

which he claims a title to in right of Hathorn -
his wife a daughter of the said Arthur see the
said Hathorn ought to have been joined with the
said Joseph in the same

2. For that the said Joseph did fail to file his
declaration against the said Lewis according to the
act of assembly in that case made and provided
whereby he became liable to be nonsuited And altho
a nonsuit was moved for by the said Lewis by his
attorney no declaration being filed the ~~same~~ motion
was overruled by the court

3. For that there is no consideration laid in the declaration
for the promise of the said Lewis to the said Joseph
on which the action is founded And being avied by
the said Joseph in his declaration that the probate of
the last will and testament of the said Arthur

Whitehead could have been prevented or the same
made void by the said Joseph nor that the said
Lewis would have been a gainer or loser by the
proving or avoiding the same

4. For that the will of the said Arthur Whitehead -
aforesaid by the said Joseph in his declaration
alleged to be have been fraudulently made obtained by
the said Lewis is avied to be made by the said
Arthur on the twelfth day of march A.D. 1750.
and proved by the said Lewis on the tenth day of
January A.D. 1751. as was not the said will proved by
the said Lewis on that day the said will proved by the
said Lewis on that day being a will of the said Arthur
and duly made and executed on the twelfth day of
march A.D. 1750. and as the said Joseph had
no cause of action

5. For that the jury sworn to try the issue joined in this