Int How about his hearing?
Ans He was some deaf. In reading, you would have to read quite loud so that he could hear you.
Int As to his sight. How bad was that affected?
Ans His sight was considerably bad: I recollect it quite bad, part of the time, other times not so bad.
Int How was he in seeing objects at a distance
Ans I could not say so much about that.
Int You could not state as to that?
(Not answered)
Int State what, in your judgement, from your knowledge of the deceased, would be the value of his labor, per year, over and above the expenses of his living?
Witness. That is the expenses of himself and family?
Counsel. No, of himself and his own living. The Pecuniary value to his family.
Witness. Do you mean to say how much his family would derive from him, over and above his living and expenses?
Counsel. Yes Sir.
Ans Well it is pretty hard to get at.
Int What would be your judgement about it
Ans It would be a matter of guesswork; that would be all over and above his washing, mending, and clothing?
Counsel. Yes Sir, and whatever other expenses he had.
Witness From $50 to $75.
Int For how long a time would you say they would be worth that? From the time he was killed, for how long a

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period would his services be worth that?

Ans I could not tell that. It would be owing to his Eyesight. If he kept it. He might work for some time. but if his Eyesight failed as it had done for some years. it would be a detriment to him instead of a benefit.

Int As to the value of his services, you say that, your judgement would be from $50 to $75 at the time of his death?

Ans Yes Sir,

Int To continue for four or five years. how would it be?

Ans If his Eyesight should continue to be in the same situation, it would be about the same,

Int from your knowledge, as to whether these infirmities grow upon him, do you know as to that?

Ans I know that for the last year or two of his life he has dug most of the graves, only for the last part of it he did not dig them at all. Mr. Sharp dug some of them during the last year; that is Mr. Sharp that attends round the Court House.

Int From what you know of him, after 2 or 5 years, what, if anything, would be his value?

Objected to

Ans I do not know that.

Objection reserved on the ground that the proper evidence was, "what would be his worth at the time of his death".

Objection over-ruled

In overruling the objection the Court expressed himself thus:

"I am inclined to think that the question will come up again, and I will therefore settle it ~~now~~ Now.

There are certain rules, which may be considered ~~in the matter~~ to be ~~material~~ mathematical rules, which will determine what a persons life will be worth at a given age. But when a question comes up, of this kind, I think that the opinion of a witness may be given, as to the physical condition of the deceased person - his habits of industry, his faculty of supporting his family - all those circumstances which take it out of the Rule of annuities. It is impossible for a jury, having the general knowledge which they may have, of a mans ability, to take care of himself and family at a given age, to determine what a particular mans services may be worth to his family; and I think the only way to arrive at that is by the opinion of witnesses, founded upon experience of those matters. It is true it is not a question of science particularly, but that opinion is to be determined by the facts and circumstances which may be given in evidence to the jury, as the foundation for such opinion. I think the question, if it arises again, may be answered".

To which ruling the Counsel for the Plaintiff, then and there Excepted.

228 Def Q. State whether, from your knowledge of Mr. Wells, after the lapse of 4 or 5 years, his services or labor, would

be worth more than his Expences of living?

Objected to - first because he cannot judge any better than the jury, and Second, because it is leading.

Interrogatory waived.

Int. State how long his services would, in your judgement, amount to more than the Expenses of his living, from the time of his death?

Ans. If I state the full, it is very difficult to tell,

Objected to.

Objection overruled.

To which ruling of the Court the Counsel for the Plaintiff then and there Excepted

Int. State your judgement about that?

Ans. Well sir, If his eyesight and hearing were to fail him as fast in the next 5 years, as they did the 4 years last previous to his death, he could not have been worth anything to his family, but whether his eyesight would increase or decrease I cannot say.

(Hudsons Map Shown to Witness)

Int. Have you been on the ground where the road crosses the Rail road and where Wells was killed?

Ans. I have

Int. Have you made any Measurements there?

Ans. Yes Sir, in the fall of 1862.

Int. State whether you have ever observed a Straight line here from Phelps' House to the other side, to ascertain the depth of the depressions from one side to the other?

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Ans You stood on the South side of the ~~Rail~~ road, and I on the other side, and sighting across it took us about here (The witness indicated a position a little above his waist).

Int When was that?

Ans It was in 1862, - the year after his death.

Int Did you ever make Ephiaments again?

Ans We made ephiaments the same day - you and I went up alone. We pitched our horse on the South side, right at the School House, and walked down. We stepped the ground, and the trains run both ways.

Int State the result of that observation?

Ans That is the rail road; up here is the sign post ~~road~~ from the crossing that measured 70 feet. From there up, the cars could not be seen so distinctly as they could from this 70 feet, or higher up.

Int State for a space of 70 feet up there you could not see the track right through the cut, all the way?

Ans You could see the cars.

Int From the crossing I mean?

Ans Take a step off from there (70 feet from the track) and you can see the cars, I think there is no one place but you may be able to see the top of the Mode ~~Stack~~ pipe

Int Now then when you are in the centre of the track, can you see everything?

Ans Yes Sir, As I stated before, that is the centre of the track - You may step up 60 or 40 feet and see the trains all the way, but I dont think that after

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You step up 70 feet. You can see the train all the way.

Dot Now bring it 70 feet from the crossing?

Ans Step right up there 70 feet. I dont think you are able to see when you get 70 & 75 feet ~~back~~ from there You cannot see the train as well as you can up there.

From 70 to 80 feet is the only point, if there is any point, where you are not able to see the cars. but you may see the smoke pipe most of the way. when a man is coming up through this cutting the road is very narrow there — it is very muddy and in 1858 or 1859 it was kind of Springy, and they laid ties across the road and filled it up with gravel, and there is a place there where there is a single track Consequently the road is only, I think, about 21 rods wide.

Dot Let a man stand there, in the center of the track,

Ans He can see the train.

Dot Now let him go up on the highway and how many feet can he go where he cannot see a train?

Ans As he goes up there he can see the cars for 30 or 40 feet and see it distinctly, but it naturally goes out, and then at 70 or 80 feet he cannot see the cars. By walking up the hill ~~the~~ natural grade would hinder you from seeing the cars.

Dot Do you remember the number of feet that is included in the Knoll, that point of observation?

Ans There may be 20 feet that they are not able to see the cars so distinctly, but I do not think there is any point where you cannot see the smoke pipe. You could

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not see the cars 40 feet up, so well as you would be-
-low: forward up, there is a natural grade.

Def Suppose you walked up 300 or 40 feet?

Ans You can see very distinctly, and going up further, you cannot see it so distinctly as below.

Def Can you see them up to a point 70 feet from the crossing?

Ans My opinion is that you can.

Def Then from there you say there is about 20 feet, that you ~~could not~~ cannot see?

Ans Yes Sir, there is a space, but after you get some 80 or 90 feet you can. From that point the higher you raise the plainer you can see the cars.

Def And from the point of the Knoll to where the Ledge is, how is the view there?

Ans From the point of the Knoll you can see the top of the smoke pipe, and the top of the cars occasionally. that is my observation when we was there.

Def Do you remember the distance a man would have to travel, if he passed up beyond the ridge of the Knoll till he got up to the line of the Ledge?

Ans It would not be more than 150 feet — it would not be that I suppose.

Def In that space could the cars be seen all the way?

Ans I think they could; that Ledge on the north side was a very scattered ledge; that on the south side of the track was a very good one.

Def When you made your examination, was it not dark?

Ans There was a ledge there, as regards that he might

place himself in a position when there was fences boards obstructed his sight, and not see it, and he might step another foot and see it.

Qst That is when you go through the cut is it not?

Ans Yes Sir.

Qst I am speaking of the hedge when you are passing up there?

Ans There comes the same obstacle - a man might say that he could not see the cars, and he might take one step now and then he could see; the hedge was very little there, it was very scatters. it would be an obstruction. It is the board that obscures the sights of the cars. but stepping one step further, then you can see between the Boards.

Qst How many boards were there?

Ans I think there was 4 or 5.

Qst What fence was that?

Ans The fence running down by the cattle guards.

Qst The railroad fence?

Ans Yes Sir, Certainly.

Qst The right of Way fence?

Ans Yes Sir.

Qst Did you try the Experiment of looking at the trains as you passed, through there, from different points in that cut?

Ans Yes Sir.

Qst State how many feet in the whole cut, you observed, where the view, ~~would be~~ was obstructed?

Ans Just as I come up to you, starting from the centre

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of the track, and, may be up some 70 feet, when you get there, there is a small space where you cannot see the cars.

Ans It may be 20 feet, and you will find that it is the boards of the fence that obstruct the view of these cars.

Qst Is there any other obstruction on the whole route?

Ans No Sir.

Qst Take the cars, and say if they would be obstructed at any ~~point~~ other point except that 20 feet?

Ans No sir, they would not.

(Cross Examination by Mr. Taylor

Qst Was the hedge standing when you made this Examination?

Ans Yes Sir.

Qst When was that?

Ans It was in the fall of the year – it was election day – we went up after they adjourned in the fall of 1862.

Qst How the leaves off the hedge at that time?

Ans They were not all off nor all on. It was in the fall you know, and they fall some quicker than others.

Qst You do not mean to say there was no point between the highway crossing there, and the Summit of the of the cut in the road towards Dover, no point but what a man could see a train of cars?

229 Ans I mean to say sir, that I could not find none. You might place yourself in one position where you

could not see it. It is actually the boards that prohibits the train of cars being seen.

Int The boards on the embankment?

Ans The boards on the fence.

Int There was 5 boards?

Ans It is either 4 or 5. Yes sir.

Int When you saw them, you saw them through the boards?

Ans Yes sir, I could not see them any other way.

Int In speaking of seeing a train then, you have referred to an ordinary train?

Ans Refered to an ordinary freight train.

Int I will inquire about your acquaintance with Mr. Wells. Was there any intimacy between your family and his?

Ans No sir, not particularly – I have done work for him occasionally.

Int How long is that since?

Ans Well sir, 8 or 9 years.

Int You do not pretend to be better posted as to his capacity for business and work than the other witnesses that have testified here?

Ans I posted ~~that~~ to know him well – during the ~~fall~~ ~~and~~ summer ~~and~~ fall of 1861, Mr. Wells was one of the same company that congregated there to know the news – that was at Barns store. James Harris used to do the reading, and when he came in we would always give him a seat close to him, and he would have to sit close, or he would not be able to hear.

Int The question is whether your opportunities for knowing

the ability and capacity of this man for business and work, was better than those of other men.

Ans I do not say it is better: it is probably as good.

Int Has he done any work in the last five years?

Ans I believe I think there in the last five years to get him to plaster a cistern, and he could not do it.

Int He has not done it?

Ans No sir.

Int Then you have no knowledge, from your own observation and Experience, on that subject?

Ans When I see a man going on the street with the rim of his hat over his eyes, and feeling along, I know very well that he is not capable of doing work.

Int Pack you to tell on your oath whether you have had him in your employ or seen him work within the last five years: what knowledge do you have that enables you to swear before this jury that he is able to work or not?

Ans I cannot answer that question, when you asked me how I knew that he could not work, I told you how I knew he could not.

Int Can he or not had him in your employ?

Ans No sir.

Int And you have not seen him work?

Ans No sir.

Int Then you do not know, from observation, what his capacity is?

Ans I have not seen him work: I said that for the last year of his life he did not dig graves and that he could not dig because of his eyesight, and that Mr. Sharp did.

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Int What do you know about that, from your own knowledge?

Ans I know that you are Joseph D. Taylor because I see you. I know he is not able to work, because he is not able to move around. He is not able to dig graves.

Int And is it from that fact, and from seeing him go down the street with his hat on his eyes? I want to know how you know that fact, that that was the reason he did not dig them all?

Ans When I see a man blind, certainly I know he is blind, and I know that Mr Wells, in the fall of 1861, actually was not fit to do anything on account of his eyes.

Int You said that the reason he did not dig all the graves, was that his eyesight was not fit for it?

Ans Yes Sir.

Int Was the premises from which you came along to that, is that you saw him going on the street with his eyes — moping down?

Ans Yes Sir.

Int Is it not that he came to you and told you that his eyes were not fit to dig graves?

Ans No sir.

Int Are you prepared to swear to this jury, that at any time during the last year of his life he could not read a Newspaper through Specs?

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Ans I am prepared to say that in the Summer of 1861 and fall of 1861, that he Emphatically States that he could

not law, and that was one of the reasons that he came in to get the news.

Int Have you ever seen him with a newspaper to his Eyes?

Ans Yes Sir, he might probably distinguish a word or something of that kind. In the Summer and fall of 1841 he used to come in there frequently to get the news.



D. J. Thompson. Called on behalf of the Defendants being first duly sworn, was examined in Chief by Mr. Kendall and testified as follows;

Int Where do you reside?

Ans I have lived in Princeton since May 1845.

Int State whether you have lived there ever since?

Ans I have.

Int How long have you been acquainted with Mr. Wells?

Ans I became acquainted with him in the Summer or Fall of 1845 – I cannot tell how long I was there.

Int State whether you have known him since then?

Ans Yes Sir, I was acquainted with him – I did not see much of him the last two or three years of his life, though I was acquainted with him personally.

Int Have you ever employed him?

Ans I really could not say positively. I think he did work for myself and brother.

Int What is your business?

Ans Well we were selling goods and packing pork at that time.

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Int State what you know with regard to his age and the condition of his sight and hearing?

Ans I really do not know his age only by judging of the man. I should think he was 60 or over when he was killed.

Int What was his physical condition, as to sight hearing &c?

Ans I know his eyes was affected for some considerable time – some years – before he was killed, but as I stated before, I cannot say perhaps for the last two or three years before he was killed; I know when he formerly lived, but I was a good deal out of town, and I cannot say much about him. I saw him occasionally and knew his eyes were sore.

Int Did you live near enough to know whether these infirmities were growing upon him?

Ans Well I think they were worse at times than ~~they~~ at other times. I think sometimes they were more inflamed; at least when I saw him.

Int Do you know anything with regard to his hearing?

Ans I have no recollection about that.

Int Do you know what his business was?

Ans I think that he was one of those men that work at very little business that comes up, dig graves build cisterns, and I think when I first came into the country he worked some at carpenter and finishing work

Int Do you know of his hearing done of late?

Ans No sir I do not,

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Dft From what you know of the man what would you estimate the yearly value of his services to his family, over and above all his personal expenses, his own individual expenses & cost of living, at the time he died?

Ans I do not know of anything by which I could swear by these in dollars and cents. My judgement is that most men, when they are 60, are worth very little more than their board,

Dft What would you say of him, from what you know of him, whether he would be worth anything to his family or not?

Ans After that, for the last two or three years I could not say the worth he was, for I do not know what amount of work he did. I only speak in a general manner, that men after they are about 60 years old are worth little more than their expenses.

Objected to in the Abstract.

The Court. He can give his opinion of this man from his habits of life.

Dft With these infirmities you know of Mr. Mills having died at that age, state whether, in your judgement, the man would be more capable or less capable, with these infirmities, than ordinary men?

Ans I do not think he would be above the average of men Sir,

Dft Would he be equal with those infirmities?

Ans Well, I do not know. I do not know of any other answer to give you, than that his health and general appearance was about the average of men of his age

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His eyes at times was an ~~incumbrance~~ inconvenience, but I do not know how I could figure down, in dollars and cents, what services would be worth I think the jury know the worth of that, as well as can tell them.

Int From the period of his death – supposing him to die at 60 or 65, from that time on, for a period of years – 10 – 12 or 14 – if he had lived, taking the time together, state whether he would be any pecuniary benefit to his family, over and above his Expenses?

Objected to

Objection overruled

To which ruling of the Court the Counsel for the Plaintiff then and there excepted.

Int In such labor as you know he was in the habit of performing. Each that period?

Ans I do not think there is any man, after that time, that is worth more than he would consume. There may be exceptions, but I do not think it.

(Hudson Map shown to the witness)

Int Do you know the Position of Mr. Phelps' barn

Ans I think it is about 140 rods in my judgement, of the crossing.

Int In what direction?

Ans A little northwest.

Int And about how far?

Ans The barn is a little northwest of the crossing of the railroad.

Int How far is the barn from the rail road here (the point

when the can count up the bank)?

Ans I should think 100 rods or over,

Int State how how high this bank is from west of the crossing?

Ans When it is thrown up, I should think it is 8 or 10 feet

Int Does this bank intervene between a view from the barn and the crossing?

Ans I think it does.

Int State how the ground slopes from that point to that barn?

Ans There is quite a fall from the house to the barn,

Int How much of a fall?

Ans Well, I dont know, I should think 8 or 10 feet, perhaps not quite so much,

Int State whether a horse and buggy could be seen there at that crossing, and a train of cars in that cut looking from this barn?

Ans It is possible the locomotive may be seen, I do not know how high it is.

Int Do you think a horse and buggy could?

Ans No Sir,

Int Have you ever ascertained as to how far you could see there?

Ans No Sir I have been over when trains passed, but have not had my attention called to see any distance I got out once there, and looked at the matter, but have a very slight recollection now, I know you were there, Mr. Taylor once, but I could not swear to anything that was definite.

Int Do you Know whether Mr. Wells was acquainted with the crossing?

Ans Well sir I only know in general terms. He has lived there since the road has been built and I suppose he is like all other men. He must have had a Knowledge of it, I think, from the circumstances.

Int State whether the sound of a whistle of a train passing there, can be easily heard in town, where Mr. Wells lived?

Ans Oh yes sir, that is, the ordinary hearing. There may be exceptions in the time of very high storms and winds.

Int State whether Mr. Wells was living there at the time the Rail road was built?

Ans I think he was.

Int How long ago was the road completed?

Ans Well sir, I should think it was built in 1853 or 1854.

Int Mr. Wells was living there then?

Ans Yes sir.

Int And has lived there ever since?

Ans I know I have seen him there, and his family.

Int Trains can be seen there, and heard there daily, cannot they, some part of the route?

Ans Oh Yes sir.

Int Do you know whether he had any friends residing beyond the crossing?

Ans Yes sir, Mr. Triplett is a brother in law up there

Int Do you know of his passing up there?

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Ans I cannot say that I do know. I suppose I saw him, but I have no recollection of any particular time.

Cross Examined by Mr. Taylor

Int You say you have not been acquainted with him much for the last 2 or 3 years, that is, you have not seen him much?

Ans I can say that I was acquainted with him, but I do not know much, about him as his business.

Int I will ask you if his constitution and physique was not better than men of his age? that is taking out his eyes and hearing?

Ans I can answer that in this way: I do not know that his constitution was better than the average of outdoor men; if you take all classes of men, perhaps it was, I think his general health was good.

Int This Barn of Phelps — did you ever go down there into the tobacco stem, and look out through a crack to see if a horse and buggy could be seen at that Crossing?

Ans ~~No sir~~ I never did

Int Then you do not mean that it could not be seen?

Ans I can answer in this way, the day we came here, I went out and stood on the platform of the car, and I will swear that I could not see the end of the barn there, over the bank. I did not see the top of the barn, after we had passed the crossing, perhaps half way down the roof. There was a time when it went out of sight.

Int You was on a passenger train?

Ans Yes Sir, And much outside to see from the Platform.

Qst You never have been on the ground and deliberately examined the nature of the crossing there, to determine what the range of vision was?

Ans No Sir. I have nothing but a general knowledge, further than what I have said.

Qst Do you know the foundation of Mr. Phelps' house there?

Ans I do not Sir, only as a general thing.

Qst Supposing the fact to be that the foundation of that house was right on a level with the second story of the barn, what would be the chances then, to see a train at the crossing?

Ans I could not reason in that way. I would not certainly string them together.

Qst I do not ask for your Philosophy upon that thing, I would ask you whether a horse and buggy could not be seen?

Ans I do not know anything about the range of that foundation, but I think my knowledge in coming upon that train, satisfies me beyond a doubt, that a horse and buggy could not be seen upon that crossing, from that barn. I very much question whether they could from the roof of it.

Qst How would it be after the horse had moved up off the crossing, and moved up on the road side?

Ans I should think it would then.

Qst That it could be plainly seen from the barn?

Ans Yes Sir; that would be my judgement.

Qst Now sir, I will call your attention to a fact

that Mr. Kendall called your attention to. Was you not present when Mr. Chapman made that examination?

Ans I was there once I think when Mr. Chapman ~~made that examination~~ and myself met there.

Int Do you not remember that a train of cars passed while you were there?

Ans I do not sir,

Int Can't you remember that?

Ans I do not, upon my word; still it may be so; I would not swear I did not, and I would not swear I did,

Int Did you hear the testimony of Mr. Chapman?

Ans I heard part of it read.

Int Your mind was not refreshed particularly?

Ans No Sir,

Int Did you not examine the cut to see whether a car could be seen coming down the bank?

Ans I believe I did, I cannot swear to anything definite though, what I could swear to now, I could swear to just as well if I had not been there.

Int Mr. Wells was an industrious man?

Ans I think he was.

Int Discreet in his business and habits?

Ans Perhaps as much as men would average; not as much, as I think some men are, I think he was one of those who was very much attached to his family and did not look after it perhaps as closely as some men - he never was a ~~reminiscent~~ man to his family.

Int. Can you state how much his family was controled by him in the management and general direction of the affairs of the family?

Objected to

Interrogatory withdrawn.

Int. State whether his Physical Labors in regard to the business of the family were of any value?

Ans. I suppose that he had as much control over his family as men usually have. I have never seen anything of his control.



W. K. Waldron. Called on behalf of the Defendants, being first duly sworn, was examined in Chief by Mr Kendall, and testified as follows;

Int. State where you reside?

Ans. Princeton, Bureau County, Illinois.

Int. How long have you lived there?

Ans. Since the fall of 1856.

Int. State whether you were acquainted with Mr Wells, the Deceased?

Ans. I was somewhat

Int. State what you know about his age, his capacity for seeing and hearing and what his business was?

Ans. I should suppose him to have been in the vicinity of 60 years old. For the past 2 or 3 years after I got acquainted with him, I usually saw him going to the Cemetery - I never saw him then digging

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graves or anything; I saw him working in gardens.

Int What do you know if anything about his sight & hearing?

Ans In the Spring, Summer and fall of 1860 I became more intimately acquainted with him, and I then discovered that his eyesight was poor. I saw him quite often then,

Int State what you know as to his business and as to his infirmity of sight, or any other infirmity, that you might think might be an impediment to his labor?

Ans I think it was at that time - the Spring and Summer of 1860 he complained very much of his eyesight at times, on several occasions, to me,

Int State whether, from what you know about his labor at this time, it interrupted his labor, or whether he had to suspend labor on account of it?

Objected to as leading

Objection overruled.

Ans All I know about it is that in 1860 - the Spring of 1860 I think; I kept my horse at Princeton where he was nearly opposite where he lived. He would very often come over there while I was stitching up. Once I saw him in the Summer of 1860 to look at a well I had - which was near done and I wanted him to clean it out. He assured me that he was not digging wells, and I think he alleged that it was on account of his eyesight. I think that both I would swear to it. I then went after him

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again to see if he could ascertain when I could water by digging, and telling him to dig a well for me. He objected to dig it,

Int On what account was it?

Ans I would not swear what his objection was;

Int Was it on account of some infirmity?

Ans To the best of my recollection it was that he was too old, and his eyesight, I am quite positive it was not that he would not do it,

Int State to the jury, from what you know of Mr. Wells, as to his physical condition, and as to his habits of labor, what would be the pecuniary value of his services to his family per year, over and above all personal expenses of living &c for himself?

Objected to

Objection overruled;

To which ruling Counsel for the Plaintiff then and there Excepted.

Ans It would be very difficult to answer. My opinion is like Mr. Thompson, that very few men can earn their living after 60, with manual labor, I think men who are mentally endowed can more than do it,

Int When they had property to manage?

Ans That might be,

Int Such when labor is all?

Ans I think men generally could not,

Int But with regard to Mr. Wells, I ask you think from his age, and his infirmities his labor would be worth anything to his family, from that age, and if so, how much,

(and I take the period at five years) supposing he had lived, what would his labor be worth over and above his personal expenses and the cost of living, for himself?

Objected to

Objection overruled

To which ruling Counsel for the Plaintiffs then and there excepted.

Ans It would be very difficult for me to say what he was worth in so much in dollars and cents, I could only judge generally; Knowing him, with his infirmities - his eyesight quite poor the last time I knew much about him, a little deaf, and the slowest man I ever did know, and of his age; it would be the only mode I have of coming at it. I do not think he was calculated for many kinds of work.

Int From these facts state what his services would be worth over and above his Expenses?

Ans I dont think his services would be worth more than his living for from 5 to 8 years.

Int Suppose he were 60 his 11 years state whether his Expenses, or the labor he performed at the same time would be the more; whether he would be able to support himself during that time?

Objected to

Objection overruled,

To which ruling Counsel

for the Plaintiff then and there excepted.

Ans I think, in certain kinds of work, he might support himself for several years.

Int For how long?

Ans 5, 6 or 8 years, if his faculties were retained.

Int After that how would it be?

Ans I think he would necessarily be an invalid to his family.

(Judges Map shown to Witness)

Int State, if you were along any time making observations upon the crossing and the surroundings when he was killed?

Ans Yes Sir, I was up there.

Int Now what were the experiments you made, and the results of them?

Ans We went up by the cut with a train of flat cars, and the Engine. We placed the Engine and cars in the cut; we then started upon the Princeton road and passed up by the cut, on the road. Mr. Wells was said to have travelled, keeping an eye on the train — engine and cars — in passing up by this obstruction, with a view to see what point, if any, we could not see the train. We then moved the train out of the way, and placed ourselves behind this Embankment, leaving it to pass by us, with a view of seeing it. We then got into a Wagon and rode up and down, and then walked up and down, with the train placed in different positions, with that purpose in view. We found

that standing from the crossing we could walk about 70 feet up the track and see the Railroad quite distinctly most of the way. We could see it a mile and a half. The train came in contact with this Mound, which is made each of dirt from the Railroad and highway that obstructed our view. Probably there was in the neighborhood of 30 feet there that we could not see the train. That is we could not see what was behind that bank, with the train we had (which was flat cars). I think, from the observation I took, an ordinary train could be seen from any point either one end or the other, at any point. This embankment shuts off from view, it is according to where you are placed. But I think, with the train we had, those cars was the most it obstructed the view.

By Mr. Taylor.

Ques How many cars had you on?
Ans I think we had 5 or 6 cars.
Ques What was the length of that train?
Ans I think it is in the neighborhood of 30 feet. Two cars ahead.

By Mr. Kendall.

Ques State whether you made any observations from the

high point of ground in front of Mr Phelps, ~~house~~ in a straight line till it strikes beyond here, to see the depth of this depression?

Ans We did – I did.

Int How is that?

Ans I went back of the hill, and took a view across and got some mark or spot upon the high post, and I concluded it was some 4 or 5 feet from the level: not that I have made it very exact.

Int ~~How~~ when were these cars in the cut when you were behind the embankment?

Ans Sometimes we had the engine at one point, and sometimes at another – we moved back and forward.

Int How much of the whole distance in coming up from the crossing towards the high ground, was obstructed so that you could not see the train? How many feet of track did that obstruction contain?

Ans Right at this point there is an obstruction of about 30 feet – it matters not if you are a little east of it, directly north of it, or a little behind it. It obstructs a little, about 30 feet. Then beyond here, over that bluff, there is a fence but that renders no very great obstruction except from the fact that one board might keep from view one car. but, as a train, you could see it. I do not think it was over 30 feet where it would wholly obstruct the view of the train

Int. And you say that for 70 feet from the crossing you could see the train?

Ans. Yes Sir, we could see a train for 70 feet there we had a pretty good idea of that because I took a tape measure, and I marked as far as I could with the tape measure as I could get a good view, and that was 70 feet. Where you are on the high ground near Mr. Phelps' house, the most commanding views in the neighborhood. You can see it for two miles.

Int. Do you know whether Mr. Hall had crossed this track frequently, and knew the location of the road there?

Ans. I do not. I don't know that he ever crossed it.

Int. You have no personal knowledge of that fact?

Ans. No Sir.

Int. Do you know of his relatives living beyond there, north of the road?

Ans. I know only by reputation. Two persons who are said to be relatives live there.

Cross Examined by Mr. Taylor

Int. I understood you to say that you measured the distance, and found it to be about 70 feet?

Ans. Yes Sir

Int. And for most of the way you had a good view of the Railroad?

Ans. Yes Sir.

Int. And that a man in a buggy could see it?

Ans Yes Sir.
Int I will ask if the engineer of an approaching train, would have an Equal view of a buggy?
Ans I think he could
Int Exactly?
Ans Yes Sir,
Int You are not going to swear to this jury, that there was only 30 feet of Space between the crossing and the highway - all through this cut - that flats could not be seen? You speak of freight cars & passengers?
Ans Well I mean to swear this, that if the train should be all flats, if one end of the flats could not be seen I think you could see the other. Whatever kind of a train, whether flats or anything else, you could see either one end or the engine.
Int Do you swear that a person standing where Chapman stood, could see the smoke stack?
Ans I think I will swear so
Int Answer that question? Right where Chapman stood?
Ans I swear that I saw one
Int At that position?
Ans I will swear.
Int Right where Phelps and Chapman stood and worked?
Ans There might be a fence board which would obstruct as I ~~stood~~ said, before a board might be in such a range that you would not see that car, but you

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might see another.

Int Is it not a fact that they come in a horizontal range

Ans Yes Sir.

Int If the boards are level, and the rail road is level, why is it that you can see only one part when the other is obstructed?

Ans In the first place there is a large mound there and the fence goes up over it, and then this fence is no very straight.

Int Is there a fence to the rail road?

Ans That is the fence I am speaking of. The fence does not run over a level surface.

Int How far east did you take that train when you went up?

Ans I think it was moved up out of the cut?

Int Will you swear it was as far east as the whistling post

Ans No I would not, because I was not paying so much attention to it. I recollect once when they went back, we went down to take our position and see it come by.

Int What was the occasion of your going out?

Ans I went out with Mr. Kendall.

Int Was any other party out on that occasion?

Ans I think not.

Int Myself, or anybody else?

Ans No Sir.

Int Do you know whether we were invited out?

Ans I do not.

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Int Did you see any other party coming out there
Ans I did not.
Int Did you see Paddock and me going up there, just where you stood down in the cut?
Ans No Sir.
Int You only saw this train in the cut nearest the crossing; how can you swear that you could see it two miles?
Ans I swore that any train can be seen in front of the house a mile and a half, at least, and perhaps two miles
Int Did you ever see if that could be so or not?
Ans Yes Sir, I have often looked. I have travelled it a great deal.
Int Did you ever see a train coming in there, and see it right through by the crossing?
Ans Yes Sir, I have.
Int When did you do that?
Ans I do not say that I have watched it, I swear that it can be seen, I have watched it coming up from the watering place, from the hollow below, to that point, and it satisfies me.
Int You speak of that as your judgement; You do not speak of having been there and settled it from having experiments in that way?
Ans Not by standing still I have not; coming to the point - I have
Int You do not pretend that you are any better acquainted with Mr Wells as to his ability to labor

PRINCETON

WAY

HIGH

A TO

TRA

F TO

C TO

BAN

WHI

BEYO

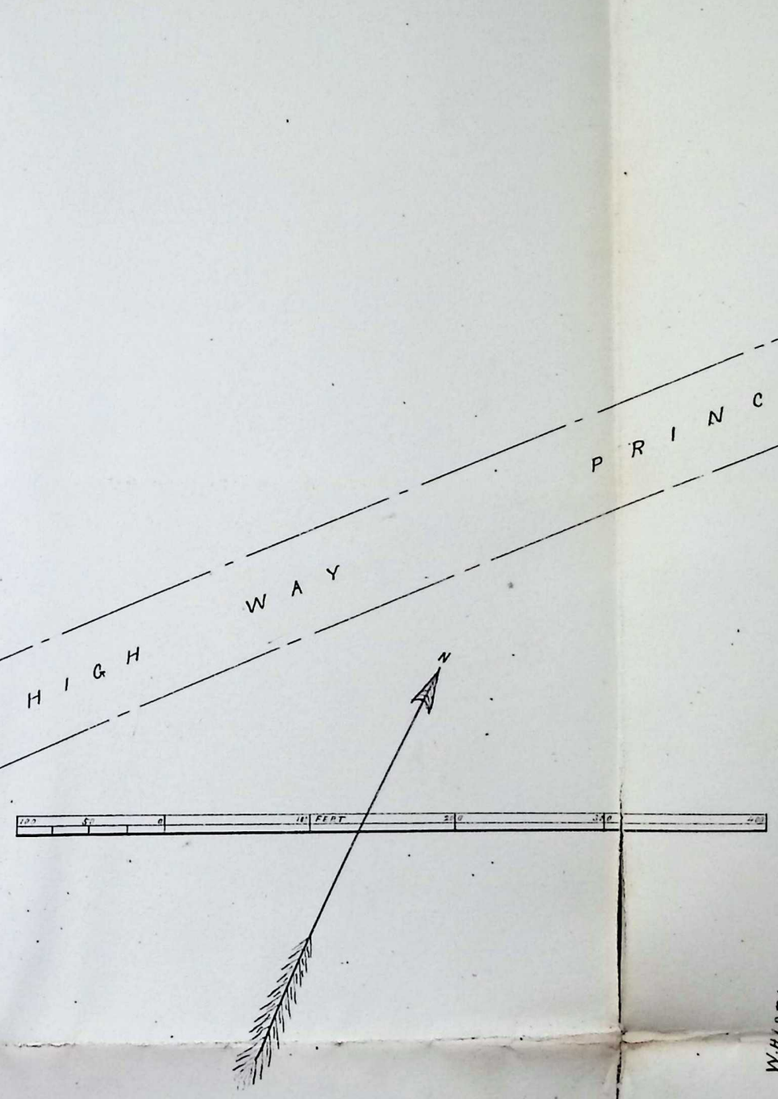
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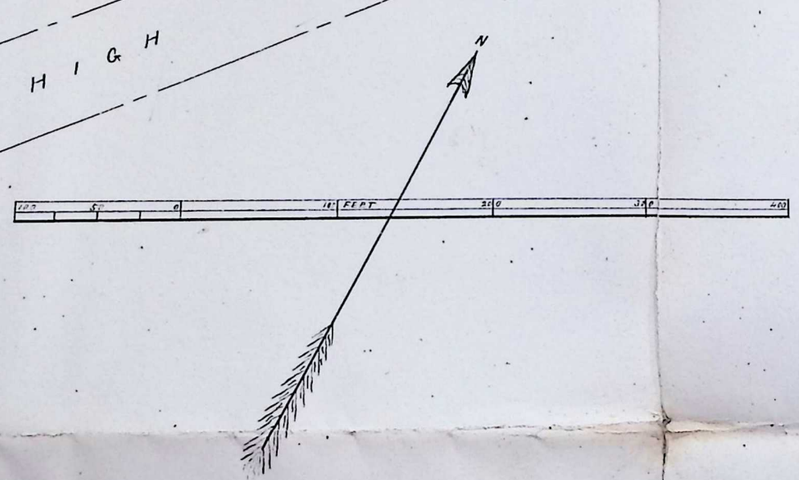
FRON

W. HISTLE



PRINCETON TO DOVER

HIGH WAY



A TO B = 200 FEET

TRACK AT A 4½ TO 5 FEET BELOW GROUND AT B

F TO C = 275 FEET CUT F TO C ABOUT 6 FEET

C TO D = 300 FEET CUT RUNS OUT AT D

BANK D TO E 1600 FEET LONG 10 TO 12 FEET FILL MOST OF THE WAY

WHISTLE POST 80 RODS FROM CROSSING A

BEYOND E IS A SMALL CUT 600 OR 700 FEET LONG 4 TO 6 FEET DEEP

AT G IS A SMALL KNOLL 30 FEET LONG 4 FEET HIGH THROWN FROM HIGHWAY PROBABLY

ANGLE BETWEEN HIGH WAY & RAIL ROAD = 22°

STANDING AT C CAN SEE HEAD OF A HORSE PASSING ON HIGH WAY

FROM E FENCE OF HIGH WAY CAN BE SEEN FROM CROSSING TO POINT OPPOSITE E

W. WHISTLE

E

than the witnesses who have testified for the Plaintiff do you?

Ans I make no pretentions at all.

Int Had you any particular intimacy with Reed?

Ans None, only what I have stated.

Int For the last 4 years you have been very little of home?

Ans Very little for the last couple of years.

Int Very little for the last 4 years?

(Not answered)

L. K. Wilson, called on behalf of the Defendants, being first duly sworn was examined in Chief by Mr. Matthews and testified as follows;—

Int What is your business?

Ans Civil Engineer.

Int How long have you been in that business?

Ans More than ten years.

Int Has that been your business for life?

Ans Yes Sir

Int Exclusively?

Ans Yes Sir.

Int In whose employment are you now?

Ans The Chicago Burlington & Quincy railroad company.

Int How long have you been in their Employ?

Ans About 4 years: I do not remember the time.

Int Did you ever go to the Crossing of a highway called the Princeton and Dover road, with the roads of the Defendants

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a short distance eastward from the Princeton Station, to make a survey of the ground?

Ans Yes Sir.

Int Did you make one?

Ans I did Sir.

(Map handed to Witness)

Int Is that the one you made?

Ans Yes Sir, that is the plat I made upon the Survey.

Int It correctly represents the ground does it?

Ans Yes Sir.

Int What is the angle of divergence of the Railroad and the highway?

Ans About 22 degrees.

Int State what A represents?

Ans The crossing of the Railroad and the highway.

Int What does B represent?

Ans That represents the place where the highway commences to descend.

Int From that point what is the distance to the crossing?

Ans 200 feet.

Int C. What point is that?

Ans It is a point in the cut where it is about the deepest.

Int State what the depth is?

(Not Answered)

Int What point is the D?

Ans It is the place where the rail road leaves the cut, and the embankment commences.

Int Explain the various distances?

Ans The track at A is 4½ to 5 feet below the level of

250

the road and highway at H. From F to C is 275 feet; the cut there varies – it is about six feet deep. From C. to D, the cut goes less and less to its termination: it is 300 feet to the point where the cut runs out and the fill Commences. D to E is 1600 feet – it is from 10 to 12 feet high – at the end it is less of Course, but nearly all the way it is from 10 to 12 feet. The Whistle post is 80 rods from the Crossing. From E is represented the other cut, from 4 to 6 feet deep. At G there is a Small Knoll, it is about 4 feet high and perhaps 30 feet long; that is, at its base. as it rises it tapers and is narrower. Standing in the cut at C there was a Horse passed down the road and his head was visible except a very short distance as he passed behind that Knoll – I should say from 15 to 20 feet there might be where the horses' head was not visible. Except at that point I saw it distinctly.

By a Juror

Juror How wide is the cut here (at C) on the railroad?
Ans It is about 18 feet – I did not measure it.
Juror How wide is it right on the top across between the Banks?
Ans It must be 35 feet wide.
Juror So that it Slopes up from both sides?
Ans Yes Sir, the usual Slope is that for every foot of Elevation there is 1½ feet of movement back and

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so that for 6 feet in width it would increase in width 18 feet.

By Mr. Tucker

Int Do that track Straight?
Ans For 2 Miles it is entirely straight.
Int Don have been engaged in railroading the last 10 years?
Ans I have.
Int What do you mean by a grand train?
Ans We mean by a grand train which is used in moving grand from one point to another for the purpose of raising the track; it runs to the bank, loads with grand, and runs out, and when it is done it backs up.
Int How is it usually run?
Ans The engine usually draws the train out, and when it is unloaded, it backs up.

Cross Examined by Mr. Taylor

Int When did you make this plat?
Ans I dont remember the date — it was sometime last fall or last summer — It was in the year of 1863 I know.
Int When was it you made this Observation about this Mine?
Ans At the time I made the survey.
Int Will you state whether that Osage hedge immediately

25-7

north of the junction, had been removed?
Ans I do not remember the bridge, I cannot state positively whether it was or not.
Int How did you ascertain the distance from A to B?
Ans By measurement.
Int You say about 200 feet.
Ans Yes Sir,
Int Why did you say "about"?
Ans From the fact that the exact point, in a road of that kind, where the descent commences is very difficult to ascertain
Int Who carried the chain?
Ans Mr. Walker and myself.
Int Who went before?
Ans Mr. Walker I think.
Int You Allege that as a reason for all these alterations, because there is no definite place of termini?
Ans I believe there was not a great many.
Int How did you ascertain the angle of this road?
Ans By measuring the distance off one road to the same off the other, and taking the distance across.
Int You make it 22 degrees?
Ans It is very near 22 degrees. It may vary a few Minutes.
Int Is it more or less?
Ans I cannot say.
Int It might have been 23 degrees?
Ans No Sir.
Int It could not have been that?

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Ans No Sir,

Inst This Cut, the east cut, designated here at the right hand side of this map, I see it marked that this cut is 600 to 700 feet long and 4 (6) 6 feet deep: do you mean that is 6 feet below the natural land?

Ans It varies in depth - at some points it is that, at others it is not,

Inst What has become of the waste dirt there?

Ans I presume it has been emptied into the Embankment, one way or the other,

Inst Have you a distinct recollection whether that dirt or any portion of it, was deposited on the bank?

Ans I think not,

Inst Any quantity?

Ans Oh, I am quite certain that a large proportion was taken away,

Inst How do you ascertain the height of that embankment, you say it is 10 to 12 feet?

Ans Sir I say that because it varies,

Inst Did you measure it?

Ans Yes Sir,

Inst At how many places?

Ans Two or three places - I do not remember - I measured the deepest places,

Inst How did you find out the depth of the balance? If you did not measure it?

Ans I believe I have not stated any depth for the balance

Inst Then you don't know the depths of the balance?

Ans No Sir, I merely averaged the places I measured,

Dett Did you make an actual measurement from the point South of this place so as to be able to state what the altitude of that cut is down by the track?

Ans I measured the heights of the general surface of the ground, above the ground, and got as near as may be, the ~~heights~~ heights of that Elevation,

Dett Why do you say "as near as may be"?

Ans I use it because I did not take it in inches.

Dett In other words because you did not measure it very accurately?

Ans I measured from the rail to the surface of the cut, and from the surface of the cut to the surface of the ground would vary in some instances.

(Birchips Map shown Witness)

Dett Did you make an actual measurement like this?

Ans No Sir, I made it from that point (the summit) to here (the natural end) and from that point down to the road. My measurement was just east of the Knoll and not west of it.

Dett Did you measure the highest point?

Ans Yes Sir, in these two measurements.

Dett How much is it?

Ans It is about 10 feet, I think the notes are there but I do not remember. The Knoll is about 4 feet above the surface of the ground,

Dett And the cut about 6 feet?

Ans Yes Sir, I think a little less than that.

Dett How far is it from E to C.?

Ans It is 275 feet - there is no earth from there (8) there, and I measures from that.

Qus What is the distance from A to E?

Ans It would be about 50 feet.

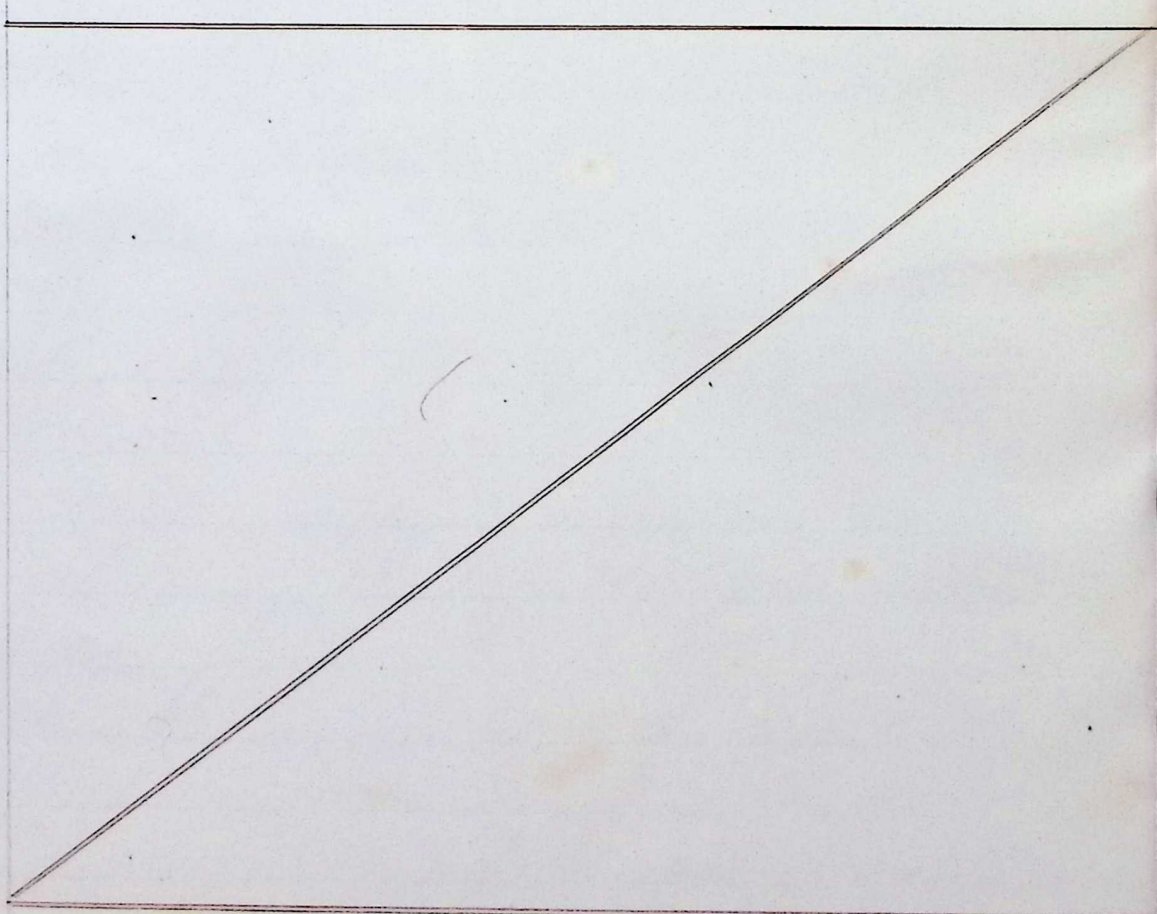


The Court adjourned until 1.30 p.m.

— Afternoon Session —



The Map prepared by Mr Hodson and referred to in his Evidence this morning in Evidence.



Mr. Kendall, on behalf of the Defendants then offered in Evidence, and read to the jury, the following Depositions, the cross Examinations being read on behalf of the Plaintiff by Mr. Taylor.

The Deposition of Winfield Green.

Int. 1 Do you know the parties to this suit or either and which of them and how long have you known them or either of them?

Ans. I do not know the Plaintiff, I know the Defendant Company have known it for three years last past

Int. 2 What is your present residence? Where have you resided for the four years last past? What is now and what has been your business for the last four years?

Ans I am now stationed at Tullahoma in Franklin County Tennessee and since the first day of July 1862 I have had no fixed place of residence but for four years prior to that I resided at Aurora in the State of Illinois I am now and have been since the first day of July 1862 a Soldier in the 89th Regiment of Illinois Volunteer Infantry. Prior to that time and during the year 1861 I was at work upon Rail roads.

Int 3. Were you in the Employment of the Chicago Burlington and Quincy Railroad Company ~~during the Years 1861 & 1862~~ the Defendant in the above entitled cause? And if so how ~~how~~ long during what period

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of time, and what during such period was your Business?

Ans I was in the Employ of the Chicago Burlington & Quincy Railroad Company during the Years 1861, & 1862. and my Business was that of a fireman on the Locomotive Engines of the Defendants.

Int 4. Do you recollect the accident which occurred at the Crossing on the Defendants road near Princeton at which one William H Wells was killed if you say you do State where the same occurred as near as you can and the time when and State all the facts and circumstances attending such accident as near as you can, what time were you upon, declare the same fully, the which direction was the same running when you upon the said train and what was the Business of each thereon, was the Bell of the Engine rung or the whistle sounded at the time or immediately prior to said accident, were the brakes put on and State fully all that was done by yourself and others upon said Train to prevent accident, at what Speed was the train running State fully and particularly all you know about the matter inquired about?

Ans I do recollect the accident at which William Wells or a person they called by that name was killed It was at the crossing of the Defendants road and the highway a short distance east of Princeton, It was in November 1861 and I think about the middle

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of that month and my recollection now is that it was on the 16th, but in this I may be mistaken, the accident occurred by the man who was killed driving his horse and buggy on the track of the Defiance and road just at the west end of the train upon which I was, struck the crossing. The train was a gravel train consisting of an Engine, tender and Eleven flats ~~cars~~ or platform cars. The Train had been out upon the track east of Princeton engaged in repairing the track and at the time of the accident was returning to Princeton. The Engine was pushing the Platform cars before it and at the time of the accident we were running at a slow rate of speed not more than ten or twelve miles per hour. There were upon the Train John McKinley the engineer who had charge of the Engine and a German, whose name I forget, whose business was to attend to the brake, My business was to fire the engine and also attend to the Brake upon the tender. The Railroad and the highway east of the crossing for half a mile were very near together and approach the crossing at a small angle for a short distance there is a cut which near the crossing I should think was five or six feet deep and gradually runs out, a few rods east of the Crossing and from where the cut runs out to some distance east of the whistling post the track is upon an Embankment eight or ten feet high, when the west end of the train reached the whistling post the

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engineer began blowing the whistle. He gave one long continuous whistle which lasted until the west end of the train was near the crossing.

As we approached the crossing we saw ~~on~~ on the highway north east of the crossing a horse and buggy with a man in it driving the horse and another man on horseback just behind him both approaching the crossing. The man on horse-back stopped on the top of the hill and in front or nearly so of a large white house and we suppose the man in the buggy would also stop but he did not and as soon as we saw that he was going to drive across the track and not stop the engineer sounded the whistle loudly and twice in quick succession to put on the brakes. The brakes were immediately applied and the engine reversed and everything done that could be to stop the train and prevent accident but it was too late and we could not bring the train to a full stop the west end of the train came in collision with the buggy. The man in it whom they called Mr. Hill was thrown out and killed. Some of the cars were thrown from the track and considerably damaged but the train was so nearly stopped that no very great amount of damage was done to it. After the collision the train did not run but a few feet

Int 5 Do you know any other matter or thing which will be of advantage to the Defendant on the trial of this cause? If yes state the same fully & particularly.

Ans I do not know of any matter other matter or thing that would be of advantage to the Defendants, that I now remember.

Cross Examination

Int 1 In what Capacity Were You employed and what were your duties on said train?

Ans I was employed as a fireman and my duties on the train were to fire the Engine and attend to the brakes on the tender.

Int 2 Was it one of your duties in your employment on said train to do anything to guard against the happening of such casualties as the one in question if so what were you to do?

Ans I have already stated what were especially my duties and it was also my duty to do anything and everything I could to prevent accidents and I did so on the occasion of the accident at which Wm. Wells was killed, I applied the brakes on the tender instantly when we saw the buggy going upon the track and at the same time with the blowing of the whistle by the engineer ordering the brakes put on.

Int 3. Have you ever been released by the Defendants on account of the Damages for which you may be liable to the Defendant in case the Defendants is made to suffer damages on account of any neglect or omission of yours on the train when the said William N. Wells was killed? If you were so released you will state when where and by whom was it in writing and may show any such

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consideration for said release. Shan that you should swear for the Defendant on the trial of this cause?

Ans I shan been and was released by the Defendant before being sworn in this cause, the release is in writing and I shan attached the same to my Deposition as an Exhibit (marked "Exhibit A"). The consideration therefor is Expressed in the release. It was no part of the consideration that I should be sworn & testify in this case.

Int 4 At what rate of Speed did the Train in question run over the half mile immediately east of the said crossing where the said Wells was killed?

At what distance as near as you can judge was the forward or West end of the said Train from the said Wells when you first saw him (Wells) on or near said Crossing?

Ans The Train was running very slowly not more than two or three miles an hour before the Brakes were Applied to stop the train and at the instant of the collision the train was barely moving we had brought it nearly to a stop. when we saw the horse and buggy going onto the track and that it was not going to stop, the West end of the train was close upon the crossing I cannot give the Exact distance I had no time to judge of that I was putting on the brakes to prevent if possible the collision but we were so near that it could not be done.

Int 5 About how many seconds intervened between

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the time you first saw ~~the~~ said Wells on or near the crossing and the time of the Collision?

Ans I cannot say how many seconds it was all I can say is that between the time when we saw that the buggy was not going to stop and the time of the Collision we had not time to stop the train though we did every thing that could be done to stop the train and prevent injury.

Int 6 Had you seen the said Wells from the Train until you saw him on or near the crossing just before the Collision?

Ans I have answered this in my direct Examination I saw the Horse and buggy and the man on horseback approaching the crossing, I saw the man on horse-back, and supposed the Horse and buggy would stop and not attempt to cross ~~to~~ till our train had passed until we were so near the crossing that when we saw the Horse and buggy attempting to cross we had not time to stop the train.

Int 7 Is it not the fact that both the railroad track as it approached said crossing from the East and the highway as it approached the said crossing from the Northeast approached the said crossing through cuts or excavations of the earth so that the depression of the ~~South~~ Rail road track and highway below the general surface of the ground and a rise of the ground or embankments fencing & hedging between the Excavated parts of said Railroad & highway near the said Crossing

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prevented your seeing the said Wells from the train until you saw him on or near the crossing?

Ans The track of the railroad from the whistling post which is 80 rods east of the crossing is upon a high Embankment until we get within a few rods of the crossing when a cut commences and runs to the crossing at the crossing it is some five feet deep. The Highway is not excavated as I recollect except near the crossing. I think the horse and buggy and the man on horseback could have been seen from the Engine and cars at all places in the highway within half a mile east of the crossing though I may be mistaken. as I have not examined the ground for the purpose of ascertaining how it is

Int 8 If in your answer to the last interrogatory you shall answer that these causes did not prevent your seeing said Wells before you saw him at the crossing you will state why then you did not see him before seeing him at the crossing?

Ans I have already stated that we saw the horse and buggy upon the Highway and supposed he would stop as the man on horseback did. If I had thought the man would attempt to cross the track I should have told the Engineer to stop the train.

Int 9 Suppose the train to be made up of fourteen empty grain flats with the Engine behind pushing the flats ahead and suppose said train to be approaching said crossing at a point Eleven hundred yards east of said crossing and the said Wells—

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at the same time to be approaching in a Buggy at a point on said Highway two Hundred yards north easterly from said Crossing in such manner said Wells in travelling over any portion of said 200 yards on said Highway have seen said flats (not the engine but the flats)?

Ans I think said Wells could have seen the train both Engine and flats at all points within 200 yards from said Crossing, if he quite soon he could if had stopped his horse and buggy and stood up in it and looked.

Int 10 If in your answer to the last interrogatory you have stated that the said Wells might have seen said flats in travelling over said 200 yards to the Crossing you will please specify particularly for what part or portion of said 200 yards would said flats be visible to said Wells and at what points on said Highway?

Ans I should judge that Mr. Wells could have seen said flats at all points within two Hundred yards. If he had stopped his horse at any point within four rods of the Crossing he could have looked eastward upon the track and have seen the train at any place within half a mile of the crossing

Int 11 About how far below the general or natural surface of the ground is the Railroad track at said crossing according to the best of your judgement?

Ans Four or five feet I should think.

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Int 12 Has any one or more of the agents or attorneys of the Defendants written you on the subject of what they desired you to swear to on your Examination in this case if so you will please append such letter to your answer to this interrogatory and mark the same a part of your answer?

Ans None of the agents or attorneys of the Defendants have written to me on the subject of my deposition or upon any other subject.

Int 13 Have you had any Communication from any person on the subject of your testimony in this case other than the officer (or his Minister) before whom your deposition is to be taken? If you will please attach the same to your answer to this interrogatory?

Ans I have had no communication from any person on the subject of my deposition. The first I knew that my deposition was wanted was a note from the Commissioner Lieut. Col. Hall to appear before him and be Examined.

Int 14 If you have had such Letter or Communication mentioned in either of the two preceding interrogatories but have lost or destroyed the same you will state fully and particularly what the contents of such Letter were or the Subject of the facts which you were desired to prove?

Ans I have had no Letter or Communication, and therefore have neither lost nor destroyed them nor is there any contents to be given.

Int 15 Do you know of any matter or thing which you

know not already told which would benefit the Plaintiff in this case

Ans I know of nothing more that will be of advantage to the Plaintiff.

Int'g Is it not your wish that the Plaintiff may be defeated on the trial of this suit?

Ans I do not know that I have any wish upon the subject, I know it was not the fault of those upon the train that the accident happened and therefore do not think it would be right for the plaintiff to recover.

Int'g Although you may be legally absolved from any pecuniary liability to the Defendants by your said release yet can you swear that you feel indifferent as to the result of this trial which may to some Extent involve your conduct in a moral point of view?

Ans So far as I am personally concerned I am wholly indifferent as to the result of this suit for I know I did all I could to prevent the accident and therefore do not feel that I am in the least to blame.

Winfield Green.

Exhibit A.

State of Illinois
Kendall County } In the Circuit Court for said County,

Samuel Winfield Administrator

Upon the Estate of
William Wells deceased
vs
The Chicago Burlington & Quincy
Rail Road Company

The Chicago Burlington and Quincy Rail Road Company, the Defendant named in the above entitled cause, in consideration of one dollar to it paid by Winfield Green, before the execution of this Release, the Receipt whereof is hereby acknowledged, does hereby release and forever discharge the said Winfield Green of and from all liability, Claims actions and causes of action, which it now has or to which it may be entitled, or which it may hereafter have or become entitled to, against him the said Green by reason of or on account of the cause and causes of action alleged and set up by the Plaintiff in the above entitled cause, and also by reason of or on account of the accident which occurred on the 16th day of November 1861 by reason of which the said William Wells named in said Plaintiffs declaration came to his death. In Witness Whereof the said Company has hereunto caused to be subscribed its corporate name and its seal to be hereunto affixed by its secretary this first day of July A.D. 1863.

Corporate Seal C.B.&Q. R.R.

The Chicago Burlington & Quincy Rail Road Company
by Chas. P. Wells Secretary

Release
Chas. P. Wells Secretary

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The Deposition of John McKinley.

Int 1 Do you know the parties to this suit or either of them and which of them, and how long have you known them and which of them?

Ans I know the Defendants Chicago Burlington and Quincy railroad Company. I do not know the Plaintiff. I have known the Defendants about six years.

Int 2 What is your present residence where have you resided for the last four years last past, what is now, and what has been your business for the last four years?

Ans I reside at present in the city and county of San Francisco and State of Cal. for about three of the four years last past I resided in Aurora Illinois on or about the first day of August 1862 I enlisted at Aurora in the Army and went to Kentucky and from there to Tennessee, serving all the time in the United States army until about February 1863 when I was discharged the service from there. When I left for Aurora Illinois where I arrived about the Middle of February 1863, and soon afterwards renewed my employment in the Service of the Defendants, I remained in the Depts employ till about the first of April 1863, I left it and went to the State of New Hampshire on a visit. I remained there about two months. I left there for San Francisco Cal. where I now

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ans. I arrived here about the 17th of June last I am now employed as engineer on the Market Street Rail Road in this City.

Int 3. How you were in the Employment of the Chicago Burlington and Quincy Rail Road Company, the Defendants in the above entitled cause, and if so during what period of time, and what during such period was your business?

Ans I was; I think I first went in the Defendants Employ in the fall of 1856 and remained steadily in such Employ until August 1st 1862 and recommenced in February 1863 and continued with them until the first day of April 1863. I was first employed as a Machinist, afterwards as a fireman and then as Engineer.

Int 4— Do you recollect the accident which occurred at the crossing on the Defendants road near Princeton at which one William N. Wells was killed, if you say you do, State when the same occurred as near as you can, what time were you upon, declare the same fully. In what direction was the train running, who were upon the said train, and what was the business of each thereof; was the bell of the Engine rung, & the Whistle sounded at the time, or immediately prior to said accident, were the brakes put on; And State fully all that was done by yourself and others upon said Train to prevent accident; at what Speed was the train running, State fully and particularly all you know about the matter enquired about?

Aug I do recollect the accident spoken of when one William N. Wells or a man who went by that name was killed. I think it occurred about the middle of November 1861, at the time of the accident I was running the Grant train, consisting of Engine Tender and Eleven ~~flat Cars~~ platform cars. I had been out of Princeton, and was returning and got to the Crossing about half a mile east of Princeton, on a highway running east from Princeton, having before I arrived at the whistling post, or at it blew a Continuous whistle, a short distance before I arrived at the crossing while I was still blowing the whistle I observed a horse and buggy, also a man on horseback a short distance behind them, the man on horseback stopped before he got to the crossing, at a large white horse, and I supposed the horse and buggy would do the same, but when I saw they did not stop, I stopped blowing the whistle and whistled down the brake, and reversed my engine, and done every thing in my power to prevent the accident, it was all too late however as I was too near the Crossing, when the train came up to the buggy, the west end of the train struck it and the collision threw off the track two or three of the cars; at the time of the accident, there was on the train a fireman named Winfield Green, and a Brakeman whose name I do not recollect, at the time I stated I whistled down the Brake, they were certainly put down by the Brakeman; when I first saw

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the Road and buggy. I do not think the Speed of the train would exceed twelve miles an hour and when the train struck the Buggy I was moving at a slow rate. When the collision took place the Buggy was about in the Middle of the Crossing and the Engine did not pass the Crossing before it stopped.

Int 5 Do you know any other matter or thing which will be of advantage to the Defendants on the trial of this cause. if yea, state the same fully and particularly?

Ans I think I have stated all that actually took place, and I cannot think of any other circumstance to relate Except to state that Deceased must have heard if he was not really deaf, the whistle a long ~~time~~ way off before the accident, and if he had heeded it, the accident would not have occured.

Cross Interrogatories and answers sworn to by the Witness on the part of Plaintiff.

Int 1 In what Capacity were you employed and what were your duties on said train?

Ans I was employed as Engineer. my duty was to run the Engine

Int 2 Was it one of your duties in your employment on said Train to do any thing to guard against the happening of such casualties as the one in question, If so what were you to do?

Ans I was to blow the whistle, and to commence blowing at the Whistling post on Eighty rods from the Crossing and to continue blowing until the train passed the Crossing.

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Int 3 Have you ever been released by the Defendant on account of the Damage for which you may be liable to the Defendant, in case the Defendant is made to suffer damages on account of any neglect or omission of yours on the train by which the said William N. Wells was killed; if you were so released, you will state when, by whom and by whom; was it in writing, and was there any other consideration for said release than that you should swear for the Defendant on the trial of this cause?

Ans There has been no understanding with the Defendant and merely about ~~the~~ release, and I have not been released, either orally or by any instrument in writing.

Int 4. At what rate of Speed did the train in question run over the half mile immediately east of the said crossing when the said Wells was killed, at what distance as near as you can judge was the forward ~~end~~ or west end of said train from the said Wells when you first saw him (Wells) on or near said crossing?

Ans The train did not run to exceed twelve miles per hour. I should think the west end of the train was down or eight feet from the buggy in which Wells was when I first saw it on the crossing. I could not see Wells at all as the Buggy was a covered one

Int 5. About how many seconds intervened between the time you first saw said Wells on or near the crossing &

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the time of the Collision?

Ans I did not see Wells before the Collision. I have no means of judging the number of seconds, that intervened between the time I first saw the buggy that Wells was in; on or ~~near~~ near the Crossing, and the time of the Collision, it could not have been more than two or three seconds at most.

Int 6 Had you seen the said Wells from the train until you saw him on or near the crossing, just before the Collision?

Ans I had seen Wells or rather the Horse and buggy ten or fifteen rods off before he got to the Crossing.

Int 7 Is it not the fact that ~~the Railroad track~~ both the Rail Road track as it approached said Crossing from the East, and the highway as it approached said crossing from the north east, approached the said Crossing through cuts or Excavations of the Earth, so that the depression of the Rail Road track and highway below the general surface of the ground, and a rise of the ground, or embankments fencing and hedging between the Excavated parts of said Rail Road and highway near the said Crossing prevented you seeing the said Wells from the train until you saw him on or near the Crossing?

Ans The highway was nearly parallel with the Rail road as it approaches it from the East, and there is a small embankment some five or six feet standing about two rods on the highway as it appro-

=aches the Crossing, and a gradual slope on the rail road, which did not prevent me while on the train from seeing the Buggy at least ten or fifteen rods before I saw it at the Crossing, and it is my impression that the buggy does not go entirely out of sight in that cut

Int 8 If in your answer to the last interrogatory you shall answer that these causes did not prevent your seeing said Wells before you saw him at the Crossing, you will state why then you did not see him before seeing him at the Crossing?

Ans I have already stated that I did see the horse and buggy two or fifteen rods before arriving at the Crossing.

Int 9 Suppose the train to be made up of (14) fourteen ~~flat~~ empty grain flats, with the Engine behind pushing the flats ahead, and ~~supposing~~ said train to be approaching said Crossing at a point Eleven hundred yards east of said Crossing, and the said Wells at the same time to be approaching said Crossing in a buggy, at a point on said highway two hundred yards north each from said Crossing, and suppose said Train and the said Wells to approach the said Crossing in their usual gait could said Wells in travelling over any portion of said 200 yards on said highway, have seen the said Flats (not the Engine but the flats)

Ans I should think he could had he looked in the direction.

Int If in your answer to the last interrogatory you have said that the said Wells might have seen the said

Flats in travelling over said 200 yards to the crossing, you will please specify particularly for what part or portion of said 200 yards would said flats be visible to said Wells, and at what point on said highway?

Ans I think the flats could be visible to him the whole distance except perhaps two or three rods before reaching the crossing and could even in that space be seen if he had stood up in his buggy.

Int 11 About how far below the ~~natural~~ general or natural surface of the ground is the Rail road track at said crossing according to the best of your judgement?

Ans I should think it was five or six feet.

Int 12 — Has any one or more of the agents or attorneys of the Defendant written to you on the subject of what they desired you to swear to or your examination in this case, if so you will please append such letter to your answer to this interrogatory and mark the same a part of your answer?

Ans I have not been written to by any agent or attorney of the Defendant Co concerning the matter in Controversy, or what I would swear to, or on any other subject and only knew of the case after the Commission had arrived here; I have no letters to append.

Int 13 — Have you had any communication from any person on the subject of your testimony in this case other than the officer (or his mandate) before

whom your deposition is to be taken; if so you will please attach the same to your answer to this Interrogatory?

Ans I have had no Communication from any person on the subject of my testimony until notified by Mr. Stevens to appear here and give my testimony.

Int 14. If you have had any such Letter or Communication mentioned in either of the two preceding interrogatories but have lost or destroyed the same, You will state fully and particularly what the Contents of such letter or, on the subject of the facts which you were desired to prove?

Ans Not having any Letter or Communication, I could not have lost or destroyed them, and was never asked what I could swear to.

Int 15— Do you know any matter or thing, which you have not already told, which would benefit the plaintiff in this case?

Ans I have I think stated all that I know of the Matter

Int 16— Is it not your wish that the Plaintiff may be defeated on the trial of this Suit?

Ans As a matter of course, I do not think he ought to recover, and as I done my duty and believe all on the train done this, to prevent the accident which he may be defeated.

Int 17— Although you may be legally absolved from any pecuniary liability to your Employers and, by such Deed or release, yet can you swear that you feel indifferent as to the result of this trial which may to

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done which in your Conduct in a moral point of view?

Ans I do not know whether I am legally liable to Dft or not. I have got no release, and do not believe the result can may or the other would affect me in the least, and cannot see how my Conduct in a moral point of view can be effected at all.

John McKinley.

George W. Vollenbrock, called on behalf of the Defts and, being first duly sworn was examined in Chief by Mr. Walker and testified as follows

Int Are you Clerk of this Court

Ans Yes Sir,

Int Have you examined the life tables to see what the expectations of a man of 60 years ~~of~~ of age would be?

Ans I have.

Objected to as not being the true rule of Damages,

Objection overruled.

To which ruling Counsel for the Plaintiff then and there Excepted.

Int How long does a man at 60, live, by the tables?

Ans According to the Wigleworth tables 15.45 years — according to the Carlisle tables 14.34 years.

Int Have you ascertained what the value of an annuity is upon the life of a man 60 years of age?

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Ans That computation is made according to "the Northampton Tables" - an annuity of $50 for life would be $391. - that is its present worth - an Annuity of $75 would be $586.50 present worth.

Qst Will you tell the jury the Values of Annuities of $50 and $75 respectively, to run 5 years?

Ans For $50 - the present worth would be $210.60 the present worth of $1 being $4.212, the present worth of $75, on the same basis for $1. would be $315.90.

End of the Testimony.

And the forgoing was all the Evidence offered by either of said parties.

Opening Argument on behalf of the Plaintiff by Mr. Paddock.

Opening Argument in behalf of the Defendant by Mr. Kendall

Court adjourned until 8 a. m.

Next day,

Third day — Thursday —.

Morning Session

Afternoon Session

Closing Argument on behalf of the Defendant
by Mr. Walker

Closing Argument on behalf of the Plaintiff
by Mr. Taylor

Opening

Thereupon the Court on behalf of the Plaintiff gave the following instructions, to the giving of which, and each of them the said Defendant, by its Counsel, then and there objected; which objection was overruled and the decision of the Court in overruling the same was then and there Excepted to by the Counsel for the said Defendants.

1st "That it was the duty of the defendant by the Statute in force at the time of the occurrence in question to place on each of its locomotive engines a bell of at least thirty pounds weight or a steam whistle which bell or whistle it was the duty of the agents of the defendants in approaching the crossing in question to ring or sound continuously for the distance of Eighty rods before reaching the said Crossing; and independently of the Statute it was the duty of defendants to give timely and reasonable notice of the approach of their engine to the Crossing in question.

"Given"

2nd 289 If the jury believe from the Evidence that the Plaintiffs intestate William N. Wells was approaching

& crossing the said way of the defendants and Exercising ordinary and proper care in so doing & was run upon and killed by the ground train of defendants under the direction of the agents and servants of defendants; and if they further believe from the Evidence that the said agents and servants neglected to continue ringing a bell or sounding a whistle for the distance of eighty rods before arriving at such Crossing; and that by reason of such neglect to ring a bell or sound a whistle, the said Wells came to his death they will find for the Plaintiff; If they further believe from the Evidence that said Wells left a family who sustained a pecuniary loss by reason of his decease.

"Given"

2d In Measuring the damage in this case the jury are the judges of the pecuniary value of the life of the deceased to his family; and if they believe from all the evidence that the constitution and physical ability of deceased were superior to those of the average of men of his age the jury would have a right to take into account such superiority in arriving at an estimate of the duration of his life at the time of the accident; and although the testimony of Wm. Wallace was competent in itself, yet if, from all the Evidence, the jury believe, that the sums assessed by him do not represent the annual money value of the services of said Wells to his family, but that such

"Given"

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Value of said services was greater than any of the amounts assumed by Mr Mollenbeck then the jury need not be bound by his statements as to the present value of such annuities respectively, but may increase the damages in proportion to such value of services as proved, to them by the entire evidence not to exceed the sum of five thousand dollars,

4th. In arriving at the measure of damages, in case the jury find for the Plaintiffs, the jury are further instructed that they are not necessarily confined to the amount of Money paid to the Deceased for his labor by those for whom he labored; & if the jury believe from the Evidence that the services of deceased in the management of the business and affairs of his family were of actual pecuniary value to such family it is proper for the jury, in case they so find for the Plaintiffs, to take into account such value of such other services, if proved,

"Given"

4½ The degree of care which the deceased was bound to Exercise in approaching the crossing in question was such care, and only such care, as is Exercised by men of ordinary prudence under like circumstances and in passing upon this question the jury will be governed by the evidence in this case and will pay no attention to the cases read from the books to the Court by Counsel for the defendant.

"Given"

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5th "The jury being the judges of the facts are to determine upon the weight and credibility of the testimony of the several witnesses in this cause; and if the jury believe from the Evidence that the Witness McKinley & Green have wilfully testified falsely upon any material points in the case, the jury would have a right to disregard the whole of the testimony of said witnesses unless so far as the same is corroborated by the testimony of other and credible witnesses in the cause."

"Given"

The Court then on behalf of the Defendant, gave to the jury the following instructions;

I

"Given"

The burden of proof is on the Plaintiff and before he is entitled to recover he must prove, or it must appear from the Evidence that there was negligence on the part of the defendant, and no want of ordinary care on the part of the deceased.

II

"Given"

The burden of proof is on the plaintiff, and to entitle him to recover he must show, or it must appear from the Evidence, that there was negli=gence on the part of the Defendant, and that the Deceased, by the Exercise of ordinary care and prudence could not have avoided the collision.

III

"Given"

If the jury believe from the Evidence that the Defendant when approaching the crossing when

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the accident occurred neglected or omitted to give the proper signal as required by law - It is not enough to entitle the Plaintiff to recover unless they shall also find that this neglect or omission was the immediate cause of the Collision, and that the deceased by the use of ordinary and proper care could not have avoided the accident.

"Given"

IV If the Jury shall believe from the Evidence that the Defendant neglected or omitted to ring the bell and sound the whistle or Either of them during the whole or any part of the Eighty rods next Approaching the Crossing as by law required, It is not enough to entitle the Plaintiff to recover, unless they shall also find that this neglect or Omission was the immediate cause of the damage, and that the deceased by the use of ordinary and proper care, could not have avoided the accident.

"Given"

V If the Jury believe from the Evidence that the deceased drove upon the railroad track without looking for the Approach of trains, and that if he had looked he could have seen the Approaching train in time to have avoided the Collision - he was guilty of such a degree of carelessness as precludes his right to recover in this action, and their Verdict must be for the defendant.

"Given"

VI If the Jury believe from the Evidence that the deceased

could have seen the approaching train by looking in the direction of it before he reached the Crossing, and in time to have ~~provided~~ avoided the Collision, his attempt to cross was a want of ordinary care and you must find for the defendants, although you shall also find that the Defendant was guilty of negligence.

"Given"

VII

If the Jury believe from the Evidence that the deceased could have seen the approaching train by looking in the direction of it before he reached the Crossing and in time to have avoided the Collision his attempt to cross without looking for the train was a want of ordinary care and the Jury must find for the defendants,

"Given"

VIII

If the Jury believe from the Evidence that the deceased could have seen the approaching train in time to have avoided the Collision by looking in the direction of it, then whether he did or did not see it can make no difference, as in either case, his attempt to cross was a want of ordinary care, and your Verdict must be for the Defendants,

"Given"

IX

If the Jury believe from the Evidence that the deceased was deaf to such an extent that he could not hear the approach of the train but could have seen it in time to have avoided the Collision if he had looked in that direction, and if they shall also find that he

"Given"

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did not look for the approach of the train but drew upon the track without first taking any precaution to ascertain whether a train might not be approaching then the deceased was guilty of gross negligence and unless they shall find a greater degree of negligence on the part of the Defendant the Plaintiff cannot recover, and the Jury must find for the defendant.

X If the Jury ~~find~~ believe from the Evidence that the deceased was deaf and blind to such an ~~degree~~ extent that he could neither see nor hear the approaching train for a sufficient distance to have enabled him to have crossed the track before it came upon him, then it was gross negligence for him to have attempted to cross the track at all without some one with him, and you must find for the defendant.

"Given"

XI If the Jury believe from the Evidence that the damage was occasioned by the fault or negligence of the deceased alone, or by the fault or negligence of both the deceased & the defendant Equally, without any intentional wrong on the part of the defendant — then the Plaintiff cannot recover and the Jury must find for the Defendant.

"Given"

XII If the Jury believe from the Evidence that the Collision was occasioned by the fault or negligence of the deceased alone or by the default of the deceased and the Defendant together and without any intentional

"Given"

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wrong on the part of the Defendant, then the Plaintiff cannot recover and the Jury must find for the Defendant,

XII If the Jury believe from the Evidence that the deceased did not use ordinary and proper care in driving upon the track, taking into consideration all the circumstances in proof, then they must find for the defendant although they shall find that the Defendant was also guilty of negligence to some extent, if the Jury believe from the evidence that the want of ordinary and proper care in driving upon the track, on the part of the deceased contributed to the accident,

"Given"

XIV If the Jury believe from the evidence that the deceased could have seen the approaching train by looking in the direction of it before he reached the crossing and in time to have avoided the Collision his attempt to cross without taking such precaution was negligence, and the plaintiff cannot recover,

"Given"

XV If the Jury believe, from the evidence, that Wells approached the crossing in question in day-light, sitting in a covered buggy with top up, so as to prevent his seeing the approaching train, that by looking in the direction of the cars he could have seen them for a considerable distance, and for a sufficient length of time to have avoided all danger; and that

"Given"

the sound of an approaching train could have been heard for a distance sufficient to give ample time to have prevented this collision; then said Wells, whether or not partially blind or not, or partially deaf or not, was guilty of such carelessness and negligence as precludes the right to recover in this case, and the Jury will find for the defendant.

XVI

If the Jury believe from the evidence that the deceased Wm. H. Wells approached a railroad crossing of the Defendant in the day-time without looking to see whether or not a train was approaching then he was guilty of such carelessness as will not permit his representatives to recover in this cause and the burthen of proof is upon the Plaintiff to show that he did look and was not in fault.

"Given"

XVII

It is the duty of all persons in going over a Railroad crossing to look and see whether or not a train is approaching; and not looking to discover an approaching train is such negligence as will be a bar to a recovery.

"Given"

XVIII

If the Jury believe from the Evidence that a loaded team had stopped on one side of the crossing, and a horse and carriage had stopped on the other side, waiting for a train to pass, and a man on horse back had also stopped for the same cause;

That the deceased was told by the man on Horseback that a train was coming, or that he would not have time to cross, and heard what was told him; That deceased heeded not the caution but went onto the crossing without looking, or stopping to look for a train, and was killed by a train; Then these facts, if proven, constitute such gross carelessness on the part of the deceased, as must preclude his representatives from recovering in this action; and the jury should find for the Defendant, unless the jury believe from the Evidence that the defendant was guilty of a higher degree of negligence in not continuously ringing the bell or sounding the whistle,

"Given"

XIX The Plaintiff has placed his right of recovery upon the neglect of the Defendants agents in not ringing the Bell or blowing the whistle, and if the Plaintiff recover he must recover for that neglect, and not for the condition of the crossing or the speed of the train, or for the manner in which the cars were placed. And if the jury believe, from the Evidence that the deceased was so placed in his carriage that he could not hear, or was so deaf that he could not hear, whereby the neglect (if such neglect ~~is~~ proven) to ring the Bell or blow the whistle did not in any degree, produce the casualty Complained of, then the jury should find for the Defendants,

"Given"

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The law being that the allegation and proof must correspond.

XX

It is not enough to entitle the Plaintiff to recover, to show that the defendants servants neglected continuously to ring the bell or sound the whistle, from the whistling post to the crossing, but he must also prove that the deceased came to his death because "such failure continuously to ring the bell or sound the whistle, and if they shall find that the proof does not establish this additional fact, they will find for the defendant.

"Given"

XXI

If the jury shall find for the Plaintiff, they can only allow such damages as the Statute authorizes The measure of damages it adopts is simply a compensatory one, that is, that which will make good the pecuniary loss sustained, The Mental suffering or grief of surviving or loss of domestic or social happiness, or as the degree of culpability of the party in fault cannot be taken into consideration in the calculation of damages - The jury cannot award exemplary or vindictive damages but must ascertain from the Evidence the pecuniary loss sustained as nearly as they can approximate thereto, and this alone; and to do this the testimony in the case must have furnished the data upon which the jury may calculate or approximate to

"Given"

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an estimate of the pecuniary value of the life to the persons for whose benefit this action is brought.

XXII To ascertain the value of the life so lost sustained, the Jury is not entitled to go outside of the Evidence and indulge in mere speculation and conjecture, not reasonably made from the Evidence and justifiable thereby; but must found their estimate upon such facts in proof as tend to show the pecuniary ~~loss~~ extent of the Loss sustained, taking into consideration the age of the deceased, and such other evidence as may ~~be offered~~ afford them the means of making the Estimate.

"Given"

Thereupon the Jury retired to consider of their Verdict, and having been absent for a time, returned into Court with the following Verdict; "We the Jury find the issues for the "plaintiff and assess the damages at one thousand "Dollars"

Counsel for the Defendant thereupon moved the Court for a new trial, which motion was submitted to the Court for decision, without argument, and the Court then and there over-ruled said Motion for a New trial; to the decision of the Court in over-ruling which the Counsel for the Defendant then and there excepted, and prayed an appeal

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to the Supreme Court of the State of Illinois, which was allowed upon condition that the defendant file a bond, with J. W. Walker as security, within ninety days; and on Motion of Counsel for the Defendant ninety days was given within which to file a Bill of Exceptions.

The foregoing bill of Exceptions, which contains all the Evidence in said cause being this day presented to the Court for allowance and Signature, and inasmuch as the Matters aforesaid do not appear of Record, the Counsel for the Defendant presents this Bill of Exceptions and prays as aforesaid that the same may be signed and sealed by the Court, and made part of the Record in said cause and it is done accordingly

M. E. Mallister Judge Seal

We have agreed upon the foregoing bill of Exceptions and the Court will please sign the same

Walker Kendall, attys for Deft.
Taylor & Paddock attys for Plff.

Filed June 20, 1864
G. W. Hellenbeck Clerk

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State of Illinois } ss
Kendall County } Albert M. Webb Clerk
of the Circuit Court in
and for said County and State do hereby Certify
that the foregoing is a true Copy of all record pro-
=ceedings had in said Court in said Cause of Samuel
Triplett administrator of the Estate of Wm K Wells
deceased lately pending in said Court, together with
a true Copy of all papers properly belonging to
the Records in said Cause now remaining on
file in my office.



Witness Albert M. Webb Clerk of
said Court and the Seal thereof at
Yorkville in said County of Kendall
this 1st day of March A.D. 1865.

A. M. Webb. Clerk

In Supreme Court of Illinois
April Term A.D. 1865.

State of Illinois
Third Grand Division
vs.
The Chicago Burlington & Quincy Railroad Company
Appellant
vs.
Samuel Triplett
Administrator of the Estate
of William H. Wells
appellee.

Assignment of Errors.

And now the said The Chicago Burlington & Quincy Railroad Company, the appellant herein, comes and says that in the record and proceedings aforesaid there is manifest Error in this, to wit,

1st The circuit Court erred in giving the instructions asked by the appellee on the trial of said cause in the court below.

2nd The Circuit Court erred in refusing to give the instructions asked by the appellant.

3rd The said Circuit Court erred in permitting the plaintiff on the trial of the cause in the court below to give in evidence to the jury incompetent and improper

testimony -

4th The Circuit Court erred in overruling said motion for a new trial -

5th The Circuit Court erred in giving judgment for the said appellee and against the said appellant, whereas by the Law of the Land judgment ought to have been given for said appellant and against the said appellee -

And because of the Errors aforesaid and other Errors in the said record contained the said appellant prays that the verdict and judgment aforesaid may be set aside reversed and for nothing held &c -

By Walker & Dexter attorneys for Appellant

And the ~~plaintiff by~~ appellee Samuel Tupett Adm of the Estate of William H Wells Dec'd by I. I. Taylor his attorney comes and says that the said supposed errors above assigned do not exist in the said Records, nor does any or either of them, but that the said Record & Proceedings are legal & proper and in accordance with the law, and he therefore prays that the Judgment thereof may be confirmed -

I. I. Taylor atto for appellee

Supreme Court.

1865.

The Chicago Burlington and Quincy R.R. Co.
appellant

vs.

Sam'l Triplett.
adm'r W.H. Wells,
deceased.
appellee

Appeal from Kendall.

Record &
&c

Filed March 24 1865

L. Leland
Clk

Walker & Dexter
for appellant

1821

1865

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