(The latter part of answer objected to by Mr. Smithson.)

40x. Where was he residing?

Ans. To the best of my recollection his family was in the city; whether he was here or not, I don't know; only part of the time.

(Objected to.)

41x. Where was his residence?

Ans. I do not know; I think on Ann st., Baltimore; am not positive.

42x. Was Mr. Kirby in Baltimore in June and July, 1852?

Ans. Do not know; he was absent very often - sometimes for long periods; I cannot tell the dates.

43x. Were you present when the lease was executed to him?

Ans. Do not recollect.

44x. Have you any recollection where he was in May, June, July, 1852?

Ans. No positive recollection.

45x. Can you say he was not out of Baltimore that time.

Ans. No; my impression is, that he was; cannot say positively.

James T. Kirby, a witness of lawful age, produced on behalf of the complainant, being by me first duly sworn on the Holy Evangelys of Almighty God, makes oath, deposes and says in that behalf, as follows, viz:

1 quest. What is your name, residence and occupation?

Ans. My name is James Thomas Kirby; am the son of Edward Kirby, Senior, and brother to the other two defendants; I am a bricklayer, and live on Fairmount avenue, near Durham st.

2 quest. Do you know the parties to this suit?

Ans. I know all but the complainant; I am four years older than my brother Edward.

3 quest. Were you and your brother Edward raised in the same house?

Ans. We were.

4 quest. By what name or names have you known him?

Ans. As Edward Kirby.

5 quest. Did you ever know him by any other name?

Ans. No, sir, only Edward.

6 quest. Are you acquainted with the two houses, 303 and 305 E. Pratt st. mentioned in this suit?

Ans. Yes, sir.

7 quest. Did you ever know him by the name of John E. Kirby?

Ans. Since 1867, he has signed his name John E. Kirby.

8 quest. Did you ever know him by the name of John E. prior to 1866 or 1867?

Ans. No, sir; when he was secretary of the Bricklayers' Union, he was in the shipping business with father; then he attached John to his name.

9 quest. How long has your mother been dead?

Ans. Eleven years last December.

10 quest. Were you with her in her deathbed sickness?

Ans. Yes, sir.

11 quest. Do you recollect hearing a conversation between her and your father, in reference to the property 303 E. Pratt street; if so, state what it was?

(Objected to)

Ans. 7 or 8 days prior to mother's death, she requested father to have the deeds of the property on Pratt and Gough streets made to Edward and Thomas (myself) same as had been done to Frances Ann Toano, of property 305 E. Pratt st, which he promised to do.

12 quest. Can you state what property your mother had referred to?

Ans. 303 E. Pratt street, and 202 Gough street, occupied respectively by Edward and myself.

Cross-Examined for Frances Ann Toano.

1x quest. Were you present at your brother's wedding with Catherine McCormick, July 20, 1854?

Ans. I can't state that I was; I do not recollect.