

Petition of Defs.
to remand Commission

Thomas Claggett

vs

James O Easterday
John Easterday
Samuel Easterday

No 3425 Equity ~

In the Circuit Court for Frederick County sitting
in Equity. ~

To the Hon the Judges of the Sixth Judicial Circuit of the State
of Maryland in and for the Circuit Court for Frederick County sitting
as a Court of Equity. ~

The Petition of James O Easterday, John Easterday and
Samuel Easterday, respectfully shows unto your Honors that your
Honorable Court issued an Order to the Commissioners in this Cause
on the 20th day of June A.D. 1841, to return the Commission issued in
this Cause with the testimony taken under it into Court on or before the
10th day of July A.D. 1841. ~

Your Petitioners further state that upon Petition by your petitioners
the defendants in this cause, your Honorable Court passed an order on the
24th day of July A.D. 1841, remanding the said Commission to the Commis-
sioner for the purpose of allowing your Petitioners to take further testimony.
Your Petitioners charge that they appeared before Francis Brouge the
acting Commissioner and gave him a list of the witnesses to be summoned
by him, and appointed a day on which to take the testimony of said witnesses,
that your Petitioners and their solicitors appeared before said Commissioner
and were informed by said Commissioner that the said witnesses had not
been summoned. ~

Your Petitioners further state that they gave the Commissioner the
names of the witnesses a second time, and appeared before him again
to take the testimony and were informed that the witnesses had not been
summoned. ~

Your Petitioners further state that on the 25th day of November
A.D. 1841, a second Order was passed by the Court for the return of
the Commission which had been remanded. ~ Your Petitioners
further state that they made a third effort to take testimony before
the said Commissioner was returned under the order of the 25th of November
but that the Solicitor for the complainants would not agree, and the
Commissioner refused to take the testimony without, and accordingly
returned the Commission on the fifth day of December 1841. ~

Your Petitioners further state, since the Commission has been
returned, and this cause set down for hearing, they have discovered
other and new evidence which is material to their defense, and without
which they cannot go to trial without prejudice to their cause. ~

Your Petitioners therefore pray your Honorable Court to remand the
Commission again to the Commissioner in order that the testimony which
your Petitioners have not been able to take by reason of the Commissioner
not summoning the witnesses, and that any new testimony which your Petitioners
may have, may be taken also. And your Petitioners will ever pray &c. ~

Your Petitioners further state that this is for no purpose of delay whatever.

J. E. R. Wood
Att. for Defendants

Court

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