Francis Parlis against Philip Lyons

Philip Lyons late of Charles County Merchant was attached to answer unto Francis Parlis of a plea of trespass upon the Case and thereupon the said Francis Parlis by Samuel Wakefield his Attorney complaineth that whereas the said Philip Lyons the twelfth day of May Anno Domini 1689 at Schoolt River in the Jurisdiction of this Court stood indebted unto one Charles Parlis in his life time in the sum of forty eight pounds sterling and being so indebted to the said Philip Lyons the thirteenth day of May in the year aforesaid according to the usage and custom of Merchants did draw three Severall bills of Exchange all of one tenor and date to Mr John Taylor of London directed wherein the said Philip did require him the said John Taylor after thirty days sight of this said third Bill of Exchange his second not first of the same tenor and date not being paid to pay or cause to be paid unto the said Charles Parlis or order the said sum of forty eight pounds sterling and the said Francis in fact saith that the said Philip Lyons in confideration of the premisses did assume upon himself and to the said Charles Parlis in his life time to wit the said thirteenth day of May in the year aforesaid and place aforesaid faithfully promise that if the said John Taylor should not answer and pay the said sum of forty eight pounds sterling to him the said Charles Parlis or his order according to the tenour of the said Bills of Exchange that then he the said Philip would the said Charles Parlis or order whatever damage he should require would well and truly content and pay and the said Francis in fact further saith that on the 28 day of June 1689 the the said Charles Parlis in his life time did indorse the said Bill of Exchange which the said Francis Parlis as by the said Bill of Exchange and indorsement therein said produced may more at large appear and the said Francis Parlis in fact further saith that on the 28 day of September Anno 1689 at the request of the said Francis Parlis Gordon Paul Notary and Tabellion publick legally admitted and sworn dwelling in London searching to the said John Taylor did demand of him if the said John Taylor would pay the Originall Bill of Exchange of forty eight pounds sterling the Copy whereof is above the said Word that he would not pay the said Bill for want of effects whereupon the said Notary at the request aforesaid did protest and as well the said Philip Lyons drawer of the said Bill as all others therein any ways obliged for change & exchange all cost damages and interests suffered or to be suffered for want of payment of the said Bill as in and by the said protest therein said produced may more at large appear yet notwithstanding the said Philip Lyons his premisse and assumption aforesaid made little regarding but minding and

fraudulently intending him the said Francis Parlis of the sum of forty eight pounds sterling craftily and subtilly to deceive and defraud the said Francis of the sum of forty eight pounds sterling although often demanded hath not paid nor any manner for the same given but hitherto wholly the whole profit gain and advantage thereof to the said Francis by buying selling and lawfully bargaining might have had is totally lost whereupon the said Francis complaineth and saith he is damnified to the value of fifty pounds sterling and thereupon he bringeth this suit and the said Philip by his Attorney cometh and defendeth the force and injury when & where & prayeth judgement of the Court and because he saith that the declaration and the Matter therein contained is not sufficient in Law for the plaintiff to maintain his Action do this Defendant by Justice be found by the Court of this Land to Mainteinance to his Land wherefore for want of sufficient Matter in the Declaration set forth he doth demurr in Law thereunto and for cause of Demurrer according to the form of the Statute in such case made and provided he saith

1: The plaintiff saith the said Philip drew three Bills of Exchange all of one tenor and date wherein the said Philip required John Taylor to pay at 30 days sight this first third bill his first not second being date forty eight pounds sterling the Defendant saith that the three bills were all of one tenor and two of them were Regular and Noyse & all not that the plaintiff set forth that he delivered them to Charles Parlis for payment of that debt for it was not the writing them but delivering them were the effects Parlis of a right to them and it is not averred that he delivered them to him nor is it said what the contents of the first and second Bills were

2: The plaintiff says that on the 13 day of May the said Lyons assumed which assumption any word is barred by the statute of limitation of this Province and that of the plaintiffs own showing and this cause not within the clause of saving between Merchants and factors nor is the plaintiff styled Merchant

3: But this Action seems to be brought upon Lyons his premisse to Charles Parlis that if Taylor did not pay the Money he would pay it and now Francis Parlis sues for the breach of that premisse and that without ever making himself party or add not to the said Charles or that which he claimed for breach any premisse to Charles and for the Action is laid upon a false foundation there being not any privity between Francis Parlis and the said Lyons for as to any right of that Action by an & endorsement of Charles was a privilege in the Francis that sued as assignee of Charles which he has not done nor showed

4: He doth not set forth a protest for Non Acceptance on the first day of tendering which Taylor might have done to have had 30 days time to consider and he might if he pleased have had the first day and pay within the 30 days and Non contra but he did for there is no protest for non payment or non Acceptance after the days expired