awaiting the result, that a judgment had been entered for them, and that they might go home. This deponent then considered that the judgment so entered was a judgment by default or for want of plea. Sometime afterwards, but on the same day Fred^k. A. Schley, Esq., who was not in Court during the proceeding before mentioned came into Court and called their attention to said suit, and moved to strike out the judgment or asked that it might be struck out and the suit continued and urged the motion at some length. This deponent recollects seeing him employed in writing and thinks he held what he had written as the plea in the case in his hand whilst addressing the Court, and has a faint recollection of seeing him hand the paper to the Clerk after he concluded his remarks. His motion was objected to by the Plaintiffs counsel, and the Court announced that they would consider the matter, but nothing was done to vary the position of the case as it stood when Mr. Schley called the attention of the Court to it, as this deponent considered; nor did the plaintiffs' counsel agree nor was the~~re~~ consent asked, to the filing of said pleas. So far as they were concerned, this was inadvertently done. The next day as the Court was about to discharge the Jury, this deponent stepped to the Judges seat, where his colleagues were in conversation with the Court to ascertain what disposition had been made of Mr. Schley's motion and learned from them in the presence of the Court that the Judgment was to stand. At the following Term in March 1847, the plaintiffs were about to proceed by execution to get the possession of the land, when the counsel of the Defendant asked time to enable them to file a Bill in Chancery for an Injunction &c. The plaintiffs would not consent, and the Defendant then resorted to an appeal, to stay execution, in order to enable him to have by this means the time desired by him for his meditated proceeding in Chancery, but with no real design to prosecute the appeal, but as a Bond for this purpose was necessary and he was not ready to give it, it was agreed between Mr. Schley and this deponent, that he should have a certain time (not now recollected) to file the Bond with the sureties named by him and agreed by this deponent to be accepted. But neither was the appeal prosecuted nor any Chancery proceeding instituted, but this deponent was apprised that there would be a difficulty in framing a Judgment in the cause by reasons of the issuable pleas filed and no verdict of a Jury, and consequently no writ of Habere facias could issue under the circumstances. In this consideration the cause has remained. Sworn before.

Jno. D. Ridenour.

Thereupon the Court laid the following Rule to shew cause upon the Defendant, which is in the words and of the tenor following to wit:

Ordered this 10th day of December 1847, by this Court, that the Defendant shew cause on or before the second Saturday of the next March Term of this Court, why the Docket entries in the cause within mentioned should not be corrected according to the within application. Provided a copy of this rule with copies of the affidavits upon which it is founded and now filed, be served on the

Defendant or his counsel by the 1st. day of January 1848. Either party to be at liberty to file further affidavits and adduce any other additional and competent evidence at any time before the said rule is heard.

Copies of which said affidavits were made and sent to the Sheriff of Washington County aforesaid to be served as directed in the foregoing order.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of Court here is continued until the fourth Monday of March next.

At which said fourth Monday of March being the twenty seventh day of the same month, in the year of our Lord one thousand eight hundred and forty eight, come again into Court here the parties aforesaid by their attorneys aforesaid and the said Benjamin Cushwa doth not come. and the said Richard Roe, Lessee as aforesaid, by his attorneys aforesaid suggests to the Court here, that after the last continuance of the plea aforesaid, and before this time, at the County aforesaid, the said Benjamin Cushwa departed this life, and the same is not denied. Whereupon it is ordered by the Court here, on the prayer of the said Richard Lessee as aforesaid, that a summons be forthwith issued returnable to the next term directed to the heirs at law of said deceased and to his executor, commanding them to be and appear before the said Court on the fourth Monday of November next, to answer &c. and such summons accordingly issues in the following words to wit:

State of Maryland, to wit: The State of Maryland to the (Seal) sheriff of Washington County Greeting. Whereas Benjamin Cushwa late of Washington County, was heretofore serbed with a rule from our Court requiring him to shew cause why the entry upon the Docket of said Court, of certain pleas in a cause pending therein, in which John S. Cushwa, and David Brewer and wife, Lessee are plaintiffs and the said Benjamin is defendant, should not be stricken out which said rule the said Benjamin did appear; and whereas it hath since been suggested in said Court, that the said Benjamin is since deceased. Now therefore you are hereby commanded to summon Isaac B. Cushwa, Ann E. Cushwa, Sarah Troup and William Cushwa, Executor of the said Benjamin, being the heirs and legal representatives of the said Benjamin, that all excuses and delays set aside they be and appear before the Judges of our County Court, to be held at Hagers Town, in and for the County aforesaid, on the 4th Monday of November next, to answer the rule aforesaid, according to the act of Assembly in such case made and provided. Hereof they are not to fail, and fail not at your peril, and have you then and there this writ. Witness the Hon. R. N. Martin Chief Judge of our said Court, the 27th day of March 1848. Issued the 9th day of September 1848.

Isaac Nesbitt, Clk.

At which said fourth Monday of November, being the twenty seventh day of the same month, in the year of our Lord one thousand eight hundred and forty eight, come again into Court here the said