

Whitehall

At a Council held Sep^r: 22th 1694

Present

His Exce^{ny}: Fran^{co}: Nicholson Esq and rest of their Maj^{ty}: Hono^{ble}: Council
aforesaided wth the Addition of the Hono^{ble}: Tho^s: Fenwick Esq and Tho^s:
John Courts.

Attor: Order to be
consulted about Appeals
and Writts of Error

It being debated at the Board whether the Gover: and Council could properly
take upon them the hearing of Appeals and Writts of Error brought before them
in a Judiciall way, as also the regulating the Court of Chancery taken into con-
sideration. Resolved that the Kings Attorney Gen^l wth the rest of the Attorneys
in Towne be sent for immediatly to give their Advice & Opinion, about the same
and accordingly appeared M^r: Job: Smith Speaker of the House of Burgeses
Attor^y: Gen^l: M^r: Henelom Cheseloyne M^r: W^m: Dent & M^r: Charles Carroll
who upon stating the Case and debating the same wth con^{cl}: did humbly
crave time to advise & further consult about it w^{ch} was granted and for their
better direction was delivered to them Copy of an Instruction and Clause out
of his Sacred Maj^{ty}: Comission to his Exce^{ny}: Francis Nicholson Esq relating
thereto whereof they are to make report wth all convenient Speed.

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Sep^r: the 27th 1694

Produced the Answer & Opinion of the Attorneys about the same w^{ch}
being read was referred to be reheard again to morrow Morning

Sep^r: the 28th 1694

The Attorneys Answer last night Referred taken again into consideration Resolved
ordered that the same be sent downe to the House of Burgeses for their perusal
The sd answer runs in these following words; Viz:

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Maryland s^r:

To his Exce^{ny}: the Gover:

Attor: opinion about
Appeals & Writts of
Error

We have in obedience to yo^r: Commands consider'd and debated the sd
Matters Given us in Charge w^{ch} we conceive to consist of these two following
propositions (to wit)
1st Whether by Virtue of their Maj^{ty}: Comission the Gover: and Council are not actually
qualified & Enabled as a Court of Justice to hear and determine all Matters in Law
that shall be brought before them by Error or Appeals or that there be a Necessity
for any further Authority or Comission to them for the same To w^{ch} we humbly
answer, We are of opinion that you and yo^r: Council are sufficiently Authorized and
Empowered by yo^r: Comission from their Maj^{ty}: to hear and determine all Matters in
Law coming before you either by Appeals or Writts of Error from the prov^l: Court
wth out any further or other Comission or Authority for the same but we conceive
it Necessary for information of the people that you signify by proclamation
how often in the year you will hear & determine such Matters.
2^d: What will be the best Methode or Manner for constituting a Court of Chancery or
Equity in this province according to the constitutions of the same.
We say that because you have power & Authority to constitute Erect and establish
such & so many Courts of Judicature & publick Justice as to you shall seem con-
venient & you may constitute a particular Court of Equity in this province
But then for the Hon^{or}: of the Gover: & Council it would be Necessary to declare
by a Law that any person expecting to be relieved by Equity shall hold of the same
before the sd Gover: & Council and not after or else you may procure a Law to be
made declaring the Gover: & Council to be Judges in Equity wth in this province.

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