December Term 1860

I hereby certify that Henry T. Finess and John T. Snyder Esquires before whom the annexed affidavit was made and who have thereto subscribed their names were at the time of so doing the Justices of the peace of the State of Maryland in and for the City of Baltimore duly commissioned and sworn. Witness my Hand of Office set my Seal hand and affix the seal of Baltimore County Court this 7 day of August A.D. 1850

A H Bradford Clk
Balto City Ct

From Mrs McTavish to the defendant and Evidence of his Entry into possession under it,

And further Evidence of the enjoyment of the Water rights by the plaintiff until the 26 of March 1852,

The plaintiff then proved by James Smith that in the Spring of 1852 the delivery of the Note,

Letter from Chas Carroll

To. Chas Carroll Mactavish,
Donghoregan Manor
March 26 1852

Dear Sir,

I understand that you are running a fence so close to my Mill race that it will be impossible or very hard for me to go and repair the race and dam, This I hope you will not continue as it will cause us both unnecessary expense,

The Mill is absolutely necessary to me as well as my right, to so obstruct the passage to and from the race will be to make it perfectly useless and cannot of course be assented to, I may see us both trouble if you will ascertain how far you have a right to interfere with what are clearly the Water rights of the Mill

Respectfully Your obt Servt
Charles Carroll

Proved the plaintiff by the defendant – that after said was delivered a post and rail fence had been erected by the defendant on the Mill Bank of the race from the side opposite from the River running towards the dwell Hand Carts and Wagons after the fence was put there could not conveniently approach the race with Materials for repairing it that they must have to take the fence down whenever occasion required them to repair the Race, that was a three Rail fence put up in the usual manner And at the time said Note was delivered the bends of the fence was completed that the land of the defendant on the West side of the said race was cultivated in corn close up to the fence in 1853, he was not positive at what time the breach in the race occurred but the Mill was stopped the 14 June 1852 it was not a good rail fence some of the Rails could be easily removed the posts were firm in the ground opposite to where the Breach occurred and the Rail could not be removed at that point. The fence was not then new it remained there till September 1856 That the posts alone must have been an obstruction in the way of repairing the Race

December Term 1860

The plaintiff then offered to prove that the Mill was used by him to grind the products of his farm to feed his cattle to the admissibility of which Evidence the defendant objected, But the Court overruled the objection and allowed the Evidence to go to the Jury, To which ruling of the Court the defendant excepted and prays the Court to sign this his Bill of exceptions which is done this day of

Nicholas Brewer (Seal)
Circuit Judge

After the Evidence contained in the first exception which by agreement is made a part of this exception the plaintiff further proved by said Smith that he Examined the fence first in 1852 and found that the Rails could not be removed. He then Rs that Mr Carroll was with him, He examined it afterwards in 1853 and found that its condition was not changed, That he cannot Estimate the value of the use of the Mill, that it was expensive from not being used

And they further proved by Witness John Carroll that he went to the fence with Smith in 1853 and the Rails could not be removed by Smith and himself, The plaintiff then offered the deposition of Carroll, The deposition referred to not among the papers

The defendant objected to that part of said deposition as to the Work done, But the Court overruled this objection and suffered the said deposition to be read to the Jury to which the defendant excepted and prayed the Court to sign and seal this his Bill of Exceptions which is accordingly done this day of

Nich Brewer Seal
Circuit Judge

After the Evidence contained in the preceding exception which by consent are made a part of this exception the plaintiff proved by Jm Reed that on the 20 of July 1853 he found all the Water out of the Race and the five day and Wheel dry. That in September 1853 he examined the fence and found a place where all the Rails could be removed, And that opposite the breach he could get none of them out. That the land was in cultivation in 1853 & 54 thinks the fence did interfere with repairing the Race,

And he further proved by John Torney that in the Spring of 1853 he had occasion to cross the Race from the East side and that he had the fence in his place and could not remove the Rails. And he further proved by Levi Young that he has known the Race from 1817 or 18 till the present time and to the best of his Knowledge never Knew of a fence being along the Bank of the Race in the position that this one is – Thinks there was a fence but far enough from the race Bank to leave a Road between the Race and the fence,

And then he proved by Ephraim Hemming that he has Known the place since 1823 or 24 That there was no fence on the West side of it but there was a fence on the South East side That there pans were made on the West side. That the