said Lands be decreed and that Otho Scott Trustee as aforesaid be authorised to convey to your petitioner all the right and state whatsoever of the said defendants in and to said Lands.

H. D. Farnandis, Sol.r for petitioner.

(Exhibit A. referred to in the foregoing petition) An act to confirm the sale of the lands of the Heirs of Preston McComas.

Sect. 1.st Be it enacted by the General Assembly of Maryland, That the Chancellor confirm the sale made of the Lands of Preston McComas deceased under a decree of the Chancellor by Otho Scott Trustee and that he be authorised and required to order and direct the said Trustee to convey to the purchaser at said sale, all the undivided interest and estate, to which the defendants in said decree are entitled in said Lands in right of their deceased Mother. and that the Chancellor have the power to order the conveyance of the undivided interests and estate aforesaid of said defendants to the same extent that he has the power of decreeing the sale of Lands held Jointly by infants and persons of full age. and before the Chancellor proceeds to order a conveyance as aforesaid he may on petition of the purchaser direct the answer of the defendants aforesaid to be taken as the answers of infants are taken to bills in Chancery and may order affidavits to be taken of the fairness of the sale and the advantage of such sale to said defendants.

Sect. 2.d And be it enacted, That the Chancellor shall award to said defendants in right of their Mother such portions of the purchase money as is equal to the undivided interest in said Lands to which they are entitled as heirs of their mother.

I do certify that the aforegoing is a true copy of the act entitled "an act to confirm the sale of the lands of Preston McComas" which passed the General Assembly of Maryland at December Session one thousand eight hundred and thirty eight. Given under our hands at the City of Annapolis this 25.th day of February 1839.

Jos. H. Nicholson, Clk. Senate Md.
George T. Brewer, Clk. House Delegates Md.

Upon which petition the Chancellor passed an order in the words following

In Chancery 18.th March 1839

I hold, that it is not within the constitutional competency of the General Assembly to authorise the sale of the real estate of infants for any purpose but to pay debts to which such estate may be liable or to maintain or educate such infants, or to effect a division where such infants hold as Joint Tenants or Tenants in common with adults; nor can the General Assembly constitutionally divest an infant of his real estate which had been illegally and without authority sold by a trustee agent or factor appointed by a decree to make sale of real estate for the purpose of paying the debts of a deceased person to whom such real estate confessedly did not belong; nor can the General Assembly constitutionally authorise any one who can only shew himself to have been purchaser from a trustee at a sale so illegally made to come into a Court of Justice in order to have such an unauthorized sale confirmed or to draw in question the right of such infant in any way or for any purpose whatever. Therefore it is ordered that the said petition of Henry Dorsey be and the same is hereby dismissed with costs to be taxed by the Register.

Theodorick Bland, Ch.r

From which order the said Henry Dorsey afterwards to wit on the sixth day of April in the said year 1839 prayed an appeal to the next Court of Appeals to be holden for the Western Shore of Maryland and the said appeal was granted, and the said proceedings were ordered to be transmitted and the same are hereby transmitted accordingly.

Maryland, Sct. I hereby certify that the foregoing is a true copy

from the original proceedings in said cause now remaining of record in the office of the Court of Chancery of Maryland.

(Seal) In testimony whereof I hereto subscribe my name and affix the great seal of the said State this tenth day of April in the year of our Lord eighteen hundred and thirty nine.

Ramsay Patchs Reg.r Cur. Cancr.

And now come into the Court of Appeals here as well the said Henry Dorsey of Edward by Henry D. Farnandis and William Schley his attorneys as the said Bennett Gilbert and wife and others by Otho Scott their attorney, and thereupon on motion of the said Bennett Gilbert and wife and others by their attorney aforesaid, it is ruled by the Court here, that the said Henry Dorsey of Edward assign the errors in the record of proceedings aforesaid in the giving the decree aforesaid so as aforesaid brought before the Court of Appeals here for correcting the errors supposed to be therein or judgment by the Court of Appeals here will be entered against him in default thereof. And the said Henry Dorsey of Edward by his attorneys aforesaid say that in the record of proceedings aforesaid and also in the giving of decree aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the decree aforesaid in the cause aforesaid given was given for the said Bennett Gilbert and wife and others against the said Henry Dorsey of Edward when by the law of the land that decree ought to have been given for the said Henry Dorsey of Edward against the said Bennett Gilbert and wife and others therefore he said there is manifest error, and he prays that the decree aforesaid for that error and others being in the record of proceedings aforesaid may be reversed annulled and held entirely as void, and that he the said Henry Dorsey of Edward may be restored to all things which he hath lost by occasion of the said decree and that the said Bennett Gilbert and wife and others may reply to the errors aforesaid and so forth. And thereupon it is ruled by the Court of Appeals here, that the said Bennett Gilbert and wife and others join in the errors by the said Henry Dorsey of Edward above assigned in the record of proceedings aforesaid or judgment by the Court of Appeals here will be ordered against them in default thereof and the said Bennett Gilbert and wife and others by their attorney aforesaid say there is no error in the record of proceedings aforesaid, nor in the giving of the decree aforesaid and they pray that the Court of Appeals here will proceed to the examination as well of the record of proceedings aforesaid as of the matters aforesaid by the said Henry Dorsey of Edward above for error assigned and that the said decree may be in all things affirmed, and so forth. The aforesaid parties by attorneys as aforesaid file in Court here an agreement in the words and figures following to wit:

Henry Dorsey
vs
McComas and others
heirs at Law of Preston
McComas deceased.

Court of Appeals for W. Shore, June Term 1839.

It is agreed that this case be submitted without argument and we would join in requesting the Court to consider and decide it at this Term if it can be done consistent with the practice and convenience of the Court. We suppose it will settle a principle of much importance and one upon which the County Courts as Courts of Equity and the Chancellor are at variance. The County Courts in most of the Counties we believe have decreed sale of the lands of infants under the acts of 1816 Chap. 154 and 1818 Chap. 133 Sec. 2. The Chancellor however regards these acts as unconstitutional unless the sale is necessary to the support or education of the infants. To produce uniformity of decision in these cases it is important to have the question adjudicated by the highest Tribunal in the state.

Wm. Schley for Appellant
Otho Scott, Attly. for Defendant.

Thereupon further process of and upon the premises between the parties aforesaid, is by virtue of an act of Assembly in such case made and provided further