

1810.

Hughes
vs
Howard

the admissions of the parties, and found the beginning of *Gist's Inspection* at a different place, figure 9, the subsequent finding of the jury is predicated on that mistake, and the courses and distances of *Gist's Inspection*, as found by the jury, must run from figure 9, and the court have no power to change the verdict, and to lay them down from I, contrary to their intention plainly expressed.

If the verdict of the jury is insufficient, or contrary to the admissions of the parties, the court have the power of granting a new trial, or ordering a *venire*, for the attainment of justice.

It is the acknowledged and exclusive province of the jury to decide on the variation of the compass, and to make such an allowance as corresponds with the proof, and will advance justice. The juries, in fixing the variation of the compass, are not confined to any certain rules, but are governed by the circumstances existing in the case. The juries, in some cases, have refused to make any allowance, in others they have allowed at the rate of one degree for every twenty years, and in others they have been influenced by ancient runnings and proof of possessions. There being, therefore, no certain criterion by which the allowance can be ascertained with precision, it would be assuming too much in the court to change the verdict in this case, by running the courses according to the patent of *Gist's Inspection* from I, instead of the figure 9, with the same allowance of variation.

[(a) It appears to me that the plaintiff has relinquished all advantage he might have been entitled to, by acquiescing in the opinion of the court, and moving for a *venire facias de novo*, and obtaining a new trial. The ground of the motion was the insufficiency of the verdict, and was granted at the instance and on the suggestion of the plaintiff. If the court below had erred in refusing to enter up judgment on the verdict, and the plaintiff had rested his case on it, judgment of *non pross* would have been given, and the plaintiff could have obtained redress by writ of error; but according to this mode of proceeding, if sanctioned by this court, the plaintiff will have the benefit of a second trial, and the right of afterwards questioning the judgment below. The *venire facias* was granted on the motion, and

(a) The part here inserted in *crotchets* did not form a part of the opinion of the court.