Should not allow the said account proved as aft or such part thereof as was proved as aft to go to the Jury because it did not appear on the said account that the Plaintiff himself had before the issuing the Original Writ in the plea aft made Oath that he had not received any part thereof more than the Credits given in that account or that any thing else had been given or delivered towards Satisfaction thereof (altho' objected by the plaintiff and tho the fact is that it was not proved that the Defendant before the suit brought or ever requested him to make such Affidavit or probate or that he Defendant ever offered to pay to the plaintiff the Ballance of the said account or so much thereof as should appear due on his the plaintiffs probate as aft) To which the plaintiffs Council objected and prayed the Court to direct the Jury that the account so proved by legal and Indifferent Witnesses for so much thereof as was so proved was sufficient Evidence to prove the plaintiff's Damage on the said first Count but the Court were of Opinion that the probate as aforesd ought to have been made by the plaintiff as aft And therefore refused to let the said Account proved by legal and Indifferent Witnesses as aft go to the Jury and refused to direct the Jury as the Plaintiffs Council requested — And declared to the Jury that the Same was not Evidence therein And in this Cause also to prove the issue on the part of the Defendant the Defendants Council offered to give in Evidence to the Jury a Writing under Seal purporting a Bond from the Intestate to a certain Peregrine Frisby conditioned that the said Intestate should pay to the said Peregrine the sum of fifty pounds current Money on a day certain and an Indorsement thereupon bearing date the 20th day of April 1755 purporting and Affidavit by said Peregrine Frisby that the said Sum was not paid or Satisfied and also an Indorsement thereon in these words & figures to wit, June 20th 1755 Recd of Mary Porter admrx. of James Porter by the Hands of Thomas Simpson fifty three pounds four shillings and eleven pence for the Use of Peregrine Frisby Esq. and by his Request Recd. pr Jno Williamson The Execution of which writing or the Indorsements thereon or any actual Payments of the Money aft were not offered to be proved. To which the plaintiffs Council objected and prayd that the Same might not be given in Evidence to the Jury, But the Court did admit the Same to go to the Jury and were of opinion and did direct the Jury that the Same was sufficient Evidence to prove the issue on the part of the Defendant — The Defendants Council offered also as further Evidence to the Jury to prove the issue on the part of the Defendant a writing purporting a Bill of Cost in an Action said to be in the Provincial Court commenced by one George Cato against one Thomas Wallis as also a Bill George Cato against the said James Porter which were Signed by one Reid Burdus but not under any Seal or proof And an Indorsement on the Same Writing purporting a Receit for the Sum of 21£ 9s 6d of Tobacco the amount of the said two said Bills of Costs bearing date the 2d day of October 1755 Signed George Cato but no Proof offered to be made of the actual Payment of the said Tobacco to which the Plaintiffs Council also objected and prayed the Court

Court to direct the Jury that the Same were not legal Evidence to maintain the issue aft on the part of the said Defendant, but the Court did permit the Same to go to the Jury and were of opinion and did direct the Jury that the Same was sufficient and legal Evidence to prove the issue on the part of the Defendant — The Defendants Council also offered as further Evidence to the Jury to prove the issue on the part of the Defendant, a Judgment obtained in Cecil County Court on the Eighth day of June 1756 — by one Hugh Mathews for the penalty of a Bond of £ 33. 6. 0. lw and 297 ℔ Tob. lost against the Defendant as administratrix of the said James Porter the Original Writ of which Judgment was issued the 22d of February 1755 but offered no Proof of any payment discharge or Satisfaction to the said Hugh Mathews of the said Judgment but the Same remained unpaid and unsatisfied To which Evidence the plaintiff Council also objected and prayed that the Same Judgment so as aft remaining unpaid and unsatisfied or discharged might not be admitted in Evidence to the Jury But the Court did admit the Same to go to the Jury and were of opinion and did direct the Jury that the Same was sufficient and legal Evidence to prove the issue on the part of the Defendant in this Case To all which opinions of the Court as aft the plaintiffs Council excepts Severally and prays the Benefit of these his Several Exceptions according to the Form of the Statute and that the Justices of this Court do hereto Set their Seals

L. Bayard (Seal) John Veatey (Seal)
Thos. Savin (Seal) Nathl. Baser (Seal)

Said now here at this Day to wit the 10th day of October 1756 Comes into his Lordships Provincial Court the said Michael Earle by James Tilghman his Attorney and Saith that in the Record and Proceed aft and in the rendering the said Judgment there is manifest and apparent Error in this that the Justices of Cecil County Court aft before whom the Cause aft was tried did refuse to admit in Evidence on the Trial of that said Cause the Plaintiffs account or Such part thereof as was legally proved as by the Record of the Exception taken at the said Trial appears And in this That the said Justices on the Trial aft admitted the Defendant in order to prove the issue as aft joined on the said Plea of plene administravit to give in Evidence the Bond to Peregrine Frisby in the said Exception mentioned tho' not paid or pretended to be paid till after the impetration of the plaintiff's writ to the Bruce of which the issue aft as aft joined between the parties aft is expressly confined And in this that the said Court did direct the Jury on the said Trial that the said Bond and the indorsements thereto mentioned in the said Record were good Evidence of an Administration and did allow the Defendant to give them in Evidence without any Proof of their Execution or of the actual Payment of the Money mentioned in the Bond And in this That the said Court admitted the said Defendant on the Trial of the said issue to give in Evidence the Writing mentioned in the said Exception purporting a Bill of Cost and the Receipt thereon indorsed without any Proof by Seal of Oath or otherwise and without proof of the actual Payment thereof and directed to the Jury that the Same are Sufficient and legal Evidence for the Defendant on the Same issue

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