gate thereon, not on the lands of the plaintiff, and have been ever since exacting and receiving tolls from the passengers on the said road; and have done the whole during the time & since the grading thereof exercised authority & exclusive control over the said road

And the said plaintiff also further proved to the jury by the said witnesses, that before the grading and work done on the said road through the land of the plaintiff, by the defendants or their servants, the said private gates and ways situate and being as aforesaid, were of easy access and in good passable order, and were frequently used, and were necessary for the purposes of the said farm; and also proved as aforesaid, that the said defendants by their servants and agents in grading the said road through the land of the plaintiff as aforesaid threw down some of the fence of the said plaintiff on the road side as aforesaid, and cut down and removed and carried away several large and valuable trees then growing on the sides of the said road and on the said plaintiff's land; and cut trenches along and in the sides of the said road and thereby made gutters and embankments; and cut and dug down the embankments upon which the said plaintiff's fences stood and thereby greatly impaired the said fences at several places along the said road; and that along by and between the said road and the said private gates and ways in and through the fences of the plaintiff as aforesaid, the said defendants by their servants and agents cut large and deep trenches, and made high and abrupt embankments, so that the said gates and ways have been since the grading of the said road obstructed and rendered inaccessible, almost impassable and useless to the said plaintiff for the purposes for which they were formerly used by the said plaintiff and his predecessors on the said farm; and the said plaintiff also proved to the jury by the said witness, that the said defendants in grading the said road, unnecessarily and improperly cut drains and trenches on, by and across the said road, and thereby turned the water off the said road and out of the gutters and trenches so cut, into and on the fields of the said plaintiff, and caused the said fields to be washed and overflown and much injured, and that the said fields of the said plaintiff have been ever since the grading the said road, and still are subject, from the cause aforesaid, to such overflowing and washing as aforesaid

The Defendant in support of the issues on his part joined then gave in evidence the Act of Assembly of the State of Maryland passed at November Session, 1790, Chap 32, and Nov 1791 Ch 82; also the Act of 1814 Chapter 71, and its various continuing Acts, and also the Act of 1852. ch. 266 and then proved by Daniel S. Resch, a competent witness, that he knew the road from Sharpsburg to the River Potomac from his boyhood, & that he lived on the said farm of the plaintiff at the time the road was graded & that the crop of wheat raised on the lower bottom of adds of the plaintiff were hauled up the road in July 1854, upon the new road, and it was then graded; and that said new graded road was upon the bed of the old road, so

far as it passed over the land of the plaintiff, but was changed below that point, all the trees on or along said road through the plaintiffs farm were cut prior to March 1854; that the plaintiff cut two of the trees himself or had them cut & he thinks some others were cut by his orders also.

That prior to the grading of the road the plaintiff could not haul a heavy load into the first gate, east of the barn, but could get out with an empty wagon & that the plaintiff intended to remove said gate about 20 yards higher up the road nearer to Sharpsburg & told witness to do so; when they had a load to haul they entered the gate leading into the barn yard which is west of the barn. That the water always ran into the field near the barn and runs there now as it always did – That there was a breaker near the Sycamore tree (which is near the spot where the west line of the plaintiff's land crosses said road) before the road was graded, and there is one there now, and the water runs from the road there as heretofore. That there is a waste near the orchard and the water runs there as it always did; That the second gate east of the barn was never used but was closed, and the third gate was used before the road was made & since without much inconvenience and that the fourth gate can be used now with a loaded wagon. That all said gates were in bad condition then and are so now; and that the plaintiff intended to have them all renewed before the road was graded, & that the new gates had been made for some time.

That the barn is a few feet from the road now as formerly & the water always ran there. There is a deep gully along the fence below the barn on the left hand side of the road, the water is discharged there as formerly; that since the making of the road the plaintiff has a good for watering his stock in the field below the barn; before he watered them at the river. That there is a waste near Groves line, but the water always ran there as now, and that the gulley spoken of by Lawson Poffenberger in the field back of the barn was there before the road was graded and could not be crossed.

Upon the cross examination he stated that he could not say whether the same body of water was in the gulley, spoken of, before the grading, but the water stood there and when full would spread over; that he was certain he hauled wheat from the lower bottom field in July 1854 & that he hauled it over the new road which was then unfinished at that point & that the distance from the barn to the river is from 1/4 to 1/2 mile; that the hands were at work on the road at different times, in the spring and fall; that there was a breaker at the lower end before the road was graded and that there were wastes in the corn house and orchard fields before; that the last time they hauled in near the second gate from the barn, and took down a panel of fence. That the ground at the