

13581

No. _____

Supreme Court of Illinois

C.B.& Q.R.R.Co.

vs.

Cauffman et al

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19
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 255

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Paupers

1882

3581
Paupers

State of Illinois }
Supreme Court. } April Term AD. 1862

The Chicago, Burlington and
Quincy Railroad Company

vs.

John M. Gauffman and
Jeremiah Herrick.

} Stipulation..

It is hereby stipulated by and
between the parties of this cause, that no oral
arguments shall be made therein on the trial
by either party, but that the same be and is
hereby submitted to the Court upon printed
or written arguments or briefs to be filed and
furnished to the Court on or before the 25th
instant and that the appellant furnish to
the counsel of the appellee on or before the 15th
instant a copy of the printed abstract of the
verdict and of the assignment of errors.

April 7-1862

Walter Van Arman Dea Clerk
Counsel for appellant
J. J. Taylor atto for appellee

255 19
The Chicago, Burlington
and Quincy Railroad Co.
vs.
John M. Gauffman, et al.

Stipulation.

Filed April 23rd 1862.
Lorenzo Ireland
Clerk

SUPREME COURT.

THIRD GRAND DIVISION.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant,
VS.

JOHN M. CAUFFMAN AND JEREMIAH MERRICK, Appellees.

APPEAL FROM BUREAU CIRCUIT COURT.

It appears from this record that there were two cases involving the same state of facts, upon pleadings, alike in substance and tried by the same jury. We shall abstract and consider the pleadings and proofs in one case only, as by stipulation the one is to abide the event of the other.

ABSTRACT OF RECORD.

- Rec. p. 5 On the 1st day of March, 1861, a declaration was filed, in which it is alleged, that the plaintiff, on the 23d day of November, 1859, was the owner of two colts, lawfully running at large upon a public highway leading from Princeton to Green River, in said county.
- 6 That defendant was owner of a railroad crossing said highway, and was also the owner of a certain engine and train of cars then running on said railroad for the transportation of passengers, which were under the direction and control of the servants of the defendant.
- 7 That the plaintiff's colts were then and *there upon or very near the crossing of said railroad over said highway.*
- 7 That it was then and there the duty of the defendant, at 80 rods distant from said crossing, to ring the bell or sound the whistle, and to have so continued to do till said crossing was passed, and to have slack-

8 ended speed so as to have enabled said colts to get out of the way. That
the defendant neglected this duty, and did not ring the bell, nor sound
the whistle, nor slacken the speed of its train on approaching said cross-
ing, but continued said engine and cars at full speed, and thereby struck
said colts upon said crossing and killed and maimed them.

9 The second count is substantially like the first, except that there is
an additional allegation, that the defendant could have seen the crossing
at the distance of half a mile before reaching it.

18 To this declaration a plea of the general issue was filed by the de-
22 fendant, and at the August term of the court the cause was tried by a
jury.

PLAINTIFF'S PROOFS.

20 The plaintiff, to maintain the issue on his part, introduced

JEROME WILCOX, who states that on the day the injury occurred witness
had been gathering corn on his farm south of the crossing, and at the time
30 of the occurrence was on a wagon load of corn, coming up through his
field in the direction of the crossing, and was 60 or 70 rods south of the
crossing when he first saw the train which killed the colts; that his
attention was first called to it by the sound of its whistle; train struck
the colts on the crossing; did not see the train till whistle sounded, then
looked up and saw some colts on or near the crossing, also some in the
highway west of crossing, but not far from it. The engine was 12 or 15
rods from the crossing when I heard the whistle. Had a good view of
it; did not notice the cars till I heard the whistle; *did not hear any bell.*
31 Do not know whether it was a passenger or freight train. Heard the
whistle, looked up, saw some colts on the crossing. They appeared to
be turning, and then they ran off on the east side, towards my house.
Know the face of the ground there; know of no obstacle to prevent
persons on the train from seeing the colts. There were bushes along
the track, but my impression is that the leaves had fallen. Do not
know whether the cars were running at a great rate of speed, or whether
they slackened up. No curve in the road for a mile or more before
32 reaching the crossing; track was straight, and an object could be seen.
Cannot tell what day it was, nor what kind of a day, nor whether the
accident occurred at noon or evening. Did not hear the whistle sound
so far as I have sometimes, but I was *on a wagon that rattled some.*
Was 60 or 70 rods from the crossing. Cannot tell how many cars there
were in the train.

When the whistle sounded, I saw two or three colts on the track grading in the act of turning; can't tell how many there were. They turned towards my house, east of the crossing; those that were opposite
33 tried to follow; they were a rod or two off. The board fence there comes up to the cattle guards. The colts were up against Daniels' fence on the west side of the crossing; could not be seen so well there. I have an orchard on both sides of the track, and about 16 rods southwest of the crossing; trees two rods apart—50 or 60 of them; have been set out ten years, and were two or three years old when set out. Don't think they hid the colts from view on the track; the colts were on the side of the crossing; the view might have been obstructed by the trees and the board fence; there were bushes along both sides of the track,
34 and extend up near the crossing on the southeast side of the track. Some of the bushes on either side of the track might have hid the colts from the view of the engineer.

The colts were on the run and trying to cross when the engine struck them; none of the colts that did not cross were injured.

33 The whistle sounded once; think I did not hear it keep sounding till after the cars had crossed. It might have sounded, and I not heard
34 it. I do not swear that the whistle did not sound before I heard it.

34 JAMES BREWER testified in substance that on the 20th November, 1857, a little after noon, he was near the crossing when the accident occurred. The train was going east, and think *it was a freight train*. Do not know what kind of a day it was; think it was fair weather, for I was gathering corn. Was 25 rods west of the crossing, near the highway, and 10 or 12 rods north of the railroad; was unloading corn; was standing in the wagon.

34 I heard the whistle sound once pretty sharp, and then a smaller
35 sound. Did not hear the bell ring nor whistle sound until the cars were 15 or 20 rods from the crossing. When they sounded the whistle, I think the cars were not more than 10 or 12 rods from me. I don't recollect hearing any bell or whistle before I saw them; think the whistle
36 was one sharp sound and one short one; this is all I heard; heard no bell or whistle till the cars got within 15 or 20 rods of the crossing; then there was a sharp blast and a low blast of the whistle.

35 The cars were 60 or 70 rods off when I first heard them, and they were going at good speed. They were 30 or 40 rods off when I first saw them. Did not hear a bell or whistle before I saw them. What attracted my attention to the cars was hearing them.

34 I saw the colts standing about the crossing, one or two certainly; one was on the crossing, and two east of it. The whistle sounded, and three of the colts turned rapidly to cross the track, and the train struck

35 two of them and killed them. The colts were on the west side when I
first saw them; not certain that any of them were on the east side; one
was on the crossing; three were on the west side and two on the east
side. The three on the west side wheeled to go back, when the train
37 struck them. When I first saw the cars, don't think any of the colts
were on the crossing. They were near the fence and feeding. *At time
whistle sounded, the colts were on Wilcox side and on the crossing; all
were on the east side except one on the track; the one on the track and one
or two others, came to the west side of the track, and the two others run
off further away from the crossing to the east; all three of the colts which
had come to the west side wheeled suddenly and jumped back again to-
wards the east side; train was but a little way from the crossing then.
These three colts were struck by the train and killed.*

35 There were no obstacles to prevent one on the cars seeing the colts.
There was an orchard south of me, and some cottonwood trees along the
railroad track. Daniels had a fence on the west side of the crossing,
north of the highway, which extended up to the crossing. The fence
37 on both sides of the highway was a board fence, and extended up to the
cattle-guards at the crossing. There were some trees along the line of
the railroad, south of me; some of them might have obstructed the view
80 or 100 rods from the crossing, in the direction of the train. There
was a board fence on the south side of the highway, and on both sides
of the crossing.

38 JAMES FISHER testified in substance, that he was 25 or 30 rods from
the crossing at the time of the accident, in a wagon with James Brewer,
unloading corn. Saw the cars 60 or 80 rods off, going at fair speed, and
watched them till they struck the colts; the rattling of the cars, and not
the sound of the bell or whistle, first attracted my attention; not more
than 40 rods from the cars when I first heard them. *Was picking corn*
39 *when I first saw the cars. I do not know whether it was a passenger or
freight train.*

38 Saw the colts in the lane before the cars struck them; they were a
short distance from the crossing when the cars were coming; some three
or four rods from the crossing, perhaps, may be more. When the colts
were struck, there were two on one side of the crossing, and the three
started to go across to them.

38 The engine was from 10 to 18 rods off when the whistle sounded.
Did not hear any bell rung when the whistle sounded; it scared the
colts, and some started to go to others; can't tell which way the colts
39 were headed; it was all done up so quick. Heard *two* toots of the whis-
tle. Did not notice any slackening of the speed of the train.

38 Think the colts could have been seen from the cars when I first saw the train; cannot tell exactly whether there were any obstructions to the view along the track. There was an orchard near the track, and I could see the cars through it.

There was other testimony, relating to the ownership of the colts, and their value, but as no point is made to which it is applicable, it is not abstracted.

DEFENDANT'S TESTIMONY.

40 FLOYD H. COOLEY says: That he was in the employ of the defendant as engineer. That he had a release from the defendant. That he had been running an engine on the defendant's road for about 7 years, and was running the engine that killed the colts in question on the 23d of November, 1859. *It was a passenger train, bound east, at about noon.*

40 Saw the colts when from 40 to 80 rods off; blowed the whistle and shut off steam. The colts passed off the track on the north side; saw nothing else, and supposed the track clear till I got within 6 or 8 rods of the crossing, when I saw colts on the west side wheeling suddenly to cross over to the east side; they came upon the jump. The engine struck three of them, and I think there was one or two more headed off,
41 and did not get upon the track. The last one had jumped into the cattle-guard on the north side of the crossing, and I was afraid the engine would run him under and throw us off the track, but he was dragged a short distance and fell off one side. We were in great danger of being
42 thrown from the track. It is always safer to run fast than slow in striking an animal.

41 We generally ring the bell all the way between this crossing and the next one west. The bell rung for the crossing next west, and I think it was kept ringing all the way until we reached the crossing where the colts were killed. The distance is 100 rods or more between the crossings. We had our landmark where to whistle or ring the bell, and used to ring here for a longer distance than 80 rods. I will not swear
42 positively that the bell was kept ringing all the way from the crossing west on the day the colts were killed, but I am positive that the bell was rung for the distance of 80 rods or more on our approach to the crossing at that time, and was kept ringing till we had passed the crossing where the accident occurred. The fireman rang the bell, and was standing at my left.

42 There were trees along the track to obstruct the view. They were poplar trees. When I first saw a colt on the track, we were 70 or 80 rods from the crossing. I blew the whistle for down brakes, shut off

steam, and ran by the momentum till we passed the crossing. We were running at the rate of 15 or 20 miles an hour. The brakemen frequently take off the brakes when the track is clear without a signal.

43 The colts we whistled for passed off the track, and until I got within a few rods of the crossing, I could see nothing on the track or near it. I should say we were within six or eight rods of the crossing when I saw the colts on the west side starting to cross over. Three were headed east and were running when I struck them; could not see them till I approached the crossing; could not possibly have slackened the speed of the train so as to have saved them. I did blow the whistle at that moment; we had not been using steam for some rods, and did not put it on till we had passed the crossing. I could not see the colts on each side the track, in consequence of trees and bushes. The colts were down in a low place and could not be seen. We whistled down brakes, and 44 blowed to scare the colts away; whistled down brakes when I first saw the colts also, and did not whistle them up till we had passed the crossing.

44 DANIEL SWEETLAND testified in substance, that he was fireman on the train at the time of the accident, and was still in defendant's employ. The first we saw of the colts was one standing on the track when about 50 rods off. The whistle sounded, and the colt ran off to the left; saw nothing more till we were near the crossing, and then saw the colts coming back on the jump; one got over safe. The engine whistle blew down brakes again.

The bell was rung for the crossing west of this, and was continued ringing all the way between the crossings until the colts were struck. It was more than 80 rods beyond the crossing where the colts were killed that we commenced ringing the bell.

45 There were bushes along the track which prevented our seeing on either side.

We were running 15 or 18 miles an hour on approaching the crossing. There was a signal to down brakes, and the train was checked, but it was not possible to have stopped the train in time to save the colts the second time we saw them. It would take 20 or 30 rods to stop the train. The engineer shut off steam when we first saw the colts, and it was not on again till we passed the crossing, and whistled down brakes, and they were not whistled off.

On his cross-examination he says: I swear that I rang the bell right through from the crossing next west.

46 GEORGE HOFFMAN says, that he was trackman on that section of the road, and that there are trees all along the track west of this crossing, also an orchard, through which the road passes. There are poplar trees

higher than a man's head when standing on the engine. There are board fences extending up to the cattle-guards on both sides of the highway. One looking from the locomotive would have to look through the orchard and fences to see the colts on the side of the crossing; it would be difficult to see.

47 A. C. PROUT stated in substance that he was passenger on the train when the accident occurred. The train was going east, and about noon. Heard the whistle blow for stock on the road, and looked out the window; was on the left side of car. Could see the crossing, but could see nothing on the track. There was a slacking of the speed, and after passing the crossing the brakes seemed to be let up, or more steam put on. It was just after I heard the first whistle that I raised the window and looked out; I put my head and neck out of the window. We were pretty close to the crossing when I first saw the colts; they were then headed east;
48 they were upon the run, trying to go over the crossing, and were not more than a colt's length from the track. There were bushes along my side of the road.

The bell rung from the first crossing west of where the colts were till I put my head out of the window. I think it continued to ring all the way till we struck the colts, but when I looked out of the window, my attention was otherwise directed, and I cannot swear positively that it rung all the way, but I know it was ringing when we passed the crossing next west of where the colts were killed, for I was standing on the platform and distinctly remember hearing the bell ringing for some time after we passed the crossing. I went into the car just before I heard the whistle sound, and I know the bell was ringing all the time till I went into the car; heard the whistle, and raised the window to see what was on the track. The view was obstructed on my side, so that I could not see the colts off by the side of the crossing.

49 The defendant then offered to give in evidence the following by-law in force in the town of Center, in said county, when the accident occurred:

Resolved, That horses, cattle, mules, sheep or goats shall be permitted to run at large between the first of April and the first of November.

Which was objected to by the counsel for the plaintiff, the objection sustained by the Court, and evidence excluded; and to the decision of the Court in excluding the same, the defendant then and there excepted.

It appears from the testimony in the case that the railroad was fenced, and cattle-guards put in, as the law requires.

This is the substance of all the testimony in the case.

PLAINTIFF'S INSTRUCTIONS.

49 1st. If the jury believe that the colts in question were killed on the crossing of a public highway by the engine and cars of the defendant, while said engine and cars were directed by the agents or servants of the defendant, and the jury further believe that such killing of said colts might have been avoided by the exercise of the ordinary care and caution on the part of such agents or servants so having the said engine and cars in charge, and the jury further believe that said colts were the property of the plaintiff when the same were so killed, on this state of facts the jury will find for the plaintiff, and the measure of damages is the value of the colts when the same were so killed. Provided, it does not appear from the proofs that the plaintiff's negligence or carelessness in suffering the colts to cross the road at the time did not contribute to the accident.

50 2d. The defendant was bound by law to have had upon the locomotive in question a bell of at least 30 pounds weight, or a whistle, and by their agents or servants directing the engine in question to have rung said bell or sounded said whistle at the distance of 80 rods from the crossing in question, and to have so continued the ringing of said bell or the sounding of said whistle until the said engine and cars had crossed the said crossing. And if the jury believe that such agents or servants of defendant directed the engine and cars in question, upon the crossing in question, (the jury believing the same to be a public highway,) and the jury believe that said engine and cars were so directed without a continuous ringing of such bell or sounding of said whistle for the said space of 80 rods before said engine and cars reached the said crossing; and the jury believe that the colts in question were killed by said engine in consequence of such omission to continue the sounding of said whistle or ringing of said bell for said 80 rods; and the jury further believe that the said colts were the property of the plaintiff when they were so killed; on this state of facts they will find for the plaintiff. Provided, the jury believe from the evidence that the carelessness or negligence of the plaintiff did not contribute to the killing.

51 3d. The jury must determine as to the credit due to the several witnesses who have testified in this case, and if the jury believe that

there is a conflict of the testimony between the witnesses for the plaintiff and the witnesses Cooley and Sweetland, it is proper for the jury to consider the relation of said witnesses Cooley and Sweetland to the defendant; the contradictions of each other (if any) in their respective statements about the ringing of the bell in question, and putting down the brakes; the fact (if proved) that the witness Cooley was engineer on the engine and cars in question, and liable to the defendant for negligence in directing said engine; and the fact (if proved) that he has been released by the defendant to enable him to swear as a witness in this case; and if upon the testimony the jury are in doubt as to the correctness of the statement made by said Cooley and Sweetland; and the jury believe from the weight of all the testimony, that the colts in question were killed on the crossing of a public highway by defendant's engine, as charged in the plaintiff's declaration, and that said colts were the property of the plaintiff; and the jury believe such killing might have been avoided by the exercise of ordinary care by the servants of defendant directing said engine, they will find for the plaintiff.

Which instructions were then and there objected to, objection overruled, and exception reserved.

INSTRUCTIONS OF DEFENDANT REFUSED.

56 3d. The defendant has a right to use its railroad and run its cars thereon without obstruction, and the plaintiff's horses had no right to be standing on the track of said railroad, or passing over the same, at a crossing, in the way of an approaching train.

Provided, the usual signal on approaching a crossing, by sounding the whistle or ringing the bell at least eighty rods from such crossing was observed by the defendant or its servants having the management of such train.

57 4th. If the plaintiff voluntarily permitted his horses or suffered them to stray in the way of the defendant's cars at a public crossing, and defendant's servants controlling said cars used ordinary caution to avoid a collision with such horses by sounding the whistle or ringing the bell at least eighty rods from such crossing, then the law is for the defendant.

57 15th. The positive testimony of the engineer and fireman to the fact that the bell was rung for at least 80 rods prior to the approach to

the crossing where the injury occurred, is superior and of more weight than the evidence of all the other witnesses not on the train swearing negatively, that they did not hear the bell rung. And the positive testimony of Prout, that he heard the bell rung while approaching said crossing, is corroborative of and gives additional weight to the testimony of the engineer and fireman. And if the jury believe from the evidence that the bell was rung or the whistle sounded for 80 rods during the approach to the crossing where the injury occurred, then the defendants are not liable, unless the jury believe the injury to have been done through the gross carelessness of the engineer.

To the refusal to give which the defendant then and there excepted.

The jury found a verdict for the plaintiff for \$120. A motion for a new trial was made by defendant, and overruled by the Court, and judgment entered upon the verdict.

A bill of exceptions was duly prayed, allowed, signed and filed, with bond, and the case in due form brought to this Court by appeal.

255
Chicago, Burlington
and Quincy Railroad Co.

vs.

John M. Gauffman et al.

Abstract

Filed April 23, 1862

J. Seland

Clerk

Walker Van Arman & Dexter
Counsel for Appellant.

(Page)

1 State of Illinois Bureau County, ss.

In the Circuit Court thereof
(To wit: On the 16th day of January
A.D. 1861, comes John W. Cauffman by
Taylor and Paddock his Attorneys and files his
Praecipe for Summons herein as follows:)

State of Illinois;

Bureau County }
3d. In Circuit Court
March Term 1861

John W. Cauffman

vs

The Chicago, Burlington &
Quincy Rail Road Company } Trespass on
the Case
Dues \$20000

The Clerk of said Court will
please issue a Summons in the above entitled
Cause against the above defendant, lay the
action in Case, and the Plaintiffs Damages
at Two Hundred Dollars

Princeton Jan'y 16th 1861

Taylor & Paddock attys.

for Pltff.

(Whereupon Summons was issued as follows,
to wit:)

The People of the State of Illinois:
 State of Illinois; To the Sheriff of said
 Bureau County, 3^d. County, Greeting;

We Command you that you
 summon The Chicago Burlington & Quincy
 Rail Road Company, if they shall be found
 in your County, personally, to be and appear
 before the Circuit Court of said County, on the
 first day of the next term thereof, to be
 holden at the Court House in the Town of
 Princeton, in said County, on the second
 Monday in the month of March, next, to answer
 unto John W. Cauffman in a plea of
 trespass on the case to the damage of the said
 plaintiff, as he says in the sum of Two
 Hundred dollars; and have you then and
 there this writ, with an endorsement
 thereon in what manner you shall have
 executed the same.

L. S.

Witness George W. Radcliffe
 Clerk of our said Circuit Court,
 and the Seal thereof, at Princeton,
 in said County, this 16th day of
 January in the year of our Lord
 one thousand eight hundred and
 sixty one

Geo. W. Radcliffe Clerk
 per. Chas. J. Peckham Deputy Clerk

3 (Which process was returned endorsed,
as follows:)

I have served the within writ this
5th day of February A.D. 1861 by delivering a
true + certified copy of this writ to Charles
Davie an agent of the within named Chicago
Burlington + Quincy Rail Road Company at
Pinckton in said County of Bureau

D. W^o Donald

Sheriff of Bureau County Illinois

(And, To wit: on the 16th day of January
A.D. 1861 comes Jeremiah Weirick by Taylor
+ Paddock his Attorneys and files his praecipe
for Summons herein as follows:)

State of Illinois

Bureau County J^W. In Circuit Court

March Term 1861

Jeremiah Weirick

vs

The Chicago, Burlington +
Quincy Rail Road Company

} Trespass on
} the Case
} Do. \$100.00

The Clerk of said Court will please
issue a Summons in the above entitled cause
against the above defendant. lay the action in
case, and the plaintiffs Damages at One
hundred Dollars

Pinckton Jan^y 16th 1861

Taylor + Paddock attys.
for pl^{ff}.

4 (Whereupon Summons was issued as follows:)

The People of the State of Illinois:
State of Illinois } To the Sheriff of said
Bureau County }^{3rd} County, Greeting;

We command you that you
summon the Chicago, Burlington & Quincy
Rail Road Company, if they shall be found
in your County, personally to be and appear
before the Circuit Court of said County, on the
first day of the next term thereof, to be
holden at the Court House in the Town of
Princeton, in said County, on the second Monday
in the month of March next, to answer unto Jeremiah
Whirick in a plea of Trespass on the Case to
the damage of the said plaintiff, as he says
in the sum of One Hundred dollars; And
have you then and there this writ, with an
endorsement thereon in what manner you shall
have executed the same.

Witness George M. Radcliffe Clerk of
our said Circuit Court, and the
seal thereof, at Princeton, in said
County, this 16th day of January, in
the year of our Lord one thousand
eight hundred and Sixty one

Geo. M. Radcliffe Clerk
per Chas. J. Pickham
Deputy Clerk

3000
L.S.

5 (Which mit was returned endorsed as follows:)

I have sewed this mit this 5th day of February A. D. 1861 by delivering a true & certified copy to Charles Barrie an agent of the within named Chicago Burlington & Quincy Rail Road Company at Princeton in said County of Bureau
D. McDonald
Sheriff of Bureau County Illinois

(To wit: On the 1st day of March A. D. 1861 comes John W. Cauffman Plaintiff aforesaid by Taylor & Paddock his attorneys aforesaid and files his narration in the words and figures following)

State of Illinois }
Bureau County }
In Circuit Court
March Term A. D. 1861.

John W. Cauffman the Plaintiff ~~the Plaintiff~~
by Taylor & Paddock (his attorneys complaining of
the Chicago Burlington and Quincy Rail Road
Company defendants (being an incorporated
Company) in a plea of Case. For that whereas
heretofore, to wit, on the twenty third day of
November in the year of our Lord one thousand
eight hundred and fifty nine at said County
of Bureau the plaintiff was the owner of ^{and}

A

Two certain mare colts one a dark Brown colt two years old past of the value of Ninety Dollars, the other a Dun colt one year old past of the value of seventy Dollars, which said colts were then and there lawfully running at large upon a certain public Highway in the Township of Center in said County said public highway being then and there opened & traveled by the public and leading from Princeton to Green River in said County and the said defendants were then and there the proprietors of a certain Rail Road known as the Chicago Burlington, and Quincy Rail Road, which said Rail Road then and there crossed the said Public highway at or near a certain point where the said Rail Road crossed the section line between Sections number Eleven (11) and Fourteen (14) in said Township of Center in the said County of Bureau, and the said defendants were also then and there the proprietors of a certain Locomotive Engine & Train of cars thereto attached then and there running upon the said Rail Road for the Transportation of Passengers over and along the said Rail Road the said Locomotive Engine and train of cars then and there being under the control, and management of the agents and servants of the said defendants, was then and there driven by them at great speed along

7 the said Rail Road, ^{from the west} where the same crossed
the said public highway as aforesaid, and that
whilst the said Locomotive Engine + cars were so
being driven + directed by the said agents and
servants of defendants towards the said crossing of
said public highway, ^B the said colts of the plaintiff
were then and there being upon or very near to
the said crossing of said highway and the
plaintiff avers that when the said Locomotive
Engine approached as near as eighty rods to
the point where the said Rail Road crossed the
said highway (where the said colts of the
X plaintiff then were) that it was then and there
the duty of the said agents + servants of the
plaintiff so having the control + direction of
the said Locomotive Engine + cars as aforesaid
to have rung the bell or sounded the whistle
attached to said Locomotive Engine, and so
have continued to ring said bell, or sound said
whistle as the said Locomotive Engine + cars
approached said crossing of said highway
until the said Locomotive Engine + cars had
approached to + crossed the said highway,
according to the Statute in such cases made
and provided, so as thereby to have scared +
d
frightened the said colts away from the said
Rail Road track where the same crossed
said highway, xx and to have slackened the
speed of said Engine + Cars so under their

8 direction as the same approached to and
crossed the said highway, so as thereby to
have enabled the said colts to escape from
the said Engine at said crossing where said
colts were then being as aforesaid and yet the
plaintiffs avers that the said agents & servants
so having the control of said Locomotive &
Engine well knowing their said duty in the
premises, then and there carelessly negli-
ently, and culpably neglected and omitted to
ring the said Bell or sound the said whistle
attached to the said Locomotive Engine &
neglected to slacken the speed of said
Locomotive Engine until the same had
approached the said crossing, but drove &
directed the said Engine and cars then &
there at full speed upon the said crossing
& colts and thereby said Engine struck
crushed maimed and killed the said colts
throwing them fifty feet into the air so
that they were totally lost to the plaintiff and
the plaintiff avers that if the said agents &
servants so having in charge the said
Locomotive Engine, had then and there
rung the said bell or sounded the said
whistle as it was their duty to have done, and
as required by the Statute in such cases made
and provided that the said colts of the plaintiff
would have by the ringing been affrighted by

9 the ringing of said bell or sounding of said whistle + then + there have made their escape from the said Locomotive Engine.

And for that whereas also the said plaintiff afterwards to wit: on the said 23 day of November A. D. 1857 at the said County of Bureau was the owner of and possessed two certain other mare colts - The Plaintiff here alledges as in his first count above he has alledged from the letter A to the letter B as said letters occur in said count - and at the distance of half a mile from the crossing of said highway + while approaching the same the said colts were then standing in the said highway on or near the point in said highway where the said Rail Road crossed the same, and the plaintiff avers that at said distance of half a mile from the said crossing the said agents + servants of defendants so having the control and direction of said Engine + cars then and there had + continues to have an open and plain view of said colts upon the said crossing of said highway from the time said Locomotive approached at the distance of half a mile from said crossing until said Locomotive Engine + cars approached to + crossed the said highway it then + there being open + plain day light, and the plaintiff avers that it was then any

10 there the duty of the said agents + servants of defendants so directing and controlling the said Engine and cars to have slackened the speed of the said Locomotive Engine + cars as the same approached the said highway where the said colts were as aforesaid, and to have approached the said crossing of said highway slowly and cautiously, and to have rung the bell or sounded the whistle attached to said Engine as the said Locomotive approached the said highway so as thereby to have scared the said colts away from the said Rail Road track where said colts were on said highway yet the plaintiff avers that the said agents and servants of said defendants so directing + managing said Engine + cars then and there so carelessly conducted the said Engine + Cars on its approach to and crossing of said highway (where the said colts were as aforesaid) by not slackening the speed of said Engine + cars, and by not ringing the bell or sounding the whistle attached to said Locomotive Engine, that the said colts were by said Locomotive running at great speed upon said crossing the said colts then and there struck crushed, maimed and destroyed by the said Locomotive Engine whereby the said colts were rendered wholly worthless, and were thereby totally lost to the plaintiff

11 whereby and by reason of the said several premises the plaintiff has been deprived of his said colts and wholly lost the same whereby and by reason of the said premises he hath been greatly damaged in the sum of Two hundred dollars and thereupon he brings his suit &c.

By Taylor & Paddock his attys.

And on the same day, To wit: On the ~~1st~~ 1st day of March A. D. 1861 comes Jeremiah Weirick plaintiff, also, aforesaid, by Taylor and Paddock his attorneys aforesaid, and files his narration in the words and figures here following:

State of Illinois 3
Bureau County 3rd ss. In Circuit Court
March Term A. D. 1861

Jeremiah Weirick the plaintiff by Taylor & Paddock his attorneys complains of the Chicago Burlington and Quincy Rail Road Company being a body corporate defendants in a plea of Case for that whereas heretofore to wit: on the 23rd day of November in the year of our Lord one thousand eight hundred and fifty nine at and within the said County of Bureau the plaintiff was the owner of and possessed a certain Bay mare

coll^A of great value to wit of the value of
eighty dollars, which said coll was then and
there lawfully running at large upon a certain
public highway leading from Pinecton to Green
River in said County of Bureau said highway
being then & there opened & travelled by the public
And the said defendants then and there were
the owners, and proprietors of a certain Rail
Road known as the Chicago Burlington and
Quincy Rail Road leading from Chicago to
Burlington and Quincy, which said Rail Road
then & there passed through the said County of
Bureau and crossed the said highway at or
near the point on said Rail Road where the
same passes over the Section line between sections
Number Eleven (11) and fourteen (14) in
Township Number Sixteen (16) North of Range
Number Eight (8) East of the 4th P. M. in
said County of Bureau and the said defendants
were then and there the proprietors of a certain
Locomotive Engine and train of cars thereto
attached which was then and there under the
charge and control of the agents and servants of
the said defendants and directed by them over
the said Rail Road in the transportation of
passengers over and along the said Rail Road,
the said Engine and cars being then and there
rapidly propelled and moved along and over the
said Rail Road by steam going eastward

13 and the said colt was then and there lawfully standing in the said highway at or near the point in said highway where the same was crossed by the said Rail Road as aforesaid, and that whilst the said colt was then and there being the said Locomotive Engine and cars in charge of the agents and servants of defendants aforesaid was driven at great speed along the said Rail Road towards the said crossing where the said colt was, as aforesaid, and the plaintiff avers that it was then and there the duty of the said agents & servants of the defendants then and there having the said Locomotive Engine and cars in charge as aforesaid to have rang the bell or sounded the whistle attached to the said Locomotive Engine as soon as the said Locomotive Engine & cars approached as near as Eighty Rods to the said crossing where the said colt then ~~was~~ ~~was~~ ~~was~~ was and then and there to have continued to ring said bell or sounded said whistle until the said Locomotive Engine had crossed the said highway, as by the Statute they were required to do as such cases made and provided, yet the said agents and servants of defendants so having the direction & control of said Locomotive Engine & cars well knowing their duty in premises then & there carelessly & negligently disregarded their said duty

and did not ring the said Bell nor sound the said whistle as by law it was their duty to have done, **B** but then and there carelessly + culpably drove + directed the said Locomotive Engine + cars upon the said crossing at a rapid speed (without ringing the said Bell or sounding the said whistle until the said Locomotive Engine had approached within ten rods of said crossing and then and there drove the said Engine violently upon the said colt as being upon the said crossing as aforesaid and thereby then + there struck crushed maimed and killed the said colt so that the same was totally lost to the plaintiff, for the want of care and attention in the said agents + servants in the management of said Engine + cars as aforesaid, and in their neglecting to ring said Bell or sound said whistle as aforesaid.

And for that whereas also, afterwards to wit on the said 23^d day of November in the year of our Lord one thousand eight hundred and fifty nine at the said County of Bureau the plaintiff was the owner of + possessed a certain other Bay mare colt - the plaintiff here alleges as in his first count above he has alleged from the letter **A** to the letter **B** and the plaintiff avers that it was then and there about noon of said day, in

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clear day light, and that said Locomotive Engine + cars, approached the said crossing where the said colt was as aforesaid, in a strait line from the West, so that the said colt might easily have been seen at the distance of a mile from from the said crossing by the said agents and servants of said defendants so having the said Locomotive Engine + Cars in charge and that said colt upon said crossing so continued in view of said agents and servants until the said Engine + cars so in their charge crossed the said highway, and the plaintiff avers that it was then and there the duty of said agents and servants so driving + directing the said train to have seen the said colt upon the said crossing at such a distance from from the said crossing, and before reaching the said crossing, as to have enabled them, said agents + servants to have checked the speed of the said Engine and cars as the same passed to and over the said crossing and thereby to have enabled the said colt to get out of the way of said engine yet the said agents + servants of said defendants disregarding their duty in the premises, and altho the said agents + servants having the said Engine + cars in charge and whilst the same was approaching

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said crossing at the distance of a half mile from the same then and there saw the said colt upon the said crossing and continued so to see the said colt upon said crossing until the said Engine + cars so under their control arrived at the said crossing where the said colt was, and should then + there have checked the speed of said cars so as to have enabled the said colt to have escaped as aforesaid, yet the said agents + servants then + there carelessly + negligently neglected to check the speed of the said Engine + cars as the same approached the said crossing and then and there carelessly and negligently neglected to ring said Bell or sound said whistle + then and there drove + directed said Engine + cars so under their control as aforesaid at a rapid speed upon the said crossing and upon the said colt so being upon the crossing of said highway as aforesaid and thereby then + there by means of the premises the said Engine struck crushed maimed and bruised the said colt, so that the same was totally lost to the plaintiff - To the damage of the plaintiff of One hundred Dollars and thereupon he brings his suit

By Taylor Paddock, his attys.

17 Pleas before the Hon^{ble} M. E. Hollister
Judge of the North Judicial Circuit of the
State of Illinois at a term of the Circuit
Court held at the Court House in Princeton
within and for the County of Bureau in the
State aforesaid on the second Monday in
the month of March in the year of our Lord
One Thousand Eight Hundred and Sixty one
Present Hon^{ble} M. E. Hollister Judge
George W. Radcliffe Clerk
Daniel M. Donald Sheriff
D. P. Jones States Attorney

(To wit. On the 3^d day of said Term of
said Court.)

Wednesday March 13th A.D. 1861

8 o'clock A.M. Court met pursuant
to adjournment - Present same as
yesterday. (And as above)

John W. Cauffman

vs.

Case

The Chicago Burlington &
Quincy Rail Road Company

And now comes the defendant by Kendall
& Ide its attorneys, who file their plea to
plaintiff's narration herein in the words
and figures following, to wit:

State of Illinois } In the Circuit Court
 Bureau County } 3^d of the March Term A.D. 1861

Chicago Burlington and
 Quincy Rail Road Company }
 ats. }

John M. Cauffman }

And the said defendant by Kendall
 + Ide its attorneys comes and defends the
 wrong and injury when &c- and says
 that it is not guilty of the said supposed
 grievances above laid to its charge or any or
 either of them or any part thereof in manner
 and form as the said plaintiff hath above
 thereof complained against the said defendant
 and of this the said defendant puts itself
 upon the County &c-

(To which Plaintiff adds, *similar as follows to wit*)
 Kendall + Ide for defendant
 And the plaintiff doth the like
 J. J. Taylor for pl'tff.

(And)
 Jeremiah Weirick

vs.

Case

The Chicago Burlington +
 Quincy Rail Road Company } And now comes
 the defendant by Kendall + Ide its attorneys, who file their plea
 to plaintiff narration herein in the words and figures following to wit:

19 State of Illinois } In the Circuit Court of the
Bureau County } ss. March T. 1861

Chicago Burlington &
Quincy Railroad Company
ats.

Jeremiah Weirick

And the said defendant by Kendall
& Ide its attorneys comes and defends the
wrong & injury when &c. and says it is not
guilty of the said supposed grievances above
laid to its charge or any or either of them or
any part thereof in manner and form as the
said plaintiff hath above thereof complained
against the said defendant, and of this the
said defendant puts itself upon the country &c.

Kendall & Ide for
defendant

(To wit: On the 12th day of said Term of
said Circuit Court)

Saturday Morning 8 o'clock March
23^d A. D. 1861 - Court met pursuant
to adjournment - Present same as
yesterday - (And as above)

John W. Cauffman

vs.

Case

The Chicago Burlington & Quincy Rail Road Company

And now comes the parties hereto by their Attorneys aforesaid and it is ordered by the Court that this cause be continued until the next term.

(And)

Jeremiah Hairick

vs.

Case

The Chicago, Burlington + Quincy Rail Road Company

And now come the parties hereto by their Attorneys aforesaid, and it is ordered by the Court that this cause be continued until the next term.

21. Pleas before the Hon^{ble} Mr. E. Hollister
Judge of the Ninth Judicial Circuit of the
State of Illinois at a term of the Circuit
Court begun and held at the Court House
in Princeton within and for the County of
Bureau on the second Monday in the Month
of August in the year of our Lord One
Thousand Eight Hundred and sixty one
Present Hon^{ble} Mr. E. Hollister Judge
Geo. W. Radcliffe Clerk
Daniel McDonald Sheriff
and D. J. Jones States Attorney

(To wit: on the 5th day of said Term of our
said Court)

Friday Morning August 16th
A. D. 1861 8 o'clock A. M. - Court
met pursuant to adjournment -
Present same as yesterday.

(And as above)

John Mc Cauffman

vs.

Cafe

The Chicago Burlington +
Quincy Rail Road Company

And now the parties by their Attorneys
aforesaid and on motion of defendant this
Cause is set for trial upon Monday next to
which day it is continued at defendants
costs.

(And)
 Jeremiah Heirick
 vs. Case
 The Chicago Burlington &
 Quincy Rail Road Company

And now come the parties by
 their attorneys aforesaid, and on motion of
 defendant this cause is set for trial upon
 Monday next, to which day it is continued at
 defendants costs.

(To wit: on the 8th day of said Term)
 Tuesday Morning 8 o'clock August
 20th A.D. 1861 - Court met
 pursuant to adjournment -
 Present same as yesterday.

(And as above)
 John M. Cruffman
 vs. Case
 The Chicago Burlington &
 Quincy Rail Road Company

And now come the parties hereto
 by their attorneys aforesaid, and it is ordered
 by the Court that a jury be empannelled
 herein. And thereupon comes a jury of
 twelve good and lawful men to wit;
 Moses J. W. Lathrop, Chas Phelps, Levi
 Walker Sr. A. C. Manrose, Barney Hagan,

William Hoskins, Geo. Chambers, Calvin Cooper, N. E. Walton, Ellis Fisher, Joseph Vanhorn and James M^c Elroy, of whom Barney Hagan, William Hoskins and James M^c Elroy are by order of the Court summoned by the Sheriff from the bystanders, the regular panel being exhausted.

And said Hagan, Hoskins and M^c Elroy being duly sworn the jurors aforesaid are duly empannelled as a jury of the County herein.

(And)

Jeremiah Weirick

vs.

Case

The Chicago Burlington &
Quincy Rail Road Company

And now comes the parties hereto by their Attorneys aforesaid and by agreement between them made in open Court with the assent of the parties to the suit between John M^c Cauffman plaintiff and said Rail Road Company defendant now called for trial. It is ordered that this cause be submitted and the evidence herein produced to the jury empannelled in said suit of John M^c Cauffman against said Rail Road Company.

24 (To mt; on the 9th day of said Term)

Wednesday morning 8 o'clock
August 21st A. D. 1861 - Court met
pursuant to adjournment. Present
same as yesterday. (and as above)

John W. Cauffman

vs.

Case

The Chicago Burlington &
Quincy Rail Road Company

And now this cause is given to the
jury aforesaid upon the testimony produced
with the arguments of Counsel and the instruc-
tions of the Court, and said jury retire to consider
of their verdict herein. And afterwards, to-wit:
upon this same day said jury return into Court
and for their verdict herein say. "We of the jury
do find the defendant guilty as alleged in
plaintiff's declaration, and do assess plaintiff
damages at One Hundred and Twenty Dollars".

Whereupon Defendant by its Attorneys aforesaid
moves the Court for a new trial of this Cause,
which motion the Court, being fully advised in
the premises, considers and orders be overruled.
and it is thereupon considered and determined by
the Court that plaintiff have and recover of
defendant the said sum of One Hundred and
twenty dollars for his damages herein, and also his
costs of this suit expended and that he have execution
therefor.

(And)
 Jeremiah Weiricks
 vs. Case

The Chicago Burlington +
 Quincy Rail Road Company

And now this cause is given
 to the jury aforesaid upon the testimony
 produced with the arguments of counsel and
 the instructions of the Court, and said jury
 retire to consider of their verdict herein. And
 afterwards, to wit; upon this same day said jury
 return into Court, and for their verdict herein say,

"We of the jury do find the defendant
 guilty as alleged in plaintiff Declaration.
 And do assess plaintiffs damages at Sixty
 five dollars"

Whereupon Defendant by its attorneys
 aforesaid moves the Court for a new trial
 of this cause, which motion, the Court, being
 fully advised in the premises considers and
 orders be overruled. And it is thereupon
 considered and determined by the Court that
 plaintiff have and recover of defendant
 the said sum of Sixty five Dollars for
 his damages herein, and also his costs of
 suit expended in this suit, and that he
 have execution therefor.

(And, to wit: on the 28th day of August
A.D. 1861 come the parties aforesaid by their
Attorneys aforesaid and file their
agreement for the consolidation of the
causes aforesaid in the words and
figures following)

State of Illinois }
Bureau County } 3^d. In the Circuit Court
of the August Term A.D. 1861.

John M. Cauffman

vs.

Case

Chicago Burlington +
Quincy Rail Road Company

And

Jeremiah Heintz

vs.

Case

Chicago Burlington +
Quincy Rail Road Company

It is agreed by the parties
plaintiffs and defendants in each of the
above entitled causes that both causes shall
be consolidated for the purposes of trial
of the same in the Supreme Court

That one Bill of Exceptions shall be
sufficient & the same shall be applicable to each case.

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Separate appeal Bonds shall be given and on trial separate judgments in each case are to be given - but the same Bill of Exceptions shall be applicables and pertinent to each case And this agreement shall be made a part of the Record of said cases
Witness the said parties by their attys. this 15th day of the said August Term of the said Circuit Court A. D. 1861. being the 28th day of August 1861.

J. J. Taylor atty.
for Cauffman + for Heirick
Shendall + Ide attys.
for C. B. + D. R. R. Co.

(To wit: on the 17th day of said Term)

Friday Morning 8 o'clock August
30th A.D. 1861. Court met pursuant
to adjournment. Present same
as yesterday (And as above)

John W. Cauffman
vs. Case
The Chicago Burlington +
Quincy Rail Road Company

And now comes defendant by
Kendall + Ide its Attorneys and files its
Bill of Exceptions herein in the words and
figures following, to wit:

(And)
Jeremiah Weirick
vs. Case.
The Chicago Burlington +
Quincy Rail Road Company

And now comes defendant by
Kendall + Ide its Attorneys and files its
Bill of Exceptions herein in the words and
figures following, to wit:

State of Illinois } In the Circuit
Bureau County } Court of the August
Term 1861.

John W. Cauffman

vs.

Chicago Burlington +
Quincy Rail Road Company

And

Jeremiah Weirick

vs.

Chicago Burlington +
Quincy Rail Road Company.

Do it remembered that on the
20th day of August A.D. 1861 being the 8th
day of the said Term the above entitled
causes came on to be tried and by agreement
of the said parties to said suits both suits
were tried together by the Court and a jury
the plaintiffs to maintain the issues on
their part introduced Jerome Wilcox as a
witness who testified that he lives on center
prairie within 10 or 12 rods of the crossing
where the injury occurred that he lived
there in Nov. 1857 at the time of the occur-
rence & had lived there several years before.
that on the day the injury occurred witness
had been gathering corn on his farm south
of the crossing and at the time of the
occurrence was on a wagon load of corn

coming up through his field in the direction of the crossing and was 60 or 70 rods south of the crossing when he first saw the train that killed the colts. His attention being called to the train by the sound of its whistle, the train struck the colts on the crossing.

Witness did not see the train coming until he heard the whistle sound, he then looked up and saw some colts on or near the crossing and also some in the highway west of the crossing but not far from it. Witness says the train was then in my field and was running from South West to North East. I had a plain view of the cars. I was coming up from the South, & headed towards the crossing. The Engine was some 12 or 15 rods from the crossing when I heard the whistle I had a good view of the crossing. I did not notice the cars until I heard the whistle. I did not hear any bell. The public highway runs east and west on Section line between Sections 11 and 14 in Center Township and the crossing is where the Rail Road crosses the highway leading from Princeton to Green River in Bureau Co.

The Rail Road was the Chicago Burlington & Quincy Railroad. Cannot say whether it was a passenger or a freight train.

I heard the whistle + looked and saw some colts on the crossing they appeared to be turning + then they ran off on the East side towards my house. I own the land on the south side of the rail road. have known the face of the ground there for 12 years dont know of any obstacle which would prevent persons on the train from seeing the colts. There were some bushes along each side of the track.

My impression is that the leaves had then fallen off. I do not think the colts at the side of Daniels Fence could have been seen so well - I didⁿ notice the cars so much.

I was looking at the horses more particularly - I do not know whether the cars were running at a great rate of speed. cannot say whether they checked up or not. I did not notice any men on the cars. I was looking at the cars. My brother was with me + one Mansfield. I went to the crossing + saw two colts killed and one wounded.

I think one was a brown and one a bay colt. They were young horses might have been 2 or 3 years old. I cannot tell how old they were. nor what they were worth. dont know of any curve in the Rail road West of the crossing for the distance of a mile or more. The grade was rather an up grade approaching the crossing

from the nest. About 2 feet above the level of the highway at the crossing. I cannot tell the day of the month - think it was in Nov. 1859. Cannot tell what kind of a day it was. The accident occurred either at noon or evening. dont know whether it was clear or cloudy. Railroad is straight there and an object could be seen for a mile. I did not hear the whistle sound so far as I have sometimes but I was in a wagon which rattled some.

(Cross Examined)

I was about the same distance from the Railroad that I was from the crossing. some 60 or 70 rods. Can usually hear a train a long distance off. Did not notice the train till I heard the whistle. The train was nearly in front of me then. Cannot tell how many cars there were in the train. Did not hear any bell. When whistle sounded I saw 2 or 3 colts on the track grading, in the act of turning. Cannot tell how many there were. They turned and went towards my house East of the crossing - Those that were opposite tried to follow. They were a rod or two off.

The board fence there comes up to the cattle guards. The colts were up against Daniels fence on the West side of the crossing. The colts were on the run when the Engine struck them. The colts were trying to cross when the engine met them. I dont know that any of the colts that did not get across were injured. The whistle sounded once. I think I did not hear it keep sounding till after the cars had crossed. It might have sounded and I not hear it. I have an orchard on the North side of the track. The orchard extends to both sides they built the road through the orchard. The orchard is about 15 or 16 rods South and West of the crossing. The trees were set 2 rods apart. There are some 50 or 60 apple trees in the orchard. They have been set 10 years + were 3 years old when set out and are some 2 or 3 inches in diameter dont think the trees hid the colts from view on the track. The crossing is higher than the road is either side, and the colts on the side of the crossing.

The view might possibly be obstructed by the trees + the board fence. The distance between this crossing + the next crossing West is about 160 rods. There are bushes along on both sides of the track.

there is a space next to the orchard on the west where there are no bushes of any account. the bushes extend up nearer the crossing on the South East side of the track. Some of the bushes on either side of the track might have hid the view from the Locomotive. I do not swear that the whistle did not sound before I heard it.

James Brewer Sworn stated:

I live on Center Prairie. Was present near the crossing when the accident happened. Think it was about the 20th of November 1857.

A little after noon in the day time. The train was going East. Think it was a freight train, but am not certain.

Do not remember what kind of day it was. It was fair weather, for I was gathering corn. I was some 25 rods west of the crossing near the highway and some 10 or 12 rods south of the Railroad. I was unloading a load of corn. I saw the colts standing about the crossing, and one or two, certainly one was on the crossing & two East of the crossing. I heard the whistle sound once pretty sharp and then a smaller sound. Three of the colts turned rapidly to cross the track and the train struck two

of them + killed them.
 The cars were 60 or 70 rods off when I first observed them and they were going at good speed. The colts were on the west side when I first saw them - I am not certain that any of them were on the East side of the crossing. One was on the crossing. Three were on the West side and two on the East side. The three on the west side wheeled to go back when the train struck them. When I first saw the cars I don't think any of the colts were on the crossing. They were near the fence + feeding. I did not hear the bell ring or whistle sound until the cars were 15 or 20 rods from the crossing. There were no obstacles to prevent one on the cars from seeing the colts. When they sounded the whistle I think the cars were not more than 10 or 15 rods from me. When I first saw them they were 30 or 40 rods off. I don't recollect hearing any bell or whistle before I saw them. I think the whistle was one sharp sound + one short one. This was all I heard. The colts jumped at the first sound of the whistle. I could not see that the speed of the train was checked any. They were not over 20 rods from the crossing when I heard the whistle sound.

The Locomotive struck three colts.

One was knocked on the South side. One was knocked 2 rods. James Fisher was with me in the waggon at the time there was an orchard South of me and some cotton wood trees along the railroad track. There were three colts killed. One was a brown colt worth 85 or 90 \$ at the time. One bay worth about the same. The smallest colt was a Dun, coming 2 years old worth about \$75.

It was a good colt. What directed my attention to the cars was hearing them and I could see them coming.

I do not know how the colts come to be out whether they were turned out or not. I heard no bell or whistle till the cars got within 15 or 20 rods of the crossing. Then there was a sharp blast + one low blast of the whistle.

(Cross-examined)

I dont recollect I ever saw the colts before. I was at work for Daniels. Daniels had a fence on the West side of the crossing North of the highway which extended up to the crossing. The fence on both sides the highway west of the crossing was board fence + extended

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up to the cattle Gaurds at the crossing - I dont recollect seeing any colts on the west side by Daniels fence - Some of the colts were on the West side - The train got up within 15 or 20 rods when the whistle sounded at that time the colts were on Gilcoxes side & on the crossing - I think all were on the East side except ^{one} on the track The one on the track and one or two others came to the west side of the track and the two others jumped and ran off further away from the crossing to the East. All three of the colts which had come to the west side wheeled suddenly and jumped back again toward the east side - The train was but a little way from the crossing then - These three colts were struck by the train and killed - I was standing in the raggon - The road is level and raises a little in going over the track There were some trees along the line of the Rail road South of me

Some of them might have obstructed the view 80 or 100 rods from the crossing in the direction of the train There was a board fence on the South side of the highway on both sides of the crossing -

James Fisher sworn for plaintiff said -
I was about 25 or 30 rods from
the crossing when the accident occurred.
The cars were 60 or 80 rods off when I first
saw them going at fair speed. I was un-
loading corn in the wagon with James
Brewer. I watched the train till they struck
the colts. I saw the colts in the lane before
the cars came. They were only a short dis-
tance from the crossing when the cars
were coming. I cannot tell how near they
were to the crossing, perhaps some 3 or 4 rods
may be more. I think the colts could
have been seen from the cars when I first
saw the train. - The rattling of the cars + not
the sound of the Bell or whistle first attrac-
ted my attention - The Engine was from 10
to 18 rods off when the whistle sounded -
Did not hear any bell ring. I dont think
I was more than 40 rods from the cars when
I first heard them. When the colts were
struck there were two on one side of the
crossing and the three started to go to them -
When the whistle sounded it scared them
I think - I cannot tell exactly whether
there was any obstructions to the view along
the track. There was an orchard near
the track but I could see the cars through
it. Did not notice any checking of the
speed of the train.

(Cross examined)

I was picking corn when I first saw the cars. I am not certain but one colt was on the track. Think one was on the East and three on the west side of the track. When the whistle sounded some started to go over to the others. I cannot tell which way the colts were headed. It was all done up so quick I heard two toots of the whistle. I dont know whether it was a passenger or a freight train. I cannot tell which side of the track the colts lay after they were struck. Cant say whether there were five or six colts in all.

Warren Eastman sworn for plaintiff said: - I know the colts. I think the brown colt worth \$100 the bay \$85 and the Dun colt \$45.00

(Cross examined)

I never saw the colts after they were killed. I do not know of my own knowledge that the colts I speak of were the colts that were killed.

Hiram Kauffman sworn for Plaintiff said I saw the colts after they were killed. I have known them ever since they were folded - Saw them the same day they

were killed One was a dun One a bay
 + one a brown Two of them, the brown +
 dun belonged to the plaintiff Kauffman
 The bay belonged to the plaintiff Heisick
 They were killed at Wilcox crossing about the
 middle of November 1859.

Defendants Witnesses

Floyd H. Cooley being sworn
 testified that he was in the employ of
 the defendant as Engineer (In answer
 to plffs. counsel stated he had a
 release &c from the Railroad Company)
 have been running an engine on this
 rail road for about 7 years. I was run-
 ning the engine that killed the colts spoken
 of by the other witnesses It was on the
 23rd day of November 1859 A passenger
 train bound East at about noon.

I saw a colt on the crossing when about
 40 or 80 rods off It was at least 50 rods
 I blowed my whistle and shut off steam
 The colt passed off the track on the North
 side I saw nothing else and supposed the
 track all clear until I got within a short
 distance of the crossing when some 6 or 8
 rods of the crossing I saw some colts on
 the west side wheeling suddenly to cross
 over to the East side - They came upon a

jump and the engine struck three of them and I think there was one or two that were headed off by the engine + did not get upon the track - The last one that had jumped into the cattle guard on the north side of the crossing and I was afraid the Engine would run him under and throw us off the track but he was dragged along a short distance and fell to one side the track - We generally ring the bell all the way between this crossing + the next one west. The bell rung for the crossing next west and I think it was kept ringing all the way until we reached the crossing where the colts were killed.

The distance is a hundred rods or more between the crossings - There was no whistling post between these crossings at the time the colts were killed but we had our land mark where to whistle or ring the bell. and used to ring for a longer distance than 80 rods as now designated by the whistling post. I will not swear positively that the bell was kept ringing all the way from the crossing west on the day the colts were killed - But I am positive that the bell was rung for the distance of 80 rods or more on our approach to the crossing at that time and

42 And was kept ringing until we had passed the crossing where the accident occurred. The fireman rang the bell and was standing at my left. There were trees along the track so close that they could reach out and strip the leaves off on both sides so as to obstruct the view. They are poplar trees. When I first saw a colt on the track we were some 70 or 80 rods perhaps from the crossing. I blew the whistle for down breaks and shut off steam and we ran by the momentum of the train until we had passed the crossing where the colts were killed. We were running at the rate of about 15 or 20 miles an hour when we struck the colts. The breaks may not have been down. We do not always whistle to take off the breaks. The break men frequently take off the breaks when the track is cleared, without a signal. The colt we whistled for passed off the track. And until I got within a few rods of the track I could see nothing on the track or near it. I should think we were within some six or eight rods of the crossing when I saw the ^{colts on the} west side starting to cross over. They were headed to the East and were running when I struck them. I could not see them until I

approached the crossing. I could not possibly have slacked the speed of the train so as to have saved them. I did blow the whistle at that moment. We were in great danger of being thrown off the track. It is always safer to run fast than slow in striking an animal. We had not been using steam for some rods. We put on steam not until we had passed the crossing - I know the date of the accident from having made a report of it to the department at Chicago

(Cross Examined) I have been an Engineer 7 years. I never said on the day of the accident that I had run into a flock of colts & bagged three of them - The fact of the trees & bushes along the track & of its being a bye place fixed the circumstance in my mind I could not see the colts on each side of the track. When the colt passed off the track we were 40 or 50 rods away.

I whistled down the breaks & shut off the steam. It takes from ten to 25 rods to stop a train - The colts were down in a low place and I could not see them - We whistled down breaks once or twice - We blowed to scare the colt off - as soon as I struck the colts I whistled off breaks

44 + put on steam - I was using no steam when I struck the colts + had not been for some rods. I whistled down brakes when I first saw the colt + did not whistle them up until we passed the crossing. Can stop the train I was running from full speed to a stand in running from 20 to 25 rods.

Daniel Sweetland sworn testified I was on the train at the time the accident happened - I was fireman on the train that killed the colts + am still in depts. employ. The first we saw of the colts one was standing on the track. I dont know exactly how far off we were then. I think about 30 rods from it. We were between the crossings. The whistle sounded and the colt ran off to the left - I saw nothing more until we got near the crossing. I saw the colts coming back. I told the Engineer the colts were coming back again. The colts were close to the crossing and were on a jump when I saw them. One of them got over safe. The Engineer shut off steam + whistled down breaks again. The bell was rung for the crossing west of this, and was continued ringing all the way between the crossings until the colts were struck. It was more than 80 rods beyond the crossing where the colts were

Killed that we commenced ringing the bell. There were bushes along the track which prevented our seeing - we could see along the track but the view was obstructed outside the track. We were running from 15 to 18 miles an hour when approaching the crossing. There was a signal for down breaks and the train was checked. It was not possible to have stopped the train in time to have saved the colts the 2nd time we saw them. It would take 20 or 25 rods to stop the train - The Engineer shut off steam when we first saw a colt on the track off again until we passed the crossing + whistled down the breaks + they were not whistled off.

(Cross Examined) I could see when the throttle of the engine was shut. I swear that I rung the bell right through from the crossing next west - I have been on the train 3 years - I don't think the colts could have been seen at the sides of the crossing at the distance of 60 or 80 rods down the track. Don't know whether one could have seen them at the distance of 20 rods. There are some trees on the left hand side of the track. When the breaks were whistled down I think we were 50 rods from the crossing - It was nearly that I think.

George Hoffman sworn testified as follows.

I am a track repairer on the road my beat extended at that time from Myanett East beyond where this accident occurred My business was also to see what stock was killed on the road and to report the same. There were two colts on the North West side and one on the South East side. One lay about 6 or 7 feet from the track. One about 4 feet. One colt was worth about 70 or 75 dollars, one about 60 or 65 dollars. And one about 45 dollars. There are trees all along the track west of this crossing. The last tree is about 15 rods from the crossing. some on both sides. On the South side there are trees half the way. There is an orchard on the North side of the track near the crossing the trees of which are small. I dont know whether it obstructs the view much. There are some poplars taller than a man wd be standing on the platform. They were higher than a man's head standing on the Locomotive - One looking from the Locomotive would have to look through the orchard & fences to see the colts at the side of the crossing. Would be difficult to see. There are board fences extending up to the cattle guards on both sides of the highway.

on the West side of the crossing. Also on the South side of the road East of the crossing

(Cross Examined)

The Rail road fences were wire fence.

A. C. Prout sworn testified as follows.

I was a passenger on the train when the accident happened - The train was going East. It was about noon in the day time. I heard the whistle blowing for stock on the road and I looked out of the window. I was on the left hand side of the cars. I could see the crossing but could not see anything on the track. I did not see any colts. There were several passengers put their heads out of there was a slackening of the speed and after passing the crossing the breaks seemed to be let up or more steam put on. It might have been putting on more steam. The speed increased again after we passed the crossing. It was soon after I heard the first whistle that I raised the window & looked out and could see nothing. I could see the crossing but nothing on it. I stood with my neck out of the window. We were pretty close to the crossing when I first saw the

colts The first I saw of the colts they were they were headed East upon a run trying to go over the crossing and were not more than a colts length from the track. I think there were two that did not get over.

There were bushes along my side of the road. The bell rung from the first crossing next of where the colts were until I put my head out of the window. I think it continued to ring all the way till we struck the colts but when I looked out of the window my attention was otherwise directed and I cannot swear positively that it rung all the way. but I know it was ringing when we passed the crossing next of where the colts were killed for I was standing on the platform and distinctly remember hearing the bell ringing for some time after we passed that crossing. I went into the car just before I heard the whistle sound and I know the bell was ringing all the while till I went into the car & heard the whistle and raised the window to see what was on the track. The view on my side was obstructed so that I could not see the horses off by the side of the crossing. I could see along the track by the side of the cars to the crossing.

The Defendants then offered to prove that the following bye Law and regulation of the Town of Center was in force in said Town at the time of the occurrence, to wit:

At the meeting of the Town of Center on the 2nd day of office after a preliminary organization of the meeting, Calijah Hoyle was chosen Moderator for today and John W. Hearnshaw Clerk. 2. The Bye Laws proposed by a Committee previously appointed were severally read and adopted with an amendment on the fourth which by laws is as follows: "Resolved that horses, cattle, mules, sheep or goats shall be permitted to run at large between the first of April and the first of November"

Which was objected to by counsel for plaintiffs and was excluded by the Court. To the exclusion of which the defendant then and there excepted.

This is all the testimony in the case. The Court instructed the jury on behalf of the plaintiff as follows:

John W. Kauffman
vs.
The C. B. & D. R. R. Co.

1 If the jury believe that the colts in question were killed on the crossing of a public highway by the Engine & cars of the defendant while said Engine & cars were directed by the agents or servants of the defendant, and the jury further believe that such killing of said colts might have been avoided by the exercise of the ordinary care and caution on the part of such agents or servants so having the said Engine and cars in charge, and the jury further believe that said colts were the property of the plaintiff when the same

were so killed, on this state of facts the jury will find for the plaintiff. And the measure of damages is the value of the colts when the same were so killed.

Provided it does not appear from the proofs that the plaintiff's negligence or carelessness in suffering the colts to cross the road at the time did not contribute to the accident

2

The defendant was bound by law to have had upon the Locomotive in question a bell of at least 30 pounds weight or a whistle and by their agents or servants directing the Engine in question to have rung said bell or sounded said whistle at the distance of 80 rods from the crossing in question and to have so continued the ringing of said bell or sounding of said whistle, until the said engine + cars had crossed the said crossing, and if the jury believe that such agents or servants of defendant directed the Engine and cars in question upon the crossing in question (The jury believing the same to be a public highway) and the jury believe that said ^{Engine and} cars were so directed without a continuous ringing of such Bell, or sounding of said whistle for the said space of 80 rods before said Engine + cars reached the said crossing, and the jury believe

that the colts in question were killed by said Engine in consequence of such omission to continue the sounding of said whistle or ringing of said Bell for said 80 rods. And the jury further believe that the said colts were the property of the plaintiff when they were so killed - on this state of facts they must find for the plaintiff -

Provided the jury believe from the evidence that the carelessness or negligence of the P^tff did not contribute to the killing

3 The Jury must determine as to the credit due to the several witnesses who have testified in this case. And if the jury believe that there is a conflict of the testimony between the witnesses for the plaintiff and the witnesses Cooley & Sweetland, it is proper for the jury to consider the relations of said witnesses Cooley & Sweetland to the defendant, the contradictions of each other (if any) in their respective statements about the ringing of the bell in question and putting down the Breaks - The fact (if proved) that the witness Cooley was Engineer on the Engine & cars in question, and liable to the defendant for his negligence in directing said engine, and the fact (if proved) that he has been released

by defendant to enable him to swear as a witness in this case, and if upon the whole testimony the jury are in doubt as to the correctness of the statements made by said Cooley + Sweetland, And the jury believe from the weight of all the testimony that the colts in question were killed on the crossing of a public highway by defendant's Engine, as charged in plaintiff's Declaration and that said colts were the property of the plaintiff. And that they believe such killing might have been avoided by the exercise of ordinary care by the servants of defendant directing said Engine they will find for the plaintiff.

To the giving of which instructions the defendant then and there excepted. —

The Court instructed the jury on behalf of the defendant as follows;

- Cauffman

vs

C. B. & I. R. R. Co.

- Weirick

Also

vs

C. B. & I. R. R. Co.

The Court instructs the jury for defendant,

The defendant is not liable in this case unless it is proven that the horses were injured or killed through the negligence or carelessness of the defendant or its servants

+ without the fault of the plaintiff.

2^d Even if plaintiff's horses were injured or killed by the negligence of the servants of the Defendant; yet if the want of ordinary care on the part of the plaintiff contributed to produce the injury, the law is for the defendant.

3^d The burden of proof in this case is on the plaintiff. The plaintiff must have proven by a preponderance of testimony that defendant's servants were guilty of negligence. The defendant is not bound to prove that its servants exercised ordinary care to prevent the killing of plaintiff's horses.

6 The defendant is not liable in this case, if plaintiff's horses were killed by a collision with defendant's cars, through any other cause than the negligence of defendant's servants in driving, running, governing & directing said cars.

7 The servants of defendant were only bound to use ordinary care and skill to prevent the killing of plaintiff's horses. They were not bound to use extraordinary care or skill

8

If the jury believe that the evidence on the question of the negligence of the defendant's servants is evenly balanced in this case, they will find for the defendant.

9

The jury are instructed that the positive testimony of witnesses that the bell rang or whistle sounded is entitled to more weight than the negative testimony of witnesses who testify that they did not hear the bell ring or whistle sound.

10

If the jury believe, from the evidence, that the killing of plaintiff's horses by defendant's cars, was solely and entirely the result of accident without the fault of the defendant or its servants then the jury should find for the defendant.

11

If the jury believe from the evidence that the Engineer upon his discovering the colts upon the track, whistled down breaks, threw off steam, or took ordinary precautions usually taken in such cases to frighten the colts away from the track, & to check the speed of his train so as to have it more immediately under control with the endeavor to prevent injury then such acts are evidence of the exercise of

55

of ordinary care and caution. And if the Jury believe from the evidence that ordinary care + caution was exercised on the part of the agents + servants of the defendant on that occasion then the Jury will find for the defendant.

12

If the Jury believe from the evidence that the colts first seen upon the track passed off upon the sounding of the whistle and that the track was clear afterwards until the train approached within six or eight rods of the crossing or so near to the same that the speed of the train could not be checked materially before reaching the crossing, and that the colts then suddenly started to cross the track + were struck + killed or injured in the act, + that there was no sufficient previous indication of their attempting to cross the track in that manner in time for the Engineer to have stopped the train or prevented a collision then the defendant is not liable in this action.

13

If the Jury believe from the evidence that the bushes + trees along and adjacent to the track together with the fences along the highway where the colts were, so obstructed the view that the Engineer + fireman either could

not see the colts in the highway off the track or seeing could not sufficiently discern their movements - Or if their movements were discernable such movements did not indicate any attempt to go upon the track, until the train had approached so near that all attempts to check the speed was useless and that then the colts suddenly started to cross the track & were killed or injured in the attempt then the defendant is not liable in this action -

14 Although the jury are the judges of Evidence, they have no right wantonly or causelessly to reject the sworn evidence of an unimpeached witness -

The following instructions asked by defendant were refused by the Court and to the refusal of which the defendant then and there excepted. Which instructions are as follows; to wit;

34 The defendant has a right to use its railroad and run its cars thereon without obstruction, and the plaintiffs horses had no right to be standing on the track of said railroad or passing over the same at a crossing in the way of an approaching train.

57

Provided the usual signal on approaching a crossing by sounding the ~~whistle~~ whistle or ringing the bell at least Eighty rods from such crossing was observed by the defendant or its servants having the management of such train

4 If the plaintiff voluntarily permitted his horses or suffered them to stray in the way of the defendants cars at a public crossing, and defendants servants controlling said cars used ordinary caution to avoid a collision with such horses by sounding the whistle or ringing the bell at least Eighty rods from such crossing, then the law is for the defendant.

15

The positive testimony of the Engineer & Fireman to the fact that the bell was rung for at least 80 rods prior to the approach to the crossing where the injury occurred is superior and of more weight than the evidence of all the other witnesses not on the train swearing negatively that they did not hear the bell rung - And the positive testimony of Groat that he heard the bell rung while approaching said crossing is corroborative of and gives additional weight to the testimony of the Engineer & Fireman.

And if the Jury believe from the Evidence that the bell was rung or whistle sounded for 80 rods during the approach to the crossing where the injury occurred then the defendants are not liable unless the Jury believe the injury to have been done thro' the gross carelessness of the Engineer.

The Jury returned their verdict as follows.
(vide ante Page 24)

"We of the Jury do find the defendant guilty as alleged in plaintiff declaration, and do assess plaintiff damages at one hundred and twenty Dollars."

And

"We of the Jury do find the defendant guilty as alleged in Plaintiff Declaration And do assess plaintiff damages at sixty five Dollars."

(To wit on the 18th day of said Term)

Saturday morning 8 o'clock

August 31st A.D. 1861

Court met pursuant to adjournment.

Present same as yesterday -

(and as above)

John M. Cauffman

vs.

Case

The Chicago Burlington and
Quincy Rail Road Company

And now comes defendant by
its attorneys aforesaid and on their motion it
is considered and ordered by the Court that
an appeal be allowed to the Supreme Court
on defendant filing appeal Bond with the
Clerk of this Court within thirty days from
this day in the sum of Four Hundred
Dollars with Milo Kendall as Surety.

(Which said appeal Bond, filed, as herein
ordered to be filed, within thirty days from
the 31st day of August A.D. 1861. To wit:
on the 14th day of September A.D. one
Thousand Eight Hundred and sixty one.
is in the words and letters following) to wit:

Know all men by these presents that
we the Chicago, Burlington + Quincy Rail
Road Company and Milo Kendall of Bureau

County and State of Illinois are held and firmly bound unto John W. Cauffman of said County and State, in the penal sum of four hundred dollars, current money of the United States, for the payment of which well and truly to be made, we being ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents.

Witness our hands and seals this Eleventh day of September A. D. Eighteen Hundred and Sixty one.

The condition of the above obligation is such, that whereas, the said John W. Cauffman did on the twenty first day of August A. D. Eighteen Hundred and Sixty one, in the Circuit Court in and for said County and State, recover a judgment against the above bounden Chicago Burlington & Quincy Rail Road Company for the sum of one hundred and twenty dollars damages and costs; from which said judgment of said Circuit Court said Chicago Burlington and Quincy Rail Road Company prayed for and obtained an appeal to the Supreme Court of said State.

Now if said Chicago, Burlington & Quincy Rail Road Company shall duly prosecute its said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered

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against it in case said Judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

(Signed). The Chicago Burlington
and Quincy Rail Road
Company. by A T Hall
Secretary
Milo Kendall Seal

(And)
Sereniah Weirick

no. Case
The Chicago Burlington and
Quincy Rail Road Company
And now comes defendant
by its Attorneys aforesaid and on their
motion it is considered and ordered by the
Court that an appeal be allowed to the Supreme
Court on defendant filing with the Clerk of
this Court within thirty days from this day
appeal Bond in the sum of Four Hundred
Dollars with Milo Kendall as surety.

(Which said appeal Bond filed herein,
as required - To wit: On the 14th day of September
A. D. One thousand Eight Hundred and
sixty one, is as follows:) To wit:

Know all men by these presents that we the Chicago Burlington & Quincy Rail Road Company and Milo Kendall of Bureau County and State of Illinois are held and firmly bound unto Jeremiah Weirick of said County and State in the penal sum of four hundred dollars, current money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this Eleventh day of September A. D. 1861.

The condition of the above obligation is such, that whereas, the said Jeremiah Weirick did on the twenty first day of August A. D. Eighteen hundred and sixty one, in the Circuit Court in and for said County and State, recover a judgment against the above bounden Chicago Burlington and Quincy Rail Road Company for the sum of Sixty Five dollars damages and costs:

from which ^{said} judgment of said Circuit Court said Chicago, Burlington and Quincy Rail Road Company has prayed for and obtained an appeal to the Supreme Court of said State.

Now if said Chicago Burlington & Quincy Rail Road Company shall duly prosecute

its said appeal with effect, and moreover
 pay the amount of the judgment, costs, interest
 and damages rendered, ^{and to be rendered} against it, in case
 said judgment shall be affirmed in said
 Supreme Court, then the above obligation
 to be void, otherwise to remain in full
 force and virtue (Signed)

J. B.

The Chicago Burlington and
 Quincy Rail Road Company
 by A. T. Hall Secretary.
 Milo Kendall Seal

State of Illinois }
 Bureau County } J. S. J. George M. Radcliffe
 Clerk of the Circuit Court within and for
 said County in the State aforesaid do hereby
 certify that the within and foregoing is a
 true copy from the Records and files in my
 office of all the proceedings had in our
 said Circuit Court in the foregoing entitled
 Causes.



Witness my hand and the seal
 of our said Court at Princeton
 this twentieth day of November
 A. D. One thousand and Sixty one
 Geo. M. Radcliffe Clerk
 By Cairn D. Trimble Deputy

Clerks Fee \$16.15 - Paid by Depts.



State of Illinois. }
Supreme Court }

3^d Grand Division.
of the April term A.D. 1862.

The Chicago, Burlington, and
Quincy Railroad Company

vs.

John M. Cauffman.

Appellee

Assignment of
Errors.

Afterwards to wit. at the April
Term of the said Court for the year A.D. 1862. before
the Justices of said Court comes the said appellant
by its attorneys - Walker, Van Arman & Dexter and
says that in the second proceedings aforesaid and
in rendering the judgment aforesaid there is error
in this^{to} wit.

- 1st That said Court erred in refusing to permit to
be given to the jury testimony offered on the trial
of said cause in the Court below on the part of
said company.
- 2^d That said Circuit Court erred in giving the
instructions asked and given on the part of the
plaintiff below.
- 3^d Said Circuit Court erred in refusing the instructions
requested and refused on the part of said defend-
-ant below at the trial of said cause.
- 4th The said Circuit Court erred in overruling the
motion made therein on the part of of said defend-
-ant, for a new trial therein.

5th The said circuit court erred in rendering judgment for the plaintiff in said cause and in not rendering judgment for the defendant therein and the said plaintiff prays that the judgment aforesaid for the cause aforesaid and other errors in the record and proceedings aforesaid may be reversed and held for nothing and that the said plaintiff may be restored to all things which it hath lost by occasion of said judgment.

Walker, Van Arman & Dexter.

Attys for Appellants.

Supreme Court of Grand Jurisdiction
Of April Term AD 1862,

C. B. & N. H. Co. appellants
vs.
John M. Cauffman &
Joseph Wickel appellants
C. B. & N. H. Co. appellees
vs.
Joseph Wickel appellee

Appeal from Bureau.
Two cases consolidated,

And the said appellants came
and say that there is no error either
in the record and proceedings aforesaid
or in giving the Judgment aforesaid
and therefore they pray that
the said Judgment may
be affirmed and that their
costs may be adjudged to them

J. J. Taylor atto
for appellants

25151

C. B. & J. R. H. Co.

(13)

John M. Kaufmann
Jeremiah Weirick

Founders in Error

Filed April 23 1882
L. Leland
Clerk

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Chicago, Burlington &
Quincy Railroad Co.

vs.

John M. Gauffman.

et. al.

Filed April 23 1862
- L. Leland
Clerk

Walker Van Arman & Dexter
Counsel for Appellant.