of any Stone enclosing a part of said land and making a continuous enclosure around the whole of his claim and pretensions then their verdict must be for the plaintiff.

6th That the defendant in order to make into continuous adversary possession for 20 years cannot avail himself of a fence of an adjoining proprietor unless they shall find that said fence was a division fence between said defendant and said adjoining proprietor and that there is no evidence in this cause that there was any such division fence.

7th That there is no evidence in this cause from which they can find a continuous uninterrupted adversary possession by actual enclosure with claim of title by the defendant and those under whom he claims of possession No 2 located on the plats as the claim and pretensions of the defendant.

And the said defendant offered the following prayers to wit

Defendants 1st Prayer

The defendant by his Counsel prays the Court to instruct the Jury that if they shall believe from the evidence in this cause that the defendant and those under whom he claims held the two pieces of land as designated on the plats as Defendants Possession No 1 and No 2 for twenty years before this action was brought such possession is a bar to all rights or claim derived from the State under the patent from John Hertz and those claiming under him and the plaintiff is not entitled to recover in this action the land located on the plats as aforesaid as Possession No 1 and 2.

Defendants 2d Prayer

The defendant by his Counsel prays the Court to instruct the Jury that if they shall believe from the evidence in the cause that the defendant and those under whom he claims held possession of the land in controversy for 20 years before this action was brought no matter whether the possession is evidenced by inclosure for 20 years by partial and interrupted inclosure by sparsely cutting over said land by user by occupation or by all or either of the aforesaid means if the Jury shall believe from the evidence that the defendant and those under whom he claims exercised those acts as proved by the defendant and had held possession of the land in controversy

by said acts for twenty years before this action was brought such acts of the Jury believe them amounts to possession such possession is a bar to all right or claim derived from the State of Maryland under the patent for the tract of land called Park of the first part of Mr Rud Rumsey and that the plaintiff is therefore not entitled to recover in this action.

Defendants 3d Prayer

The defendant by his Counsel prays the Court to instruct the Jury that if they shall believe from the evidence in the cause that the defendant and those under whom he claims have been in exclusive possession for twenty years before this action was brought of the two pieces of land located on the plats of defendants possession No 1 and No 2 by actual inclosure claiming the same such possession is a bar to the plaintiffs right to recover said pieces of land so located as possession No 1 and 2

The Court granted the plaintiffs 1st and 2d and refused to grant his 3d 4th 5th and 6th prayer and also granted the defendants 3d prayer and refused to grant his 1st and 2d prayer.

To the ruling of the Court in granting the plaintiffs 1st and 2d prayer and each of them and refusing to grant the defendants 1st and 2d prayer and each of them, the defendant excepted and asked the Court to sign and seal this his bill of exceptions which is accordingly done this 22d day of October

S Weiser (Seal)

And at the trial of the above cause was also said therein the following to wit

Whereas John Daniels executed to me an agreement or bond dated about the year 1857 for the exchange or sale of certain lands therein described for his warrant in said lands and at the same time I the subscriber executed a bond or contract to said John Daniels to give and convey to him certain land therein described as part of a tract of land called Hearts Delight "lying on the East side of Colyer's Mountain The land hereto to me as described in his land to me which has been mislaid or lost lay adjoining the tract of land called Colliers Discovery" and was the same land now in controversy between Samuel Furlong lessee vs John Davis and whereas the said John Daniels and myself have cancelled