June Term 1837.

Rule to shew cause — It is ruled by the Court that the said Daniel Brewer shew cause within the first four days of the next term of this Court why a writ of Habere Facias possessionem shall not be issued against him to recover possession of the Lots or portions of Land situate in the Town of Clearspring in Washington County aforesaid now in his possession, and which were sold by the Sheriff of said County to the said Peter K. Zacharias on the 29th day of September 1836 by virtue of sundry writs of execution which have been returned by the said Sheriff to the present Term of this Court. It is further ordered that a copy of this order be served on the said Daniel Brewer on or before the first day of February 1837" &c.—

A copy of which said rule was made and sent to the Sheriff of Washington County aforesaid to be served on the said Daniel Brewer. And now here in Washington County Court aforesaid to wit on the fourth Monday of March 1837 the Sheriff of said County returns to the Court here the aforesaid copy of said rule with an affidavit thereto appended which are as follows to wit:—

Copy of Rule and Affidavit Returned by Sheriff — Peter K. Zacharias vs Daniel Brewer — In Washington County Court November Term 1836. On application of Peter K. Zacharias it is ruled by the Court that the said Daniel Brewer shew cause within the four first days of the next term of this Court why a writ of Habere Facias Possessionem shall not be issued against him to recover possession of the Lots or portions of Land situate in the Town of Clearspring in Washington County aforesaid now in his possession, and which were sold by the Sheriff of said County to the said Peter K. Zacharias on the 29th day of September 1836 by virtue of sundry writs of execution which have been returned by the said Sheriff to the present Term of this Court. It is further ordered that a copy of this order be served on the said Daniel Brewer on or before the first day of February 1837.— True copy Test. O. H. Williams, Clk.

Be it remembered that on this 23d day of January 1837 personally appears James M'Laughlin before the subscriber a Justice of the peace of the State of Maryland for the County of Washington, and makes oath on the Holy Evangels of Almighty God that he served on and delivered to the above named Daniel Brewer on the 23d day of January 1837, a true copy of the above order of Washington County Court. Taken before me — Jno. D. Ridenour.

Continuance to November Term 1837 — Whereupon further process of and upon the premises aforesaid between the parties aforesaid by consent of the said parties and their attornies aforesaid, and by order of the Court hereon thereon is continued until the third Monday of November next.—

At which said third Monday of November being the twentieth day of the same month, in the year of our Lord one thousand eight hundred and thirty seven come again into Court here the parties aforesaid by their attornies aforesaid. And the aforesaid Daniel Brewer by his attornies aforesaid files in Court here the following to wit:—

Objections of Defendant — Daniel Brewer of Washington County by R. M. Lidball and Alexander Neill, Junr. his attornies comes into Court here, and in compliance with the exigency of a rule nisi laid by Washington County Court at the last November Term of said Court at the instance of Peter K. Zacharias shews cause as hereinafter set forth, why a writ of Habere Facias Possessionem should not be issued against him &c. &c. as set forth in said rule, that is to say:

1st Because no demand was made upon this respondent for the possession of the property in said rule mentioned by the said Peter K. Zacharias before the said rule nisi was laid.—

2d Because no affidavit was filed with the Clerk of Washington County Court shewing, that this respondent had on demand failed or refused to deliver possession of said property before the said rule was laid: Whereas by the practice

June Term 1837.

of the Court such affidavit is necessary and proper as a foundation for such rule.—

3d Because it is not recited or set forth by way of statement or of suggestion or otherwise in the said rule nisi, that such demand was made or that this respondent refused to deliver possession or that an affidavit had been filed as by the practice of the said Court is required.—

4th Because the said rule was not served upon this respondent before the first day of February last.—

5th Because there is nothing filed in Court here to shew that said rule was served upon this respondent agreeably to the exigency of the said rule.

6th Because the said rule is informal defective and uncertain in this to wit: that it does not specify the particular tract or tracts piece or pieces, parcel or parcels of land lot or lots or part of a lot or parts of lots which are and ought to be embraced and included in the proposed writ of Habere Facias possessionem.—

7th Because there was no return of sale made at the time said rule was laid upon this respondent.—

8th Because the said return is defective and insufficient in this to wit that it is a general return upon several writs of Venditioni Exponas and a certain writ of Fieri Facias Whereas there ought to have been several and separate returns to each of said writs of Venditioni Exponas and to said writ of Fieri Facias.—

9th Because by the said return it is set forth, that said property was sold under and by virtue of certain writs of Venditioni Exponas to the said return annexed, and under and by virtue of a certain writ of fieri facias to the said return annexed. And this respondent suggests that said writ of fieri facias was returnable at March Term 1836 of the said Court, and that the rule of Court in this case was laid at the last November Term and not before.—

10th Because the returns made to the several writs of fieri facias on which said several writs of Venditioni Exponas were founded are defective, and void for uncertainty; and that the right title interest and estate of this defendant in and to the property mentioned in the return to said several writs of Venditioni to the said return annexed, and the said writ of fieri facias to the said return annexed, was not and has not been divested by a sale under said several writs of Venditioni Exponas or any of them; nor did the said Peter K. Zacharias as purchaser acquire any right by force of any sale under said writs of Venditioni Exponas or any of them.—

11th Because said several writs of Venditioni Exponas are all void and defective on their face.—

12th Because the said return does not conform to the said writs of Venditioni Exponas, and non constat that the property sold as shewn by said return is the same property which is mentioned in the said writs of Venditioni Exponas.—

R. M. Lidball, Alexander Neill Junr. — Attornies for Daniel Brewer.

Rule made Absolute — Whereupon it is considered by the Court here that the said rule to shew cause be made absolute, and that a writ of Habere Facias possessionem as aforesaid do issue according to the provisions of the Act of Assembly in such case made and provided.—

Prayer for Appeal — And thereupon the said Daniel Brewer by his attornies aforesaid prays that he may appeal from the Judgment aforesaid of the Court here so as aforesaid made and rendered to the High Court of Appeals, and to him the same is granted by the Court here.—

Appeal Granted — Whereupon the said Daniel Brewer exhibiteth to the Court here an appeal Bond entered into by himself, and two sureties, which by the Court here are approved of, the tenor whereof ensueth in the following words to wit:

Appeal Bond — Know all men by these presents that we Daniel Brewer Peter Brewer and Joseph Brewer of Washington County and State of Maryland are held and firmly bound unto Peter K. Zacharias in the full and just sum of