Thomas Russell and Charles Wright are in no wise guilty thereof as the said William Pellett, Mary Whitwick, William Russell Thomas Russell and Charles Wright above by pleading have alleged,

Memorandum, Before the Jurors aforesaid withdrew from the bar of the Court here, the said William Pellett, Mary Whitwick William Russell, Thomas Russell and Charles Wright by their Attornies aforesaid, tendered to the Court here his bill of Exception and which was by the Court here signed and sealed, and is in form following to wit.

Wm Lux's Lessee
v
Wm Pellett & others

In the trial of this cause the Defendts. to support & prove the issue on their part as well as their location of the resurv. thereon herein aftermentioned offered to read to the Jury the Deposition of Jacob Giles which had been taken agreeable to a rule of this Court made by consent of the said parties to be taken for and read in Evidence by the Defendts on the trial of this cause saving to the Plff the benefit of all objections which he could make to the said Jacob Giles being examined as a Witness for the Defts in this cause if he was produced to give Evidence personally in Court in the same cause which depos. follows in these words to wit: (here insert it) Whereupon the said Plfs Council produced and shewed in Evid. that John Giles the Father of the said Jacob was actually seized of the said tract of land called Upton Court which is alledged by the sd. plff. to lie as described on the plat hereto annexed, Beginning at the letter B & thence with the black dotted lines to the place described and marked Ferry point on the sd. plat thence with the black dotted line to the letter C and thence with the black lines to the letter D and from thence with the black dashed and dotted lines to the beginning and which same tract is alledged by the Defts to be as described on the plat in their location thereof and extending beyond the letter D to the letter E and thence with the black pricked lines to the beginning the Cert & part. of which same tract of land follow (here insert them). and the same Plff also produced & shewed in Evidence a Cert. of resurv. made by the said John Giles dated the 29 Mar 1723 and also a grant of confirm. thereon to John Giles Son of the said John Giles dated the 12 day of August 1731 which Cert and patt. follows. (here insert them) and the same resurv is alledged by the Plff to,

to begin at the said letter B and to run with the water of Patapsco river & ferry br. to the letter O and thence with the black lines to E & thence with the black lines to B aft. and the said Deft alleg. the same resurvey runs from the said letter E with the water described on the said plat by black shaded lines which represent the water of the North West Branch. The Plff also produced & shewed in Evidence the will of the aft. John Giles the father by which he devised to the said Jacob Giles all that part of Upton Court aft. begg at the place marked & described Herring pond on the plat thence therewith to E thence with the red line to the NWest branch thence up the sd. br. to the Northermost bounds of the said tract & with the sd. bounds to the middle branch thence with the middle branch & patapsco river to the sd. Herring pond which will follows in these words (here insert it). and also produced & shewed a deed of conveyance of the said Jacob Giles to one John Moale dated the 1st day of Mar. 1732 in the words following (here insert it, & annex the plats in this cause). And the said Plff objected against the reading of the sd. deposition for that, as he alledged the said Jacob Giles was interested to prove and maintain the Defendants location of the said original tract of land called Upton Court, and also the Defendts. loc. of the said resurvey called Upton Court or one of them. and of such opinion was the Court and so declared their opinion, and on the prayer of the Plff by his Council aft. would not permit the sd. Depos. to be read in Evidence to the Jury. To which opinion of the Court the Defendts except &c.

Danl of St Thos Jenifer (Seal)

And also, before the Jurors aforesaid withdrew from the bar of the Court here to consider of and upon their Verdict in the premises aforesaid, it was agreed upon between the parties aforesaid by their Attornies aforesaid, that the Verdict to be found by the Jurors aforesaid should be subject to the opinion of the Court here, on the following point saved, to wit.

Wm Lux's Lee
v
Pellet & others

The Plff to make out his title shewed in Evidence the follg. Cert & Grant for the land mentioned in the deed in this cause which follow (here insert them). and also shewed in Evid. the will of Nicks. Auston Gay the Gtee aft. therein whereby the said tract of land is devised or ment. to be devised to the Lessor of the Plaintiff.

The Defendants gave in Evidence that they were before, & at the time of the date of the said Certificate in the actual occupation of the,