

Oath read, 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 delivering to all goods & Merchandises
in the Information mentioned at Vnderwood & Lyons and putting the same into
Vnderwoods tobacco house and cellar by Mr. Vnderwoods & others and many other
substantiall proofs, and other evidence circumstances touching the providing
of the said Master & Merchants in breach of the said Act of Parliament in the
Information 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 that at barre 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 Court produced an order of the said Provinciall Court made the 10th of March
whereby they had left matter upon the said Information to be determined at
a speciall Court to be held the 4th of the next March when in at the request of the
said Lynch for himselfe and others interested in the said goods, w^{ch} 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 eight shillings, and
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 questionably or condemnably, without proof and the ship was first condemned
for the transportation making the same like the case of principal & accessory, and
that the Master and ship not being seized being the principals the accessory is
is clear w^{ch} is not admitted for law or reason Nor doth this case resemble wth that of
principal & accessory, for if goods be brought in by land & seized if not entered
according to law they are by express words of the Act is: law: in the Information
mentioned forbidden, and if they come by water and be seized, and the vessel that
brought them in go away that she cannot be seized, how it doth not at all respect
the goods, y^t admit the same were disputable in law the Jury had not to do therewith
but only with matter of fact, and the Jury ought to have not withstanding that
suggestion to have brought in for the plaintiffs or at least a speciall 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 Justices then arising upon argument & evidence speciall
verdict matter and have 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 have mistaken the law
Judgment shall be given contrary to the Verdict. And the Jury have found contrary
to evidence & law and for the same ought to be quashed.