Archiundered upon the said Mirgatt Miller by Kentlin (Reseldyer his dwe
complaineth) that whereas the said Samuell in his life time to wit the
Twentieth day of May Anno 1682 stood indebted unto him the said
Mirgatt for diverse sums of Tobacco paydable by speciall in standing of
the said Samuell in his life time to severall persons in the province as
also for severall goods by Merchandize bought sold & delivered and diverse
days & times to wit from the 14. day of August in the yeare 1680 u
until the Twentieth day of May in the yeare of our Lord 1682 according
a particular of severall summes of Tobacco & goods Merchandize as
stood in Court produced amounting in the whole to the summe of Eight
thousand Nine hundred & sixty five pounds of Tobacco for Consideration
whereof the said Samuell in his life time to wit the 20. day of May
in the yeare aforesaid did assume upon himselfe and to the said Mirgatt
did faithfully promise that he the said Samuell when thereunto required
the said summe of 17966 to him the said Mirgatt would well and truly make
and pay, and the said Mirgatt further saith that although the said Sam
Samuell in his life time did pay unto the said Mirgatt the summe of
five thousand pounds of Tobacco part of the said summe of 17966 lbs
the summe of 17966 lbs of Tobacco Residue of the said summe of 17966 lbs to
him the said Mirgatt though often thereunto required in his life time
hath not payd, nor the said Anne since his death administratrix of all
and singuler the goods & chattells which were the said Samuell at the
time of his death, since his death, to her Ministrator though often
required but the same to pay hitherto hath & still doth delay to
to the damage of him the said Mirgatt the summe of 20000. lbs —
And thereupon he brought his suit —

And the said Anne Tobey administratrix aforesaid comes & defends
the force and injury when &c and by Griffith Hounds her Attorney
praydth liberty to imparle hereon to until the next Provincial Court
and it is granted unto her the same day is given to the pltff allo —
Now here at this day to wit the fourth day of October Anno Dni 1684
came the said parties by their Attorneys aforesaid and the said Anne
by Griffith Hounds her Attorney saith that she did not assume & promise
in manner & form as in the Declaration is set forth & that upon
this issue upon the Country — And the pltff also —
Thereupon the Sheriff of St. Maries County that now
is or shall be for the time being, commanded, the Sheriff of St. Maries County that now
is or shall be for the time being, commanded to summon here Corbin Griffith &c. to
Prosecute &c. against Charles Stoakley &c —
At the aforesaid fourth day of October 1684 came the said parties by
their Attorneys aforesaid and the Juror of the Jury likewise summoned
to wit Thomas Hinder, Thomas Hughes, Richard Hounds, James Hughes,
Robert Smith, John Hartlewood, John Scott, Matthew Chilton, Andrew
Addington, William Desquith, Richard Hughes, Lewis Blangy, who to
say the truth in the premisses being elected tryed & sworne upon
their oaths do say we find for the pltff Nine thousand Eight
hundred and one pounds of Tobacco damaged occasioned by the
trespass aforesaid together with Cost of suite — Whereupon the
said Anne Tobey by Griffith Hounds her said Attorney moved the Court
in arrest of Judgment and desired time till Munday next being the
fifth day of the said October which day being come the said Anne prayed
further time to file her reasons in arrest of Judgment until the
first day of the next Provincial Court and it is granted unto her
the same day is given to the pltff also — And the said ranges is continued
until the next Provincial Court —
Attorney said next Provincial Court the said Anne by her Attorney
aforesaid filed her Reasons in arrest of Judgment which follows in
words viz:

1. For that the said Mirgatt hath brought his action against the said Anne in an action of Trespass upon the Case and hath layd in his declaration upon a special assumption which ought to have been provided by Testimony and the Jury found for the said Mirgatt the pltff without Verdict and Judgment thereupon boyd for the same is the sole ground of the action brought —
2. For that the pltff in his declaration hath layd his assumption the Twentieth day of May 1682 for a Consideration in the yeare 1680 which being a past Consideration whereupon whereupon no assumption can be grounded, but the same is a nudi pactii. ex quo non oritur actio, and the said Samuell had not a valuable Consideration whereupon to ground the assumption —
3. The Declaration is not good because it is generally indebitatus assumpsit for goods Merchandizes Forbearance fees Cleareys and bond which lye not in Contract being of an higher nature and more credit to be given to them —
4. The Declaration is not good, for that the day of requisit sought to be indicated for is not so specified requisitus will not serve and it appeared not that the requisit was before or after the action Commenced against the Deft and if after the action brought then not demanded —
5. The verdict of the Jury is void, for that there is not twelve fatias returned to warrant the Jury and so no verdict, and the same not helpen by the Statute of Jeoffaylds —
6. That the Declaration being upon an assumption and it appearing upon the all — That the assumption was for less than he hath declared upon he hath failed in laying his Declaration for the Contract is entire and destroyed the Contract in the
7. The Originall writ whereupon the Declaration and orig proceedings in Grand was purchased and sued for the 29. day of September 1683 before the said Anne administratrix of the said Samuell Tobey which being the Original writ and the ground of the action the same is not helpen by the Statute of Jeoffaylds and thereupon the verdict void —
8. If no Error in that the pltff layd his assumption to be the 20. day of May 1682 and produced his account as Evidence to prove the same in the yeare 80 or 81 which Evidence does not maintain the Declaration for had the pltff layd his Declaration according to his Evidence which he ought to have done the Deft as Administratrix might have pleaded the Statute of Limitation for which reason the Deft says that Judgment ought to be arrested —

Now here at this day to wit the second day of March Anno Dni 1684 came the said parties by their Attorneys aforesaid and the said reasons in arrest of Judgment and it is further considered by the Court here that the said reasons being fully heard and understood by the Justices here that the said reasons are not sufficient to arrest the Judgment and therefore it is considered by the said Justices that the said Mirgatt a Miller recover against the said Anne Tobey Administratrix aforesaid the summe of Nine thousand Eight hundred and one pounds of Tobacco with damages occasioned by the Trespass aforesaid as also the summe of Eleven hundred fifty four pounds of Tobacco cost of suite the Deft in Mercy &c.

Ethemiah Blakiston
ag
John Abbey

Maryland ss.
John Abbey late of Calvert County planter was attached to answer unto Ethemiah Blakiston Gent of a plea of Trespass upon the Case &c.
And whereupon the said Ethemiah by Thomas Rutford his Attorney &c. complaineth that whereas the said Ethemiah the first day of January in the yeare of our Lord 1681 at St. Maries County was possessed of one man servant named Peter Arflotteger having then bond in his service of