

Lib. H. D. cannot after that Assign any Error which is matter of ffact, Rolls Tit Error ffol 762.

2: If he Assign Matter of ffact for Error a sci: fa: shall be Granted, 18H: 6: 19.

And it seemeth to me that vpon the Return of the Sci: ffac: & the Appearance of the Def^t therevpon in that Court where the Writ of Error is Returnable, and where the Error is Assigned the Plaintiffe & Def^t shall join issue, which issue
 P. 355 must be sent to that Court where the first Cause was Tried, and shall be there tryed by Twelve Men, and then it shall be sent to that Court where the Writ of Error is depending, and then they must proceed accordingly. This I humbly submit to your Ex^{ncy} as the Opinion of

Yo^r Excell^s most humble Serv^t
 R: Gouldesborough

I am of the same Opinion with the above Reporter.
 Geo: Plater

I am of the same Philip Clarke

I subscribe to the same Opinion Rob^t Carvile

In obedience to your Ex^{ncies} Commands, to Certifye my Opinion, in the Case of Edward Randolph Esq^r, who as well for our Sovereign Lord the King as for himself prosecuted against John Blackmore & the ship Ann &c^a I have considered

1: That in the case of a Subject only & where the King is not concern'd in the Suit; if a Writ of Error be brought in a Superiour Court vpon a Judgm^t given in an inferiour Court, and the Judgm^t be therevpon Reversed for Error in the Judgm^t given in the inferiour Court; then the Superiour Court ought to give the same Judgm^t as the inferiour ought to have done in case they had not Erred, Rolls 1st part, tit Error ffol 774, Delamore & Hoskins Case, Lim 10 Car Rot 900 adjudged Hoskins & Cheles Case, Mich: 14 Caroli in B R adjudged, and Omuleourie & Aires case adjudged in a Writ of Error vpon a Judgm^t in Ireland, Mich, 13 Car in Banco Regis Rot 332.

2: In the principall Case the information was brought ag^t the ship vpon the Statute supposing that she had not observed the form of the Statute, but had taken on Board Tobacco before any Bond was given according to the form of the Statute, and was thereby become forfeited to the King and to the Informer Vpon this the Master of the ship appeared & pleaded not guilty & puts himself vpon the Countrey, and the Informer Joynes issue.