ought not to be precluded from having and maintaining his action aforesaid against him the said Josias Speake because he saith that the said Josias did within six years next before the day of issuing the original writ of him the said James Clagett in this cause against him the said Josias Speake undertake and promise in manner and form as the said James Clagett above hath complained: and this the said James Clagett prays may be enquired of by the country; and the said Josias Speake in like manner and so forth.

And the said James Clagett as to the third plea of the said Josias Speake above alleged, saith that he by any thing by the said Josias Speake in his third plea ought not to be precluded from having and maintaining his action aforesaid against him the said Josias Speake, because he saith, that the cause of action of him the said James Clagett stated in the Declaration of him the said James Clagett did accrue within six years next before the day of issuing the original writ of him the said James Clagett in this cause; and this he the said James Clagett prays may be enquired of by the country; and the said Josias Speake in like manner and so forth. Therefore tel a jury thereon come before the court here on the second Tuesday of October next, by whom and so forth, and who neither and so forth, to recognize and so forth, because and so forth, the same day is given to the parties then and there e so forth.

At which said second Tuesday of October being the tenth day of the same month in the year of our Lord one thousand seven hundred and ninety seven, come again into the General Court here, as well the said James Clagett by his attorney aforesaid, as the said Josias Speake by his attorney aforesaid, and the said Josias Speake by his attorney aforesaid files in court here the following affidavit to wit Montgomery County

County to wit. The deposition of Leonard Brooke taken before me the Subscriber one of the associate justices of the county aforesaid this ninth day of December seventeen hundred and ninety three. This deponent after being duly sworn on The Holy Evangels of Almighty God deposed and said, that on June 1792, he shipped on board the Ship Washington as First Mate, and found Mr. James Clagett on board with his four carpenters at work, that after they had been at work five or six days, on Thursday in the forenoon he heard Mr. Clagett just before he left the ship to return to George Town give orders to his carpenters that on Saturday they must leave the ship work done or not, and make the best of their way home to George Town, and to take care of their tools, and particularly he heard him charge the one of the said carpenters called Harry not to get drunk; that immediately after having given these orders Mr. Clagett left the ship, and did not return on board the said ship before she sailed, that at the time he gave those orders he did not say any thing about the manner which they were to return home, nor that they were to come up with Captain Speake, nor to apply to him for any orders or assistance when coming away, and that to his knowledge being then first mate on board the ship and on deck at the time Mr. Clagett left her (the above conversation and orders were the last had with or gave to his carpenters. That on the Saturday following in the forenoon the carpenters finished the corking of the ship's deck, he applied to Captain Speake to know if he had any thing more for them to do, and on being answered that he had not he this Deponent told the Carpenters that they were discharged, and might take their tools, and go as soon as they pleased, that two or three hours after, he saw three of them at some distance from the ship in a small boat going up the River; that

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