

State of Illinois  
 The Circuit Court }  
 of Knox County } of the February Term  
 A.D. 1861

Erastus W. Hazard

vs

The Chicago Burlington &  
 Quincy Rail Road Company

Be it remembered  
 that afterwards to wit on the 28<sup>th</sup> day of  
 February A.D. 1861. That being one of the days  
 of the said February A.D. 1861. Term of  
 said Court the issues so as aforesaid  
 joined in the above entitled cause—  
 came on to be tried before a jury empan-  
 nelled in said court and in said cause  
 to try the same the said Plaintiff ap-  
 pearing in person and by his attorneys  
 Julius Manning and E. Van Buren and  
 the said defendant by Van Arman  
 and Walser, its attorneys and thereupon  
 the said plaintiff to maintain and prove  
 the issue on his part called as a witness  
 one Richard Garretson who being sworn  
 testified and says that he is acquainted  
 with the Plaintiff and knows that there is  
 such a company as the Chicago Burlington  
 & Quincy Rail Road Company and that  
 its Rail Road runs from Chicago to  
 Burlington through Keosauqua & Galis-  
 burg I know that I saw the Plaintiff  
 get aboard the cars of the defendant



on the 29<sup>th</sup> June 1860 at Keosauqua for Galis-  
burg he said it was about five o'clock  
in the afternoon. It was a freight train  
there was attached a passenger car such  
as they generally attach to freight trains  
passengers rode in such cars. I always  
rode in such cars when I wanted to with-  
out objection. It was one of the cars which  
they have attached to each of the freight trains  
for hands to ride on in connection with  
a freight train - passengers ride in these cars  
with doors in each end with platforms at  
Each end and steps to them <sup>Each end</sup> And on each  
side and seats inside running lengthways  
on the sides of the cars the seats were some-  
times cushioned & sometimes with plained  
boards. I went in with him to the depot  
heard him ask the agent or clerk of the  
telegraph if there was a train going to  
Galisburg that afternoon that carried  
passengers. He told plaintiff that there was  
one and it would be along in a few mo-  
ments. The name of the agent was Dudley  
Crandell. I think they called him Dudley &  
Crandell. He was acting there selling  
tickets and does yet said a train would  
be along in a short time. He got  
a ticket and paid one dollar for it  
and in about fifteen minutes a  
train came that he did not know



the Conductor nor the Engineer on the train  
 There were fifteen or twenty cars Clerk  
 said train would come in short time  
 cant say that he number of minutes maintain and  
 The Plaintiff further to prove  
 the issue on his part introduced one  
 R D Lewis who having been sworn says  
 say I made the measurements on the  
 diagram presented to him Eighty four feet  
 is the distance from the warehouse on the  
 North side of South Street to South  
 Street from South Street along the  
 center of Rail Road to center of  
 Seminary Street is 162 feet points  
 on the side walk and says that it is  
 115 feet from Railroad to Seminary Street  
 along South Street The walk is on the  
 South side of South Street It is 43 feet  
 from side walk on South side of South Street  
 to the first switch, from first switch to  
 the second switch it is 100 feet from  
 second switch to side walk on Seminary  
 Street is 35 feet. Side walk is four and  
 a half feet wide It is fifty one feet from  
 side walk to center of Seminary  
 Street The warehouse spoken of is where  
 they pressed hay last fall (said diagram  
 was thereupon given in evidence to the  
 jury)



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Seminary St

Mulberry St

Main St

1/8 sq yard

Chicago, Burlington and Quincy Rail Road

219 ft

Walk 151 ft

South St 162 ft

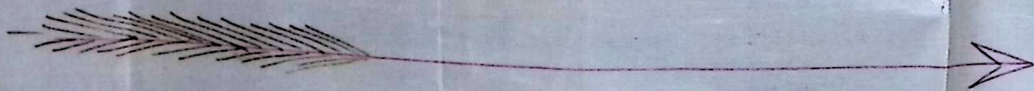
Walk 115 ft

100 ft

84 ft

switch

switch





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Bush was there at that time. That train came in about fifteen or twenty minutes before, I don't know who came for the buggy - They sent a man down and I went to hitching up the horse and just as I got through Bush came and wanted to know if that horse & buggy was to take Hazard home. I drove down and Bush walked to where Hazard was and got there about same time I did. I went within 10 or 15 feet of where Hazard was. I don't know who brought him to the buggy except Bush. Carson was there. Three men carried him and Carson & Bush were two of them. An inquiry was made how he got hurt.

Questions by Plffs Counsel

At that time what did Mr. Bush say in reference to the Plaintiff getting hurt - To which question and the answer thereto the said defendant then & there objected for the reason that it asked for the statement of Bush at a time subsequent to the accident and was merely hearsay testimony.

ob

Which objection was overruled by the court and the counsel for the said defendant then and there excepted to the said ruling of said court, in allowing said question to be put and answered.

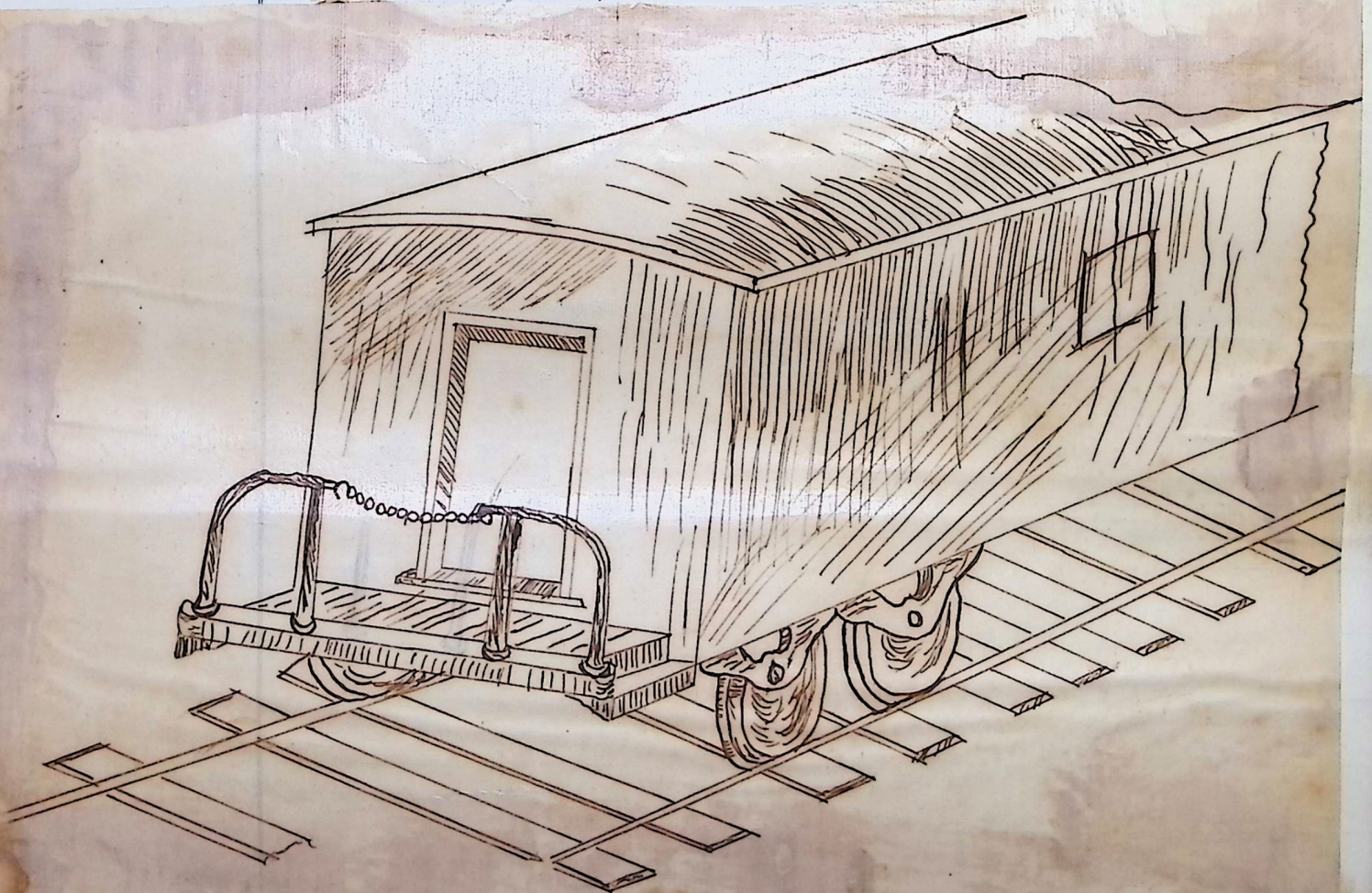


The witness thereupon states in answer to said question Mr Bush said Hazard got up started to the front end of the car and he told him he had better go to the back end and as Hazard got to the Back door the cars started and jerked him over the platform and he said he grabbed for him as he saw he was going but could not save him That is all I heard Mr Bush say. And Hazard spoke and said if there had been any guard chain he would not have been hurt. This guard chain is a chain running from one railing to the other on the outer edge of the platform. The Counsel for the plaintiff thereupon presented to the witness a diagram and the witness on being asked if that was a fair representation of that car said he did not know. See no difference between this car and others so far as the railing is concerned the chain is for the purpose of keeping men from falling through. There is a passageway opposite the door between the railings across where the chain is put up. And the said plaintiff thereupon offered said diagram in evidence to the jury - to the admission of which as evidence to the jury the



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counsel for the said defendant then & there objected - for the reason that the same had not been shown to be a fair representation of the car in which the plaintiff took passage, nor of any car. which objection was then overruled by the court and the diagram admitted as evidence to the jury. to the ruling of the court upon the said last mentioned objection the said defendants by its said counsel then & there excepted, - and thereupon said diagram was given in evidence to the jury ---



Said witness further stated that there was a railing to that car in which Hazard was at that time, but no guard chain. I don't know how many cars there was on that train - there was a door in the hind end



of the car. witness is shown another diagram says that it is a fair representation of the railing. The plaintiff was on the side walk on south side of south street - the cars were south west of this on the track standing six or eight rods off - there are switches along there, two switches between where Hazzard was & where the cars were. This plat represents the switches, cannot say how many cars there were on the train - I was not on it. - I took Hazzard home, Mr Bush went with me - He walked & I rode - Bush and myself took him in - I am sure of the date the 29th of June. I remember it from Carsons book. Carson made the charge for carrying Hazzard home - On his cross examination witness states that, I have never been employed on a railroad - my place of business is about thirty rods from the crossing. Do not know the engineer nor fireman on the train or brakeman. was not acquainted with Bush. know him by sight - Do not know who came to the stable for the horse, He gave me no account of the accident. a swede was then in stable - know English, he did not go with me, I went alone - The conversation occurred while they were bringing Hazzard from the track to where I was - ten or fifteen feet off - Hazzard took no part in conversation except to say if chain had been there he would not have been hurt - Conversation has been related by me twice once to Manning 6 or 7 months after it occurred and once to the other gentleman



never related it before that time. Did not take particular pains to state the exact words, all I recollect is in substance that Hozzard proposed to get off of the train and started for the front door and Bush told him to go to the Back door, and when at rear end was jerked from the platform, no statement was made as to the reason why Hozzard wanted to get off. I understood it occurred at south street.

this is all I know - no statement made as to if I did not understand whether car stood still or was moving - no reason given why Hozzard wanted to get off - Do not know whether there are notices against standing on the platform

No one rode in buggy with me when I took Hozzard home - I related this conversation to Manning at the last term of the court, it was not repeated till now - was not talked over in my presence, nor has it since last term been talked over - I did not see the train when it come in - it was a freight train - I know nothing about Rail road business - know nothing about the use of chain - never except at Galistburg, had or did business near a Railroad - It was a way car, know nothing about the customs of other roads. I have never seen a chain on the rear end of the rear car, never seen one on a way car nor on a passenger car, all I know about a chain I got from this diagram - know nothing about its use except from what I infer, it was here admitted by Defts counsel that



there was no chain on car in question and the said plaintiff further to maintain & prove the issue on his part introduced.

William W. Bagley, who testified that he resides in Marshall county, is a merchant have had to with rail roads <sup>Have been employed on rail roads</sup> six or seven years in almost every capacity first in hauling stone to build a rail road and ended by becoming Superintendant & was conductor - station agent - Supervisor of trains - and assistant superintendant - was conductor a very short time but a few weeks was supervisor of trains a year or a year & a half was assistant superintendant about the same time, was train master about a year or a year and a half was superintendant about a year on Pittsburg Cincinnati and Columbus, rail road. I left three years ago next april, the time of 6 years I was rail roading was immediately preceeding the time I left, I am acquainted with the construction of Rail road cars. Heard part of the evidence of the last witness, passenger cars are usually constructed and sent out of the shops with these chains upon them never saw one come out of the shop without them have seen a great many cars running with chains off. The object of these chains is to prevent not only passengers in passing from one car to another but also train men from falling through between the guards - I should think them to be highly necessary - they are necessary for the protection of human life so far as passengers are concerned.



they are more necessary at the rear end of the rear car than at the rear end of the other cars - the custom is generally to put up the chain between all the cars or keep the door of the cars locked. It is necessary at the rear end of the car in my judgement for the protection of passengers. I have travelled on a great many roads where this was not done, and on a great many where it was done - I am acquainted with the running of trains much depends upon the condition of the train as to the necessity of jirking, the position of the train might be such as to require something of that kind - It is sometimes necessary, when the train is what I call stalled on up grade or when they are overloaded then it is necessary to back up the cars put on the brake on hand car, and then put on steam to start up and give the engine motion to start a train. not necessary when the cars are running if Engine is in proper condition. It is not necessary to jirk a train when coming to a halt. It may be so started as to jirk a train in two, and it may be so started as not to be perceived. If the Engine is in proper order and the train in motion it is not necessary to jirk the train, it can be avoided it requires care and caution but it may be done to avoid the jirking it requires the proper opening of the valve and keeping the engine in order - I think I have already stated that it is not necessary to jirk the train the engine being in proper condition - a train running 2 or 3 miles an hour to be moved forward 150 feet with an

(Stops)



Engine in order it is not necessary to be jostled and whether steam should be put on or not would depend upon the train track so, I think a train at the speed of 2 or 3 miles an hour with a straight track and level grade would move 180 feet,

On his cross examination witness says that he has been employed on different roads - First on the Rutland & Burlington Railroad on the central Ohio Railroad - on Cincinnati & Wilmington Railroad - on the Pittsburg, Cincinnati & Columbus Railroad - commenced about nine years ago was never fireman nor engineer have sometimes when a train was running have taken hold and run a little & fire but never had any thing to do in the construction of cars - I think the cars of this state are generally constructed with a view to the use of these chains, I have seen a chain on a car of the Michigan central & on the Michigan Southern Railroad, have been over the road two or three a year for the last three years. It was within the last three years. I speak from recollection - I speak of the rear end of the rear car - seen them on both roads - I think these chains are not now generally used I never saw them upon a freight car - There is a caboose car & a drivers car & a way freight car - on these cars have never seen either a platform or a railing - I am not acquainted with the rules of roads in this



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State But in Ohio the roads did not permit people under any circumstances to ride on freight trains. Never saw a platform with either chain or railing on freight cars - have seen a freight car altered over to carry stock drivers - side doors, doors in the ends & platform made. I think there was no chain - the railing run the whole length of the platform - Do not remember to have seen any such cars in the state except on the Michigan central & Michigan Southern rail roads - have never seen any chain in this state - I think they are not generally used either here or elsewhere - I have seen the rear door locked on the Rock Island Railroad but cannot say what the custom is - Have never seen the door locked in such a way, as is supposed in this car - It is the custom to prevent passengers from passing from one car to another on the Cleveland & Columbus Railroad and on the little Miami & on Central Ohio Railroads - I was never acquainted with any Railroads where the managers did not prohibit passengers from standing on the platform of the car while in motion - This rule is made known by a notice on the door of the car - It is not customary to stop passengers from passing from one car to another - I think it is highly improper for passengers to pass from one car to another, or, to stand on the platform of the car when in motion for I consider it dangerous - It is also dangerous to pass from one car to another when in motion - Have never



been employed as freight conductor, but have occasionally run a freight train - That passenger trains are liable to less jerking for they are shorter, easier handled and lighter.

Freight cars generally have brakes on but one truck. The weight would make a difference for it requires more power to move a heavy object than a light one - with a heavy freight train on a slippery track you could not move steadily at starting. It could not be done without jerking. On a grade the same would be true - that there is from two to four inches slack between the cars a freight train of fifteen cars heavily loaded and you start the train as slowly as possible the last car would be started instantaneously but it would start more gently than the first one. the rear car would start less sudden than the front one. the difference would depend on the condition of the engine in starting - A train of twenty cars the last car would start more gently than the first one. I speak of this as my observation. the rear car may start the more gently but as Railroads are managed the rear car starts the more suddenly. My Idea is that in the ordinary management of a train it may be started without a jerk, I do think a train will continue to go faster until it has obtained the maximum of its speed. a train of 15 or 20 cars running at



three miles an hour and moving with its own momentum and steam shut off and when most stopped they would close up on almost any grade and should you then put on steam and start up the jerk would be similar to that in starting and the amount of jerk would depend on circumstances. Such condition of train the closing up of cars or under such circumstances there would necessarily be some jerk. but there is a difference between that & jerking a man off his feet - a freight train starts heavier than a passenger train. It is sometimes necessary to put on all the steam when the power is not sufficient to carry it on.

The Plaintiff next introduced as a <sup>witness</sup> John E. Titus - who having been sworn stated that he has rode on Railroads considerable and has in one or two instances recollects seeing chains across between the railings. I do not know much about the construction of cars only what I have observed. within the last 2 or 3 weeks has been to the Depot to examine and look for these chains - that he found in two instances I found chains up, in some Depots found but one car and in others two or three with chains on. I found chains across the rear end of the sleeping car on the Michigan Southern road. I found that cars were almost always made for chains but had none on. I made this examination of cars in the depots after the trains had been made up.



c went to the Depots on five afternoons & found  
the car with chains on rear end of rear car on  
each occasion - I saw some trains afterwards  
made up but found no chains - On his Cross  
Examination this witness says that he made  
the examination within two weeks went to  
Illinois central depot. Michigan Central de-  
pot - Chicago & Rock Island Depot - The Alton  
& St Louis depot - The Chicago & Fort Wayne  
depot The Chicago & Milwaukee & Galena &  
Chicago Northwestern depots - In all found  
only 2 chains up on sleeping cars. Stopped  
quite often on 8 or 10 different days, found them  
at the Michigan Southern on the sleeping car in  
the rear - saw none up on any other car in the  
whole city - found chains on Illinois Central  
cars cannot say how many two or three - one  
with chain detached from the car cannot say  
whether it was sleeping car or not one was att-  
ached and the other not - Found them on the Michigan  
central cars cannot say whether sleeping car or  
not - saw one chain not in use in a car which  
was not a sleeping car - Have Examined a great  
many cannot say how many I found among  
the cars in the depot of either the Chicago &  
Milwaukee or of the Northwestern cannot say  
which a car having one chain found a chain  
on a car at every depot except that of the Chicago  
Burlington & Quincy Railroad - Cannot be  
certain that he saw them upon any cars but  
sleeping cars - while at the depot saw one train



leave on the Milwaukee road and one come in on the Illinois Central Railroad. I had no other Business except to look after these chains.

The said plaintiff next called and examined as a witness John M. Purple — who stated that he lives in Henry Illinois has been employed on Railroads for sometimes about 11 years. since he commenced was station agent most of the time was conductor 2 or 3 weeks on Road he first commenced it was common to have chains. Every year ago about four years since he left the business — commenced on the Connecticut River Railroad — the cars were made and used with chains during that time & are at present never saw a car come out of the shop without them on. I mean passenger cars. I should consider them necessary to keep passengers from falling through as they get on and off at Stations — The purpose is that when passengers are getting in & out of the cars to prevent them from falling off. They are also necessary for the protection of the brakeman there are places on every road when the cars will rock and then it saves the Brakeman. I consider it more necessary on back car unless the door is locked — That it is not necessary to jerk the train in starting unless the train is stalled no difficulty in avoiding it if the engine is in good order. On the cross examination the witness says that since he left Connecticut Railroad has been on the Rock Island Railroad. In Connecticut they used chains on their way cars.



I mean by way car a second class passenger car. they had a Caboose car attached to freight trains on which they had no chains or platforms, never saw a chain on or platform this class car never was engaged in building cars - have been in two or three shops to see different grades of building - a Caboose car is not constructed differently from a way car except that a way car has platforms & chains. There doors in ends and sides and seats lengthways - Second class passenger cars were used on the Connecticut River road from 1851 to 1856.

And thereupon the said plaintiff to further maintain the issue on his part called a witness one Henry Beardsley as a witness who said the regular fee from Keewauke to Galzburg is one dollar.

Nelson J. Knapp, who says that he is a Locomotive Engineer was such on Defts road commenced there in 1855 and was one in all 4 years. Freight trains generally stopped in yard at Galzburg. Hardly ever run up to the passenger depot could not always tell when to stop. a train might have to go in different tracks as one might be filled - They generally run up past the first switch and the switching engine then takes them - These switch them. They used to run up about one hundred feet perhaps west of first switch - I cannot tell the exact distance from the head end of train. The switching engine usually stood on the side track -



On the cross Examination this witness states that he left the defendants road a year ago last August did leave with his own accord he was not discharged has been on Burlington & M R R since knows nothing about freight train regulations at Galesburg since he left They have always had a switching engine at Galesburg.

The said plaintiff thereupon called & Examined as a witness M. N. Taylor - who testified that he is a physician & surgeon was called to see plaintiff about the last of June or first of July - found a very serious injury to the ankle joint the injury was recent within a few hours the foot had been examined by Dr. Bunce found evidence of an injury by the foot being turned - and some of the bones fractured the outer bone of the leg had been broken just above the ankle joint, There was much swelling about these parts - and found a bone out of its place on the outer portion of the foot it is technically called the Estragalass and lies under the shin bone and connects it more immediately with the foot

It is a small bone just within the ankle joint and under the bone of the leg as near as I could ascertain this bone was broken and the front part of it thrown out. With Dr. Bunce's assistance succeeded in returning it to its place but it would not remain, returned it three times found it would not remain there put on compress and held it best we could was satisfied of the fracture from the grating sensation generally observed when bones are fractured The case is still under my care have given Plaintiff advice frequently



Do not suppose the bone was put back entirely to its place. The compress would not keep it as there was much swelling, & Effusion of Blood. limb is not well - am unable to tell the condition of the bone now. There is some swelling foot not quite in its natural position. There is a loss of motion in the ankle joint to some extent I think not withstanding he will finally acquire this up & down motion side motion is nearly lost cannot tread on it not advisable to walk on it. The swelling & thickening of the parts has thrown the foot in a little the toe turned down. I think he will never recover the full use of the foot. He was confined to his house six or eight weeks might have been longer - foot very painful most of the time pain would not be likely to cease with 8 weeks - cannot say whether it is yet painful or not but presume it is. It is a serious interference with his getting about. Have not yet made up my charges they will be as much as a hundred dollars. Witness produces skeleton of limb and says this small bone is shown here this was fractured and the front part thrown out in front and on bringing it back to its place I could not keep it there when this bone was compressed the joint would move the front portion of the bone is not now in its place. It was impossible with the means I had to keep it there - the probability is that the thickening of the parts will in a manner prevent the use of the limb he will always be some lame. Injuries to the bone are



liable to cause abscesses and may require a removal of the bone this is a severe operation sometimes Amputation is necessary. Examined the foot to day it is turned inward and there has been a loss of motion since last court though the swelling is less & bearing the weight of the foot would be likely to produce pain. These bones being of porous nature do not unite as readily as others and weight might produce pain and prevent the recovery so completely as otherwise would be the case.

On his crop Examination witness says my opinion is now the Bone has united but it is not perfect yet and as the bone has united matter has been thrown out around it and created a loss of motion. I anticipate that when the bone is united and becomes sound he will in a manner recover the use of the limb. In most cases of fracture in the joint we lose motion to a greater or less extent. I at first thought he would not be able to use it under a year from time of accident. I think he will not now be able to use it under four months still he may. I speak of the accumulation of matter & the formation of abscesses only as a possible thing. I have as yet discovered no indications of that, when inflammation has subsided he will be able to bear his weight on his foot. I still think he will be compelled to walk with a cane will be obliged to limp. I think this will be the case after the bone has united. Dr Bunce Spalding & Tuttle saw it cannot say why I could.



not keep the bone in place used the only means that could be used and that was a compress & bandage. Should think the Plaintiff forty five years of age and of vigorous constitution when I examined it to day Drs Bramard & Allen Spalding & Tuttle were present, if bone were removed the limb would be shortened the joint would become fixed - foot be flattened. Suffering in such case would be severe to such an extent that Annodyus would not prevent it. In such case the deformity would be readily observed. The pain was very severe at the time of reduction & subsequently. The plaintiff then introduced as a witness

Dr Spalding who testified that he is a Physician & Surgeon saw Plaintiffs foot the next morning after the injury Taylor & Bence were with me. Have not seen it since till to day when I first saw it foot was thrown in very much my opinion was that bone might have been fractured as Taylor states - think the limb will never be useful - that it will not assume its proper condition - It will in a great measure destroy the use of the foot - saw it again to day - there is less motion - position of the foot more fixed - If there be any small pieces of bone they must be come decayed - I saw no indication of the formation of matter at Present - On the cross Examination witness testified that he cant say that Taylor was right in saying that the bone was broken - Did not examine sufficiently at first to ascertain



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Had Taylor not said it was broken should have thought the whole bone moved to the right - The bone will eventually unite but he will never have the use of the foot - will have to walk on edge of foot somewhat. The ankle will be just as strong but not as useful or convenient - think there will be danger of throwing ankle out of place - on his reexamination witness says the difficulty I think will consist in the fact of his having to walk on side of foot somewhat. There is a liability to the formation of abscesses & ulcerations in which case bone must be removed and this would be a severe operation - but at present cannot discover any such tendency -

Dr Tuttle,

The Plaintiff further to maintain the issue on his part introduced and examined as a witness - who testified that he is a Physician & Surgeon. Examined Plaintiff's foot the first time three weeks after the accident - In November last and again to day - when first saw it there was considerable swelling & foot turned in & toes downward - that there is a Permanent injury from which he will never recover - The difficulty is the foot is on one side and less motion than there should be - There is danger of abscesses forming & these near a large joint are dangerous - Plft now walks with a crutch and I should suppose that the walking occasioned more or less pain - On cross examination this witness states that there is less swelling but more tenderness than in December last - Discovered no indications of the formation of abscesses - When I speak of permanent



injury I mean loss of motion in the joint - He has slight motion now but I do not believe he will ever recover full motion - his foot will never become straight - And thereupon the said plaintiff introduced as a witness one -

Dr. Babcock - who stated that he is a Physician - has never Examined foot - Have heard a part of Taylor & Spaldings testimony but cannot give an opinion - The Plaintiff next called & Examined as a witness.

Daniel Brainard - who testified that he is a physician & Surgeon and has been engaged in teaching and Practicing as such about 20 years - Have heard the medical testimony in this case and have examined the foot very carefully first two or three weeks ago and then to day - the injury appears to be a displacement of the forepart of the astragalus - cant say whether this was produced by fracture or not except from testimony of Taylor - foot is turned in and toes downward the bone wedges so as to hold the foot in that position - If Plff should use his foot he would step on the outside of it - Do not see how it ever can be very different from what it is, so long as the bone is as it is - think the only treatment that would make the limb better would be to take the bone out or the piece displaced - this would be attended with some danger and is severe - This done he would have a strong useful foot - but foot would be flattened ankle stiff and limb about an inch shorter - at the



present time the ankle is very considerably stiff as well as the movement in it it cannot be used as a serviceable limb as long as the bone remains out of place he will be lame will have to use the foot lightly and carefully should think if limb used carefully there would be not much danger of an abscess - but should be hurt or bruise or use it much there might, In case of an abscess - bone would have to be removed and it would be somewhat dangerous - it would lay him up while abscess was healing - possibly amputation might become necessary - such an injury as this is generally very painful - so long as bone is out of place and if used much will produce pain & soreness -

On cross Examination witness states that he thinks the forward portion of the bone is out of place and is thrown out on the outer side - If the bone is where I think it is it will be likely to unite by ligament - when ligaments are formed and united - He will not lose the motion - He now has, and this motion may increase when it shall become firmly united He will still have to walk on side of foot which may produce swelling - Saw no indications to-day of abscesses and think there is no danger if Plaintiff is careful -

The Plaintiff recalled the said witness Knapp who testified that he is an engineer and has been such since 1843 - has run a Locomotive for the last nine years thinks if an engine is in good order there is no necessity of jerking a train when starting - Sometimes the throttle valve becomes



dirty and does not open easily, and then it  
flies open & a jerk is produced - If valve in  
order and everything works well there is no need  
of jerking train - an Engine should be kept in  
good order - have been engaged as engineer on  
both freight & passenger trains - On Cross  
Examination witness says that there are no cir-  
cumstances in my opinion where it is necessary  
to produce a jerk - If cars are suddenly started  
the tendency is to throw a man down standing  
up - so it would if started moderately quick -  
Patch - Bradley - Howard - Reed and others  
were fireman and brakeman under me - I have  
often produced jerks like this but not very often  
Except by one Locomotive - think when I made  
jerks forward car was jerked the most - the reason  
was I would shut off steam - I know I have  
often produced jerks cant say why - used to do  
it more in earlier days than now - left  
employment of defendant last august a year  
ago - was not discharged - did not discharge  
myself - just left that is all - if train is so heavy  
that you have to jerk it in order to start it  
it is better to cut the train in two - I used to  
have a locomotive I could not manage nor  
anybody else - never had any difficulty with  
defendant. -

Beardsley.

Recalled - am an attorney and in business  
with the Plaintiff - Plf has been doing a large  
business which requires him to be away from home -  
Generally in United States Court - He went in.



October to <sup>Chicago to</sup> attend court - at July term he had about one hundred cases which were continued. He attended fall term in October at Chicago - the last September term in Knox County and the last term of United States court at Chicago - have been in the habit of travelling on the Railroad and on freight trains in similar cars to this paid same fare - have seen other passengers on defendant's road - On his Cross Examination he says he has known the Plaintiff since 1838 - He has lived in Galisburg ever since that time - He came there the fall before - Has travelled on the cars of Defendant often - thinks he knew when the depots of the defendant were at Galisburg - I do not know that the defendant have any regulations about allowing persons on the platform of the cars.

The Plaintiff thereupon called on - G. C. Lampher, as a witness who testified - that he has travelled on freight trains on defendant's road in similar cars - but has not done so for 8 or 10 months - have bought tickets and paid same fare as on passenger trains no difference in price there is no distinction between riding on such trains & on passenger trains.

The said plaintiff having closed his testimony in chief - the said defendant to maintain the issue on his part called as a witness -

William H. Spalding - who being duly sworn says - that he is Depot Master at the Illinois Central Union Depot at the foot of Lake Street Chicago and has had it in charge over four years previously to such employment - was engaged as freight & passenger



Conductor and station agent and Baggage Master on the Michigan Central Railroad from 1844 until four years ago - was station agent <sup>two years</sup> at Marshall and Dexter - at that time the road was owned by the state of Michigan - I have to see to the making up of trains There are from 10 to 25 passenger cars in the Depot all the time - From 12 to 15 passenger cars per day go out of the depot and as many more come in - never saw a chain on a way car on the Michigan central railroad - never had any chains on the Passenger cars of the Michigan Central Railroad company since the present Co have run that road - The Illinois Central Company have 76 Passenger cars - They use no chains and have not used them for two or three years - I do not remember of seeing these chains on any of the roads - I am acquainted with for several years -

On the Cross Examination the witness states that on all these cars there is an iron railing on the Platform - this is I suppose for protection Have seen a great many railings that had no holes in them for chains - In some instances these chains would be a great inconvenience - It would be impossible to manage the trains with these chains on - Do not know but it could be done with chains on rear end of rear car - Before they were disused I saw them on Buffalo & Albany Railway - My Attention has never been called to the fact till recently - have heard these chains objected to as an inconvenience - no necessity of conductors going



through rear door of rear car perhaps - for the purpose of collecting fare - never saw railing clear across the Platform of the car - Do not think chains of much additional safety - My impression is that these chains have not been used for a long time. - Have charge of the Depot into which the defendant road runs into in Chicago - Chains might increase safety.

The defendant further to prove the issue on its part called as a witness -

Stephen W. Whipple - who upon his oath stated to the jury that he has been acquainted with Railroads and engaged in the introduction of Railroad improvements for about Eight or nine years - More than half of the time have been on Railroads and in and about Railroad shops - Have travelled on nearly all the main lines of Railroads between the Mississippi and the Atlantic - Know what is understood by way car - Never saw a chain between the guards + platform of a way car - Have seen them on passenger car - Most all of the roads use a way car on the rear end of their freight trains - These chains are not used on scarcely any of the roads - Most all the roads have discontinued the use of them some five years ago - Chains are not needed or used between cars and there is no more need of chains at the rear end than between the cars - Freight trains cannot be nearly so easily handled a passenger train - Whenever there is a stock and the engineer attempts to put on steam it must necessarily produce a jerk or shock -



On his Cross Examination he says am not an Engineer never run a train - that he has watched and observed everything about cars for the last Eight years - Have introduced Patent rights of various kinds & particularly Rail road Brakes The Experience I have had in the management of trains, has been obtained in travelling upon Railroads as a passenger do not think these chains would be of any use if Passenger keeps his seat when cars are in motion there is no necessity for chains - If door was locked and kept locked there would be no danger - nor would there be danger if no one is on the Platform - In these railings there are sometimes Eye holes - when cars first come out they had chains but when overhauled they throw them off - do not know exactly when these chains were dispensed with - not only for the convenience of the Conductor and Brakeman but also for the passenger - If passenger desire to pass he must stop on platform long enough to unhook these two chains pass & hook them up again - passengers do sometimes pass I suppose & if one does pass it is dispensed with for his convenience - Company could have brakemen on each Platform a chain at rear platform would not be inconvenient to the Brakeman - if there were two Brakeman to each car think there would be a little time gained in case of accident - If a chain went across & there was a sudden jerk of a train it might throw a man off - Do not



65 think the chain would save him - But it might possibly if it did not break. The said defendant further to maintain the issue on his part called Hugh Gray - who being duly sworn says that he resides at Chicago is superintendant of car repairs on the Galena & Chicago Union Railroad Company and have been so employed twelve years - previously to that time was a car builder on the Michigan Central Railroad - Has charge of both freight and passenger car on the Galena road - They do not use chains on the way car on the Galena road and never have - When I was on the Michigan Central they did not use chains on their passenger cars - In the construction of cars then these chains were not put upon them - the Galena & Chicago Union Railroad Company have not used chains on their passenger coaches in four years - we consider it rather an incumbrance than a benefit - in my judgement it does not work to the safety or advantage of Passengers in getting on or off the cars - if chain there it would not be natural for him to take hold of it - there is no necessity of taking hold of anything but the guards which are provided on each side of steps & platform

The Galena Shops are about five minutes walk from the Northwestern railway shops - have been frequently there and at their depot - Never saw any chains on any of the cars on that road - neither passenger or way cars - and they are not used on the cars of any road coming into Chicago to my knowledge -



On his Cross Examination witness states that -  
way cars are for the convenience of the men on the  
train and to carry tools - Do not know whether  
they carry passengers or not - We put these guards  
on cars for the support of the Brake & the  
Brake wheels - and for the convenience of the  
Brakeman & for any body getting on & off the Plat-  
form - Think if a man was standing door of  
the rear end of the car & be thrown out he would  
be likely to go over the chain -

The said defendant further to maintain the  
issue on its part called

Chester F. Allen who having been duly sworn in said case  
testified that he resides in Michigan - Does  
business at Aurora has been there six years  
is superintendant of wood work & car repairs  
of Defendants road - and has been for six years  
previously was building bridges and buildings  
on railroads - Have seen the construction  
of other cars and examined them - that we  
have not been in the habit of putting on chains  
He not recollect of ever having seen them on  
the Michigan Central Railway - Railing is  
put on to hold brake wheel and keep persons  
from falling in getting on & off the cars - The  
Brakeman is obliged to ride on the Platform -  
Chains interfere with the Brakeman & Conductor  
in the performance of their duty - He attends  
2 brakes - Conductors have to run through often  
in great haste and so does the brakeman to  
adjust his bell rope and in case of threatened



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 danger & chains would be greatly in the way. of the Employees saving & protecting the lives & safety of Passengers - the way cars on the defendants road are all similarly constructed.

On his cross Examination witness says that he does not know that he was ever on a train where chains were - If a brakeman were upon every platform these chains would not be in the way of the Brakeman except when passing through to adjust bell cord and other things - If train was standing still possibly a chain might prevent any one being pushed off - but in case of a jerk he would be thrown over -

This Defendant next called as a witness -

Mr. La. Rue Harrison - who having been duly sworn testified that he resides in Burlington Iowa - am employed on Railroads - last employment was superintendent of wood work and car repairs on the Burlington & Missouri railroad - used to work for Defendant in office of Chief engineer and was drafts man - Have been on Engines - Have noticed other roads - but not been familiar with them - never run any cars - have observed in regard to the use of the chain between guards on platform - They do not use them now - I saw some used four or five years ago - my reason for their discontinuance is because they are dangerous and inconvenient both to passengers and employees - a passenger passing from one car to another must stand on platform till unhooked & when he has passed they be hooked up again - There is a slack in them - and in case of a



jerk if relied upon would throw a passenger off and on the back of the car they are not safe - owing to the slack - they strike the legs and if one catches hold he is thrown over - have seen them used on a way car and they are not generally used now on any of the roads on any of the cars nor have they been for four or five years - Have often been on freight trains never had any thing to do with Eng. - ing further than my own amusement - In a majority of cases there would be a sudden jerk - There is a great difference between a freight & passenger train - Have rode a good deal on freight trains - they are longer and consequently more slack - in stopping they close up together and in starting out there will be more or less jerk - should say the slack is from 8 to 10 inches - from 3 to 5 inches between draw bars and then the rubber springs - no reason why a light freight train should jerk more or less than a passenger train of equal length - the jerking other things being equal will depend on the number & weight of the cars - have a general acquaintance with machinery - never found two locomotives that worked exactly alike although made by the same persons - There is a difference in the suddenness with which they start if persons should stand on the platform on the rear end of the rear car unsupported & unused to freight trains it would not be safe and it would frequently occur that it would throw him off one third the time - when cars are moving by their own momentum they would close up and if new steam be put on.



there will necessarily be some jerk - do not believe that engines are so perfect as to be so managed as to start a freight train without jerking -

On his cross examination witness states that he has been draftsman and accountant have observed the running of engines - have never been engaged as an engineer - do not think the throttle valve entirely under the control of the engineer - not even when the Locomotive is in good order & the valve in good condition - think you can let on a small or a large quantity of steam - have seen them go without steam - have seen cars go without steam - the guards are some two & a half feet high - the chains are lower - do not think guards 3 feet high - chains I should say were four or five inches lower than guards - The hook is some 3 or 4 inches long - have had no experience with these chains - think the chains might be thrown out -

The Missouri road is now pretty rough - think I have been in Chicago two weeks - was requested to come here by Mr Ball or Hawkins - am going to Iowa as soon as I can get away from here - think a perfectly rigid bar across might be a protection but a chain slackened would not - I would not have it on - think it would be dangerous - if it hung down four inches it would swing out 4 inches and if a man saw the chain it would tend to throw him out - If a man were being thrown out he would be more likely to go out with the chain than without it - And the defendant further to maintain the issue on its part called as a witness



Brackley - who having been duly sworn testified that he resides in Galisburg. - is conductor on defendants road and has been since June 15, 1886, had been train master in Michigan city previously - have sometimes been on engines - never run trains as an engineer was freight conductor four years - am now passenger conductor and have been six months - cannot run heavy freight trains without jerking - if running down grade the cars run up on the engine and when it starts out there will be a jerk - at all times when running and engine shuts off steam and then takes steam again there will be a jerk - cannot control an train so as to prevent it - cannot stop a train a particular point - from my experience cannot start a train just as you want to - two engines will not take steam <sup>just</sup> alike. There are no particular rules on the subject it is our duty to prevent jerking & save breaking irons & pins - we often brake draft irons - have seen them broken when <sup>the</sup> train was managed as well as it could be and also by carelessness - If train is managed as well as it can be the jerk is sometimes severe enough so as to brake pins - Nor could a man stand on the platform - have been myself thrown from my feet and against the door on my train this winter - This occurs very often every day if a man runs every day - these jerks are not the result of carelessness - they are unavoidable - Train men cannot avoid it - If a man keeps guard he may not be



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 thrown down - I do not think they can be avoided - I know they cannot - a train of 15 or 20 cars running at the rate of 2 or 3 miles an hour by its own momentum & steam be then put on a man unguarded would be moved and the amount of the jar would depend on amount of steam put on and the train could not be managed so as to avoid such jirks. I do not know what the grade is at south street but think it is about a level but from east side of south street the grade descends east should say that grade at south street at switches & frogs is level - the pins & connectors often break have been fortunate on my train this winter and have not broken them more than a dozen times - three weeks ago in starting up Young America we broke the draft rods - the jerking will occur when going through a depression in track when he shuts off & then again gives the engine steam - when the rail is made slippery by frost dew or grass on track - train runs up & when wheels stick there is a jerk - when running if steam be given quick then there will be a jerk. Have never seen a car with one of these guard chains on - have run on the Rome & Watertown road - on the Michigan Central Railway in 1855 - never saw a car <sup>with</sup> one on - think they are <sup>a very</sup> inconvenient thing in running a train should think them dangerous and especially in the night time when passengers & men would be obliged to stop and unhitch them and hitch them up a brakeman



usually tends two brakes the hind car and the forward one & these chains would be in the way on any other than the hind car these chains would be no safety but would be dangerous - It would be safer without them and be used - On all roads it is customary for brakeman to tend to two brakes - last June the freight trains of the defendant were in the habit of stopping the rear car at a point opposite the scales - to let out switching engine. The place is about 500 feet west of south street - <sup>grade is level it may be higher between scales & south street</sup> Eastwardly it commences to be down grade - In coming Engine shuts off steam about a half a mile east of that point - and runs up to see whether switches are right - then puts on steam and runs up - It is the custom in coming in to run carefully on account of so many switches -

On his Cross Examination witness states that if trains are watched they would not be found to vary in stopping much from the point above stated place of stopping would not depend on length of train - Conductor does not signal them to stop the brakeman stops train - a train running at 3 miles an hour might or might not run up to point indicated - It would depend on circumstances track - length of time - brakes may be on - not the custom for the engineer to stop train - Engineer does not know when to stop - Engineer is always looking out to see the signals conductor if in car cannot give signals unless doors be open - Street is near 2nd Switch - Street is 3 rods wide - the train must be run up sufficiently to let out.



the switching engine it must run up past the frogs & up near the scales - think track nearly level rather descend west from the street - a car body is 33 feet - think it would ordinarily be necessary to put on steam with a train running three miles an hour to get up to a point where the switching engine could pass out - three miles an hour is very slow and a heavily loaded train runs heavily with 15 or 20 cars and over - switches & train running 3 miles an hour do not think it would run up without steam being put on - It is common practice to run the engine down opposite the passenger house - If the engine is on the centre steam can be let on in so small a quantity as not to move it - Think if engine took steam at all could not be let on in so small a quantity as not to move the engine with careful engineer cannot move a train of cars just as you have a mind to - With 10 cars you might let on steam in so small a quantity as not to move them nor 7 nor 8 nor 5 - I slack all taken up & steam be let on it would move 5 cars Have no interest in event of <sup>this</sup> suit - Passengers have no business to pass from one car to another across the Platform when train is in motion - do not know as they would be more likely to remain in car if chains were up - These chains would have to be taken down for the convenience of the men managing the train - One object of these guard rails is to hold the brake shaft & wheel & another to take hold of in getting on and off & for the brakeman - There are instances when fireman have become engineers - If a man stood in



back door of a car to do not think chain would add anything to his safety in case of a sudden jerk - Can't say whether with a chain there it would be more or less dangerous think it would be very likely to trip him - a chain would not be a protection in all cases - if a man falling should grab the stanchion and the chain - Stanchion would save his body & the chain would prevent his legs going off - I think a man jerked against the chain and it giving it would throw him from his balance and he would be likely to fall over it & his breast would fall on the chain and it was strong enough it might hold him -

The Examination - Witness says that trains would have to run up to from 100 to 120 feet past the frogs to let switching engines out - back end of train did usually stop at scales.

Passengers were never in the habit of getting out at or near South street - nor did trains slack up or stop to let passengers get off there.

The Defendant thereupon called as a witness one William Patch who having been sworn in said case testified that he resides at Galesburg and has lived there six years - Have been in employment of defendant most of the time - Have been most of the time conductor of a Freight train - commenced railroading 17 years ago have worked for 4 railroad companies - commenced on the Boston & Cherokee R Road - then on the Galchburg road - then on the Boston & Miami road and then to the defts road have been conductor between nine & ten years - was a baggage man &



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Fireman before that - In running freight trains there is a jerking motion - and the amount of this jerking depends on the length of the train the longer the train the greater the jerking - when steam is shut off & slackening occurs & steam be put on there will be a jerk & the longer the train the more severe it will be - when track is bad or grass on it and the wheels slip if engineer puts on steam there will be a jerk - In going into and out of a hollow there will be a jerk - the jerks cannot be avoided they may be mitigated by applying the Brakes - When train has slackened up and steam is put on it is not possible to avoid these jerks - the jerk is greatest on the rear car in consequence of the slack - there is in a train of 15 or 20 cars from 12 to 15 feet of slack in all - the engine has acquired speed and the last car starts with the momentum of the train - another reason is the way car is so light - In a train managed as well as it can be these jerks will be likely to occur - a man riding from one station to another and was not on his guard he would be likely to be floored by those jerks - I mean a man standing and unaccustomed to riding on freight trains - think it dangerous to stand on platform of cars - There is a notice on passenger cars that persons are not allowed to stand on platform - the reason it is not on on a way car is that it is not designed to carry passengers - Passengers are not allowed on these cars except for the special accommodation of <sup>the</sup> passengers - cannot say that I am an engineer -



Speak of the effects of jolts from my experience -  
Have never seen a guard chain on a way car - seen  
some on the passenger cars of Cheshire road & also  
on Fitchburg road in 1845 - When these roads  
when these roads commenced running their cars  
first built had these chains on them - but they  
were soon taken off on both roads - have never  
seen them used elsewhere - never saw them on  
the Michigan Central road - (Questions by defendants  
counsel - "How does the Michigan Central Rail  
road rank as to its general management, <sup>and character</sup> with other  
railroads in the United States" To which questions  
the counsel for the plaintiff objected - The objection  
was sustained by the court and the question &  
answer thereto were excluded - and to the ruling  
of the said court in sustaining said objection &  
excluding said question & testimony the said  
defendant by its said counsel excepted -

Thereupon the same question was put to said  
witness in reference to the Fitchburg & Cheshire  
Railroads - The same objection was made by  
the counsel for said plaintiff & the same ruling  
thereon by said Court and a like exception taken  
by the said counsel for the said defendant - Have  
travelled over various other roads and observed  
their cars never saw a chain on them - <sup>think they are a perfect</sup> should have noticed them if used - Insurance  
they cannot be used between the cars without  
great inconvenience to conductors & brakemen - a  
passenger at night in running out on to them would  
be likely to be thrown off - have seen dresses and clothes



tore by them - the chain on rear end of rear car is of no benefit if a sudden jerk should occur - the slack would throw a person from his feet - if no one was there they would do no hurt - I have used them and at that time them a nuisance and so did other <sup>railroad</sup> men and they were discarded as a general thing because they were not useful - Train used to stop last June at Galieburg within two rods of the scales generally opposite but as often on one side as the other - these scales are about 30 rods west of west side of south street - am acquainted with track from south street to scales - If train was running at 3 miles an hour at south street by its own momentum with 15 or 20 cars they would not run up to where they usually stopped - It would be necessary to put on steam and this would undoubtedly make a severe jerk - the rule of the company is not allow persons to get off the cars while in motion some passengers will get off however because they are near their houses - the trains were not in the habit of stopping at south st to let persons get off - heard of this accident that evening - time card shown to witness - this is the one we were running by at that time and the printed rules are the ones the employees are bound by - Freight trains coming from Chicago usually shut off steam between Main + Meuburg streets and let their cars move by their own momentum till we get down & that switches are all right and then engine puts on steam enough to haul down into the yard - the speed is reduced to from 2 to 3 miles per hour - On his Cross Examination witness states that



he is in the employ of Defendant at the present time not an engineer - thinks the jolting cannot be avoided - this opinion is based upon every day observation because trains jolt frequently I infer it is necessary. They are more or less severe the difference is caused by length of train and amount of steam. Do not think steam can be put on when there is slack without producing a jolt - Do not think it would depend mainly on speed of engine - One or 2 might possibly be started slowly but not 15 or 20 - with 15 or 20 cars could not start so but that it would throw a man off his feet. If steam let on gradually might not be as hard as it otherwise would - Freight trains are not designed to ride on - Way car attached for use of train men - never saw these chains on a way car nor have I seen them in actual use any where else except on rear end of rear car - I think they are a nuisance there - Between the cars they are an injury both to the passengers and men - do not think the chains would help to save a man thrown from platform in any case - door way - or from inside the car - Railing is about 30 inches high - there is a notice on all the cars not to stand on the platform - it was for the convenience of both passengers and men that these chains were dispensed with - Railing & chain made of iron - the chain might be placed higher and then it might be a protection but this would interfere with the brake chains & railing could not be higher without interfering with brakeman - Train usually stopped 30 rods south of south street some of switches are near south St - Grade nearly level



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between south street & where train stops - if cars were running 3 miles an hour and slack taken up & steam be put on jerks would be less - passengers are not in the habit of getting out at or near south street never told any one to get out there & no one ever asked me to do so - I have known persons to jump off them - chains are inconvenient to Brakeman & Conductors - If brakeman on each platform would not be so much in the way - Brakeman might unlock the door for the passenger - if there and nothing else to do - chain at rear end of the car not in the way of the conductor - If a man kept off the platform it would not be a nuisance to him but if he got a jerk he would be more likely to save himself without a chain than with one - would not be as likely to get hold of the rail if chain was there - Passengers usually get off at scales after car stopped - When one or 2 jumped off do not call it a habit - have known persons to jump off west of main street when steam is shut off the cars make a jerk - In stopping at station sometimes brake is applied and sometimes not - The Defendant further to prove

the issue on its part called as a witness Lucius Newland who being sworn says that he resides at Galeburg - is passenger Conductor on the Quincy & Chicago Railroad - has been such for eighteen months - was freight conductor 2 1/2 years on defendant's road had charge of a yard in New England for 5 years - have been employed on Rutland and Burlington Railroad in Vermont & in Massachusetts and on the Defendant's road &



on the Quincy & Chicago road in all about ten years - In running freight trains have always found on all the roads a liability to jerking more so than on passenger trains - This jerking is caused by inequalities in road - by slack of train & by putting on and shutting off steam - If train be never so well managed it cannot be avoided have never seen it done - it may be mitigated not prevented - With train of freight cars of 15 or 20 on level grade moving 3 or 4 miles an hour by its own momentum if steam be put on there will be a jerk and it could not be prevented - It has always been so in my experience - the jerk would be very likely to throw a man down who was standing unsupported and unawares - I have been jerked down - it often occurs with persons on freight trains - a slippery track will produce jerks - most engineers commenced as fireman in the west - they have been firing and working in the shops - about 6 years ago was brakeman on Rutland & Burlington road when these chains were used was depot master when 3 other roads came in do not know whether other roads used chains or not - have not seen these chains since I was brakeman on the Railroad on any road - think these chains are a nuisance and of no benefit - If chain was hooked it would take brakeman as long to unhook them as to put on Brakes - If not put up they are not safe in working on the car - do not think they would be of any use in case of an accident



Never saw them of any use - chain on rear end of rear car might be of advantage to a short person but not to a person of Plffe's height - Freight trains usually stopped at Galesburg opposite the scales not varying perhaps more than 2 or 3 rods it is customary to shut off steam between Main street and the mills in coming into Galesburg and let the train run of its own motion and come up to switches at the rate of 3 to 5 miles an hour sometimes could run in and some times it was necessary to put on steam - If train of 15 or 20 cars should by their own momentum run at south street at 3 miles an hour it might or might not be necessary to put on steam.

Trains generally go in slow to get a view of switch - no rate of speed prescribed - they usually came in at from 3 to 5 miles an hour and if it became necessary to put on steam there would be a jerk and sufficiently hard to throw a man standing unguarded down -

On his Cross Examination witness states that violence of jerk depends upon steam put on amount of slack the Rubber springs - should think a small quantity of steam could be let on.

The engine is in good order even when the valve works hard - pressure of steam might cause this - if valve unmanagable Engine would not be in good order a small quantity of steam might be let on but not so small as to start train and not produce jerk - you would not feel much of a jerk if brake were on hind car - I ran a freight train there a



year and a half and we carried passengers all the time sometimes we had a passenger car - second class car - and sometimes a way car - If a man were to get a jolt he would be more likely to fall off with the chain than without. - The said Defendant further to maintain said issue on its part Examined

Daniel Patch, who being duly sworn in said case testified that he has resided in Galisburg 3 years is running passenger and freight trains on defendants road as conductor - have been employed 3 years on Rail road - on the Quincy & Chicago 3 1/2 years of that time am acquainted with running of freight trains - they do not run as steadily as passenger trains cannot be run so as to avoid jerking - have never known them to be run without - It occurs on slippery tracks when steam is shut off and then put on again the whole train will be jerked the last car most - slack of train cannot be taken up without a jerk - never saw these chains used on any cars - have passed over a great many roads and never seen them - I cannot say what I would say as to their utility - have not formed any opinion - Freight trains usually stopped at or near the scales - Engineer shut off steam near the wheels and let train run up by its own momentum and if it would not run in he put on steam and when this is done a jerk is produced this cannot be avoided - a person unaccustomed to it would be obliged to step to save himself - Have known persons jerked



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Benjamin Barnes

down. The said defendant thereupon introduced Barnes who, being duly sworn in said case testified that he resides at Galisburg - Is conductor of freight trains on Defendant's road - and has been for 4 years - Before this was conductor on New York Central Railway - Have been on Railroads Eleven Years - am acquainted with the running of freight trains - They do not run as steadily as passenger trains - in freight trains, there is "great liability to jirks - and this jirking cannot be avoided - never knew it done - caused by length of train - no matter how easily train starts hind car is jirked the most - on level grade if steam be shut off cars will run up and if steam be put on jirk comes and this cannot be avoided never knew it avoided - the effect is to jirk a man off his balance - a man standing on platform might be jirked off by it - Have seen men thrown by it in ascending a grade out of a hollow when I first commenced nine years ago on Rutland & Burlington Road saw chains on the cars but they were never used - If used they were obstructions - the custom is to employ one brakeman on 2 cars - this is enough - have never known roads to employ more - do not think these chains of any use for 1st - Passengers are not to be on the platform when the train is in motion and in getting on and off they are of no use - they would be no protection to a man if on the platform - have been much on other roads but never saw them - they have not been used for four or five years - Chain was not used on Michigan Central Railroad when I was there - Freight trains used to stop last June at Galisburg at scales - custom was to run in very slow - Engineer shuts off steam near the mill - let train run up



if it will and if not put on steam - a train of 15 or 20 cars at 3 miles an hour at south street would not have momentum enough to run up probably - It would depend somewhat on condition of track -

On cross Examination witness says - It may be necessary when train in motion at 3 miles an hour to give engine steam to run up and whether the jerk - would throw a man over the platform would depend on circumstances - do not think the slack could be taken up without jerking - was an engineer about three months - if engine is in order steam can be let on in small quantity but if slack is taken up it would jerk the train and it might be so severe when trains run at three miles an hour as to throw a man off - steam cannot be managed exactly as you wish - chains are in the way of people - there are notices on every passenger car warning people to keep off the platform when car is in motion - to go from one car to another when cars are in motion is dangerous - and thinks if chains were up it would make no difference about passengers passing from one car to another - these chains were dispensed with for the reason that they were of no use - they are an extra expense of no benefit cost two shillings a piece - I would take them down for they are in the way - on rear end would not be in the way but it would be inconvenient to change it from one car to another - the Guards are made to help passengers to get off and on - and for Brakeman & Brakewheel - there are holes at the end of these railings on some cars - no notices



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on way car but on passenger car there is - the said Defendant further to maintain the said issue on its part called C. B. Lawriet who having been duly sworn in said case testified that he has lived in Aurora since spring of 1859 - Is master mechanic of locomotive department has been in employment of Defendant since 1855 - was on Michigan Railroad in 1840 - was there till 1855 - except 2 years upon the lakes as engineer - have run locomotives - have built engines - repaired them - has run on freight trains - they do not run as steadily as passenger trains - they are very liable to be jerked - this cannot be avoided when steam is put ~~on~~ - in a long train there would be 10 or 12 feet slack - if steam shut off engine loses momentum quicker than the cars and they run up on to the engine and if steam be put on they will jerk and the rear car the most - 15 or 20 cars - speed 3 miles an hour - steam shut slack run up steam then put on - the jerk would be likely to throw a man down unless guarded - this cannot be avoided - do not think engines are made so perfect as that engine cant put on joint steam enough to run a train and not produce a jerk - Engineer cannot put on as much steam as you want and no more - All engines are not alike - the condition of things are constantly changing - by grades on track - weight of train - the weather pressure of steam - never have seen these chains - they never have been used on any road where I have been - not used on Michigan Central - nor on Detroit and Milwaukee to my knowledge - never knew these freight trains to run without more or less of this jerking - On Cross Examination witness states that 2 cars may be moved without any very considerable jerk - cant start at 10 or 12 miles an hour - we generally put on steam enough to start the



train but it is necessary to jolt them to start them - have run an engine - If 15 or 20 passenger cars were put on a train there would be a jolt in starting a good engine can let on just a little steam as it pleases and gradually increase it - The Defendant further to maintain the issue on its part introduced as a witness -

S. S. Charney who having been sworn on his oath stated that he lives in Galesburg - is Master Mechanic on Defendant's road and has been for 2 years - was engaged on the Michigan Southern road as a Mechanic - was on the Connecticut and Vermont Central railways - have been engaged on Railroads in all about 11 years - have run freight trains - they are more liable to jolt - this cannot be prevented in whole - When steam is given to engine - The compression of the rubber springs combined with the force of the engine makes the cars jolt rear car more suddenly than the other cars - Cars running three miles an hour by their own momentum and steam be put on there will be a jolt but not so much as when starting - Engineer cannot prevent this I never could - the more cars in the train the greater will be the jolt - In a train of 15 or 20 cars a jolt like this would be likely to throw a person down who was standing on the platform with no place to step - have been on 8 or 10 roads within 3 years and have not seen these chairs in use in that time - as long ago as 1845 - the Boston & Lowell Road used them - never saw them on any western road - do not consider them of any utility was employed about the depot at Galesburg last June Remember of hearing of the accident the same night - I was well acquainted with the engine both before and



after - It was No 58 - saw it before and after the accident - It was in good order - Freight trains coming from the east stopp'd rear car near scales - this custom was uniform - Do not know where this particular train stopp'd - Clark was the engineer - It is a rule order to engineer to have perfect control of trains in approaching stations and this requires reduction of speed to about 3 miles an hour - If 15 or 20 cars were running at south street at 3 miles an hour with their own momentum - this would not carry the train over the frogs and switches to the place where the train usually stopp'd and if steam be put on the necessary effect is to jerk the train sufficiently to throw a man off standing unsupported - On his Cross Examination witness states - If engineer has perfect control of his engine and it is in good condition - he can put just as much steam or as little as he pleases - the violence of the jerk depends some on amount of steam - If car is in motion it requires about as much steam to accelerate motion as to start it - It takes less to start a train when moving than when standing - do not often run trains at a mile an hour - they might be so run - have seen them loaded so they could not move - Moving the engine is first cause of jerk - then this is increased as it passes through the train - Violence of the jerk to a greater or less extent depends upon amount of steam - the power as it passes from one car to another is increased - If only steam enough be applied to start one car at a time - The power of the engine would be lost and it could not start a train of 15 or 20 cars - You must put on enough to start the train and in doing this there will be a jerk - The said defendant further to prove the issue on its



part called as a witness - <sup>60</sup>George Chalender who having been sworn in said cause testified that he resides at Burlington Iowa and has since December 1855 - Is master machinist of the Burlington & Missouri Railroad - Before that was employed on the Galena & Chicago Union Railroad - before that on the Defendants road - been on a rail road in Pennsylvania commenced in 1848 - previously was a blacksmith & machinist - have run a good deal on freight trains - nearly half the time since 1848 & on 4 different roads - Have worked on Locomotives - Passenger trains run more steadily than freight on account of being shorter & lighter - a freight car loaded is the heaviest - Freight trains cannot be run without being jerked - Starting up in putting on & shutting off steam they will be jerked cannot prevent this jerking - no matter that they are managed as well as they can be this jerk would be apt to throw a man down standing on the platform - have seen these chains a few times but do not now remember where - they are not generally used - never had anything to do with them - think they are of no use - It is hardly possible to put on steam enough to start a heavy freight train without producing a shock more or less - We start a train as easily as we can - could not start a train by putting on steam starting one car then shutting it off and putting it on again - never knew train so started with 15 or 20 cars & slack all taken up it would require a very powerful machine to start -

On Cross Examination witness states that you cannot avoid this jerk - It would take quite a jerk to throw a man off the platform - When cars are ~~starting~~



and steam be put on there will be a jerk - If cars are in motion at 3 miles an hour should not put on much steam to run a 100 feet - a passenger car is as heavy as a freight - but when loaded they are not - a passenger will carry 50 or 60 persons - a car of what should weigh ten tons - came here this morning was not suspected - Mr Reed sent for me - he never talked with me - The said defendant further to prove the said issue on its part examined as a witness -

Joseph Moore who having been duly sworn in said cause testified that he is an engineer and has been for 7 years - 2 years on northern Railroad in New Hampshire 3 years on Pacific <sup>Rail</sup> road in Iowa - one year on the Rock Island road - 1 year on the delta road - Previous to being engineer was fireman and in machine shop - about 8 months in machine shop - have run both freight & passenger trains - Freight trains are liable to jerks - these jerks occur when starting - when increasing speed - also ~~when~~ <sup>in</sup> going through a hollow - It is caused by taking up slack of train - when steam is shut off it causes something of a jerk - also when train is running by its own momentum & steam is put on - this jerking of the cars can't be prevented - never saw Guard chain on any road. I have been on & don't believe they are of any use - On Cross Examination witness states that if the steam be off & train running at 3 miles an hour - Violence of jerk would depend on amount of steam used - the length of train & weight of train - cars at three miles an hour of their own momentum - steam could not be put on without producing a jerk on account of the slack - when pressure is great the throttle valve moves harder than when it is light - Know of no way of pre-



venting a jerk at starting or whenever the slack of train is taken up - Violence of jerk is so great sometimes as to break couplings - these breaks more frequently occur near the rear end of the train -

Said Defendant further to maintain the issue on its part called & examined Joseph Rodenbough who having been sworn in said cause testified that he resides at Galisburg & has for six years is now and has been for 6 years an engineer on defendant's road commenced Railroading when Polk was elected have been running engines for about 13 years -

Bidding Railway in Pennsylvania - on to the Mansfield R.R. then on Galena & Chicago Union R.R. - for the last 6 years have run passenger trains - before that both passenger & freight - Freight trains do not run as steadily as passenger trains - Freight trains are liable to be jerked - I could never start a freight train without producing some little jerk - If train be running and steam be shut off there will be jerks by the cars running together and if steam be put on there will be produced another jerk by taking up the slack of the train - Violence of the jerk depends somewhat on the length of the train - Engineers in approaching a station reduce speed 3 to 5 miles an hour - when the momentum is not enough to carry the train where we want to stop we put on steam and that produces a jerk hard enough to throw a man unguarded - and not expecting it down - the Budding road at first used chains on a few of their cars but they were taken off just as fast as the cars went into the shops to be repaired think the use of chains an injury rather than a benefit - have seen cars started by a pinch bar and



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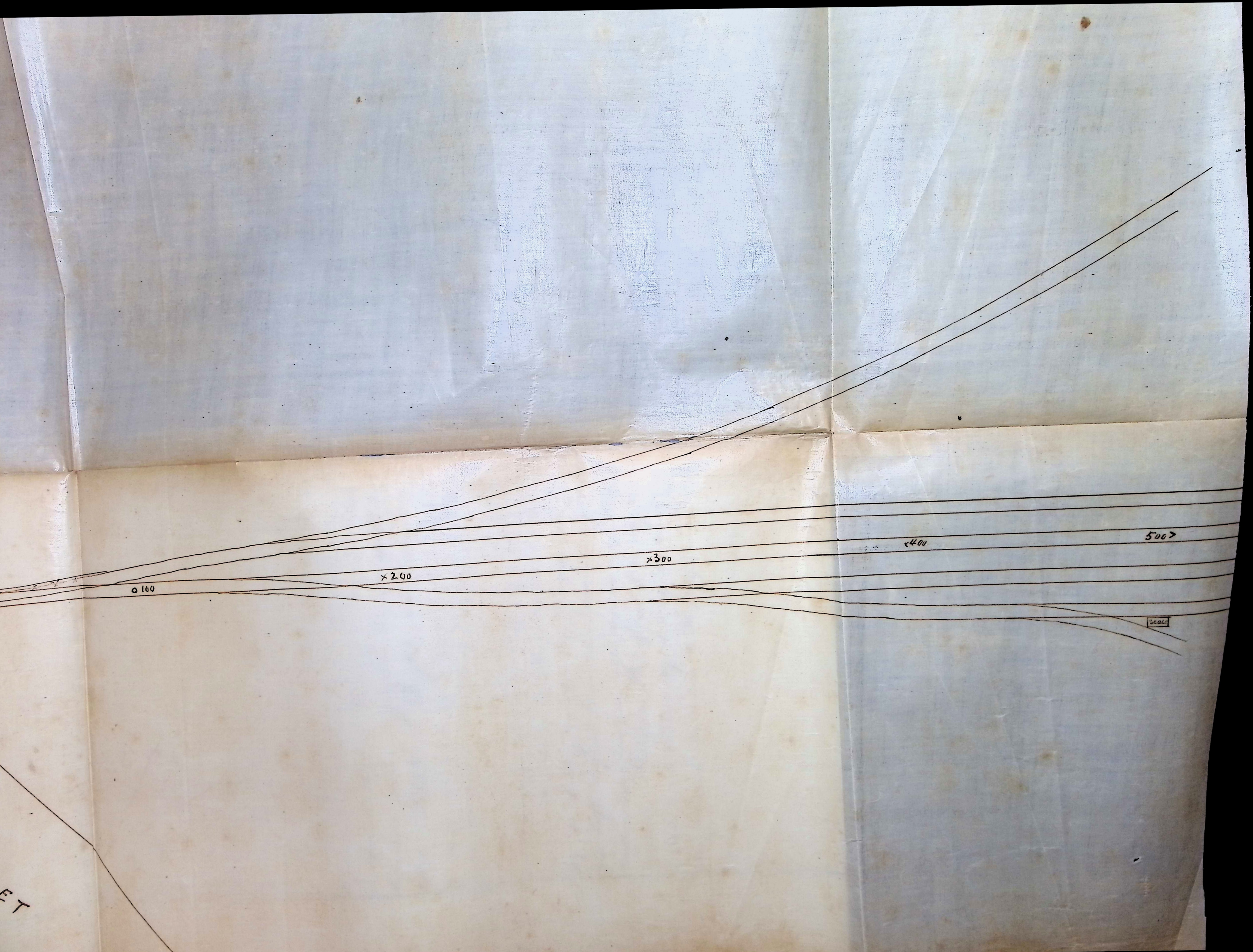
a jerk so violent as to brake the train into - The said defendant further to maintain the issue on its part introduced one Andrew Stevens who being sworn testified & gave in evidence to the jury that he resides in Aurora Ill & has for 4 years - is a Locomotive Engineer & has been for 6 years Saginaw, & Peoria & on Defs road before that was in repairs shops on the Vermont Central & N.W. Road & in shops of Defs - Have run mostly on freight trains - Freight trains are liable to be jerked more so than passenger trains - These jerks occur in starting & stopping & up & down grades & they cant be wholly prevented - If train is running & steam be shut off it will produce a jerk and then if steam be let on it will produce a jerk - this is more severe on them in letting on & shutting off steam & greater at the rear end of the train - In running trains into Galveston from East they generally leave the way car by the scale - reduce the speed of train to 4 or 3 miles an hour before approaching the switches - If running with momentum of cars & speed not sufficient to take the train to stopping place steam is put on and this produces a sudden jerk - Never saw these Guard chains in use do not think them of any use - a jerk sufficient to throw a person against a chain would be likely to throw him over - they afford no protection to passengers - On Cross Examination witness states that does not think a chain would save a man from falling from the platform - am in Defs employ - a train running at the rate of three miles per hour would run the length of 3 or 6 or 8 Cars without letting on steam - jerking depends on amount of steam and length of train - I cannot tell whether a man would be more likely to be jerked over platform



or not with a chain - and the said defendant thereupon  
introduced Elias, W. Weed who being sworn in

said case testified that he resides at Galesburg - that  
he helped make the plat shown to witness - South  
Street is correctly represented on the map - I helped  
to measure the distances - From South Street to scales is  
500 feet - Grade is level - The map was here given  
in evidence to the jury





ET



SOUTH STREET

0 100

x 200

x 300

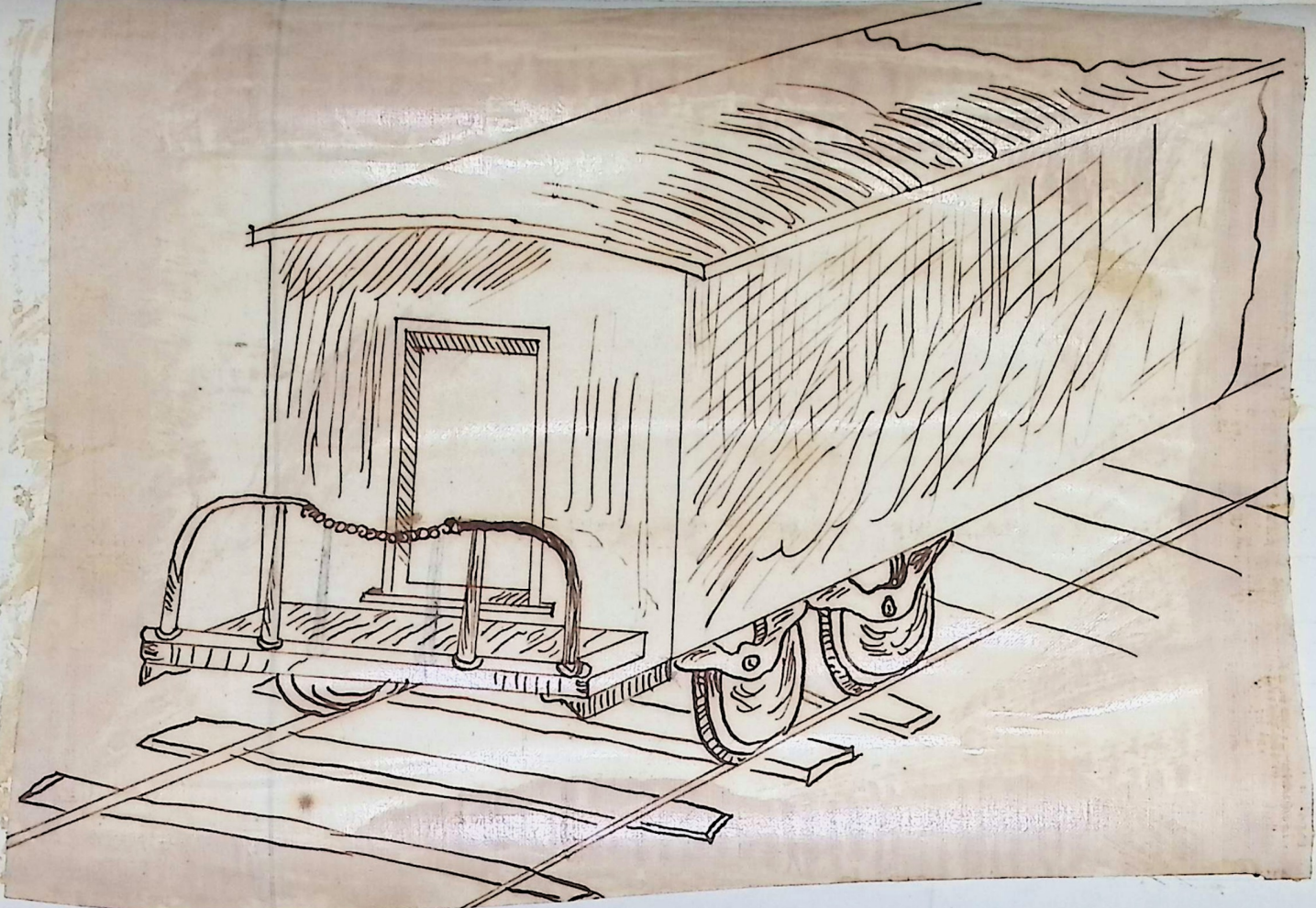


There are regulations of defendant road prohibiting passengers from standing on the platform when the cars are in motion - these are published by a sign posted on each door of every passenger car on the road and they have been there ever since the road was in operation in 1854. These notices are all a like - this notice produced by witness was taken from one of defendant's cars - the notice was here given in evidence to the jury

Copy of Notice  
 "Passengers are not allowed to stand on the Platform"

The witness further says has known Plaintiff for 3 years - have often seen him on defendant's road and at defendant's depot at Galisburg - And the said defendant further to maintain the issue on its part called George P. Bryan who being sworn in said car gave in evidence to the jury that he resides at Aurora - and has for 4 years - that he has been employed on the New York Central in machine shops 3 years - then went to Michigan Central and was in their shops 6 months - from there to Michigan city car Factory and was there 9 months and thence into Defs shops at Aurora - Know how way cars are constructed - same as freight cars are except doors & windows - Platform Plat of end of the way car exhibited and witness says it is right - which was then given in evidence to the jury -





The witness describes the railing as shown by the Plat - the way cars are all alike and are designed for the use of the train men - does not recollect of ever seeing chains used on any road except the New York Central and they were ~~not~~ discontinued on that road some two years ago - do not deem them of any benefit - railing on platform is for <sup>the</sup> convenience of getting on and off and also for the brakewheel standard. If a man were falling through the door over the platform should grab for the stanchion it would probably save him.

Dr Buncce

being sworn says that he now lives & has for the last 23 years in Galesburg - that he is and has been for 23 years a Physician and surgeon - at the time of the accident he was at Dr Spaulding's - a young man came for Spaulding who not being at home witness was asked to go and see Hazard - That he found Hazard at his house on bed



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hurt - Examined his foot found an injury to ankle was a little in doubt as to what the matter was - Asked Hazard how he got hurt - he said he came in on a freight train and asked the conductor if he couldn't get off without going to the depot so far from home home - the Conductor replied he would hold up near the mill - when the train got there - It was moving very slow and he (Hazard) got up and took his carpet bag in his hand - conductor said "Not now M<sup>r</sup> Hazard presently" conductor then said "now is your time M<sup>r</sup> Hazard - He (Hazard) started to go to the forward end of the car conductor then said "No Go to the back door" just as he was passing through the back door the train started up and he was precipitated off the platform onto the track - Hazard said the conductor seemed to be a very pleasant young man that he did not blame him - he said he was passing through the door - Mrs Hazard and the young man ~~who~~ came after me were there at the time of this conversation - On cross Examination witness says he does not remember whether Hazard's mother was present at the conversation spoken of & does not know whether she heard it or not - Does not know the young gentleman's name - this was in the evening - Hazard's son was not there thinks he gives the precise language or nearly so - we had no other conversation -

H. H. Bush being sworn says - I reside in Galesburg - am Freight conductor on C B & Q R R have been for about a year and a half - was a brakeman before that - been on R R 3 years know Pff recollect his taking passage on my train at Keosauqua 32 miles from Galesburg - It was Friday 29th June 1860 - he rode on way car on freight train - he got aboard about 5 - got to Galesburg about 8 -



Question

What were your orders about letting persons ride on the freight train?

Ans<sup>r</sup>

My orders were to carry no passengers unless they had a ticket & Special Permit - the orders I think were posted on conductors Bulletin board in office at Galesburg - when we came into Keokuk we stopped by east water tank - Mr Hazard seemed to be in a hurry to get on to May car - I told him not to be in a hurry as we were to stop there & he would have time to get on - I then asked him if he had a ticket? he said yes. I did not ask him any thing about the permit for the reason that the station agents were in habit of writing special permits on back of tickets to persons doing business on the road - He afterwards showed it I think there was a permit written on the back but I cant swear to it we had no conversation till we got near Galesburg - after we had crossed Main Street in Galesburg - Mr Hazard spoke to me & wanted to know if he could get any supper at Passenger house - I told him he was to early by about an hour - nothing on the table at that time - he then said he guessed he would not go to the passenger house as he had been away from home 3 or 4 days & was in a hurry to get home - he then asked me where we would leave our train? I told him I did not know where we would leave it as we left it sometimes opposite freight house & sometimes opposite passenger house - I then asked him where he lived - he said down on Main St & pointed to house I was standing up by side door & he in his seat beside me - I told him business men of the town frequently jumped off between Main St & passenger house - he replied he guessed he would get off & picked



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up his satchel & umbrella & went to the front door & I  
went & shut the side door at which I was standing  
on north side of <sup>the</sup> car - he went to the front door & opened it  
& as he did I spoke to him & told him he hadnt better  
go out of that door - his reply was - I guess the other  
door will be the safest - he turned around & started  
for the back door & I crossed over & shut door on south  
side of way car & when I shut up that I started towards  
back end of way car - he had got to back end of car &  
was stepping out of door & had left hand on side of  
door casing and one foot on platform & the other on  
door sill - at this point the engineer took up slack of  
train & it just reached way car as he was stepping  
out one foot on the door sill & the other on the plat-  
form - way car jerked - I was near back door & tried  
to catch him - one or two fingers slipped down his coat  
he had on linen coat - the jerk of the car threw him  
off his balance - I saw him catch his right hand on  
the guard rail of the north side of car and then he fell  
backward off the platform & I suppose struck on both  
feet - he fell down & rolled over once or twice & brought  
up sitting on side walk on south side of south st &  
South. W. of R.R. the jerk did not throw me down  
I had hold of nothing - It did not move me - the  
jerk was no more severe than usual on taking up  
of slack & it frequently occurs - I was within 2 or 3  
feet of him - I stepped off my way car as soon as I saw  
him fall & went to him - he was sitting on walk I asked  
him if he was hurt - he said he was - I asked him whereabout  
he said his ankle was dislocated or broken - about that time  
switchman came up & asked Hazard his name & if he  
was Lawyer Hazard to which he said yes - Hazard said



he wanted his boot pulled off - I pulled it off - he said he would have to have a carriage - I sent switchman after carriage - It did not come - a man came along & stayed with Hazard till I got a carriage & took him home - It was very frequent that business men got off there - train was moving at abt. 3 or 4 miles an hour Engineer S. R. Clark - Fireman George Buckman - nobody in car but me & Hazard - I have related all that occurred & as it occurred -

Cross Examination witness says, &c

Ques — Did you tell Mr Hazard that the cars would go very slowly & that he could safely step off?

Ans — I did not - there was nothing said in relation to this speed

Ques — Was you at Mr Hazard's in his bedroom on 30 June?

Ans — I was —

Ques — Did you there have a conversation with Mr Hazard?

Ans — I did in a measure —

Ques — Who was present? (Ans) a man Hazard introduced to me as Lombard & one of his son —

Ques — In that conversation did Mr Hazard say "you told me I had better get off at a certain crossing or side walk - the cars will run very slowly past there & you can very easily and safely step off" and as we were there almost then I got up and started toward forward end of car you spoke to me & said don't get out there - go to rear end of car - I then turned round and started toward rear end of car you followed close behind me & just as I was in the act of stepping my foot on platform the car was violently jerked & I was thrown over the platform on to the track - As I was falling I threw out one hand & caught the railing & held to



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it untill my foot struck the track - the whole weight of my body came on that foot - And did you at that time assent to that statement & say "yes" and as you fell I grabbed at you but did not succeed in holding you? - (Ans) we had part of that conversation & part we didnt - (Ques) which part of it did you not have?

Answer - There was no conversation we had in the room relative to the conversation we had before he got off the cars -

Question - What part of this conversation did occur? (Answer) the conversation as stated in question as to his falling & how he struck & how he got hold of the railing occurred - the rest did not -

Question - Did not Mr Hazard on that occasion ask you if the platform of car was not a very narrow one & you replied it was? -

Answer - I cant say whether I did or not - I think not -

Ques - Did Mr Hazard then add and there was no guard chain up to prevent my falling off? -

Ans - I think not -

Ques - Did you also on that occasion say - I am very sorry you are hurt, I did not think there was any danger or I should not have advised you to get off there - the reason why I did so was because business the men of the town who ride with me are in the habit of getting off there I hope you will not blame me in the matter and Hazard reply "I have no doubt you did what you thought was for the best?" -

Ans - A part of that was said & a part of it was not - I said to Mr Hazard I was very sorry he was hurt I did not think there was any danger as the business men often got off there "I did not say any thing about having advised him to get off there I did not say "I hope



you will not blame me" nor did I say "I have no doubt you did what you thought was for the best."

Ques—

Did you say to Mr Biglow within a few days, that if there had been a guard chain or chain up he would not have fallen off? (Ans)—No—

Ques—

Did you say to Mr Hazard at the last term of this court that if there had been a guard chain up the Pk. would not have fallen?

Ans—

Not to my recollection—

Ques—

did you say to Mr Biglow at any time since the commencement of this suit that you called Mr Hazard from the front door & told him he had better get off at the rear door?

Ans—

No Sir.— I don't know Mr Douglass & don't know whether he was present at conversation at Court house at last term of Court. I did not say at the last October term that if a chain had have been up Hazard would not have got hurt— I was conductor of the train at the time of the accident— I think they were running 3 or 4 miles an hour— I thought at that time it was safe if he knew how to get off— I think it would have been safe for him if there had been no jerk— I did not know the man— thought him a business man at Chicago—

### Re Examination

On 30 June last I went there that day to see how Mr Hazard was— saw Lombard & Son I think I commenced the conversation— I said it was a sad accident & I was sorry— His reply was "that there was no one to blame" there was also conversation about the manner of falling & the strength of jerk



I do not recollect exactly what it was - there was nothing at all said about my advising him to jump off - I think I was there about 15 minutes - no one joined in conversation between me & self. It was just as easy for me to take him - I had no motives to advise him to get off - Mr Bradley came & advised me that Mr Hazard wanted to see me. He asked me to relate the conversation & I commenced & he told me he had heard enough - had two other conversations one at his house - I went and he asked me to state the question and at that conversation his boy & two women came to the house - at that conversation he told me his statement - at another time I conversed with him a week before the time he asked me to ride at that time we had some conversation we agreed partly & partly disagreed - and before I left he asked me if the Rail road Company would discharge me - and said if he had a conversation with Mr Biglow - he said I might have a free accep to that - and expenses would be nothing. Before he left he said he wanted I should look at the case as favorably as I could - as my evidence would destroy the case - he told me I could finish my studies free of charge - said I might finish my studies & it would not cost me anything.

W. E. Ex<sup>m</sup>

He asked me if the company would discharge me on the next day I told Mr. Hitchcock - Mr Hitchcock is the Superintendent - I did not think it wicked to talk to Hazard.

Such Recalled we had 15 cars were loaded with lumber & Merchandise. I cant tell how many were loaded perhaps half of them - I know that



some of them were loaded full - I do not know how many were loaded - We used to carry lumber & dry goods I think the train was pretty heavy - In coming up the grade at Keenawau we found we had all we could pull.

George Paulson who being sworn says - have been fireman on this road Eleven months - have worked on Railroad 3 years - a while on Michigan Central R.R. Remember the day I was hurt was fireman on train that he says he was hurt on - We came in that day just as we usually do - I think the steam was shut off on that day - It was the custom to shut off steam about Main Street Locomotive was in good order - I do not know how cars were loaded -

#### Cross Examination.

Not my business to take charge of engine - Engineer was competent to take charge of his own engine - I always look <sup>Engine</sup> over to see if any thing is out of order - If any thing had been out of order I should have seen it - I am still in their employ.

Simon R. Clark who being sworn says I am engineer - have been 8 years on the Northern R.R. in New Hampshire - the Michigan Central R.R. & on the C. & D. R.R. I was on the train on which Mr Hazard got hurt was engineer on the train called Mendota Freight train run into Galesburg on 29 June 1860 - I did not know as any one was hurt on the train - did not hear of injury for 3 months - I know I ran a train on that day - cannot say how the cars were loaded - did not know of accident till sometime afterwards Engine was in good order -



Robert E. Goodrich who being sworn says - I reside in Galis-  
 burg. - have lived there 6 years - Five years of that  
 time I was railroading am now dealing in produce  
 know Plff heard he got hurt last summer. - I  
 had a conversation with Plff I think on the 1st week  
 in July regarding his injury - I was at that time  
 at work on a building on the next lot west join-  
 ing his house - he was sitting in window on west  
 side of house - we had some conversation about a trade  
 & I finally asked him how the accident happened  
 "he went on and gave me a statement. that he  
 came into Galisburg on a Freight train & instead  
 of going down to the place where the cars stopped  
 got off (having had some conversation with con-  
 ductor about supper & learning it was too early)  
 he asked conductor if he could get off and that the  
 conductor said that business men were in the habit  
 of getting off and that the train slackened up so  
 that he could get off - I do not recollect the street  
 but train was running about 3 miles an hour and  
 he got up took his satchel & umbrella & went to  
 front end of car. and conductor told him he had  
 better (or it was more safe to get off at the hind end  
 he went to hind end & stepped one foot on platform  
 & the engine took up slack of train & pitched him  
 out through the opening at the hind end of car -  
 I asked him if he blamed the conductor" and  
 he said he did not <sup>attach any</sup> blame to the conductor" there  
 was some general conversation about the injury  
 and then the conversation turned to matters  
 of business - this conversation did take place

Cross Examination



I think I am certain about the time - it was the fore part of July - I think I recollect pretty much the whole conversation & think I have given the precise words or very near -

Ques -

why did you say that he gave you a statement "something like this"

Ans -

I don't know as I can give any reason - I think I told the conversation to Mr Weed before the suit was talked <sup>of</sup> soon after the conversation with Hazard - I can't tell the exact time I met him almost every day - we were speaking of Mr Hazard & the accident - The trade was some Whortleberries - I ship some things over the Railroad - I was conductor and discharged last May - I had a pass last season - but Hammond refused to renew it - Did not have but one conversation with Hazard -

Doc - J. A. - Allen who having been sworn says - that he resides in the city of Chicago Ills - Is a physician & Surgeon has been engaged in practice about 15 years is now Professor of Principles & Practice of Medicine & Clinical Medicine in Rush Medical College - has been connected with other medical colleges - Knows the plaintiff in this case - first examined the injured part in October last, (1860) examined it again yesterday (Friday March 1st 1861) have heard the testimony of Doc Taylor & the other medical witnesses - From the testimony & my own examination think there has been a fracture & partial dislocation of the bone of the ankle joint - called the astragalus - a portion having slipped forward & outward up the outer and upper part of the foot there is still some displacement of the same - think from Dr Taylor's testimony there was also a fracture



of the small bone of the leg called the Fibula - near the ankle - There is no evidence - There is no evidence of that fracture now present on examination ~~so~~ The ankle is now better than it was in October last - there is more motion & less swelling & tenderness around - Believe that the Plaintiff will be able to use the foot in walking - he will probably limp some as the motion of the joint will not be quite as perfect as before - He will have a useful foot - may for sometime require a cane perhaps six months or a year the foot is a little turned in at present - thinks this depends partly on the displaced bone partly on its not being used and partly on the Callus so called around the fractured part of the astragalus - this Callus will as the internal part of the bone strengthens gradually be absorbed and the present effect thus being very much lessened - My opinion is for this reason more favorable as to the future usefulness of the ankle than it would be if there had been previously only simple dislocation of the astragalus - there is at present no appearance of the formation of abscess and with careful usage no danger need be apprehended - It will <sup>be</sup> safe for the Plaintiff to begin to use the foot when it produces little or no pain in so doing - the better use of the foot will be gained by commencing to use it as soon as possible Think the motion will steadily improve by use -

I am not in the employ of the defendant of this suit nor in any way connected with the C. B. & D. R. R. one of the Defs counsel married a sister of my wife.



The said defendant having closed its testimony  
The said plaintiff thereupon introduced the dep-  
osition of Josiah L Lombard - who in said deposition  
testified as follows —

Int- 1st

What is your name - age - occupation - and  
place of residence - and where do you do business? -

Ans- 1st

My name is Josiah L Lombard - I am twenty  
seven years old - my principal business is buying  
and selling lands located in the states of Illinois  
& Missouri - I reside in Somerville in the State  
of Massachusetts - I have two business offices one in  
Galesburg Illinois and one in Boston Massachu-  
setts -

Int- 2nd

Are you acquainted with Erastus W Hazard  
the plaintiff in this suit? If yes how long have  
you known him?

Ans 2nd

I am acquainted with said Hazard & have  
known him about eight years -

Int. 3d,

Are you acquainted with Henry Bush the con-  
ductor of a train of cars running on the Chicago  
Burlington and Quincy Railroad.

Ans 3d,

On or about the 30th day of June last I was  
introduced by Mr Hazard the plaintiff in this suit  
at his house to a man of the name of Bush - I  
learned from a conversation which then took place  
between him & said Hazard that he was a con-  
ductor on <sup>said</sup> Railroad - he was till then a stranger to  
me - I did not then learn his christian name &  
do not recollect to have seen him before or since  
And the said counsel of said defendant thereupon  
objected to the reading in evidence to the jury the



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fourth Interrogatory and the ~~answer~~ thereto - for the reason -

1st the same is incompetent because it tends to give in evidence to the jury the statements of the witness

Bush made by him subsequent to the alleged injury And - not competent as impeaching testimony for the reason that no proper foundation has been laid for it

3d the question put to the witness was never propounded to sd Bush

4th the testimony of said Lombard so far as it is for impeachment is a mere opinion and not a statement of a fact - To which objection the said court overruled and permitted said fourth Interrogatory and the answer thereto to be read to the jury and to the ruling of said court thereupon the said counsel for the said defendant then & there excepted & the said plaintiff read in evidence to the jury as follows -

Exh - 4th Were you present at a conversation that took place between said Bush & said Hazard on the morning of the 30th of June A.D. 1860 If you state that conversation fully and in the words used by the parties to it as near as you can now recollect them omitting nothing that you remember -

Ans - 4th I was present at a conversation <sup>between</sup> Mr Bush & Mr Hazard which took place at the house of said Hazard and in his bedroom - I think it took place on the morning of the said 30th day of June but I am not positive whether it was that day or a little later I am positive <sup>that</sup> it was <sup>on or</sup> near that time - Mr Hazard was at the time lying on his bed and I was sitting



by his side near the head of the bed when Mr Bush came in - They exchanged some common salutations Mr Hazard then introduced me to Mr Bush - Mr Bush asked Mr Hazard how he was getting along Mr Hazard made some reply which I do not remember - the two then entered into a conversation about an injury that Mr Hazard had just sustained by being thrown off a car of which Mr Bush was the Conductor Mr Hazard made a statement of the circumstances of the accident which statement I will give in his words as near as I can recollect - he said to Mr Bush - I first asked you where you were going to stop - you said you did not know - Here Mr Hazard related some conversation that took place between him & the Conductor that I have so far forgotten that I cannot repeat it -

But it related to and concerned where Mr Hazard had better get off - Mr Hazard then said to Mr Bush you told me I had better get off at a certain place - crossing - or side walk - (I said Lombard do not recollect which & the location of which - I said Lombard do not understand) Mr Hazard continued you said the cars will run very slowly least then & you can easily & safely step off - and as we were then almost there I got up took my baggage (Mr Hazard named the baggage) & started towards the forward end of the car, you spoke to me & said "Don't get out there go to the rear end of the car" I then turned around & started towards the rear end of the car you followed close behind me and just as I was in the act of stepping my foot upon the platform the car was violently jerked



and I was thrown over the platform on to the track as I was falling I threw out one hand and caught the railing & held to it until my foot struck the track the whole weight of my body came on that foot to all the above statements Mr Bush then assented as being true but the words he used in signifying his assent I do not now recollect Mr Bush added as Mr Hazard closed the above statement "yes and as you fell I grabbed at you" but did not succeed in holding you"

Mr Hazard then asked him if the platform of the car was not a very narrow one - Mr Bush said it was - Mr Hazard added "and there was no Guard-chain up to prevent my falling off" Mr Bush then said "no there was no Guard chain up" Mr Bush then attempted to explain to Mr Hazard why it was the train was jerked so violently and said something about some india rubber springs connected with the couplings of the cars - which I did not comprehend but which he seemed to think helped to produce the violence of the jerk Mr Bush then said to Mr Hazard "I am very sorry you are hurt I did not think there was any danger or I should not have advised you to get off there - the reason why I did so was because the business men of the town who ride with me are in the habit of getting off there I hope you will not blame me in the matter" Mr Hazard replied I have no doubt you did what you thought was for the best" Mr Bush then bid Mr Hazard Good day & withdrew -

I have stated above all I can remember of said conversation and in the words of the parties as near as I can recollect them and I think most



I have stated as such is in the language used by the parties themselves - but of this I cannot be entirely positive - I have endeavored to keep the matter distinctly in my mind but lapse of time and care and perplexities of my own business have caused me to forget some small portion of what was said -

And therefore the said plaintiff offered in evidence to the jury the 3<sup>rd</sup> & 6<sup>th</sup> interrogatory of said deposition & the answer thereto - to the reading of which the counsel for the said defendant then & there objected which objection was sustained by the court and the same was excluded from the jury -

On the Cross Examination said Lombard testified as follows

#### Cross Interrogatories.

First cross Interrogatory. Was the said plaintiff done any business for you? If you state what is particularly the nature character and amount of that business -

Ans<sup>r</sup> - the Plaintiff has done business for my firm as our attorney ~~done~~ for my <sup>self</sup> individually the suits which he has conducted for us have been principally ejectment suits & in the United States court - he has also been an attorney in the collection of debts - the amount has varied so much with different years that I can hardly give the average but should think the least amount paid him in any one year was about fifty dollars or thereabouts and the largest amount would not exceed nine hundred dollars

Second Cross Interrogatory has not the said plaintiff at the present time business of yours in his charge and



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what amount and kind of business -  
 Ans Said Plaintiff has in his charge at presents certain suits in which I am interested the fees on which, if said suits are not compromised before trial - will amount to from Eleven to twelve hundred dollars. If any are compromised it will reduce the amount. They are all ejectment suits except one which is a collection of about Five hundred dollars -

Third Cross Interrogatory have you ever talked with the said Plaintiff in reference to what you would testify in this case? If you say you have state when & where you talked with him and who commenced the conversation. If you say you have not talked with him on that subject have you not written to him as to what you would state and if you have so written state whether you volunteered to do so or were you requested to make such statement by the said Plaintiff?

Ans - Yes, I have talked with said Plaintiff in relation to what I would testify in this case. I think I have talked with him on the subject three times - the first was in Chicago at the house of his brother in law Mr Titus somewhere about the middle of October last - the other two times were at said Plaintiff's house in Galesburg sometimes in December last. I think said Plaintiff commenced the conversation each time - I have never written to said Plaintiff on said subject.

Cross Interrogatory fourth - If you say that you were present at a conversation on the morning of the thirteenth of June last between the said Plaintiff & the said Bush state where such conversation took



place who commenced it - who was present at the time - state the name of all who were present on that occasion - Did you hear the whole of that conversation and all that was said by each? how far were you from the said Bush while he was speaking? how came the said Bush to go to the place of such conversation - and how came it that you were also there?

Ans - I was not present at a conversation between the said Plaintiff & said Bush on the morning of the thirtieth of June last but I was present at a conversation which took place between said parties on or about the thirtieth day of June last - being the one referred to in my answer to direct Interrogatory 4th - It took place in a bedroom in Mr Hazards house and I think Mr Bush commenced the conversation the only persons present during the whole of said conversation were Mr Bush Mr Hazard & myself and I think we were the only persons present in the said Bedroom at any time during the said conversation - Mrs Hazard the wife of the said plaintiff was in the room adjoining most of the time the door between said rooms was open during said conversation - I think that some the members of Mr Hazards family were in said adjoining room (it being the common sitting room of the family) during a part of said conversation - I did hear the whole of said conversation & all that was said by each - I was about six feet from said Bush while he was speaking - I suppose the only object of said Bush in coming to the Place of said conversation was to see how Mr Hazard was getting along I was there to enquire after Mr Hazards health & to advise with him



about some suits he was attending to for me  
 Fifth Cross Interrogatory - How long in duration was such conversation and at what hour in the day did it take place? state particularly -

Ans - I think such conversation was not over half an hour long and that it took place in the forenoon - I do not recollect exactly the hour

Sixth Cross interrogatory Did you at that time write down said conversation? If yes why did you do so? If not how are you to give the exact words or language used by the said Bush on that occasion?

Ans - I did not at that time write down said conversation - the reason why I recollect so much of said conversation is because as soon as Mr Bush had left he Hazard asked me if I took notice of what he (Mr Bush) said and I told him I did notice what Mr Bush said. he then said he (Bush) had told the truth and that he (Hazard) believed he was an honest young man but did not know what influence might be brought to bear on him hereafter - and he asked me to be particular and remember the conversation that I had just heard as he might wish to call on me as a witness in case he had a suit with the rail road company -

And the said Plaintiff further to prove said issue on his part recalled said Pagley and put to him a question as follows -

What do you know about the utility of a chain across the outer edge of the platform of the car?

To which the said counsel for the said defendant then and there objected for the reasons



1st the plaintiff opened this subject in chief & cannot now come to accumulative testimony on that subject  
2nd It is not rebutting testimony —  
3d It is incompetent for other reasons — which objections was then and there overruled by said Court and the opinion of the court thereupon was then & there excepted to by said defendants counsel — the said witness thereupon testified — that he himself had been saved from falling ~~from~~<sup>by</sup> these chains and the said counsel for the said defendant thereupon moved to strike out (exclude) said said answer as incompetent which motion was overruled by the court and the opinion of the court overruling said motion was then & there excepted to by said defendants counsel — said Plaintiff's counsel then inquired of said witness — Do you recollect any other instances? to which question & answer the said counsel for the said defendant then & there objected which objection was overruled by the court and the opinion of the court in admitting said testimony was then & there excepted to — and the witness answered — since coming upon the stand — I recollect an other instance — when a person was saved from falling by a chain — this was a case of lady with a child in her arms — and the conductor was not particularly conversant with the engine and jolted them — the lady fell on to the chain I sprang to catch her but she saved herself —

On his cross Examination witness stated that since his former examination he has spent his time here or at Galisburg not been home — saw the plaintiff yesterday which was Sunday — went



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to Plffs house - met several persons - was sent for by Mr Hazard - not much said in relation to this case Hazard learned what I would swear to from a conversation I had with him - am not an engineer was never a conductor except about 3 weeks in all at various times - had nothing to do with the Locomotive no Authority over it - while conductor collected tickets and fare - no duty to perform in relation to Locomotive - I did one time haul a train of 75 cars beyond this had nothing to do with Locomotives - have had nothing to do with repairing cars - at one time an engine broke down and I helped repair it - was once in shop & helped a man lift off flues and this is all - never educated as an engineer never worked in Machine shop - my knowledge has been acquired from what I have related - had a conversation with Hazard 2 or 3 weeks ago with Hazard at Henry - he was at my store a Mr Purple sent him to me so Hazard said -

R. A. Curtis who testified that he had made these chains had put some on the New York & Erie road some six or seven years since - Do not know who was Superintendant at that time - think Minot was do not know - cannot tell when I have seen any of these chains - The said Plaintiff further to maintain the issue on this point called as a witness the said Titus - and the following questions -

What do you know as to the effect of the use of these chains - which question and answer thereto was then & there objected to by the counsel for the said defendant - the objection overruled by the court



and the ruling of the court thenon then + there ex-  
cepted to by the said counsel for said defendant—  
and said witness answered— I recollect of only  
one instance when I have seen them tested— the further  
answer of said witness to said question was here again  
objected to for the reason that it was incompetent  
for the witness to state particular instances— which  
objection was then + there overruled and the evidence  
admitted + the ruling of the court then + there exap-  
ted to— the witness answered further— that I was  
aboard of a train between Indianapolis and the  
conductor said would be 20 minutes for dinner  
I stepped off out of sight and just as I returned  
the train was starting— I made a spring for the  
rear platform of rear car— stepped onto the plat-  
form and the jolt of the car was very violent and  
I fell against the railing part but the chain saved  
me— have not grown much since—

And thereupon the said defendant to sustain the  
reputation of the said witness Bush called four witnesses  
who were duly sworn George Farr, Luther Gould  
Lewis Bissell, + Samuel Maddox—

Among whom was George  
Farr who being duly sworn in said case— (the  
said Conductor being first examined) testified that  
he resides at Galva Henry county Illinois and has  
resided there for six years last past that he knows  
N. A. Bush and has during that time— that he  
knows and is acquainted with the neighbors and  
acquaintances of said Bush at Galva when said  
Bush resides—



Question.

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By the counsel for the said Defendant - Are you acquainted with the general reputation of the said Bush for truth & veracity among his said neighbors & acquaintances in the county where he resides and if so what is it. - which <sup>said</sup> question was then & there objected to by the said counsel of the said Plaintiff on the ground that the general reputation of the said Bush for truth & veracity had not been attacked by the said Plaintiff - which objection the said court then & there sustained and refused to allow said questions to be put to said witness & Excluded the answer thereto from the jury and to the ruling of the court in sustaining said objection of said objection of said Plff counsel & excluding said testimony from the jury the counsel of the said defendant then & there excepted - and there upon the said counsel for the said defendant offered to show & give in evidence to the jury by the said witness George Farr & the 3 other witnesses last above named that the reputation of the said witness H H Bush for truth & veracity among his neighbors and acquaintances in the vicinity where he resides is good - to the giving of which said testimony the counsel for the Plaintiff then & there objected which objection was sustained by the court & said evidence & the whole thereof excluded from the jury & to the opinion of the court in sustaining said objection & excluding said testimony the said counsel for the said deft then & there excepted - the said counsel of the said defendant thereupon recalled the said witness H. H. Bush who testified that he has been a conductor abt a year and a half has never seen these chains used & should consider them dangerous rather



than a means of safety they would get unhooked  
could not be kept hooked - this being all the test  
imony in said cause and the counsel for the said  
parties having summed up the same to the jury the  
said counsel for the said plaintiff thereupon  
requested the said court to give to the said jury the  
following instructions to the giving of which said  
counsel for the said defendant then & there objected

Upon which the Court of Sessions is  
the following ruling was made:  
The Court is of the opinion that the  
instructions requested by the plaintiff  
are proper and should be given.



Copy of Instructions given, <sup>in property of</sup> by the Plaintiff

Erastus W Hazard vs The Chicago Burlington & Quincy Rail Road Co. In the Circuit Court of Knox County Ill Feb. Term 1861

The Plaintiff asks the Court to instruct the jury as follows to wit,

"Given" 1. If the jury believe from the evidence that the plaintiff received the injuries mentioned in his declaration at or about the time therein set forth while on board the defendants cars and while riding as a passenger from Newane to Galsburg by reason of the negligence of the defendants in not providing a suitable car with proper safeguards for the protection of passengers the jury should find for the Plff and assess his damages unless the plaintiffs negligence contributed to the injury.

119 2. If the jury believe from the evidence that the Plaintiff received the injuries mentioned in his declaration at or about the time therein set forth while on board the defendants cars while riding as a passenger from Newane to Galsburg by reason of the carelessness, improper conduct, want of

"Given"



due and proper care, want of diligence or want of skill of any of the agents or servants of the defendant while engaged in the discharge of their duties on or about said train of cars, or in the conducting or managing of said train of cars, or by reason of the omission of any duty which ought to have been performed by said agents or servants, or any or either of them while engaged in the performance of their duties on or about said train the jury should find for the plaintiff and assess his damages unless the jury also believe the negligence of the Plaintiff contributed to produce the injury."

"Given"

3<sup>d</sup> It is the law that Carriers of passengers for hire are bound to use the utmost diligence in providing for their safety, by the use of sufficient and suitable modes of conveyance as means of transportation and they are in like manner bound to use the utmost care and diligence in managing directing and using those means in order to prevent those injuries which human care and foresight can guard against."

4<sup>th</sup> It is the peculiar province of the jury to determine what particular

"Given"



circumstance, or circumstances if any, detailed in the evidence do or do not constitute carelessness a want of diligence, a want of skill, or due and proper care, on the part of the defendants their agents or servants; and what particular circumstance or circumstances, if any, constitute an omission of duty on the part of the defendants their agents or servants, and the court is not at liberty to instruct the jury as to what particular circumstance or circumstances constitute either the one or the other or any of them,

5th. "Given" "If the jury believe from the evidence that the plaintiff by the advice of the conductor of the train attempted to leave the train, and in doing so, from the want of a chain across the space between the railings attached to the rear platform of the car upon which he was riding, or by reason of the violent jerking of the cars, was thrown off and injured; provided the jury further find from the evidence, that said chain was a necessary and proper precaution for the safety of passengers, or if they find that said violent jerking was unnecessary and by proper care and skill might have been avoided, the plaintiff if not in fault is entitled to recover. A Railroad Company



Carrying passengers, cannot allege that a passenger is in fault in obeying the specific instructions of the Conductor, instead of general directions of which he has been informed."

6<sup>th</sup>  
"Given"

"Carriers of Passengers are required to use the highest degree of care and diligence vigilance and skill in the selection of materials. construction of their vehicles and other means of transportation, and for their conduct and management repairs and preservation of them, with a view to the comfort safety and transportation of passengers and their baggage And they are liable for slight neglect or carelessness in any of their particulars qualified however by the reciprocal duty of the passenger that his want of ordinary care does not cause or contribute to produce the injury."

8<sup>th</sup>  
"Given"

"It is the duty of a rail road company to use every necessary and proper precaution for the safety of passengers on their cars in their transportation throw and discharge therefrom; not only in the management and conduct of the train, and control of the engine, but also in the construction of their cars, and in all



proper care and watch, by their conductors and agents, over the lives and safety of their passengers;

And if the jury believe from the evidence in this case that the engine and train were not managed with sufficient skill and care so as to avoid unnecessary, violent and dangerous jerks; or if they find from the evidence that there was an omission to construct the car, in which the Plaintiff rode with proper safeguards, or chains, or railings, if such were necessary to <sup>fully</sup> protect their passengers; or if they find from the evidence that the conductor omitted any portion of his duty in regard to the plaintiff, and that knowing of the danger to which the plaintiff would be exposed, by necessary jerking of the car or other danger, while standing by the rear door of the car, or in case of his attempting to get off the car, which were unknown to the plaintiff, he neglected to apprise the plaintiff of his danger or to take all necessary precaution to protect him therefrom and if the jury further find that from any one of these causes, or all combined, the injury in question was occasioned without the fault of the plaintiff, they should find a verdict for the plaintiff.



9  
"Given"

"If the jury believe from the evidence that the plaintiff received the injuries mentioned in his declaration at or about the time therein set forth while on board the defendants cars, and while riding as a passenger from Newane to Galisburg by reason of the negligence of the defendant, in not providing a suitable car with proper safeguards for the protection of passengers, the jury should find for the plaintiff and assess his damages unless the plaintiff's negligence contributed to the injury."

10  
"Given"

"If the jury find for the Plaintiff in estimating the damages the plaintiff may have sustained by reason of the injury complained of, the jury are not confined to such damages as may have resulted to the plaintiff by loss of time, and expenses of medical attendance but may give such additional damages for the loss of natural use of plaintiff's limb, the pain and suffering which the jury exercising a sound discretion may think proper and just; and they may also take into consideration any damages that they may believe from the evidence



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he may <sup>sustain or</sup> suffer hereafter growing out of said injuries"

"11

"Given"

It is not sufficient to relieve the defendant from liability for the negligence of the agents and servants of the defendant, which occasions an injury to show that the plaintiff also was guilty of negligence, unless it is further proved that the negligence of the plaintiff actually produced, or materially aided in producing the injury"

"12

"Given"

If the jury believe from the evidence that the defendant had a freight train and also used the said freight train for the purpose of carrying passengers by having a car for that purpose attached to said freight train and that said defendant received said plaintiff as a passenger on said train and received from him, therefor the usual price for carrying passengers on the defendants first class cars: And if the jury further believe from the evidence that such freight trains are more dangerous to passengers than passenger trains, and that the defendant had knowledge of this fact and did not inform the plaintiff of it, then the defendant is liable for all damage which



might have occurred from such greater danger of the said freight to the Plff. unless said plaintiff knew of such danger, or could have known of it by the use of ordinary skill & judgment as well as the said defendant, or such damage was occasioned by the plaintiff's fault."

"Given"

"If the jury believe from the evidence that a chain reaching from railing on the hind end of passenger car was a necessary precaution to save passengers from injury and that the plaintiff being a passenger on said car ~~and that the~~ plaintiff being a passenger on said car and that the plaintiff without fault of his own was thrown from said car and injured on account of the want of such chain then the jury will find for the plaintiff"

"Given"

"If the jury believe from the evidence that the defendant received the plaintiff on their train of cars to be carried as a passenger from Keokuk to Galesburg for a compensation paid by plaintiff, that one Bush was the conductor and agent of said defendant on said train of cars, that said plaintiff by the consent and under the



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advice and direction of said conductor attempted to descend and alight from said cars while they were moving slowly and in so doing without any fault of his own received an injury this renders the defendant liable for such injury.

"Refused"

Copy of Plft. Instructions "Refused" by Court,  
It is a part of the duty of the conductor of a train of cars when passengers are exposed to danger the knowledge of which is peculiarly with the conductor to inform said passengers of such danger; and if such conductor knowing and foreseeing such danger, neglects <sup>to</sup> to inform <sup>sub</sup> passengers of such danger while such passengers are conducting themselves properly this would constitute a want of that degree of care which the law requires of rail road companies in carrying and taking care of passengers.

Said Instructions were filed as follows.  
to wit:

Filed Mar 5/61  
J H Lewis  
Clk



D. G.

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which were accordingly given by said court to the giving of which said instructions to the jury and each of them the counsel for the said defendant then & there excepted and thereupon requested the court to give to the jury the following instructions.



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Copy of Instructions, "given" the Jury on the part of the Defendant, and also those "Refused" being Dpts Instructions, in this case - to wit

Defendants Instructions

No. 1.

"The burden of Proof is on the Plaintiff to show, 1st, that the injury complained of was the result of the carelessness, or negligence of the Defendant. - 2d That the Plaintiff himself was either without negligence, or that the exercise of ordinary prudence on his part, would not have prevented the injury. -"

"Given"

No. 3.

If the Jury shall believe from the Evidence, that the injury to the Plaintiff in this Suit happened to him by mere accident, without fault, on the part of the Defendant, then the Plaintiff cannot recover."

"Given"

No. 3 1/2 (Note: This is probably meant for No. 2 - cer)

To entitle the Plaintiff to recover, the Jury must be satisfied by the evidence that the injury for which the Suit is brought, was occasioned by the negligence or misconduct - ~~neglect~~ of the Defendant, or its agents, while

"Given"



acting within the scope of their authority."

No. 4.

If the Jury shall believe from the evidence that the alleged injury to the Plaintiff would not have happened, had it not been for the carelessness and negligence of the Plaintiff, and want of ordinary care and prudence on his part, then they will find for the Defendant."

No. 9.

A Passenger takes all the risks incident to the mode of travel, and the character of the conveyance, which he selects; and if the Jury shall believe from the evidence that the Plaintiff selected the Freight Train and cars of the Defendant, instead of its ordinary Passenger Train, in going from Keosauqua to Galesburg, he took whatever additional risk there is incident to that mode of conveyance, and if, in consequence of this more dangerous mode of travel, the Plaintiff suffered the alleged injury without fault on the part of the Defendant, then the Plaintiff cannot recover."

No. 10.

The Plaintiff was as much bound to look to his own safety, as was the Defendant,



"General"

and if the Defendant was found to the exercise of great care and precaution, by reason of the hazardous mode of conveyance selected by the Plaintiff, to prevent injury to the Plaintiff, the Plaintiff was bound to the exercise of the same ~~or~~ ordinary degree of care & prudence on his part, to guard himself from harm, & if the Jury shall believe from the evidence, that the Plaintiff would not have been injured, if he on his part, to guard himself from harm, & if the Jury shall believe from the evidence, that the Plaintiff would not have been injured, if he on his part, had exercised ordinary <sup>& reasonable</sup> care and prudence. To prevent an injury to himself then, they will find for the Defendant."

X  
 "Art. 14. If the Jury shall find from the evidence that Freight Trains of Cars, when running on Rail Roads, when in good order, and skilfully and properly managed, are liable from their length and weight, or other causes, to be jerked or started so suddenly, as at times to render it impossible or difficult for persons, unaccustomed to their motions, to stand in them, or on the Platforms thereof, unsupported, and that the accident which caused the injury for which this Suit is brought, was caused by the jerking or sudden starting of the Car, upon which he was a Passenger, then, unless

"General"



the Jury shall find that such jerking was produced by the carelessness or improper management of the Train, then the Plaintiff cannot recover."

"No. 18"

If the Jury shall find from the Evidence that Freight Trains of Cars, when running on Rail Roads <sup>when</sup> in good order, and skillfully and properly managed are liable from their length and weight, or other causes to be jerked or started so suddenly as at times to render it impossible or difficult for persons, unaccustomed to their motions, to stand in them, or on the Platforms <sup>thereof</sup> unsupported, and that the Plaintiff was aware of this fact, when he took passage on the Freight Train of the Defendant, and that the accident which caused the injury for which this Suit is brought, was caused by the jerking or sudden starting of the Car, upon which he was a passenger, then, unless the Jury shall find that such jerking was produced by the carelessness or improper management of the Train, then the Plaintiff cannot recover."

"Given"

"No. 20."

If the Jury are satisfied by the Evidence, that the Plaintiff on the 29th of June 1860, took passage on a Freight Train



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gleans, on Depts. Railroad from Newane to Galesburg, and when said Train had reached the latter place, but before it had arrived at its usual stopping place, and while said Train was still moving at the rate of three or four miles an hour, it being <sup>in</sup> the night time, the Plaintiff proposed, (for the purpose of reaching his home, nearer than he could from the station, where said Train would stop) to get off said Train; and shall further find that the Depts. Conductor (in charge of said Train) consented to his so getting off said Train while so in motion, and shall further find that while the Plaintiff was passing through the back door of said Car, for the purpose of getting off, and stood with one foot on the hind Platform of said Car, the said Car, was suddenly jerked forward, and the Plaintiff thereby thrown from said Platform and injured, and if the Jury shall further find, that, both the position which the Plaintiff had so assumed in attempting to get off the cars, and the jerking of the Train conspired and contributed to produce the injury, each, in such manner and degree, that neither of said causes alone would have produced the injury, that is, if the Plaintiff had remained in the cars, the jerk would have caused no such injury, & being on the Platform, no such injury could have occurred without the jerk; then, unless the jury shall find

"Given"



that the jerking of the Car, was caused by some defect in Locomotive or Cars, themselves or the carelessness or mismanagement of the Repts. Agents in conducting and running the Train, they ought to find for the Plaintiff,

"Art. 21."

That ~~the~~<sup>in</sup> determining a question appertaining to, or arising out of any trade, art, or science, it is the duty of the Jury to give great weight to the testimony of persons of skill and experience in such trade, art or science, and therefore in this case, in determining, whether a chain across the passage, between the Railings on the Platforms of Cars, is necessary, or useful for the safety of Passengers, such weight should be given to the testimony of witnesses who have skill and experience in running & conducting such cars; and in determining the question whether it is possible to avoid jerking & sudden starting, in running Freight Trains, great weight should be given to the testimony of Engineers, of experience & skill in running Engines & Trains of Freight and Passenger Cars.

"Given."



to leave the cars of the Defendant, in which he was a Passenger, when there was no danger in remaining therein; while ~~to which~~ ~~the~~ same was attached, was in motion, at the rate of about three miles an hour, and that the injury was the result of such leaving or attempting to leave, then the Plaintiff cannot recover."

No. 4. "If the Jury shall believe from the Evidence, that had the Plaintiff remained in the cars of the Defendant, in which he was a Passenger, until the Train had stopped he would have sustained no injury, and that the injury to the Plaintiff resulted solely or mainly in consequence of his attempting to leave the Train while it was in motion, and before it had reached its accustomed stopping place, then they will find for the Defendant."

No. 8. "If the Jury shall believe from the Evidence that the Defendant was guilty of carelessness in the management of its Train at the time of the alleged injury, yet if they shall also believe that the injury to the Plaintiff would not have happened, had it not been for his own act in going out of the



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Car. on the Platform, or attempting to do so, while the Train was in motion, then they will find for the Defendant."

No. 11. If the Jury believe from the Evidence that the Plaintiff was guilty of a want of reasonable care in going out or attempting to go out upon the platform of the car on which he was a passenger while the Train was in motion or in attempting to leave said train before it stopped - or if without reasonable cause or apprehension of danger he left or attempted to leave the car while the train was in motion & was thereby injured he cannot recover unless they shall believe the defendant to have been guilty of a greater degree of negligence.

No. 12. If the Jury shall believe from the evidence that the cars of the Defendant on which the Plaintiff was a passenger were still in motion and that while the same were in motion the Plaintiff <sup>while</sup> there was no apprehension of danger in remaining undertook to get off and in doing so occasioned & received the injury complained of, then the jury will find the Plaintiff guilty of such a degree of carelessness and imprudence as will prevent his recovery in this case - unless they shall believe from the

Refused

Refused



Evidence that the defendant was guilty of a still greater degree of negligence -

"No 13"

To jump from a car or to attempt to leave it while the train to which it is attached is in motion while there is no danger or apprehension of danger in remaining is gross imprudence and if the jury shall believe from the Evidence that the injury complained of resulted to the Plaintiff by reason of his having left the car of the defendant in which he was a passenger or by reason of his having attempted to do so while the same was in motion at the rate of about three miles an hour while there was no danger or apprehension of danger in remaining therein - then and in either case they will find for the Defendant -

"No 14"

If the Plaintiff had not been carried to Galesburg where he intended to stop and had a right to be let off he could have recovered in an action upon the contract compensation for the inconvenience and the loss of time & labor in travelling there but if the jury shall believe from the evidence that the Plaintiff while there was in no danger in remaining upon the car in which he was a passenger to save him to reach his home sooner or for any other purpose of his own - jumped off the train without waiting for it to stop



and thereby suffered the alleged injury they will find for the Defendant notwithstanding they may also believe the defendant to some extent guilty of negligence —

No 16<sup>th</sup>

"If the jury shall believe from the evidence that it was a rule of the Defendant, that Passengers should not stand on the platform of the cars while the train is in motion & that such rule is a reasonable one made for the safety of the passengers - and that the Plaintiff knew of its existence - and still further believe from the evidence that the Plaintiff in violation of this rule did voluntarily and of his own choice go out - and at the time of the alleged injury was in part or wholly upon the platform of the car in which he was a Passenger while the same was in motion at the speed of about three miles an hour and that his being in that position at the time of the alleged injury was carelessness upon his part and known to be such by him and that his being there was to such an extent the occasion and cause of the injury that if he had remained in the car until it reached its usual stopping place he would not have been injured - then they will find for the defendant notwithstanding they may believe that the conductor of the defendant consented to the Plaintiff's being in such position -"

Refused



"No 16"

"If the Jury shall believe from the evidence that at the time of the alleged injury - the Plaintiff was in the act of alighting from the car in which he was a Passenger or going upon the Platform to alight therefrom before the train had arrived at its usual stopping place and while it was moving at the rate of three or four miles an hour and thereby occasioned & received the alleged injury and that such act of the Plaintiff was grossly imprudent & careless and known to be such by both the Plaintiff and the Conductor of the Defendant then they will find for the Defendant - for the Conductor though he consented to the said act of the Plaintiff - would have no authority to bind the defendant by such consent."

"No 19"

"If the Jury are satisfied by the evidence that the injury for which this suit is brought was received by the Plaintiff while a Passenger on the freight train of cars of the Def't running on its Railroad & that the injury was produced as follows - That the Plff while said train was running at the rate of three or four miles an hour proposed to get off the cars while so in motion to which proposal the Def't Conductor (in charge of said train) consented; and shall further find that the Plff for this purpose of getting off started for the rear platform of the car (on which he was riding) & while the same were still in motion



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Refused

+ when he had reached the door + stood with one foot in the car + the other on the Platform he was suddenly thrown from said Platform on the ground + injured and that the immediate cause of his being so thrown from said platform was the jerking of the car caused by letting onto the locomotive steam to accelerate its speed + carry the train to its usual stopping place + If the jury shall further find that the steam was so let on in the usual + proper manner of running + moving a freight train in such circumstances - and if the jury shall further find that to go upon the platform of a freight train or attempt to jump from such train when under motion + running at the rate of three or four miles per hour is dangerous + an act of gross carelessness then they should find for the Def<sup>t</sup>.

No 22

Refused

If the jury are satisfied by the evidence that the Def<sup>t</sup> at and about the time when the Plff received the injury for which this suit is brought was in the habit of running a way car attached to the freight trains on its road intended principally to accommodate the employees of the Co employed on such trains + that the Co was in the habit of occasionally permitting other persons than such employees to ride upon such way cars + shall further find that the Plff at his own request was permitted to take passage on a way car so attached to one of its freight trains - The Plff by electing



"Refused"

such mode of conveyance instead of a passenger train must be considered to consent to accept whatever inconvenience & risk necessarily incident to the mode of conveyance which he so selected & the Dept is not bound to use any greater care or diligence or in the conduct of such trains than is usual & necessary in the running of freight trains and therefore if the jury should find that the freight trains upon which the Plff took passage was managed with the care & diligence usual & proper with freight trains & that the accident resulted from any movement or action of the car peculiar to that kind of train the Plff is not entitled to recover."

"Refused"

"No 23"

"If the jury believe that the accident to Plff - occurred on account of a jerk of the way car of the dept attached to freight train on which Plff. was a Passenger and that the jerk was produced necessarily and unavoidably by the putting on of steam in order to carry the train to the point of destination they will find for the defendant."

filed which said Instructions, so "Given" and "Refused" were filed as follows to wit:  
Filed March 5. /01  
J. H. Lewis  
clerk



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and the said Court thereupon gave to the jury the instructions numbered 1-2-3-4-9-10-17-18-20-21-22-24.

And refused to give the balance of said instructions which are numbered 5-6-7-8-11-12-13-14-15-16-19-22-23 so as aforesaid asked by said counsel for said defendant to the refusal to give which said last mentioned instructions & each the said defendant by its said counsel then & there excepted and thereupon the jury retired to consider of their verdict and after an absence of a few hours returned into court the following verdict

"We the jury find the issues for the Plaintiff & assess his damage at the sum of Eleven thousand dollars," thereupon the defendant moved the court for a new trial and in arrest of judgment for the reasons stated in said motions which motions and reasons were as follows.

"E. W. Hazard { Knox Circuit Court July term 1861

v.  
C. B. & D. R. R. Co. { Motion for new trial & arrest of judgment

### Reasons

- 1 Because of misdirection of <sup>the</sup> jury by court
- 2 Verdict is contrary to instructions of court
- 3 Verdict is against the evidence & law of the case & the rights of the Parties
- 4th On account of the excessive damages given in verdict  
Walker, Van Arman, & Smith & Ford  
Deputs Attys.



Upon which Bill of Exceptions was the  
following <sup>Verdict</sup> filed March 27/61

A. W. Lewis Clk.

and thereupon afterwards to wit on the Eighth day of March A.D. 1861, the said motions for a new trial and in arrest of judgement came on to be heard before said Court and were submitted to said Court for his discretion thereon and afterwards and on the 8th day of March A.D. 1861 it being one of the days of said term of said Court the said motions for a new trial and in arrest of judgement were denied & overruled and judgement entered upon said Verdict for the said sum of \$11,000 to which decision of said Court in overruling said motions and in rendering judgement upon said verdict the said counsel of said defendant then & there excepted And for as much as the matters and things aforesaid do not appear of Record and in order that they may do so this said defendant has prepared this <sup>his</sup> said Bill of exceptions and prays the Court that the same may be now here allowed signed and sealed and made a part of the Record in said case which is accordingly done

A. Tyler, Esq.

Circuit Court Knox County  
Erastus W Hazard

vs  
The Chicago Burlington &  
Quincy Railroad Co.

Due service of notice for settlement of above bill of exceptions for Monday March 25, 1861 at 9 o'clock A.M. before Hon A Tyler judge of said Circuit Court wherever he may be upon his circuit whether at home or at Monmouth is hereby admitted  
Chicago March 23 1861

E. W. Hazard



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Copy of appeal Bond.

" Know all men by these  
 " presents, that We, The Chicago, Bur-  
 " lington and Quincy Rail Road Com-  
 " pany, and James M. Walker and Charles  
 " S. Hammond, are held and firmly bound  
 " unto Erastus W. Hazard in the penal sum  
 " of thirteen thousand dollars, lawful money  
 " of the United States, for the payment of  
 " which well and truly to be made the bind  
 " ourselves, our heirs, executors and adminis-  
 " trators, jointly and severally, firmly by  
 " these presents -

" Witness our hands and seals and  
 " the seal of said Company this nineteenth  
 " day of March A.D. 1861.

" The condition, of the above obli-  
 " gation is such, that whereas the said  
 " Erastus W. Hazard did on the Eighth  
 " day of March A.D. 1861, in the Circuit Court  
 " of Knox County, within and for the County  
 " of Knox, and State of Illinois, recover a  
 " judgment against the above bounden  
 " Chicago, Burlington and Quincy Rail  
 " Road Company for the sum of Eleven  
 " thousand dollars, damages, besides  
 " costs of suit, from which said judgment  
 " of said Circuit Court the said Chicago  
 " Burlington and Quincy Rail Road Company



"Has prayed for and obtained an appeal  
"to the Supreme Court of said State of Ill-  
"inois -

"Now, if the said Chicago, Bur-  
"lington and Quincy Rail Road Company,  
"shall duly prosecute its said appeal  
"with effect, and shall moreover pay  
"the amount of the said Judgment, dam-  
"ages, costs and interest, rendered against  
"the said Company, in case the said  
"Judgment shall be affirmed in the said  
"Supreme Court, then the above obligation  
"to be null and void; otherwise to re-  
"main in full force and virtue -

Seal

"the Chicago Burlington &  
"Quincy Railroad Company, by  
"Amos T. Hall, Secretary,

Seal

J. M. Walker Seal

C. G. Hammond Seal

"I deem the above Bond sufficient, and  
"authorize the clerk of the above Court, to  
"accept and approve of the same.

E. M. Hazard "

"Approved by me, this 2<sup>nd</sup> day of  
"March A. D. 1861.

J. H. Lewis CLK "



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State of Illinois  
Hend County

I John N. Lewis,  
Clerk of the Circuit Court in and for  
said County, do hereby certify that the  
foregoing is a true and complete copy  
of the Record, and Proceedings in the  
foregoing case of Crastus W. Hazard  
against The Chicago, Burlington and  
Quincy Rail Road Company, as the  
same appears from the Files and Re-  
cords of my Office -



In testimony whereof,  
I have hereunto set my hand  
and affixed the Seal of said  
Court, at my Office, in the City  
of Knoxville this third day of  
April A.D. 1861

John N. Lewis  
Clerk



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State of Illinois  
Knox County

The Chicago Burlington  
& Quincy RR Co  
att  
E W Hazzard

Record

Filed April 17, 1861  
L. Leland  
Clerk