fifteenth day of August 1682 being the said thirteenth day in August then
next and exhibited to the Court here the said demurrer for maintaining thereof
Mr. Hudleston the said John Lorder saith that the plts declaration is tenuious
1 imperfect and insufficient in law to maintain and his demurrer against him the said
John Lorder. Besides he says that he the said John Sunderland in his declaration
aforesaid have not set forth a consideration sufficient in law to compell nor
oblige him the said John Lorder to pay the said sum of three hundred
twenty and five pounds of tobacco to claim the said John Sunderland for
that he the said John Sunderland in his declaration aforesaid untruly saith
that whereas the said John Lorder upon the fourth or twentieth day of July
white wood in the yeare of our Lord God one thousand six hundred seventy
and five stood indebted unto Hammond Hammond of the Citty in Talbot County planter
in the sum of three hundred twenty and five pounds of tobacco for a
consideration whereof the said John Lorder at or upon the seventh day of
June in the yeare of our Lord God one thousand six hundred and eighty
at the house of Thomas Coyden in Talbot County aforesaid
did assume upon himself and to the said John Sunderland did faithfully
promise that he the said John Lorder when thereunto required the aforesaid
sum of 325 pounds of tobacco to the said John Sunderland well and faithfully would
content satisfy and pay or doth not show in his said declaration what power
or right he the said John Sunderland had to demand or receive the said of
him the said John Lorder viz. whether as attorney, administrator or
executor or by any other order from the said Hammond Nor that the said Hammond
was any way indebted to him the said Sunderland Nor in any other manner
then he saith the said John Lorder did promise to pay the same to the said
John Sunderland and if the said sum of 325 pounds of tobacco were due to the
aforesaid Hammond Yet the said promise and the said John Sunderland in
his declaration aforesaid hath set forth is not obligatory in law to compell
the said John Lorder to pay the same to him the said John Sunderland
Besides he showed no lawful title that he hath to the debt or debts
due to the said Hammond Hammond without showing some other right
whereby to exhibit the said promise made by the said John Lorder
to the said John Sunderland is but a bare and naked promise which by
law is void and obliged not the said John Lorder to find it Neither can
any such promise made by the said John Lorder to the said John Sunderland
be any good title or warrant to the said John Sunderland to sue the said John
Lorder in his own name for a debt due to the said Hammond Hammond without
showing some other right or title to exhibit himself to be
the said John Sunderland although the said John Lorder did make such promise to the said John
Sunderland as the said John Sunderland in his declaration hath set forth
Yet he the said John Sunderland in his said declaration hath showed
no other consideration nor title to the debt or debts due to Hammond
Hammond but the said John Lorder his promise to pay the same to him the said
Sunderland. He hath not sufficient warrant in law for the Court to ground
judgment upon against the said John Lorder. Besides no judgment
ought against the said John Lorder upon the declaration aforesaid to be
any discharge to the said John Lorder for that the declaration aforesaid is
debt due to the said Hammond Hammond. Therefore the said declaration is tenuious
imperfect and insufficient in law to debt although the said John Lorder hath
pleaded non assumpsit and it is found against him yet the said declaration is
ill that the verdict cannot help it &c.

2 Secondly the declaration is tenuious imperfect insufficient in law in that
the said John hath only set forth generally that whereas the said
John Lorder upon the 24th day of July white wood in the yeare of our Lord God
one thousand six hundred seventy and five stood indebted unto Hammond
Hammond of the Citty in Talbot County planter in the sum of
325 pounds of tobacco for a consideration whereof the said John Lorder at or upon
the seventh day of June in the yeare of our Lord God one thousand six hundred
and eighty at the house of Thomas Coyden at Talbot Town in Talbot County
aforesaid did assume upon himself and to the said John Sunderland did
faithfully promise that he the said John Lorder when thereunto required
the aforesaid sum of three hundred twenty five pounds of tobacco to the said
John Sunderland well and faithfully would content satisfy and pay &c. And doth not

show any cause of the debt due to the said Hammond Hammond but he
bound judgment dayright Entered or order was for if the debt were due upon
judgment or specialtie which lyes not in contract then upon the assumpsit
would not lye. Besides damages recovered upon an assumpsit cannot be
barr to a debt upon record or specialtie therefore also the declaration
aforesaid is thus the said John Sunderland is tenuious imperfect insufficient
in law to maintain his action aforesaid. And although the said John
Lorder hath pleaded non assumpsit and it is found against him yet the said
aforesaid being the ad aforesaid he ought not to be
3 Thirdly the declaration aforesaid is tenuious imperfect and insufficient in
law in that that the said John in it hath set forth that whereas the said
John Lorder upon the fourth or twentieth day of July white wood in the yeare
of our Lord God one thousand six hundred seventy and five stood indebted
unto Hammond Hammond of the Citty in Talbot County planter in the sum of 325 pounds of
tobacco the which was apparent by the said Hammond Hammond by the said Sunderland
upon the said small wood upon a certain consideration whereof the said John
Lorder at or upon the seventh day of June in the yeare of our Lord God one
thousand six hundred and eighty at the house of Thomas Coyden in Talbot
Town in Talbot County aforesaid did assume upon himself and to the
said John Sunderland did faithfully promise that he the said John Lorder when
thereunto required the aforesaid sum of 325 pounds of tobacco to the aforesaid John
Sunderland well and faithfully would content satisfy and pay &c. Yet he
manifestly appeared by the said John Sunderland ought showing in his
aforesaid that the promise and assumption aforesaid by the said John Lorder
to him the said John Sunderland made and the action upon the consideration
in the declaration aforesaid is brought after the bound limitted
limitted by a certain act of assembly entitled Prohibition made at a certain assembly
held at St. Mary's City begun and held at the City of St. Mary's the 13th day of
April in the yeare of our Lord 1676 entitled An act for limitation of
certain actions for a time being sued at law which said act of assembly by divers
acts of assembly standed still in force in our Province aforesaid
enacted that all actions of trespass, quare clausum fregit, all actions of debt
detinue, trover and replevin for any goods and chattels all actions of
account upon a contract debt or bond upon the sale or exchange of any
contracts and concerning the trade of merchandizing between merchant and merchant
their factors and servants which are not resident in this province all actions of
debt for lending or contracts without specialtie all actions of debt for arrears
of rent and all actions of slander assault and battery wounding and
imprisonment or any of them which shall be brought by any person or persons
within this province at any time after the end of this present assembly shall
be sued or prosecuted within the time and limitation hereafter expressed and not
after (that is to say) the said actions of slander assault and battery wounding and
imprisonment and the said actions of trespass debt detinue replevin
for goods and chattels and the said actions of trespass quare clausum fregit
within two years after the end of this present session of the assembly
or within two years after the cause of action shall arise and not after (that
is to say) the said action being had to the said act of assembly aforesaid
Therefore the said John Lorder saith that by force and virtue of the said act
of assembly the action aforesaid by him the said John Sunderland upon the
consideration in the declaration aforesaid mentioned ought not to have been
brought but the consideration therein mentioned ought forever after to be
of the kind limitted by the said act of assembly to be void and from all or
any action or actions what soever to be utterly debarred to all intents & purposes
whatsoever. And therefore also at length the said John Lorder hath pleaded non
assumpsit and it is found against him the declaration also being therein
the verdict cannot help or aid it. Therefore the said John Lorder saith
that judgment ought not to be given against him in this behalf upon the