that space is a part of the Carriage house but fear trees and a lot of gooseberry bushes. On the West side of said lot the said enclosures embrace a part of the adjoining lot No 45 belonging to Henry Smith, as is shewn by the space on said plat by me which between the blue and red shaded lines, All the explanations I have here given are contained in the explanations on said plat. The beginning of said survey was at a stone marked A on the plat, which stone was shewn me by Jesse Wright as the boundary of the intersection of Prospect Alley and Side Alley, running from said stone the beginning formed itself to be correct with the houses and streets as they are held.

Cross Examined by the Solicitor for the Complainant,

The Mr Wright who is present as a Witness in this cause is the same gentleman who shewed me the stone, In making my locations, I did not locate the present Baltimore Turnpike Road. The blue shaded lines represent the true location of the lot according to my Survey, as exhibit on the plat, and the red shaded lines represent the enclosures of the said lot as they now stand, The Turnpike road passes through Main Street in the Town of New Market. Also at the same time and last aforesaid Milton W Welch a Witness of lawful age produced on the part of the defendant 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 the Complainant in this cause about one year and a half, I have known the Defendant for same four or five years.

To the 2d Interrogatory. I knew nothing about the written Contract and was not present when it was made, I received a letter from Mr Andrew Mercer of R. desiring me to see Mr Houser and ascertain from him, what he would ask for the house and lot referred to in this cause and examine the same for him, At that time I resided in New Market and Mr Andrew Mercer of R resided in Baltimore City. On the 27th day of June 1859. I called on Mr Houser and stated to him what Mr Mercer had requested me to do, Mr Houser stated to me that his price for the house and lot was $1400 and went with me and shewed me the premises. After examining the garden, stable, Carriage house dairy and smoke house, blacksmith Shop &c I went into the house and measured the rooms or at least some of them. As I was coming away Mr Houser called my attention to the door opening on Federal Street from the back of the building, In front of that door there was a little flower bed or enclosure fenced in, I thought the same it was from seven to eight feet in width, Mr Houser told me that it belonged to the premises and extended the entire distance of the lot although it was not enclosed for that distance, and that Mr Mercer could enclose it if he saw proper and that he had a right to do it, if he bought the property and desired me to make that statement to Mr Mercer, Mr Houser limited not to me as his premises all that is contained within the enclosures, and the strip just spoken of, in addition thereto, And I made the statement and representations made by me to Mr Houser and by Mr Houser to me to Mr Andrew Mercer of R. by letter on the same day.

To the 3d Interrogatory. Some few days after my interview with Mr Houser, Mrs Mercer, the Wife of the defendant, came to my House in New Market and desired my self and Wife to walk down with her to the premises in question and see Mr Houser, Wether this was before or after the date of the written Contract, I do not know because I knew nothing about said Contract, but I presume it was after the date of said Contract because I understood at that time that Mr Mercer had purchased the property Mrs Mercer was introduced to Mr Houser by myself and she asked him if he had not told Mr Mercer, that he would impart any information that he possessed in regard to making and lengthening wagon tools, to any blacksmith he Mr Mercer might send there, He answered that he would do so, if he was paid for it, He then stated to him that he had deceived Mr Mercer in regard to the extent of the business carried on at the Shop on said premises independent of the wagon tool business, She told him that he has said to Mr Mercer that the Shop yielded him $100 per year on Book account, Mr Houser replied that he had not told him so that he had told him that it was worth some $100 a year to him, Mr Houser and he did not know what it might be worth to any other blacksmith and that it depended on the Man and how he worked.

To the 4th Interrogatory, The business carried on by the Complainant on the said premises was blacksmithing. There was a blacksmith Shop on the premises, Philip T Houser represented to me, at the time I called on him on the 27th day of June, that Mr Mercer, if he purchased the property, could rent the Shop for $40 a year, and I communicated that fact to Mr Mercer.

The Complainant excepts to the testimony of Milton W Welch the Witness in this cause upon the ground, 1st That the testimony of Witness is immaterial he having failed to shew the representations made by Philip T Houser to him forms the subject matter of the Contract, he said in testifying that he had no knowledge of the within Contract in this case,

2nd Because such testimony would lead to wrong, and to and after the written Contract,

William T Ross.
Solicitor for Complainant,

Also at the same time and place Jesse Wright, a Witness of lawful age produced on the part of the Defendant being duly sworn, and examined to interrogatories filed with the Commissioner, by the Solicitor for the defendant and hereunto returned deposes and says.

To the 1st Interrogatory, I have known the Complainant and Defendant for a number of years.

To the 2d Interrogatory. I know the stone marked on the plat, with letter A. as the beginning of the Survey, The Original stone was pulled up, but an impression or indentation remained, when it had stood, I planted the present stone some ten or twelve years ago, at the same spot, as near as I could get at it and in the indentation of the ground in which the Original stone