or enclosure which the aforesaid Peter Myers has had in possession upwards of twenty years thew with that fence N° 3° E. 13 ps. to a two hickory saplings stile with the fence N° 83½° E 21½ ps. to a stake and stone put up on the closing line of part of "Untietam Bottom" conveyed by Margaret Foster and Thomas Foster to Henry Bedinger, on the 25th day of April, in the year seventeen hundred and sixty three, said part being located with an allowance of 50' as aforesaid, thew reversing said closing line N° 8° W 22½ ps to a stake and stones put up on the 21st line of "Untietam Bottom" located as aforesaid, thew reversing that line N° 70° 50' W 70 ps to the end of the 20th line located as aforesaid, then N° 83° 50' W. 16 ps to a stone set up and planted at the end of the 2d line of John Blackford's resurvey called "Moreland," thew reversing the lines of said re-survey S 25° 20' W 40¾ ps to a stone, N° 77½° W 31 ps. to a stone S. 18° E 41½ ps to the lines of the land conveyed for the use of the Chesapeake and Ohio canal company, thew running with the lines of said condemnation S 77½° E 49 ps and 7 links, S 81½° E. 21 ps, S 89½° E. 8 ps to the place of beginning, containing and now laid out for fifty acres of land be the same more or less, the land hereby granted, bargained and sold, or meant, mentioned or intended to be his real estate whereof Jacob Bedinger, deceased, herein before mentioned died seized in Washington County aforesaid, and the same which is reported by said Robert M. Tidball to the County Court of Washington County as a Court of Equity aforesaid, by his report bearing date the 9th day of December, in the year eighteen hundred and thirty six to have been sold to John Blackford, but from some inaccuracy or mistake, is stated in said report to contain fifty acres and seventy perches instead of fifty acres as therein before mentioned, To Have and To Hold the said parts or tracts of land and premises hereby bargained and sold, or meant, mentioned or intended hereby so to be, to and with every of the appurtenances unto the same belonging unto the said John Blackford, his heirs and assigns forever, to his and their only proper use and behoof and to and for no other use, intent or purpose whatsoever. In witness whereof the said Robert M. Tidball hath hereunto set his hand and affixed his seal the day and year first herein before written.

Signed, sealed and delivered in presence of I. Hausler Wm. H. Handley. — Robert M. Tidball, (Seal)

State of Maryland, Washington County, Set. Be it remembered that on this twenty second day of December, in the year eighteen hundred and thirty seven, before us the subscribers, two Justices of the Peace of the State of Maryland, in and for Washington County aforesaid, personally Robert M. Tidball, party grantor in the foregoing deed or instrument of writing and who is satisfactorily known to us of our own knowledge to be the same person who is named and described as and who professes to be the party grantor in the said deed or instrument of writing and acknowledged the same to be his act and deed. Acknowledged before. — I. Hausler, Wm. H. Handley.

Received December 23d 1837 for record and same day recorded in Liber I. I. folios 165, 166 and 167, one of the Land Records of Washington County and examined per. O. H. Williams, Clerk.

The plaintiff then offered the Plots and Explanations returned by the surveyor. And it is agreed between the said parties, by their counsel that the said plats and explanations may be used on the trial of this cause in the Court of Appeals, and that the same need not be inserted in the record. It is admitted that the said plaintiff proved on the said trial as aforesaid,

by Michael Himes, James Himes, Aaron Fry and George Roderick, competent witnesses, that the said defendant committed trespasses by cutting trees on the piece or parcel of land conveyed as aforesaid, by William Price, Executor as aforesaid of John I. Hays to the said John Beckford the testator, and which said piece or parcel of land is the locus in quo, and which trespasses are marked ~~are marked~~ on the said plats and shown by the explanations of the surveyor. And on the cross examination the defendant proved by the said Michael Himes, that in 1848, or 1849 Franklin Blackford, as guardian of William, the defendant was in possession of the 36 acres tract, and cut timber there and over it whenever he pleased, and that he told witness that all the land lying below the ravine belonged to the lower farm. This was whilst Henry Beckford lived on the Home place. It was called the Hays land and belong to the lower farm. He also cut for Col. Blackford, but never went beyond the ravine, but kept to its right. And by Jacob Hine, that it was always called the Hays' land; and that John I. Hays and Joseph G. Hays were brothers and both were doctors. And by Aaron Fry, that he has known the land a good while - that it was called the Blackford land belonging to the lower farm; this was when Franklin was there, and when Joseph Rhode lived there; and that he always understood that the woods belonged to the lower farm. And by George W. Rhoderick, that he came to Sharpsburg in 1842 and that in two or three years afterwards he cut two trees on the land. This was whilst Henry lived on the home farm. And the plaintiff further proved by the said Michael Himes and other witnesses examined as aforesaid that the said plaintiff has under actual enclosure a part of the said tract of land acquired by the said John Blackford from William Price, Esqr. executor of John I. Hays and which is the locus in quo, and that the said Himes, the witness, had cut wood for the said Douglass on the East end of the said tract of land near the line between the same and the piece of land acquired from Joseph G. Hays and wife. And it was further proved that a part of the said tract as aforesaid acquired, and which is the locus in quo as aforesaid, is within the enclosure of the said William Moore Blackford, by whom or his guardian the same was cleared of the timber thereon; both which enclosed pieces appear upon the plats. —

The defendant then for the purpose of supporting the issue on his part joined offered the following parol evidence which was received subject to all exceptions, and for the purpose of raising the legal questions upon the true construction of the will of the said John Blackford, deceased, that is to say, by Joseph Rhode who testified that he resided on part of the land of Col. Blackford, the testator, in his life time, four years before his death, and lived there at the time of the death of the said testator. That the said witness proved that he was on the survey made for this cause, and pointed out to the surveyor, and proved that in the year 1831 or 1832 when he lived with Col. Blackford as overseer on the Upper farm Col. Blackford took witness to the corner which he called Myers's corner, and told him to take a black man with a mattock, and then observed "Joe, I am going to plant a stone and run a line to the Hays line," and enjoined him the said witness to remember it, as he the witness was young and stated that if ever any difficulty arose between his children, he would put it right. That he the said Blackford designed to throw the small portion of the home farm to the lower farm, and that the lower farm consisted of this portion of the home farm the Bedinger