stating that he had received it in part payment of the purchase money due from Smith for the Land sold him and that he did not thinke that he should do, and supposed he would have to go back on Augustus Smith for the amount. Witness remembers the conversation perfectly and that Nothing was said by Crandell about the company being paid rent for rent.

There being no other Witnesses to be examined and neither party desiring further time for the production of Evidence, the Commissioner closed the Testimony and herewith returns the same this 21 day of June 1859 under his hand and seal.

N Brewer of John Comr (seal)

Augustus Smith vs Richard Crandell

Cross Interrogatories to Martin Deale

1st Has not Richard Crandell always laid claim to the Land in question as his own

2d Has not Augustus Smith begun ploughing and making improvements on his agents as rent for said Land.

3d Was the conversation alluded to before or after Smith's Entry upon the Land.

Cross Interrogatory to Henry M Leach

1st By what rule the taxes upon said Land paid by you when Collector as mentioned.

James S Franklin Solr for Defts

And afterwards to Wit on the 6th February 1860 the Complainants and defendants by their Solicitors filed in said cause Exceptions to testimony as follows to Wit

Augustus Smith vs Crandell &c

Exceptions to testimony produced on behalf of the defendant

The Complainant by his Counsel except to the testimony adduced by the defendants in chief in the following particulars.

1st We except to the answer of Thomas Rogers in reply to the 3d Interr of defendants because the same is hearsay so far as relates to the agency of Martin Deale for Richard Crandell and the message of Crandell about the wood cutting.

2d We except to the evidence of Mr S Wood in answer to the 3d Interr of Defts because the written Notice mentioned by the Witness is not produced, or its absence accounted for.

3d To Walter B Normans testimony in reply to Defts 3d Interr.

3d Interr so far as the same refers to the written receipt alleged by the Witness to the Complainant to have been sent upon the Complainant to produce the said receipt, nor is its absence accounted for and until such Notice is served Secondary Evidence is not admissable.

Rawlins and Wagner for Complt

Augustus Smith vs Richard Crandell Margaret A Crandell admx

The defendant excepts to so much of the testimony of John W Chew one of the Complainants Witnesses as relates to the declarations of the Complainant Lemuel, in relation to the contract for the purchase of the Land mentioned in the said and also to such testimony of other Witnesses who testified as to their misunderstanding, in defendant of their knowledge of facts of any contract subsisting between the parties to the said.

J S Franklin Solr for Defts

And afterwards to Wit on the 5th January 1860 the Judge passed his Decree in the said cause in the words following to Wit

Augustus Smith vs Margaret A Crandell and Richard H Crandell

Circuit Court for Anne Arundel County.
In Equity
October Term 1860.

This cause being ready for hearing was argued on both sides and duly considered. The Bill claims a conveyance of a tract of Land from the defendants as a specific performance of a contract between Richard Crandell of whom they are the Heirs and the Complainant. The Bill alleges that the Complainant bought the Land from the Heirs for the sum of Eight hundred Dollars which sum was loaned to him by Richard Crandell and the purchase at his instance conveyed by them to Crandell who found the above purchase money, as a friendly fund for payment by the Complainant. That the Complainant immediately took possession of the Land and has occupied ever since under the contract with Crandell and has paid to him a part of the purchase money and on which he has lived a course of twelve years. The defendants do not admit the contract but allege that the land was purchased by the elder Crandell and vested in the Complainant. It is very difficult to say upon what equitable principle, or rather under what head of Equity relief can be afforded of all and neither Mistake nor fraud is alleged or proven with regard to conveyance to Crandell the payment of the purchase Money or the alleged contract between Crandell and the Complainant so that relief could not be given under either of those heads. Neither could the case be treated as resulting trust arising from the payment of the original purchase Money. It is alleged and proved that Crandell upon the delivery of the Deed to him paid the purchase money out of his own funds. Nothing transpired at the time of the delivery of the deed or afterwards to show that it was intended by either of the parties a trust deed or Mortgage. The only head of Equity therefore upon which relief could be granted is that of a specific performance which from the allegation of the Bill I presume was the ground upon which relief was originally sought. Though the argument of the Complainants Counsel took a wider range not a very definite range, and to the relief sought under this head, the defendants by plea relying upon the statute of frauds as a bar, and there is no doubt that it is a bar, as there was no contract in writing unless the Complainant can bring the case within the exception of such performance by the delivery of possession, or the payment of a part of the purchase money. In the first place a Complainant cannot demand the specific Execution of a contract, as a matter of right, but it is decreed by the Court at its discretion and only on full and clear proof of the contract as alleged or of a contract not materially differing from it, as well as of the facts which are relied upon to take the case of the statute. The contract also must be mutual 1 Md Ch 346 3 Md R 490 3 Md 494, 2 Md Ch 493 4 Md Ch 133. There is no legal proof in this case that Smith the Complainant made the contract with the Heirs for the land as his own account. His own statement to the effect is not Evidence neither is there any Evidence that he bought it as the agent for Crandell. The deed was given to Crandell the Money found by him and not a Word was said at that time in reference to the subject by any one, there is however proof by the subsequent declarations of Crandell that he and not the