attorney aforesaid, as the said Nehemiah Birkhead executor as aforesaid by his attorney aforesaid. — And the said Nehemiah Birkhead executor as aforesaid by his attorney aforesaid as before defends the force and injury when and soforth, and saith that the said Richard Chew his action aforesaid thereof against him to have and maintain ought not because he saith, that after the date of the said writing obligatory and after the death of the said Seaborn Birkhead and before the assignment aforesaid towit on the - day of - in the year — — towit at Calvert county aforesaid, he the said Nehemiah Birkhead paid to the said Thomas Contee the sum of money in the Condition aforesaid above specified according to the form and effect of that condition, And this he is ready to verify, Wherefore he prays Judgment if the said Richard Chew assignee as aforesaid his action aforesaid against him the said Nehemiah Birkhead executor as aforesaid to have and maintain ought and soforth.

And the said Nehemiah Birkhead executor as aforesaid by his attorney aforesaid and by leave of the Court here according to the form of the Statute in such case lately made and provided further comes and defends the force and injury when and soforth and saith, that the said Richard Chew assignee as aforesaid his action aforesaid against him the said Nehemiah Birkhead executor as aforesaid to have and maintain ought not, because he saith, that he the said Nehemiah Birkhead at the time of the impetration of the original writ in this cause had fully administered all the goods and chattels which were of the said Seaborn Birkhead at the time of his death in his hands to be administered, and that he hath not nor on the day of the impetration of the original writ in this cause nor ever after had any goods or chattels which were of the said Seaborn Birkhead at the time of his death in his hands to be administered, wherewith he, the debt aforesaid or any part thereof might pay, and this he is ready to verify, Wherefore he prays Judgment if the said Richard Chew assignee as aforesaid his action aforesaid against him the said Nehemiah Birkhead executor as aforesaid to have and maintain ought and soforth. —

And the said Richard Chew assignee as aforesaid saith, that he by any thing by the said Nehemiah Birkhead in his first plea above alledged from having and maintaining his action aforesaid, ought not to be precluded, because he saith, that he the said Nehemiah Birkhead did not pay unto him the said Thomas Contee - before the assignment aforesaid the said quantity of nineteen thousand pounds of crop tobacco in the Condition aforesaid mentioned, which he ought to have paid according to the form and effect of the said Condition towit at Calvert county aforesaid in manner and form aforesaid, as the said Nehemiah Birkhead above in his first plea by pleading hath alledged, And of this he the said Richard Chew assignee as aforesaid prays may be enquired of by the country and soforth, and the said Nehemiah Birkhead executor as aforesaid in like manner and soforth. —

And the said Richard Chew assignee as aforesaid, as to the second plea of the said Nehemiah Birkhead executor as aforesaid by him above by pleadings alledged by way of replication thereunto saith, that he ought not to be precluded from having and maintaining his action aforesaid, by any thing in the said second plea of the said Nehemiah

Nehemiah Birkhead executor as aforesaid alledged: because he saith, that the said Nehemiah Birkhead at the time of the impetration of the writ aforesaid in this cause and since had in his hands unadministered goods and chattels, rights and credits — which were of the said Seaborn Birkhead at the time of his death sufficient to have paid and satisfied the said Richard Chew assignee as aforesaid his debt aforesaid towit at Calvert county aforesaid: And this he prays may be enquired of by the country, and the said Nehemiah Birkhead executor as aforesaid in like manner and soforth. —

Therefore let a Jury thereupon appear before the Judges of our General Court here on the second tuesday of May next by whom and soforth, and who neither and soforth to recognize and soforth, because as well and soforth, the same day is given to the said parties then and there and soforth. —

And now here at this day towit, the said second tuesday of May being the twelfth day of the same month Anno Domini one thousand seven hundred and eighty nine, — comes again here into our General Court as well the said Richard Chew assignee as aforesaid by his attorney aforesaid, as the said Nehemiah Birkhead executor as aforesaid by his attorney aforesaid. — And the Jurors of that Jury whereof mention is within made being called come, that is to say, James Williams, Howes Somerville, James Mackall Sellers, John Smith Magruder, Jacob Shryock, Samuel Durham, Gabriel Jacob, Isaias Barter, John Ridgely, Sodwick Young, Zaccheus Onion and Jesse Bourne Junior, who being duly elected, tried and sworn to say the truth in the premises upon their oath do say, as to the first issue between the parties aforesaid within joined, that the said Nehemiah Birkhead executor as aforesaid did not pay to the said Thomas Contee after the death of the said Seaborn Birkhead and before the assignment aforesaid, the said full and just quantity of nineteen thousand pounds of crop tobacco in the Condition of the said writing obligatory mentioned together with all the interest due thereon in such manner and form as the said Nehemiah Birkhead executor as aforesaid within by his first plea by pleading hath alledged. — And the Jurors aforesaid, as to the second issue between the parties aforesaid within joined upon their oath aforesaid do further say, that the said Nehemiah Birkhead hath, and on the day of the exhibition of the original writ within written of the said Richard Chew assignee as aforesaid towit, on the fifth day of March in the year one thousand seven hundred and eighty eight, had sundry goods and chattels which belonged to the within named Seaborn Birkhead at the time of his death in his hands to be administered, to the value of the debt within specified, wherewith he might have satisfied the same Richard Chew assignee as aforesaid the debt aforesaid towit, at Calvert county aforesaid in such manner and form as the said Richard Chew assignee as aforesaid above in his second replication by replying hath alledged, and they do assess the quantity of twenty seven thousand nine hundred and eighty one pounds of crop tobacco to be due, to the said Richard Chew assignee as aforesaid on the writing obligatory aforesaid

Therefore it is considered by the Judges here, that the said Richard Chew assignee as aforesaid recover against the said Nehemiah Birkhead executor as aforesaid as well the quantity of thirty eight thousand pounds of crop tobacco his debt aforesaid, to be released on the payment of the quantity of twenty seven thousand nine hundred and eighty one pounds of tobacco (by the Jurors aforesaid in form aforesaid assessed) according to the