Plea.

7th And the said Plaintiff as to the said Fourth Plea of the defendants, for further replication thereto, says that the said defendants before committing the grievances complained of, did not pay, nor have ever made or paid to the Plaintiff any compensation whatever for the privilege of grading, using and occupying the said road located and running through, over and upon his land as aforesaid nor have the said defendants ever agreed with the Plaintiff, or taken inquisition by jury in the premises, as to the damages to be paid him for the said privilege and use of the said road, either before or since the committing of the grievances aforesaid.

8th And the said Plaintiff as to the said Fourth Plea, for further replication thereto, says that the defendants, before entering upon the land and close of the Plaintiff and grading using and occupying the said road located and running through, over and upon his land as aforesaid, did not nor would compensate the Plaintiff for the privilege and use of the said road, and did not nor would agree with the Plaintiff of and concerning the said grading, using and occupying of the said road, or as to the damages therefor; and did not have condemnation by inquisition and ascertainment of damages by jury, nor have the said defendants ever had any inquisition or condemnation in the premises, or any agreement whatever with the Plaintiff of and concerning the location, grading, using and occupying of the said road, or the damages and compensation for the privilege and use thereof.

9th And the said Plaintiff as to the said Fourth Plea, for further replication thereto, says that the said defendants did not grade and occupy the said public road mentioned in the declaration and the said Fourth Plea, in pursuance and lawful exercise of the authority rights and powers conferred on them by the said Acts of Assembly mentioned in the said defendants Fourth Plea.

10th And the said Plaintiff as to the said Fourth Plea of the said defendants, for further replication thereto, says that the said defendants cut down and removed the Earth, and cut down and removed the trees in, and upon the sides of the said road, and did other acts complained of in the said declaration, unnecessary and improper to the grading of the said public road, and for other purposes than the grading of the said road did the said defendants commit the said acts complained of in the said declaration.

R. H. Alvey, Atty for Plff.

And thereupon, all further proceedings in the premises aforesaid between the parties aforesaid by order of Court here, in conformity with the Act of Assembly, are continued until the Fourth Monday of November next. At which said Fourth Monday of November, being

the twenty second day of the same month, in the year of our Lord one thousand eight hundred and fifty eight, come again into Court here, the parties aforesaid, by their respective Attorneys aforesaid.

And the said defendants, by their Attorneys aforesaid, file in Court here the following Rejoinder, to wit:

Robert Douglass vs. The President, Managers & Company of the Boonsborough Turnpike Road Company	In the Circuit Court for Washington County No 418 Trials, Nov. T. 1858

Rejoinder.

1st The defendants join issue upon the Plaintiff's second, third, fifth, sixth, ninth and tenth replications.

2. The defendants, by their Attorneys, say, that the Plaintiff's fourth replication is bad in substance, in this, that it alleges certain acts complained of to have been done by the said defendants with a continuando, whereas the said acts do not lie in continuance.

3. The defendants, by their Attorneys, say, to the Plaintiff's seventh replication, that the Plaintiff before the commission of the acts complained of by him, or then or since, had no claim or right by law to be paid any compensation whatever, or for an agreement between him and the defendants, or for the taking of an Inquisition by a Jury in the premises as to any damages to be paid him for the privilege of occupying, grading and using the said public road running through, over and upon his land as aforesaid, because they say and aver that they have so occupied and graded said public road in pursuance of the powers and rights so vested in them by the Acts of Assembly aforesaid, and in so doing have not deviated from the tract of said public road, or changed the same, through that portion of said public road that passes through, over and upon the lands of said Plaintiff.

4. The defendants, by their Attorneys, say, to the Plaintiff's eighth replication, that the defendants before occupying, grading and using the said public road running through, over or upon the land of the Plaintiff, or afterwards, were not bound to compensate the Plaintiff for the privilege or use of said road, or to agree with him of or concerning the occupying, grading and closing of the same, as to the damages thereof, or to have condemnation by inquisition and ascertainment of damages by a Jury, because they say, they had a right by and under said Acts of Assembly, and the powers, rights and duties so conferred on them by the same, to occupy, grade and use said public road, in the manner they have