in this action and the verdict should be for the defendants

3rd That if the jury believe the facts set out in the defendants second prayer, and shall also believe that the said Andrew Hershner exercised acts of ownership over the interest of the said Jacob in & to said land after said Jacob's death by receiving rents and profits therefrom, and that in the year 1849 he conveyed the same to Gustavus Hershner and William Ditto by the deed of the 2nd April of that year given in evidence with the answer of said Gustavus in Chancery also given in evidence, then the said Jury are not only at liberty to presume the existence of and due returns to the writs of fieri facias of March Term 1827 as stated in the foregoing second prayer, but the contract of sale by the Sheriff became executed in said Andrew Hershner and the title to said lands of the said Jacob vested in him by force of said facts without regard to the requirements of the Statute of Frauds, and the plaintiff would not be entitled to recover, but the verdict must be for the defendants.

4th That if the jury believe the facts set out in the second prayer or in the 2nd and 3rd prayers, then Jacob Hershner and his son the plaintiff claiming under him are estopped and precluded from questioning the sale by the Sheriff to said Andrew and the Plaintiff would not be entitled to recover in this action

5th That the omission of the Clerk of Washington County Court to record the judgments of Andrew Hershner & Jacob Hershner given in evidence in this cause, with all proceedings thereunder as required by him by the Act of 1817 ch 119 Sec 7. if the jury find such proceedings and omission, does not affect or impair or invalidate the title acquired by the purchaser at said Sheriffs sale, if the jury find such sale to have been made, but the said title remains as valid and effectual as if said judgments & proceedings thereunder had been duly recorded agreeably to the requirements of said Act of Assembly

6th That if the jury believe the facts set out in the 2nd prayer or in the 2nd and 3rd prayers, then said facts amount to a

create a presumption of law that said sale by the Sheriff did take place and was duly returned by him & that in such case the jury are bound to find for the defendants.

Memorandum. Before the jurors aforesaid withdrew from the bar of the Court here the Plaintiff and Defendant by their Attorneys aforesaid filed in the Court here the following Bills of exceptions to wit:

Andrew Hershner vs. Gustavus Hershner	At the trial of this cause in the Circuit Court for Washington County, the plaintiff to maintain

the issue on his part joined introduced and read from the Land Records of Washington County the following deeds for lands in the said County to Jacob Hershner. 1st a deed from John Ritter to Jacob Hershner, dated 29th day of February 1808

This Indenture, made this twenty ninth day of February in the year of our Lord one thousand eight hundred and eight between John Ritter of Washington County and State of Maryland of the one part and Jacob Hershner of the County and State aforesaid of the other part, Witnesseth that the said John Ritter for and in consideration of the sum of one hundred pounds current money of the State aforesaid to him in hand paid by the said Jacob Hershner the receipt whereof he the said John Ritter doth hereby acknowledge and therefrom and therefrom doth hereby exonerate acquit and discharge the said Jacob Hershner his heirs executors and administrators, he the said John Ritter hath granted bargained sold aliened enfeoffed and confirmed, and by these presents doth grant bargain sell alien enfeoff and confirm unto the said Jacob Hershner his heirs and assigns forever, all the land which he the said John Ritter is entitled to as heir at law of his father John Ritter deceased lying and being in the County and State aforesaid on Conococheague known called the "Conquest" otherwise "Hazard" together with all and singular the buildings, improvements