

Same Contained is not Sufficient in Law to maineteine the writt aforesaid Soe as aforesaid prosecuted and that he hath noe need neither by the Law of the Land is held to answer to the Said writt etc. and for Causes of Demurrer according to the Statute Saith that in the Same writt it is not Contained upon whom or upon what Execution in the Said writt Should be Leavied whether upon the body of David Small or upon the Goods and Chattles of the Said Charles Treacy Deceased for noe Execution can be awarded upon the body or goods of any Executor or administrator Debonis propriis untill a writt of Devistavitt have been Leagally returned against the Executor or administrator that they have wasted the Esteat of the Deceased or that the Said Executor or administrator have pleaded some fallce plea: to the perpetuall barr of the Plaintiffs Debt Sued for and if the Judgement to be affirmed in the Same writt of Scire facias aforesaid Supposed to be made upon the Goods and Chattles of the Said Charles Treacy Deceased as it must bee if any be obtained the writt of Scire facias Should have mentioned why the Said Allexander Magruder ought not to have his Execution against the Said David of the Debt and Damages aforesaid to be Leavied of the goods and Chattles which ware of the Said Charles Treacy att the time of his Death to be administred upon which this writt makes no mention off for which uncertaintey in the writt of Scire facias aforesaid noe certaine Judgement can be Entred for the Count or Declaration must be agreeable and Conforme to the writt the barr to the Count or Declaration etc. and the Judgements to the Count for none of them must be narrower or broader then the other Cookes Institutes Folio 303: A Wherefore for want of a Sufficient writt of Scire facias to warrant and maineteine a Judgement to be affirmed by the Said writt Supposed aforesaid the Defendant Prayeth Judgement for his Damages and Costs etc.

Joshua Cecell for the Defendant.

And the Said Allexander by John Meryton his attorney Saith that by any thing alleadged in the Defendants Plea: he ought not to be barrd of haveing his Scire facias aforesaid and for replication he Saith etc.

That the Scire Facias is well brought by mentioning the Said David Small to be the administrator of the Said Charles Treacy Deceased and that Execution may be awarded against the goods and Chattles of the Said Charles Treacy Deceased and not against the Said David Small as Executor or administrator debonis Propriss or that the Said David hath wasted the Esteat of the Deceased or that the Said David hath pleaded any falce plea to the perpetyall barr of the Said Plaintiffs Debt Sued for are but meer Nicetyes in Law and alltogather contrary to the Custome and Practice of this Province and not Sufficient to preclude the Said Plantiffe from haveing Judgement affirmed upon the Said Scire facias and hereof hee prayes Judgement of this Court whether the Said Defendants Plea is not alltogather Deletory Vicious and Eronius and further Prayeth Judgement of this Court for his Debt and Costs to him to be adjudged etc.

John Meryton for the Plaintiff.

And the Said David by Joshua Cecell his attorney Saith that the replication aforesaid in not Sufficient in Law to barr the Defendants Plea in Demurrer or to maineteine the Said writt of Scire facias aforesaid brought etc. and of this he putts himselfe upon the Court. Joshua Cecell

And the Said Allexander. John Meryton.