

1810.

Hughes
vs
Howard.

No. 892 of the city of *Baltimore*, to prove his said location correct on the present plots, read in evidence the proceedings, certificate and plot, made out and returned by the said commissioners in 1782. And as the defendant had read in evidence the said last mentioned proceedings for the purpose aforesaid, the plaintiff offered to read the same to the jury, to show that the same did not correspond with the location made on the present plots by the defendant; but that the W N W 100 perches line terminated in lot No. 900, and not in No. 892. But the defendant objected to the plaintiff's using the said proceedings, plot and certificate, for the purpose aforesaid. And the county court, (*Nicholson*, Ch. J. and *Hollingsworth*, A. J.) determined, that inasmuch as the plaintiff had not counterlocated the proceedings of the commissioners, he could not, by the evidence offered, controvert the location thereof as made by the defendant. The plaintiff excepted; and the verdict and judgment being for the defendant, the plaintiff appealed to this court.

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

Martin and *Winder*, for the Appellant, stated that the first question was upon the first verdict found by the jury; that the ejectment was brought for *Gist's Inspection*, the beginning of which tract was admitted by both parties to be at letter I on the plots, and the only question for the jury, was as to the variation of the compass on the lines running from the beginning at I; but the jury, disregarding the admission of the parties, by their verdict found the beginning of *Gist's Inspection* to be at figure 9 on the plots. They contended that the finding of the jury, as to the beginning of *Gist's Inspection*, ought to have been rejected as surplusage, and the court should have corrected the verdict so as to make the beginning at the letter I, and rendered judgment thereon. If the jury find what is contrary to the agreement of the parties, it is mere surplusage, and judgment is to be entered on the remaining part of the verdict. They cited 7 *Bac. Ab. tit. Verdict*, (W) 41. *Dyer*, 115, 147, 183. *Goddard's case*, 2 *Coke*, 4. *Hassall vs. Juxon*, *Cro. Eliz.* 283. 2 *Roll. Ab.* 691, (R) pl. 1, 2, 3, 10. *Jenk.* 102. *Wilcox vs. The Servant of Skiptwith*, 2 *Mod.* 5. *Clare vs. Pepys*, *Cro. Eliz.* 41. 5 *Com. Dig. tit. Pleader*, (S. 17,