18.) 3 *Leo.* 80. *Tonkin vs. Croker & Billing*, 2 *Lutw.* 1216. 1 *Leo.* 66. *Foster vs. Jackson*, *Hob.* 53, 54. *Vin. Ab.* tit. *Trial*, 386, 407, 437, 438. *Pal.* 19. *Trials Per Pais*, 284. *Co. Litt.* 227. a. *Rules of Practice*, 11 *Mod.* 64, (2). 2 *Bulstr.* 56. *Tonkin vs. Croker*, 2 *Ld. Raym.* 860. *M'Ferran vs. Taylor*, 3 *Cranch*, 280; and *Hall vs. Gittings's Lessee*, 1 *Harr. & Johns.* 28. 1810. Hughes vs Howard.

Harper and *W. Dorsey*, for the Appellee, stated that two questions arose upon the refusal of the court below to enter judgment upon the first verdict—1. Did the court err in so refusing? And 2. If they did, was it competent for the appellant to avail himself of it on his appeal? They admitted, on the *first question*, that the court might mould the verdict so as to carry the intention of the jury into effect; but they contended, that if it had been done in this case there would have been quite a different finding from that contemplated by the jury, since the jury might not have found the same variation of the compass from the beginning at the letter I, which they did from the figure 9. In all the cases cited by the counsel for the appellant, after the surplusage was stricken out, there was a complete verdict remaining upon which judgment could be entered.

On the *second question*, they contended, that the plaintiff below, on the refusal of the court to enter judgment on the verdict, should have availed himself of the error at the time by an appeal or writ of error; but having submitted to the decision, and prayed the court to award a *venire de novo*, which was granted to him, he has waived all error, if there was any.

On the question arising on the *bill of exceptions*, they referred to *Hammond, et al. Lessee vs. Norris*, 2 *Harr. & Johns.* 148. *Keedy vs. Chapline*, 3 *Harr. & M'Hen.* 578; and *Jarrett's Lessee vs. West*, 1 *Harr. & Johns.* 501.

Chase, Ch. J. delivered the opinion of the court. As to the first question in this case arising on the refusal of the court to enter up judgment on the verdict of the jury.

It appears to the court that the verdict was insufficient, and that the court below did not err in refusing to enter judgment on it, and in granting a *venire facias de novo*.

The jury were concluded by the admissions of the parties, and ought to have found the beginning of *Gist's Inspection* at I, the place admitted; but having disregarded