they stated to me the Contract, Mr Houser was not so particular to have the contract written, as was Mr Mercer, who said he wanted Mr Houser so bound that there would be no getting out of it, I then wrote the Contract as they stated it, I called both of them and said Gentlemen I will read this Contract for you to that you may see which I have written it correctly, I then read the Contract, and upon reading it there was a matter in regard to some hay left out of the Contract, which matter was then by joint agreement left out of the Contract, Both parties were then satisfied with the agreement and Mr Mercer desired to make a payment on the property purchased, so as to bind the bargain, The receipt was thereupon added to the written agreement, Mr Mercer the defendant seemed very anxious in regard to the possession of the property, observing to Mr Houser that he Mr Houser must be sure to give him Mercer possession of the property upon the day stipulated in the agreement, Mr Houser told him in reply that he should have possession as agreed upon if he had to tent his family out, The signature to the receipt is in the hand writing of Mr Houser and Mr Mercer paid him the money, In regard to the matter of hay of which I have already spoken, I do not desire to be understood as saying, that Mr Mercer, relinquished his right to the hay, he Mercer was to have the hay, that year, on a certain lot by paying Mr Houser for cutting it and putting it upon stack, This was by verbal agreement because they did not desire to reunite the agreement, After I had written the contract as stated, I called to Mr Mercer and Mr Houser and said to them gentlemen I will now read the Contract and if there is any thing in it, not in your agreement, you will state it, I did then read the Contract to them and they both declared themselves perfectly satisfied with it and both signed it in my presence, After the contract was signed Mr Houser said to Mr Mercer here about using things and Mr Mercer observed just as things as they belonged to you, until you give me the possession of the property.

Also at the same time and place Robert Phelps, a Witness of lawful age produced on the part of the Complainant, being duly affirmed and examined interrogatories filed with the Commissioner by the Solicitor for the Complainant and hereunto returned deposes and says

To the 1st Interrogatory, I have never been personally acquainted with Mr Mercer until the last about the purchase of the Property, spoken of in this cause, I have known Mr Houser personally for over twenty years.

To the 2d Interrogatory I look at the paper now shown me marked as Exhibit P.J.H. I am one of the subscribing Witnesses to that paper, I was present when the same was executed and acknowledged and certified to the Knowledgement of the same Philip J Houser the Complainant and his Wife Sallie S Houser signed sealed and acknowledged the same before me as a Justice of the Peace in and for Frederick County, I was a Justice of the Peace for Frederick County at the time of the signing sealing and acknowledgment of the said paper.

To the 3d Interrogatory, I was present, It was on the Morning of the 21st day of July 1859 at the residence of Mr. Andrew Mercer of R the Defendant, in the City of Baltimore, We the Complainant and the Witness admitted into the House of the Defendant, We saw the Defendant, who refused to have any Conversation with us, until

he sent for a friend, When the friend Frederick Atchison came Mr Houser said to Mr Mercer here is your Key of the property, I have sold you and the deed said deed being the same paper as that marked Exhibit P.J.H. filed in this cause, as soon as Mr Philip J Houser the Complainant, made this presentation of the deed and Key, Mr Andrew Mercer, the defendant replied in an agitated manner, that he would not receive either the deed or Key, or have any thing to do with them as the property Mr Houser then said he had come to fulfill his contract with him the Defendant, and again offered him the deed and Key but Mr Mercer again peremptorily refused to accept either, Mr Houser and myself then left, At the following Morning the 22d day of July we called at to the residence of Mr Mercer and were not invited into the house of the defendant, Mr Mercer made his appearance at the door of his house, where we had been knocking for some time, and Mr Mercer again refused to accept either and charged Mr Houser with selling him property that did not belong to him, Mr Houser and myself then left Mr Houser made a reply to the charge made by Mr Mercer, but I did not understand what he said,

Also on Friday the 25th day of May in the execution of this Commission John Ramsburg a Witness of lawful age produced on the part of the defendant at the place aforesaid being duly sworn and examined to special Interrogatories filed with the Commissioner by the Solicitor for the defendant and hereunto returned deposes and says.

To the 1st Interrogatory, I have known Philip J Houser the Complainant for about ten years, and have known Mr Mercer the defendant about three or four years.

To the 2d Interrogatory, I am by profession a Surveyor and reside near the town of New Market in Frederick County.

To the 3d Interrogatory, I know the location of the Lot No 41 in the town of New Market in the possession of the Complainant, I have located and surveyed it, I made the said Survey and location on the 23d of May 1860 at the instance and by the request of Andrew Mercer of R, the defendant, I made a plot thereof and I produce the same, which is here marked by the Commissioner as Exhibit A of Defendants testimony and filed as such in this cause, I made the said Survey and location from a plot and plan of the town of New Market, marked Exhibit B and filed as a part of Defendants Testimony,

To the 4th Interrogatory The explanations of said plot are correct as made and contained therein, The actual enclosures of said Lot are not on the actual lines thereof according to the Survey I made, By the survey the the enclosures embrace lands, not within the lines of said Lot, The fence in front of the house stands two feet on the Main Street in the town of New Market and in front of the porch is a stone Wall standing three feet further out on said Main Street, on the East Margin of the lot stands a flower bed enclosed by a neat paling fence seven feet five inches in width and 32 feet 7 inches in length, 6 feet of the width thereof for the entire length thereof, stands on Federal Street, one of the public Streets of the town of New Market, on the back or South Side of said lot, the enclosures embrace four feet and nine inches of the adjoining Lot belonging to Samuel Talbot and within