

12541

No. _____

Supreme Court of Illinois

Chicago & Rock Island R. R.Co.

vs.

Still.

71641  7

State of Illinois

Sasalle County & Chas. Reper the Honorable Martin E.
Wallace, Circuit Judge for the ninth
Judicial District of the State of Illinois and the
presiding judge of the Sasalle County Circuit Court
at a Court commenced and held at the Court
House in Ottawa in said County and State on the
second Monday in May, the same being the
twelfth day of May in the year of our Lord One thousand
eight hundred and fifty six and of the Independence
of the United States of America the eightieth
Year

The Honorable Martin E. Wallace Presiding Judge
John F. Nash Clerk
William H. L. Wallace State Attorney
Francis Warner Sheriff

Be it remembered that on the 29th day of April 1856.
a summons was issued out of said Court and in the
words and figures following to wit:

"State of Illinois & The People of the State of Illinois
Sasalle County & To the Sheriff of said County Greeting
We command you that you summon
the Chicago and Rock Island Rail Road Company
if they shall be found in your County personally to have
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

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Attains in said Court on the 12th day of May next to
answer unto James Stitt in a plea of Trespass on the
case to the damage of said plaintiff as he says in
the sum of Five hundred dollars, And hereon then
and there this writ, with an endorsement thereon in
what manner you direct the same.

Witness John F. Nash Clerk of our said Court and the
Deputy Sheriff at Attain this 29th day of April A.D. 1836
J. F. Nash Clerk

Said summons was returned and filed in the office
of said Clerk on the 9th day of May 1836 with the
endorsement of the Sheriff thereon in the words and
figures following that is to say:

"Executed this writ by reading
the same to and by making a copy of this writ with
S. Fowler agent of the Chicago and Rock Island
Rail Road Company April 29th 1836. F. Warren Sheriff
By S. S. Morris Deputy.

On Monday May 17th 1836 the sum being one of the
days of the May term of said Court for the year A.D. 1836
an order was entered of record in said cause in the
words and figures following viz:

James Stitt
Chicago & Rock Island
Rail Road Company
Trespass on the lease

On motion of the defendants by their clerk their
attorneys, it is ordered by the Court that this cause be
continued at the costs of the plaintiff for want of a
declarative term day before the first day of the present
term of this Court."

The Plaintiff filed his declaration
on the 29th day of October 1836 in the words and
figures following viz:

"State of Illinois, On the Circuit Court thereof
LaSalle County ss: I vacation after May term A.D. 1836
James Stitt vs. The Chicago and
Rock Island Rail Road Company - Trespas in the
case - James Stitt plaintiff complains of the Chicago
and Rock Island Rail Road Company, defendant, in a
plea of Trespas in the case, for that whereas the plaintiff
before and at the time of the committing of the defendants
of the grievance hereinafter mentioned, to wit, on the
28th day of April in the year of our Lord 1836 at
LaSalle County aforesaid was lawfully possessed of a
certain carriage, to wit: a two horse wagon and of
two certain horses drawing the same, in which said
wagon the plaintiff was then and there riding and
driving in and along a certain public and
common highway, and the defendant was then and
there possessed of a certain railroad truck which
crossed the said public and common highway and

was then and there also possessed of certain steam
 carriages, locomotives and said road cars, running on the
 said said road track, which said steam carriages
 locomotives and said road cars were then and there under
 the care, government, management and direction of
 certain their servants of the defendant in and along
 the said said road track. Nevertheless the said
 defendant by his said servants then and there so
 carelessly, negligently and improperly drove, governed
 managed and directed the said steam carriages
 locomotives and said road cars, that by and through
 the carelessness, negligence, negligenceness and
 improper conduct of the defendant, by his said servants
 and servants of proper care and management, in
 that behalf, the said steam carriages, locomotives and
 said road cars of the defendant then and there ran
 and struck with great force and violence upon and
 against the said wagon of the plaintiff and against the
 said two horses of the plaintiff drawing the same, then
 and there ~~carelessly~~ carelessly going in and upon the said
 public and common highway, when the said said
 road track of the defendant crossed the same and
 traveling along the same and there then and there
 while so crossing said said road track killed the
 said two horses of the plaintiff of great value to wit
 of the value of one hundred dollars each, and
 crushed, broke, pieces and damaged the said
 wagon of the plaintiff of great value to wit, of the value

of one hundred dollars and the same thing then and there occurred and was rendered of little or no use or value to the plaintiff, and the plaintiff was necessarily subjected to and incurred a great expense, to wit: one hundred dollars in repairing the said wagon, and was there deprived of the use thereof for a long time to wit: for one month during which time the plaintiff was obliged to hire another wagon, at great expense to wit: fifty dollars, to wit: at Sadale County, Arkansas. To the damage of the plaintiff of five hundred dollars and therefore he brings suit.

And for that whereas the said defendant on the day and year aforesaid at the County aforesaid was an incorporated company incorporated under and in pursuance of an act of the General Assembly of the State of Illinois entitled "an act to incorporate the Rock Island and Sadale Rail Road Company" approved February 27th 1847 and an act of the General Assembly entitled an act to amend an act to incorporate the Rock Island and Sadale Rail Road Company approved February 7th 1851, and for that whereas the plaintiff before and at the time of the committing of the defendant of the grievance hereinbefore mentioned to wit: on the day and year aforesaid at the County aforesaid was lawfully possessed of a certain two horse wagon and of two certain horses drawing the same in which said wagon the plaintiff was then and there riding and driving along a certain public road

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Common highway, and the defendant was then and
there possessed of certain Steam carriages, locomotives
and rail road cars, which were then and there under
the care, government, management and direction of
certain other servants of the defendant running in and
along a certain rail road track of the defendant
which crossed the said public and common highway
Nevertheless the said defendant by his said servants
then and there so carelessly and negligently and
improperly drove, governed, managed, guided and
directed the said steam carriages, locomotives and
rail road cars upon the said rail road track of the
defendant, that by and through the carelessness
negligence, negligences and improper conduct
of the defendant, by his said servants, and for want of
proper care and management in that behalf, that the
said defendant then and there by their said servants
did not nor would ring a bell nor whistle a
steam whistle placed on said locomotive, at the
distance of eighty rods from the place where the said
rail road track of the defendant crossed the said public
or common highway nor keep ringing or whistling
until the said locomotives had crossed the said
highway, as the said defendant was required by
law to do, but on the contrary then and there
crossed the said public or common highway
without ringing the bell or whistling the steam whistle
placed on the said locomotives, the said steam carriages

became and said road cars of the defendant then
and there ran and struck with great force and violence
upon and against the said wagon of the plaintiff and
against the said two horses of the plaintiff drawing
the same, there and there savagely King in and upon
the said public and common highway and traveling
upon and along the same where the said said road
track of the defendant crossed the same, and thereby
there and there while crossing savagely the said road
track of the defendant killed the said two horses of the
plaintiff of great value to wit of the value of two
hundred dollars each, and crushed, broke to pieces
and damaged the said wagon of the plaintiff of great
value to wit of the value of one hundred dollars, and
the same thereby there and there became and was
rendered of little or no use or value to the plaintiff
to wit at LaSalle County of said to the damage
of the plaintiff of five hundred dollars and
therefore he brings suit. By
Bushnell & Gray his attorneys.

To which declaration the defendant filed its
plea on the 17th day of November 1856 in the words
and figures following viz:

"James Stott vs The Chicago & Rock Island Rail
Road Company - Now comes the said defendant
by John Cook its attorney & defends so where and

acted on &c because the fact that it is not guilty
of the trespasses in plaintiffs destruction mentioned
or any or either of them in manner and form as
the said plaintiffs have herein thereof declared
against them and of this they put themselves
upon the country - Sherr & Clerk D. J. S. Attys."

And afterwards to wit: on Monday June 15, 1837
the same being one of the days of the present term of
said Court for the year 1837 an order was entered
of record in said cause in the words and figures
following viz:

"James Still

"

Chicago & Rock Island

Rail Road Company

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Trespass on the case

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This day the plaintiff came by

Bushnell & Gray his attorneys and

the defendant by Sherr & Clerk their attorneys, and by

agreement of parties this cause is set down for trial

on Tuesday afternoon of the third week of the present
term of this Court."

And afterwards, to wit: on Wednesday June 24
the same being one of the days of the said present term
of said Court, another order was made and entered
of record in said cause in the words and figures
following to wit:

an order to agree upon their verdict. Thereupon
the Court discharge the jury from further consideration
of this cause.

And afterwards, to wit: on Monday November
16th 1837 the same thing on of the day of the summer
term of said Court a further order was entered of
record in said cause viz:

"James Stitt

"

Chicago & Rock Island

Rail Road Company

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3

3

Thereupon the case

This day comes the plaintiff
by Bushnell & Leland his attorneys
and the defendants by John Clerk Schumann & Eldridge
their attorneys and thereupon come the following names
of a jury to wit: Joshua Willard, Ira Carter, Stephen
Mason, A. M. Squires, William F. Denny, Joseph
Heath, John R. Jones, Sylvester W. Keder, George Arnold,
A. A. George, Pontaud Kopper, and C. H. Head who
are duly sworn to and sworn to and try by
the issues herein according to the evidence; and
after hearing a part of the testimony, the further
hearing of this cause is postponed until the
coming in of the Court to another morning."

And afterwards, on different days of said summer term
of said Court for the year A.D. 1837 give further orders

non intendi di recare in said cause verif

Tuesday November 19th

4 James Little

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Tripass on the case

Chicago & Rock 3

Island Rail Road Company

This day again came the parties heard of their opponent, together with the jury sworn herein, and after hearing the balance of the evidence, the further hearing of this cause is postponed until the coming in of the Court the morrow morning?

Wednesday November 18th

"James Pitt

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Trespass on the case

The Chicago and

Rock Island Railroad Company

This day again came
the parties here by their attorneys together with the
jury soon hearing and after hearing the arguments of
counsel, the jury retired to consider of their verdict.
And by agreement of parties it is ordered that the jury
hear back to read their verdict and return the same
into Court to morrow morning.

London November 19th

James Little
 In papers on the case
 Chicago & Rock
 Island Rail Road Company

This day again came the parties hereto by their attorneys together with the jury from prison who returned into Court the following verdict to wit: "We the jury find the issues joined in favor of the plaintiff and assess his damages at One hundred and fifty dollars." Defendants commit men the Court for a new trial.

Friday December 4th

James Little
 In papers on the case
 Chicago & Rock
 Island Rail Road Company

It is ordered by the Court that the defendants motion for a new trial herein be overruled. It is therefore considered by the Court that the plaintiff has and recovers of the defendants the sum of One hundred and fifty dollars for his damages, costs and charges by him in and about this cause expended, and that he has execution therefor.

Saturday December 5th

James Still

"

Trespass on the case

Chicago & Rock

Island Rail Road Company

The defendants again
come by their clerk their attorneys and pay an appeal
herein to the Supreme Court which is granted upon
condition that the defendants within July next from
this date file an appeal bond payable to the plaintiff
in the penal sum of Five hundred dollars with
Joseph C. Shaw or Burton L. Cook as their security."

The defendants file their bill of exceptions on the
27th day of January A.D. 1858 in the words & figures
following to wit:

"

James Still

vs

The Chicago & Rock
Island Rail Road
Company

La Salle County Circuit Court
November Term A.D. 1857
Trespass.

Be it remembered that on the
trial of this cause the plaintiff to maintain the issues
on his part introduced as a witness William Miller
who testified as follows:

I know James Still the plaintiff
in this case, I was at the Aqueduct Mill in 1856,

One Evening just as it was getting dark, I was standing in the door of the mill and looking up saw the cars coming on the track of the Chicago & Rock Island Rail Road Company. Saw at the same time a two horse wagon with one man sitting in it going from the aqueduct up towards the Rail Road track at the road crossing. I watched the cars to see if they whistled, the team stepped on to the track and then still looked up and backed up his horses, then the Locomotive struck them, one horse was a gray and the other a dark brown. Still was travelling on the public highway, I was 20 rods from where the team was struck, perhaps a little further. I saw the train a quarter of a mile off, the team was walking and still was sitting down in the bottom of his wagon with his back towards the direction the cars were coming, they were coming from the East & still was going North. It was a mild misty evening, I had no difficulty in seeing the train, I saw no sparks, I could tell when the train came on to the bridge as it sounds louder and heavier there. Still was nearer the train than I, I heard it plainly when it came on to the bridge. Still might have seen the train if he had looked up and around. You can see the cars when coming from the East if you are between the aqueduct and Brewery or between the Brewery and the House also from the House to the Railroad track. There was very little wind if any, the smoke flew South &

east, the road was frozen & pretty rough. It was a very quiet evening. If there had been a whistle blown I think I should have heard it. The whistle was not blown nor did the bell ring, I mean I did not hear them. I watched to see if they would whistle or ring, I thought that if they did not Still would get caught. I do not think it possible that I could have been mistaken under the circumstances. If the bell had rung or whistle sounded, I certainly should have noticed it. I was afraid there would be a collision unless they did give the signal & was watching to see whether any was given. The head light was not lit. I am as sure of this as I am that the whistle did not sound or the bell ring. The Mill I stood in was Kelers Mill in the City of Ottawa.

The plaintiff also called Thomas Dwyer who testified as follows:

I know the plaintiff, I was in the cellar of the Mill & was cold, stiff and tired on the evening spoken of, was anxious to have the train come along because the time for the arrival of the train was the same as the time when we quit work.

I saw the cars coming a long way off above the bridge, was watching the train as it was pretty near time to quit work. I also saw the train after it had crossed the bridge, to the best of my knowledge

no bell was rung or whistle sounded, I thought of it that night when the accident happened that they did not ring or whistle. In answer to a question whether he would swear positively that the bell did not ring or whistle sound, he said, I would not pretend to recollect positively it was so long ago, but I would have taken my oath that night that the bell did not ring or the whistle sound, I saw the horses after they were struck one was dead and the other nearly so, he afterwards died, I was inside of the Mill in the cellar don't know whether the mill was running or not, didn't hear the bell or whistle, saw no head light on the Locomotive.

The Plaintiff then called as a witness James Meeler, who testified as follows:

I was in the office of my mill at the time spoken of & did not see the occurrence, I heard the cars coming & heard Miller exclaim & ran out just as the train was passing, when I heard Miller exclaim, I remarked to Brown that they had not whistled, I should have been likely to have heard them if they had whistled. The bell may have been rung and I not have heard it, I saw the horses, one was dead and the other injured, The distance is such that I could have heard the whistle if it had been sounded. The office is a room

inside of the Mill, I could hear the Cars distinctly while crossing the bridge, I can see them 2 or 3 miles off. I should think in a still night one could hear the train a mile off, certainly 400 yds. The mill is 12 or 14 feet higher than the road at the aqueduct & some higher than the Railroad, a man down cellar would be as high as the rail-road, it must be 40 feet from the north-west corner of Everetts house to the Rail road track and 200 feet from the house to the Brewery near Everetts house one can see a quarter of a mile up the Railroad, there is some shrubbery in Everetts yard, I can not tell whether it would obstruct the view or not.

The plaintiff then introduced as a witness, William Brown who testified as follows;

I saw the horses immediately after the accident, dont know whether I heard the train before Miller exclaimed I did not hear the whistle blow, we generally hear it in the Mill, when I got up to the crossing they were trying to get one horse up, it stood up a while, but died in an hour or so, the wagon was a good one, the tongue was broken off, horses and wagon were in the ditch on the South side of the Railroad. I was in the office of Miller at his Mill & talking with him, think he said that the whistle had not

Sounded not that the bell was not rung, it was a little before dark we could see the train a mile off. In a still night one could hear the train a mile off, it makes a louder noise when it strikes the bridge, dont know whether the head light was lit or not, when at the aqueduct you can see 50 rods up the Railroad track cant see over the Coal Bank, The Brewery & Everetts House obstruct the view and the bridge angles in such a way that after passing the house it is difficult to see through it, I have been over the ground on foot, there is no place between Everetts house and the Railroad track where you can see the whole length of the bridge, you can see up the line of the Railroad after passing the house as far as the coal-bank, have not been over the road in a wagon, the fence & trees between Everetts house and the Brewery might obstruct the vision in the direction of the Railroad Eastwardly they would in some places in my opinion. The distance from Everetts house to the track is 70 rods feet you cant see the East end of the bridge from there. It is about 40 rods from the East end of the bridge across the bottom to the coal bank, & the track is on an Embankment you can see a train coming over that Embankment, from between the track & Everetts House, The Railroad is about

on a level with Everett's fence & the highway is
turnpiked to it, you can see the track 200 feet
East of the bridge, the obstructions to the view
are Everett's house & Shrubbery, house is 25 or
30 feet square, the road is turnpiked up with
soft earth after you pass the race from Kulers
hill going north, South of race there is hard
rock, the ground was frozen, there were wagon
tracks or ruts in which the water had frozen and
wagons in passing over made a creaking noise,
it is about 200 feet from the aqueduct to the race
and about 400 ft from race to Railroad track, the
road was smooth at the time spoken of. We did
not all quit work when the cars came along, as a
general thing we hear the whistle blow outside of
the mill, I have heard the same whistles blow. I did
feel uncomfortable toward the rail road company. I
would like to have kicked some of them, they killed
a cow of mine and only allowed me half price
for it.

The plaintiff then called Miss Everett as a witness
who testified as follows.

I remember the accident,
the Irish girl was standing at the window and
screamed, I then saw the horses, I can't tell what
the condition of the team was before they were struck,
my attention was not particularly called to the

question whether the Signal was given but I think I should have heard the bell or whistle if they had sounded. I don't recollect of hearing either, I was tearing off the skirt of a dress at the time and was talking, we can hear the bell ring commonly, I can't tell whether the bell was rung last Monday morning don't remember that it rang that night, didn't think any thing about it at the time -

The plaintiff then called John Keith who testified as follows:

I was in the house on the west side of the road and South of Railroad about 60 feet from the track, heard the cars crossing the bridge went out and saw one horse in the ditch and the other much hurt, he afterward died, I think ^{that} if the whistle had sounded or the bell rung I should have heard them, It was the cracking of something that sounded like the snapping of glass that first attracted my attention & made me go out, I heard the train before it got to the bridge distinctly heard it louder still when on the bridge, could hear it a mile off that night, I have driven a team across the Railroad when I could not hear the cars, at the house I can hear them 2 miles off, my attention was not called to the noise of the approaching train until the cars struck -

Of course all that I pretend to swear is that I did not hear the bell or whistle, but I think that if they ^{had} been sounded I should have heard them. I saw the plaintiff there at the time I went out, one horse was a Tag & the other a Sorrell, when I went out one horse was dead, the other died soon afterwards.

The plaintiff then called as a witness John Craig who testified as follows:

I was on the east side of the Fox River 20 or 30 feet east of the end of the trestle work of Bridge the train was going the same way that I was & passed me there. I watched the train approaching me. I heard of the accident the same night and a day or two afterwards saw two horses dead and the wagon with the tongue broken off. Did not hear a bell or whistle that night. I saw the cars coming & wondered why they did not ring a whistle. I had worked on the Railroad and knew what the rule was. I had walked 40 or 50 rods before the train passed me, the train was a mile or so East of me when I first discovered it, this was when I came out of the Coal Tank. I stood still when the Cars passed me & was some 15 feet lower than the Cars, think I was not asked whether I heard the bell or whistle when I was subpoenaed.

The Plaintiff then called John Connors as a witness who testified as follows:

I was in the aqueduct Mill looking out of the East window & saw the train strike the team, the bell did ^{not} ring nor the whistle blow, I was watching the train & that is strange at the time, first saw the train about 10 rods East of the bridge. I was watching to see it go past & then go home & not to see if the whistle blew, I did not hear it, I was not listening but looking for the train, I was in the cellar of the mill & could not see more than 10 or 12 rods of the Railroad from there.

The Plaintiff then called Prescott Prentiss as a witness who testified as follows:

I was at Nelsons Coopers Shop in the night of this accident, first saw the train $\frac{3}{4}$ of mile East of the bridge, did not see the collision on account of a small house between me and the crossing, saw the wagon a few rods South of the crossing said to my brother that they ought to ring the bell or they would catch that team, that there might be a collision, did not hear the bell, dont think the bell could be rung or the whistle blown without my hearing them, from where I stood Everett's house hid the track for about 40 rods, the team was on a walk, I was

30 or 40 rods from it. I heard the train very plainly before it crossed the bridge, it was a very still night, I could see the train a mile off, I did not hear the whistle blow, I think if it had blown I would have heard it, don't recollect of hearing it. I don't think you can see the cars $\frac{3}{4}$ of a mile up the track from between the aqueduct and mill race, could not swear to it, I did not hear the stroke of the engine before I saw the train, I did not say on the former trial that I heard the strokes when I first saw the train, I did hear the train a half a mile off. The train was opposite Everett's house when I first saw it, my recollection is that the head light was lit, I am not positive however, I think they were behind time because they were going faster than usual, they often run at the same rate of speed, sometimes faster, there was nothing extraordinary about their speed.

The plaintiff then called ^{as a witness} Richard Thorne who testified as follows:

I was on board the train the evening referred to - I heard of the accident the next morning - I got on the train at Marseille, the train was behind time, I live at Ottawa & got off at the depot there. I was surprised when the train struck the bridge as I supposed that

we were then about opposite alexanders which is 3 or 4 miles above Ottawa, the first intimation I had that we were near Ottawa was when we struck the bridge across the Fox River, I neither heard the whistle sound, nor the bell ring, my attention was called to the fact at the time, I was talking with a passenger at the time, did not hear the collision, my hearing is good, dont think the whistle could have blown without my hearing it, I was talking with a passenger about the length of time we were coming down from Marselles, it was some 7 or 8 minutes, the distance is 7 or 8 miles, the train was behind time & hardly stopped at Marselles, I have been 15 minutes coming down, I did not time the cars, some one else did, I think I could tell their time within 2 or 3 minutes, I did not know the conductor, my impression is that they had no head light at Marselles, I know that I did not hear the whistle, dont say but that it did blow, I was in the hind car, he should dispute the statement of any one who said they heard the whistle sound that evening, he felt confident it could not have happened without his hearing it, the car ^{windows} was open, I have timed the train within three weeks, they ran down in 8 minutes from Depot to Depot.

The defendant to maintain the issues on its part called as a witness D. L. Carroll who testified as follows;

I was in January last, the time of this accident, agent for the United States Express company on the Chicago and Rock Island Railroad. I was on this train at the time of the accident & remember it. I was in the Express car which is next to the tender, I took my money from the safe and stepped to the car door with it in my hand while the train was on the bridge, the bell was then ringing, I stepped to the door the moment the train struck the bridge, I had no interest whatever in this matter, I pay my fare every time I go over the road - I saw the team in the ditch, I had a lantern in my hand, did not get out of the Car till we got to the Depot, Des Moines was the name of the Locomotive, I don't think she can run a mile in a minute, don't think there is an engine on the road that can do it, have been with the Express Company 2 years, I had the money in my hand so as to be ready to deliver my freight at Ottawa, I delivered it to Mason at the Station, was near the end of the bridge when I opened the door, heard the bell ringing before I got up and some 600 feet more or less from where team was, Capt Wheeler did not ask me about the ringing of the bell at that time, he has asked me what I knew about it and I told him what I have here stated, should think the train was running at the rate of 10 or 12 miles

an hour and was 6 or 8 minutes behind time, I am not mistaken as to the place where the bell was ringing, they generally commenced ringing on the bridge, sometimes before.

The defendant then called as a witness Capt. Wheeler who testified as follows;

I heard part of the testimony of last witness, I was the conductor on board the train spoken of, I have no interest in the result of this suit, I heard the bell ringing while we were on the bridge, one of the brakemen said we had struck a team at the crossing & that a man was in the wagon, but was not hurt. We stopped that evening at Seneca, I sent Ernie the fireman to light the head light, I saw that it was lit at Ottawa when we got there, we did not stop long enough at Marsailles to have it lit there. I have been on the road 3 years or more. The Des Moines cannot run a mile in a minute, don't think she ever ran down from Marsailles in less than 12. minutes, the usual time is 20 minutes by day and 25. by night. I remember distinctly that the bell was ringing on the bridge, the grade is a little descending from Marsailles, I don't think there was time for a person to light the head light after we got to Ottawa before I saw

it. The Engineer & fireman stood talking about the accident, the bell was rung as usual, not violently. The whistle was blown between the bridge and station, the bell was ringing on the bridge, I asked Baxter if the bell was rung before we struck the bridge, he said it was.

The bridge is 180 or 190 ft in length, I did not see the collision, heard of it from the brakeman, I might hear a bell and not remember it unless something called my attention to it at the time, the accident made me remember it this time, it is 7 miles from Ottawa to Marsilles and 12 to Seneca, the train was due at Ottawa at 6.20 P.M., it was dark when we got in, the speed was lessened when we struck the bridge, we were then running 15 or 20 miles an hour & were a little behind time.

The Defendant then called as a witness L. A. Baxter who testified as follows:

I was the Engineer aboard the Locomotive at the time of the accident, I have been in the employ of the Company going on 5 years, have been Rail Reading 14 years, the Des Moines was the name of the Engine, she has a five foot wheel, don't think she can run down from Marsilles in less than 12 minutes, I have run it in 11 minutes with a five foot

Engine, it was a much Smarter Engine than the
 Des Moines. I know that the Fireman Commenced
 ringing the Bell near the East end of the bridge,
 after passing the bridge he jumped over to my side
 of the engine & told me there was a team on the
 track, he was pulling the bell rope & let go to
 come over to me, I lit the head light myself
 at Marcellus that night, after that night it
 was lit at Morris, before that time we had
 lit it at Ottawa, then at Marcellus. It was
 not possible for us to avoid the accident after
 the team was discovered. I jumped off the
 the train at Ottawa, & told the conductor that
 we had come in Collision with a team at the
 crossing & I could not tell what damage
 had been done. It is down grade from 60
 or 70 rods above the bridge down to it, we shut
 off the steam above that point, I think we
 were going about 15 miles an hour, I have no
 interest whatever in the Railroad Company,
 only work for my wages. The Engineer & Fireman
 are in more danger from a collision or other
 accident than any one on the train, I am still
 in the employ of the company, I think I should
 have remembered the ringing of the bell if my
 attention had not been called to it at the
 defect, I can swear positively that the bell
 was ringing when the team was hit, it commenced

ringing at or near the East End of the Bridge, still could have avoided the accident by stopping or backing off, He did not get half way across the track or I could have seen him, My business is to look ahead & see if there is anything on the track, I could not see the team on account of the smoke stack & the dome of the bell, don't think I could have seen him before he reached the crossing it was so dark, I consider that my life depends upon keeping a good look out, it is the fireman's business to ring the bell, my look out is on the right hand side, I can see the entire width of the tracks & rods ahead, if I should look out on the other side I would be away from my levers & could not manage the engine, I could stop a train running 15 or 20 miles an hour in running 150 or 200 feet, I could have stopped the train if I had seen the team before we struck the bridge, I keep a look out between the fences of the road, am not in the habit of looking about outside of the fences & up & down roads crossing the track to see whether there were teams outside of the railroad fences approaching the crossings in public roads.

The defendant then called as a witness Cyrus Dickey who testified as follows:

I was in the Engineering Corps when the lines were run for this Railroad, the Fox River is about 200 feet wide, it is about 200 feet from the West end of the bridge to the road crossing, it is down grade from Marseilles to Ottawa, the grade is very slight.

The defendant then called as a witness Christopher Ennis who testified as follows,

I was fireman on the Des Moines, I saw the team before we struck it, some 10 rods I should think, they stood with their fore feet inside the track, Still was trying to back them up, I commenced ringing the bell before we got onto the bridge. I recollect of ringing it while on the bridge, I let go the rope to tell the Engineer that the team was on the track, the head light was lit at Seneca, we were a little behind time that night. Wheeler asked me if I was ringing the bell, the team were on the track when I first saw them. If the Engineer sees anything on the track he sounds the whistle, when I see anything I tell the Engineer, I think I should have seen the team sooner if it had been light, I was ringing the bell, my attention was called to it, at the time of the accident.

The Defendant then called as a witness Geo C. Campbell who testified as follows—

I have been up to the crossing mentioned by the
previous witnesses, went up to ascertain the limits
of vision from various points along the road up
the railroad track, went up in a buggy, when
near the track I discovered an approaching train
about 2 miles to the East of the crossing, at
10 feet south of the track I could see through
the entire length of the bridge, at 25 feet south
of the track I could see up the track about
a mile, from the aqueduct up to where the
brewery begins to obstruct the vision, there is
nothing to prevent seeing up the track as far as
the Coal Tank, between the Brewery and Everett's
house, there are a few scattering trees, but I
found no place along there where the train if
approaching would be hid by the trees, when
upon the bridge over the mill race, I saw a
man walking down the track, he was about
10 rods up the track from the commencement
of the Coal Tank, I saw his head plainly,
It is 80 odd feet from the rail road track to
the line of Everett's house, at 25 feet north of
the house, I could see up the track to a point
beyond the commencement of the coal tank,
the nearer I approached the track the farther
I could see up the track, I do not think it
possible for a man to avoid seeing an approach-
ing train while passing along the road from the

Trawery to the house if he was looking toward the East - I am a student in the office of Glover & Cook & went up to take observations at their request. Mr. Glover came up there just as I was leaving he called my attention to the height of the fence beside the road it came up to one of his lower vest buttons, I met Judge Deland near there -

The defendant then called as a witness Levi Mason who testified as follows;

I was ticket agent for the Railroad Company at Ottawa last winter, was at the depot when the train came in, the head light was burning when it came in, I was standing on the platform. The Des Moines has 3 feet 4 driving wheels I think, I have frequently timed fast trains & never but once rode a mile a minute, that was with a 7 foot driver, a five foot wheel must make about 440 revolutions in the seven minutes to run down from Marselles in that time, It would be a smart trip for her to run it in 18 minutes. Capt Wheeler and I compared time, I remarked that he was on time, I went up to the crossing to see what had happened and to afford relief if necessary, I am not now in the employ of the Company.

Still had his collar turned up and a Comforter about his neck, I think he told me that he was sitting down in the bottom of his wagon, and did not see the cars at all, said he was sitting with his back towards the train, no man could see the train most any where along there by exercising ordinary diligence, you can hear the train 2 miles off when the ground is frozen, Still told me that they neither rang the bell or sounded the whistle.

The defendant then called as a witness Saml C. Walker who testified as follows;

I was up at the crossing with Campbell, while standing on the bridge over the Mill race I saw the smoke stack of an approaching train a half a mile, I saw the whole train when distant 9 telegraph poles from the bridge, I think the poles are 250 feet apart.

This was all the evidence in the case.

The plaintiff then asked the Court to give the Jury the following instructions, which were given:

In LaSalle County Circuit Court - November term A.D. 1857

James Still

vs.

Trespass on the case

The Chicago &
Rock Island Rail Road Company

Will the court instruct the jury for the Plaintiff -
1st

Given

If the jury believe from the evidence that the plaintiff at the time of the injury was driving his horses attached to his wagon in a public highway which was crossed by the railroad of the defendants, that the injury was occasioned by the locomotive Engine of the defendants with the train of cars attached, being propelled along the track of the railroad & against the team or wagon of the plaintiff at the crossing, & that the servants of the defendant in charge of the Engine & train of Cars, negligently omitted to ring a bell or sound a whistle while approaching the crossing, & that the injury resulted from such neglect to whistle or ring & would not have happened if they had whistled or rung, & if the plaintiff exercised ordinary care & diligence to avoid the collision, the jury should find for the Plaintiff.

- 2) If the jury believe from the evidence, that the injury to the plaintiff was occasioned by a collision between the team & wagon of plaintiff & a locomotive Engine of the defendants at a place where a public road crossed the railroad of the defendants, & on such public road, & that the collision was owing to the negligent, careless & unskillful manner in which the servants of the defendant managed the locomotive

Given

a train of cars attached, and if the Plaintiff used ordinary care & diligence to avoid the collision, the jury should find a verdict for the Plaintiff.

3
Given The fact, if proved, that the servants of the defendant neglected to ring the bell or sound the whistle & to continue whistling or ringing for the last eighty rods before crossing, when approaching the crossing of the public road, where the injury took place, makes a *prima facie* case of negligence against the defendant.

4th
Given Although the jury might believe that the servants of the defendant did ring the bell & sound the whistle, or that one of these things were done, yet if the jury believe from the evidence, that the servants of the defendant were guilty of negligence in not ringing or whistling soon enough, or in causing the engine to be propelled too rapidly considering all the circumstances & the nature of the crossing, or that there was negligence in said servants in not keeping a proper lookout, or if, in any other way they omitted & neglected to use reasonable precautions to avoid the collision, and the injury complained of was caused thereby, and if the Plaintiff did use ordinary care & diligence to avoid the injury, the jury should find a verdict for the Plaintiff.

The law does not require that the plaintiff should have used the highest possible care & diligence to have avoided the collision, if the jury believe from the evidence, that the collision was the result of negligence of the defendants servants & would not have happened, if they had not been guilty of neglect, & that under all the circumstances in which the plaintiff was placed he used ordinary care & diligence to avoid the injury, the verdict should be for the plaintiff.

Juries are the judges of the credit that is to be given to witnesses, & they are not bound to believe anything to be a fact, because a witness has stated it to be so. They are to judge of the effect that bias or prejudice, a fear of losing employment, a desire to avoid censure, a fear of offending or a desire to please employers, if proved or any other circumstances in testimony, operating, in the opinion of the jury to warp the judgment & pervert the truth, has upon the human mind, & after weighing all these things & applying their own knowledge of human nature, & of the philosophy of the human mind, to the investigation of the subject, they are to judge of the weight of the evidence & decree accordingly.

to the giving of each of which instructions
the Defendant by its attorneys then & there objected,
which objection was then & there overruled by the
court - To which said ruling of the Court, the
Defendant by its attys then and there excepted,

The defendant then asked the Court to give the
jury the following instructions which are given

James Still

vs

The Chicago & Rock
Island R.R. Co.

given

The jury are instructed
on the part of the defendant
that Before the plaintiff can
recover two things must be proven -

1st

given

That the defendants servants were guilty of a
want of ordinary care -

2^d

given

That it is necessary, for the plaintiff to establish
the proposition that he acted with ordinary care
and prudence - and that his own want of
ordinary care and prudence in no way con-
tributed to the injury sustained by him.

3.

If the plaintiff acted without ordinary care in
driving his team on to the railroad before an
advancing train, and without looking to see

Given whether the train was coming or not, when if he had looked he would have seen the train and prevented the accident he cannot recover.

4

Given

If the plaintiff was guilty of carelessness in seating himself in the bottom of his waggon in such position that he could not see the train and driving his horses on the road in front of the train, when if he had used ordinary care in looking out for the train, he would have seen it and escaped the injury he cannot recover in this suit, no matter whether the defendants were guilty of carelessness or whether they rang a bell or sounded a whistle or not.

5

Given

The burden of proof in this case is upon the plaintiff and he must make out his case by a preponderance of proof before he can recover, if there is as much proof that the bell was rung, as that it was not, the jury should find that point for the defendant.

6

Given

If the horses of the plaintiff were killed and the servants of the rail road Company were guilty of carelessness, yet if the plaintiff was also careless and the killing of the horses was the result of the carelessness of both parties, the defendant is not liable to pay for the said horses.

7

The Rail Road Company had as much right to run their Cars along their road as the plaintiff had to drive his team along the public road and it was just as obligatory upon the plaintiff to use care to avoid a collision, as it was the duty of the Engineer - and if the plaintiff drove his team upon the Rail Road track without at all looking out for the cars, and without using such care as an ordinarily careful and prudent man would do, and his horses from such want of care were killed on the track he cannot recover for those horses no matter how careless or negligent the agent or Engineer of the Company were, if not wilful.

Given

8

Before the plaintiff can recover he must prove not only negligence in the part of the defendant but also that he himself exercised proper care and circumspection.

Given

9

The defendants in this case are not liable if they were, at the time the horses were killed conducting their trains with ordinary care and skill.

Given

10

The law does not require that the agents of the defendants should have used the highest possible care and diligence to have

avoided the collision. The law requires the same
 amount of care and diligence on the part
 of the plaintiff to avoid the collision that it
 does of the agents of the rail road company
 and if the accident was the result of the negli-
 gence of both parties the plaintiff cannot
 recover and in such cases it does not matter
 which party was guilty of the first negligence.
 Though the law required the defendant on ap-
 proaching road and street crossings to ring a
 bell or sound a whistle. Yet the obligation
 of the defendants to use these precautions did
 not exempt the plaintiff from his obligation
 to use ordinary care to avoid the injury -
 and even if the defendants neglected to fulfill
 these statute requirements if plaintiff by his
 want of ordinary care contributed to the injury
 he cannot recover of the defendant - nor is the
 burden of the proof upon the defendant to
 show that the injury did not arise from
 their omission until proof is given ^{tending} to show
 that the injury resulted from the neglect of
 give the required signal

Whether the defendants can easily pay a judgment
 in this case or not, is a question which ought
 not to have the least influence with the jury.

The Jury found a verdict for the Plaintiff,
the defendant moved for a new trial, the
Court overruled the motion, to which decision
of the Court the defendant then and there
excepted and prays that this its bill of
exceptions be signed, Sealed, and made
part of the record, which is done

M. E. Hollister Seal
Judge

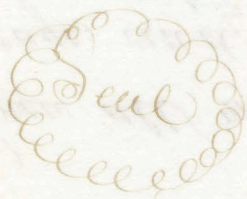
Know all men by these presents that we the
Chicago and Rock Island Rail Road Com-
pany as principal and Burton C. Cook as
Surety are held and firmly bound unto
James Still in the penal sum of Five
hundred dollars lawful money, for the payment
of which we bind ourselves and the said B.
C. Cook binds his heirs, executors, and adminis-
trators jointly, severally & firmly by these presents.
Witness the Seal of the said Chicago & Rock
Island Rail Road Company and the name of
Henry Harnam President of said Company
by him hereunto subscribed and the hand and
Seal of said Burton C. Cook this 18th day
of December 1857.

The condition of this obligation is such
that whereas the said James Still did receive
a Judgement in the circuit court of LaSalle

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of said Court

County Illinois at the November Term, A.D. 1857
against the said Chicago & Rock Island
Rail Road Company, for the sum of two
hundred & fifty dollars besides costs, ~~from~~
which said Judgement, the said Chicago &
Rock Island Rail Road Company has prayed
for and obtained an appeal to the Supreme
Court of the State of Illinois. Now if the
said Chicago and Rock Island Rail Road
Company shall prosecute said appeal with
effect and without delay and shall pay
the said Judgment & costs and all costs, inter-
est and damages, which may be adjudged
against said Company by said Supreme Court
in said cause, then this obligation shall be
void otherwise in full force



Henry Harnam

President of the Chicago
& Rock Island
Rail R^d Co.

W. C. Cook Seal

State of Illinois } I John T. Stark Clerk of the
Sasalle County } Circuit Court in and for
said County and State do hereby
certify that the above and foregoing Comprises a true
full perfect and complete record of all the papers
on file and of all the orders of said Court on the above
entitled cause as the same appear of record and
on file in my office in the case of James Little vs
The Chicago & Rock Island Rail Road Company
On Testimony Whereof I have subscribed at my
hand and the Seal of said Court at Ottawa
this 16th day of February A.D. 1858
J. T. Stark Clerk

And now comes the said Chicago & N. W. R.R. Co
by Cork its atty and ~~defendant~~ ~~whom~~
says that in the record & proceedings
afore said there is manifest error
in this behalf

The court erred in giving each
of the instructions for the plaintiff & for the

2 The court erred in concluding after
motion for a new trial

3 The court erred in rendering the
Judgment afore said in manner
& form afore said

B. C. Cook

The Chicago & Rock
Island Rail Road Co

142. 4

James Stubb

Record

Filed April 16, 1888
Leland
Clark

Recd \$12.95

[2541-54]

The Chicago & Rock Island
Rail Road Co

Amended

Appeal from La Salle

Geo. B. Campbell being first duly sworn
saith on oath that the bill of exceptions
in this cause was prepared by applicant
and was submitted to the court by the
attornies of the appellant ~~at the~~ at
the term in which the cause was
tried and while the court was
judicially sitting at the same term
in which the cause was tried that
Judge Selance who was of counsel for
said State took some exception to the
bill of exceptions tendered and it was
suggested that Judge Selance should
make his suggestions in writing and
submit the court and the court
should settle them which was done
and the reason why the bill of exceptions
was not signed during the term was
the fact that the court took time to
consider it after it had been duly
tendered in the same term at which
the cause was tried. Geo. B. Campbell

Subsd. & sworn to before
me May 20. 1858.
L. Leland Clk.

6 R. J. R. L. Leo.
172.5 163
James Still

affidavit

Filed May 20. 1858.
L. Leland Clk.

Filed May 24. 1858
L. Leland
Clk

b & R. I R R Co

James Still

} Authorities

1st The Pliff & Deft had equal rights
the one to run their train across
the highway & the other to cross the
Track at the crossing & each were
bound to equal degrees of care
i.e. ordinary or reasonable care

^{Parker}
~~Moore~~ v Adams 12 Met 415-

Moore v Central R R Co 4 Zabriskie 268-

Beers v Montatomic R R Co - 19. Conn 566-

Macon R R Co v Davis 18. Geo. 679-

Prout v Troy & Schenectady R R. 8. Barb. 368-

Aurora B. R. Co v Grimes 13. Ill. 585-

Military Tract v Rockafellow 17. Ill. 541-

Pierce American R R Law 264-

2nd - The evidence shows ^{that} Stills negligence in
driving on to the track as he did
contributed to the injury
see abstract P.P. 1. 2. 3. 6. 7.

3^d - This could not possibly be ordi-
nary care on the part of Plaintiff &
if so he can not recover -

Rumy on v. Cent. R. R. Co. 1. Dutcher 556.
Moore v. Same 4. Fabris 268.
Beers v. Keosauqua R.R. Co. 19. Leown 566.
Macon v. W.R.R. Co. v. Davis 18. Geo 679.
Brand v. Troy & Sch. R.R. 8. Barb. 368

and it is the well settled rule that
whenever the plaintiff negligence con-
tributes in any degree to the injury he
can not recover, he must be
without fault -

6. Bing 716-	1. Cronin & Mus. 21.
5. E. C. S. 295.	6. Leown 191.
14. Do 429.	21. Barb. 339.
19. " 298.	5. " 337.
22. " 280.	11. " 112.
24. " 368.	13. " 9.
" " 391.	4. Court. 349.
25. " 261.	21. Wend 615.
34. " 435.	19. " 399.
" " 485.	6. Keill 592.
38. " 245.	2. Kernan 425.
3. New & H. 244.	2. E. D. Smith 151.
10. Do 545.	21. Wend 188.
10. East 60.	13. Howard 109.

Spencer v. Min. & Ch. R.R. Co. 337.
Chaffin v. Rochester R.R. 21 Barb 339.

12. Mite	415.	16. Bon n	420.
2. Pick	621.	x 19.	" 566.
7. "	188.	23.	" 339.
2. "	176.	"	" 437.
2. Gabris.	188.	25. Maine	39.
22. U.L.	213.	7. Foster	43.
6. Whart	311.	10. Dredell	402.
5. Watts & S.	524.	8. Rich	120.
2. Greenl. Ev.	473.		
* Qd.	Angell on Car.	566.	
3. Kent	231.		

The burden of proof is upon the plaintiffs to show that he exercised ordinary care he can not sit immovably in the bottom of his wagon & not look up and then assume that if he had looked up it might have been over against the barn where he could not see the train and therefore it was ordinary care for him not to look out at all

B C Cook

It is submitted as a parting word that if this verdict is sustained, the principle is sanctioned that any person can without looking out at all drive onto a rail road

143, 10

The Chicago & Rock Island
Rail Road Company
vs
James Still

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12541

Preferred

1858

Mo. to suppress Bill
of exceptions
Gentry