in York County Pennsylvania, they have seven children, who all resided with their said parents, and are all infants under 21 years of age to wit;

1 John Thomas Leib
2 Mary C Leib
3 Martha I Leib
4 George Ella Leib
5 William Joseph Leib
6 Eleanor Leib
7 Margaret Leib

Twelfth Interrogatory Do you know any other matter or thing material or beneficial to the parties to this cause, if you state the same as fully and particularly as if you were therein specifically interrogated

Answer I have carefully read over the testimony of Hannah Turner already given under this commission and do rely on my testimony as a supplemental contains a full account of the descendants of James Calder deceased, or of his children George Calder Margaret Park Sarah Turner, Mary Little and Charlotte Withers and their respective descendants.

No other Witnesses being named or produced to me I then at the request of the Solicitors of the respective parties closed the said Commission and now return it closed under my hand and seal on the day and year last aforesaid, at the City of Baltimore in the State of Maryland.

Frederick Pinkney Com Spec

And on the same day the said Complainants by their Solicitor aforesaid filed in Court here the following certificates of publication of the Order of publication herein before recited with the printed copies of the said Order thereto annexed to Wit.

Office of the Daily Exchange
Baltimore March 1862

This is to certify that the annexed advertisement of order of Circuit Court for Baltimore County in the case of James Turner and wife and others and Charlotte Withers and others was published in the Daily Exchange "a Daily Newspaper published in the City of Baltimore, once in each of four successive Weeks before the 30 day of November 1860.

Glenn & Co
for Edward F. Carter

This is to certify that the annexed advertisement was published with Baltimore County Advocate, a Weekly paper printed in Baltimore County for four successive weeks next before the 30th day of Nov 1860

E. F. Cronch Publisher.

For a copy of the Order above referred to see page 6.

And on the said 19 day of March in the year last aforesaid the said Complainants and defendants by their Solicitors aforesaid filed in Court here the following agreement to Wit.

James Turner et al vs Charlotte Withers et al
Circuit Court for Baltimore County.
In Equity

It is agreed in this case that all objections to the Evidence taken before Frederick Pinkney Esq be waived, and that the case be sub-

mitted to the Court for Decision without any delay March 17. 1862.

W S Waters Solr for Complts
Brune & Bruno Solrs for Geo Little and other descendants of Mary Little
R D Gilliams for all the defendants who appear except the descendants of Mary Little

Which being read and heard the Court hereof filed of Record in said cause the following Opinion to Wit

James Turner and Wife and others vs Charlotte Withers and others

In the Circuit Court for Baltimore County
In Equity

This cause has been submitted upon written argument on behalf of the Complainants and oral argument by the Solicitors of some of the defendants. The Bill is filed for the purpose of obtaining a partition of certain Real Estate of which Margaret Park died seized; and which she held under the Will of her father James Calder, and under a decree of this Court for the partition of the Real Estate of the said James Calder. The questions to be decided depend on the true construction of the said Will; a copy of which is filed by the Complainant as part of their Bill and marked Exhibit A.

It is contended by the Solicitor for the Children of Mary Little that by force of the Ultimate limitation in remainder to John Gugnon upon the death of all the testators children, without issue that the life estates previously given to each of his children, including their originally given to his son George and daughters Margaret became enlarged to estates tail, which by virtue of the act of descents were converted into estates in fee, but whether this be so or not "be it enacted" that the limitation over to said Gugnon being after an indefinite failure of issue of all his children is too remote and therefore void.

Unless the testator intended an indefinite failure of issue his children did not take estates tail by implication, neither is the devise over to Gugnon too remote, it becomes therefore necessary to consider whether the testator intended in this clause of his Will, an indefinite failure of the issue of all of his children or a failure of issue at their death

If there were nothing in the Will shewing a contrary intention there is doubt but that the law treats that the words mean an indefinite failure of issue, but it appears to me, if we look at the whole Will, and at the connection in which these words are used and particularly at the clause immediately preceding this clause and also at the clause next to the immediately preceding clause that it is clear that the testator intended the same kind of dying without issue and with issue, in all say a dying without issue at the death of any of his children, a dying with issue at the death of any of his children and dying without issue at the death of all of them. He provides for each case in regular and immediate succession. He first gives life Estates to his children. He next provides for the case of any of his Children dying without issue living at his or her death and for the