

much less extend to the Beer either of Virginia or Maryland therefore the Judgm<sup>t</sup> affirming the Contrary and overruling the demurrer, is Erronious.

4: It is Error in this that the information is likewise grounded upon the Act of Tonnage and poundage made in the 12<sup>th</sup> year of King Charles the Second and upon that clause thereof which Sayes, that if any wines goodes or other Merchandizes, whereof the Subsidies afores<sup>d</sup> (meaning Tonnage and poundage) are or Shall be due, Shall at any time after the 24<sup>th</sup> of June in the s<sup>d</sup> Statute mentioned be Shiped or put into any boat or Vessell to the intent to be carried into the partes beyond the Seas, or else be brought from the partes beyond the Seas into any port, place or Creek within this Realm, or other his Ma<sup>ty</sup> Dominions etc: Soe that to make goodes Forfeited within this clause, two conditions are essentially requisite, the First is that the Subsidies of Tonnage and poundage be according to the Booke of Rates due from Such Goodes, The second is that they be Shiped in Some Boat or Vessell to be carri'd into the partes beyond the Seas or else brought from the partes beyond the seas into any port place or Creek of the Realm of England, or ouler his Ma<sup>ty</sup> Dominions etc:

But in this information it is not as much as alleadged that the Su[b]sidyes of Tonnage and poundage are due upon the Beer informed ag<sup>t</sup> or that it was either brought from beyond the Seas or put into any Boat or Vessell to be carryed beyond the Seas, or if it were alleadged it were false that the Tonnage and poundage were due upon Beer as may appear by the Book of Rates, and as false that it was either brought from beyond the Seas or put into any boat or Vessell to be carried beyond the Seas, therefore the information is palpably defective, and consequently the Judgm<sup>t</sup> given thereupon erronious.

5: It is Error in this that the s<sup>d</sup> information is likewise partly grounded upon an Act of Assembly of this Province, and only upon that clause thereof which Sayes that the importer of liquors Shall pay four pence per gallon Now if Virg<sup>a</sup> Beer were intended to pay the s<sup>d</sup> Duty, (which most of the Members of the Assembly that made the Act do declare it was not) yet there being no penalty either by confiscation forfeiture or otherwise laid by the s<sup>d</sup> Act either upon the Beer or Importer thereof, it could not be legally Seized nor confiscated upon non Compliance of paym<sup>t</sup> of the s<sup>d</sup> Duty therefore the s<sup>d</sup> Act of Assembly cannot maintain the s<sup>d</sup> information, or if it Should maintain the Same ag<sup>t</sup> the importer, it certainly cannot doe it ag<sup>t</sup> the Buyer, who had the s<sup>d</sup> Beer Six weekes in his celler before the s<sup>d</sup> Seizure, and then his doores broke Open at 12 of the Clock at Night rather like a Robbery then an Act of Justice, and next day the s<sup>d</sup> Beer Carted away by the informers Order, all which can no wayes be maintained [56] by the s<sup>d</sup> Act of Assembly, therefore the Judgm<sup>t</sup> given thereupon is Erronious, for which and all other the Errors in the proceedings and Judgm<sup>t</sup> of the s<sup>d</sup> Court, the s<sup>d</sup> Charles prayeth that the s<sup>d</sup> Judgm<sup>t</sup> may be reversed and he to what he hath lost thereby may be Restored.

Clarke pro Quer.