Roe, the defendant, the said Thomas Kelso, the tenant in possession of the premises aforesaid or those under whom he claims, to his declaration aforesaid, may appear and answer. Whereupon, the said John Doe, lessee as aforesaid, by his attorney aforesaid, prays that the said Richard Roe, the defendant, the said Thomas Kelso, the tenant in possession of the premises aforesaid, or those under whom he claims to his declaration aforesaid, may appear and answer; but the said Richard Roe, (casual ejector,) nor the said Thomas Kelso, (tenant,) nor any other person whatsoever, appears to to the declaration aforesaid, according to the notice aforesaid, but the said Richard Roe makes default, Therefore, it is considered by the court here, that the said John Doe, lessee of the said Benjamin M. Dennis, recover against the said Richard Roe his term aforesaid, yet to come and unexpired, of in and to all that tract of parcel of land, mentioned and described in the declaration aforesaid, and that he have thereof his possession against the said Richard Roe, &c.

And afterwards, the cause was continued by regular continuances, until the fourth day of May, eighteen hundred and sixty-four, at which said fourth day of May, eighteen hundred and sixty-four, the said John Doe, lessee as aforesaid, by R. R. Boarman, his attorney aforesaid, prosecuted and sued forth out of the said court, the writ of the State of Maryland, of habere facias possessionem, in the words and of the tenor following, to wit:

The above mentioned writ is not in court, not having been returned by the sheriff. - J. H. L. (Clk.)

And afterwards, to wit: on the sixteenth day of July, eighteen hundred and sixty-four, comes into court here the said Thomas Kelso, by his attorneys, A. W. Machen and R. J. Gettings, Esquires, and files a motion, petition and affidavit, which motion, petition and affidavit are in the words and of the tenor following, to wit:

Benjamin M. Dennis's lessee, vs Thomas Kelso.	In the Circuit court for Baltimore county. May Term 1864.

The petition of the said Thomas Kelso shows to the court here, that he is the person, who at the time of the institution of this suit, was seized and possessed of the parcel of land described in the declaration, holding the same under a deed of conveyance

long before that time, duly executed to him by a certain John Armitage, and that he, the said Thomas Kelso, has stile an interest in said land, and right to the possession of the same, or of a part thereof. That he, nevertheless, had no knowledge or notice of said suit, nor of any of the proceedings therein until recently, and since the execution of the said writ of habere facias possessionem, nor had any tenant, or other person claiming or holding said land, nor any part thereof under him the same Kelso, (as he is credibly informed and verily believes,) any knowledge of the existence of said suit, until the said writ of possession. That when this action was instituted, a certain Joshua Kidd was and for many years previously thereto, he had been, and he ever since had been living in a certain dwelling house standing on land of him, the said petitioner, lying adjacent to the said land described in the declaration, the said dwelling standing one hundred yards or less from the said so described parcel, and that he, the said Kidd, was so in occupation as tenant thereof under the said petitioner, and as such tenant, was also in possession of said parcel in the declaration described, cutting wood therefrom, and doing other acts thereon, yet no copy of the said declaration was served, either upon the said Kidd or upon any other person in occupation of said land, nor upon the said petitioner. And the petitioner doth aver, that no copy of said declaration was, according to the knowledge and best information of the said petitioner, set up on the said premises, so as to be visible or notorious, and that no sufficient or proper service thereof was made; and that the said judgment against the said ejector was obtained by surprise and irregularity. And the petitioner, if he had had any notice of said suit, would at once have come in, and defended the same, and was, and is ready to do so successfully.

The said Thomas Kelso therefore prays, that said judgment heretofore entered in this cause, may be stricken out, and possession of said land restored to him, and the parties claiming or holding under him, in the same manner as he, and they had possession thereof, at the time of the issuing of the said writ of habere facias possessionem, and before the execution of said writ; and that he, the said petitioner, may be permitted to come in under the common rule to defend said action upon such terms as the court may prescribe. &c. —

And as, &c.