April Term 1866.

Solicitor for the defendant and in the absence of Mr Ivy appearing for Mr Linthicum who was sick and consent to his being and no Witnesses appearing the Commission was adjourned to await the appointment of a day by Counsel to the taking of further testimony on the 15th day of March 1866 the Commission met present the Solicitors of the respective parties at the Office of Wm M Marine at the hour of 3 O Clock and proceeded to the taking of further testimony. Hales A Linthicum a witness of lawful age produced on the part and on the behalf of the Complainant being by me first duly sworn on the Holy Evangelys of Almighty God makes oath deposes and says First Interrogatory State your age residence and occupation, answer I am 34 years old reside at the Corner of Lanvale and Brandy streets occupation Attorney at Law, Second Interrogatory do you know the parties to this suit If you have long have you known them answer I have known Mr Gelston six years or more I know Mr Musselman 3 years I have seen Mrs Frazier during the progress of this suit I do not know Captain John Frazier and Joseph Cabot,

Third Interrogatory If you have any knowledge of Hugh Gelston or any one on his behalf having made a tender of a sum of money to extinguish the ground rent of $110 upon the property of Washington Hall in the City of Baltimore please state all your knowledge in regard thereto (Question objected to by defendants Solicitor Mr Musselman) answer I know that in the latter part of April 1864 that Mr Gelston was desirous of extinguishing the ground rent mentioned and by my directions he notified Mrs Frazier of his intention to do so by tendering the principal sum of $1833.33 on or before the 1st day of May 1864 and also that he owed for the ground rent due on May the 1st 1864 and at that time paid up to and to 28 or 29 of April 1864. Mr Gelston brought to me a letter dated Baltimore Apl 28th 1864 addressed to Hugh Gelston Esq by Amos F Musselman Attorney for Mary Ann and John Frazier which has been previously filed with the bill of complaint in this case marked Complainants Exhibit No 6 which I now produce as a part of my answer By which Mr Gelston was notified by said Musselman Attorney for Mary Ann and John Frazier that no money would be accepted as a legal tender of said sum of $1833 1/3 except gold and silver Coin of the United States a few days after Mr Gelston handed me a check drawn by him on the Farmers and Planters Bank of Baltimore in favor of Mary Ann Frazier for $1833 33 dated April 29th 1864 stating at the same time that he had shown the same to Mr Musselman, and he desired me to take the check and whenever Mrs Frazier John Frazier and Mr Musselman should agree to receive the sum of $1833 33 in extinguishment of said ground rent and agree to execute a deed in which Joseph Cabot the trustee should unite conveying the property mentioned in the proceedings to Hugh Gelston in fee simple in extinguishment of the ground rent to prepare the deed for execution and hand them over the check or go with them to the Bank and have the money drawn on the check and pay over to Mrs Frazier I saw Mr Musselman a few days afterwards and informed him that as soon as his principals should agree to accept the money that the money was already in Bank to be paid over he then informed

me that Mr Gelston had brought a check for the money to him and that he refused to receive it because he had no authority from his principals to go contrary to what he had intended to Mr Gelston refusing to accept the tender if made unless in gold and silver, I had told Mr Musselman I had the check he spoke of in my possession and was ready at his request to pay it over whenever his principals should consent to execute a deed as required by the Covenant in the lease I kept this check in my pocket for one or two months when I handed it back to Mr Gelston to be kept by him as I feared I might lose it The check is not here but was here at the last meeting and was identified by Mr Brueckus in his examination and a copy of it filed (Here the Solicitor Mr Musselman calls for the production of and filing with the Commissioner of the said original check) Complainant Solicitor here asks the Witness whether he can and will produce said original check at the hearing of this case and then file the same among the said proceedings Question objected to Witness in answer says the check is not now in my possession, but I can get it from Mr Gelston in about possession days and produce it in Court at the hearing of the Motion to dissolve or file it at with the Commissioner at the next meeting Fourth Interrogatory do you or not as Solicitor for the Complainant prepare a bill in Equity against the defendant in this case for a specific performance of the Covenant for the extinguishment of the rent of the property mentioned in these proceedings, if you did do so you file the same and state why not Question objected to by Mr Musselman) answer I was in the latter part of this summer or early in the fall of 64 I prepared a bill of Complaint for the specific performance of the Covenant mentioned as Solicitor of Hugh Gelston as Complainant against Mary Ann Frazier John Frazier and Joseph Cabot trustee as defendants which was sworn to by Hugh Gelston and ready to be filed but I did not file the bill because I was asked by Mr Musselman not to do so at that time as he thought there could be a settlement of the case without it and because he wanted to take some steps in the matter which he thought would facilitate the settlement of matters in dispute I waited until the Spring of 1865 when I learned that proceedings had been had with a view to remove Mr Cabot from the trust and have another trustee appointed in his place and stead I saw Mr Musselman and told him I thought I had been treated badly because that he had done instead of facilitating the settlement of the case would increase the difficulties of a settlement and indeed impose upon me the necessity of preparing a new bill to meet the different circumstances of the case he said he thought not because he expected to be appointed trustee and when he should be appointed he would endeavor to have the case settled amicably Sixth Interrogatory Were there any proceedings taken in this case to require the money to be tendered to extinguish the ground rent aforesaid to be brought into Court, and if yes, was the money or its equivalent brought as so brought in and by whom and if the money was so brought in what was the action of the Court in the premises and if there was any action by the Court was it or not in writing. Question objected to by Mr Musselman answer on the 19th day of June 1865 a petition for bringing money into Court and the Order of Court of the same date was served on me and a copy of said petition and order left with me which copy I herewith file