embankment, & could be used as before; fourth gate at barn before road was graded was in a bad condition, a drunk there; a short distance from it, 30 or 40 yards, is a level spot better suited for it; and said gate was in a very bad condition; the drains about the same as they were before the road was constructed.

And by Aaron Good, a competent witness, that he has lived in Sharpsburg since 1851; that the fences of the Plaintiff were in a very ragged condition, and some of the gates he could not distinguish from the fences, having rails sticking out there were very heavy showers in 1853 and 1856; that there were 8 or 10 of them in 1855, which tore up the turnpike at Shepherdstown; that he has travelled the road very often since it has been graded on foot and otherwise.

And the said Plaintiff then, upon the whole evidence in the cause, submitted to and prayed the Court to instruct the jury as follows:

The Plaintiff by his counsel prays the Court to instruct the jury

1st. That the Act of Assembly of 1852, Chapter 266. read in evidence by the defendants, is void, and therefore conferred no authority on the defendants, sufficient to enable them to justify in this case.

2d. That the jury find from the evidence in the cause, that a part of the Public road mentioned and referred to in the said Act of 1852, Chapter 266, read in evidence by the defendants as aforesaid, ran through, over and upon the land of the Plaintiff mentioned in this declaration; and that the said defendants proceeded under the said Act of 1852, to grade and occupy the said Public road so running through the land of the Plaintiff as aforesaid, as in the said Act of Assembly of 1852, it is provided they might; they were bound by the law of the land, either to come to an agreement with the Plaintiff for the right of way over his said land, or have an inquisition by jury taken, and payment of any damages therein that might be assessed, before the said defendants could have graded and occupied the said public road and change tolls thereon as provided for by the said Act of 1852.

3 That if the jury find from the evidence before them, that the defendants did appropriate the said Public road mentioned and referred to in the said Act of 1852, given in evidence as aforesaid, and grade and occupy the same as in the said Act it is provided they might; and that part of such public road ran through, over, and upon the land of the Plaintiff, mentioned in this said declaration; the said defendants, in grading the said road, through the said land of the Plaintiff, were only authorized and justified in making use of such earth and other material in and along the sides of the said road on the said land of the Plaintiff, as would have been necessary and proper for the repair and good order of the said road, if it had remained Public

under the supervision of the County authorities, and not passed into the control of the defendants

4th That if the jury find from the evidence in this cause that a part of the Public road mentioned and referred to in the said Act of 1852, Chapter 266, read in evidence by the defendants as aforesaid, ran through, over and upon the land of the Plaintiff mentioned in this declaration, and that the said defendants proceeded under the said Act of 1852, to grade and occupy the said Public road so running through the land of the Plaintiff as aforesaid, as in the said Act of Assembly of 1852, it is provided they might; and 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, then the said defendants would be answerable therefor.

To the granting of the said prayers or either of them as submitted as aforesaid, by the Plaintiff, the defendants by their Counsel objected, and the Court thereupon refused to grant the three first prayers so submitted or either of them, but rejected the same, and refused so to instruct the jury; and granted the last & fourth of the said Plaintiff's prayers so offered. To the ruling and refusal by the Court to grant the three first prayers of the Plaintiff, and so to instruct the jury the said Plaintiff by his Counsel prays leave to except, and that the Court will sign & seal this his bill of Exception, which are accordingly done, this 9th day of December. Anno Domini, 1858.

Thomas Perry {Seal}

Robert Douglass

vs

The President, Managers & Company of the Boonsborough Turnpike Road Company

In the Circuit Court for Washington County, as a Court of Equity

November Term, 1858

2 Bill of Exception

At the trial of this cause, after all the testimony given to the jury, both on the part of the Plaintiff, and on that of the defendants, which said testimony and evidence so given is contained in a former bill of exception taken in the trial of this cause, and to which said Bill of exception so taken, reference is hereby made and incorporated herein as part hereof, the said defendants, upon the whole of the said evidence given in the cause, prayed the Court to instruct the jury as follows:

1st. The defendants by their Counsel pray the Court to instruct the jury that if they shall find from the evidence that any acts of trespass were committed by the defendants, and shall also