And the defendants further answering say that a fi fa was issued upon the said judgment and levied upon and the right title and demand of the said Benjamin Cushna in and to the said lands and the same being sold by the Sheriff of Washington County to your petitioners John S Cushna and David Brewer as stated in the said bill yet the said execution was al asseda at the instance of the heirs of the said Bendjamin for want of legal notice of the said sale by the said Sheriff That upon petitioners thereupon issued an alias fieri facias and in which the said right title interest and Estate of the heirs of the said Benjamin Cushna having been again purchased by these defendants John S Cushna and David Brewer said objections having been again filed by the said heirs the said sale was upon argument confirmed by the Court.

These defendants state that this suit is not prosecuted by creditors of the said Benjamin Cushna there being no creditors having valid debts due by the said Benjamin before his said application but that the said William Tuttle is prosecuting the same for and on account of the heirs of the said Benjamin Cushna and that his suit prosecuted in his name and for their exclusive benefit and that the allegations of their being creditors who are now for the first time moving in this matter to obtain satisfaction of the claims is a mere pretence having no foundation in fact.

And these defendants further answering say that they know nothing of their own knowledge of the accounts and dealings of the said John and Benjamin at the time of and prior to the application of the said Benjamin for the benefit of the insolvent laws but from papers of the said John Cushna now deceased, which since his death have come into their possession that the said Benjamin about the month of June 1826 being largely indebted to the said John both in his own account and for large sums for which the said John was liable as his security and which the said John subsequently paid the said Benjamin executed to the said John a Mortgage of the said lands which will appear by the said Mortgage exhibited by these defendants marked A which these defendants pray may be taken as part of this their answer But that the said Mortgage was not put upon record and on the 14th of November 1826 it was agreed between the said Benjamin and John that the said John having paid off the said debt for which he was liable as security of the said Benjamin the said Benjamin should execute to the said John an absolute deed for the said lands which will appear from a list of the said debts made out at the time and for which the said Benjamin gave his receipt which list is herewith exhibited marked B which these defendants pray may be taken as part of this answer and that the said deed was afterwards on the 14th of November 1826 executed by the said Benjamin to the said John a copy of which is exhibited by the Complainant,

These defendants further answering say that after the said Benjamin was committed as aforesaid upon the allegations filed by the said Henry Seibert and sent to prison the said John Cushna paid the whole of the debt due to the said Seibert and costs of the said suit amounting as these defendants believe to the sum of two thousand eight hundred dollars, by which payment of the said John the said Benjamin was released from imprisonment, That the said sum so paid to the said Seibert was over and above the debts in satisfaction of which the said deed was executed That the said payment made to the said Henry Seibert and other payments and advances made to and on account of the said Benjamin by the said John constitute the debt for which the note was given and judgment recovered against the said Benjamin as aforesaid. These defendants further answering say that the said Benjamin was in possession of the said lands at the time of the said conveyance

of the 14th November 1826 that the said John thereafter as these defendants believe took possession of part thereof called the Knave farm and held possession of the same until his death and these defendants as his heirs have possessed thereof since. The residue of the said lands called and known as the home farm the said John left in the possession of the said Benjamin except a house and lot as hereinafter stated upon the agreement of the said Benjamin as these defendants think and believe to pay rent for the same These defendants found among the Books and papers of the said John after his death an old account Book in which the said John commenced to keep an account of the said Knave and home places and in which there are entries of rents received for the home place from the said Benjamin which account Book is herewith exhibited marked C which these defendants pray may be taken as part of their answer. How the said entries were continued by the said John up to the year 1833 after which these defendants find no trace of any such accounts or Books and papers of the said John That the said Benjamin Cushna was an unthrifty man in business and was never able to pay his rent as it had against as these defendants believe and the said John being a kind and indulgent brother was reluctant to keep or hold the said Benjamin to a strict account for the said rent. These defendants further answering say that in addition to the Knave farm the said John also soon after the execution of the said mortgage took possession of a house and lot part of the said home place and received the rents thereof during his life: but that after the death of the said John the said Benjamin locked up the said house and prevented these defendants from taking possession of the same. And the said John seemed answering fortieth of the said interrogatories propounded to them in this said bill says that his father John Cushna never said nor intimated to this defendant that the said deed of the 14th of November 1826 was intended as a Mortgage or an instrument in the nature of a Mortgage to secure a debt to him by his said brother Benjamin or that on the payment of the consideration of the said deed the said land was to be conveyed to the said Benjamin by the said John in words or conversation to that effect. He further answers that his said father never said to this defendant that after the execution of the said deed and at the time of the said Benjamin's application as aforesaid there was any debt of any account due to him by the said Benjamin The said John never said to the defendant that the said Benjamin ever paid to him the said John any part of the consideration of the said deed This defendant further answering says that he does not know from any conversations he ever had with his said father at any time that the said deed was made for the express purpose of securing to him the said John the amount of this debt due at the date of the said deed and that on the payment of the same the said land was to be conveyed to the said Benjamin or his heirs or that the said sum for which the note of the said Benjamin was given to the said John was the said sum of which the said deed on the consideration thereof was executed to the said John received by payments afterwards made thereon by the said Benjamin and this defendant further answering says that the said John Cushna never told him nor did he ever understand from the said John in any conversation he ever had with him that a settlement had taken place between the said John and the said Benjamin of their accounts, including the consideration mentioned in the said deed on which settlement it was ascertained that the balance due the said John was the amount of said Note on which said judgment was