Assembly, but the said Philemon saith that thereunto he hath not been called, agreeable to the Rules and directions of the said Act of Assembly and this he is ready to verify; Whereforeby he prays Judgment if the said Thomas Johnings Sells his Action aft against him to have or maintain ought thereof &c.

Wm: Hayward for the Deft.

And the aforesaid Philemon Downes by leave of this Court here, and according to the form of the Statute in such case made and provided by William Hayward his Attorney further comes and defends the force and injury when and so forth; and prays the hearing of the writing obligatory aforesaid and it is read to him: He prays also the hearing of the Condition of the same writing obligatory and it is read to him in these words, to wit: (The Condition of which being read and heard

this said Philemon saith that the aforesaid Thomas Johnings Sells his Action aft against him Virtue of the writing Obligatory aforesaid, to have and maintain ought not, because he saith that after the death of the said Jacob Sells in the writing Obligatory and Condition aft mentioned he the said Philemon Downes at Queen Anns County, did intermarry with Mary Sells Widow and Administratrix of the said Jacob Sells and Mother of the said Thomas Johnings Sells, and that by means of such his intermarriage, he became possessed of all the Estate of the said Thomas Johnings Sells; that afterwards, to wit, on the twenty fourth day of August which was in the year of our Lord, One thousand seven hundred and seventy five at Queen Anns County aft, the said Philemon, being so as aforesaid possessed of the Estate of the said Thomas Johnings Sells; and the said Thomas Johnings Sells then and there being an Infant under the age of fourteen years, he the said Philemon was then and there by the County Court aforesaid Guardian to the said Thomas Johnings Sells of which the said Philemon then and there accepted and for the due performance of the Guardianship, did then & there, to wit, on the twenty fourth day of August, in the year of our Lord, seventeen hundred and seventy five, execute the writing obligatory aft with the Condition aforesaid thereto annexed by means whereof the Estate of the said Thomas Johnings Sells remained and was continued in the hands and possession of the said Philemon; that after the making and executing the writing obligatory aforesaid, and before the suing the original process in this cause, to wit, on the Eleventh day of April in the year of our Lord, One thousand seven hundred and eighty, the said Thomas Johnings Sells had arrived to the age of fourteen years, and that on the same Eleventh day of April in the year of our Lord, seventeen hundred and eighty the said Thomas

(John:

Johnings Sells, at Queen Anns County aft did appear and before the Orphans Court of Queen Anns County aft, and did then and there as was his Right, Elect and make choice of a certain James Sells (the same James Sells that is appointed now here by the Court as Guardian to the said Thomas Johnings Sells to prosecute this suit) then also present in the said Orphans Court as Guardian of him the said Thomas Johnings Sells and that the said James Sells did then and there in the same Orphans Court accept of the Guardianship of the Thomas Johnings Sells, and enter into Bond himself, with John Fisher, William Phillips and William Clayland his sureties for the said James Sells his faithful performance of such Guardianship; and the said Orphans Court did then and there make their order for the delivery and payment of the Estate of the said Thomas Johnings Sells unto the said James Sells and that the said James Sells did not ever after the making such order as aft by the Orphans Court aforesaid and before the suing of the original process in this cause deliver unto him the said Philemon a Copy of the order so as aft made by the Orphans Court aft for the delivery and payment of the Estate of the said Thomas Johnings Sells unto the aft James Sells under the hand of the Clerk of the said Orphans Court, with this that the said Thomas Johnings Sells the time of the suing the original process in this cause was in fact under the age of twenty one years; and this the said Philem is ready to verify; Whereforeby he prays Judgment if the said Thomas Johnings Sells his Action aforesaid against him to have or maintain ought, thereof &c.

Wm: Hayward for the Deft.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their Attornies aforesaid; and by order of the Court here thereon was further continued until the second Tuesday in September then next following. At which said second Tuesday of September seventeen hundred and eighty five, came again the parties aforesaid by their Attornies aforesaid; and this Cause standing ready for trial, thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties and their Attornies aforesaid, and by order of the Court here then was further continued until the second Tuesday in April then next following.

At which said second Tuesday of April, seventeen hundred and eighty six, came again the parties aforesaid by their Attornies aforesaid; whereupon

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