THE MEMPHIS DAILY APPEAL.

BY M'CLANAHAN, TROUSDALE & DILL. MEMPHIS, TUESDAY, JANUARY 25, 1859. VOLUME X.—NUMBER 20.

Daily Appeal.

THE WINCHESTER CASE.

Official Publication of the Opinions of the Supreme Court of the State of Tennessee, delivered at Nashville, on December Term, 1858.

Opinion of the Court, delivered by Edwin H. Ewing, Esq., appointed by the Governor Special Judge for the occasion.

W. M. WINCHESTER et al. vs. J. M. WINCHESTER et al.

James Winchester died in 1826, having made a will, providing for his wife and for the support of his minor children, leaving his lands (except those devised to his widow) to descend. His lands were situated in various counties of Tennessee; some of them in, and some of them out of the District of the Chancery Court, then held at Carthage. He leaves consort of two adult males, two married women, several minor children, and two minor grand-children. Lucilius Winchester, one of his adult sons, became guardian for the minor children. In January, 1829, a petition was filed in the Chancery Court at Carthage, for the sale of certain lands as descended. This petition was signed by the adult sons, by the married women and their husbands, by Lucilius Winchester, as guardian for the minor children, and by Orville Shelby, who is stated in the body of the petition to be next friend and father of said minor grandchildren.

At the term of the Court, at which this petition was filed, the Chancellor made an order, decreeing the sale of the lands and appointing Commissioners for that purpose. This decree contains recitations as to the sale and the report, and authorizes the sale to be made by division of the lands into lots, if deemed expedient. The Commissioners appointed were Lucilius Winchester and William Cage, who made sale of the lands mentioned in the decree, and made a particular report thereof to said Court at its July term, 1829; they reported that the sale of a tract of land, not mentioned in the petition, lying in Stewart county, and of two tracts in Weakley county, which it has been supposed were not mentioned in the petition. This report was not excepted to. Certain of the lands, which had been bought by Lucilius Winchester, were set aside for the use of the widow, and made a particular report thereof to said Court at its July term, 1829; they reported also