

And whereupon the defendt by his Attorney James: Sang the Court and defendt the fort and injury  
 and saith that at the pt doct orders he did lease a certain plantation of m. John. At this last of  
 that County drafft, for the term of six years, which in the first place it alleges that falls at the lease  
 will make appear being but four years. 2dly the pt doct orders that at the sd pt doct lease a certain  
 plantation. But what plantation or where there is nothing more uncertain, (the sd m. John. At this doct  
 being void of several plantations which the name is) where they lay ought carefully to have been inserted  
 Otherwise it appears that this plantation by the pt always was no plantation of m. John. This drafft is consequently void  
 falls 3dly the pt says, that at the expiration of six years he did remove of the sd plantation which is by the defendt granted  
 and further he says that he left 16. hogstades of tobacco in a tobacco house upon the sd plantation which is also falls being  
 a dwelling house. Now herein the pt is also uncertain as to the quantity or quality, weight or condition, sound or  
 rotten. So that no judgment can pass, if all that the pt doct always thereupon was really true. 4thly the pt always says  
 the defendt did take the said 16. hogstades of tobacco which in Law term doct amount to an appropriation, which is likewise  
 falls 5thly that the defendt did put out of the sd tobacco house the sd 16. hogstades of tobacco which is by the defendt warrant  
 as that. The pt anno 1688. was tenant by lease parcell, and being lawfully warned to remove about the latter end of December  
 that instant year the pt did remove leaving his tobacco part in hogstades, which was removable with out damage. Notwithstanding  
 the sd pt being warned as to it to transport and remove the sd tobacco with all other his utensils, yet the said pt officiously  
 maliciously and with a premeditated intent to damage the defendt, the said tobacco would not remove, having sufficient warning  
 and time, but with Christmas and the first of July following 1689 at which time the defendt had up of the sd house to store  
 his wheat and left the pt says he is damaged the value of 10000. of tobacco which is a certain sum which cannot  
 hold good in law, the principal being uncertain the damage is not certain & certain no judgment can be entered but  
 by the whole, that the pt doct and may always is the turning out of the said tobacco, which the defendt justified says  
 that the pt in the sd house had no property, and ought the same tobacco to have removed after notice given to remove the  
 same; and also the same he ought to have secured from damage the means being in him self and the defendt no ways being  
 obliged to store or keep it, for all men are bound to preserve their own hurt and if they neglect, the law calls it *damnum  
 sui injuria*, and they are made liable. The defendt likewise says that he would not expose his own crops of wheat to the hazard  
 of the weather for the safety of another man's goods, the law says *Non tenetur exponere rem fortunam suam pro re  
 alterius* Nulla Commodum Capere potest de injuria sua prae, being so sure maxim in Law that the pt's malicious intent  
 plainly appears in the said special verdict. Expecting to take benefit by his own wrong contrary to the sd rules and reason  
 lastly, the defendt says that there is nothing certain in the whole declaration whereupon judgment might pass, and it sheweth  
 that attorney certain to be brought into judgment. *Scimus apud omnia oportet ut res sita ad iudicium in iudicium*, and if  
 nothing certain a Non suit follows in Law. J. S. ....

The pt craved that the matter in question may be referred to a Jury which by the Court was granted.  
 A Jury was legally impanelled and duly sworn, whose names are as follows: viz. John. Boyman  
 William. Robinson John. Downe Alexander. Thomas. Mober. Hamilton Robert. Pollock. Ralph. Milbourne. Samuel.  
 Howell. John. Carr. William. Boyman. Matthew. Starbrowe. Thomas. Oxford. who having heard the whole  
 proceedings, having with their Oaths good faith to determine the same. And being returned do  
 unanimously bring into Court the following verdict. Viz. That the Jurors do find for the pt Damages  
 two thousand five hundred pounds tobacco with exp. given in by Jm. Boyman.

4 Obedient swears for pt. Which Verdict the Court ordered to enter