

shall carry all the goods of such plantation loaden on board her to some other of his Majesty's English Plantations, or to England, Ireland, Wales, or the town of Berwick upon Tweed, and that every ship which shall take on board any of the goods of such plantation where she shall come before such bond be given or certificate produced that such bond was given in England, Ireland, Wales or the town of Berwick shall be forfeited with all her guns, &c.

And the breach assigned against the said John Blackmore and his said ship Ann was that he had taken on board eighty hogheads of tobacco before he gave such bond as was required by the said law. Whereupon (to salve the said breach) was produced a bond wherein the said Blackmore's name was mentioned but neither signed nor sealed by him but signed and sealed by one Thomas Tench; and then the question was whether that bond was a sufficient bond within the letter of the said clause of the said statute, and that question being a mere question of law, and by law not determinable by a jury (*Quia ad questionem juris non respondent juratores;*) the jury having taken upon themselves the determination thereof contrary to that rule and maxim of law, who are only to try matter of fact, renders their verdict vicious especially when they have mistaken the law in the point in adjudging a bond sufficient according to the statute, which in law is not so, therefore the judges ought not to have given judgment upon the said verdict and in doing thereof have erred, therefore their judgment ought to be reversed.

The judgment is erroneous in this that in the entering up thereof it is only said, Therefore is considered by the court here that the said Edward Randolph who as well &c. take nothing by his information aforesaid but be in mercy for his false clamor, and that the said John Blackmore go thereof without day, whereas to make the entry right and free from error (as may appear by the Book of Entries) it ought to be made thus, It is therefore considered that their said Majesties, and the said Edward Randolph who as well &c. take nothing by the said information. Therefore for want of a right entry the judgment is erroneous.

It is error in this that in the said judgment it is said and the said Edward in mercy, whereas he being their Majesties' chief officer of their customs in this province, &c. the information