where it was to run. When they reached the upper line and were closing the line of the Hays tract, the said Knode again expressed surprise, in speaking of the last line, and also expressed surprise that that was the Hays land, that this was the inference he drew from the language of said Knode at the time, that he, the said Knode, meant the whole of the Hays tract; and he witness, states that he himself was surprised at it being the land. The plaintiff further proved, by the said Grove that he, witness, never saw Leo. Blackford, on the Hays tract, but he saw his team and servants from the upper farm, not very often, hauling some wood or offals of shingles timber, but did not see it taken from the land and does not know where they hauled it. Upon cross-examination by the defendant the said Grove proved that he knows the said Joseph Knode; that he is a high-minded, honorable gentleman, and that he has no reason to doubt his word, and would certainly believe him on his oath. The plaintiff then, for the purpose of further rebutting the testimony of the defendant, (and subject to the aforesaid exceptions) proved by Samuel McGlaughlin a competent witness, who was the surveyor that returned the plats in this cause, that when on the survey, the said Joseph Knode did not know the beginning of the Hays tract, and expressed surprise at the particular locations of some of the lines and at the extreme running of the Western terminus of said tract; but witness never understood him as expressing surprise about the location or situation of the land itself; which the said Knode always said lay North of the Sheppard tract. The said Knode always said that the tract they were running was the Hays tract, in a general way; he only expressed surprise at the particular running of some of the lines, as he understood him. He said nothing about a stone at the Myers corner, or a peg, that he remembers. They looked for a stone however but found none - The defendant then for the purpose of explaining the testimony of said Knode, and to support the issue on his part joined, and subject to the same exceptions as aforesaid, proved by the said Joseph Knode that he was with the said Grove and Dowrim on the survey, and that when they reached that point or part of the Hays tract that is now cleared and enclosed by defendant he expressed surprise at the line running as it did in the field; but this part was in timber when he had last seen it before and has been cleared and enclosed since, and this was the cause: that as they proceeded west and came to the three trees, he observed a stone planted near them, and when the surveyor ran wide of these he again expressed surprise, as he thought from these circumstances the line would run by them - And as they proceeded west and ran out to the extreme point of the Hays tract as located on the plots, he did express surprise as he did not before think it ran out to such a point, but thought the tract terminated sooner and did not make so sharp an angle. When the surveyor ran the line from D. to O. on the plots, he again expressed some surprise as he thought that line ran in a straighter direction and did not make such an angle and nook as it appeared to do: that he has no recollection of telling the said Grove that the tract they were running was not the Hays tract, or expressing any surprise to him about its being that tract; and that the said Grove must certainly have misunderstood him; as he had lived upon the land and knew that the Hays tract lay there, and though he did not profess to know with certainty its outlines. The plaintiff thereupon by his counsel prayed the Court to instruct the jury as follows:

1 - That the will of John Blackford which is in evidence in this cause, in the devises therein contained to his sons Henry V. S. Blackford and William M. Blackford, does not present the case of a latent ambiguity, and that

parol evidence is not admissible to show an intention different from that express by the words of the will - 2d - That notwithstanding the Jury may believe the several facts deposed to by Joseph Knode on the part of the defendant, and find that the said testator did in his life time make the several declarations testified to by the said Knode with reference to the division of his Home farm from his Lower farm, yet by the true construction of the said will, the intent and meaning of the said testator is still free from ambiguity, and that the construction of the said will must be made from its face alone, and that the said parol and extrinsic evidence so adduced by the defendant is wholly inadmissible. 3 - That by the true construction of the said will the piece or parcel of land conveyed as aforesaid by Wm. Price, executor of John S. Hays, deceased, to the testator, and upon which piece or parcel the trespasses complained of, are alleged to have been committed, did not pass by the said will to the said Wm. M. Blackford, the defendant - 4 - That by the true construction of the said will the said piece or parcel of land so conveyed by the said Executor of J. S. Hays to the testator, did pass by the said will to the said Henry V. S. Blackford under whom the plaintiff claims title - Which instructions so prayed by the plaintiff the Court refused to give to the jury, but ruled that parol testimony was admissible for the purpose of showing and explaining to the jury the land intended to be devised by said will, and for the purpose of showing to the jury the land or property described by the testator in his will as the Lower farm on which Joseph Knode resided at the time of the execution of said will. To which refusal of the Court to instruct the jury as so prayed by the plaintiff, and ~~and~~ also to the said ruling of the Court the plaintiff by his counsel prayed leave to except and that the Court would sign and seal this his bill of exceptions, which is accordingly done this 17th day of December 1853.

Thomas Perry (Seal)

And thereupon the said Robert Douglass, by his attorneys aforesaid, prays an appeal from the judgment of the Court here, so as aforesaid rendered, to the Court of Appeals of the State of Maryland, and it is granted him; It is thereupon ordered by the said Court that a transcript of the record and proceedings in the plea aforesaid, with all things thereunto relating be transmitted to the Court of Appeals of the said State, to be held at the City of Annapolis on the second Monday of June next, and the same is transmitted accordingly.

Test, Isaac Nesbitt, Clerk.

State of Maryland Washington County, to wit: I hereby certify that the foregoing is truly taken from the record of proceedings of the said Court.

In Testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for said County, at Hagerstown, this 22d day of December 1853.

(Seal)

Isaac Nesbitt, Clk.

Plaintiffs costs - - - $110.48
Defendants do. - - - 57.46⅔
Record - - - 34.70

And now come into the Court of Appeals here, as well the said Robert Douglass by William T. Hamilton R. H. Alvey and William Price, Esquires