declaration for the machines mentioned in which the action is brought. Then the plaintiff is not entitled to recover in this action.

3rd That if the Jury believe from the testimony that any part of the one hundred and sixty seven acres surveyed by the Warrant to Benjamin Harrison to Eleanor Stephenson (if the Jury shall so find the execution of said Will) was at the institution of this suit in the possession of the Lessor of the plaintiff, or of her assigns and so continued that then the plaintiff is not entitled to recover in this case.

4th That if the Jury believe from the testimony that eleven acres and a half more part of the 147 acres mentioned in the Deed of Benjamin Harrison offered in evidence in this case (if the Jury shall so find the execution of said Will) was at the institution of this suit, and have been ever since the death of said Benjamin Harrison in the possession of the Lessor of the plaintiff, and her assigns then the plaintiff is not entitled to recover in this action.

5th That if the Jury shall believe as stated in either of the last two preceding prayers that then the plaintiff is not entitled to recover one undivided half of the 135 acres described in the declaration of the plaintiff.

The plaintiff objects to said prayers and further Plaintiff objects to the 2d of said prayers but considers that it was incumbent on the plaintiff to shew that the lands for recovery in which this action is brought was part of the adjoining plantation of the said Benjamin Harrison deceased and part of the 147 acres of the said adjoining plantation which is claimed by said Last Will in trust for the testators daughter Eleanor Stephenson and that the same lands are in possession of the defendant.

The Court thereupon rejected said prayers but each rejection of said prayers the defendant excepts and further prays the Court to instruct the Jury as follows.

If the jury shall find from the evidence that Benjamin Harrison executed the said Will and testament given in evidence that by the said Will he devised to Anna Ingram the plaintiff the real and personal property therein named and bequeathed to her and shall further find that the said Ann Ingram accepted and received the said devises and bequests, and sold and conveyed the land which is the subject matter of this suit that such acceptance and sale by the said Ann Ingram was an election to claim under the said Will and that she is thereby estopped from claiming as heir at law of her said Father Benjamin Harrison the real estate claimed by the declaration in this cause and the Jury should find a verdict for the Defendant.

If the Jury believe from the evidence in this cause that there was a partition made about the year 1839 between Eleanor Stephenson and her husband and John Stevenson and Anna Ingram of the 147 acres of land mentioned in the deed of Benjamin Harrison offered in evidence in this cause if the Jury shall believe that the same was executed and that the persons and those under whom they claim have held and enjoyed the lands of the said partition and their respective parts of the said partition during the

time the plaintiff is not entitled to recover in this action.

4th That unless the Jury believe from the testimony that an actual ouster of the plaintiffs Lessor has been made by the defendant or some of those under whom he claims from the said land sought to be recovered in this action the plaintiff is not entitled to recover.

5th That unless the Jury should believe from the testimony that the land sought to be recovered in this action is embraced within the abuttals designated in the Warrant the plaintiff is not entitled to recover.

Whereupon the Court granted the said 3rd and 4th prayers but rejected the said 1st prayer to which granting of the said 3rd and 4th prayers the plaintiff excepted and the defendant excepted to the rejection of his aforesaid 1st prayer, and the plaintiff thereupon prayed the Court to instruct the Jury.

1st That if the Jury shall find that the said Anna Ingram had no knowledge of her title as heir at law of the said Benjamin Harrison deceased to the land in controversy in this suit (if they shall find that she was one of the Heirs at law of the deceased at the time prior to the year 1838 and that she was first informed of her title by her son Benjamin Ingram after his conversation with Mr Dorsey as stated by the said Witness (if they shall find the fact so stated by the said Witness) and that she sold and conveyed the land which she had acquired under the last Will of the said deceased to the said William H Hall about the time she was informed of her title as heir at law as aforesaid to the land in controversy in this suit and that at the time of the death of the said deceased she was a feme covert, and that her husband died in the year 1825 and that she received in her life time all the personal property which was bequeathed to her by the said last Will and testament of her said deceased father and that he also received the personal estate left by him as sold and applied by his administrator to the payment of his debts, then there will be no evidence of any declaration on the part of the said Anne Ingram to abandon the title as heir at law of the said deceased father to an undivided interest in the land in controversy in this suit so as to produce a recovery of the plaintiff upon the said title of the said Anna Ingram, as heir at law as aforesaid in case such title is made out to the satisfaction of the Jury.

2nd That the Court rejects said prayer but on the refusal of the Court to instruct the Jury as prayed by the plaintiff the said plaintiff excepted and prayed the Court to sign and seal this her Bill of Exceptions to the granting of the 3rd and 4th prayers of the defendant as aforesaid, and to the refusal of the Court to instruct the Jury as prayed for by the plaintiff as aforesaid which is accordingly done this 11th day of April 1861.

Nicholas Brewer (Seal)

And thereupon the aforesaid John Doe Lessee as aforesaid by his Attorneys aforesaid prays an Appeal from the foregoing aforesaid to the aforesaid Court of Appeals of Maryland to be held at the