

Declaracion in every part thereof is aided, warranted supplyed and made good, do by the same Statutes may more fully appear and therefore the prayer that Judgment may be entered according to the Verdict of the Jury aforesaid.

Tho: Truman

After full hearing & Examination of the Pleas. It is the Opinion of the Court that the reasons in arrest of Judgment exhibited by the aforesaid John Obington are not sufficient to stay the giving and entering of Judgment upon the Verdict aforesaid, and therefore it is Ordered by the Court that the said John Obington pay unto the said Thomas Truman as well the aforesaid Summe of Two hundred & fifty pounds of Tobacco at five shillings p pound according to the Verdict aforesaid, as also the reasonable Costs & Charges in prosecuting the said Suit.

The same the aforesaid John Obington by Richard Botcher his Attorney and appeared to the Prob Court and for the discharge of the same appeal produced Joseph Baker & Andrew Dickinson who in open Court acknowledged the Recognizance following viz.

Joseph Baker and Andrew Dickinson acknowledged themselves bound unto Thomas Truman in the summe of five thousand pounds of Tobacco to be laid out on his Goods and Chattels Lands and Tenements to the use of the said Thomas Truman.

The Condition of this Recognizance is such that if the above named John Obington shall not pursue the direction of the Act of Assembly (intituled an Act for settling and regulating Writts of Error) at the Prob Court now next ensuing, according to the Rules of the Provinciall Court, and prosecute this Appeal with Effect and shall not also satisfy and pay unto the said Thomas Truman the summe or assigne (in case Judgment now given against the said John shall affirm) as well all & singular the Costs Damages & Costs adjudged by the aforesaid Judgment, as also all Costs and Damages that shall be awarded by the Provinciall Court for the same delaying of Execution, then this Recognizance shall stand in full force and Virtue.

Copia Verba per Sir Kellett Dep.

On which said Assente eight day of May in the year of our Lord One thousand six hundred Eighty One aforesaid the said John Obington by his Attorney aforesaid and according to a certain Act of Assembly in that behalf made and provided intituled an Act for appealing & regulating writts of Error: offered to the Court the following Reason of his said John Obington appearing from the Judgment of the said Court of Calvert County for that the Record and proceedings aforesaid are manifestly erroneous as followeth viz.

First

The Declaracion is erroneous in this that the Action (as by the Preamble thereof appears) is brought against John Obington, and the Assumpsit as well matter of fact in the said Declaracion sett forth is against Thomas Obington, which should have been laid against John Obington if the fact was by him legally Impowered to deal to the use, and the Contract made in his name and to his use.

Secondly

The Declaracion charges not John Obington either in Debt or in Assumpsit without Oath of witness the Declaracion is not sufficient to maintain the Action against him.

Thirdly

The Declaracion is erroneous in this that the said Thomas Obington the servant is not therein assigned, to mention his Master or Employers name in the Contract and Bargain made for the Purchase without which it doth not charge the said John, but by the law is implied to be some officer of the said John Obington.

Fourthly

In the said Declaracion it is not sett forth that the Purchase was made to the use of the said John Obington without which the said John Obington by the law is not chargeable therewith nor ought the Action to have been brought against him.

All which is materiall Error: to reverse the Judgment aforesaid and therefore the said John prayeth to be dismissed from the Judgment of the County Court aforesaid, & that to all that he shall be by left he may be restored.

Richard Botcher & al.

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