

June 25 1708

The aforesaid prayer Judgment and that the said Plaintiff had the action aforesaid to have may be  
Deferred *Capitulum Demurro* *Philippson pro Defo*

1. Every Declaration ought to be certain otherwise not direct & certain answers can be  
given thereto but this Declaration is not certain for in the first part are the words -  
Whereas the said James in his life time to wit in the year of our Lord 1706  
He without naming any month is very uncertain for that the said James dyed  
Several months before the end of the year 1706 - the words in his life time do  
not help this uncertainty by Intendment because the name of the month is in plain  
words in this Case & cannot be supplied by any Intendment

2. The Plaintiff in his Deed supposes that all the goods & Merchandise of the said James  
he sold & delivered unto him by the said Thomas divers goods wares & Merchandise  
whereas he either supposes another Thomas besides the Plaintiff is. I have not yett found  
in the former part of the Deed or Else if he means that the Plaintiff is the Thomas -  
that he sold & delivered to unto the said Thomas it is intelligible non sense & void  
being a defect in the very essential part of the Declaration -

3. The Plaintiff supposes that he sold & delivered the diverse goods wares & Merchandise  
to as by an Audo he alledging the same amount to 4 & 6 - whereas there is  
noe Audo. of goods wares & Merchandise amount to the Deed consisting of  
Such Articles as will warrant the Deed in that manner & form Wherefore  
for all which they pray Judgment as aforesaid *Philippson pro Defo*

Demurrer Joyned Earle & Quer

Which said Demurrer being read & argued and mature deliberation thereupon  
by the Court being taken the Demurrer aforesaid is Ruled good Therefore it is  
Considered by the Court here on this Twenty fifth day of June Anno  
Domini 1708 that the said Thomas doe take nothing by his Deed aforesaid but  
for his false claim he & his Wives of prosecuting be in memory and the said  
Deeds goe thereof without day he and a fine that the said John Price and Mary  
his wife & C. of James with a fine doe recover against the said Thomas -  
Doe as well the sume of fifty pounds of Tobacco for their own Suits as also  
the sume of Two hundred eighteen pounds of Tobacco cost by the said Doe about  
their Defense in this be halfe expended and by the Court here of this aforesaid Judged  
in the whole amounting to the sume of Two hundred Sixty and Eight pounds  
of Tobacco and that the said Doe have thereof Execution  
*Sam Smith*