but by a desire to make what was deemed a just and proper division of certain family property between himself and his brothers, and because his father in his life time had conversed with him on the subject and had informed him that his your Orators fathers property was to go to Richard and your Orator was to have "Snow Hill" and "Gills" Place, and your Orator expressly avers and charges that the provisions in the Wills of his Uncle Kensey and his father in favor of his brother Richard to his exclusion, were not the result of any wish to disinherit him, but were made on the faith of and in performance of the agreement hereinbefore set forth, by which his uncle John was to devise to him the said "Snow Hill" and "Gills Place" in fee simple. And your Orator further states that after the death of his uncle Kensey, and his father Richard Johns, he continued to live near the residence of his Uncle John, being upon terms of the kindest intercourse with him, aiding him when desired in his business, renting from him on shares the farm called "Gills Place" which adjoins land belonging to your Orator, and attending upon him during the illness which resulted in his death about the last of December in the year 1857 and in the seventy ninth year of his age: that since his death his last Will and testament bearing date the 12th day of June in the year 1856 has been admitted to Probate and duly recorded in the office of the Register of Wills for Baltimore County, and letters testamentary have been granted to the Revd Henry V. D. Johns and Montgomery Johns, the executors in said Will named. And your Orator further shows that by the said Will the testator revoked all Wills by him before made: that he devises to the Revd Henry V. D. Johns in fee simple his Home Farm or Dwelling Plantation (herein before mentioned as known by the name of "Snow Hill" and containing four hundred and Eighty nine acres) describing it in the will in the following words "that is to say the lands called and known by the name of "Nicholsons Manor" "Chew Chase" & "Friendship" which contain four hundred and fifty four acres more or less; and also thirty five acres called "Mary Meadow" the said lands constituting the farm on which I reside" and your Orator avers and charges that the farm so devised, is the same which the said testator had agreed with his brothers Kensey and Richard to devise, and which by his Will made on December 28th 1849 he did devise to his three brothers for life with remainder in fee simple to your Orator, and which was described in said agreement and last mentioned Will not by the names of the several tracts of land which constitute it, but by the name of "Snow Hill" by which the whole farm was known and called. And your Orator further shows that by said Will of June 12th 1856 the said testator also gives devises and bequeaths to the Revd Henry V. D. Johns all the rest and residue of his Estate of whatever nature and description whether real personal or mixed to him his heirs executors and administrators, and that by said devise of the residue, the small farm of one hundred and six acres, hereinbefore mentioned known by the name of "Gills Place" was also given to the Revd Henry V. D. Johns in fee simple, subject to the power and authority given to the Executors by a previous clause of the Will, to sell all the real and personal Estate of the testator, not specifically devised and bequeathed for the purpose of providing for the payment of the several pecuniary legacies given by the Will: and your Orator from such information as he has on the subject believes and therefore charges that the real and personal Estate of the testator, not specifically devised or bequeathed, and exclusive of the said farm called "Gills" are abundantly sufficient for the payment of all said pecuniary legacies. And your Orator charges that

under the circumstances hereinbefore particularly stated of the agreement between the said John Johns and his brothers Kensey and Richard, and the performance of that agreement by the execution of their several Wills, and the remaining unrevoked of those of the said Kensey and Richard, at the time of their respective deaths, and by the actual benefit and profit conferred upon and enjoyed by the said John, under the devise of his brother Kensey's Will it would be against Equity and good Conscience to permit the said Home Farm called "Snow Hill" and the said Small farm called "Gills" to be devised by him to any other person than your Orator: and that your Orator is entitled in Equity to have the said two farms conveyed to him by the devisee of the said John Johns in fee simple. And inasmuch as your Orator is unable of his own knowledge to state the premises save by the interposition and aid of this Honorable Court, To the End therefore, that the said Revd Henry V. D. Johns, in his own right, and the said Revd Henry V. D. Johns and Montgomery Johns executors as above stated, may answer the several matters and things hereinbefore stated as fully and particularly as if they were herein again repeated, and the said parties were thereunto specially interrogated, and that the said Executors may produce the said last will and testament hereinbefore described as executed by the said John Johns on the 28th day of December 1849, if the same can be found among the papers of their testator, and that the said Revd Henry V. D. Johns, may be decreed to convey unto your Orator, the said two Farms called "Snow Hill" and "Gills" in fee simple, and that the said Revd Henry V. D. Johns and Montgomery Johns executors of John Johns, deceased, may be decreed to unite in the conveyance of the said last mentioned Farm, and that your Orator may have such other and further relief as his case may require, May it please your Honor to grant unto your Orator, the writ of subpoena against the said Revd Henry V. D. Johns, and the said Revd Henry V. D. Johns and Montgomery Johns, Executors of the last Will and testament of John Johns, deceased, commanding them to appear in this Court at some certain day to be therein named, to answer the premises and abide by and perform such decree as may be passed therein, and as in duty &c.

Steele & Tagart
John Nelson
Solrs for Complt.

The Exhibits marked J. J. J. No 1 and 2, referred to in the foregoing Bill of Complaint are as follows to wit: [These Exhibits will be found annexed to the return of a Commission issued to take testimony de bene esse in this case, which hereinafter appears]

Whereupon issued subpoena as prayed in form following, to wit:

The State of Maryland, To Revd Henry V. D. Johns, in his own right &c
Revd Henry V. D. Johns
Montgomery Johns, Exors of
John Johns, of Baltimore City Greeting:

(Seal)

We command and enjoin you, that all excuses set aside, you be in your person before the Judge of the Circuit Court for Baltimore City at the Court House in said City, on the second Monday of March next, to answer the Complaint of John Tolly Johns, against you in the said Court exhibited: Hereof fail not as you will answer the contrary at your peril. Witness the Honorable William Gwynn Hebb, Judge of our said Court, the Eleventh day of January, 1858. Issued the 2d day of February Anno Domini 1858.

W. H. H. Dunn Clk.