

Oath was, and though upon much argum^t. the Court permitted the same to be read —
y^t wth the direction to the Jury not to take the same as evidence but as a history —
that the same was read and in the same was proved the said ship coming with his
ship from Portugal to St. Marys, and then unloading his said goods & Merchandises
in the Informacion mentioned at Vnderwoods & Lyons and putting the same into
Vnderwoods tobacco house and cellar by Mr. Vnderwoods Receiver and many other
substantiell proofs, and other evidence circumstances touching the providing
of the said Master & Merchants in breach of the said Act of Parliament in the
Informacion mentioned do by the said Affidavit may appear y^t the said
Jury would take no notice of the same, but found for the Defendant though
many of the Jury then at Barr did declare that if that oath might have been
admitted as evidence they must have found for the Plaintiff all which is
erronious, and the Verdict against proof and law.

4: The Plaintiff produced an order of the said provincial Court made the sixth of March
whereby they had left matter upon the said Informacion to be determined at
a special Court to be held the fourth of the March where in at the request of the
said Lynch for himself and others interested in the said goods, which were many
of them liquors and other perishable Commodities it was ordered the same
should be appraised and delivered to Mr. Lynch the giving security and pursuant
to that order they were appraised and amounted to twenty six hundred and eighty
Nine pence as by the same produced appeared and the bond given by Mr. Lynch
being also produced whereby it plainly appeared the said goods were European
goods & imported into this Province by land or by water, and were owned by the
said Lynch and other the Merchants of the said ship providers of Deale and so
liable to seizure and condemnation y^t the Jury took no notice of the same which
they ought to have done.

5: The said Lynch by his Council offered for law before the Jury that the said goods were
not questionable or condemnable, without this and the ship was first condemned
for the transgression making the same like the case of principals & accessory, and
that the Master and ship not being seized being the principals the accessory is
is clear which is not admitted for law or upon the case similar which is that of
principal & accessory, for if goods be brought in by land & seized if not contrary
according to law they are by express words of the Act 15. Car. 2. in the Informacion
mentioned forfeited, and if they come by water and be seized, and the vessel that
brought them in go away that she cannot be seized, nor it doth not at all respect
the goods, y^t admit the same were disputable in law the Jury had not to do therein
but only with matter of fact, and the Jury ought to have notwithstanding that
suggestion to have brought in for the plaintiffs or at least a special verdict upon
the whole matter, for their duty is to find the truth of the whole fact and to refer
the discussion of the law to the Justice then arising upon argument & evidence special
matter of law, and the Reverend Judge said. If the Jury will not find the special
Verdict matter and leave it to the Judgment of the law they ought at their peril to find
according to law, and if the Jury find contrary to law they shall have in spite the law
Judgment shall be given contrary to the Verdict. And the Jury have found
to evidence of law and so the same ought to be quashed.