

(21)

That the said ^{Commissioner} fully and thoroughly weighed and considered the Evidence
of both Sides, and the proceedings thereupon, and being fully satisfied
therein did pronounce, publish and Declare their final Sentence,
Judgment and Decree which was, That the said John Derry did not die; That
but that the words by him spoken (viz.) I give all that I have to my
Sister Eliza Derry, my Brother Owen Derry, and my Cousin John
Derry and do make them my Executors do amount to a Nuncupative
Will, and that the said John Derry was of a Sound Disposing mind at the time
of his speaking the same. The Court of Delegates did therefore order,
adjudge and Decree those words so spoken by the said Derry to be the last
Will of the said Derry, and that the said Eliza Derry, Owen Derry, and
John Derry are the Executors of the said John Derry. And that the said
Garratt Vanswinigen in pay unto the said John Derry the Summ of Seven
Thousand Seven hundred Ninety Seven pds of Tobacco for Costs allowed
the said Derry for his Charges, as by the said Decree of the said Court
of Delegates Remaining upon Record in yo. Upper Court of Chancery
(Relation being thereunto had) more fully and more at large it doth and
may appear. NOW forasmuch as the said Commission for the said Court
issued out of yo. Upper Court of Chancery, and the said proceedings, and
Decree thereupon are there returned and enrolled, and the said Garratt
refuseth to pay yo. Upper Court the said Costs according to the said Decree. Yo.
Petitioner humbly prayeth yo. Upper Court to grant him yo. Upper Court most gracious Writ
of Execution of the said Decree to the said Garratt to be Directed,
thereby commanding him to obey the same, and if he shall not be obedient
thereunto, then that process of Contempt as usually ~~is~~ of Courts issue out
of this Court. And yo. Petitioner duly bound shall pray &c.

The said Garratt Vanswinigen did also at a Council held at the City of
St. Mary the 28th Day of March last offer his Petition to the
yo. Upper Court in Council which was then read and heard but the Debate
thereof then referred until the next meeting of the Council the
Petition is argued (viz.)

To the Right Hon. Charles Absolute Lord Prop.
of the Province of Maryland & Avalon Lord
Baron of Baltimore &c.

The Humble Petition of Garratt Vanswinigen
humbly sheweth That yo. Petitioner being principal Executor of John Derry deceased
secured the said Decree from the Hon. Judge for probate of Wills &c. And
thereby possessed himself of the said Derry's Estate, and was forced to pay several
Debts of the said Derry, and for the payment of his own, and the other Debts &c.
And the better to enable him to administer Duties, he was necessitated to
commence several Actions against several of the said Derry's, and
amongst the rest against John Derry, Gent. who was the last said Derry's
Bill