

the Court hath ordered that the said debt be paid out of the Estate of the said Tho: Howell with costs of suite ats Execucōn. Whereas itt doth not appeare how the said debt was proved, or whether the said account was duely sworne to, to which the said Ex<sup>rs</sup> ought to have bin su<sup>m</sup>oned to answer & defend themselves, being otherwise debarred of putting in their just plea of plen<sup>e</sup> administravit or the Statute of lymitacōns in barre of the said account being most of itt of above two yeares standing att the comencem<sup>t</sup> of the said pretended suite, & ought not to be admitted ag<sup>t</sup> a dead mans Estate, or such other legall plea as they should have bin advised, but the Ex<sup>rs</sup> are condemned unheard which is altogether illegall & erroneious & expressly ag<sup>t</sup> the twenty eighth Chapter of the Statute of Magna Charta, in that case made & provided.

Also itt is further erroneious in this, that in the accompt by him exhibitted on which itt is supposed the order of Court was grounded it is said

Cap <sup>t</sup> Tho: Howell is D <sup>r</sup>	15 to 5
To M <sup>r</sup> Job Walton att request.....	950
To M <sup>r</sup> W <sup>m</sup> Dunkerton at request.....	550

And itt doth not appeare how the same was proved, or by whom the request was made, nor any receipt or order produced, which ough to be done & sufficiently made appeare, especially in the case of an Ad<sup>r</sup> or Ex<sup>r</sup> who are but trustees for Credito<sup>rs</sup> & Legatees, & if itt were only proved by his owne oath is not sufficient, but the order & receipt must be duely proved by testimony—And for the same reasons itt is erroneious in the next Su<sup>m</sup> of ffifteen hundred forty two p<sup>d</sup>s of tobacco said to be paid to Cap<sup>t</sup> Thomas Carleton for the use & att the request of Cap<sup>t</sup> Howell ffurther the acc<sup>t</sup> sayes. To a dozen of pills to Nath<sup>l</sup> Howell..... 30<sup>th</sup> to 5  
 For Cap<sup>t</sup> Tho: Howell a pectorall julipp..... 60  
 To ditto a voyage attendance w<sup>th</sup> boat & hands..... 140

The said George Wells ought not to be his owne carver, but ought to have brought his quantum meruit for the same, or proved a positive assumpsit for the same.

Lastly the said George Wells by the credit side setts the prices of what was sold him, & yet the Court gives judgem<sup>t</sup> ats Execucon, which order is illegall & not warranted by Law And thereupon the said John and Nathaniel Howell say, that in the Record & proces as in the giving of Judgem<sup>t</sup> aforesaid itt is manifestly erroneious in the Errors aforesaid by them in forme aforesaid alleadged, & pray that the judgem<sup>t</sup> aforesaid be revoaked & adnulled & held for nought And that they in those things w<sup>ch</sup> they by occasion of the p<sup>r</sup>misses have lost may be restored And that the said George Wells to the Errors aforesaid may answer. Which Record proces & Errors aforesaid being read & heard the said George Wells by George Parker his Attorney prayeth lycense to imparle thereupon untill next Provinciaall