the Complainant and that his devisees were in possession of the Home farm" until they were in fee simple a few months prior to the death at law of said John. These defendants severally believe and aver that the deed from Benjamin to John although absolute in its face, was intended and understood by and between the said Benjamin and the said John as a Mortgage, to secure to the said John the payment of the debt which the said Benjamin owed to the said John and which said debt these defendants aver formed the consideration stated in said deed. These defendants believe and aver that said debt was subsequently reduced by payments made at divers times down to the sum of $4687.86 and for which residue the said Benjamin gave the note a copy whereof has been exhibited by Complainant marked No 6. These defendants further admit that the said Benjamin in his life time always claimed said real estate as his own subject to the payment of a debt owing by him to his said brother John which said debt at the date of the execution of said deed was the consideration therein mentioned and was at the date of the note reduced by payment to the sum of $4687.86. These defendants also admit that after the death of the said John his administrators instituted suit on said Note and obtained judgment thereon against the said Benjamin at the November term 1847 of Washington County Court and that said the death of the said Benjamin the same has been received against his heirs and the land finally sold to the heirs at law of said John for the sum of $50.00. These defendants insisting that the consideration mentioned in said deed was the only debt existing between the said Benjamin and John that said deed was intended by the parties thereto as a Mortgage and as treated and regarded by each and both during their lifetime that the payment obtained by the administrators of said John against the said Benjamin herein before specified now represents the true amount of said indebtedness on the part of the said Benjamin to the said John and that whenever or whenever the same shall be found these defendants will be entitled to have a reconveyance of said lands these defendants insisting upon the above representation of their rights refer them to the decision of this Honorable Court being willing to conform to such decree passed in the premises as may be and considered with Equity And as &c

Isaac B Cushna
Sacy Troup
Ann E Cushna

State of Maryland Washington County to wit.

On this 22d day of July 1854 before me the subscriber a Justice of the Peace of the State of Maryland in and for said County personally appeared the above named Isaac B Cushna Sarah Troup and Ann E Cushna and made oath that the matters stated in the foregoing answer are true to the best of their knowledge and belief. Samuel Boyd J P

The following answer of James R Ward was also filed to wit The answer of James R Ward to the Bill of Complaint of William Sells against him and others in the Circuit Court for Washington County exhibited. This defendant in answer to said Bill that he knew nothing of his own knowledge of the various statements and allegations therein mentioned. He admits the Complainants exhibit No 4 to be a true copy of the last will and testament of Benjamin Cushna deceased. This defendant under the provisions of said will has a trust confided to him by said testator and beyond and outside of said trust he has no legal interest in said sale. This defendant confesses

only to do what his duty in that behalf may require, as nothing to submit to such decree as may be passed and be consistent with Equity and this defendant does not wish or does he intend to accept the trust. James R Ward

State of Maryland Washington County to wit On this 22d day of July 1854 before the subscriber a Justice of the Peace of the State of Maryland in and for Washington County aforesaid personally appeared the above named James R Ward and made oath that the matters stated in the foregoing answer are true to the best of his knowledge and belief. Samuel Boyd J.P.

Thereupon the following Petition of Wm Price next friend &c was filed by order of Court thereupon viz

To the Hon Judge

Mr Price

William Sells vs David Brewer and wife. John S Cushna and others

In the Circuit Court for Washington County as a Court of Equity. To the Honorable the Judges of the Circuit Court for Washington County sitting as a Court of Equity. The petition of William Price prochein ami of Sarah A Cushna and Ann Rachel Cushna of Washington County infants under the age of twenty one years humbly shews. That since the filing of the answers in the above cause the said John S Cushna one of the defendants therein has departed this life leaving the said infants as his only children and heirs at law. Your Petitioner therefore prays that said infants may be admitted as and made parties defendants to said cause in the room and stead of their deceased father and as &c Wm Price next friend &c

Upon reading and considering the above petition it is decreed this 27th day of March 1855 by the Circuit Court for Washington County sitting as a Court of Equity Ordered and Adjudged that said infants heirs be admitted as parties defendants to the above cause in the room and stead of their deceased father and that said cause proceed as if no death had occurred. Thomas Perry.

Thereupon the following Agreement of Solicitors was filed viz

William Sells vs John S Cushna and S Brewer et al

No 1216 Equity. In the Circuit Court for Washington County sitting as a Court of Equity.

It is agreed in the above cause that the general reputation shall be considered as having been fixed that a Commission to take testimony shall issue to as J S Clagett Esq therein the testimony documentary and otherwise contained in and between pages 7 and 20 inclusive of the printed record in the office of John S Cushna and others lessees vs Isaac B Cushna et al shall be deemed and taken as proved under said Commission to have the same force and effect as if regularly proved under said Commission and to be taken to all legal objections to which it may have been subject if returned as testimony by said Commissioner under said Commission the figures 1 first stricken out and 20 inserted. Also the deed from Benjamin to John Cushna dated Nov 14 1826 for the property in dispute. March 27 1855. Wm Price for defendant
George Salter for plaintiff.

And thereupon it was suggested and made known to the Court and that since the filing of the agreement aforesaid and before the time the said William Sells the Complainant in this cause at the County aforesaid hath departed this life and the same is not denied.

Then follows the printed record from pages 7 to 20 inclusive in the cause of John S Cushna and others Lessees Isaac B Cushna and others mentioned in the foregoing