by his attorney aforesaid, it is ruled by the Court here that the said Baltimore and Ohio Rail Road Company rejoin to the replication of the said Israel Thompson in the plea aforesaid or judgment will be returned against it by default.

Thereupon the said Baltimore and Ohio Rail Road Company by its attorney aforesaid rejoins and says: as to the said replication of the said plaintiff to the said second plea of the said defendant and which the said plaintiff hath prayed may be enquired of by the country doth the like.

And the said defendant as to the said replication of the said plaintiff to the said third and fourth pleas of the said defendant saith that the said plaintiff ought not, by reason of anything by him in that replication above alleged to have or maintain his action as aforesaid against the said defendant in respect to the said supposed trespass in the said third and fourth pleas and in the said declaration mentioned, because the said defendant saith that after the making of the said demise in said replication mentioned, to wit on the first day of January 1857 and before the said several times, when &c, to wit on the day and year last aforesaid, the said tenancy and the said estate and interest of the said plaintiff in said demised premises and the said place in which &c, with the appurtenances, wholly ended and determined, to wit on the fifth day of January 1857 at the County aforesaid: And thereupon the said defendant after the said tenancy was so ended and determined as aforesaid, to wit, at the said several times when &c, entered into the said close in which &c, and committed the said supposed trespass mentioned as he lawfully might for the cause aforesaid and the leave and license of the said John Hoye as aforesaid, set forth in said third and fourth pleas of said defendant to wit, at the County aforesaid. And this the said defendant is ready to verify. Whereforeas before, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant, in respect to the said supposed trespasses in the said third and fourth pleas and in the said declaration mentioned.

Thomas P. McKaig Att'y for deft.

Thereupon the said Israel Thompson by his attorney aforesaid files in the Court here the following surrejoinder in form following to wit:

And the said plaintiff as to the said rejoinder of defendant to the replication of the plaintiff to the said third and fourth pleas of the said defendant saith that by reason of anything by the said defendant in the rejoinder alleged ought not to be barred from having or maintaining his aforesaid action thereof against the said defendant, because he saith that the said several trespasses mentioned in the plaintiffs declaration and replication were committed by the said defendant before the estate and interest of the said plaintiff in the said demised premises were by the said demise wholly ended and determined, to wit, at the several days and times when &c, and not after the said end and determination of the said lease, as the defendant hath alleged in its said rejoinder and this he prays may be inquired of by the County aforesaid &c, and this he prays may be inquired of by

the country &c.

W. Bruce for Plaintiff.

and the said defendant doth the like &c.

Thomas P. McKaig attorney for defendant.

Thereupon for trying the issues aforesaid joined between the parties aforesaid, it is ordered by the Court here, that twenty persons from the panel of petit jurors returned to the Court here by the sheriff of Allegany County aforesaid, be drawn by ballot according to the directions of the act of Assembly in such case made and provided.

And thereupon the twenty persons so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties and the counsel for each of the said parties having stricken out four persons from the said lists; thereupon the remaining twelve persons being called come, that is to say: Michael Sherry, Otho W. Hull, Robert Christy, Andrew Deal, George W. Layman, Isaac Beighley, John Nelson, James Reynolds, John Riley, Elias Nelson, Edwd. Mellen, Harrison Black, who being empannelled, sworn and affirmed to say the truth in the premises, upon their oaths do say, that the said Baltimore and Ohio Rail Road Company is guilty of the premises in manner and form as the said Israel Thompson hath above complained against him, and they assess the damages of him the said Israel Thompson by occasion of the premises to the sum of eight hundred and fifty nine dollars and ninety cents.

Therefore it is considered by the Court here that the said Israel Thompson recover against the said Baltimore and Ohio Rail Road Company as well the sum of Ten thousand dollars, the damages in the declaration of the said Israel Thompson as the sum of one hundred and fifty six dollars and forty seven cents adjudged by the Court unto the said Israel Thompson on his assent for his costs and charges by him about his suit in this behalf expended and the said Baltimore and Ohio Rail Road Company in mercy &c.

Memorandum. Judgment was rendered in this case on the third day of November Eighteen hundred and fifty four for the sum of $2000. damages and costs. Damages to be released on the payment of $859. 90 with interest from the 3d. day of November 1854. and costs $156. 47.

Memorandum. Before the jurors aforesaid withdrew from the bar of the Court here, the said Baltimore and Ohio Rail Road Company by its attorney aforesaid filed in Court here the following bill of exceptions to wit:

The plaintiff to support the issues on his part joined first offered in evidence the lease (Lease, not in the papers) the execution was admitted and then offered to prove by George W. Newman that the fence around the close in question was a good fence in 1850. the pasture or field contained from two thousand acres to two thousand four hundred acres, and that he had grazed 200 head of cattle on said pasture during a grazing season.

And also proved by Thornton Gilpin that Thompson was using that pasture in 1850 — that he had his own stock upon it during the summer of 1850 — that he cannot say how many he had, but would not put them at less than 150. head. That he