the Said Regine the said Defend in like manner &c the Said Plaintiff replied as Said &c
Joyn &c and Said by the Said Attor. that the Bill of Complaint the Said Regnd the Said
Defend in like manner &c Said as Said Said to Joyn Issue Prayed
Leave of Court to Imbr &c Record &c which is granted &c
3 The Said Defendt in his Said Dec8 Said by Mr Benjamin Hoby &c Comp. his Said
Attorney &c that the Said Benjamin Hoby Comp. ought not to be
Admitted to Prosecute his Said Appeale because he Said that the Said Benjamin Hoby
Comp. is an Alien born and Subject to the King of Great Britain and Ireland
and not to the Said Defendt or to the Queen of this Province and that
he the Said Benjamin Hoby Comp. is not Resident within this Province
and that he the Said Benjamin Hoby Comp. hath not Estate within this
Province to Answer the Damages and Costs that may be Awarded against him
in the Said Appeale and that he the Said Benjamin Hoby Comp. is
not ready to Prosecute his Said Appeale but Refuseth so to do and
that the Said Defendt by reason of the Premises ought not to be
Delayed unto him &c Wherefore &c Defendt

The Plaintiffe Joyns in Demurr &c Pleads to Issue &c

Which Said Demurrer being read and argued and mature Deliberation thereupon by
the Court being taken and also that the Demurr. aforesd is not Sufficient in Law
to Stay or delay Judgment Therefore It is Considered by the Court here &c that this
Twenty Seaventh day of Aug. Anno Dni 1708 that the Said Plaintiffs Benj. Way &
Company do recover against the Said Edward Bathurst the Said Defendant the afd
Sumes of Nine pounds Fifteen Shillings & Nine pence half penny Res money
Damages and also the Sume of Three Hundred forty one pounds of Tobacco Cask by
the aforesd Plaintiffs about their Suite in this behalfe Expended & by the Court here
of their assent adjudged & the Said Defendant in Mercy &c Whereupon the Said Defendt
Came & Prayed an Appeale from the Judgmt of this Court which is Granted giving
Security &c Whereupon the Said Edward Richd Simonds & Danl Dulaney Entered into
Bond to the Said Plaintiffs for the Effectuall prosecution of the Said appeale according to
Act of Assembly in that case made & provided & Said Bond Said appeare

James Smith Clk

Test Copy taken from the Records of Kent County — James Smith Clk

And now here at this Day to wit the Seventh Day of September
Anno Dni 1708 Comes the Said Edward Bathurst into Court by his Attorney &
of Maryland before the Justices there of by Vornett Hunt his Attorney Says that
in the Record & process aforesd and also in Rendring the Judgmt aforesd Manifestly
Erred to wit —

Impris It is Erred in this that the now Defendants Sett forth in their Dec8 that
John Jordan in the Said Dec8 mentioned was Indebted to the now
Plaintiffs but Shew not in what Sume or for what —

2 It is Erred in this that they Sett forth the Custome to aid the want of Shewing
the Consideration —

3 It is Erred in this that the Said now Plaintiffs Assumption in the Dec8 Said
by him to be made as repugnant to the Effect of that in the Same Dec8
Recited — and a Void Contract according to their own Showing —

4 It is Erred in this that the Said Defendt Sett forth that for want of Acceptance &
Paymt of the Sume in Action that all Accrewed to them &c but Saver
not that the Rest of the Same Tenor and date were not paid for that any
were paid they Could have no action —

(L)

5 It is Erred in this that they aver not that the now Plaintiffs had Notice of the protest of Said Bille —

6 It is Erred in this that the now Defendt declared against the Plaintiffs first in Case and after Say action hath accrewed to them before any breach of promises Assigned —

7 It is Erred this that there appeares in the Record no Cause why the Plaintiffs in Demurrer —

8 It is Erred in this that the Damages being uncertaine ought on a writt of Enquiry to be awarded by a Jury & not without it be Assessed by the Court —

9 It is Erred in this that in Rendring Judgmt ag. the now Plaintiffs the Court adjudged that the Demurrer was not Sufficient in Law to Stay or delay Judgment which they Should have Judged the Dec8 or not to maintaine the Action that being their Sume in Law —

Wherefore the Said Edw. prayes that he to all by occasion of the Judgmt aforesd hath Lost may be Restored that the aforesd Writt & Comp. to the Errors aforesd may come & that the Court now here of our Soveraigne Lady the Queen may proceed as well to the Examination of the Record & process aforesd as the matters aforesd above for Error Assigned — Whereupon the Said Benj. Way & Comp. by Robt Gouldesborough their Attorney appeare and Say that in the Record and proceedings and also in the Rendring of Judgment therein It is in Nothing Erred and pray that the Same Judgmt may in all things be Affirmed &c And thereupon the Said Benj. Way & Company by their Attorney aforesd pray also that this Court of our Lady the Queen here will proceed as well to the Examination of the Record and process aforesd as of the matters aforesd above for Errors Assigned &c Whereupon for that the Said Court here is not advised of its Judgment of and upon the premises Days is Given to the Said parties to hear Record of the Judgment until the next Court for that the Said Court yet is not &c

All which Said next Court to wit the 5th Day of Aprill Anno Dni 1709 Comes again as well the Said Edward Bathurst by his Attorney aforesd as the Said Benj. Way & Comp. by their Said Attorney and thereupon all and Singular the premises being by this Court here fully Seen and Understood & Mature Deliberation being thereupon had

It is therefore Considered that the Judgment aforesd for the Errors aforesd & others in the Record process aforesd being be reversed annulled & altogether held for none & that the Said Edward Bathurst to all things that thereby he shall Lost may be restored &c It is also Considered by the Court here that the Said Edward Bathurst Recover ag. the Said Benj. Way & Comp. the Sume of pounds of Tobacco by the Court here adjudged unto him for his Costs & Charges by him upon this prosecution of their said Appeale Laid out & Expended & that he the Said Edward Bathurst have thereof his Execution &c

Marg. Kings Clerk St Maries County ss

Mary Manners Be it Remembred that heretofore to wit the first Day of Aprill in the Seaventh yeare of the Reign