aforesaid, and the Judge of the Circuit Court for Frederick County aforesaid sitting as a Court of Equity; And the said Complainant by his Solicitor aforesaid at said Term, to wit, on the 19th day of March A.D. eighteen hundred and sixty filed in Court here, the following exceptions, to wit:

(Exceptions by Complainant to testimony of S. R. Waters & N. Worthington
No 2539
John A. Castle vs. Wm Tabler of Lewis
In the Circuit Court for Frederick County
Sitting as Equity
To the Hon M. Nelson Judge of the Circuit Court for Frederick County sitting in Equity John A. Castle the complainant in this cause by his Solicitor prays leave to except to the testimony of Somerset R. Waters in reply to the 3d 4th & 1st & 2nd Special Interrogatories of defendant and files herewith the following exceptions, to wit 1st Because in his testimony in reply to said 3d & 4th Interrogatories and 1st & 2nd special interrogatories of defendant the said Waters speaks in relation to an arbitration award and settlement (all or some of which) were in writing, and because it is not competent for said Waters to testify to the contents of said writings or any of them without the production thereof, or proof of their loss, and because said papers were not produced and no competent and sufficient proof of their loss was offered

2nd Because the testimony of said Waters in relation to the contents of written papers is not competent and admissible in the absence of said papers or a legal excuse for their nonproduction

3d Because the testimony of said Waters in relation to the contents of written papers is not competent and admissible in the absence of said papers, or a legal excuse for their non production

3d Because the testimony of said Waters is too indefinite and uncertain to establish any proveing material fact

4th Because in his answer to said 3d Interrogatory in regard to what occurred the next morning after said alleged settlement, the said Waters does not prove that the complainant was present and assented to any thing that was said or done.

5th Because the whole testimony of the said Somerset R. Waters in reply to all the Interrogatories and cross Interrogatories is indefinite uncertain and insufficient to establish with legal certainty any material fact in this cause.

And the complainant also excepts to the testimony of Nicholas Worthington in reply to the 4th & 5th Interrogatories of defendant

1st Because the testimony of said Worthington in reply to said 4th Interrogatory is not sufficient evidence of the loss of the papers referred to in the testimony of said Somerset R. Waters

2nd Because the said testimony of said Worthington does not sufficiently establish or show a legal excuse for the non production

of the written papers referred to in the testimony of said Waters.

3d Because the testimony of said Worthington in reply to said 5th Interrogatory is hearsay & incompetent & inadmissible

Wm P. Maulsby, Solr for Complt.

And at the said Term to wit; on the nineteenth day of March in the year of our Lord, one thousand eight hundred and sixty, was also filed in Court here the following order of the Court to wit:

No 2539 Equity
John A. Castle vs. Wm Tabler of Lewis
In the Circuit Court for Frederick County, sitting in Equity.

On motion of the Solicitor of the complainant it is this 19th day of March, eighteen hundred and sixty, ordered that cause be set down for final hearing on the Twenty sixth day of April next — And further ordered that a copy of this order be served by the Sheriff on the Solicitor of the defendant.

M. Nelson

A copy whereof, as required by the order of the Court aforesaid, was duly served, by Wm Chen, Sheriff of the County of Frederick aforesaid, within the time required therein, upon the said Solicitor of the defendant, to this cause, as appears by the copy of the said order, filed, and the return of the Sheriff thereon, of "Served" M. S. Haller Shff

Thereupon, afterwards, to wit; at the said Term, and on the Thirteenth day of June A.D. eighteen hundred and sixty, was filed in the Court here the following agreement of Counsel to wit:

(Agreement of Counsel to appoint R. H. Marshall Esq. as special Judge)
John A. Castle vs. Wm Tabler of Lewis
In the Circuit Court for Frederick County
Sitting in Equity.

His Honor Judge Nelson being disqualified, as preferring not to sit in this cause on account of having been Counsel in matters connected therewith. It is agreed that the Honorable Richard H. Marshall be appointed special Judge, & be requested to act as such.

June 12th 1860 Wm P. Maulsby, Solr for Complt
Jos. M. Palmer Solr. for Defdt

Whereupon, the Honorable Richard H. Marshall, appointed Judge aforesaid, on the next day thereafter, to wit; on the fourteenth day of June A.D. eighteen hundred and sixty duly appeared in open Court here, and qualified, as follows to wit;

(Qualification of Hon R. H. Marshall)
No 2539 Equity
John A. Castle vs. Wm Tabler of Lewis
In the Circuit Court for Frederick County sitting in Equity
February Term 1860

I Richard H. Marshall, do hereby swear that I will by the