

U. H.
Journal
1659-69
p. 192

3^{dly} And more Cheifely even in the substantiall forme of my Adversarys declaracōn itt is most Erroneous he not Chargeing me att all therein to have spoken the words either false or malitiose when he ought to have done itt with both or noe Action can lyc & this is Error as fol. 47 Trin 7 Car. B. R & fo. 24

4^{thly} The matter of Lawe was never as yett Concluded on either before or after the Verdict of the Jury by which itt might appeare whether the words were Actionable or noe yo^r pet^r then & still humbly Conceiving they were nor are not & in his answere mentioned as much & left itt wholly vpon the Court desiring them to judge the matter of lawe as in the sd Answere vpon Record doth more att large appeare & this he humbly Conceives is Error

5^{ly} ffor a Jury to give dammages beyond the Capacity or possibility of the plts being dampnyfied more then in Estate Creditt or otherwise he was ever worth the birth Educacōns & Estate of my Adversarys being sufficiently obvious; yo^r pet^r also humbly Conceives is Error

6^{ly} And lastly there is palpable Error in the Jury for giving any damages att all when my Adversary never named any for he ought to have named his dammages & indeed haue proved them for folio 339 Co: 10-113. 13. H. 7. 16 sayth plainly A man shall never recover more dammages then he doth declare for in his declaracōn

L. Barbier

Fiat Justitia

Charles Calvert

Wherevpon issued this writt as followeth

Cæcilius &c To the Sherriff of S^t Marys County Greeting because in the Record & process and giving of judgem^t in a plea that was depending Betweene Henry Spinke and Ellenor his wife plts. & Luke Barbier defd^t in tryall of an action vpon their case for defamacōn and Slauder w^{ch} was sumoned before our Governour & Councell in our Pro^{all} Court the ninth of ffebruary 1663 as is sayd Error manifest hath intervened to the greate damage of the afores^d Luke as from his plea wee haue rec^d Wee the Error in due manner to be Corrected & To the partys afores^d full & speedy Justice to be done willing in this parte Comand yoⁿ that by good & lawfull men of yo^r County yoⁿ make knowne to the s^d Henry Spinke & Ellinor his wife who recovered ag^t the s^d Luke Barbier that they be before us at our Assembly held att S^t Marys on Thursday 15th of September next to heare the Record & process afores^d soe had as also the Errors which the aforesaid Luke in this parte to assigne & alledge shall happen & further to doe & receive