

could not be summoned and the Sheriff returned a non-est in return against him. The Defendant  
Lynch being summoned appeared in person and pleaded not guilty and put himself out of the country  
and the said Nicholas with a few others also. A Jury being impanelled and sworn returned their  
Verdict that they found for the Defendant.

Against which Verdict and return of the Jury the said Nicholas  
S:wall who a few days after the first return  
1: The said Verdict is erroneous and against law being found for the Defendant without any  
proof and against legal proof produced and offered by the Plaintiff sufficient to warrant  
the Court to give directions to the Jury to find for the Plaintiff which they ought to have done  
2: The Plaintiff to prove the Information first produced there evidence viva voce to wit Anthony  
Videwood, Capt. Lawrence, and John Coumant, who all proved the said Capt. Effio to have  
come with his ship to anchor in St. Marys riv. into St. James's Creek there at the time  
mentioned in the Information to wit the first of February and that he and the  
whilst the ship lay there that for all goods and Merchandises to wit the light  
regiment of powder, some barrels of salt and other the goods and Merchandises in  
the Information mentioned, were in the night time put a shore at the house of the said  
Videwood and James Lyon there heard by, and that they did believe those goods came  
from on board the said Effio's ship, and the said Videwood further deposed that he  
had been on board the said Effio's ship and that Capt. Effio declared to him that he had  
run himself into some danger of being seized, for bringing in several prohibited goods  
not allowed in England, and asked Mr. Videwood's advice whether the said Effio had  
better through himself upon Capt. Allen, Commandant of the King's ship frigate there in  
Virginia as was reported or submit to the officer appointed by the Government  
of this Province in which he then was, and the said Mr. Videwood advised him to  
submit to the Government. He also further deposed that he did himself go to the said  
Nicholas S:wall the King's Collector to inform against the said goods, but that the said  
Nicholas S:wall had before made information to the Government. That Mr. S:wall did  
come to his house and made search of the goods there that the wine and other goods  
were in the night time when he was asleep put into his tobacco and cellar but by  
Mr. Videwood's leave that these goods might be permitted to be put there with  
granted and was agreeable to the disposition of the said Smith that all this was done  
privately and clandestinely, appeared by the circumstances of their several oaths and  
that in the substance of the said Evidence by which it is apparent the said  
Effio had not only imported prohibited goods not allowed in England, but had broken  
bulk and landed those European Commodities without entry here against the forms  
of the Act of Parliament and yet the Jury would not find the said Defendant guilty  
against proof and law.

3: The Plaintiff further to prove the said Information produced to the Court and Jury the Testimony  
of the said Christianus Smith a Merchant of R. plantation written by his own hand and by  
him signed & upon which he was sworn and examined in the Provincial Court of this  
Province in open Court in the face of the Country being there summoned by due process  
Mr. Lynch his request, and which oath was attested by the Clerk of the said Prov. Court  
being the Supreme Court of law of the Province (the upper house of Assembly only  
excepted) and the same for attested is and remained a Record of the same Court and ought  
to have been made use of in this Court as good evidence for the King, and the rather in  
regard the said Christianus Smith being a Merchant not an Inhabitant of this Province was  
about his own affairs some times in our County and some times in another, and some  
times in Virginia out of the Jurisdiction of this Court, and he could not be had viva  
voce at the trial of this cause, and yet the Defendant Lynch opposed the having the said  
Oath