4 Marcy

Mary Mullor brought before this Court by her Master Mr. Garrett Wauchope in forfeiting a Recognizance, this day the said Mr. Wauchope in open Court prayed that this Court would take the premisses into their Consideration and the said matter being fully heard and understood by the Justices now sitting in Court it was ordered that the Sheriffe of St. Marys County forthwith take the said Mary Mullor to the whipping post and there cause her to receive on the bare back thirty lashes and that for the trouble of the Court and the loss of time of the said Mary the Servant for the said Prayer his assignee two days over and above her time serving by law or otherwise she is obliged to serve —

Joseph Eaton ag. John Abbey

John Abbey late of Calvert County was attached to answer unto Joseph Eaton of a plea of Trespass on the case.

Joseph Eaton of a plea of Trespass on the case and whereupon the said Joseph Eaton by Robert Carvile his Attorney complaineth that whereas the said John Abbey upon the fourteenth day of June in the year of our Lord 1682 at Calvert County aforesaid in the said province stood justly indebted to the said Joseph Eaton in the sum of fourteen pounds sterling ten shillings sterling money aforesaid (John Abbey according to the tenor of Indenture thereupon made) to deliver to the said fourteenth day of June at Calvert County aforesaid deliver to the said Joseph Eaton two bills of Exchange with the proper hand and name of the said John Abbey subscribed to the Merchants of London directed requiring and appointing the aforesaid John Lucom by the first of the said two bills of Exchange at Sixty days sight of that the said first bill of Exchange the sum not being paid to the said Joseph Eaton or order the sum of fourteen pounds ten shillings sterling and the said John Abbey afterwards to wit the fourteenth day of June aforesaid at Calvert County aforesaid in consideration of the premisses did promise that if the said bills of Exchange or either of them for want of acceptance thereof by the said John Lucom should be protested according to the use of Merchants or if the said John Lucom should not pay the said fourteen pounds ten shillings in the end of the time aforesaid then the said John Abbey would well and truely satisfy and pay the same and the said Joseph in fact says that afterwards to wit the fifteenth day of October in the year of our Lord 1682 one Nicholas Hayward Merchant Notary and Tabellion of publick dwelling in the City of St. Marys by authority of the Kings most Excellent Majesty admitted and sworn at the request of the said Joseph Eaton in the City of London aforesaid speaking to John Lucom aforesaid demanded of him if he would pay the said first bill of Exchange of the said two bills of Exchange for the said sum of fourteen pounds ten shillings sterling money aforesaid and then and there said John Lucom and the said John Lucom answered that he would not pay the said bill for want of effects upon which the said publick Notary at the request aforesaid at London aforesaid the said fifth day of October aforesaid according to the Custom of Merchants did protest that bill of Exchange against the said John Abbey and all other to whom it might concern for all costs damages interests then already suffered and sustained and to be suffered and sustained for want of payment of the said bill and the said Joseph further saith that the said John Lucom at the end of the said time mentioned in the said fourteen pounds ten shillings sterling to the aforesaid Joseph

Eaton hath not payd or in any manner for the same satisfied yet the said John Abbey his promise and assumption aforesaid but deceitfully and fraudulently intending him the said Joseph Eaton in this behalfe craftily and subtilly to defraud and deceive the said fourteen pounds ten shillings sterling to the aforesaid Joseph Eaton hath not as yet payd or in any manner for the same given satisfied though he the said John Abbey to do it by the said Joseph Eaton was afterwards (that is to say) the 23. day of June in the year of our Lord 1682 at the City of Calvert County aforesaid required thereupon the said Joseph Eaton saith that he is damnified and hath damage to the value of his whole profit gained and advantage which he hath the aforesaid fourteen pounds ten shillings sterling (if the aforesaid John Abbey had well and faithfully performed his promise and assumption aforesaid) by buying selling and bargaining might have had and gained hath now totally lost and is deprived of thereupon the said Joseph saith that he is damnified and hath damage to the value of twelve pounds sterling and therefore he brings his suit —

And the said Joseph Eaton brings into Court here the said bill of Exchange and the writing of protest aforesaid —

Robert Carvile

pledges Jno. Doe
Rich. Roe

And the said George Parker John Abbey by George Parker his Attorney comes and defends the force and injury when etc. and prays that he may be hereof hence dismissed but this Court not provincial Court etc. his prayer is granted but to him the same day is given to the plaintiff also.

Now here at this day to wit the second day of April Anno Dni 1683 came the aforesaid parties by their Attorneys aforesaid and the said John Abbey by his Attorney ought not to have to Exchange he says that he did not promise and assume in manner and form as the plaintiff in his declaration hath declared and of this he puts himself upon the Country — And the plaintiff also — command was therefore given to the Sheriffe of St. Marys County that he cause to come here twelve etc. by whom and etc. and who neither etc. to recognize the truth of the premisses etc.

And at the said second day of April 1683 came the said parties by their Attorneys aforesaid and the Jurors of the said Jury likewise sworn (to say) — Richard Adams John Read Walter Wolverston Philip Lynde Thomas Cole William Sandrell John Parsons Thomas Cole Francis Yoe Matthew Turner who to say upon their oaths do say we find for the plaintiff nine pounds and five shillings with costs of suit upon the said John Abbey. But the said George Parker moved the said Court in arrest of Judgment and desired time till the next provincial Court and it is granted unto him —

At which said next provincial Court he said defendant filed his Reasons in arrest of Judgment which follow in these words viz. —

1. The Declaration is not good for that the declaration ought to comprehend all the certainty that the matter may be brought to Judgment and the law requires a certainty to all intents in all pleadings of the plaintiff it being a rule in law that verba dubia sunt narratio contra eos qui dominium in judicium. Now the Declaration doth set forth that Abbey was indebted to Eaton fourteen pounds ten shillings sterling and doth not say for what, for it ought to be set forth for what the debt was due otherwise it is not good as hath been adjudged —

2. The bond is insufficient in law for that the plaintiff doth not in his Declaration show that the defendant had clear any notice that the bill was protested which he ought to have set forth and particularly address for how could the defendant in safety pay the contents of his bill to the plaintiff when he hath no notice that the bill was not payd in London which ought to appear in the Declaration for which reasons he prayeth that the Judgment may be stayed —