

No. 12901

Supreme Court of Illinois

Galena & Chicago Union

R. R. Co.

vs.

Yarwood

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G. E. H. R. R. Co.

b.

Yarrowood,

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~~Yarrowood,~~

~~Yarrowood,~~

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United States of America
State of Illinois

Came before the Honorable Isaac G. Wilson Judge
of the thirteenth Judicial District State of Illinois
and Presiding Judge of the Kane County Circuit
Court at the November Term of said Court began
and held at the Court House in Geneva in said
County on the seventh day of November in the year
of our Lord one thousand eight hundred and fifty three

Present	Hon. Isaac G. Wilson	Judge
"	Mc. Me. Boyce	State Attorney
"	Coak. B. Spalding	Sheriff

Attest L. Dearborn Clerk

And Whereas heretofore to wit on the 13th Day
of October AD 1853. there was filed in the Clerk's Office of the said
Kane County Circuit Court, of which the following is a true copy

State of Illinois

Kane County

Lewis N. Gamwood

Kane County Circuit Court Nov. T. 1853

vs
Case

The Galena & Chicago

Union Rail Road Company

Will the clerk issue a summons
in the above entitled case to

the Sheriff of Cook Co. returnable at the next term of said Court

Damages \$10,000.

Edm. Gifford

Oct 3^d 1853.

Proffo atty

upon which said proffo a summons issued
(as therein commanded) which is in the words and figures
following to wit

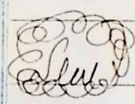
State of Illinois

Kane County

The People of the State of Illinois to
the Sheriff of Cook County Greeting

We command you that you summons the

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Galena & Chicago Union Rail Road Company if they shall
be found in your county personally to be and appear before the
Circuit Court of said County on the first day of the next Term
Thereof to be holden at the Court House in General in said County
on the first Monday of November next to answer unto Lewis
N. Manvord in a plea of Case to the damage of the said Plaintiff
as he says in the sum of Ten Thousand Dollars. and have you
then and there this writ with an endorsement thereon in what
manner you shall have Executed the same

 Wm. Luther Dearborn clerk of our said Court
and the Seal thereof at General in said County this
13th day of October A.D. 1833.

Luther Dearborn clerk
By G. A. Blanchard Deputy
and upon the back of said summons was the following
Endorsement to wit

Kane County Circuit Court November Term A.D. 1833
Lewis N. Manvord v Galena & Chicago Union R.R. Company
Summons - Case - Gifford Attorney

Served by reading to William M. Larabee Secretary of
the within named Rail Road Company October 19th 1833. and John
B. Turner President of the within named Rail Road Company Oct-
ober 24th 1833 and delivered to each of them a copy of this writ

3 services 1.00

2 copies 1.00

3 miles 1.00

1 Return 1.00 2.00

Cyrus P. Brasley Sheriff
By J. A. Norton Deputy of Cook County

And afterwards to wit on the 28th day of October 1833
the following Carr was filed in said Clerk's Office which is in the
Words and figures following to wit

State of Illinois

Kane County ss Kane County Circuit Court

November Term A.D. 1833

Lewis H. Garwood

vs

The Galena & Chicago
Union Rail Road Company

Lewis H. Garwood by Amos L. Gifford
his attorneys complains of the Galena & Chicago Union Rail Road
Company a corporation duly organized under the Statute of the State
of Illinois who having been duly summonsed is in a plea of Trespass
on the case for that on the second day of August in the year Eighteen
hundred & fifty-two at Elgin in the said County of Kane the said
Defendants were then and there the owners & proprietors of a certain
Rail Road called the Galena & Chicago Union Rail Road then
constructed & built from Chicago in the County of Cook in said
State to Belvidere in the County of Boone and State aforesaid and
were then & there common carriers upon said Road and the owners
of certain Engines passengers & freight cars which the said Defendants
were then & there for a long time before that time had been running
over said Road every day Excepting Sundays & from time to time
from & to the said Chicago & Belvidere & from & to intermediate
Stations on said Road for the carriage & conveyance of passengers
& freight from & to the said place for hire & reward to their instant
benefit and thereupon afterwards (to wit) on the day & year last
aforesaid at Elgin in said County of Kane the said Defendants
receiving the said plaintiff in and to one of their said cars ^{as a passenger} for
a reasonable compensation to them the said Defendants in that behalf
to be conveyed from the said Elgin to Clinton in said County of Kane
the said (Elgin & Clinton in said County being the Stations or stopping
places for the said cars on said Road) and it then became and
was the duty of the said Defendants to carry the said plaintiff safely
& lawfully & without any loss to him by any carelessness negligence
or breach of duty of the said Defendants in that behalf and to fur-
nish suitable Cars & engine and prudent Careful & Skillful Engineers
& Conductors to Conduct & Manage the said & also to provide & furnish

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a permanent and substantial, safe & secure road & rail to run
the said Cars & Engines upon at the said Home County. Yet the
said Defendants not regarding their duty in that behalf knowingly
and wilfully violated their said duty and did then & there suffer and
permit their said road & rails to be and remain in an insecure, unsafe
& dangerous situation to run said Engines & Cars upon & more partic-
ularly did knowingly carelessly & negligently suffer & permit
the Iron & Wooden rails upon which the said Engines & Cars
then & there run to be constructed of poor materials & so be imperfectly
& insufficiently fastened & secured to the said road in so much
so that on the day & year last aforesaid the said plaintiff then
being on one of the said Cars of the said Defendants as passenger
aforesaid and while the said Cars were being run from the said
Elgin to the said Clinton by the said Defendants & being managed
and conducted by the Engineer & Conductors thereof & servants of the
said Defendants. and just before reaching the said station or
stopping place at the said Clinton by the action of the wheels of the
said Engine & Cars the said Iron & Wooden rails were torn up
for a great distance (to wit) for the distance of twenty feet in
consequence of the said rails being constructed of poor materials
& so insufficiently & so insecurely fastened as aforesaid the said
Car on which the said plaintiff was then & there a passenger as aforesaid
was thrown violently off of the said road by reason of which the
life of the said plaintiff was put in great peril & danger in so much
so that the said plaintiff was obliged and did jump from the
said Cars to the ground (the said Cars being then & there so off the
said track & still moving at a rapid rate over the ties of the
said road and apparently about to run off a very steep bank &
then & there being in doing which the said plaintiff's left leg was
broken near the ankle his ankle badly & severely sprained
& bruised & his body otherwise severally bruised & injured all
of which was caused by the "wreckedness" & carelessness of the said
Defendants & their servants by reason of the said injuries so

received as aforesaid the said plaintiff was confined to his room for a great length of time (to wit) for the space of four months and was sick sore and lame for a great length of time (to wit) hitherto and suffered great pain both of body & mind & by reason of said injuries was obliged & did pay Lay out & expend Large sum of Money (to wit) five hundred dollars for medicine medical aid & nursing in & about endeavouring to be cured of the said injuries & by reason of the said injuries the said plaintiff was hindered & prevented from performing & transacting his necessary business by him during that time at the said Elgin to be performed & transacted to the damage of said plaintiff of ~~the~~ ^{the} Thousand Dollars

And ^{whereby} afterwards to wit on the day and year last aforesaid at Elgin aforesaid the ^{the} Defendant being then & there the owner & proprietor of a certain rail road called the Galena & Chicago Union Rail Road then constructed from the said Chicago to the said Belvidere & also being then & there the owners & proprietors of certain Engines passengers & freight cars which the said Defendant were then & for a long time before that time had been running from time to time on said Road from & to the said Chicago & Belvidere & from & to intermediate stations on the said road and carrying passengers & freight thereon from & to the said places & from & to the ^{the} intermediate stations for hire & reward to them in that behalf did receive the said plaintiff into one of their said cars to be carried safely & carefully as a passenger for a reasonable compensation to be paid in that behalf from the said Elgin to Clinton in the said County of Kane and the said Defendant were then and there in Law bound to convey the said plaintiff safely & carefully & without loss or injury to him by any carelessness negligence or lack of duty on their part from the said Elgin to the said Clinton and also to provide a proper & safe Road proper & skillful Engineers & Conductors & treatment to conduct & run the same on said road & to run the said Engines & Cars in a safe & careful manner. Yet not regarding their said duty

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Obligations in that behalf the said Defendants on the Day &
year aforesaid at Elgin aforesaid Carelessly & Negligently
Constructed the said Road and suffered the same to remain
& to be & remain dangerously out of repair and did not in any
manner provide a safe & secure Road to run their said Engine
& Cars upon & did not provide ^{competent} Skilful Engineers & Conductors
& Breastmen to conduct the same but on the contrary the said
Cars ~~that~~ into one of which the said plaintiff was received & in one
of which he was then being conveyed from the said Elgin to the said Clinton
as aforesaid by the said Defendants was run over the said Road at
double the ordinary speed and much faster than the same could
be run over said Road without putting the lives of all the passengers in
said Cars in great danger & peril & ⁱⁿ consequence of the great and
dangerous speed at which the said Engine & Cars were then & there
run and driven over the said Road from the said Elgin to the said
Clinton and just before reaching the usual stopping place at the
Clinton the iron & wooden rail of the said Road was torn up
for a great distance to wit for the distance of twenty feet & the
~~car~~ ^{car} in which the said plaintiff then was as passenger as aforesaid
was thrown violently off of the said tracks by reason of which
the life of the said plaintiff was in great peril and while the
said Car was so off of the said tracks & said Car still being
still driven at a very rapid rate over the ties of said Road &
apparently about to be driven down a very steep bank then &
there being the said plaintiff to escape the impending danger &
he saw himself jumped from the said Car to the ground & by reason
of which his left leg was broken near the "ankle" his "ankle"
severely strained & bruised & his body otherwise severely bruised
& injured all of which was caused by the imprudence carelessness
& negligence of the said Defendants & their servants. The said Engine
Conductors & Breastmen by reason of the ⁱⁿjuries so received as
aforesaid by said plaintiff was confined to his room for a great
length of time to wit for the space of four months and was sick

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Sore & lame & suffered great pain both of body & hand for a
great length of time (omit) hitherto and was obliged & did pay
lay out and expend large sums of money (omit) from hundreds of
dollars for Medicines Medical aid Nursing & in & about endeavouring
to be cured of the & injury & by reason of said injuries rendered
absent from performing & transacting his necessary ^{business} ^{affairs}
by him to be performed and transacted during that time at
Elgin aforesaid to the damage of said plaintiff ten Thousand
Dollars

And whereas afterwards (omit) the day or days Last
aforesaid at Elgin aforesaid the said Defendants were the owner
proprietors of a certain Rail Road, also of certain Cars
& Engines & were then & there running the same on the said Road
& were then & there engaged in carrying freight & passengers for
hire & reward to them in that behalf from Elgin in said County
Kane County to Clinton also in said County & being such
carriers of passengers the said Defendants then & there received
the Plaintiff into one of their said Cars as a passenger for a
reasonable compensation to be paid to them in that behalf to be
safely carefully & securely Carried from the said Elgin to the
said Clinton it became & was the duty of the said Defendants
to have & keep in order & good repair, a good safe proper and
secure track on which their said Engines & Cars should run in
safety & also to have suitable & safe Cars & Engines for the
conveyance & Transportation of passengers and also to have good
faithful sober Skillful & discreet Engineers & Conductors &
Firemen & to run said Cars & Engine with proper speed safely
& carefully over & upon said Road yet the said Defendants not
regarding their duty in that behalf did not provide a good safe
secure and proper track on which their said Cars & Engines
should run with safety but on the contrary they their said
track was improperly insecurely negligently & carelessly constructed
& was dangerously out of repair & their Engine & Cars were not run

& upon the said Road in safety. Nor did the said Defendant
 "omit" on the day & year & at the place aforesaid employ Suitable
 Engineers Conductors & Breakeven & run their said cars at a safe
 & proper speed, but on the contrary the said Defendant then
 & there run their said cars so carelessly negligently & with such
 dangerous rapidity over upon the said Road as in consequence
 of such improper & careless speed and improper of the said train
 that heretofore (omit) the day & year aforesaid, while I Plaintiff
 as such passenger as aforesaid the car in which said plaintiff
 was riding was thrown with great violence off the track & the
 said plaintiff without fault on his part & by reason of said
 carelessness and improper conduct of said Defendant thereby
 came with great force & violence upon the earth & his left
 leg was thereby broken near the ankle his ankle severely br-
 uised & other parts of his body severely bruised & injured by
 reason of which injury the plaintiff was confined to his room
 for a great length of time "omit" for the space of four months and
 suffered great pain both of body & mind & was sick sore &
 lame for a long time (omit) hitherto by reason of the said injuries
 was obliged & did pay Lay out & expend large sums of money
 omit five Hundred Dollars in & about endeavouring
 to be cured thereof and was also by the said injuries so received
 as aforesaid hindered & prevented from performing & transact-
 ing his necessary business by him then & there at Elgin aforesaid
 to be performed and transacted to the Damages of Ten
 Ten Thousand Dollars

And Whereas afterwards omit on the day
 and year last aforesaid at Elgin in said County of Kane the Defendants
 were common carriers and were possessed of a Locomotion with cars thereto attached
 engaged & employed upon the said Road, tracts of the said Defendant in the business
 of said Defendants in & about carrying passengers in said County of Kane & while
 the said train was driven guided managed & controlled along the said track by
 an engine & servants of said Defendants & while the said Defendants by their

Filed by
John C. Clark,
at St. Louis,
Mo.

Servants aforesaid had the care direction & management of the said train the said plaintiff at the special instance & request of the said Defendants became & was a passenger in & upon a train to be conveyed & carried from Elgin in the said County of Kane to Beloit also in the said County for a certain fare & reward in that behalf and the said Defendants then & there received the said plaintiff as such passenger aforesaid & thereupon it became & was the duty of the said Defendants to have a good safe & proper track & have due & proper care that the said plaintiff should be safely & securely conveyed & carried to said Beloit in the said County of Kane yet the the said Defendants not regarding their duty in that behalf then & there had a track so improperly & unreasonably & dangerously made and so badly and dangerous by out of repair & by their Engineers so carelessly & improperly & wrongly managed & directed said train & Locomotive that by & through the carelessness & negligence & improper conduct of the said Defendants by their said Engineers & in consequence of said improper track the said train of the said Defendant in which said plaintiff was as a passenger as aforesaid was then & there thrown off the track with great violence and thereby the said plaintiff came with force & violence upon the earth his left leg was thereby broke near the ankle his ankle badly strained & bruised and other parts of his body severely bruised & injured & by reason of said injuries he received as aforesaid the plaintiff was confined to his room for a great length of time (to wit) for the space of four months & was obliged & did pay lay out & expend large sums of money (to wit) five hundred dollars in & about endeavoring to be cured of the said injuries & suffered great pain both of body & of mind & was sick & sore lame for a long time (to wit) & during that time was hindered & prevented from performing & transacting his necessary business by him during that time to be performed & transacted at Elgin aforesaid to the damage of the plaintiff ten thousand dollars

Levis. H. Gamwood

And Whereas afterwards to wit on the 10th day of November A.D. 1853 the following plea was filed which is in

the words and figures following to wit

Name Circuit Court

the Galena & Chicago

Union Rail Road Company

ad

Lewis H. Garwood

and the said Defendant by Chas. H. Collins
their attorney comes & defend the wrong and
injury when & say that they are not guilty of the said several
supposed grievances above laid to them charged in manner and
form as the said plaintiff hath above thereof complained against
them & of this they put themselves upon the country &c

and the plaintiff's Ref doth

the like Nov 19th 1853

Gifford & Wilson

Atty for Ref

Chas. H. Collins

Defts attys

And whereas afterwards to wit on 27th Day
of March 1854 the following Bill of Exceptions were filed in said Court
which are in the words of figures following to wit

Name County Circuit Court

State of Illinois

Galena & Chicago Union

Rail Road Company

ad

Lewis H. Garwood

" Be it remembered that upon the 15th
day of February in the year of our
Lord One Thousand Eight Hundred &
fifty four before the Honorable Isaac G. Wilson Judge of said Name
Circuit Court & a jury duly impanelled to try the issues in the
above cause came on for trial and upon the trial of the issues in
the said cause the plaintiff introduced as a witness

Samuel L. Jones — who being duly sworn said that he was
present at the time of the accident when the plaintiff sustained

11 74
Sold by
John G. Clark
to Dec 22.
1883.

the injury complained of. it occurred about $1\frac{1}{2}$ miles below Elgin
on or about the 2^d day of August 1883 plaintiff got on Cars ^{at Elgin} to go to
Clinton. it was in the afternoon. Reffs myself got on cars at the same
time to go to Clinton on business. Wm. H. Higgins was conductor
Reff and Conductor sat on the Platform at Elgin before starting.
Albert R. Fay & I were going to Clinton we asked plaintiff to go
with us. Conductor said "yes ^{he} ~~you~~ had better get on and go down with us.
that the passenger cars were full & we should have to get in the baggage
car. we all then got on. The track from Elgin to Clinton is down grade
to the bridge, & from the bridge to Clinton a down grade but not so
steep as from Elgin to the Bridge from Elgin to the Bridge is pretty
steep. from Elgin to the Bridge is T rail & to a short distance below
bridge & then strap rail to Clinton. they had run about $\frac{1}{4}$ of a mile
after leaving T rail before accident occurred. did not notice
any decrease of speed after they passed from T rail to strap rail
I was in baggage car most of the time. Plaintiff just before or
about the time we got to the Bridge started out of the Baggage into
2^d class car. I also followed them & passed on into
first class car which was the last I saw of him. the first that
I noticed that anything was wrong was that it was rough riding
I had just gone back into baggage car. Fay was standing on hind
end of 2^d class car. I made for the door to see what was the matter
a gust of wind came & blew away dust so that I could see terrific
when I jumped off on the East side. when train stopped 2^d class car
was just opposite to me. that part of 1st class car was off of track
we ran about 300 feet after I first felt rough riding I noticed the
marks of the wheels on the ties. the time must of been 2 or 3 or 4
minutes. when the cars stopped we were in as cut there are always
ditches at the side of the track in a cut. there was a ravine and
culvert back of where the cars stopped, where I noticed the marks
on the ties were first behind where cars stopped. there was a piece
of the iron rail torn off. about 5 feet back of where culvert
was I think there was a piece of a ribbon. saw 2 or 3 pieces

of rail that was torn off. One piece looked as if it had been broken. After I jumped off I saw plaintiff lying on the ground 4 or 5 feet back of 1st class car. he said he felt faint. said he believed he had broken his leg. I went & got him some water. we got a hand bar and put him & Mrs Fay into the hand bar & took him to Elgin and carried him to Mr Padelford's about 200 feet from the tracks we set so that we could see the tracks. while going back the track was somewhat out of repair I saw one or two snake heads. plaintiff was confined to his room 1 or 2 months. After he got out he went on crutches, two for a time. afterwards one & a cane. I was about there all the time have seen plaintiff favor the fact that was injured. After we took him to Padelford's called Doctor Vasey & Kerr, they were preparing to set his leg. Don't recollect seeing McClure, while he was sick plaintiff required much attention had watchers at night. had to apply ice all of the time to his limb. it was warm weather. he suffered pain complained of a good deal of pain. when I jumped & strivers on all fours as soon as I straightened up saw plaintiff. never run Engins took cars in afternoon. we invited plaintiff to go to Clinton Fay & myself were going on business. after we got into the cars they got into a play. pulling out "shirt tails" it was warm weather we had no rests on. plaintiff was engaged in the same way. there is also a track for Rail Road on the East side of the river to Elgin. I suppose the reason of the cars being thrown off was the breaking of the bars. Recollect seeing one bar freshly broken. I think that same cause that would have thrown off one car would throw off the other. I don't know that the baggage car went on with the train two cars were left behind 2nd & 1st class. Commencement of cut was one hundred feet back of hind end of 1st class car. it was from 100 to 150 feet from where cars stopped to Culvert think it was not 200 feet it might of been. think some of the ties behind where cars stopped were laid along by the wheels of the cars. there is a wooden rail on that a ribbon of oak and on that is a strap of iron. this was the way road was

breaking etc
 car -

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Sold by
John C. Clark,
63 Dock St.
Phila.

Constructed. Can only say that my best impression is that the
ties were slipped. I saw all 2 or 3 pieces of the iron rail off. all
that I noticed particularly was one piece. this was north of the
culvert. didn't notice any under the cars. the snakeheads I saw
on my way back to Elgin was on the Strap rail. Some of them north
of poplar creek bridge. we went back to Elgin on the East side of
the river. I do not recollect that I saw any snakehead between T
rail & the place of accident. there were ~~several~~ ^{several} places that were very rough
when I jumped & jumped with the cars not off at right angles.
I received no serious injury. We stopped our scuffling about at the
bridge. the scuffling was done in the baggage car. As plaintiff started to
go back into 1st class car. I did not chase him. Tay did. I think the
car was about the length of a car after plaintiff jumped. Plaintiff
was on the East side of the tracks. Culvert was about three feet wide.
after we got back to Elgin am confident I did not go for Dr. Tefft.
it was warm weather. In going down on cars, I only passed out
once where Tay landed was nearly opposite the hind end of 1st class car.
we were all unharmed. Now the scuffling had stopped before the
cars went off. I jumped off because I thought it would be safer
than to remain on. I did not reflect long on my danger. when the
cars stopped I think I ~~think~~ ^{think} I was nearly opposite hind end of 1st class
car. the main track ^{of road} on which we came down was on west side of the
river. it was on this track we came down ~~on~~. but went back on tracks
on East side of river. the two tracks come together near poplar creek
bridge. Direct resumed. think there was a snakehead & that the
wheel caught it & "that" that "then" off the ~~front~~ cars. if the snake-
head was less than six inches high it would pass under the wheel.
am confident that I did not state to Dr. Tefft "after we got back
to Elgin that the boys had been making fools of themselves"

Re. Ex²

Albert R. Fay being duly sworn said that he was on the train
at the time of the accident. Jones & myself was at the Depot
at Elgin. we were going to Clinton. we asked plaintiff to go with

us. we got on board & went down. We got into the baggage car it was a year ago last August. we rode in the baggage car part of the way down to the place ^{where} accident happened. It was down grade. rate of speed was good. don't recollect whether they slacked up much as they came on to the strap rail think they did a little from end of T rail to where accident occurred $\frac{1}{4}$ to $\frac{1}{2}$ mile. Last I saw of Plaintiff he went through 3rd & 1st Clap cars. This was shortly after we passed bridge just before or about the time we left T rail when I first noticed unusual motion. I was in 2nd Clap car. it was very rough. Cars appeared to run zigzag leaning over & went out on the platform & took hold of brace & wrenched it up 2 or 3 times, the times extended outside of rail. 18 or 20 inches & some of them only six inches or a foot. Perhaps there was so much dust that we could not see how far over the wheels were. After putting down brace 2 or 3 times I jumped off on the west side. Next I saw of Plaintiff he was on the hand car. Plaintiff Attorney then asked witness the following questions

What was the reason that you jumped from the cars. Question Objected to by Defendant Objection Overruled & Deft-Excepts.

Ans. I jumped because I felt in danger. I was afraid that the coupling might break & the cars smash up. I was excited because the cars were off the track. when they first took me up they carried me to the baggage car. And afterwards put me on the hand car with the Plaintiff & took me up to Elgin. Noticed 2 or 3 places on the track before we struck T rail where it was rough. Plaintiff has got a big "ankle" from the injury. I saw him 6 or 7 weeks after accident. I got out a few days before he did. he was on crutches when I first saw him. he was injured in the ankle. Bone was broken off between ankle & since he get favors that Leg. this ankle is stiff compared with the other Plaintiff's business at the time was head Book Keeper for the Elgin "factory" a fair salary would be \$500 or \$600 per annum

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John G. Clark,
55 Dock St.
Phila.

15

Ex

Walter took his place there after he was injured. Since last Spring he has been in the drug business. When the car stopped the hind End of the 1st class car was between plaintiff & myself. Before the accident we had been standing up. principally we had been scuffling some. commenced soon after we left Elgin did not scuffle a very long time at the time I jumped off did not notice any other one jump. Conductor told us on platform at Elgin we had better go in the baggage car as passenger car was full had paid no fair. Hadn't been asked for any. Mr. Higgins was conductor. Plaintiff is a stepson of Higgins place where I saw rail loose was between the place where we ran off & the "I" rail. When on the Hand car I was reclining held up by some person. at several places they held us in going over these rough places because it hurt us

Charles P. Wells being duly sworn said

that he was on board the train on which accident occurred. in ^{the} first class car. saw plaintiff on board the train. the last I saw of him before accident he was going from one car to the other. the first class car was so full that it had to stand up. I was once in the 1st class car. it ^{is} very difficult to tell how far cars run after they were off tracks. there was a good deal of excitement on board cars from one to two minutes. think they were running rather above usual speed. they ran very fast from Elgin to bridge. have no particular recollection as to slackening speed. the effect when we ran off was violent jumping up & down of cars. there was a general commotion. some exclaiming what is the matter. the Ladies screamed. some tried to Laze out. the passengers pretty universally rose up there was a general alarm among them. I did not know what was coming. don't think I could have got out if I had ^{I thought there was danger at the time} tried. After cars stopped I got out at hind End.

after passing over culvert the wheels (Eastones) run along on the ties near to the west rail, the west wheels were on the side of the embankment. the embankment near the culvert was quite a depth dont know how deep

Cross Examination

we were in the cut when the cars stopped, the hind end of 1st class passenger car was one or two rods in cut when we stopped. the 2^d class passenger car and forward trucks of 1st class passenger were off the tracks. The back end of 2^d class car. forward end of 1st class hanging out from the tracks. the Plaintiff, Fay & Jones seemed to be having a lively time in the cars. Saw no other persons injured but Fay & the Plaintiff. the screaming was nothing unusual the men did not scream as Ladies did. I thought they were a good while in stopping. heard no signal to stop. I went on in the baggage car to the junction. before the accident I saw the Plaintiff & some one playing in second class box. think the other person was Fay. Saw Plaintiff Fay & Jones chasing each other through the cars. the brakes were down at the time the cars ran off. No one who remained in the cars was injured

Direct Examination

I cannot say how long it was after I saw the boys playing that the cars ran off

John S. Brewer. being duly sworn Says

that he was on Board the train of cars upon which the accident occurred. I was agent for the Michigan Central Rail Road was on the platform of the first class car at the time of the accident. Heard the whistle a minute before the accident I jumped to the track & turned it up. stood on the platform a short time and then jumped off. partly jumped & partly fell. Forward part of the car was off the tracks when I jumped off. I am now in the employ of the Defendant. I was going over the road at the time of the

17.
of accident 4 times a day

Car Examined

The conductor took hold of brake the same time that I did. I should judge that the cars after getting off men four or five rods. might have been more. the same cause that threw off the first car. might not have thrown off the next one. It did not throw off the the hind trucks of 1st class car. But seen the young men playing in the baggage car. Plaintiff was playing there. Two of them. I also saw Jones playing in second class car Plaintiff was one. This was before accident. I went out of car just before accident. The rate of speed at which we were going previous to accident was 10 to 12 miles an hour. Speed had been slackened after leaving T rail. Think the track was in as good condition as any could be made of strap rail. Recollect seeing plaintiff & some one else scuffling in 2nd class car shortly before the accident. Think that at the time of accident plaintiff stood partly between me and conductor. I jumped off before plaintiff did. I think that if a man was careful he might have jumped off without hurting him. Just before accident heard plaintiff say "he had got rid of Samuels curse. Don't know whether it was after he went into 1st class car or as he came out. Don't know as I saw the young men chasing each other through the cars. Saw them scuffling. At the time one stopped plaintiff was ahead of hind end of first class car. on the ground. I was about opposite hind end. Where we jumped off there was no danger of cars tipping over. We had entered the cut cars could not have been going very fast when I jumped for they stopped in going the length of a car. So far as I could see the brakes were put on. I heard the signal to put down brakes

Driver resumed

^{Saw} ~~and~~ the brakeman on the hind end of 2nd class car put on his brake. He then jumped off. Noticed that we were in a cut when I jumped. I did not pick out any particular spot when to land. I came down on my hands and knees. Barked my skin a little

Dr. W. L. McClure. being duly sworn Aids

That he knows the plaintiff. Attended him as his physician before the accident. By jumping from cars the bones of the ankle were fractured. Dr. Vasey had dressed the limb before I saw it. At the time I saw the plaintiff the limb was in proper splints. I attended him daily for 3 or 4 weeks. Had to taste pains to combat inflammation. Have never seen a good ankle made after such a fracture. That is the experience of all physicians. The difficulty of putting on splints to compress limb is that there is so little flesh, that if they are put on tight enough to keep bones in place there is danger of (Slaughtering) inflammation (sores) and that the piece of bone might wholly drop out. The probability is that plaintiff will never have as good a limb as before though it is not impossible. I have examined the limb a good deal and tasted some pains to ascertain the results of the case. A fair fee for plaintiff's physicians bill would be \$40 to \$50. it was necessary for him to have attendance night & day for the space of three weeks. Two dollars a day would be a fair compensation for nursing & attendance. He was laid up longer than that and had to have nursing for a longer time though not so careful as for first 9 weeks.

The plaintiff here rested his case and the defendant thereupon introduced as a witness on the ^{part} of the company

John. Clark. who being duly sworn Aids

That he was Superintendent of the tracks of the Defendant & had been for 4 years & that he knew the condition of track at the time of accident. A portion of the track was flat rail & the balance T rail. From Clinton to Poplar Creek the track was in good condition. Passed over it 2 or 3 times weekly. My rule at that time at that time was to have a man to each mile. Did not put on more force there because I considered that part better than some other parts of the road.

Snareheads are caused by the breaking of the spike that holds the end of the bar ^{down}. Therever seen a snarehead caused by the breaking of a bar. The spikes that were in use on this road were wrought-iron spikes. The rail in use was thicker than that used on the Michigan Road. Not so thick as that used on the Aurora Road. Some portions of the road had not been gravelled up. Can't say how it was at the spot in question it is some 4 miles from Elgin to Clinton. From Elgin to Poplar bridge is a mile & something over. I sometimes pass over the tracks on foot sometimes on train & sometimes on hand cars. I passed over road to examine condition of tracks. Think I passed over this track some 2 or 3 days before accident. The tracks was in as good order as it could be. there was no settling that I noticed. This Rail Road was constructed in this manner. Ties were laid on to the ground across the bed of the road 2 1/2 feet apart on the ties wooden rails six inches square are laid lengthways of road on the wooden rail a ribbon of oak is spiked upon the ribbon is placed the flat rail & spiked down with "best" iron spikes the head of the spike which hold down iron rails will wear and after a time break off. The spike generally breaks just under the head in consequence of the wearing by the pressure of cars on the tracks. the Locomotive is more likely to break spikes in consequence of its greater weight than cars. In case there was a snarehead on the tracks the hind end of the train would be more likely to catch the snarehead. The passing of the wheel would have a tendency to roll up the bar. If a snarehead was up a little ways the passage of the Engine would throw it up higher & it might be caught by the next wheel. I consider this track safe for the rate we were accustomed to run it which was 12 to 15 miles an hour. Not as safe as a T rail would be for a speed of 25 to 30 miles per hour. The witness further stated that the road of the Defendant was extended from Elgin to Belvidere a distance of about 25 miles in the year 1853. that the Extension was of

T. rail. And the rail, required in the construction were handed over the track when the accident in question occurred.

Proof Examined

I was superintendant of the track from Chicago to Belvidere. My Intention was to have one man as track repairer to every mile of track. Mr. Cox was superintendant under me of that portion of the track. My direction to him were to have a man pass over the line & examine the tracks after the passage of every ^{train}. Such were my instructions from John B. Turner the superintendant of the road. The track between Elgin & Clinton was mostly cast rail. The Ribbon was wholly oak. Mr Turner was the President & superintendant of road, & it was his duty to see to the condition & repairs of the whole road. As I went over it I could notice the condition of the track. A freight-train would be liable to raise snarlheads. I should think it safe to have two trains go over after ^{without} examining the tracks. The Examination of the track was a precautionary measure to prevent the iron getting loose to the eye. It would be I think impossible to prevent snarlheads on a flat-rail.

Re Exd. These snarlheads are common on the flat rail. The settling of the track might cause them. My impression is that I passed over this flat ^{after road} the morning of the day of the accident or the day before.

It was my business to notice the road condition of the road.

John. Cox Being duly sworn said

That he had charge of the track on defendant's road from the St Charles Branch to Elgin. ^{our business was to keep the track in order} I had from 8 to 12 men in my employ. In August 1852. when this accident happened this track was in good condition for strap rail. at this point it was pretty

well guarded, was there next day after accident. Where the accident occurred, the wood rail was fine. It was about 1 mile from popular Cress. I was over the track on the day of the accident about noon or a little after. Snakeheads are caused by the breaking of the spike. This one was caused by the breaking of a spike. I never knew Snakehead caused by the breaking of a bar. Sometimes a spike draws out but rarely. Locomotives are more likely to break spikes than cars. In this case the Locomotive might have broken the spikes & then the brakes caught into the Snakehead. I think it was safe to run over this road at the rate we were accustomed to run. On the first of August 1853 the road was in good condition. This was the first accident that had occurred and the first time that any train had been thrown off on my division. I heard the plaintiff say at Lewis' Drug Store in Elgin, that he did not care so much about the hurt as he did the foolish manner in which he did it. This was after he got out doors and was going about on a crutch or crutches.

Crop. Examiner

This accident happened about 4 P.M. I had passed over the road about noon. I think that between the time I passed and the train on which plaintiff was, passed, one freight-train had gone over the road. I think there was not two trains. Cannot say certainly. The iron of which this track was made had been previously used. It was bought from some other road. The cars ran off about 4 feet north of the Culvert. If the engine broke the spikes the Engineer would not know anything about it. After this accident I put in pine rails along there during the fall & winter. The ravine by the Culvert is about three feet deep & is dry. I never saw many spikes break from rust.

Direct resumed

The iron was about the same thickness of other

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flat rail full as chicks. In Laying the tracks we selected the iron
& threw out all that was defective. I had occasion to cut the iron
rails often. Some were very good. Some ordinarily good. I was
generally in the habit of running over the road from 3 to 6 times
a day. The hind End of 1st Class car when I saw it after accident
was about 50 feet from the culvert. The road from Poplar Creek
west was laid with T rail. Think this rail had been taken up
from some Eastern Road & laid down on this. Some 5 or 6 trains
passed over this road daily about that time. Some of them were
heavy freight trains. I considered it a safe road for the business
they were doing. Spikes sometimes break when they are new
almost as soon as they are put in. The spikes used on this road
were good wrought iron. The quality of iron was good.

Henry Beland being duly sworn

Said

that he was on the train at the
time of the accident. I was baggage master. Had been on train
for two years previous. Can judge of the rate of speed at which
a train is running. Just previous to accident we were going at
from 10 to 14 miles an hour. There was a diminution of speed
as we came down on the strap rail. The young men were scuffling
all the way in the baggage car until we struck the strap rail
thereof for minutes before the accident. When plaintiff pulled
out his shirt tail & immediately left the baggage car & went
back in the train leaving Fay to adjust his clothes. Then Fay
left the baggage car. The next I saw of plaintiff was lying
on the ground. When I last saw Fay, plaintiff was not more
than 2 or 3 minutes before cars went off. When I first saw plaintiff
after the accident he was on the ground just behind first class car.
The baggage car was not off of the tracks. It went on immediately
after accident towards Chicago. There was no danger in baggage
car. It ran as usual except that there was some jostling back
of cars on account of the next car back being off the track.

Cars run about 100 feet after getting off the tracks. We had run about $\frac{3}{4}$ of a mile on strap rail before accident. When they stopped there was a bump on the west side. I did not jump. I think there was no necessity of jumping off the train. As one was hurt who remained upon the cars. Always think it safer to remain lay on the cars rather than jump. Can't say the tracks was safe as T rail. The road was in good condition. I thought ^{better, than} this part, good deal of road. A road is entirely safe in my opinion that has snakeheads. There were snakeheads occasionally on this track. It is impossible on a flat rail to prevent snakeheads. The cars probably ran at the rate of 4 or 8 miles per hour when on the ties.

Cross Examined

I ride so much on Rail Road that I can tell when there is a snakehead without seeing it. The baggage car was not in violent motion. There was no brace man between baggage & 2^d class passenger car. I used to put on the brace there. I did. The plaintiff Fay, Jones, were loosely dressed. Fay had no suspenders on they had no vests on. Wiggins was conductor. Johnson Engineer driver both in the employ of the company. I heard the whistle of alarm & went out. I found the cars off the tracks. I knew of no accident in that vicinity before that one. Think that a snakehead might be caused by a single train even though the tracks had been closely examined. If every effort that could be made had been made an accident might occur upon the tracks.

Direct resumed

When one of the Boys pulled out another shirt tail there was a good deal of laughing. They scuffled so hard that I shut the door to of the baggage car to keep their hats from going out. I was in baggage car all the time until cars ^{ran} off.

John. Demond. being duly sworn said

That he was on the train at the time of the accident. Was agent of the Stage Company. Was in the baggage car. After leaving Elgin there was in that car 3 persons. beside the baggage ^{man} ~~car~~. (Plaintiff) Fay Jones & myself. Plaintiff Fay & Jones were scuffling & continued so until we got near the end of 1 rail or on to drop rail. Then plaintiff left the baggage car suddenly. They (Plaintiff Fay & Jones) all left nearly together & somewhat rapidly. This was 3 or 4 minutes before the cars ran off. Had been in habit of riding over the road twice a day for nearly a year and a half was going at the time of accident at the rate of 12 to 15 miles per hour. The baggage car was in some motion. It was jostled and twitched some. Think there was no danger in that car could not say at what rate we were going for the last 50 feet. Can slow Any one remaining in the baggage car would be safe

William. H. Higgins being duly sworn said

That he was conductor of the train upon which the accident happened. Two of the cars were partly off the track. All the wheels of 2nd class & the forward wheels of the 1st class car. Several persons jumped from the platform of cars Plaintiff. Fay. Jones. Brewer. & Swain jumped. I stood on platform of 1st class car. (front platform) & held brake until cars stopped. Saw plaintiff jump off. Feared from the way in which he jumped that his leg was run over. Got down & went to him. He said his leg was not run over but was broken. We were running 15 or 16 miles an hour. As soon as I found that we were off I went to the brake. Don't know the exact distance we run off. We were off for at least 50 feet. Did not run at the time plaintiff jumped very fast not more than 3 or 4 miles an hour. A light train like this would stop a great deal sooner when off than on the tracks. Striking against the ties would retard

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their motion. Just before accident plaintiff came up to me in 1st class car and said that they had had a tear or a perfect bar in "there" I said you had better look out or you will tear yourself off the track. Just then I heard whistle & said "we are off now" we stepped out in front on the platform of 1st class car. Brewer jumped from the platform before the plaintiff - plaintiff immediately after Brewer. The best part of the road was between Elgin & Junction. The road bed was perfect, dry, & hard, & the rails good. The iron on this road was as good as any I ever saw except on Aurora Road. A great many ways have been taken to prevent snakehead, but thus far it has been impossible to do it. No one on cars was hurt, & there was no danger of injury to a passenger remaining on the cars.

Crop. Eedy

Several ^{persons} ~~passengers~~ jumped plaintiff
Tay. Jones. Brewer & Swain the brakeman

G. W. Merrill being duly sworn said
that he had a conversation with plaintiff after the accident at the depot station in Elgin. He was then going about on crutches. He said he was going from one car to another at the time of the accident. That he did not blame any one so much as he did his own foolishness in jumping off.

The Defendant her rested

The plaintiff for the purpose of rebutting the Defendants testimony introduced P. H. Coffee, who being duly sworn said, that he was upon the first class car at the time of the accident. I saw plaintiff passing into 3rd class car. When the car came off it was very rough riding. I grabbed the side of the seat & held on so I could keep my place. There was alarm & confusion in car. There was noise among ^{the} women & children

I examined where the cars ran along off the tracks. Had the cars run off near the ravine the consequences might of been serious a piece of the Iron rail was torn off when the cars first run off this was 4 or 5 rods back of where the cars first stood

Cross Examined

I saw yawwood after accident on the Banks on one side of where cars stopped. There was no danger of the cars turning over in the cut where the cars stopped. There was a good deal of jolting in the cars & I took hold of the side of the seat to keep from jolting

Colton Having being duly sworn said

That he was frequently along the tracks in the Spring & Summer previous to the accident - (The plaintiff then asked the witness the following questions) what was the condition of the tracks in the Spring & Summer previous to the accident - between Poplar Creek & Clinton, " to which question the defendant objected, the objection being overruled by the court the defendant then & there Excepted

"Ans" I was over the tracks from Clinton to Poplar Creek in April 1852. Saw several snakeheads some 3 or 4 inches counted them & found 10 or 11 in this distance. one was up more than a foot. have been over the road at other times. Never saw so many snakeheads at any other time. It was very wet weather in the Spring. so wet that I had to get on to rails road tracks to get to Elgin. I informed some of the ^{agents of the} conditions of the tracks

Cross Examined

When I had come back over the road at night the rails had all been fastened down. I saw no snakeheads then

George P. Harvey. being duly sworn said
That he had conversation with
John B. Turner the President & Superintendent of the road in
relation to the condition of this portion of the track in June
previous to the accident —

The following question was put by plaintiffs counsel
"Ques" What did Turner say to you in the conversation referred
to about the condition of the track from Elgin to Clinton? "Question
Objected to by Defendants Counsel. Objection overruled by court
and defendant then & there excepted to the opinion of the court in
overruling said Objection

Ans" Turner said that the piece of road between Elgin & Clinton
together with an other piece he mentioned, was the poorest part
of their road & that they were going to relay it as soon as they
could get the iron out from the East. They were going to relay it
with T rail

Cross Examined

Don't know whether
Turner had been out on road that day or not. Think he had not
for I saw him in Chicago when I got in. They commenced relaying
the track with T rail sometime in September I think. They
have since relayed it all with T rail

This was ^{all} the end of the testimony ^{offered} in the
cause on the part of the plaintiff or defendant

The plaintiff then asked the court to give
the jury the following instructions

Lewis. H. Myerwood (
The Galena & Chicago
Union Rail Road Co

vs the Kane Circuit Court
of the Term of February A.D. 1874

by his counsel

And now comes the said plaintiff and moves the Court to instruct the jury unpamelled herein as follows viz

qualif.

given

1st That if the jury believe from the Evidence that the Plaintiff was a passenger on board of the cars of the defendant in the month of August 1882 in the County of Maine. That the cars of the defendant was thrown off the track of their road by reason of the unskillfulness or negligence of the defendants or their agent and that by means of such accident the Plaintiff was injured in his person they will find a verdict for the Plaintiff & assess his damages

given

2^d That if the Plaintiff was injured by means of an accident occurring on the rail road of the defendant while he was a passenger on their cars. That then the burden of proving that such accident was not the result of the negligence or unskillfulness of the said Defendants or their agents is cast upon the said Defendants

qualif.

given

3^d That in order to authorize the jury to find a verdict for the Plaintiff it is not necessary for the jury to be satisfied that the Defendants were guilty of gross or even ordinary neglect in the reparation of their road or management of their trains but if the jury believe from the evidence that slight neglect of the defendants or their agents was the cause of the accident resulting of the Plaintiff they will find a verdict for the Plaintiff and assess his damages provided the jury believe from the Evidence that the Plaintiff was a passenger on board the cars of the defendants at the time of such accident and injury

given

4th That carriers of passengers by rail road are bound to use all precaution as far as human foresight will go for the safety of their passengers and are answerable to injured passengers for the smallest neglect of themselves and agents in the reparation

of the track and conduct and management of the trains whereby an injury ensues.

5th the omission of any precaution which would produce or increase the safety of or reduce the probability of danger to the passengers. constitutes such a neglect in carriers of passengers as will make them answerable in damages to a passenger injured by means of such neglect

qualif 6th that railroad companies are answerable for injuries to a passenger resulting from a defect in their tracks which might have been discovered by a most careful and thorough examination. and if the jury believe from the evidence that the injury complained of in this case was occasioned by the neglect of the company or their agents to examine the tracks prior to the passage of the train on which the accident occurred they will find a verdict for the plaintiff and award his damages

qualif 7th that if the jury believe from the evidence that the company gave orders to their track owners & repairers to grooves their respective divisions of the roads after the passage of a train over the same. and that the agent who had charge of the division where the accident occurred either negligently or wilfully disobeyed that order, and by means of the neglect of this precaution, the accident and injury occurred as alleged, the jury will find a verdict for the plaintiff and award his damages

8th that if the jury believe from the evidence that the accident and injury occurred by reason of the too rapid speed of a train on a down grade or by reason of the neglect to apply the brake in time, or because of any other

neglect ~~unskillfulness~~ management of the train they will find a verdict for the plaintiff and apes his damages

9th that if the jury believe from the evidence that the accident ~~occurred~~ and injury complained of happened by reason of the neglect of the Engineer in charge of the Locomotive attached to the defendant's train to sleep a look out for snags heads; ~~or~~ or to blow his whistle in time; or by reason of the neglect of the conductor to warn the engineer in time; or by reason of the neglect of the brakeman to apply the brake in season they will find a verdict for the plaintiff and apes his damages

10th that if the jury believe from the evidence that the accident and injury happened by reason of the bad order of the track and want of due care and attendance of the company or any of their agents in the reparation of the track; or in the management and conduct of the train on which the plaintiff was they will find a verdict for the plaintiff and apes his damages

11th That the fact that the plaintiff jumped from the car while they were in motion to the ground & thus sustained the injury complained of will not deprive him of a right to a recovery against the defendants if the jury believe from the evidence that an accident had occurred, that the cars were off the track and moving at the rate of from 3 to 3 miles per hour and the plaintiff had reasonable grounds to believe and did believe that his life or limb were in danger and that it was necessary to leap from the cars in order to avoid the danger which threatened him

12th that in determining the question whether the plaintiff had reasonable ground to believe himself in

Given
danger. the jury then have a right to consider the experience and knowledge of plaintiff in regard to peril of this character the commotion and consternation if any among the passengers and the fact if it be so. that one of the brascemen had abandoned his post and leaped from the case

+ 13th
Given
that the fact that the plaintiff was a few minutes previous to the occurrence of the accident and injury. scuffling & playing in a sportive manner with others on the case. will not deprive the plaintiff of his right to recover from the defendants. if the jury believe from the evidence that the defendant or their agent were guilty of any neglect however slight whereby the accident and injury occurred unless the jury further believe that such scuffling & playing contributed to produce the injury

Given
12th that in estimating the damages which the plaintiff may have sustained by reason of the injury complained of the jury if they find for the plaintiff are not confined to such damages as may have resulted to the plaintiff by loss of time & expense of medical attendance. but may give such additional damages for the loss of the natural use of the plaintiffs limb which the jury exercising a sound discretion and in view of all the circumstances may see proper to award

Given
15th that if the jury find for the plaintiff in ascertaining the amount of damages they may take into consideration the loss of time the necessary expense for medical & surgical aid for nursing & attendance. for the loss of time for the pain & suffering both of body & mind and the permanent injury to the plaintiffs and the produced by the injury received by him complained of by the plaintiff

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X
16th that if the jury believe from the evidence that the injury complained of was caused by the cars of the company being thrown off the track the defendants are bound to show that the cars were thus thrown off of the track by some cause that the utmost human skill & foresight could not have prevented and if they do show this then they are liable to the plaintiff for all the injuries suffered by Pltff in consequence of such accident

17th That common carriers of passengers are in Law bound to make a thorough Examination so far as human skill & foresight is capable of all their means of conveyance such as their coaches, harnesses, Engines, Cars, Rail Road, Tracks, previous to each and every journey

X
19th that if the jury believe from the Evidence that the motion of the cars while off of the track, the excitement among the passengers, the situation of the cars & the ground at the place where the cars run, while off of the track & all the circumstances connected with & produced by the running off would have produced in the mind of any of ordinary prudence & providence such fear of injury as to have induced him to jump from the cars then no culpability

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want of prudence or blame can be attributed to the plaintiff on account of jumping from the cars

20th — *Given* that the fact that the cars were thrown off of the track at the time of the injury complained of is prima facie evidence of negligence on the part of the defendant —

21st — *Given* that it would make no difference as to the plaintiff's right to recover, whether the plaintiff paid any fare or not, or whether he was travelling in defendant's car on business or for pleasure

all of which instructions were given by the court

The 1st 3^d 6th 7th & 8th instructions were given by the court with the following qualification

Qualification to plaintiff 1st 3^d 6th 7th & 8th instructions

Given But if the jury believe from the evidence that the negligence or want of care of the plaintiff contributed or assisted to produce, such injury the jury should find for defendant. And the burden of the proof is upon the plaintiff to ^{prove} that such was not the fact

To the giving of each & every one of which instructions the said defendant by its counsel then ^{promised} then excepted

The Defendant then asked the court to give the jury the following instructions

3^d *Refused* That the defendant as a common carrier of passengers is not an insurer ~~against all accidents~~ of the personal safety of passengers — but is liable only for the want of such care & diligence as is characteristic of cautious persons, if the defendant exercised such ^{care} diligence in the transportation of the plaintiff then the plaintiff cannot recover in this action

which instruction was refused by the court to which refusal of the court to give said instruction the said defendants by its counsel then & there excepted.

The jury thereupon retired and afterwards came into court & rendered the following verdict

Yanwood
vs
B. & O. R. R. Co. } If the jury find for the plaintiff and assess the damages at \$1000. Dues

Daniel Hall

Foreman

Upon the rendition of said verdict the defendants counsel moved the court the court for a new trial in said cause & filed the following motion

Hans Circuit Court

Galena and Chicago Union

Rail Road Company

vs

Lewis W. Yanwood

February Term 1854

and now comes the defendant by Collins & Williams its attorney & moves the court for a new trial therein for the following reasons

- 1st Because the court ^{erred} in admitting testimony on the part of the plaintiff
- 2^d Because the court erred in excluding evidence offered by the defendant
- 3^d Because the court erred in giving instructions on the part of the plaintiff
- 4th Because the court erred in refusing instructions on the part of the defendant
- 5th Because the court erred in altering, amending & qualifying the instructions of the defendant
- 6th Because the court erred in giving the instructions of the defendant as erased, altered & qualified by the court
- 7th Because the verdict is against Law
- 8th Because the verdict is against the Evidence
- 9th Because the verdict is against the Law & Evidence

Collins & Williams

Sold by
John C. Clark,
68 Post St.
Palo Alto

which motion was overruled by the court to which decision of the court in overruling the said motion for a new trial the said defendant by his counsel then & there Excepted & Moved the court to sign & seal this Bill of Exceptions which is done

J. L. Wilson

Seal

Judge

I have Examined and am satisfied with the above bill of Exceptions
Chicago March 24th 1853

B. S. Blackwell

And Whereas heretofore to wit on the 19th day of November AD 1853. it being one of the days of the County Circuit Court of the November Term thereof 1853. the following among other proceedings were had which are in the words of figures following to wit:

Lewis M. Farwood

Plaintiff

The Galena and Chicago Union Rail Road Company

by Gifford & Wiley his attorneys and the defendant by Williams Farnsworth

and also their attorneys. and on motion of defendant's leave is given to amend the plea of the general issue by inserting the words "Not" after the words they are. On motion of the Plaintiff it is ordered by the court that a jury come whereupon came a jury of good & Lawful Men to wit "Lanson Butler Alex Grimes W. L. Wilson. W. A. Little L. P. Warren Edward Bonister Samuel Berry Edward Alexander Addison Danforth Otis Scott John Haight & Col. Young who being elected tried & sworn also come and after hearing a portion of the Evidence it is agreed between the parties that the jury may separate and meet the court to morrow morning

And whereas afterwards to wit on the 18th day of November A.D. 1853. it being one of the days of said Term of the Kane County Circuit Court the following among other proceedings were had which are in the words of figures following to wit

Lewis. H. Yarwood

Galena & Chicago Union
Rail Road Company

Case

This day comes the parties to this suit and the jury heretofore empanelled herein also comes and after hearing the ballance of the Evidence. Argument of Counsel and Instructions of the Court retires under Charge of a sworn Officer of this Court to consider of their verdict

And afterwards to wit on the 19th day of November 1853 it being one of the days of said November Term of said Court the following among other proceedings were had to wit

Lewis. H. Yarwood

The Galena & Chicago
Union Rail Road Company

Case

This day comes the parties to this suit by their counsel attorneys if and the jury heretofore empanelled herein also comes. and say "they cannot agree" and are discharged from rendering a verdict herein

And afterwards to wit on the 15th of February A.D. 1854. it being one of the days of the aforesaid Kane County Circuit Court of the February Term thereof A.D. 1854 the following among other proceedings were had which are in the words & figures following to wit

Lewis H. Garwood

The Galena & Chicago
Union Railroad Company

Case

This day comes the Plaintiff
by Gifford his attorney and Defendant
by Williams Garwood & Platts their
attorneys and on motion of Plaintiff Attorney a jury comes and
it is ordered that a jury come whereupon comes a jury of good
and lawful men to wit John H. Lervey Julius A. Sparks Wesley
Wall Ham. Israel Frederick Morgan John Boyle Francis
Jepson John Loomis Daniel Hall David Martin G. J. Hanna
Lusk Bates who being duly sworn chosen tried and sworn
and after listening to a portion of the evidence it is agreed that
when the court adjourns for the day the jury may separate and
meet the court at nine o'clock tomorrow morning

And afterwards to wit on the 16th day
of February A.D. 1854 it being one of the days of said February
Term of said Court A.D. 1854 the following among other proce-
dings were had to wit

Lewis H. Garwood

The Galena & Chicago
Union Railroad Company

Case

This day comes the parties
to this suit and the jury heretofore
Empannelled heretofore also come and it is agreed between the
parties that the jury may separate and meet the court tomorrow
morning

And afterwards to wit on the 17th day of
February 1854 it being one of the days of the aforesaid February
Term of said Court the following among other proceedings were had
to wit.

Lewis H. Garwood
&
The Galena & Chicago
Union Railroad Company } base

This day comes the parties to this suit by their respective attorneys and the jury heretofore empanelled herein also come and for a verdict upon their oaths say, we the jury find the defendant guilty and assess the plaintiff damages at One thousand dollars thereupon comes the defendant and moves the court for a new trial. The court overrules the motion & defendant excepts. It is therefore considered by the court that the plaintiff have and recover from the defendant the sum of One thousand dollars damages together with his costs in this suit expended & have Execution therefor.

Thereupon comes the defendant by Williams Blakes & Farnsworth and prays an appeal to the Supreme court of this State which is allowed by the court upon the defendant entering into Bond in the sum of Two thousand dollars with John B. Farmer as security. Bond or Bill of Exceptions to be filed in forty days from this date by agreement.

And afterwards writ on the 27. of March 1857. There was filed in the Clerk's Office of the Kane County Circuit Court the following Bond which is in the words of figures following to wit:

Know all men by these presents that we the Galena & Chicago Union Railroad Company a principal & John B. Farmer as security and help jointly bound Lewis H. Garwood in the penal sum of Two thousand dollars to be paid to the said Lewis H. Garwood or to his certain attorneys Executors administrators or assigns for which payment well and truly to be made we bind ourselves Successors heirs Executors & administrators & Each & Every of them jointly & severally firmly by these presents. Sealed with the seals of the said Galena &

Chicago Union Rail Road Company acting by their President
 and Secretary and into the seal of the said John B. Turner this
 Twentieth day of March. A.D. 1857.

It is at the February Term of the
 said Circuit Court in the year of our Lord Eighteen hundred and fifty four Judgment
 was rendered by the said Court in favor of the above named Lewis
 A. Gammon against the said Galena & Chicago Union Rail Road Company
 for the sum of One thousand dollars damages besides costs of suit. And whereas
 the said Galena & Chicago Union Rail Road Company have prayed an appeal
 from the said Judgment to the Supreme Court. Now Therefore the condition
 of the above obligation is such that if the above named Galena & Chicago Union
 Rail Road Company shall duly prosecute the said appeal and will pay
 or cause to be paid the said Judgment, Costs interest & damages in
 case the said Judgment shall be affirmed the above obligation to
 be void otherwise to be and remain in full force & virtue.

In Witness whereof the said Galena & Chicago Union Rail
 Road Company have hereunto affixed its corporate seal
 & caused this bond to be signed by its President & Secretary
 & the said John B. Turner has signed the same & sealed
 it with his private seal the day & years first above written.

H. Mc Larambee
 Secretary

John B. Turner Pres.
 of the Galena & Chicago Union R.R. Co.
 John B. Turner

State of Illinois
Rand County

I Luther Dearborn clerk of the Rand
County Circuit Court in and for said county and State afo-
said do hereby certify that the above and foregoing is a
true full perfect and complete copy of the Precipe
Summons Declaration Pleas Bill of Exceptions and
orders of the Court together with the appeal bond as
they appear on file in my office and the records of said
Court.



In witness whereof I have hereunto subscribed
my name and affixed the seal of said
Court this 20th day of May A.D. 1852
Luther Dearborn clerk

Supreme Court.
The Galena & Chicago
Union Railroad Company
vs
Lewis, H. Garwood

State of Illinois.
June Term A.D. 1854.

In Error from Kane County.

And now comes the said
Galena & Chicago Union Railroad Company
plaintiff in Error by Collins & Williams its attor-
neys & say that in the record & proceedings afore-
said and in the Entering of Judgment aforesaid
there is manifest error in this, to wit,

First

The Court erred in admitting improper
evidence on the part of the plaintiff in
the trial of this cause.

Second The Court erred in giving the
4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th
instructions on the part of the plaintiff.

Third

The Court erred in refusing
the third instruction for the Defendant.

Fourth

The Court erred in overruling
the motion for a new trial in this cause.

Fifth

The Court erred in entering judg-
ment for the plaintiff & not for the de-
fendant.

Collins & Williams
attys for pff in error.

And the said Lewis H. Gamwood by Blackwell &
Beckwith his attorneys comes and says that
there is not any error in the record of
the proceedings and in the rendition of
the judgment aforesaid in manner and form
as above alleged, and thus he is
ready to verify by the record &c
Blackwell & Beckwith per

Superior Court.
Galena & Chicago
W. R. R. Company
vs
Lewis, H. Gamwood
Plaintiff in Error.

⁶⁰
Supreme Court

Galena Heitzig
U. R. Road Co.
Appellant

vs
S. H. Yarwood
appellee

Record & sign
ment of record

C. W. Min of Williams
Atty. for
J. W. in En

Filed June 13, 1884
S. Leland Clk.