and by the improper persuasions of the said Samuel the brother of the said Agnes (she being too feeble in mind & body to resist the same) was induced to put her name thereto without being capable of understanding the contents thereof.

This Libellant charges that the said Agnes Gaither gave no instructions to the said Nathan Shipley nor was she seen by him until the time of signing said paper dated the 23 day of August 1841.

This libellant charges that the said Agnes after returning to her home in Montgomery County & learning that she had executed a paper purporting to be her last will & testament whilst she was at her brother Samuel Gaithers dated the 23d day of August 1841 declared that if she had signed such a paper she was not conscious thereof & that it was not her last will & testament & wrote to the said Mr. Shipley to procure said paper that she wished to destroy the same declaring at the same time that she had made but one will & that was the will written by Dr. Warfield & dated the eighth day of June 1838.

This libellant charges that the said Nathan Shipley waited upon the said Samuel Gaither & requested him to give up the said paper at the same time informing him that Agnes Gaither had made the request which request the said Samuel Gaither refused to comply with. This libellant further charges that the said Agnes upon hearing that the said Samuel Gaither had refused her request, stated that the contents of said paper was not in accordance with her wishes & declared it not to be her last will & testament because she was forced to make it stating that she had never executed willingly but one will & that one was written by Dr. Warfield. This libellant charges that the paper written by Nathan Shipley & dated the 23 day of August 1841 & signed by the deceased & also deposited in the Registers Office of Montgomery County is not the genuine last will & testament of Agnes Gaither because the said Agnes Gaither at the time of executing the same was not of sound & disposing mind memory & understanding & capable in law of making a valid deed or contract. Secondly, for that the same was obtained by fraudulent misrepresentations undue influence & improper importunities which the said Agnes Gaither was at the time of making the same too feeble & weak to resist. Thirdly because the same is contrary to the previously declared intentions of the said Agnes Gaither & the provisions of her will & testament made while she was of sound & disposing mind memory & understanding & capable in law of making a valid deed or contract & in fraud of the same. In tender consideration whereof and to the end that the said Washington Gaither, Mary A Gaither, Sarah Ann Mercer Samuel C Gaither may be made defendants to this libel & answer the same on their corporal oaths, and that the said paper purporting to be the last will & testament of Agnes Gaither dec^d dated the day of may be vacated & declared null & void & not be admitted to probate & for such other relief as to your Honors may seem fit. May it please your Honors to grant this libellant the states writ of subpoena directed to the said defendants commanding them & each of them to be & appear



in this Court & answer the premises. which said paper purporting to be the last will and testament of the said Agnes Gaither, bearing date the eighth day of June in the year of our Lord one thousand eight hundred and thirty eight, referred to in the said libel, and referred to in the further proceedings of this cause as the paper marked A, is in form following to wit, and filed in the case.

In the name of God Amen, I Agness Gaither of Montgomery County and State of Maryland, being of sound disposing mind memory & understanding do make, publish & declare this to be my last will & testament, hereby revoking all others. I give my soul to my creator in full confidence of his saving mercy & my body to the ground to be decently interred at the direction of my executrix. I give all my personal and real property of every kind & description whatsoever to Rachel M Gaither in consideration of my affection for her and her kindness and attention to me, and I hereby authorise her said Rachel M. Gaither to settle any just claims against me & take the whole of the property into her immediate possession from the time of my decease, and I hereby give to her the said Rachel M Gaither all my right title & interest in any property that may come to me. And I hereby appoint her the said Rachel M Gaither my executrix & sole legatee. In witness I hereunto set my hand & seal this eighth day of June 1838.

Agness Gaither (Seal)

Signed by me at her request for her. Gustavus Warfield.

Signed sealed published & declared to be her last will in presence of us who saw her sign it & who signed it as witnesses in her presence at her request and in presence of each other.

Witness. Jefferson Griffith.
Orlando G. White.
Wm Rickard.

Whereupon the Court by consent of the plaintiff and her attorney aforesaid postpone the said proceedings until the fifth day of December in the year of our Lord one thousand eight hundred and forty three. At which said day, to wit, the fifth day of December in the year last aforesaid came into Court again here as well the said Rachel M Gaither by her attorney aforesaid as the said Washington Gaither, Mary A Gaither, Sarah Ann Mercer and Samuel C Gaither by their attornies, John G England and William C Gott, Esquires, where the said Washington Gaither by the said John G England and William C Gott his attornies filed in the Court here his separate answer to the libel of the said Rachel M Gaither the plaintiff, in form following, to wit.

To the Honourable the Judges of the Orphans Court of Montgomery County. The separate answer of Washington Gaither the named executor in the will in controversy to the libel or petition of Rachel M Gaither, filed in the Orphans Court of Montgomery County on the 2d day of November 1843 against Washington Gaither, Mary A Gaither, Sarah Ann Mercer and Samuel C Gaither. This respondent for answer thereunto or to so much thereof as he is advised it is material he should answer saith he admits that the said Agnes