borrow on the lot in controversy in August 1825 and has lived in the neighborhood of this lot for 31 years and now lives within a mile and three quarters of it. Ever since he can recollect they were said to be Thistle's lots. It was usual about there if a man wanted a stick of timber to go upon any man's land and cut it. It was the custom so to do. Heard it said that Mr Rawlings had one lot there which was lot No. 3980 but never heard of his owning lot No. 3978.

On cross examination the witness said that about sixteen years ago he heard people say, that one lot was Moses Rawlings. Heard his grandfather say so. That he knows of no cutting here on lot No. 3978 by any person except by Frank Hammers and some rail timber cut and by Meshack Frost, seven or Eight years ago, since he purchased.

The plaintiff further offered in evidence by Isaac Wenebrenner that he went to live on the lot in question about thirty two years ago. That the lot No. 3978 was always called Mr Thistle's lot. It had been previously called Murdock's lot. It was said in 1835 that Rawlings had one lot there, but that was the Hammers lot No. 3978.

The plaintiffs then offered in evidence the tax books of Allegany County to show that the lot in question has been from 1832 to the present time taxed to George Thistle and his heirs.

The defendant further offered in evidence by Moses Rawlings that when Mr. Thistle sold him the lots, he told him to go and take possession of them. That he had conversations with Mr Thistle, he is certain of two such conversations about 1840 in relation to the lots alluded to. He met Mr Thistle in the streets of Cumberland when he asked the witness whether he had disposed of the lots or had made anything out of them. Witness answered that he had not.

Upon cross examination he said that the matter in which he took possession of the Lots when Mr Thistle sold them to him, was that he offered to sell them to Robert M'Culloch, there was no actual possession given to him by Mr Thistle except as he has already stated. He went upon the lots immediately after Mr Thistle sold him the lots, to look at them, walked over them and went in the house on lot 3980, and locked up the house, which was then vacant, and took the key away with him, this was about the manner in which he got possession of them. He was there several times before he put Klink in the house. He was then looking at the property. That he cannot remember the amount of Mr Thistle's indebtedness to him. Mr Thistle owed him more than $100. for which he took the lots, and he took the lots in part of what Mr Thistle owed him. Has no memorandum of the account or settlement between himself & Mr Thistle, that during the whole time referred to, Mr Thistle lived about one mile South of Cumberland and about thirteen miles from the lots. That Mr Thistle was about 78 years of age when he died and thinks he did not move about much for several years before his death, but at the time of the sale of the lots was an active man.

The plaintiffs further proved by Morris Wenebrenner that Thomas Robinson lived in the house on Lot No. 3980 in 1835 Klink came there to live in 1836 or 1837 he cannot tell which, thinks it was in 1836 that Klink went there to live. Is certain it was after the fall of 1835. Robinson paid rent for the house to witness's Father. Klink paid

rent to his father for the house and part of the ground in 1836 and afterwards.

Upon cross examination witness says that his father never claimed Lot No. 3980 his Father claimed the house as his property and claimed the house was situated on a tract of land called "Hill side" adjoining Lot No. 3980, the tenants farmed a cornfield on Lot No. 3980, but his father never charged them rent for it. The house was in possession of Klink as his Father's tenant after 1836, and paid rent to his Father for it. After Klink left it his Father rented the house to one Lee Stot and received rent for it from him. The house was built by his Father and Mr Fouck, the land cleared around it was cleared by Mr Fouck and witnesses brother Isaac, who were in possession of the house as his father's tenants, but did not clear all the land as tenants of his father as his father did not claim any part of the land east of about one rod of the house.

Upon cross examination he said that his father claimed the lines of his tract called "Hill side" to run about one rod to the east of the door of the house as located on Lot No. 3980 on the plots running parallel with the west line of that lot. That his Father never claimed further than this, and the tenants who claimed over the line did so themselves and not by his fathers permission. That he was one of the chain carriers on the present survey and was also examined as a witness on the ground to prove the white oak tree at A, on the plats and when they run out Lot No. 3980 he was disappointed to find that the lines of 3980 did embrace the house and spring. In a chancery suit now pending on the Equity side of this Court he and his brother Isaac and the rest of his Fathers heirs are claiming the land lying to the west of the house as part of "Hill Side" and should they sustain said suit they will get more land and more money.

The Plaintiffs further offered in testimony by William J. Wenebrenner. That after Klink left the house a man named Lee Stot went into it under his Grand Father.

Upon cross examination witness said that he thinks he was about 18 or 20 years old when Stot went there. That Stot is now dead thinks his Grand Father died in 1847 or 1848. if he had his account with him, could tell the day when Stot went there, can't say it was before 1840. He feels kind of bothered about those dates. It might have been in 1836 or 1837 that Klink was there. He cannot fix dates about people moving out or in property. It may have been as late as 1845 when Stot went there.

The Plaintiff then prayed the Court to instruct the jury: That there is no evidence in this case to show a title by possession in the defendant, which direction the Court refused to give. But the Court was of opinion and so instructed the jury that if the defendant and those under whom he claims have held the said land by adverse possession for more than twenty years prior to the bringing of this suit, then such adverse possession is a good defence to this suit, and that such adverse possession under the act of 1852 chapter 177 may be shown by spars in cutting from time to time on said land by the defendant and those under whom he claims with right of title or right to said land, by putting the land in charge of persons to take care of it and keep off intruders and trespassers by putting tenants on the land, and such other acts of ownership as are usually exercised by owners over uncultivated wood land. To which refusal of the Court to give the direction so prayed and also to the opinion and