find if they believe the testimony of Mr. Boulden.–

7th. That the Defendants have not truly located "Bold Venture", inasmuch as they cannot run the 5th line of that Tract as they have located it on the plats further than to the River side, as designated on the plat by a black broken line shaded blue a little distant from Z. and South westerly thereof.–

8th. If the Jury find from the evidence that the first bound or beginning tree of Mountenays Neck, was a red oak and stood at the spot marked on the plats as black M. and if the Jury believe that said tree was a bound tree of "Long Island Point", and the only red oak which was among the bound trees of said tract, and if the Jury find from the evidence in this cause, that said red oak was destroyed and white oak standing at the same spot was then made the beginning bound tree of Mountenays Neck, and a bound tree of "Long Island Point" as a substitute for said red oak, and if the Jury believe that said white oak was the tree referred to in this patent of Bold Venture as a bound tree of "Pountnys Point" and if the Jury believe from the evidence that "Pountnys Point" and "Long Island Point" are the same tract under different names then they are bound to find the Beginning tree of "Bold Venture," at M.

9th. That the Jury must find that the red oak called for at the termination of the 7th. line of Long Island Point, in the patent of that tract (as a bounded red oak of a parcel of Land laid out for Alexander Mountenay) stood as it is located on the Plats at M.

10th. That if the Jury believe a white oak, was substituted in the place of the red oak mentioned in the preceding prayer, as a boundary of Long Island Point and that it was so substituted at or before the year 1695, and that said last mentioned oak, was a bounded tree of Bold Venture then they must find that it was the Beginning tree of said tract.–

11th. If the Jury believe from the evidence that Oulton was under a mistake as to the true location of the Patent of Mountenay Neck, and supposed that its Beginning tree was at H. and accordingly called for his first line to terminate at a red oak at that spot, then said call of itself does not establish that at that time a red oak stood as the first boundary of Mountenays Neck, according to its true location.–

12th. That there is evidence from the recitals of the patents offered in this cause and from the undisputed locations on the plats and the Verdict of the Jury and certificate of the surveyor and the depositions accompanying the same from which the Jury may find that the red oak the original beginning tree of Mountenays Neck was destroyed in 1695, and that a white oak at or before that time was substituted in its place.–

13th. That whether the beginning tree of Bold Venture originally stood at M. is a question of fact to be ascertained by the Jury and not a question of law to be authoritively decided by the Court.–

14th. That there is evidence in this cause from which the Jury may find that the true beginning of Bold Venture as originally located by John Oulton was at black M. as marked on the plats.–

15th. That if the Jury find the location of the tract of Bold Venture, as made by the defendants particularly the Beginning at M. even with such degree of allowance for variation of the compass as they may think it right to allow, is not true, but false; then they cannot give their verdict for the Defendants in support of such false locations.–

16th. If the Jury find from the evidence that the location of Bold Venture





by the Defendants is correct and from the warrant, certificate and Patent thereof, that no intimation or statement, was given to the Lord Proprietary that so much of the said tract as they may find, was covered by navigable water, was in fact so covered, and if the Jury find that the said John Oulton purposely kept back and fraudulently concealed the fact that so much of the said tract was covered by navigable water and that it was in front of the elder tract binding on or in the water granted to Alexander Mountenay, then the Patent to said Oulton was void, at least so far as it extended into navigable water.–

17th. That it was not competent to the Ld. Proprietary to grant to John Oulton, the soil covered by navigable water in front of and with the water line of Mountenays Neck, that such grant was in derogation of the Patent to Mountenay and void.–

18th. That the 5th line of Bold Venture should as Defendants have located it, be shortened above, or at the river side near Z. so as to gratify the call of the 6th. line of that tract, which is to terminate at the river side, and that so much of the 6th line as is necessary for the same purpose should be stricken out.–

And the Defendants prayed the Court to direct the Jury as follows:

1st. That the location of Mountenays Neck, on the platts in the case not having been counterlacted, the Jury must find such location of that tract to be the correct one.–

2d. If the Jury find that the Tract of land called Bold Venture was granted as given in evidence by the Defendants, and that the Defendants location of the second and third lines of that tract on the platts in the case is the correct location that then the patent of Mountenays Neck gives no title to the Lessors of the pltffs. to the Lot of ground for which the Defdts have taken issue on the platts.–

3d. That the 2d. and 3d. lines of the said tract called Bold Venture, if the Jury find said tract was granted as given in evidence by Defdts. must run with two lines of the tract of land called Mountenays Neck as that latter tract is located on the platts, and if the Jury find that the said two lines are those on the platts, running from black M. to black N. and from black N. to red figures 320. that then the patent of the tract Mountenays Neck gives no title to the Lessors of the pltff. to the lot of ground for which the Defts have taken defence on the platts in the case.–

But the Court granted only the second and ninth of the plaintiffs prayers and rejected the others, and in respect of the prayers of the Defendants gave the same to the Jury.– To which rejection, and direction by the Court the plaintiff excepted, and prayed the Court to sign and seal this Bill of Exceptions; which accordingly is done this 24th. September in the year 1846.– Stevenson Archer. (Seal)
Jno. C. LeGrand. (Seal)

And thereupon the said John Doe, Lessee, as aforesaid, by his attorneys aforesaid, prays an appeal from the Judgment aforesaid, so as aforesaid rendered, to the Court of Appeals for the Western Shore of the State of Maryland, and to him it is granted.– It is thereupon ordered by the Court here, that a transcript of the Record and proceedings in the plea aforesaid, with all things thereto relating, be transmitted to the said Court of Appeals; and the same is transmitted accordingly.–

In Testimony that the aforegoing is a full and true transcript taken from the Record