dence, and the Lot was pastured by people from Town with old horses and cattle. That it remained in that condition for ten years a common, Sam the property every day - put up the fence after it had been open for ten years. He further proved by said Witness that he had a conversation with Nathan Tyson under whom the plaintiff claims in the year 1851, when the said Tyson offered to sell said Witness the land belonging formerly to George Ellicott and said there was a Lot of two or three acres adjoining which he did not claim, and it was more than probable that whosoever got his (Tysons Lot) would get this (the two or three acres) as there was no other land. To the admissibility in evidence of this conversation the plaintiff by his counsel objected, but the Court overruled his objection and permitted the same to go to the Jury, to which ruling the plaintiff excepted. The defendant further offered in Evidence by said Myers that the land in dispute in this cause never was cultivated by Ellicott or Tyson or by any one else whilst they held it in possession and that the stumps on the land were removed only by Keener the plaintiff after he purchased it from Tyson. The defendant further offered evidence by John Nicholson, a competent Witness, that in 1851 he purchased from Nathan Tyson a Lot of land when said Tyson requested Witness to buy the land afterwards sold by him to the plaintiff, and said that whoever did buy it might get the Lot adjoining, to which he would give notice as he had now told,

The Plaintiff thereupon further to support the issue on his part joined offered in Evidence by Nathan Tyson that he might have had conversation with Mr Myers the Witness examined on the part of the defendant such as he has testified to but has no recollection that he ever had. That he held said land as the agent of George Ellicott, and that he told the plaintiff when he sold him said land, that persons had informed him that there was a difficulty about the title to some part of it, That he thought it belonged to George Ellicott. And by James Tyson before examined that from him before 1845 Myers complained to him of the condition of the fence enclosing said land. that as well as Witness recollects there was not more than two or three parcels missing and that one hundred and twenty five dollars paid for the whole of the repairs. And by Joshua Kennedy that the fences were very in the condition of other fences, when they were rotten.

The plaintiff thereupon submitted to the Court the prayers following,

1st That if the Jury believe from the evidence that Christian Keener was in possession of the property located as his possession and that if the Jury further find that the trespass as alleged in the declaration was committed by the defendant, and that the defendant took down and removed the fence referred to by the Witness from its original position while the said Keener was so in possession and put it up in its present place then the plaintiff is entitled to recover such damages as the Jury find from the evidence he has sustained.

2nd That if the Jury find from the evidence that George Ellicott was in possession of the property as located within the plaintiffs possession in the year 1817 by actual enclosure and by the use and cultivation of the property so enclosed and if the Jury further believe from the evidence that he so continued in the

possession of the same by himself or his tenant until April 1832 and that about said date said Ellicott departed this life, and that Nathan Tyson having previous to that time intermarried with the daughter of said Ellicott, and continued in possession subsequent to that time till the year 1845 and that Christian Keener the plaintiff bought the same by contract dated and took possession under the same, that then the entry of the defendant is barred and the plaintiff would be entitled to recover.

3d If the Jury find from the Evidence that George Ellicott entered upon the actual possession of the lot as located by the plaintiff on the plats in this cause and enclosed the same by fences as stated in the proof in the year 1817 and having thus enclosed it occupied used and cultivated it and so continued in the occupation use and cultivation thereof until his decease on the 4 April 1832, And if the Jury further find from the evidence that Nathan Tyson intermarried with the daughter of said George Ellicott who was living at the death of her father - And that her husband the said Nathan Tyson immediately after the death of the said Ellicott entered upon the possession of the said Lot and occupied used and cultivated in the same manner as did the said George Ellicott and continued so to do with the said fences up until the year 1845 then the Jury are bound to presume a claim of the piece of land in dispute in this cause from the defendant or those under whom he claims to the land Nathan Tyson.

All of which three prayers were rejected by the Court who further peremptorily directed that the Will of George Ellicott was little a deed of bargain and sale which would not operate in law to render the possession of the devisee continuous with that of the devisor and could not in law constitute the same possession that the one must therefore, in estimating the period of limitation be taken as distinct from the other and could not be added together so as to make one possession, Which the Court refused and declined to give the instruction to the Jury thereby asked, to which rejection and refusal, as well as to the over ruling of the objection to the testimony of George Myers, hereinbefore stated, the plaintiff excepted and prayed the Court to sign and seal this Bill of exceptions, which is accordingly done this Ninth day of February 1858.

John H Price (Seal)

And thereupon the said Christian Keener by his attorney 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 to him is be granted,

Whereupon the said Christian Keener files in Court here a certain writing obligatory commonly called an Appeal Bond which is in the words and of the tenor following to Wit,

Know all men by these presents that we Christian Keener, William H Orrick and Geo Henry Berry of Baltimore City in the State of Maryland are held and firmly bound unto Hiram Kaufman his executors and administrators in the penal and just sum of Four Hundred dollars current money, to be paid to the said Hiram Kaufman his Executors and administrators or his certain attorney executors administrators, and assigns, to the payment whereof, Well and truly