

administration upon his estate had been granted to his widow, the defendant Lydia, who has since intermarried with the defendant David; that the administratrix has possessed herself of the personal assets of the estate, sufficient to pay all just debts against it; and that John Henderson left three infant children, the defendants Richard Henderson, Sarah Henderson, and Janet Lingan Henderson, who are his heirs-at-law. That James M. Lingan is dead intestate, leaving the plaintiff Janet his widow, to whom administration upon his estate had been granted, and three children, the plaintiffs Sarah, George, and Anne. And that the administratrix of John Henderson disputes the claim of the representatives of said Lingan against Henderson's personal estate; and, his children being infants, no adjustment can be had with them.

* Whereupon it is prayed, that the administratrix of Henderson may be compelled to pay the amount of the purchase money for the land, with interest; or if the sale should not be admitted or proved, that the heirs of Henderson may be compelled to reconvey the land to such of the plaintiffs as are entitled thereto; and that the plaintiffs may have such further and other relief as to the Court shall seem meet and consistent with equity. And forasmuch as the defendants were all of them non-residents, the plaintiffs prayed an order of publication, which was passed accordingly, directing the defendants to be warned to appear on or before the 29th day of May then next. 238

The plaintiffs, by their bill, filed on the 15th of December, 1821, in this case, alleged, that Henry Waring, of Washington County, in the District of Columbia, was the only person by whom they expected to be able to prove their claim; that he was then advanced in life, and if deprived of his testimony, they were apprehensive that they would not be able to establish their claim. They therefore prayed, that a commission might be issued to perpetuate his testimony, and that it might be issued to James Dunlop, Jun'r, John Marbury, J. J. Stull and Joseph Brewer, and for such other relief, &c. Annexed to this bill there was an affidavit of the truth of the facts stated in it, made before an Assistant Judge of the Circuit Court of the United States for the District of Columbia; and a certificate of the Secretary of State, that he was at the time an Assistant Judge.

JOHNSON, C., 15th December, 1821.—Issue the commission as prayed. (n)

(n) RYMER v. DULANY—1787.—Petition for a commission *de bene esse*, stating that the petitioners, the plaintiffs, were in want of the testimony of Abraham Cream, of Frederick County, who was a material witness for the petitioners in the said cause, and who was about eighty years of age, and sick and impotent. Granted.—*Chan. Pro. lib. S. H. H. lett. C, fol. 296.*