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whereas there was sold at public auction on the ninth day of August one thousand eight hundred and nineteen unto the above said Nathaniel by order of the Orphans Court a tract of land formerly the property of George T Hawkins lying near the Patuxent River for the sum of three thousand and fifty dollars bearing interest for one year from the day of sale, now in consideration of the sum of three thousand and fifty dollars with interest from the date of this Indenture, to be paid unto the said Nathaniel Washington by the said Hanson Burroughs the said Nathaniel Washington doth hereby covenant and agree and bind himself his heirs executors and administrators to convey on or before the ninth day of August next ensuing by a full lawful and valid title in fee simple against all persons whomsoever unto the said Hanson Burroughs his heirs or assigns the aforesaid tract of land, and the said Hanson Burroughs doth hereby agree, promise and bind himself his heirs executors and administrators to pay unto the said Nathaniel Washington his heirs executors, administrators or assigns on or before the ninth day of august next ensuing with interest from the date of this Indenture, the sum of three thousand and fifty dollars lawful money of maryland as soon as the said Nathaniel Washington shall have conveyed unto him the above said Tract of land in form aforesaid, and moreover for the due performance of the several covenants and agreements aforesaid the parties aforesaid do hereby respectively bind themselves their heirs executors and administrators each to the other his heirs executors administrators and assigns in the penal sum of one thousand dollars current money as by the said Indenture reference being thereto had will more fully appear, and the said Nathaniel protesting that he always from the time of the making of the said Indenture hitherto hath well and truly observed performed fulfilled and kept and was always ready and willing to execute a deed of conveyance for the said land to him, at the time stipulated for them to do so in the said Indenture and ever since upon the said Hanson's tendering him a deed to execute for the said land according to the form and effect of the said Indenture: protesting also that the said Hanson since the making of the said Indenture hath not observed, performed, fulfilled and kept all or any of the covenants, clauses and agreements in the said Indenture contained on his part to be observed performed fulfilled and kept according to the form and effect of said Indenture, And the said Nathaniel in fact avers that the said Hanson did not on or before the said ninth day of August next ensuing the date of said Indenture, nor at any time since tender to the said Nathaniel a deed to be executed and acknowledged by the said Nathaniel to the said Hanson for the land aforesaid nor pay or cause to be paid to the said Nathaniel the said sum of three thousand and fifty dollars lawful money of Maryland with Interest as aforesaid or any part thereof, which said sum of three thousand and fifty dollars lawful money of Maryland the said Nathaniel avers is equal to, and of the value of three thousand dollars current money, but the same hath wholly refused to pay contrary to the said Indenture and to the covenant of the said Hanson therein contained whereby an action hath accrued to the said Nathaniel to demand and have of and from the said Hanson the said sum of three thousand dollars lawful money of Maryland and the said sum of one thousand dollars current money above demanded. Nevertheless the said Hanson (although often requested) hath not yet paid to the said Nathaniel the said sum of three thousand dollars lawful money of maryland, and the said sum of one thousand dollars current money, above demanded or any part of them, or either of them; but to pay the same or any part thereof to the said Nathaniel the said Hanson hath hitherto wholly refused and still doth refuse and so he hath not kept his covenant wherefore the said Nathaniel saith he is injured and hath damage to the value of five thousand dollars current money and therefore he brings suit and so forth.

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G N Causin, Pltffs Atty } Hodges &c { Ins Doe & Richard Roe

And the said Hanson Burroughs by his attorney aforesaid defends the force and injury when and so forth, and files in court here the following pleas to wit.

Nathaniel Washington against Hanson Burroughs } Covenant.

And the said Hanson, defendant by Alexander Kilgour his Attorney comes and defends the wrong and injury when and so forth, and as to the said breach of covenant above assigned, says that the said Nathaniel Washington ought not to have or maintain his aforesaid action thereof against him because he says that after making of said articles of agreement as are therein in the covenant contained and before the commencement of the ninth day of August eighteen hundred and twenty one and on that day in the said declaration mentioned, and on divers other days and times between that day and the commencement of the ninth day of August eighteen hundred and twenty one in the said declaration mentioned to wit at the County aforesaid, he the said Hanson Burroughs did request the said Nathaniel Washington to commence, to do and perform the covenants in the said Indenture; and to do which, the said Nathaniel then and there was ready on those respective days and times, refused and from thence hitherto hath refused to in that the County aforesaid, contrary to the tenor of the aforesaid articles of agreement and of the covenant of the said Nathaniel being a condition precedent to the performance of the covenants of the said Hanson he ought not to be bound to the performance of his covenants until the said Nathaniel hath in all things performed and fulfilled his aforesaid covenant, and this he the said defendant is ready to verify, and therefore he prays judgment if the said Nathaniel ought to have and maintain his aforesaid action against him

And for a further plea in this behalf as to the said breach of covenant by the - Nathaniel Washington in the said declaration first above assigned the - Hanson Burroughs by leave of the court here first had and obtained saith that he ought not to have and maintain his aforesaid action, because he saith that according to the form and effect of the said covenant or articles of agreement the said Nathaniel Washington obligated and bound himself to convey unto the said Hanson Burroughs a tract of land in fee simple, and in consideration thereof the said Hanson Burroughs promised and obliged himself to pay the sum of three thousand and fifty dollars so soon as the said Nathaniel should convey the said tract of land unto the said Hanson Burroughs in form as aforesaid, and that because the payment of the money by the said Hanson Burroughs was a condition subsequent to the conveyance of the land in fee simple by the said Nathaniel Washington, and this he is ready to verify, wherefore he prays Judgment if the said Nathaniel ought to have or maintain their aforesaid action against him

Alex. Kilgour for Defendant

And thereupon the said Hanson Burroughs by his said Attorney prays that the said Nathaniel Washington may reply to the answer of the said Hanson Burroughs in the plea aforesaid; Whereupon it is ordered by the court here, that the said Nathaniel Washington reply to the answer of the said Hanson Burroughs in the plea aforesaid, and if he doth not reply to the said answer of the said Hanson Burroughs Judgment will be rendered against him by default; and the said Nathaniel Washington by his said Attorney prays leave of the court here to imparlance until the first Monday of March next, to reply to the answer of the said Hanson Burroughs in the plea aforesaid and he hath it, the same day is given to the said Hanson Burroughs then and so forth.

And now here at this day to wit the said first Monday of March being the seventh day of the said month in the year of our Lord one thousand eight hundred and twenty five until which day the said Nathaniel Washington had leave to imparlance and then to reply to the answer of the said Hanson Burroughs in the plea aforesaid comes as well the said Nathaniel Washington by his Attorney aforesaid as the said Hanson Burroughs by his Attorney aforesaid. and the said Nathaniel Washington by his Attorney aforesaid, files in court here the following demurrer to the pleas of the said Hanson Burroughs to wit -