that the said acts of trespass were authorized and directed by the said defendant or were afterwards adopted and sanctioned by the defendant.

3d Prayer of Defendant.

The defendant by its counsel prays the Court to instruct the jury, that unless the jury shall believe from the evidence in the cause, that any trespass complained of and offered in evidence by the plaintiff in this cause, were committed by the said defendant or were the direct and immediate consequences of the unlawful and injurious acts of the defendant, or that such acts of trespass were authorized and directed by the said defendant, or were adopted and sanctioned by it, that the plaintiff is not entitled to recover for the same in this action against the defendant.

4th Prayer of Defendant.

That if the jury shall believe from the evidence that the defendant broke and entered the said close of the said plaintiff and thrown down his fences; if the jury shall also believe that the said plaintiff knew the said fences were down and could have rebuilt or repaired them, by reasonable exertion so as to enclose and keep his cattle within the said such time, that then the jury shall regard the cost of rebuilding or repairing the fence so taken down by the said defendant and such damages as the jury may find he necessarily sustained or would have sustained, whilst the fences were being built, as the rule for assessing any damages they may find caused by the injurious acts of the said defendant in throwing down said fences or any injury directly or immediately caused by the same.

5th Prayer of Defendant.

The plaintiff is not entitled to recover against the defendant in this suit for any acts of trespass on the land mentioned and during the time specified in the declaration or to the cattle of the plaintiff, committed by or caused by other persons than the defendant, or by the horses, sheep, cattle or other animals of such other persons, unless the jury shall also believe that the said injurious acts were either authorized and directed by the defendant or afterwards adopted and sanctioned by the defendant.

6th Prayer of Defendant.

That there is no evidence in the cause to entitle the plaintiff to recover any damage for the alleged injury to the cattle of the plaintiff by frightening or scaring them caused by the construction of the said Rail Road by the said defendant.

7th Prayer of Defendant.

The defendant by his counsel prays the Court to instruct the jury that the plaintiff is not entitled to recover for any act or acts of trespass complained of in the declaration in this cause, which the jury shall believe was not the natural or necessary result of the entering upon said land and constructing said road through said land, and that if the jury shall even believe that acts or damages complained of were the necessary result of entering upon said land and constructing said road the plaintiff is only entitled to recover for such damages as he could not by reasonable endeavors on his part has prevented and avoided the jury allowing for the necessary cost of guarding against or avoiding such damage and the damage suffered by said plaintiff while avoiding it.

8th Prayer of Defendant. The defendant by its counsel

prays the Court to instruct the jury, that in estimating damages in this case, the jury will not allow for any damages that were remote, contingent or speculative, upon the effects of the trespass complained of in this case, and that the damages claimed on account of the cattle's not thriving are of that description.

9th Prayer of Defendant.

The defendant by its counsel prays the Court to instruct the jury that the plaintiff is not entitled in this action to recover for any consequential damages that he may have sustained; and that the non-thriving of his cattle if the jury should believe the same, would be consequential damages, if the jury shall believe that they did not thrive because they were disturbed or frightened by the hands or laborers employed in constructing the road.

But the Court granted the 2nd 3d 4th 5th and 9th and rejected the 1st 6th and 9th prayers of the defendants. The defendant excepted and asked the Court to sign and seal this its bill of exceptions which is accordingly done this 3d day of November 1854.

Thomas Perry (Seal)

And to the granting the 5th of the said prayers the plaintiff excepted and asked the Court to sign and seal this its bill of exceptions which is accordingly done this 3d day of November 1854.

Thomas Perry. (Seal)

Afterwards to wit on the 21st day of November in the year 1854 the said Baltimore and Ohio Rail Road Company by virtue and in pursuance of the provisions of the act of Assembly in such case made and provided applies to and directs the Clerks of the Circuit Court for Allegany County to enter an appeal from the judgment aforesaid, so as aforesaid rendered, to the Court of Appeals for the State of Maryland: which is accordingly done.

Whereupon the said Baltimore and Ohio Rail Road Company files in the office of the Clerk of said Court, a certain writing obligatory commonly called an appeal bond, which is in the words and of the tenor following, to wit.

Know all men by these presents that we the Baltimore and Ohio Rail Road Company and William G. Harrison of the City of Baltimore and A. L. Huggins of Allegany County are held and firmly bound unto Israel Thompson of Allegany County, in the just and full sum of one thousand and five hundred dollars, current money, to be paid to the said Israel Thompson, his certain attorneys, executors, administrators or assigns, to the payment whereof well and truly to be made and done, we bind ourselves our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 18th day of November 1854.

75 cents

Whereas the said Israel Thompson did obtain judgment against the said Baltimore and Ohio Rail Road Company in the Circuit Court for Allegany County at the October Term of said Court for the year 1854, for the sum of Eight hundred and fifty nine dollars and ninety cents with interest from the third day of November 1854 and costs due being No 65. Docket of said Term, reference to the docket of said Court will more fully and at large appear, And whereas afterwards to wit, on the said third day of November 1854, the said Baltimore and Ohio Rail Road Company, by virtue and in pursuance of the