

Somerset county many years ago, and has been a seafaring man, engaged for many years as commander of a vessel, trading from Baltimore, down the Chesapeake bay, to the western shore of Virginia and elsewhere, and that complainant was not aware that he, witness, could prove the above facts, until the time above mentioned, and then prays that the order of the 29th of April, (which was passed at the time the opinion before reported was given, and refers the case to the Auditor, to state accounts upon the principle therein decided, and with leave to take testimony in relation thereto,) be opened and the cause reheard.

To this petition the defendant filed an answer, in which she states, that she has no knowledgo or information other than what is contained in said petition, that Reece, the proposed witness, has any knowledge, or is able to give any testimony, touching the title to the negro Isaac. She admits that the witness lived in the family of Jesse Hughes, before 1815, and afterwards, and perhaps until 1821, but avers that he was young, and not likely to take notice of business transactions, that he could not have been more than thirteen or fourteen years of age in 1815. She does not admit, nor believe, that he will give any such testimony as is stated in the petition. She admits that Reece lives in the city of Baltimore, with his wife and family, that he is a boatman engaged in navigating a vessel in the Chesapeake bay, but denies that it has been many years ago, since he removed from Somerset county, but avers that it has only been a few years since he so removed, and that he removed long since the pendency of this suit, and has lived in Baltimore ever since, and been accessible to the complainant.

That it does not appear that the complainant has used due diligence to discover the testimony of said Reece. That the complainant had full knowledge that the witness had lived at Jesse Hughes' house, and has had every opportunity, with due diligence, to have discovered, before the cause was decided, the testimony now alleged to have been discovered since. That the cause was set down for hearing, at the instance of the complainant, and that respondent was limited, by the order