

without the bounds of Virginia but that all such tryalls and Determinations shall be secundum Legem and Consuetudinem in Anglia and therefore he ought (and by the Lawes of this Colony itself) to have been tryed by a Justice of the Peace where the fact was committed viz: of Calvert County in Maryland, which he was not, therefore the tryall vicious and the same was reversed by his Council. The Court overruled the foregoing points for that the words of his Majesty's Commission of Oyer and Terminer are per Sacramentum proborum & legalium Hominum de Colonia Nostra Virginia. That in all Indiments certainty is required that the prisoner ^{at} the bar, may not suffer prejudice for want of certainty where to he may plead, and that in the Indiment whereby he was arraigned, there was no specification of the river, Creek, Town parish or hundred nor of the County, nor province and therefore the Commission of Oyer and Terminer hath not been well pursued in that respect.

To which the Court made answer that the Indiment was as certain, as possible viz: that the fact was committed on board his Majesty's Ship the Quaker, in Great Cabin thereof riding within the Capes of Virginia.

3. The Prisoner insisted, that the full pannel of the Jury for his tryall did not amount to the number of four and twenty persons whereas by the English Lawes and Customs that number is requisite to make a legal Pannel.

To which it was replied by the Court that the pannel is only the Jury sworn, and that an array sometimes consists of twenty four, sometimes of thirty six that thereby the prisoner may have Liberty to make his exception, of the full number allowed by Law, if he please, and that being no person was admitted and sworn on the Jury of Life and death of whom the prisoner (George Talbot) excepted, (and)