excepts to the competency of parol evidence to show that the note was cancelled by the mortgage referred to.

The Solicitor for Sophia Fitzhugh here files with me the Claim marked B.E. No 11. the said claim being handed to the witness he deposes & says.

I look at the note attached to claim marked B.E. No 11. here shown me the signatures thereto are in my hand writing and that of Sarah Margaret Fitzhugh and Sophia Fitzhugh who were my executrix on said note. The balance of $646.98 cents was paid by said Sarah Margaret Fitzhugh out of her separate estate for which she took the assignment attached to said claim said note was cancelled in and cancelled and intended to be assigned by the mortgage executed by me to Sophia Fitzhugh and Sarah Margaret Fitzhugh a copy of which said mortgage is hereunto shown marked Exhibit No 4. The Solicitor for Jacob M. Kunkle excepts to the competency of parol evidence to show that the notes was cancelled by the mortgage referred to.) The Solicitor for Jacob M. Kunkle & Sophia & Sarah Margaret Fitzhugh respectively here file with me an agreement in writing admitting the assignments attached to papers marked B.E. No 10 and to papers marked B.E. No 11 filed in this case to be respectively the original assignments &c subject however to every exceptions to the admissibility of said assignment. The further taking of testimony was then postponed until the 18th of January 1869 at 9 1/2 O'clock A.M. at which time the Solicitors for the respective parties being present the further taking of testimony was resumed.

Peregrine Fitzhugh being recalled by the Solicitor for Sophia Fitzhugh and examined deposes and says

I look upon the paper here shown me marked Exhibit No 4 being a copy of a mortgage from me to Sophia Fitzhugh and Sarah Margaret Fitzhugh.

I look also at the paper shown me marked Exhibit No 6. being a copy of a deed from Peregrine Fitzhugh and wife to Jacob M. Kunkle at the time of the execution of said deed to Kunkle by Kunkle had actual notice of the existance of the mortgage of the 9th of October 1856 he was notified of the existance of it and his attention was distinctly called to it by Wm. F. Rose Esq in my presence. I look at the papers here shown me marked L.E. No 1 and Exhibit J.M.K. No 1 L.E. No 1 being a copy of a mortgage from Peregrine Fitzhugh to Sophia Fitzhugh dated 11th of December 1854 and Exhibit J.M.K. No 1 being copy of a mortgage from Peregrine Fitzhugh to Sarah Margaret Fitzhugh dated 11th of December 1854. Jacob M. Kunkle