years old – they the fences have stood there ever since I knew them said where the soldiers disturbed them since the spring of 1861.

Plaintiffs rebutting testimony.

Amos McCleish I was up 4 or 5 years ago to a quarry there was no fence when I was there I was not acquainted with it There was some rails along there The grape vine was there There was nothing there to make a fence.

Cross Ex my first knowledge was the fence before Harris went there I was there different times after Harris went there The first spring Harris came there and for 3 years thereafter no fence was along there.

Re examined The land over the hill is what Harris said he owned with Hanicks.

Daniel Rice Part of the fence running up the hill was there and part was down part lying in a common I was there shortly after Hogg moved off. I think it the fence was below the Chesnut then It is above the fence now.

Jerry Malone I worked at the quarries I knew it from 1847 The fence along the bottom was always there There was along the hill a brush fence There was always a fence of some kind there.

Lewis Twigg says he never saw any fence there I live 2½ or 3 miles from the farm

Cross Ex never saw a fence there except a few brushes The fence formerly was above the Chesnut tree about 2½ rods.

Francis Twigg In 1844 I was down there I did not pay much attention to it There was a fence along the spring In 1845 there was a great many (40 or 50) hands there and I saw no fence In 1846 there was a failure of the work going on but in 1848 they came back There was no fence there then.

Thereupon the plaintiff offered the following prayers

1st The plaintiff by his Counsel prays the Court to instruct the Jury that if they shall find from the evidence in the cause that the title to the lands described in the deed from Andrew Bruce to the Cumberland Bank of Allegany and located on the plats in this cause was conveyed to said Cumberland Bank by the execution of said

deed and that the said deed did not contain the lands in controversy in this cause then no presumption of title in said Bank can be made to the lands in controversy from the fact of said conveyance by said deed or from the previous possession of the lands in controversy by those holding or possessing the same prior to the execution of said deed.

2d And further if they shall also find in addition to the above facts that the said Cumberland Bank had the lands now in controversy in possession by actual inclosure from the time of the execution of said deed till the year 1857 intending thereby that any lands outside of the lines of said deed were inclosed supposing that the said inclosures corresponded with said lines and without intending to hold any lands outside of the lines of said deed by adversary possession then such possession even by inclosures does not bar the right of entry in the plaintiff or prevent his recovery in this cause.

3d And further, if they shall find from the evidence in the cause that the said Cumberland Bank held the lands in controversy knowingly and designedly by adversary possession and by actual inclosures for a less than twenty years then there is no evidence in the cause to authorize the defendant to tack any possession which they may find him to have had to the possession of said Bank so as to make up the full term of 21 years of adversary possession.

4th And also further prays the instruction of the Court to the Jury that if they shall find that said defendant and those under whom he claims did not hold all the lands located on the plats in this cause as his possession NO 2 by adversary continuous and exclusive possession and inclosure for twenty years before the commencement of this suit then the plaintiff ought not be thereby prevented from recovering so much of said possession NO 2 as is within the line of the deed of said plaintiff now in evidence in this cause.

5th The plaintiff further prays the Court to instruct the Jury that if they shall find from the evidence in the cause that the defendant has never been in actual possession of all the land located by him on the plats as his claim and pretensions and that said defendant disclaims all title to a portion of said land and that said defendant had no fence