

take his one third interest in said Property, and that the said Com-
 plainant being unable to comply with the terms of sale and to meet
 the payments as they became due assented thereto, and that thereupon the
 said James M. and this Defendant Joseph repaid to said Complainant
 John the amount he had paid towards the purchase of said land, and
 took upon themselves the purchase of and payment for the same; That
 some time in the year Eighteen Hundred and sixty three, the said
 James M. and this respondent Joseph took the said Daniel E. Fick
 into the purchase with them in lieu of said Complainant, and procured
 and had the deed for said tract of land made to the said James
 M. Daniel E. and Joseph N. W. Fick. That the said Daniel E. Fick
 paid of a note for \$100 due in Eighteen Hundred and sixty three,
 for said tract and one third of the interest due on some of the other
 notes given for said purchase; That in the month of August 1863, the
 said deed was made by the Executor of said Eichelberger to said James
 M., Daniel E. and this respondent Joseph, and that in the previous
 October the said Daniel E. did testify in that having paid one
 third of the whole purchase money for said tract of land as he had
 agreed to do when the said deed was so made to him in conjunction
 with said James M., and this respondent Joseph; And that this re-
 spondent and the said James M. both in the life time of said Daniel
 E. and after his death repaid to and for him more than the amount
 he had advanced as aforesaid towards said purchase, and that
 although the deed was made in the name of said Daniel E. he
 was not to be entitled to a one third interest in said land until
 he had fully paid the whole amount of one third of the purchase
 money therefor. And these respondents in this behalf further an-
 swering say they are that the said Daniel E. required no title
 under said deed because the distinct understanding and agreement
 was that the deed should be so made so as to avoid the necessity
 of subsequently executing a separate deed to said Daniel E. when he
 should have paid the whole of the one third of the said purchase money,
 and that though the deed purported to convey to him one third of
 said property it was not to have that effect until he had paid the one
 third of the purchase money, which except as hereinbefore specified was
 paid by this respondent Joseph, and said James M.; And that the
 said Daniel E. having failed to pay said one third of said purchase money,
 and the amount that he did pay having been repaid to or for him he
 acquired no title whatsoever under or by virtue of said deed
 These respondents further answering say, they admit that said Daniel
 E. Fick died leaving as his only heirs at law his brothers, the said
 James M. Fick, Joseph N. W. Fick and the Complainant John M. Fick,
 but they deny that they the said named heirs at law of said
 Daniel E. inherited the said Daniel E. Fick's undivided interest or third
 part in said real estate, because these respondents say the said Daniel
 E. Fick had no interest or estate in the said real estate what ever
 And further answering these Defendants say that admit that the