April Term 1866

marked Copy of petition and order of Court June 19th 1865 I now produce and file with the Commissioner. In pursuance of said Order I as Solicitor for Mr Gelston went into Court with Mr Gelston on the 26th June 1865 carrying with us a check on the Farmers Bank endorsed Ups and Bank for $18333⅓ and this paper which I now file marked No 100 and endorsed marked No 200 which paper No 100 was read to the Court and the Check shown at that time Mr Musselman said that a deed must be not be executed and that he wanted the money brought into the Court to be invested for the benefit of Mrs Mary Ann Frazer without prejudice to her rights to which James McGelston Solr objected that Mrs Frazer was not entitled to the money or to have the money invested for her benefit unless she should execute to us a proper deed together with John Frazier and Amos I Musselman trustees concurrently with the payment of the money, as by the covenant entered to the has the were entitled to have Mr Musselman refused to execute the deed or to have the deed executed and the Court stated that as Mr Musselman refused to have the deed executed he would not order the money to be paid into Court and the matter of said petition and order was left over indefinitely, nor order of Court in writing was passed on said petition defendants Solicitor Mr Musselman calls for the production of the original Check spoken of by witness and the payment thereof with the Commissioner.

4th Interrogatory Was the Check spoken of you endorsed and if so what endorsements was on the Check that is to say at the time it was brought into Court. Question objected to by Mr Musselman) answer The Check was endorsed by the bearer of the Bank Mr Gelston I think the not sure of the name the Check is in the possession of Mr Gelston and has been since that day and will be produced at the Court or filed with the Commissioner at the next meeting but being a paper of great value we desire not to file it but immediately before the return of the Commission to the Court when it will be safe from accident.

5th Interrogatory did or did the Tenant make any any declaration to the effect that he would regard and treat the so endorsed Check as equivalent to legal tender notes commonly known as green backs what was said by the Court upon the subject Question objected to by Mr Musselman answer on the morning of going into Court I saw Mr Charles Alexander deputy Clerk and told him that we had ready being into Court the sum of $18333⅓ and asked him if I should bring the money itself in notes or would he prefer our bringing and endorsed Check He stated as that he would have to deposit the money immediately he would prefer an endorsed Check, upon going into Court with the Check I stated to the Court this Conversation with the Clerk and asked if necessary with the permission of the Court I would if required go to Bank with the Check and with Mr Gelston and get the money and bring the money in legal tender Notes into Court, The Court then stated that would not be necessary the Check would be treated as the money and Mr Musselman thereupon said he would not put me to the trouble of going to the Bank and bringing the money as he would consider the Check as the money,

Commission adjourned to Friday March 6th 1866 at 4 O'Clock at

which time the Commission met and in the presence of the Solicitors of the respective parties proceeded to the taking of further testimony, Mr Musselman as Counsel and trustee and party to the instrument, having demanded as matter to seen by the above recited that the Check dated Baltimore June 26th 1865 on the Farmers and Planters Bank for the sum of $18333⅓ signed by Hugh Gelston with a cancelled 2 cent stamp thereon endorsed by the bearer Gelston as good and which as appears by the testimony of Mr Cornelius and a copy thereof filed with this testimony as the same being now produced before the Commissioner Mr Musselman as a stated whether he insists that such Check shall be filed in obedience to his demand for production and filing or will be consent to its production at the trial at the hearing of this cause In answer to the foregoing Mr Musselman answers that its production was only demanded as the best evidence of the contents thereof and its production at the trial table will be sufficient and this remark is applicable to the and other Check dated April 29. 1864, The defendants Solr Mr Musselman excepts to the admissibility of Complainants exhibit marked No 100 No 200 and Copy of petition and order of Court June 19th 1865, Mr Musselman admits the signatures to the several papers in Complainants exhibit marked No 40 but objects to them admissibility in evidence the signatures above referred to are those of Mary Frazer & Mr Hugh Ryan & Strachan and it further agreed between the Counsel of the respective parties that all the exhibits in the case of Mary Ann Frazer by her next friend J W Patterson against Hugh Gelston and John Frazier shall be used in evidence in this cause as if the same were filed with the Commissioner and proved subject to all the legal objections as against them admissibility in evidence upon legal grounds

Cross examination of Mr Gelston second first Cross Interrogatory was the sum of money which the aforesaid Check of June 1865 was drawn paid to the Clerk of the Circuit Court of Baltimore City Answer It was not because the Court said it would not require the money to be paid into the Court as the defendant refused to execute a deed properly We were ready to pay the money on that day and have been ever since. Hugh Gelston 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 Evangels of Almighty God make oath deposes and says First Interrogatory State your age residence and occupation Answer I am 72 years old reside in Baltimore occupied in general affairs Second Interrogatory Do you know the parties to this suit of you how long have you known them, Answer for several years I am one of the parties 3d Interrogatory Have you ever at all times since the 29th April 1864 to the present time been able to pay over to the parties entitled thereto the sum of $18333⅓ in lawful money in exclusionshment of the ground rent of $1100 per annum issuing out of the property at Baltimore Street Bridge known as Washington Hall on receiving a deed conveying to you the Sr Samuel mentioned with the payment of the money by you Question objected to by Mr Musselman) Answer I have 4th Interrogatory Please to produce the check of the date of the 29th Apl 1864 and state the same with the Commissioner and state whether the terms aforesaid upon the face of said check would have been paid in lawful money Question objected to by Mr Musselman Answer Here is the check it would have been paid