

14471

No. \_\_\_\_\_

# Supreme Court of Illinois

Galena & Chicago Union R.R.  
Co.

vs.

Appleby

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 208

*Gal. & Chas.*

*Thos. R. Co.*

1863

*Appellants*  
*Respondents*

14471



IN THE

**SUPREME COURT OF ILLINOIS,**

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**April Term, A. D. 1863.**

GALENA & CHICAGO UNION RAILROAD CO.,  
*Plaintiff in Error,*

vs.

DANIEL W. APPLEBY, who sues as well for himself  
as for the State of Illinois,  
*Defendant in Error.*

ARGUMENT OF E. ANTHONY FOR PLAINTIFF.

*Filed April 23, 1863*  
*Leland*  
*clerk*

CHICAGO:

PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.  
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## ARGUMENT.

This is an application for a re-hearing of this case, which was decided at the last term of this court.

The action was a *qui tam* action, brought to recover a number of penalties which the plaintiff alleged had been incurred by reason of the defendant not ringing a bell or blowing a whistle while crossing "a public highway," in Winnebago county, with their cars.

The *pleas* which were filed to the plaintiff's declaration, are considered at length. But the court *seems* to have entirely misapprehended not only the argument of the counsel for the plaintiff in error in regard to their scope and bearing in the case, but has completely overlooked every *other* point which was made in the case, excepting one of a formal character, and for all real practical purposes, *the case* remains just as much undecided as if it had never been here at all.

Judging from the decision itself, one would suppose that the entire case had been rested upon the *pleas alone* and nothing else. Now, I care not whether the *pleas* were good or bad, and never did, so far as the final result was concerned. What I insisted upon, and still insist upon, is, that the *declaration* was and is fatally defective, and could not be cured by any process whatever.

If we are ever to have anything certain in the law at all, I most respectfully submit that the rules of pleading should be carefully and rigidly adhered to and carried out.

Now, the simple facts in the case which were presented in the record by the pleas, were to this effect: That in the year 1849, a

general railroad act was passed, the 38th section of which required "a bell of at least thirty pounds weight, or a steam whistle, should be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the railroad shall cross any other road, or street, &c. On the 25th of February, 1854, an amendment was made to the charter of the Galena and Chicago Union Railroad Company, the third section of which amendment expressly provided that the 38th section of the general railroad act should not extend to or control the charter or franchises of the said act hereby amended."

On the 15th of February, 1855, a *special* act was passed, without the knowledge or consent of the Galena and Chicago Union Railroad Company, repealing the 3d section of the above act, and then, in section 2, providing as follows: "A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine run by said Company, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation—one-half thereof to go to the informer and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect."

Now, I desire the court to observe that *this law* may be a *police law*, and the legislature may have had the right, power and authority to have passed it, but it is nevertheless, and notwithstanding, a *private statute*.

In the printed argument filed by me in this case, I said that this action was brought "to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is *admitted* that by the decision of this court, in the case of the *Galena and Chicago Union Railroad*

“ *Co. vs. Loomis*, 13 Ill., p. 548, that this Company is subject to the “ *general police* regulations of the State, as prescribed by the general “ law of 1849, yet it is respectfully submitted that the legislature “ cannot, by a special law, applicable only to the Galena and Chi- “ cago Union Railroad Company alone, change its charter, or inter- “ fere with it in the exercise of its powers or privileges, or make it “ subject to pains and penalties, *aimed at it as an individual*, by “ imposing additional burdens upon the road, against the will of the “ Company.”

In the case of *Loomis*, 13 Ill. p. 550, the court say: “ That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations, in the exercise of their franchises, so as to provide for the public safety, admits of no doubt.” But is it equally clear that the legislature can enact *special police* laws for the government of an individual, which would conform to the spirit of our institutions. Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?”

Now, this was all that I said upon the subject of the powers of the legislature or the *police laws* in question. I *admitted* that the Company *was* subject to the general police regulations of the State, but I *expressed a doubt* as to the power of the legislature to pass a *special police* law which should regulate the conduct of this *individual* corporation. I thought that *police* laws should be *general* rather than special; but I laid no great stress upon that point. I had stated previously that the Galena and Chicago Union Railroad Company was chartered January 16, 1836, and with this argument I there stopped.

The court, however, notwithstanding this was every word that was ever addressed to them, proceed as follows :

"It is urged that when the general assembly released this Company from its requirements of the general law, they became *invested* with such a right that they could not be deprived of it except by their assent. That such exemption became a portion of their franchises which the legislature could not rescind."

Knowing well that this road was incorporated in 1836, without any restrictions whatever upon the subject, and having already admitted, in my argument, that this Company was *subject* to the general police laws of the State, I respectfully submit that the argument which the court has attributed to me, was *never made* by me, or thought of by me, and is a very incorrect statement of my position, and any and all opinions I ever entertained upon the subject. But I do not design to call in question the reasons given by the court for its decision further than has now been stated. But, granting each and every reason which has been given by the court, I submit that this court, by *its* decision, has only decided just two things, one of which was never seriously questioned by me, and the other of no particular consequence so far as the general question is concerned. 1st. That these bell-ringing penal statutes are police regulations, and the legislature has a right to make *any* railroad subject to them. 2d. That in a penal statute no damages need be laid.

The court seems to have entirely overlooked every other point that was made *in regard to the declaration*, and which points were relied upon more than every thing else.

I cannot tell, and am unable to determine from the decision itself, whether *the court* treated this suit as having been brought upon section 38 in the general railway act or upon the private statute. But what I desire to present, for the consideration of this court, is this: 1st. If this action is brought upon the private statute, then I insist that the *declaration* is fatally defective by all the rules of pleading, because the act *itself* is not *counted* upon, and is

no where referred to or recited, and the court will not take *judicial notice* of any private statute whatever.

- Gould's Pleading, p. 55, Sec. 16.
- Stephens on Pleading, p. 347.
- 1 Saunders on Pleading and Evidence, p. 523.
- 10 Mass, 39.
- 16 Ala. 214.

Penal actions, like indictments, are subject to the most rigid rules, and must be framed *on the statute itself*, referring to it, and *counting on it*, whether the law be public or private.

- Robinson's Practice, p. 616.
- 6 Iredell, 354.
- 17 Johnson, 455.
- 4 *ib.* 193.
- 8 *ib.* 218, 342.

This has not been done at all, as the declaration itself will show; and formal defects, in penal actions, become matters of substance.

- 1 Chitty's Pl. 358.
- 2 East. 353.
- 6 Cowen, 290.
- 7 Cowen, 496.
- 13 John's, 253, 428.

See Page 2

Depts. Report

2d. This action is brought by "Daniel W. Appleby, who sues as well for himself as for the State of Illinois." Now, if the statute in question be a *police law*, and a *private law* at that, where did he get his authority to bring this suit *on his own behalf*, and *on behalf of the State*? It is true, that both by the special act above referred to, and by the thirty-eighth section of the general law of 1849, one-half of the penalty goes to the informer as a *premium* for his watchfulness, but in the special act, there is *no mode pointed out* to the informer as to who should sue, or how he is to get his

reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, "in the name of the people of the State of Illinois."

If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute.

McClellan & Young, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

When the statute says that the penalty is to be recovered "in the name of the people of the State of Illinois," it does not mean Daniel W. Appleby, or Daniel W. Appleby suing for *himself* and the State of Illinois together. The statute either means expressly what it says, or it does not mean anything.

If the "informer," in this case, relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in *that* case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, *the State alone* must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity.

In the case of *Colburn vs. Sweet*, 1 Metcalf, 236, Chief Justice SHAW says, speaking of a law analogous to the one under consideration, that "where no such right (that is a right to sue for a penalty), is given to any individual, or body of individuals, then as the right to enforce all penalties made to ensure obedience to *general laws* is *in the commonwealth*, such action of debt or case might be prosecuted by the commonwealth."

See Page 4  
Depts Arg.

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Again: "Where a penal statute expressly gives the whole or a part of the penalty to a common informer, and enabled him generally to sue for the same debt, might be sustained; and he need not declare *qui tam* unless where a penalty is given for a contempt; but if there be no *express provision enabling* an informer to sue, debt could not be supported in his name for the recovery of the penalty.

Sedgwick on Statutory and Constitutional Law, p. 112.

1 Chitty Pl., 163.

See *Carle vs. The People*, 12 Ill., 286.

The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by BROWN, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject*. If the person making the complaint may sue *because* he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

In this case, the "informer" has not united with the State of Illinois, but has chosen to proceed on his own account, at the same time *assuming* to *represent* the State.

If the plaintiff relies upon the statute of 1849, then he must follow the *mode* there pointed out; the suit must be brought in the name of the people alone.

*McClellan vs. Young*, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

3 *Bosarquet and Puller*, 382.

This case, therefore, may be suspended to either one of two horns of a dilemma, to wit: If, by the repeal of the law of 1854, the Galena and Chicago Union Railroad Company was remitted back to the general railway law of 1849, then there is no pretense whatever that this action can be sustained, for that act expressly provides, that the penalties are to be recovered by the district attorney, in the "*name of the people of the State of Illinois.*"

2d. If this suit is brought upon the private act, then, by no rule or principle of pleading yet discovered, can this suit be sustained, because the declaration does not pretend to count upon the private act; it neither refers to it by name, title, or any other way, neither is it recited or set out.

3d. The declaration in question does not specify any *particular road* which the railroad crossed in Winnebago county, at which the Company failed to ring a bell or blow a whistle, and for this reason the declaration was bad—the rule being, that "where a statute has created an offense unknown to the common law, whether the proceeding be by bill, information or *the common law declaration*, there must be the same certainty in the specification of the fact or facts constituting the offense, as in a bill of indictment."

*The State vs. Williams*, 8 Texas, 255.

This case is in *principle* like the case of *Leguart vs. The People*, 11 Ill., 331; there the court says: "The charge of neglect of duty, in not putting up guide boards, is altogether too indefinite and uncertain to apprise a defendant of what he is to answer. He has the

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right to know the specific nature and character of the offense charged against him, that he may prepare himself to defend against it. His indictment does not allege at *which* crossing of public roads the defendant neglected to put up guide boards, nor even that there were any crossings of public roads in the district. As well might a defendant be required to answer to an indictment charging him generally with neglect to keep the public roads of his district in repair, as to charge him with neglect in not putting up guide boards, without *specifying* where, or that there were any crossing in his district requiring guide boards to be put up."

The demurrer, which Appleby filed to the pleas put in for the Railroad Company, enabled the Company to go back and *attack* the declaration, and to take advantage of the defects in the declaration, the plaintiff being guilty of the first fault.

1 Chitty Pl's., 358.

2 East., 353.

6 Cowen, 290.

Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time (to wit, the 26th of July, 1855), defendants propelled engines and cars; that said railroad *crossed* a *public highway in said county*; that on the day and year aforesaid, the said defendants propelled an engine *across* SAID highway without blowing a steam whistle "or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* themselves innocent of such vague and *general* charges which might be brought against them. Could this judgment ever be plead in bar

to any suit which might subsequently be brought against the company? It is in vain to say that such pleading as this is *cured* by the *judgment*. This is a *penal* action, and the utmost strictness is required. The facts showing the violation of the statute must be specifically stated and set forth. There cannot be found any reported or adjudicated case in all of the books of reports where so vague and indefinite a charge was *ever* tolerated in a *penal* action. *Such* pleading has no parallel whatever in the whole history of jurisprudence. There is no distinction in this respect between criminal and quasi criminal actions. This offense, of not ringing bells and blowing whistles, is something utterly unknown to the common law, and therefore I insist that upon principle that a court should hold a party to the utmost strictness.

But the declaration in the case is defective, because the offense is not alleged in either court to have been committed "against the form of the statute."

*The People vs. Barton*, 6 Cowen, 294.

22 Cowen, 208.

35 Maine, 429.

And this defect is fatal, even after verdict, and could have been reached by a general demurrer. The rule in *penal* actions being, that a general demurrer is equivalent to a special demurrer.

1 Chitty Pl., 258.

*Lee vs. Clarke*, 2 East., 353.

6 Cowen, 284.

*McCullough vs. Commonwealth*, Hardin, 95.

For these reasons I respectfully submit that the judgment in this case should have been reversed.

E. ANTHONY,

*Attorney for Plaintiff in Error.*

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Defto's copy

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*Filed at 23. 1863*  
*D. C. Lane*  
*cm*

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*See Page 2 Left Arg.*

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The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by Brown, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject*. If the person making the complaint may sue *because* he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

In this case, the "informer" has not united with the State of Illinois, but has chosen to proceed on his own account, at the same time *assuming* to represent the State.

If the plaintiff relies upon the statute of 1849, then he must follow the *mode* there pointed out; the suit must be brought in the name of the people alone.

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This case, therefore, may be suspended to either one of two horns of a dilemma, to wit: If, by the repeal of the law of 1854, the Galena and Chicago Union Railroad Company was remitted back to the general railway law of 1849, then there is no pretense whatever that this action can be sustained, for that act expressly provides, that the penalties are to be recovered by the district attorney, in the "*name of the people of the State of Illinois.*"

2d. If this suit is brought upon the private act, then, by no rule or principle of pleading yet discovered, can this suit be sustained, because the declaration does not pretend to count upon the private act; it neither refers to it by name, title, or any other way, neither is it recited or set out.

3d. The declaration in question does not specify any *particular road* which the railroad crossed in Winnebago county, at which the Company failed to ring a bell or blow a whistle, and for this reason the declaration was bad—the rule being, that "where a statute has created an offense unknown to the common law, whether the proceeding be by bill, information or *the common law declaration*, there must be the same certainty in the specification of the fact or facts constituting the offense, as in a bill of indictment."

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This case is in *principle* like the case of *Leguart vs. The People*, 11 Ill., 331; there the court says: "The charge of neglect of duty, in not putting up guide boards, is altogether too indefinite and uncertain to apprise a defendant of what he is to answer. He has the

See Page 6  
Depts Arg.

right to know the specific nature and character of the offense charged against him, that he may prepare himself to defend against it. His indictment does not allege at *which* crossing of public roads the defendant neglected to put up guide boards, nor even that there were any crossings of public roads in the district. As well might a defendant be required to answer to an indictment charging him generally with neglect to keep the public roads of his district in repair, as to charge him with neglect in not putting up guide boards, without *specifying* where, or that there were any crossing in his district requiring guide boards to be put up."

The demurrer, which Appleby filed to the pleas put in for the Railroad Company, enabled the Company to go back and *attack* the declaration, and to take advantage of the defects in the declaration, the plaintiff being guilty of the first fault.

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Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time " (to wit, the 26th of July, 1855), defendants propelled engines and " cars ; that said railroad *crossed* a *public highway in said county* ; " that on the day and year aforesaid, the said defendants propelled " an engine *across* SAID highway without blowing a steam whistle " or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* them selves innocent of such vague and *general* charges which might be brought against them. Could this judgment ever be plead in bar

to *any* suit which might subsequently be brought against the company? It is in vain to say that such pleading as this is *cured* by the *judgment*. This is a *penal* action, and the utmost strictness is required. The facts showing the violation of the statute must be specifically stated and set forth. There cannot be found any reported or adjudicated case in all of the books of reports where so vague and indefinite a charge was *ever* tolerated in a *penal* action. *Such* pleading has no parallel whatever in the whole history of jurisprudence. There is no distinction in this respect between criminal and quasi criminal actions. This offense, of not ringing bells and blowing whistles, is something utterly unknown to the common law, and therefore I insist that upon principle that a court should hold a party to the utmost strictness.

But the declaration in the case is defective, because the offense is not alleged in either court to have been committed "against the form of the statute."

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And this defect is fatal, even after verdict, and could have been reached by a general demurrer. The rule in *penal* actions being, that a general demurrer is equivalent to a special demurrer.

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For these reasons I respectfully submit that the judgment in this case should have been reversed.

E. ANTHONY,

*Attorney for Plaintiff in Error.*

See Page 7  
Left to Arg.

IN THE

**SUPREME COURT OF ILLINOIS,**

THIRD GRAND DIVISION,

**April Term, A. D. 1863.**

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GALENA & CHICAGO UNION RAILROAD CO.,  
*Plaintiff in Error,*

vs.

DANIEL W. APPLEBY, who sues as well for himself  
as for the State of Illinois,  
*Defendant in Error.*

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ARGUMENT OF E. ANTHONY FOR PLAINTIFF.

CHICAGO:  
PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.  
1863.

*Filed Apr. 23. 1863*

*J. Seligson*  
*CR*

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The action was a *qui tam* action, brought to recover a number of penalties which the plaintiff alleged had been incurred by reason of the defendant not ringing a bell or blowing a whistle while crossing "a public highway," in Winnebago county, with their cars.

The *pleas* which were filed to the plaintiff's declaration, are considered at length. But the court *seems* to have entirely misapprehended not only the argument of the counsel for the plaintiff in error in regard to their scope and bearing in the case, but has completely overlooked every *other* point which was made in the case, excepting one of a formal character, and for all real practical purposes, *the case* remains just as much undecided as if it had never been here at all.

Judging from the decision itself, one would suppose that the entire case had been rested upon the *pleas alone* and nothing else. Now, I care not whether the *pleas* were good or bad, and never did, so far as the final result was concerned. What I insisted upon, and still insist upon, is, that the *declaration* was and is fatally defective, and could not be cured by any process whatever.

If we are ever to have anything certain in the law at all, I most respectfully submit that the rules of pleading should be carefully and rigidly adhered to and carried out.

Now, the simple facts in the case which were presented in the record by the *pleas*, were to this effect: That in the year 1849, a

general railroad act was passed, the 38th section of which required "a bell of at least thirty pounds weight, or a steam whistle, should be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the railroad shall cross any other road, or street, &c. On the 25th of February, 1854, an amendment was made to the charter of the Galena and Chicago Union Railroad Company, the third section of which amendment expressly provided that the 38th section of the general railroad act should not extend to, or control the charter or franchises of the said act hereby amended."

On the 15th of February, 1855, a *special* act was passed, without the knowledge or consent of the Galena and Chicago Union Railroad Company, repealing the 3d section of the above act, and then, in section 2, providing as follows: "A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine run by said Company, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation—one-half thereof to go to the informer and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect."

Now, I desire the court to observe that *this law* may be a *police law*, and the legislature may have had the right, power and authority to have passed it, but it is nevertheless, and notwithstanding, a *private statute*.

In the printed argument filed by me in this case, I said that this action was brought "to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is *admitted* that by the decision of this court, in the case of the *Galena and Chicago Union Railroad*

“*Co. vs. Loomis*, 13 Ill., p. 548, that this Company is subject to the “*general police* regulations of the State, as prescribed by the general law of 1849, yet it is respectfully submitted that the legislature cannot, by a special law, applicable only to the Galena and Chicago Union Railroad Company alone, change its charter, or interfere with it in the exercise of its powers or privileges, or make it “subject to pains and penalties, *aimed at it as an individual*, by “imposing additional burdens upon the road, against the will of the “Company.”

In the case of *Loomis*, 13 Ill. p. 550, the court say: “That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations, in the exercise of their franchises, so as to provide for the public safety, admits of no doubt.” But is it equally clear that the legislature can enact *special* police laws for the government of an individual, which would conform to the spirit of our institutions. Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?”

Now, this was all that I said upon the subject of the powers of the legislature or the *police laws* in question. I *admitted* that the Company *was* subject to the general police regulations of the State, but I *expressed a doubt* as to the power of the legislature to pass a *special police* law which should regulate the conduct of this *individual* corporation. I thought that *police* laws should be *general* rather than special; but I laid no great stress upon that point. I had stated previously that the Galena and Chicago Union Railroad Company was chartered January 16, 1836, and with this argument I there stopped.

The court, however, notwithstanding this was every word that was ever addressed to them, proceed as follows:

reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, "in the name of the people of the State of Illinois."

If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute.

McClellan & Young, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

When the statute says that the penalty is to be recovered "in the name of the people of the State of Illinois," it does not mean Daniel W. Appleby, or Daniel W. Appleby suing for *himself* and the State of Illinois together. The statute either means expressly what it says, or it does not mean anything.

If the "informer," in this case, relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in *that* case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, *the State alone* must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity.

In the case of *Colburn vs. Sweet*, 1 Metcalf, 236, Chief Justice SHAW says, speaking of a law analogous to the one under consideration, that "where no such right (that is a right to sue for a penalty), is given to any individual, or body of individuals, then as the right to enforce all penalties made to ensure obedience to *general laws* is in the *commonwealth*, such action of debt or case might be prosecuted by the *commonwealth*."

See Page 4  
Deft's Arg.

See Page 4  
Deft's Arg.

Again: "Where a penal statute expressly gives the whole or a part of the penalty to a common informer, and enabled him generally to sue for the same debt, might be sustained; and he need not declare *qui tam* unless where a penalty is given for a contempt; but if there be no *express provision enabling* an informer to sue, debt could not be supported in his name for the recovery of the penalty.

Sedgwick on Statutory and Constitutional Law, p. 112.  
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The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by BROWN, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject*. If the person making the complaint may sue *because* he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

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See Page  
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Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time " (to wit, the 26th of July, 1855), defendants propelled engines and " cars; that said railroad *crossed* a *public highway in said county*; " that on the day and year aforesaid, the said defendants propelled " an engine *across* SAID highway without blowing a steam whistle " or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* themselves innocent of such vague and *general* charges which might be brought against them. Could this judgment ever be plead in bar

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*Attorney for Plaintiff in Error.*

See Page 7  
Deft's arg.

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GALENA & CHICAGO UNION R. R. Co.,  
Plaintiff in Error,

*vs.*

DANIEL W. APPLEBY, WHO SUES AS WELL  
FOR HIMSELF AS FOR THE STATE OF ILLINOIS,  
Defendant in Error.

## ABSTRACT OF THE RECORD.

### *Statement of Case.*

PAGE OF REC. THIS was an action of debt, commenced in the Circuit Court of Stephenson County, by one Daniel W. Appleby, against the Galena and Chicago Union Railroad Company, to recover certain alleged penalties which said Company incurred under the statute, for not blowing a steam whistle or ringing a bell in the neighborhood of a public highway.

2, 3

### *Præcipe and Summons.*

5 First Count of Declaration, in substance, as follows: Daniel W. Appleby, by William Brown, State's Attorney of the Fourteenth Judicial Circuit of the State of Illinois, who sues as well for the People of the State of Illinois as for himself, in this behalf, complains of the Galena and Chicago Union Railroad Company, being summoned, &c., of a plea that they, the said Defendants, render to the People of the State of Illinois, and to the said Daniel W. Appleby, the sum of one thousand dollars that the said Defendants owe and unjustly detain from them. Avers that Defendants, on the 24th of July, A. D. 1855, were the owners of said Railroad, situated in part in said county, over which road at said time Defendants propelled engines and cars; that said Railroad crossed a public highway in said county; that, on the day and year aforesaid, the said Defendants propelled an engine across said highway without blowing a steam whistle or ringing a bell of thirty pounds weight at the distance of eighty rods from the place where the said Railroad crossed the said public highway and while crossing the said highway, contrary to the statute, whereby an action hath accrued, &c.

7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 Contain eleven other counts of the said Declaration, each for a separate penalty; they are all substantially the same as the first count.

PAGE OF REC. The conclusion of the Declaration, on page 17 of the Record, is as follows: "Yet the said Galena and Chicago Union Railroad Company (although often requested) have not paid to the People of the State of Illinois and to the said Daniel W. Appleby, who sues as aforesaid, or either of them, the said one thousand dollars above demanded, or any part thereof; but to pay the same to them, or either of them, the said Galena and Chicago Union Railroad Company have wholly refused, and still do refuse, and, therefore, as well for the People of the State of Illinois as for himself, the said Daniel W. Appleby brings his suit.

"WILLIAM BROWN,  
"State's Att'y of 14th Judicial Circuit."

- 18 Security for costs.
- 19 General Demurrer to Declaration.
- 21 A change of venue ordered by the Judge of Stephenson Circuit Court to Ogle Circuit Court.
- 23, 24 Overruling of Demurrer, and judgment against the Defendant for \$600.
- 25 Vacation of said judgment.
- 26, 27 At the March Term, the Defendant filed two pleas; 1st, that the said Defendant is exempted from the operation of the statute upon which this action is based, because the 38th section of the general statute of the Railway Act was repealed as far as it applied to the Galena and Chicago Union Railroad Company, which act was passed Feb. 24, 1854.
- The 2d plea sets out and avers that the said action of the said Plaintiff is brought and founded upon a supposed amendment of the Defendant's charter, which was passed Feb. 16, 1855, stating the title of said act and setting forth that the act repealing the 38th section of the General Railway Act, so far as it applied to the Defendant, was repealed; and then states that a special section was enacted applying specially to the said Galena and Chicago Union Railroad Company, requiring it to carry a bell of thirty pounds, &c; and then states that this pretended amendment to the charter of the Defendant was rejected by the Defendant by a formal vote, which resolution of the Defendant is set out in the words used by the Defendant.
- To these pleas a general demurrer was interposed, which was sustained by the Court, and Defendant electing to stand by its Demurrer, a judgment for \$600 was entered against Defendant.
- 33 Clerk's certificate to the Record.

The Errors Assigned in this case, are as follows :

1. That the declaration of record and the matters and things therein contained, are not sufficient in law for the said Defendant in Error to maintain the aforesaid action.

2. The declarations and matters and things therein contained, are insufficient for the Defendant in Error, Appleby, to maintain the aforesaid action.

3. Daniel W. Appleby was improperly joined in the aforesaid action with the State of Illinois, and had no right to prosecute the aforesaid action jointly with the State of Illinois, or *qui tam* in his own name and in behalf of the said State of Illinois.

4. The Court erred in rendering a judgment in favor of the Defendants in Error, Daniel W. Appleby, and the State of Illinois.

5. The Court erred in rendering a judgment in favor of the Defendants in Error, Daniel W. Appleby, and the State of Illinois.

6. The Court erred in sustaining the demurrer to the Plaintiff in Error's pleas.

7. The judgment should have been for the Plaintiff in Error, the Galena and Chicago Union Railroad Company, and not for the Defendants in Error.

Therefore the said Galena and Chicago Union Railroad Company prays that the judgment aforesaid, for the errors aforesaid and for other errors apparent in the Record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing.

E. ANTHONY,  
*Att'y for Plaintiff in Error.*

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The ~~Gale~~ <sup>Gale</sup> and  
Chicago Press & B. Co

v7

Appleby

Abstracts

Filed April 18, 1861  
L. Leland  
Clerk

In the Supreme Court  
of Illinois  
Third Grand Division  
April Term AD  
1863.

Galena & Chicago Union  
Rail Road Company  
Plaintiff in Error

vs

Samuel W Appleby, who sues as  
well for himself as for the State  
of Illinois.

Defendant in Error

To J. A. Brain Esq  
Atty for Defn in Error

Please take notice  
that I shall at the next term  
of the Supreme court apply to the  
said Supreme Court for a re-hearing  
of said case above entitled case.  
For the reasons set forth in the  
printed petition herewith handed  
you

Very Respectfully  
Yours &c

Edwell Anthony  
Atty for Plaintiff in Error

I accept service of the  
within notice,

Thomas

Att'y for Defendant

208

Galena Chicago Bureau

R.R. Co

as

Dr. C. J. Cady

Filed April 23, 1883

W. H. Cady

IN THE  
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*L. Glauve*  
*CM*

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If we are ever to have anything certain in the law at all, I most respectfully submit that the rules of pleading should be carefully and rigidly adhered to and carried out.

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general railroad act was passed, the 38th section of which required "a bell of at least thirty pounds weight, or a steam whistle, should be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the railroad shall cross any other road, or street, &c. On the 25th of February, 1854, an amendment was made to the charter of the Galena and Chicago Union Railroad Company, the third section of which amendment expressly provided that the 38th section of the general railroad act should not extend to or control the charter or franchises of the said act hereby amended."

On the 15th of February, 1855, a *special* act was passed, without the knowledge or consent of the Galena and Chicago Union Railroad Company, repealing the 3d section of the above act, and then, in section 2, providing as follows: "A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine run by said Company, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation—one-half thereof to go to the informer and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect."

Now, I desire the court to observe that *this law* may be a *police* law, and the legislature may have had the right, power and authority to have passed it, but it is nevertheless, and notwithstanding, a *private* statute.

In the printed argument filed by me in this case, I said that this action was brought "to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is *admitted* that by the decision of this court, in the case of the *Galena and Chicago Union Railroad*

“ *Co. vs. Loomis*, 13 Ill., p. 548, that this Company is subject to the “ *general police* regulations of the State, as prescribed by the general “ law of 1849, yet it is respectfully submitted that the legislature “ cannot, by a special law, applicable only to the Galena and Chi- “ cago Union Railroad Company alone, change its charter, or inter- “ fere with it in the exercise of its powers or privileges, or make it “ subject to pains and penalties, *aimed at it as an individual*, by “ imposing additional burdens upon the road, against the will of the “ Company.”

In the case of *Loomis*, 13 Ill. p. 550, the court say: “ That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations, in the exercise of their franchises, so as to provide for the public safety, admits of no doubt.” But is it equally clear that the legislature can enact *special* police laws for the government of an individual, which would conform to the spirit of our institutions. Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?”

Now, this was all that I said upon the subject of the powers of the legislature or the *police laws* in question. I *admitted* that the Company *was* subject to the general police regulations of the State, but I *expressed a doubt* as to the power of the legislature to pass a *special police* law which should regulate the conduct of this *individual* corporation. I thought that *police* laws should be *general* rather than *special*; but I laid no great stress upon that point. I had stated previously that the Galena and Chicago Union Railroad Company was chartered January 16, 1836, and with this argument I there stopped.

The court, however, notwithstanding this was every word that was ever addressed to them, proceed as follows:

“ *It is urged* that when the general assembly released this Company from its requirements of the general law, they became *invested* with such a right that they could not be deprived of it except by their assent. That such exemption became a portion of their franchises which the legislature could not rescind.”

Knowing well that this road was incorporated in 1836, without any restrictions whatever upon the subject, and having already admitted, in my argument, that this Company was subject to the general police laws of the State, I respectfully submit that the argument which the court has attributed to me, was never made by me, or thought of by me, and is a very incorrect statement of my position, and any and all opinions I ever entertained upon the subject. But I do not design to call in question the reasons given by the court for its decision further than has now been stated. But, granting each and every reason which has been given by the court, I submit that this court, by its decision, has only decided just two things, one of which was never seriously questioned by me, and the other of no particular consequence so far as the general question is concerned. 1st. That these bell-ringing penal statutes are police regulations, and the legislature has a right to make any railroad subject to them. 2d. That in a penal statute no damages need be laid.

The court seems to have entirely overlooked every other point that was made *in regard to the declaration*, and which points were relied upon more than every thing else.

I cannot tell, and am unable to determine from the decision itself, whether *the court* treated this suit as having been brought upon section 38 in the general railway act or upon the private statute. But what I desire to present, for the consideration of this court, is this: 1st. If this action is brought upon the private statute, then I insist that the *declaration* is fatally defective by all the rules of pleading, because the act *itself* is not counted upon, and is

no where referred to or recited, and the court will not take *judicial notice* of any private statute whatever.

- Gould's Pleading, p. 55, Sec. 16.
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Penal actions, like indictments, are subject to the most rigid rules, and must be framed *on the statute itself*, referring to it, and *counting on it*, whether the law be public or private.

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- 4 *ib.* 193.
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This has not been done at all, as the declaration itself will show; and formal defects, in penal actions, become matters of substance.

- 1 Chitty's Pl. 358.
- 2 East. 353.
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2d. This action is brought by "Daniel W. Appleby, who sues as well for himself as for the State of Illinois." Now, if the statute in question be a *police law*, and a *private law* at that, where did he get his authority to bring this suit *on his own behalf*, and *on behalf of the State*? It is true, that both by the special act above referred to, and by the thirty-eighth section of the general law of 1849, one-half of the penalty goes to the informer as a *premium* for his watchfulness, but in the special act, there is *no mode pointed out* to the informer as to who should sue, or how he is to get his

reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, "in the name of the people of the State of Illinois."

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If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute.

McClellan & Young, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

When the statute says that the penalty is to be recovered "in the name of the people of the State of Illinois," it does not mean Daniel W. Appleby, or Daniel W. Appleby suing for *himself* and the State of Illinois together. The statute either means expressly what it says, or it does not mean anything.

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If the "informer," in this case, relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in *that* case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, *the State alone* must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity.

In the case of *Colburn vs. Sweet*, 1 Metcalf, 236, Chief Justice SHAW says, speaking of a law analagous to the one under consideration, that "where no such right (that is a right to sue for a penalty), is given to any individual, or body of individuals, then as the right to enforce all penalties made to ensure obedience to *general laws* is in the *commonwealth*, such action of debt or case might be prosecuted by the commonwealth."

Again: "Where a penal statute expressly gives the whole or a part of the penalty to a common informer, and enabled him generally to sue for the same debt, might be sustained; and he need not declare *qui tam* unless where a penalty is given for a contempt; but if there be no *express provision enabling* an informer to sue, debt could not be supported in his name for the recovery of the penalty.

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The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by BROWN, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject*. If the person making the complaint may sue *because* he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

In this case, the "informer" has not united with the State of Illinois, but has chosen to proceed on his own account, at the same time *assuming to represent* the State.

If the plaintiff relies upon the statute of 1849, then he must follow the *mode* there pointed out; the suit must be brought in the name of the people alone.

*McClellan vs. Young*, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

3 *Bosarquet and Puller*, 382.

This case, therefore, may be suspended to either one of two horns of a dilemma, to wit: If, by the repeal of the law of 1854, the Galena and Chicago Union Railroad Company was remitted back to the general railway law of 1849, then there is no pretense whatever that this action can be sustained, for that act expressly provides, that the penalties are to be recovered by the district attorney, in the "*name of the people of the State of Illinois.*"

2d. If this suit is brought upon the private act, then, by no rule or principle of pleading yet discovered, can this suit be sustained, because the declaration does not pretend to count upon the private act; it neither refers to it by name, title, or any other way, neither is it recited or set out.

3d. The declaration in question does not specify any *particular road* which the railroad crossed in Winnebago county, at which the Company failed to ring a bell or blow a whistle, and for this reason the declaration was bad—the rule being, that "where a statute has created an offense unknown to the common law, whether the proceeding be by bill, information or *the common law declaration*, there must be the same certainty in the specification of the fact or facts constituting the offense, as in a bill of indictment."

*The State vs. Williams*, 8 Texas, 255.

This case is in *principle* like the case of *Leguart vs. The People*, 11 Ill., 331; there the court says: "The charge of neglect of duty, in not putting up guide boards, is altogether too indefinite and uncertain to apprise a defendant of what he is to answer. He has the

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Depts any

right to know the specific nature and character of the offense charged against him, that he may prepare himself to defend against it. His indictment does not allege at *which* crossing of public roads the defendant neglected to put up guide boards, nor even that there were any crossings of public roads in the district. As well might a defendant be required to answer to an indictment charging him generally with neglect to keep the public roads of his district in repair, as to charge him with neglect in not putting up guide boards, without *specifying* where, or that there were any crossing in his district requiring guide boards to be put up."

The demurrer, which Appleby filed to the pleas put in for the Railroad Company, enabled the Company to go back and *attack* the declaration, and to take advantage of the defects in the declaration, the plaintiff being guilty of the first fault.

1 Chitty Pl's., 358.

2 East., 353.

6 Cowen, 290.

Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time (to wit, the 26th of July, 1855), defendants propelled engines and cars; that said railroad *crossed* a *public highway in said county*; that on the day and year aforesaid, the said defendants propelled an engine *across* SAID highway without blowing a steam whistle "or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* them selves innocent of such *vague* and *general* charges which might be brought against them. Could this judgment ever be plead in bar

to any suit which might subsequently be brought against the company? It is in vain to say that such pleading as this is *cured* by the *judgment*. This is a *penal* action, and the utmost strictness is required. The facts showing the violation of the statute must be specifically stated and set forth. There cannot be found any reported or adjudicated case in all of the books of reports where so vague and indefinite a charge was *ever* tolerated in a *penal* action. *Such* pleading has no parallel whatever in the whole history of jurisprudence. There is no distinction in this respect between criminal and quasi criminal actions. This offense, of not ringing bells and blowing whistles, is something utterly unknown to the common law, and therefore I insist that upon principle that a court should hold a party to the utmost strictness.

But the declaration in the case is defective, because the offense is not alleged in either court to have been committed "against the form of the statute."

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*The People vs. Barton*, 6 Cowen, 294.

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35 Maine, 429.

And this defect is fatal, even after verdict, and could have been reached by a general demurrer. The rule in *penal* actions being; that a general demurrer is equivalent to a special demurrer.

1 Chitty Pl., 258.

*Lee vs. Clarke*, 2 East., 353.

6 Cowen, 284.

*McCullough vs. Commonwealth*, Hardin, 95.

For these reasons I respectfully submit that the judgment in this case should have been reversed.

**E. ANTHONY,**

*Attorney for Plaintiff in Error.*

IN THE  
**SUPREME COURT OF ILLINOIS,**

THIRD GRAND DIVISION,

**April Term, A. D. 1863.**

GALENA & CHICAGO UNION RAILROAD CO.,  
*Plaintiff in Error,*

vs.

DANIEL W. APPLEBY, who sues as well for himself  
as for the State of Illinois,  
*Defendant in Error.*

ARGUMENT OF E. ANTHONY FOR PLAINTIFF.

*Filed April 23, 1863*  
*J. Secor*  
*MR*

CHICAGO:  
PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.  
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## ARGUMENT.

This is an application for a re-hearing of this case, which was decided at the last term of this court.

The action was a *qui tam* action, brought to recover a number of penalties which the plaintiff alleged had been incurred by reason of the defendant not ringing a bell or blowing a whistle while crossing "a public highway," in Winnebago county, with their cars.

The *pleas* which were filed to the plaintiff's declaration, are considered at length. But the court *seems* to have entirely misapprehended not only the argument of the counsel for the plaintiff in error in regard to their scope and bearing in the case, but has completely overlooked every *other* point which was made in the case, excepting one of a formal character, and for all real practical purposes, *the case* remains just as much undecided as if it had never been here at all.

Judging from the decision itself, one would suppose that the entire case had been rested upon the *pleas alone* and nothing else. Now, I care not whether the *pleas* were good or bad, and never did, so far as the final result was concerned. What I insisted upon, and still insist upon, is, that the *declaration* was and is fatally defective, and could not be cured by any process whatever.

If we are ever to have anything certain in the law at all, I most respectfully submit that the rules of pleading should be carefully and rigidly adhered to and carried out.

Now, the simple facts in the case which were presented in the record by the *pleas*, were to this effect: That in the year 1849, a

general railroad act was passed, the 38th section of which required "a bell of at least thirty pounds weight, or a steam whistle, should be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the railroad shall cross any other road, or street, &c. On the 25th of February, 1854, an amendment was made to the charter of the Galena and Chicago Union Railroad Company, the third section of which amendment expressly provided that the 38th section of the general railroad act should not extend to or control the charter or franchises of the said act hereby amended."

On the 15th of February, 1855, a *special* act was passed, without the knowledge or consent of the Galena and Chicago Union Railroad Company, repealing the 3d section of the above act, and then, in section 2, providing as follows: "A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine run by said Company, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation—one-half thereof to go to the informer and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect."

Now, I desire the court to observe that *this law* may be a *police* law, and the legislature may have had the right, power and authority to have passed it, but it is nevertheless, and notwithstanding, a *private* statute.

In the printed argument filed by me in this case, I said that this action was brought "to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is *admitted* that by the decision of this court, in the case of the *Galena and Chicago Union Railroad*

“*Co. vs. Loomis*, 13 Ill., p. 548, that this Company is subject to the “*general police* regulations of the State, as prescribed by the general law of 1849, yet it is respectfully submitted that the legislature cannot, by a special law, applicable only to the Galena and Chicago Union Railroad Company alone, change its charter, or interfere with it in the exercise of its powers or privileges, or make it subject to pains and penalties, *aimed at it as an individual*, by imposing additional burdens upon the road, against the will of the “Company.”

In the case of *Loomis*, 13 Ill. p. 550, the court say: “That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations, in the exercise of their franchises, so as to provide for the public safety, admits of no doubt.” But is it equally clear that the legislature can enact *special police* laws for the government of an individual, which would conform to the spirit of our institutions. Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?”

Now, this was all that I said upon the subject of the powers of the legislature or the *police laws* in question. I *admitted* that the Company *was* subject to the general police regulations of the State, but I *expressed a doubt* as to the power of the legislature to pass a *special police* law which should regulate the conduct of this *individual* corporation. I thought that *police* laws should be *general* rather than special; but I laid no great stress upon that point. I had stated previously that the Galena and Chicago Union Railroad Company was chartered January 16, 1836, and with this argument I there stopped.

The court, however, notwithstanding this was every word that was ever addressed to them, proceed as follows:

"*It is urged* that when the general assembly released this Company from its requirements of the general law, they *became invested* with such a *right* that *they could not* be deprived of it except by their assent. That such exemption became a portion of "their franchises which the legislature could not rescind."

Knowing well that this road was incorporated in 1836, without any restrictions whatever upon the subject, and having already *admitted*, in my argument, that this *Company* was *subject* to the general police laws of the State, I respectfully submit that the argument which the court has attributed to me, was *never made* by me, or thought of by me, and is a very incorrect statement of my position, and any and all opinions I ever entertained upon the subject. But I do not design to call in question the reasons given by the court for its decision further than has now been stated. But, granting each and every reason which has been given by the court, I submit that this court, by *its* decision, has only decided just two things, one of which was never seriously questioned by me, and the other of no particular consequence so far as the general question is concerned. 1st. That these bell-ringing penal statutes are police regulations, and the legislature has a right to make *any* railroad subject to them. 2d. That in a penal statute no damages need be laid.

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reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, "*in the name of the people of the State of Illinois.*"

If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute.

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When the statute says that the penalty is to be recovered "in the name of the people of the State of Illinois," it does not mean Daniel W. Appleby, or Daniel W. Appleby suing for *himself* and the State of Illinois together. The statute either means expressly what it says, or it does not mean anything.

If the "informer," in this case, relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in *that* case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, *the State alone* must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity.

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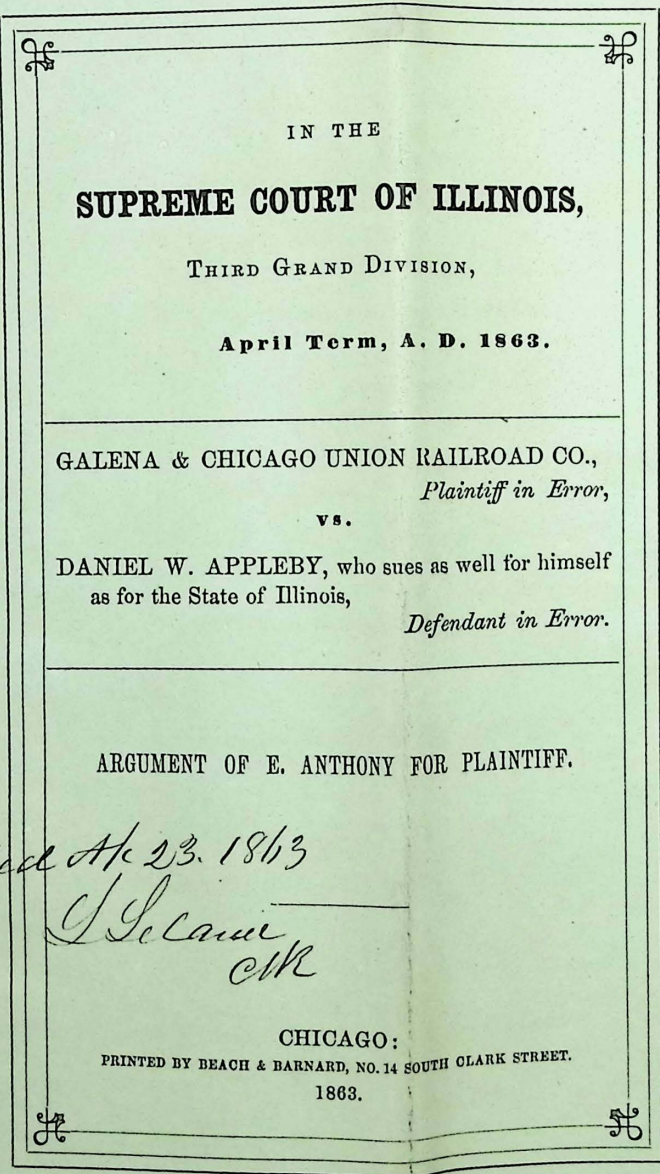
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DANIEL W. APPLEBY, who sues as well for himself  
 as for the State of Illinois,  
*Defendant in Error.*

ARGUMENT OF E. ANTHONY FOR PLAINTIFF.

*Filed Apr 23. 1863*  
*J. S. Lawrence*  
*clerk*

CHICAGO:  
 PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.  
 1863.

IN THE  
**SUPREME COURT OF ILLINOIS,**

THIRD GRAND DIVISION,

April Term, A. D. 1863.

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GALENA & CHICAGO UNION RAILROAD CO.,  
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The action was a *qui tam* action, brought to recover a number of penalties which the plaintiff alleged had been incurred by reason of the defendant not ringing a bell or blowing a whistle while crossing "a public highway," in Winnebago county, with their cars.

The *pleas* which were filed to the plaintiff's declaration, are considered at length. But the court *seems* to have entirely misapprehended not only the argument of the counsel for the plaintiff in error in regard to their scope and bearing in the case, but has completely overlooked every *other* point which was made in the case, excepting one of a formal character, and for all real practical purposes, *the case* remains just as much undecided as if it had never been here at all.

Judging from the decision itself, one would suppose that the entire case had been rested upon the *pleas alone* and nothing else. Now, I care not whether the *pleas* were good or bad, and never did, so far as the final result was concerned. What I insisted upon, and still insist upon, is, that the *declaration* was and is fatally defective, and could not be cured by any process whatever.

If we are ever to have anything certain in the law at all, I most respectfully submit that the rules of pleading should be carefully and rigidly adhered to and carried out.

Now, the simple facts in the case which were presented in the record by the pleas, were to this effect: That in the year 1849, a

general railroad act was passed, the 38th section of which required "a bell of at least thirty pounds weight, or a steam whistle, should be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the railroad shall cross any other road, or street, &c. On the 25th of February, 1854, an amendment was made to the charter of the Galena and Chicago Union Railroad Company, the third section of which amendment expressly provided that the 38th section of the general railroad act should not extend to or control the charter or franchises of the said act hereby amended."

On the 15th of February, 1855, a *special* act was passed, without the knowledge or consent of the Galena and Chicago Union Railroad Company, repealing the 3d section of the above act, and then, in section 2, providing as follows: "A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine run by said Company, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation—one-half thereof to go to the informer and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect."

Now, I desire the court to observe that *this law* may be a *police law*, and the legislature may have had the right, power and authority to have passed it, but it is nevertheless, and notwithstanding, a *private* statute.

In the printed argument filed by me in this case, I said that this action was brought "to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is *admitted* that by the decision of this court, in the case of the *Galena and Chicago Union Railroad*

“*Co. vs. Loomis*, 13 Ill., p. 548, that this Company is subject to the “*general police* regulations of the State, as prescribed by the general “law of 1849, yet it is respectfully submitted that the legislature “cannot, by a special law, applicable only to the Galena and Chicago Union Railroad Company alone, change its charter, or interfere with it in the exercise of its powers or privileges, or make it “subject to pains and penalties, *aimed at it as an individual*, by “imposing additional burdens upon the road, against the will of the “Company.”

In the case of *Loomis*, 13 Ill. p. 550, the court say: “That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations, in the exercise of their franchises, so as to provide for the public safety, admits of no doubt.” But is it equally clear that the legislature can enact *special* police laws for the government of an individual, which would conform to the spirit of our institutions. Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?”

Now, this was all that I said upon the subject of the powers of the legislature or the *police laws* in question. I *admitted* that the Company *was* subject to the general police regulations of the State, but I *expressed a doubt* as to the power of the legislature to pass a *special police* law which should regulate the conduct of this *individual* corporation. I thought that *police* laws should be *general* rather than special; but I laid no great stress upon that point. I had stated previously that the Galena and Chicago Union Railroad Company was chartered January 16, 1836, and with this argument I there stopped.

The court, however, notwithstanding this was every word that was ever addressed to them, proceed as follows:

“ *It is urged* that when the general assembly released this Company from its requirements of the general law, they became *invested* with such a right that they could not be deprived of it except by their assent. That such exemption became a portion of their franchises which the legislature could not rescind.”

Knowing well that this road was incorporated in 1836, without any restrictions whatever upon the subject, and having already admitted, in my argument, that this Company was *subject* to the general police laws of the State, I respectfully submit that the argument which the court has attributed to me, was *never made* by me, or thought of by me, and is a very incorrect statement of my position, and any and all opinions I ever entertained upon the subject. But I do not design to call in question the reasons given by the court for its decision further than has now been stated. But, granting each and every reason which has been given by the court, I submit that this court, by *its* decision, has only decided just two things, one of which was never seriously questioned by me, and the other of no particular consequence so far as the general question is concerned. 1st. That these bell-ringing penal statutes are police regulations, and the legislature has a right to make *any* railroad subject to them. 2d. That in a penal statute no damages need be laid.

The court seems to have entirely overlooked every other point that was made *in regard to the declaration*, and which points were relied upon more than every thing else.

I cannot tell, and am unable to determine from the decision itself, whether *the court* treated this suit as having been brought upon section 38 in the general railway act or upon the private statute. But what I desire to present, for the consideration of this court, is this: 1st. If this action is brought upon the private statute, then I insist that the *declaration* is fatally defective by all the rules of pleading, because the act *itself* is not counted upon, and is

no where referred to or recited, and the court will not take *judicial notice* of any private statute whatever.

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Penal actions, like indictments, are subject to the most rigid rules, and must be framed *on the statute itself*, referring to it, and *counting on it*, whether the law be public or private.

- Robinson's Practice, p. 616.
- 6 Iredell, 354.
- 17 Johnson, 455.
- 4 *ib.* 193.
- 8 *ib.* 218, 342.

This has not been done at all, as the declaration itself will show; and formal defects, in penal actions, become matters of substance.

- 1 Chitty's Pl. 358.
- 2 East. 353.
- 6 Cowen, 290.
- 7 Cowen, 496.
- 13 John's, 253, 428.

*See Page 2 Lefts Arg.*

2d. This action is brought by "Daniel W. Appleby, who sues as well for himself as for the State of Illinois." Now, if the statute in question be a *police law*, and a *private law* at that, where did he get his authority to bring this suit *on his own behalf*, and *on behalf of the State*? It is true, that both by the special act above referred to, and by the thirty-eighth section of the general law of 1849, one-half of the penalty goes to the informer as a *premium* for his watchfulness, but in the special act, there is *no mode pointed out* to the informer as to who should sue, or how he is to get his

reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, "in the name of the people of the State of Illinois."

If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute.

McClellan & Young, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

When the statute says that the penalty is to be recovered "in the name of the people of the State of Illinois," it does not mean Daniel W. Appleby, or Daniel W. Appleby suing for *himself* and the State of Illinois together. The statute either means expressly what it says, or it does not mean anything.

If the "informer," in this case, relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in *that* case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, *the State alone* must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity.

In the case of *Colburn vs. Sweet*, 1 Metcalf, 236, Chief Justice SHAW says, speaking of a law analagous to the one under consideration, that "where no such right (that is a right to sue for a penalty), is given to any individual, or body of individuals, then as the right to enforce all penalties made to ensure obedience to *general laws* is in the *commonwealth*, such action of debt or case might be prosecuted by the commonwealth."

See Page 4  
Deft's Aving

See Page 4 Deft's

Again: "Where a penal statute expressly gives the whole or a part of the penalty to a common informer, and enabled him generally to sue for the same debt, might be sustained; and he need not declare *qui tam* unless where a penalty is given for a contempt; but if there be no *express provision enabling* an informer to sue, debt could not be supported in his name for the recovery of the penalty.

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1 Chitty Pl., 163.

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The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by Brown, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject.* If the person making the complaint may sue because he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

In this case, the "informer" has not united with the State of Illinois, but has chosen to proceed on his own account, at the same time *assuming to represent* the State.

If the plaintiff relies upon the statute of 1849, then he must follow the *mode* there pointed out; the suit must be brought in the name of the people alone.

*McClellan vs. Young*, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

3 *Bosquet and Puller*, 382.

This case, therefore, may be suspended to either one of two horns of a dilemma, to wit: If, by the repeal of the law of 1854, the Galena and Chicago Union Railroad Company was remitted back to the general railway law of 1849, then there is no pretense whatever that this action can be sustained, for that act expressly provides, that the penalties are to be recovered by the district attorney, in the "*name of the people of the State of Illinois.*"

2d. If this suit is brought upon the private act, then, by no rule or principle of pleading yet discovered, can this suit be sustained, because the declaration does not pretend to count upon the private act; it neither refers to it by name, title, or any other way, neither is it recited or set out.

3d. The declaration in question does not specify any *particular road* which the railroad crossed in Winnebago county, at which the Company failed to ring a bell or blow a whistle, and for this reason the declaration was bad—the rule being, that "where a statute has created an offense unknown to the common law, whether the proceeding be by bill, information or *the common law declaration*, there must be the same certainty in the specification of the fact or facts constituting the offense, as in a bill of indictment."

*The State vs. Williams*, 8 Texas, 255.

This case is in *principle* like the case of *Leguart vs. The People*, 11 Ill., 331; there the court says: "The charge of neglect of duty, in not putting up guide boards, is altogether too indefinite and uncertain to apprise a defendant of what he is to answer. He has the

See Page 6 Dept  
arg.

right to know the specific nature and character of the offense charged against him, that he may prepare himself to defend against it. His indictment does not allege at *which* crossing of public roads the defendant neglected to put up guide boards, nor even that there were any crossings of public roads in the district. As well might a defendant be required to answer to an indictment charging him generally with neglect to keep the public roads of his district in repair, as to charge him with neglect in not putting up guide boards, without *specifying* where, or that there were any crossing in his district requiring guide boards to be put up."

The demurrer, which Appleby filed to the pleas put in for the Railroad Company, enabled the Company to go back and *attack* the declaration, and to take advantage of the defects in the declaration, the plaintiff being guilty of the first fault.

1 Chitty Pl's., 358.

2 East., 353.

6 Cowen, 290.

2/10 1855  
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Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time (to wit, the 26th of July, 1855), defendants propelled engines and cars; that said railroad *crossed* a *public highway in said county*; that on the day and year aforesaid, the said defendants propelled an engine *across* SAID highway without blowing a steam whistle "or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* themselves innocent of such vague and *general* charges which might be brought against them. Could this judgment ever be plead in bar

to any suit which might subsequently be brought against the company? It is in vain to say that such pleading as this is cured by the *judgment*. This is a *penal* action, and the utmost strictness is required. The facts showing the violation of the statute must be specifically stated and set forth. There cannot be found any reported or adjudicated case in all of the books of reports where so vague and indefinite a charge was ever tolerated in a *penal* action. Such pleading has no parallel whatever in the whole history of jurisprudence. There is no distinction in this respect between criminal and quasi criminal actions. This offense, of not ringing bells and blowing whistles, is something utterly unknown to the common law, and therefore I insist that upon principle that a court should hold a party to the utmost strictness.

But the declaration in the case is defective, because the offense is not alleged in either court to have been committed "against the form of the statute."

*The People vs. Barton*, 6 Cowen, 294.

22 Cowen, 208.

35 Maine, 429.

And this defect is fatal, even after verdict, and could have been reached by a general demurrer. The rule in *penal* actions being, that a general demurrer is equivalent to a special demurrer.

1 Chitty Pl., 258.

*Lee vs. Clarke*, 2 East., 353.

6 Cowen, 284.

*McCullough vs. Commonwealth*, Hardin, 95.

For these reasons I respectfully submit that the judgment in this case should have been reversed.

E. ANTHONY,

Attorney for Plaintiff in Error.

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Depts Corp.



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See *Carle vs. The People*, 12 Ill., 286.

The case at bar is similar to the case of *Seward vs. Beach*, 29 Barb., 241, which was an action brought by Seward to recover five penalties of *twenty* dollars each, which had been incurred by reason of violations of an act, on the part of the defendant, which provided that no load of iron or iron ore of more than two tons weight should be transported over the Poughkeepsie and Stormville Plank Road. The case was decided in May, 1859, by Brown, Justice, who says, on page 241, "Conceded that the act has been broken, and the penalties incurred, by what right does James A. Seward institute and maintain this proceeding? The law must be so construed as to give it effect, if possible, and at the same time *it must be construed strictly*, for it is a penal statute. It imposes a penalty—\$20 for every offense against it—"one half to the complainant, and the *other half* to the county treasurer of the county of Dutchess, for the benefit of the poor fund of said county." *It does not say* who shall sue and bring the action for the penalty. *It is silent on that subject*. If the person making the complaint may sue *because* he is entitled to *one half* of the penalty, why may not the treasurer of the county of Dutchess also sue, who is entitled to the other half? And if an interest in the penalty confers the right to bring the action, why should not both the complainant and the county treasurer unite for that purpose.

In this case, the "informer" has not united with the State of Illinois, but has chosen to proceed on his own account, at the same time *assuming to represent* the State.

If the plaintiff relies upon the statute of 1849, then he must follow the *mode* there pointed out; the suit must be brought in the name of the people alone.

*McClellan vs. Young*, 454.

Sedgwick on Statutory and Constitutional Law, p. 112.

3 *Bosarquet and Puller*, 382.

This case, therefore, may be suspended to either one of two horns of a dilemma, to wit: If, by the repeal of the law of 1854, the Galena and Chicago Union Railroad Company was remitted back to the general railway law of 1849, then there is no pretense whatever that this action can be sustained, for that act expressly provides, that the penalties are to be recovered by the district attorney, in the "*name of the people of the State of Illinois.*"

2d. If this suit is brought upon the private act, then, by no rule or principle of pleading yet discovered, can this suit be sustained, because the declaration does not pretend to count upon the private act; it neither refers to it by name, title, or any other way, neither is it recited or set out.

3d. The declaration in question does not specify any *particular road* which the railroad crossed in Winnebago county, at which the Company failed to ring a bell or blow a whistle, and for this reason the declaration was bad—the rule being, that "where a statute has created an offense unknown to the common law, whether the proceeding be by bill, information or *the common law declaration*, there must be the same certainty in the specification of the fact or facts constituting the offense, as in a bill of indictment."

*The State vs. Williams*, 8 Texas, 255.

This case is in *principle* like the case of *Leguart vs. The People*, 11 Ill., 331; there the court says: "The charge of neglect of duty, in not putting up guide boards, is altogether too indefinite and uncertain to apprise a defendant of what he is to answer. He has the

See Page 6  
Defts arg.

right to know the specific nature and character of the offense charged against him, that he may prepare himself to defend against it. His indictment does not allege at *which* crossing of public roads the defendant neglected to put up guide boards, nor even that there were any crossings of public roads in the district. As well might a defendant be required to answer to an indictment charging him generally with neglect to keep the public roads of his district in repair, as to charge him with neglect in not putting up guide boards, without *specifying* where, or that there were any crossing in his district requiring guide boards to be put up."

The demurrer, which Appleby filed to the pleas put in for the Railroad Company, enabled the Company to go back and *attack* the declaration, and to take advantage of the defects in the declaration, the plaintiff being guilty of the first fault.

1 Chitty Pl's., 358.

2 East., 353.

6 Cowen, 290.

Now, the language employed in each and every count of the declaration is, that the said "defendants were the owners of a railroad situated in *part* in said county, over which road, at said time " (to wit, the 26th of July, 1855), defendants propelled engines and " cars; that said railroad *crossed* a *public highway in said county*; " that on the day and year aforesaid, the said defendants propelled " an engine *across* SAID highway without blowing a steam whistle " or ringing a bell," &c.

*A public highway in said county!* As a question of pleading, does the court hold that *such* an allegation is sufficiently *definite* to enable a party to defend himself? If it does, then all railroad companies are perfectly at the mercy of every miscreant in the country who chooses to turn common informer. It would require every railroad company in the State to have all of its agents and employees, and the public generally, in readiness to *prove* themselves innocent of such vague and *general* charges which might be brought against them. Could this judgment ever be plead in bar

to *any* suit which might subsequently be brought against the company? It is in vain to say that such pleading as this is *cured* by the *judgment*. This is a *penal* action, and the utmost strictness is required. The facts showing the violation of the statute must be specifically stated and set forth. There cannot be found any reported or adjudicated case in all of the books of reports where so vague and indefinite a charge was *ever* tolerated in a *penal* action. *Such* pleading has no parallel whatever in the whole history of jurisprudence. There is no distinction in this respect between criminal and quasi criminal actions. This offense, of not ringing bells and blowing whistles, is something utterly unknown to the common law, and therefore I insist that upon principle that a court should hold a party to the utmost strictness.

But the declaration in the case is defective, because the offense is not alleged in either court to have been committed "against the form of the statute."

*The People vs. Barton*, 6 Cowen, 294.  
22 Cowen, 208.  
35 Maine, 429.

And this defect is fatal, even after verdict, and could have been reached by a general demurrer. The rule in *penal* actions being, that a general demurrer is equivalent to a special demurrer.

1 Chitty Pl., 258.  
*Lee vs. Clarke*, 2 East., 353.  
6 Cowen, 284.  
*McCullough vs. Commonwealth*, Hardin, 95.

For these reasons I respectfully submit that the judgment in this case should have been reversed.

E. ANTHONY,  
*Attorney for Plaintiff in Error.*

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Depto Corp.

# SUPREME COURT

OF ILLINOIS,

APRIL TERM, A. D. 1862.

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GALENA & CHICAGO UNION R. R. CO.,  
PLAINTIFF IN ERROR,

VS.

DANIEL W. APPLEBY,  
DEFENDANT IN ERROR.

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**BRIEF SUSTAINING POINTS FOR DEF'T IN ERROR.**

—•••••—  
SWEET & CRAIN,

FOR DEFENDANTS.

—•••••—

GALENA & CHICAGO UNION R. R. CO. }  
vs. } ERROR TO OGLE.  
DANIEL W. APPLEBY, who sues, &c. }

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## BRIEF AND POINTS OF DEFENDANT IN ERROR.

### I.

The repeal of the third section of an act approved February 25th, 1854, entitled "An act to amend an act entitled 'An act to incorporate the Galena & Chicago Union Railroad Company,'" approved January 16th, 1836, was a competent exercise of police power.

13 *Ill.*, 551.  
22 *Ill.*, 269.  
24 *Barb. S. C.*, 240.  
28 *Vermont*, 140.  
2 *Zab.*, 623.  
32 *N. H.*, 215.

2. The repeal, then, of third section, above mentioned, remitted plaintiff in error to liability for violation of 38th section of General Railway Act, approved 5th November, 1849.

### II.

Defects, if any existed in declaration, are aided by bar.

1 *Chit. Pl.*, 671.  
9 *Pick.*, 62.  
1 *Gil.*, 372.  
10 *Wheat.*, 283.

### III.

1. Daniel W. Appleby *qui tam* is properly plaintiff.

4 *Scam.*, 165.  
7 *Conn.*, 185.

2. Declaration in penal actions properly conclude without *ad damnum*.

1 *Chit. Pl.*, 471.  
4 *Burr.*, 2021.

## ANSWER TO THE BRIEF OF MR. ANTHONY.

MAY IT PLEASE THE COURT:

The order of our argument will be a traverse, point by point, of the several propositions advanced by plaintiff in error, asking the consideration of the court to authorities sustaining us, which, if not so numerous as those cited adversely, will, we trust, be found in an inverse proportion just that much more pertinent.

The first words of argument in support of the first point of plaintiff in error, are found on page 9 of his brief, and are accurately as follows:

"Now this action is brought, it will be seen, to recover the statute penalties given by section two of the above act, passed in 1855, and which is made to pertain exclusively to the Galena and Chicago Union Railroad Company; and while it is admitted that by the decision of this court in the case of the *Galena and Chicago Union Railroad Company vs. Loomis*, 13 Ill., p. 548, that this company is subject to the *general police* regulations of the State, as prescribed by the general law of 1849, yet it is respectfully submitted that the legislature cannot, by a special law, applicable only to the Galena and Chicago Union Railroad Company alone, change its charter, or interfere with it in the exercise of its powers or privileges, or make it subject to pains and penalties, aimed at it as an individual, by imposing additional burdens upon the road, against the will of the company.

"In the case of *Loomis*, 13 Ill., p. 550, the court say: "That the legislature has the power, by the enactment of *general laws*, from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety, admits of no doubt." But is it equally clear that the legislature can enact *special police laws* for the government of an individual, which would conform to the spirit of our institutions? Can the legislature single out any particular *individual*, and designating him, say that he shall be subject to a particular law, and that he shall be liable to prosecution for a penal offense, if he omits to do some specific thing? If the legislature wanted to make the railroad in question liable to the *general law* of the State, why not say so?"

We answer the above from the opinion of Mr. Justice Walker in a case wherein this same corporation was plaintiff in error:

“That the protection of the traveling public from injury, and in the enjoyment of their rights of transit by private or public conveyance, is such a police power as is incident to and may be exercised by the Legislature, will be readily conceded. And whether such regulations apply to travel on public highways, by railway or by water navigation, can make no difference in its exercise. The object being to insure the safety of individuals from injury and loss, it may be exercised in such manner as the *Legislature may deem most expedient*. Whether its regulations shall embrace all of these means of travel, or only a portion of them—all of the carriers of travelers by each mode, or only a portion—is a question for the Legislature alone to determine in the exercise of its power. They may apply proper police regulations to *one highway or railway, and exempt all others from its operation*, or they may apply it to all highways and railways, and exempt one or more from its operation if they choose. The power of adopting police regulations for the protection of its citizens is inherent to government, and it may do so in any manner not prohibited by the fundamental law of its creation. And there is no such prohibition upon our Legislature as will render this enactment void. If all acts should be held to be void which apply only to one, or to a limited number of individuals, many of the most important rights claimed by a portion of our citizens would prove unfounded.”

22 *Ills.*, 269.

See, also, 28 *Vermont*, 140.

32 *N. H.*, 215.

23 *Barb. S. C.*, 240.

Plaintiff's second point is:

“The attention of the court has been called to the fact that the statute in question is a *private* statute, is so published and classified, and *is not* made a public law by any provision contained in said statute whatever. Now, if this is so, then the declaration is fatally defective by all the rules of pleading, because the act itself is nowhere recited or set out; and the court will not take judicial notice of any private statute.”

There are two answers to the last point:

1st. The first section of the act of 15th February, 1855, simply repeals the exemption of plaintiff in error which it enjoyed by act

of 25th February, 1854, and remits plaintiff in error to the general liability of general railway act of 5th November, 1849. And plaintiff in error being thus subject to a general law of which the courts take judicial notice, it was not necessary to count specially on the statute.

2d. Supposing, for argument, that this suit *was* brought on the second section of the act of 25th February, 1855, and that it *was* a private act, and that it *was* necessary for declaration to count specially on it, yet if the omission to do so was a defect, that defect has been expressly aided and cured by the plaintiff in error, who sets up and pleads in his second plea the very "private act," as he terms it, thus putting it into the record.

The plea runs:

"The said defendant says *actio non*, because he says that the said action of said plaintiff is brought and founded upon a supposed amendment of the said defendant's charter, passed by the legislature of the State of Illinois, and approved February 15th, 1855, entitled "An Act to Amend an Act entitled 'An Act to amend an Act entitled 'An Act to incorporate the Galena and Chicago Union Railroad Company,'" approved February the 25th, 1854," &c., fully setting out the act.

1 *Chit. Pl.*, 671.

9 *Pick.*, 62.

1 *Gil.*, 372.

10 *Wheat.*, 283.

The last point made by plaintiff in error is:

"This action is brought by "Daniel W. Appleby, who sues as well for himself as for the State of Illinois." Where did he get his authority to bring this suit on his own behalf, and on behalf of the State? It is true that, both by the special act above referred to, and by the thirty-eighth section of the general law of 1849, one-half of the penalty goes to the informer as a *premium* for his watchfulness, but in the special act, there is no mode pointed out to the informer as to who should sue, or how he is to get his reward; while by the forty-second section of the general railway act, the penalty is to be sued for by the district attorney, 'in the name of the people of the State of Illinois.'

"If the plaintiff in this suit relies upon the general railway act, then I claim that the action is brought wrong, because the *mode* is there pointed out how the penalty is to be recovered; and it being a statutory provision, that mode must be followed, or the action utterly fails. There can be no escape whatever from this position. Statutory penalties must be recovered according to the statute."

Admit this suit to be brought upon the general railway act; the court will please note that the 38th section of the general railway act creates this offence, prescribes the penalty and designates to whom the penalty, when recovered, shall go, while another section, the 42d, authorizes suits in the name of the people. The following authority is peculiarly pertinent:

"It is a well settled principle that whenever a new offence is created by statute, and in the clause creating it a special remedy is prescribed, such remedy is exclusive and must be followed. To this rule there is a qualification equally well established. When a new created offence is prohibited by a substantive clause in a statute, and by *another* section a special remedy is given, an indictment on information will lie on the prohibitory clause.

7 *Conn.*, 185.

1 *Burrows*, 544-5.

2 *Mod.*, 128.

"If the "informer" in this case relies upon the *private* statute, then, to say nothing of the fatality of his declaration, which has been before pointed out, I contend that in that case he is wrong, because the statute, not *expressly* authorizing him to bring a suit, the State alone must enforce obedience to its laws; and the law in question being regarded as a *police* regulation, it follows that all violations of it must be enforced by the State alone, in its sovereign capacity."

To the above arguments as to the capacity of the plaintiff in this action to bring this suit, we present the court with the following case brought on the following section of the Laws of 1835:

"Sec. 2. Should any person or persons attempt to sell, hire, lease, traffic or vend any clock or clocks to any person whatever, without first having obtained a license as aforesaid, and without first

having exhibited the same to the person or persons he offers or attempts to sell, lease or traffic the same to, shall forfeit and pay the sum of fifty dollars for such offence, one-half to the use of the informer, and the other half for the use of the county, which sum shall be recoverable before any justice of the peace in said county, and the offender liable to indictment as in other cases of misdemeanors."

*Laws 1835, page 63.*

It was objected that the action was brought in the name of the people.

Say the Supreme Court:

"This is a *qui tam* action, the penalty going to the informer and the county. The State has no interest in the recovery. The defendant has forfeited nothing to the people. The statute not authorizing the suit to be brought in the name of the people, it was improperly brought, and the court erred in not dismissing it.

"The action should have been brought in the name of the informer or that of the county; most properly in the name of the informer for the use of himself and the county."

*IV. Scam., 165.*

Now, if the court please, either supposition of plaintiff in error, 1st, that this suit is brought under the general railway act of 1849, or *public* act, as he terms it; or, 2d, that it is brought on the second section of the act of 15th February, 1855, or *private* act, as he styles it, puts him in this dilemma. If under the general law, as the offence is created by one section—the 38th—and a mode of bringing suit by another,—the 42d,—then, by the 7 *Conn.*, 185, rule, it is competent for a suit to be maintained under the substantive section by a proper plaintiff. We then look into this substantive section itself as the court did in the case in *IV. Scam.*, above cited, for the designation of the proper plaintiff. In that case, the penalty was to the informer and *county*, and the court say the suit would have been "most properly brought in the name of the informer for the use of himself and the county." In the case at bar, the penalty is to the informer and *the State*; consequently, the suit is "most pro-

perly brought," as it is brought, in the name of the informer, for the use of himself and *the State*. If it is supposed that this action is brought under the so-called *private* act, then there is but one section—precisely a copy of the 38th section above considered—to be looked into: and as it is a counterpart, of course would designate the same plaintiff—"Appleby, for use of himself and the State."

Plaintiff in error next, on page 14 of his brief, objects that

"The declaration in question does not specify any *particular road* which the rail-road crossed in Winnebago county, at which the company failed to ring a bell or blow a whistle, and for this reason the declaration is bad—the rule being, that 'where a statute has created an offence unknown to the common law, whether the proceeding be by bill, information or the common law declaration, there must be the same certainty in the specification of the fact or facts constituting the offence as in a bill of indictment.'"

In answer to this part of plaintiff's argument, we have to say that, supposing the defect complained of to exist, the plaintiff in error has by his first plea expressly aided and cured such supposed defect. The plea runs:

"And defendant further avers, that at the time of such alleged crossing of said highway in said plaintiff's declaration mentioned, the said amendment to its said charter was in full force and effect, and the said crossing in said declaration mentioned was a crossing of their said road across said highway, and then occupied, used and run under and by virtue of the rights conferred by said charter, and the aforesaid amendments thereto, and that they did then and there run their said locomotive engine on said road, as they lawfully might, which are the same supposed grievances in said declaration mentioned."

The above "aider" by the plea will more strongly appear if the superfluous words are passed over and the underscored lines read continuously. The plaintiff in error replies to our declaration that the crossing mentioned in our declaration was a crossing of their railroad, and that they did "then and there" run their locomotive engine, &c.

Plaintiff in error says he knows where the place is, but that we have not described it to him. The law requires him to stand by the *whole record*, as he himself has assisted to make it.

9 *Pick.*, 62; 1 *Gil.*, 372.

Again, the plaintiff in error objects:

"But the declaration in the case is defective, because the offence is not alleged in either count to have been committed 'against the form of the statute.'"

This is simply a mistake, of which your Honors made, I think, a minute on the oral argument. If the court will look into the *Record*, instead of the Abstract, they will find every count concludes "against the form of the statute in such case made and provided."

The last error complained of is, that

"The judgment in the case was six hundred dollars; whereas, no amount is stated in the conclusion of the declaration. This was an error; the rule of practice which the court has established being, that whatever may be the form of action, it is error to render a judgment for a larger sum than is demanded in the declaration."

And cites 24 *Ill.*, 196.

We suppose it *is* error to render judgment for more than the *ad damnum* where an *ad damnum* is laid; and that is all the case proves. But we fail to see that it requires an *ad damnum* in cases where, from the nature of the action, an *ad damnum* is impossible.

**"Lex non cogit impossibilia."**

Our authorities are few and to the point:

"In *penal actions* at the suit of a common informer, as the plaintiff's right to the penalty did not accrue till the bringing of the action, and he cannot have sustained any damage by a previous detention of the penalty, it is not proper to conclude *ad damnum*."

1 *Chit. Pl.*, 417.

4 *Burrows*, 2021, 2490.

1 *Marsh*, 180.

In conclusion, we would call the attention of the court to the persistency with which this Corporation has, in this court, repeatedly sought to evade the requirements of a police regulation, the enforcement of which is absolutely necessary to the protection of the people of the State. In their case vs. Loomis, they denied the right of the legislature to subject them to police regulations at all; but the court rigidly applied the true rule. The road then *procured*, in an act ostensibly for the increase of their capital stock, the exemption, of which they availed themselves in their case *ads. Dill*, above mentioned. Upon which the legislature, finding them not only claiming the right, but actually driving their engines and trains across highways without any of the precautions required and employed by other railroads, repealed this dangerous exemption. And now we find them again in this court, insisting—with what grace the court will determine—that their charter is intact and above the inherent police power of the State.

SWEET & CRAIN,  
*For Def't in Error.*

140  
The Galena Chicago  
Union Rail Road Company  
vs

Daniel W. Appleby

Record

Filed March 15 1881

L. L. Leland  
Clerk

Supreme Court  
3<sup>rd</sup> Grand Div  
April Term 1844

Galena & Chicago Union  
Rail Road Company  
Plffs in error

vs

Daniel W. Appleby who  
sues as well for himself as  
for the State of Illinois  
Defr in error

Record

E. Anthony  
Atty for Plffs in error.

1  
State of Illinois }  
Ogle County, S.S. } In the Circuit Court of said Ogle County

Transcript from the files and records of the Honorable  
the Circuit Court of Ogle County in the State of Illinois

At a Term of the Circuit Court of said  
Ogle County, begun and holden at the Court House in Oregon on  
Tuesday October the 7<sup>th</sup> A. D. 1856, in pursuance of the Statute in  
such case made and provided, then and there being present-

Hon. J. Wilson Drury, Judge of said Court, & Presiding  
Judge of the 6<sup>th</sup> Judicial Circuit of the State of  
Illinois

William T. Miller States Attorney

R. B. Light, Clerk of said Court, and

Charles Newcomer Sheriff of said County—

And afterwards, to wit:— in Vacation after said Term— In the  
Matter of the People of the State of Illinois, upon the information of  
Daniel W. Appleby vs— The Galena and Chicago Union Rail  
Road Company — To wit:— on the 4<sup>th</sup> day of March A. D. 1857. =  
The Praecipe & Summons, marked "A" — Narratio, marked "B" — Bond  
for costs marked "C" — Demurer, marked "D" — and the Transcript of  
proceedings had — of record in the Stephenson County Circuit Court  
— were filed in said Circuit Court of Ogle County —

The said Praecipis being in the words and figures following  
To-wit: —

State of Illinois }  
Stephenson County }<sup>vs</sup> In the Stephenson County Circuit Court  
of the December T<sup>h</sup> 1856 —

The People of the State of Illinois, upon the  
information of Daniel W. Appleby

<sup>vs</sup>  
The Galena and Chicago Union Rail Road Company

} Debt  
} Damages \$1000.

The clerk will please  
issue summons in the above entitled cause returnable according  
to Law

L. J. B. Smith, clerk &c  
Oct 31 - 1856 —

W<sup>m</sup> Brown  
States Attorney

— Which said Praecipis is endorsed in the words of figures following  
to-wit: — People of the State of Illinois, upon the information of Dan<sup>l</sup> W-  
Appleby - vs - The G. & C. U. R. R. - "A" - Praec for Sum<sup>t</sup>  
Filed Oct 31<sup>st</sup> 1856, Joseph B. Smith clerk. By N. P. Ordway Dep-  
Filed March 4 - 1857 - M. W. Smith, clerk —

and which summons is in the words and figures following - to-wit: —

State of Illinois }  
Stephenson County }<sup>Det.</sup> The People of the State of Illinois to the  
Sheriff of Stephenson County — Greeting: —  
We command you to summon The Galena and Chicago

Union Rail Road Company, if they shall be found in your county - to appear before the Circuit Court of Stephenson County at the next term, to be holden at Freeport on the First Monday of December next, to answer The People of the State of Illinois upon the information of Daniel W. Appleby in a plea of Debt Damages One thousand dollars - And have you then there this writ - Witness Joseph B. Smith, clerk of the Circuit Court of Stephenson County, Illinois, at Freeport, this 31<sup>st</sup> day of October A.D. 1856.

seal

Attest: Joseph B. Smith clerk -  
By W. R. Ordway Dep -

Which said summons was endorsed in the words of figures following -  
"Sowit": - "The President of the within named company is not found in my county this 6<sup>th</sup> day of Nov A.D. 1856 - Isaac Koleckner Shff - p - W. R. Naramore Deputy" - "Served by reading and delivering a true copy of this writ, with John Adams (the Station Agent at Freeport), of the within named Galena and Chicago Union Rail Road Company, this 6<sup>th</sup> day of Nov A.D. 1856. - Isaac Koleckner Shff - p - W. R. Naramore Deputy" -  
"A" - "Summons". "N<sup>o</sup> 125." - "The People of the State of Ills. upon the information of Daniel W. Appleby - vs - The Ill. Galena & C. U. R. R. Co." - "Shff Fees. 1. Service, 50 - 1. Copy, 25. 1 Mile .05. 1 Return, 10. = .90" - "Filed March 4, 1857. H. W. Smith clerk" - "Atty for Plff"

4

And which Narratio is in the words and figura following  
Solwit: ---

State of Illinois }  
Stephenson County }

In the Stephenson County, Circuit  
Court, of the December Term  
AD 1856

The People of the State  
of Illinois upon the  
information of —  
Daniel W. Appleby

vs

The Galena & Chicago  
Union. Rail Road Company

Daniel W Appleby by William  
Brown, States Attorney, of the Fourteenth Judicial Circuit  
of the State of Illinois, who sues as well, for the People of  
the State of Illinois, as for himself, in this behalf,  
Complains, of the Galena and Chicago, Union, Rail Road  
Company, being Summored &c of a plea that they, the  
said Defendants, render to the People of the State of Illinois  
and to the said Daniel W Appleby, the sum of One thousand  
dollars, lawful money, of the United States, that the said  
Defendants, owe, and unjustly detain, from them —  
For that, whereas, the said Defendants, were on the twenty  
fourth Day of July, AD 1855, the owners of a certain  
Railroad situate and being, in part, in said County,  
known and called, by the name, of, the Galena and  
Chicago Union Rail Road, over which said Railroad —

the said Defendants propelled, or ran, or caused to be propelled or run, Locomotive Engines, and cars, on the day aforesaid. And the said Plaintiffs, further aver, that the said Railroad crossed a certain public Highway or road in said County. And the said Plaintiffs, further complain of the said Defendants, that, heretofore, to wit: On the day and year, last aforesaid, the said Defendants, ran a Locomotive Engine on said Rail Road, in said County, across the said Highway, in said County, and then and there, the said Defendants, neglected to blow a Steam Whistle, or to ring a Bell, of thirty pounds weight, at the distance of Eighty rods from the place, where the said Railroad, crossed the said public Highway, and the said Defendants then and there, neglected to keep ringing a Bell as aforesaid, or Steam Whistle, whistling until after said Locomotive Engine had crossed said public Highway - contrary, to the form of the Statute, in such case made and provided, whereby, and by force of the Statute an action hath accrued, to the said Daniel W Appleby, who sues, as aforesaid, to demand and have, as well, for the People of the State of Illinois, as for himself, of the said Galena and Chicago, Union Rail Road, Company the sum of Fifty Dollars. And for that, whereas, Also, the said Defendants were, on the twenty fifth day of July A.D. 1853 the owners of a certain other Railroad situate and being in part in said County, known and called, by the name, of the Galena and Chicago Union Rail Road, over which said Railroad the said Defendants, propelled, or ran, or caused to be propelled or run

other Locomotive Engines and Cars, on the day last a-  
 foresaid, and the said Plaintiffs, further aver, that the  
 said Railroad, crossed a certain public highway or road,  
 in said County, and the said Plaintiffs, further complain  
 of the said Defendants, that, heretofore, to wit: on the day,  
 and year, last aforesaid, the said Defendants, ran another  
 Locomotive Engine, on said Railroad, in said County,  
 across said Highway, in said County, and then and there  
 the said Defendants, neglected to blow a Steam Whistle  
 or to ring a Bell, of sturdy pounds weight at the distance  
 of Eighty rods, from the place, where the said Railroad  
 crossed the said public highway, and the said Defen-  
 dants, then and there, further neglected to keep ringing  
 a Bell, as aforesaid, or whistling, until after said Lo-  
 comotive Engine had crossed said public highway,  
 contrary, to the form of the Statute, in such case made  
 and provided, whereby, and by force of the Statute, an  
 action hath accrued, to the said Daniel W. Appleby,  
 who sues, as aforesaid, to demand and have, as well for  
 the People of the State of Illinois, as for himself of the said  
 Galena and Chicago Union Rail Road, Company, the  
 sum of Fifty Dollars, And for that, whereas, Also, the  
 said Defendants aver, on the twenty fifth day of  
 July, A.D. 1855, the owners, of a certain other Rail-  
 Road, situate and being in part, in said County -  
 known, and called by the name of the Galena and  
 Chicago Union Rail Road, over which said Railroad  
 the said Defendants, propelled, or ran or caused to be  
 propelled or run, other Locomotive Engines and cars,

on the day, last aforesaid and the said Plaintiffs further  
 aver, that the said Rail Road, crossed a certain public  
 Highway, or road, in said County, and the said Plaintiffs  
 further complain of the said Defendants, that, heretofore  
 to wit: on the day and year, last aforesaid the said  
 Defendants, ran a certain other Locomotive Engine  
 on said Rail-Road in said County, across said high-  
 way, in said County, and then, and there, the said  
 Defendants, neglected, to blow a Steam Whistle or  
 to ring a Bell of thirty pounds weight, at the Dis-  
 tance of Eighty rods, from the place, where the said Rail-  
 road, crossed the said public highway and the said  
 Defendants then and there, further neglected to keep ring-  
 ing a bell as aforesaid or whistling, until after said Loco-  
 motive Engine, had crossed said public Highway, contrary  
 to the form of the Statute, in such case made and provi-  
 ded, whereby, and by force of the Statute an Action  
 hath accrued to the said Daniel W Appleby, who sues as  
 aforesaid, to demand and have as well, for the People  
 of the State of Illinois, as for himself, of said Galena and  
 Chicago Union Rail Road Company, the sum of Fifty  
 Dollars. - And for that, whereas also the said Defendants  
 were, on the twenty fifth day of July A.D. 1855, the owners  
 of a certain other Railroad, situate and being in part, in  
 said County, known and called by the name, of the Galena  
 and Chicago Union Railroad, over which said Railroad  
 the said Defendants propelled or ran, or caused to be  
 propelled or run other Locomotive Engines and cars on  
 the day last aforesaid: and the said Plaintiffs, further

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aver, that the said Railroad, crossed a certain public highway or road, in said county; and the said Plaintiffs further complain of the said Defendants, that heretofore to wit: on the day and year last aforesaid, the said Defendants, ran a certain other Locomotive Engine on said Railroad, in said county, across said highway in said county, and then and there, the said Defendants neglected to blow a Steam whistle, or to ring a Bell, of thirty pounds weight, at the distance of Eighty rods, from the place where the said railroad crosses the said public highway and the said defendants then and there further neglected to keep ringing a bell as aforesaid or or whistling, until after said locomotive engine had crossed said public highway contrary to the form of the statute in such case made and provided, when by and by force of the statute an action hath occurred to the said Daniel W Appleby who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Twenty fifth day of July A D 1853 the owners of a certain other Railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad over which said Railroad the said defendants propelled or ran or caused to be propelled or run certain other locomotive Engines and cars on the day last aforesaid, and the said plaintiffs further aver that the

said railroad crossed a certain public highway or road in said County, and the said plaintiffs further complain of the said defendants that heretofore, to wit, on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway and the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway contrary to the form of the statute in such case made and provided whereby and by force of the statute an action hath accrued to the said Daniel W Appleby who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Twenty sixth day of July A.D 1853 the owners of a certain other railroad situate and being in part in said county, known and called by the name of the Galena and Chicago Union Railroad and the said plaintiffs further aver that the said railroad crossed a certain public highway or road in said County, and the said plaintiffs further complain of the said defendants that heretofore to wit on

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 the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway, and the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway, contrary to the form of the statute in such case made and provided whereby, and by force of the statute an action hath accrued to the said Daniel W Appleby, who sues us aforesaid, to demand and have as well for the people of the state of Illinois, as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Twenty sixth day of July A D 1855 the owners of a certain other railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad, and the said plaintiffs further aver, that the said railroad crossed a certain public highway or road in said county, and the said plaintiffs further complain of the said defendants that heretofore, to wit on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county, and then and there the said defendants neg-

lected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway. and the said defendants then and then further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway. contrary to the form of the statute in such case made and provided, whereby, and by force of the statute an action hath accrued to the said Daniel W Appleby who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Twenty sixth day of July A D 1855 the owners of a certain other railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad, and the said plaintiffs further aver that the said railroad crossed a certain public highway or road in said county, and the said plaintiffs further complain of the said defendants that heretofore to wit on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway, and

the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway contrary to the form of the statute in such case made and provided whereby and by force of the statute an action hath accrued to the said Daniel W Appleby who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Twenty seventh day of July A.D. 1855 the owners of a certain other railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad. and the said plaintiffs further aver that the said railroad crossed a certain public highway or road in said county. and the said plaintiffs further complain of the said defendants that heretofore to wit on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway and the said defendant then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway contrary

to the form of the statute in such case made and provided whereby and by force of the statute an action hath accrued to the said Daniel W Appleby, who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself. of the said Galena and Chicago Union Railroad Company the sum of Fifty dollar

And for that whereas also the said defendants were on the Twenty seventh day of July A D 1855 the owners of a certain other railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad and the said plaintiffs further aver that the said railroad crossed a certain public highway or road in said county and the said plaintiffs further complain of the said defendants that heretofore to wit on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and then the said defendant neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crosses the said public highway, and the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway contrary to the form of the statute in such case made and provided, whereby, and by force of the statute, an action hath accrued to the said Daniel W Appleby who sues

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as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Thirtieth day of July A D 1855 the owners of a certain other railroad situate and being in part in said county known and called by the name of the Galena and Chicago Union Railroad and the said plaintiffs further aver that the said railroad crossed a certain public highway or road in said county and the said plaintiffs further complain of the said defendants that heretofore to wit on the day and year last aforesaid the said defendants ran a certain other locomotive Engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway and the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed said public highway contrary to the form of the statute in such case made and provided whereby and by force of the statute an action hath accrued to the said Daniel W Appleby who sues as aforesaid to demand and have as well for the people of the state of Illinois as for himself of the said

Galena and Chicago Union Railroad Company the sum of Fifty dollars

And for that whereas also the said defendants were on the Thirtieth day of July A D 1855 the owners of a certain other railroad situate and being in part in said County known and called by the name of the Galena and Chicago Union Railroad and the said plaintiffs aver that the said railroad crossed a certain public highway or road in said County and the said plaintiffs further complain of the said defendants that heretofore to wit on the day and year last aforesaid the said defendants ran a certain other locomotive engine on said railroad across said highway in said county and then and there the said defendants neglected to blow a steam whistle or to ring a bell of thirty pounds weight at the distance of eighty rods from the place where the said railroad crossed the said public highway. and the said defendants then and there further neglected to keep ringing a bell as aforesaid or whistling until after said locomotive engine had crossed the public highway contrary to the form of the statute in such case made and provided. whereby and by force of the statute an action hath accrued to the said David W Appleby who sues as aforesaid to demand and have as well for the people of the state of <sup>Illinois</sup> ~~of~~ <sup>as</sup> for himself of the said Galena and Chicago Union Railroad Company the sum of fifty dollars

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And for that whereas also the said Defendants were on the Thirty first day of July A. D. 1855. the owners of a certain other Rail Road situate and being in part in said County. known and called by the name of the Galena and Chicago Union Rail Road and the said Plaintiffs further aver, that the said Rail Road used a certain public Highway or Road in said County. and the said Plaintiffs further complain of the said Defendants that heretofore to wit: - on the day and year last aforesaid the said Defendants ran a certain other Locomotive Engine on said Rail Road across said Highway in said County. and then and there the said Defendants neglected to blow a steam whistle or to ring a Bell of thirty pounds weight at the distance of Eighty rods from the place where the said Rail Road crossed the said public Highway and the said Defendants then and there further neglected to keep ringing a Bell as aforesaid or whistling until after said Locomotive Engine had crossed said public Highway contrary to the form of the Statute in such case made and provided whereby and by force of the Statute, an action hath accrued to the said Daniel W. Appleby who sues as aforesaid to demand and have as well for the People of the State of Illinois as for himself, of the said Galena and Chicago Union Rail Road Company, the sum of Fifty dollars.

Yet the said Galena and Chicago Union Rail Road Company (although after requested) have not paid to the People of the State of Illinois, and the said Daniel W. Appleby who sues as aforesaid or either of them the said One Thousand dollars above demanded or any part thereof, but to pay the same

to them or either of them the said Galena and Chicago Union Rail Road Company, have wholly refused and still do refuse and therefore as well for the People of the State of Illinois as for himself the said Daniel W. Appleby brings his Suit —

William Brown

States Atty of 14<sup>th</sup> Jud. Circuit —

— Which said Narratio. was endorsed in the words of figures following — to wit: —  
 "125" State of Illinois on information of Daniel W. Appleby — vs — Galena & Chicago Union Rail Road Co — "TB" — "Narratio" — "Filed Nov 21. 1856 Joseph B. Smith clerk" — "Filed March 4. 1857. M. W. Smith. clerk"

And which Bond for costs. is in the words of figures following. to wit: —

The People of the State of Illinois upon the information of Daniel W. Appleby	} Stephenson County Circuit Court —
vs	} December Term. 1856 —
The "Galena and Chicago Union Railroad Company"	

I do hereby enter myself Security for costs. in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court in pursuance of the Laws of this State —  
 Dated this 20<sup>th</sup> day of August A. D. 1856 —

W<sup>m</sup> G. Woodruff

— Which said Bond for costs. is endorsed in the words of figures following To wit: — "People of the State of Illinois upon the information of Daniel W. Appleby — vs — The G. & C. —

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Re. R. Co. Com-y - "Bond for boats" - "C" - "Filed Oct 31<sup>st</sup> 1856  
Joseph B. Smith Clerk - By N. R. Ordway Dep" - Filed  
March 4 - 1857. M. W. Smith Clerk -

And which Demurer is in the words and figures following To wit: -

State of Illinois } In the Circuit Court of Stephenson County  
Stephenson County } ss. of the December Term A. D. 1856. -

The People of the State of Illinois upon  
the information of Daniel W. Appleby } No. 125 -  
vs  
The Galena & U. R. R. Co -

And the said Defendants  
by Bright & Smith their Attorneys comes and defends the  
wrong and Injury when &c. and says that the said Declara-  
-tion and each and every count thereof, and the matters therein  
contained in manner and form as the same are above stated  
and set forth are not sufficient in Law for the said Plaintiff  
to have or maintain their aforesaid action thereof, against the  
said Defendants and they the said Defendants are not bound  
by Law to answer the same - And this they are ready to  
verify wherefore by reason of the insufficiency of the said Declaration  
and each and every count thereof in this behalf the said Defend-  
-ants pray Judgment and that the said Plaintiffs may be barred  
from having or maintaining their aforesaid action thereof against  
them &c -

Bright & Smith Defts Attys

Which said Demurrer was endorsed in the words & figures following To wit:-  
"N<sup>o</sup>. 125" "The People of the State of Illinois by Daniel W. Appleby-  
vs - G. & C. W. R. R. Company" - "Demurrer" - "ID" - "Filed Dec  
3<sup>d</sup> 1856. L. W. Guiteau clk." "Filed March 4, 1857. M. W.  
Smith clerk" - Bright & Smith Defts Atty's -

And which said Transcript was in the words and figures following  
To wit: -

United States of America  
State of Illinois }  
Stephenson County } Pleas before the Hon Benjamin R.  
Sheldon, Judge of the Fourteenth Judicial  
District of the State of Illinois, at the December Term in the  
year of our Lord One Thousand Eight hundred and fifty six  
of the Stephenson County Circuit Court, began and held at the  
Court House in Freeport in said County on the 2<sup>nd</sup> day of December  
A. D. 1856. -

Present Hon Benjamin R. Sheldon Judge  
Urban D. Moscham States Attorney  
J. Wilson Shaffer - Sheriff -  
Attest - Leith W. Guiteau, Clerk -

Be it remembered, that heretofore to wit: - on the 3<sup>rd</sup> day  
of December A. D. 1856. at the December Term aforesaid of said  
Court, the following among other proceedings were had - to wit: -

The People of the State of Illinois  
Ex rel - Daniel W. Appleby

vs

The Galena & Chicago Union Railroad Company

} Debt -

And now come  
the Defendants by their

Attorney and file their Demurer to the said Plaintiffs Declaration

And afterwards to wit: - on the 4<sup>th</sup> day of December A. D.  
1856. at the December Term aforesaid of said Court the  
following proceedings were had. to wit: -

125 The People of the State of Illinois Ex rel.  
Daniel W. Appleby

vs

The Galena & Chicago Union Railroad Co.

} Debt

The Considering  
Judge of this Court being

a party interested in this Suit as a Stockholder in the said  
Railroad Company - Defendant herein. it is ordered that  
the venue herein be changed to the County of Ogle, and it  
is further ordered by the Court that the Clerk of this Court,  
transmit to the Clerk of the Circuit Court of Ogle County all  
the papers in this Suit, and the Record herein, before the first  
day of the next Term of the Ogle County Circuit Court -

State of Illinois }  
Stephenson County }

ss. J. Luther W. Guiteau Clerk of the  
Circuit Court in and for said County.

Do hereby certify that the foregoing is a true copy from

the Records of my Office of all the proceedings had in said cause, and that the Praecipi & Summons marked "A" - Narratio marked "B" - Bond for costs "C" - Demures "D" are all the papers on file appertaining to said cause in my office -

In Witness Whereof, I have hereunto set my hand and affixed the Seal of our said Court at Freeport this 24<sup>th</sup> day of February A.D. 1857 -

Attest - Luther W. Guiteau - Clerk

The People - Ex Rel -  
Daniel W. Applebee

December Term A.D. 1856.

*vs*  
The Galena & Chicago U. R. R. Co. ) Pltfs B. C.

Dues Suit 10¢ Entg App & Atty 15¢ fily Proc & Starr 10¢ - " 35

Dues fily 40¢ - Takg fily Bond for costs 10¢ Entg order for chg of U.S. 70.

Entg order to transmit paper 20¢ Transcript etc. & seal 1.35 - 1.55

Postage 21¢ Makg & Entg B. C. 30¢ - .51

3.11

Shffs J. Koelchner - Ex - Retg fees -

.90

\$4.01

Defendants Bill costs

Entg App & Atty 15¢ Entg & fily Dem - 25¢ B. C. 30¢ .70

I Luther W. Guiteau, clerk of Circuit Court in & for the County of Stephenson & State of Illinois - do certify that the foregoing is a true & correct copy from my Fee Book

L. W. Guiteau clerk

And on which said Transcript is endorsed in the words & figures following to wit -

"The People Exrel. Daniel W. Appleby - vs -  
Galena & Chicago U. R. R. Company" - "Transcript" -  
"Filed March 4. 1857 - M. W. Smith Clerk"

And afterwards to wit: - At a Circuit Court begun and holden in and for the County of Ogle, at the Court House in Oregon, on the first Monday of October A. D. 1857, then and there being present

Honorable John V. Eustace, Judge

Mortimer W. Smith Clerk

Robert C. Burchell, States Attorney

Eliphalet R. Tyler, Sheriff: -

And afterwards to wit: on Wednesday the 14<sup>th</sup> day of said October, the same being one of the days of said October Term A. D. 1857, the following proceedings were had and entered of Record - to wit: -

People of the State of Illinois, by  
relation of Daniel W. Appleby

vs  
Galena & Chicago Union Rail Road Company

This day come the said Plaintiff by Sweet their attorney, and the Defendants come by Lusk & Dutcher its attorney's, and the Demures of the said Defendants to the Plaintiffs Declaration herein comes on to be heard and after argument of Counsel and consideration by the Court, it is considered that the said Demures be overruled - Thereupon, on motion of the said Defendant leave is given it to plead herein -

And afterwards to wit: at the June Term of said Court, in the year A. D. 1858. and on the 11<sup>th</sup> day of said June, the same being one of the days of said June Term, the following proceedings were entered of record To wit:

<p>The People of the State of Illinois on the information of Daniel W. Appleby vs The Galena &amp; Chicago Union Rail Road Company</p>	}	<p>Debt. to recover a penalty for not ringing a Bell or blowing a Steam Whistle —</p>
--	---	---

This cause having been heard upon the Demer of the Defendant to the Plaintiffs Declaration and after hearing the argument of counsel, the Court being fully advised in the premises are of opinion that the Declaration aforesaid and the matters therein contained are sufficient in law to support this action, and the Defendant having failed to plead in this cause — Whereupon it is considered and adjudged by this Court that said Daniel W. Appleby (who sues as well for himself, as for the People of the State of Illinois) have and recover of the Defendant, the sum of six hundred and fifty dollars his debt, and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor

John W. Eustace —

And afterwards to wit: — on Saturday the 12<sup>th</sup> day of said June the same being one of the days of the said June Term A. D. 1858. the following proceedings were entered of record — To wit: —

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People of the State of Illinois on  
relation of Daniel W. Appleby

vs

Galena & Chicago Union Rail R. Co.

Debt - Change of Venue

This day comes the said  
Defendant by Dutcher and Keaton  
its Attorneys and enters its motion to vacate the Judgment entered  
herein. on yesterday -

And afterwards to wit: - on the 17<sup>th</sup> day of said June, the same  
being one of the days of the said June Term A. D. 1858 -  
the following proceedings were entered of record to wit: -

People of the State of Illinois. by  
relation of Daniel W. Appleby

vs

The Galena & Chicago Union Rail Road Company

Debt -

This day comes the  
Defendant as heretofore and  
the motion of the said Defendant to vacate the Judgment heretofore  
at this Term. entered herein. having been heard and considered,  
and the Court being fully advised in the premises. It is ordered  
that the said Judgment. be vacated and set aside and rendered  
of no effect -

And afterwards to wit: - on the 28<sup>th</sup> March A. D. 1860 - the  
following Pleas were filed in said Court - to wit in the words  
and figures following to wit: -

State of Illinois } Ogle County Circuit Court of the March Term  
 Ogle County } A. D. 1860 —

x  
 The People of the State of Illinois on  
 information of Daniel W. Appleby

vs

The Galena & Chicago Union Rail Road Company } And the said Defendant  
 by Heaton & Goodwin comes  
 & defends the wrong & injury when &c — And for plea in this  
 behalf said Defendant says actio non because it says that in and  
 by virtue of an act of the Legislature of the State of Illinois  
 approved January 16<sup>th</sup> 1836. entitled an Act to incorporate the Galena  
 & Chicago Union Rail Road Company - this Defendant become and  
 was organized & become and was a corporation - the name and title  
 of said corporation as by the said Act & the several Amendments  
 thereto more fully appears - That the Legislature of the State of Illinois  
 passed an Amendment to the charter of this Defendant which  
 Amendment was duly approved by the Governor of the State of Illinois  
 on the 25<sup>th</sup> day of February 1854. & become a law & become and was a  
 part of the adopted rights & franchises of the said Defendant & which  
 said Act was entitled "An Act to amend an Act entitled "An Act to  
 Incorporate the Galena & Chicago Union Rail Road Company, approved  
 2<sup>d</sup> February 16<sup>th</sup> 1836. and by the 3<sup>d</sup> section of which said Act it was  
 declared and enacted "that the thirty eighth section of "an act"  
 "to provide for a General System of Rail Road corporations" approved  
 "November 5<sup>th</sup> 1849 - does not & shall not extend to or control the  
 "charter or franchises of the said Act hereby amended" - by reason

whereof it became and was one of the franchises of said Road & became & was a part of the chartered rights of the said Defendant to run Locomotive Engines & Cars on their said Road without keeping a bell of at least thirty pounds <sup>weight</sup>, & without blowing a whistle on said Engines, at least Eighty rods distant from the place where said road shall cross any other road or Street without keeping such Bell ringing or whistle blowing until their Locomotive Engines & Cars should have or shall cross such Road or Street; And Defendant further avers that at the time of said alledged crossing of said Highway in said Plaintiffs Declaration mentioned the said Amendment to its said Charter was in full force and effect, & the said Rail Road crossing in said Declaration mentioned was a crossing of their said Road across said highway & then occupied used & run under and by virtue of the rights conferred by said Charter and the aforesaid Amendment thereto & that they did then & their run their said, run their said Locomotive Engine on said Road as they lawfully might which are the same supposed grievances in said Plaintiffs Declaration mentioned & this it is ready to verify— Whereupon it prays Judgment &c.

Heaton & Goodwin for Deft—

And for further plea in this behalf the said Defendant says actis non. because he says that said action of said Plaintiff is brought & founded upon a supposed amendment of the said Defendants Charter, passed by the Legislature of the State of Illinois and approved February 16<sup>th</sup> 1855. Entitled an Act to Amend an Act Entitled "An Act to amend an Act Entitled, an Act to Incorporate the Galena & Chicago Union Rail Road Company, approved February the 25<sup>th</sup> 1854. by the first section of said Act an attempt is made

to take from and deprive said Defendant of their vested rights and franchises by the second Section of said Act an attempt is made to require said Defendant to ring a Bell and blow a Whistle at the crossing of Defendants Road, of other Roads, Streets & by said Section of said Amendment it is provided further that on failure to ring such Bell or to blow such Whistle at such crossing and at a distance of at least Eighty rods from such crossing & shall continue to ring such Bell or to blow such Whistle until the Locomotive so crossing said Road or Street shall have crossed the same, the Defendant should be liable to a fine to the amount, and to be recovered as sought and alledged in Plaintiff's Declaration herein. But this Defendant avers and charges the fact to be that said supposed Amendment to their said Charter was not accept & did not become vis not a part of their said Charter & has no force and effect as against the previously acquired, granted & vested rights of this Defendant, but that that as soon as passage of said Amendment to their said Charter became & was known to this Defendant Lovit - at a meeting of its Directors held at the office of said Company in Chicago on the 6<sup>th</sup> day of March A.D. 1855, the foregoing Act was first read to said Directors - they then & there being lawfully authorized to act thereon & to accept or reject the same as an Amendment to their said Charter - Whereupon on Motion it was resolved "That the said Galena & Chicago Union Rail Road Company, does hereby absolutely, to all intents and purposes refuse to accept, accede to, or recognize the said Act (the said supposed amendment to said Charter meaning) & will not be governed thereby. - And this

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the said Defendant is ready to verify - wherefore it prays Judgment  
re  
Hocaton & Goodwin  
for Deft -

Which said pleas were endorsed in the words of figures following to wit  
"The People re - vs - G. & C. W. R. R. Co" - "Pleas" - "Filed March  
28 - 1860 - M. W. Smith clerk" -

And afterwards to wit :- on the 28<sup>th</sup> day of March A. D. 1860.  
the following Demurer was filed in said Court. to wit  
in the words and figures following to wit :-

1 The People of the State of Illinois, upon the information of Daniel W. Appleby  
vs  
The Galena & Chicago Union Rail Road Company } In the Circuit Court of  
Ogle County, in the State  
of Illinois, of the March  
Term A. D. 1860 -  
- And the said Plaintiff

as to the said pleas of the said Defendant by it firstly and  
secondly above pleaded says precludi non because it says  
that the said pleas and the matters and things therein pleaded  
are not sufficient in law to prevent the said plaintiff's from  
having and maintaining their aforesaid action against the said  
Defendant - and this the said plaintiff are ready to verify  
wherefore they pray Judgment - re -

Burchell States Atty  
& Sweet Atty for Plffs -

Which said Demurer were endorsed in the words of figures following to wit :-  
"The People et al vs - The G. & C. W. R. R. Co" - "Demurer" - "Filed March  
28. 1860. M. W. Smith clk. By H. J. Smith Deft" -

And afterwards to wit: at the March Term of said Court  
 A. D. 1860. and on the 28<sup>th</sup> day of said March  
 the same being one of the days of said March Term  
 the following proceedings were entered of record to wit:—

The People of the State of Illinois, on the  
 relation of Daniel W. Appleby

vs

The Galena & Chicago Union Rail Road Company

In Debt

And now on

this day come the

said Plaintiffs by Messrs Sweet & Burchell their Attorneys, and  
 the Defendants come by Dutcher & Heaton their Attorneys, and now comes  
 on to be heard the Plaintiffs Demurer to the Pleas of the said  
 Defendants, and after argument of Counsel and the Court being  
 fully advised in the premises, it is ordered by the Court that the  
 said Demurer be sustained, and the Defendants saying no further  
 but standing by their said Pleas by them herein pleaded, it is  
 ordered by the Court that the said Plaintiffs have and recover of  
 the said Defendants the sum of Six hundred Dollars their Debt  
 herein (the one half of which said sum of Six hundred Dollars to be  
 paid to and received by the said People of the State of Illinois  
 and the other half of which said sum of Six hundred Dollars  
 to be paid to and received by the said Daniel W. Appleby to-  
 gether with the Costs and charges of the said Plaintiffs by them  
 in and about this Suit in this behalf expended and that they  
 have execution therefor —

And afterwards to wit: - on the 8<sup>th</sup> day of February A.D. 1861. - an Execution was issued directed to the Sheriff of Stephenson County - which said Execution was in the words and figures following to wit: -

Received this Execution and Fee Bill, this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock M.

County of \_\_\_\_\_ Sheriff of \_\_\_\_\_

Fees Book..... Page..... Term No.....  
 No. 32117 Fi. Fu.  
**OCLE CIR. COURT.**  
 of the People of the State of Illinois  
 vs.  
 The Habana and Chicago Union Rail Road Company

Costs	\$	
Damages	600.00	
Costs	14.76	
Debitant's Fee Bill	3.40	
Total	618.16	

Judgment Rendered, *March 28* 1860  
 This Writ Issued, *Feb. 8* 1861  
 Return Day, *May 9<sup>th</sup>* 1861

The Sheriff will collect interest from the above mentioned date of Judgment.

**SHERIFF'S FEES.**

Copying Execution..... \$.....  
 Advertising Property..... mile travel.....  
 Commission on \$.....  
 Certificate of Purchase.....  
 Replicate and Recording.....  
 Printing Notice.....  
 Returning Execution.....

Total Amount, \$.....  
 Paid..... 156.  
 Crank.....

State of Illinois, )

OGLE COUNTY, SS.

The People of the State of Illinois, to the Sheriff

of ~~said~~ *Stephenson* County, GREETING:

WE COMMAND YOU, That of the goods and chattels, lands and tenements of *The Galena and Chicago Union Rail Road Company*

Defendants, in your County, you cause to be made the sum of *Six Hundred* Dollars and

*Cents*, which *The People of the State of Illinois on the Relation of Daniel W. Applebee*

Plaintiff, lately, in the Circuit Court of said County of Ogle, at a \_\_\_\_\_ term thereof begun and holden at Oregon, on the *Third* Monday of *March* A. D. 186*0*, recovered against the said Defendant, and which by the said Court were adjudged to the said Plaintiff for *their* damages,

And also the further sum of *Fourteen* Dollars

and *Seventy Six* Cents, which were adjudged to the said Plaintiff for costs and charges in that behalf expended, whereof the said Defendant do stand convicted, as appears to us of Record; and have you these moneys ready to render to the said Plaintiff for damages, ~~and~~ and costs aforesaid, and make return of this Writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

*Seal*

WITNESS, FREDERICK G. PETRIE, Clerk of said Court, and the seal thereof, at his office, at Oregon, in said County of Ogle, this *8<sup>th</sup>* day of *February* A. D. 186*1*.

*F. G. Petrie* Clerk.  
By *B. F. Shute* Dep

STATE OF ILLINOIS, )

OGLE COUNTY, SS.

The People of the State of Illinois, to the Sheriff of said

*Stephenson* County, GREETING:

WE COMMAND YOU, That the within Fee Bill, amounting to *Three* Dollars and *Twenty* Cents,

you cause to be levied of the goods and chattels, lands and tenements, of *The Galena and Chicago Union Rail Road Company* in your County, according to the statute in such case made and provided. And make return of this Writ, within ninety days, as the law directs, with an endorsement hereon in what manner you shall have executed the same.

*Seal*

WITNESS, FREDERICK G. PETRIE, Clerk of said Court, and the seal thereof, at his office, at Oregon, in said County of Ogle, this *8<sup>th</sup>* day of *February* A. D. 186*1*.

*F. G. Petrie* Clerk.

State of Illinois }  
 Ogle County S.S. } J. Frederick G. Petrie, Clerk of the Circuit  
 Court in and for said County - do hereby  
 certify, that the above and foregoing is a true and correct Trans-  
 -cript of the Record, and of the Papers now on file in my office  
 and the whole thereof, in a Cause in which the People of the  
 State of Illinois on the information of Daniel W. Appleby were  
 Plaintiffs - and the Galena and Chicago Union Rail Road  
 Company were Defendants -

Witness my hand, and the Seal of said  
 Court, at my Office in Oregon this 26<sup>th</sup> day of  
 February A. D. 1861 -

J. F. Petrie Clerk  
 By B. F. Schute Copy

Let a supersedeas issue in this case. Bond  
 \$1200. Motion L Newberry ~~with~~ ~~the~~ ~~same~~ security  
 J. H. Eaton

Supreme court  
of Third Grand  
Division - April  
Term A.D. 1861.

Galena & Chicago Union Rail  
Road Company - Plaintiff in Error

vs

Daniel W. Appley, who  
uses as well for himself  
as for the State of Illinois

State of Illinois  
Supreme court.

Chicago Union Rail Road Company - prays that the  
judgment of said for the error of said, for other  
errors of said in the record & proceeds of said may  
be reversed, annulled & set aside, held by, nothing &c  
Elliott Anthony  
Attorney for Plaintiff in Error

And now comes the said  
plaintiff in error by Elliott Anthony its  
attorney and says that in the record & proceeds  
of said also in the rendition of the judgment  
of said manifest error hath intervened in  
in this - First that the declaration of said &

the matters & things therein contained are  
not sufficient in law for the said defendant  
in error to maintain the aforesaid action.

2. The declaration and matters & things therein contained are insufficient for the defendant in error Appley to maintain the aforesaid action.
3. Daniel W. Appley was improperly joined in the aforesaid action with the State of Illinois - & had no right to prosecute the aforesaid action jointly with the State of Illinois or quitclaim in the own name & in behalf of the said State of Illinois.
4. The court erred in rendering a judgment in favor of the defendant in error Daniel W. Appley & the State of Illinois
5. The court erred in sustaining the demurrer to the plaintiff in error's plea
6. The judgment should have been for the plaintiff in error the Galena & Chicago Union Rail Road Company, & not for the defendant in error.

and now comes the defendant and says that in  
the records and proceedings of said case there is  
no error, and prays that said judgment  
be affirmed.

State of Illinois }  
Supreme Court } Mini Grant Decision  
April Term 1861

Galena & Chicago Union  
Road Road Co. - Plaintiff  
vs.

Daniel W. Appleby who sues as  
well for himself as for the  
State of Illinois

And now comes the  
said defendant by Sweet & Krain his  
attorneys and moves this court to set  
aside the contumacy in this cause and  
proceed to a hearing in its order at  
the present term of this Court - for the  
following reasons to wit -

1 Because said plaintiff did  
not at the time of obtaining a certificate  
of suspension to sit on the 15th of March  
last apply for a writ of Habeas corpus  
according to the 5th Rule of this court

2 Because the certificate of  
suspension though forwarded to ~~Plaintiff~~  
attorney was not by him <sup>sent</sup> ~~sent~~ to the  
proper officer until within ten days  
of the first day of the present term of  
this court

Sweet & Krain

Deft Attys

~~110~~ 53

Galena & Chicago  
v. R. R. Co

vs

Daniel H. Appleby  
the sur for pro

Motion to set  
aside Continuance  
&  
Grounds therefor

Filed Apr. 19. 1861

Admitted

Calhoun

STATE OF ILLINOIS,  
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Sheriff of

Ogle

County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Ogle County, before the Judge thereof, between Daniel W. Apoloby who sues as well for himself as for the use of the People of the State of Illinois plaintiff, and The Galena & Chicago Union Rail Road Company

defendants, it is said that manifest error hath intervened, to the injury of the said Galena & Chicago Union Rail Road Company

as we are informed by their complaint the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Daniel W. Apoloby who sues for as well for himself as for the use of the People of the State of Illinois

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Daniel W. Apoloby who sues as well for himself as for the use of the People of the State of Illinois notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25<sup>th</sup> day of February in the year of our Lord One Thousand Eight Hundred and Sixty-two

J. Seland

Clerk of the Supreme Court.

Case

The Galena & Chicago  
Union R.R. Company

No. ~~140~~ vs.

Daniel W. Appleby et al

SCIRE FACIAS.



FILED... April 15 A. D. 1862

S. Seland Clerk.

State of Illinois  
Cook County

The within  
process of Daniel W. Appleby  
not found in my County  
this 11<sup>th</sup> day of April  
A. D. 1862

John H. Hughes Sheriff  
By E. P. Stanton Deputy

John Patton 64

Supreme Court of Illinois  
Third Grand Division  
April Term 1861.

Galena & Chicago Union  
Rail Road Company  
Plaintiff in Error  
vs.

The People of the State  
of Illinois. Upon the in-  
formation of Daniel W.  
Appelby  
Defendant in Error

### Statement of Case

This is an action of Debt brought by the Defendant in Error to recover Twelve penalties, of Fifty Dollars each, for not ringing a Bell or blowing a Steam Whistle at ~~the~~ a road crossing in Stephenson County.

The declaration is intended to be *quæ tam in ferns* and commences thus; " Daniel W. Appelby " by William Brown, States Attorney of " the fourteenth judicial Circuit of the " State of Illinois. Who sues as well

" for the People of the State of Illinois.  
" as for himself in this behalf Complainant.

The Narr Contains twelve  
Counts all alike in form but specifying  
different dates, claiming in each  
Count the penalty of Fifty Dollars  
and ends with this breach " Let the  
" Said Galena and Chicago Union Rail Road  
" Company (although often requested) have  
" not paid to the People of the State  
" of Illinois, and the said Daniel W.  
" Appelby who sues as aforesaid or either  
" of them the said One Thousand Dollars  
" above demanded or any part thereof  
" lent to pay the same to them the  
" Said Galena and Chicago Union Rail  
" Road Company have wholly refused  
" and still do refuse and therefore  
" as well for the People of the State  
" of Illinois as for himself, the said  
" Daniel W Appelby brings his suit.  
Signed William Brown  
" State Atty of 14<sup>th</sup> Jud Circuit.

This declaration it will be observed  
Contains a breach - but No ad Damnum,  
or amount in its conclusion whatever

The venue of this Case was in motion

of the Judge he being interested as a  
Stock holder, changed from Stephenson  
County to Ogle County, where certain  
pleas were filed by the defendants to  
which the Plaintiff interposed a general  
Demurrer, The Demurrer was sus-  
tained and the defendant (Plaintiff  
in error in this court) stood by the  
same and the Court entered up a  
Judgment for the amount of Six  
Hundred Dollars.

This claim was and is clearly  
Erroneous, and is against the well  
settled practice of this State - and  
would be so held if no adjudicated  
Cases were to be cited,

In the case  
of Russell v City of Chicago which  
was an action brought upon a final  
bond, The general rule as applicable  
to all actions of debt was thus en-  
unciated by this Court "No rule of  
"Practice is better established than  
"that in an action of debt the  
"Plaintiff cannot recover damages  
"beyond the amount claimed in his  
"declaration" see 23 Ill Page 287  
This rule is of course by the practice  
of this state now applied to all

Civil actions and I cannot conceive how an exception is to be made to it, I conclude therefore that every declaration must conclude with some amount whether of debt or damages.

That this is the correct rule as applied to actions like the one under consideration. I call the attention of the Court to a number of forms which are found in the 3<sup>rd</sup> Volume of Burrill's Practice, pages 288, 289, 290, and without quoting them at length - I copy the conclusion of one which is on page 289, 10. which was an action *qui tam* by a common informer, and just like the one at bar in being an action on a penal statute, and that concludes in exactly these words.

"Nevertheless the said defendant  
" (although often requested) hath not  
" as yet paid the said sum of \_\_\_\_\_  
" Dollars above demanded or any part  
" thereof to the said People and the  
" said Plaintiff, who sues as aforesaid  
" or to either of them; but to pay  
" the same or any part thereof to the  
" said People and the said Plaintiff

" who sues as aforesaid or to either of them.  
" the said defendant hath hitherto wholly  
" refused and still refuses so to do—  
" To the damage of the said Plaintiff  
" who sues as aforesaid of \_\_\_\_\_ Dollars,  
" and therefore he brings <sup>his</sup> suit "

This then disposes of that point  
in the case— and of course shoud en-  
title us to a supersedeas.

But in addition to this point  
I consider 2<sup>ndly</sup> that the action  
is improperly brought in the name of  
Appleby and the State because by  
Section 42 of the General Railway  
act page 949 of Cooks Statute of  
Ill. it is provided that the ac-  
tion is to be brought by the  
district Attorney " and in the name  
" of the people of the State of  
Illinois " not qui tam by a  
Common informer— but the penalty  
is to be recovered by a suit brought  
in the name of the "People— And  
nothing is better settled than this,  
that if a penalty is created by  
a statute and a mode pointed out  
for its recovery, that mode is  
exclusive of all other remedies

Now the Court will observe that no express authority is given by the statute for a Common informer to bring suit at all, but leaves the matter to the Commonwealth, And in the language of Chief Justice Shaw in the Case of Colburn v Sweet 1 Metcalf, 234 "It is a general rule that no action for a penalty can be maintained by a Common informer unless power is given him for that purpose"

2 East 569, 5 East 318. 3 Bos + Pul 382 and on page 236, he says - after discussing the subject "When no such power is given to any individual or body of individuals, then, as the right to enforce all penalties made to insure obedience to general laws, is in the Commonwealth such action of debt or case, might be prosecuted by the Commonwealth"

And this view will be further confirmed when it is considered that this Court has decided in the Case of the Galena and Chicago Union Rail Road Company v. Lewis 13 Ill, 550, <sup>that</sup> this bell ringing statute is a mere Police

regulation- enacted enacted for the  
protection and safety of the citizen  
and for no other purpose. Therefore  
I conclude that the action is to  
be brought only by and in the  
name of the state- and not  
by a common informer joined  
with the state as this action  
is brought- and upon this point

see McClelland & Conroy 454

Sedgwick on Statutory and Con-  
stitutional Law. page 112

Seward v. Beach 29. Barlow 241  
1 Chittys P. 105-163.

1 Metcalf 232

The judgment is I contend, therefore  
clearly erroneous and we should  
have a supersedeas.

E. Anthony  
Attny for plaintiff in Error

140 53  
Supreme Court

3<sup>rd</sup> Grand Div.

April Term 1861.

Galena & Chicago Union  
Rail Road Company  
Plff in Error.

vs

The People of the State  
upon information of  
Danl. W. Appelluy  
Def't in Error

Points for Plaintiff  
in Error.

Filed Apr 17. 1861

Shelburn  
Clerk

E. Anthony  
Atty for Plff in Error

State of Illinois }  
La Salle Co. } ss.

Supreme Court - Third  
Grand Division April  
Term AD 1861

Galena & Chicago Union Rail  
Road Company vs Stephen Erwin  
vs

Daniel W Appleby who sues as  
well for himself as for the State  
of Illinois vs Erwin

Joseph C. Crain  
of lawful age being first duly sworn  
deposes and says that "Burckhard & Boston"  
attorneys referred to in the affidavit of  
Elliott Anthony on file in this cause, and  
to whom he states he forwarded the certificate  
first issued in this cause, are, and  
have been acting as the <sup>regular local</sup> attorneys in response  
of the said plaintiff in error; and that the  
certificate first mentioned by said  
Anthony, as having been sent to said  
attorneys, was not by them placed in  
the hands of the Sheriff of Stephenson  
county; <sup>if at all, until within the days of this term of court</sup> but that the first knowledge  
which said defendant or his attorneys  
had, that a writ of Superedeas had  
been allowed, was by the Sheriff of said  
Stephenson county handing this affidavit  
the second certificate mentioned by said  
Anthony, issued within <sup>(57)</sup> five days of the

first-day of the present-term of this court-

This affiant-further says that-said Sheriff of Stephenson County, at-the time he handed the <sup>said</sup> second certificate to this affiant, stated to this affiant, that he, (Sheriff), had just received the same; and this affiant avers, that said second certificate, issued from this court-on the 11<sup>th</sup> day of the present-month and within five days of the first day of the present-term of this court, was the only certificate which said Sheriff ever received. And this affiant most-positively denies, that-said Sheriff ever wrote said Anthony any such letter as he pretends to have received from said Sheriff; and most-respectfully submits, that-even if said Anthony had as he pretends, forwarded the first certificate issued to said Sheriff-and which certificates are always in form as prescribed by a rule of this court, whether it is probable ~~that~~ any person of ordinary understanding-much less any attorney of this court-would in the face of the express terms of said Certificate, inform said Sheriff "that they did not consider the Certificate sufficient to arrest-proceedings."

And this affiant asks the attention of this court, to conduct of said Anthony as set forth by himself in his said affidavit - to wit - that even if he did, as he pretends, receive a letter stating that the Sheriff desired some further process to stay proceedings, that he the said Anthony did afterwards obtain and forward to said Sheriff precisely the same kind of process that he pretends to have first sent -

And this affiant submits to this court, that if there is any attorney of this court who could by any possibility fail to comprehend the office of a certificate such as is above referred to, whether it would not ~~be~~ most likely ~~be~~ that one who should apply for, receive & send such certificate to the proper officer, and afterwards write for some writ "to stop said Sheriff from further proceedings"

And this affiant further submits to this court, that even if said letter, <sup>(on receipt of which was sent</sup> ~~for~~ said second certificate), quoted in term by said Anthony did contain the word "seize facias", whether the said letter, did not amount to an application for a supersedeas one, it evidently being his intention to obtain

Something to "Stop the Sheriff" only

And lastly this affiant submits whether, said Anthony as the attorney of said plaintiff having as he admits neglected to apply for a writ of Scire facias at the time when he first took a ~~Certificate~~ <sup>Certificate</sup> of supersedeas on the 15th March last - did use any such diligence, as entitles the said plaintiff to continue in this cause, by applying for the first time for a scire facias, within less than ten days of the first day of the present term of this court.

And further this affiant denies, not only the so claimed diligence of said Anthony - attorney of said plaintiff - but also his pretended good faith, in desiring that this cause should be speedily heard and as an instance strongly tending to the above conclusion, this affiant would remind this court, that this affiant had to apply to said court, to compel a return of papers to the files of said court, so that this cause could be properly prepared.

Subsd. and on to J. Hoar  
before me Apr. 20, 1861.

L. Ireland Clk.

140 53  
Galena & Chicago  
Main Rail Road Co.

U.S.

Daniel W. Appleby & c.

Additional copy  
of McLean

showing why continuance  
should be set aside

Filed April 20 1861

L. Leland  
Clerk

1082  
1107  
2189

State of Illinois  
Sup. Court 3<sup>d</sup> Division

The Galena & Chicago  
Union Rail Road Company

vs

Daniel W. Appleby who sues vs

Error to Ogle

J. B. Rice being

Just duly sworn on oath says that  
he is deputy Clerk of said Court, that  
on or about the 15<sup>th</sup> day of March 1861,  
as affiant believes the transcript of the  
record of the Circuit Court of Ogle County  
in the above entitled cause with an  
order for supersedeas endorsed thereon  
by the Chief Justice of said <sup>Supreme</sup> Court, together  
with a supersedeas bond was filed in  
the office of the Clerk of said Supreme  
Court & that on said 15<sup>th</sup> day of March  
a writ of error was issued & filed in  
said cause & ~~endorsed~~ in the usual form;  
& that a certificate that said writ of  
error was made a supersedeas was on said  
15<sup>th</sup> of March sent to E. Anthony Chicago  
Illinois. Affiant further says that said  
sometime after said fifteenth day of March  
affiant cannot state the exact day  
but believes it to have been sometime in said  
month of March said Anthony ~~made~~

to the Clerk of said ~~Supreme~~ Court  
received a letter from said ~~Anthony~~  
requesting him (to send to the Sheriff  
of Stephenson County a writ of  
Supersedeas or some writ which  
would stay the Sheriff of said Stephenson  
County from proceeding in the above  
entitled cause.) Affiant does not  
remember the exact words of said  
letter but believes the above statement  
~~contained in~~ enclosed in brackets to be  
the substance of said letter.

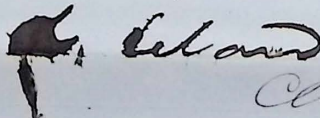
∴ Affiant further says that on the  
receipt of said letter he found by  
examining the Clerk's docket that a  
Certificate, that said writ of Error ~~was~~  
was made a Supersedeas, had been  
sent to said Anthony on the 15<sup>th</sup> day of  
March 1861. Affiant further says that  
he then issued another Certificate that  
said ~~supersedeas~~ writ of Error had been  
made a supersedeas & sent the same  
to said Anthony instead of sending  
it to the Sheriff of Stephenson County  
as requested in said letter, so that the  
said Anthony could order another writ,  
if the one so sent as last above stated  
should not be the kind of writ he wished.

Affiant further says that he has  
examined the affidavit made by him

affiant in this cause & filed April 12, 1881  
& says that ~~the~~ <sup>the effect of the</sup> statement therein contained  
in the following words "that said Anthony  
"did make use of the words ~~made~~ men-  
"tioned by him in his affidavit in the  
"letter which said Anthony wrote to  
"the Clerk of this Court" was made  
by ~~affiant~~ misapprehended by affiant  
at the time he made the affidavit, and  
affiant did not notice the mistake  
until after the same was put upon  
file. Affiant further says that he  
cannot now ~~remember~~ remember the  
exact words used by said Anthony in his  
letter to the Clerk of this Court, but affiant  
~~does not~~ <sup>the content of said letter to have been</sup> believes ~~it to~~ <sup>to be</sup> substantially  
what is ~~in~~ contained in the clause en-  
closed in brackets above;

Subscribed & sworn to  
before me this 20<sup>th</sup> day  
of April A.D. 1881.

J. B. Rice

  
Clerk.

~~53~~ 53  
The Galena & Chicago  
Union Rail Road Company

Appleby

Further affidavit  
of J. B. Rice

Filed April 20 1861

L. Leland  
Clerk

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the vicinit Court for the County of Ogle Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the vicinit Courts of Ogle County, before the Judge thereof, between The People of the State of Illinois on the relation of Daniel W. Appleby

plaintiff, and The Geneva & Chicago Union Rail Road Company

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by the complaints of said defendant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15<sup>th</sup> day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.  
by J. B. Rice Deputy

140

*The Galena & Chicago Union*

*Rail Road Company*

No.

vs.

*Daniel W. Appleby who*

*is vs*

**WRIT OF ERROR.**

*This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.*

*L. Leland*

*Clerk.*

*J. D. Rice & Son*

FILED

*March 15<sup>th</sup>*

A. D. 1861

*L. Leland*

*Clerk.*



Supreme Court of Illinois  
Third Grand Division  
April Term A.D. 1862

Galena & Chicago

Union Rail Road Co  
vs  
M. in Ex.

Daniel W. Appleby  
vs  
Ex. in Ex.

} Ex. to Ogle

And now comes  
said defendant - by Sweet & Crain  
his attorneys and further moves  
this court - to set aside the order  
heretofore entered in this case reversing  
& remanding the same because of no  
prejudice points on behalf of said  
defendant - found filed on first call  
of this case and for reason  
thereof said defendant - shows the  
court the following

That - previous to the  
present Term of this court - it was  
arranged and understood between  
H. Crain & M. P. Sweet attorneys (residing  
in Freeport Illinois) for defendant -  
that said Crain should take charge  
of this case in this court - on the part  
of said defendant - and said Crain  
made preparation accordingly and

for argument of said case, but  
that when the first-day of the present  
term of this court arrived the Stephenson  
County Circuit Court in said State was  
then and had been sitting for some  
days: That said Crain had several  
cases pending in said Stephenson  
Circuit Court which required his  
constant personal attendance on said  
last-named Court: That said Crain  
had no copartner or any one  
associated with him in said cases  
with whom he could leave the same  
in charge during his absence from  
said Stephenson Circuit Court - but  
for the purpose of ascertaining the  
probable time when this case would  
be reached on first call, said Sweet  
came down to this Court on the  
first-day of the present term ~~and~~  
was to telegraph said Crain if there  
was any probability of said case  
being called the first<sup>day</sup> - That during  
said first-day said Crain was engaged  
in the trial of a case by jury in said  
Stephenson Cir. Court which occupied the  
entire day - but received no telegram  
from said Sweet: That on the

Morning of the second day of present term said Pugh arrived at home at daylight direct from Ottawa and informed said Crain that probably said case would be called on that day: that said Crain immediately prepared to attend this court - went to the rail road station but by mistake took the wrong train and the train which would have enabled him to get here in time to have attended to said case left without having him on board: that on ascertaining that such was the case said Crain telegraphed to Hon. S. Bruce one of the Justices of this court - that he said Crain was left as aforesaid and requesting the court for that reason to pass said case: but that Justice Bruce had not when the telegram to him reached Ottawa arrived at said last named place and did not arise until the third day of said term and after this case had been reversed & remanded

Pugh & Crain

Attys for Defendant

Supreme Court - of Illinois  
Michael Grant Jackson  
April Term A.D. 1862

State of Illinois }  
La Salle County } ss

Julien & Chicago  
Main Mail Road Co.  
vs  
Duff in Cr.

Daniel W. Appleby who  
was & c. Sept. in Cr.

}  
E. To Cope

Additional Vermin of  
lawfull age being first-duly sworn  
deposes and says that he is employe  
as counsel for said defendant - and  
that this deponent drew the foregoing  
motion and that the facts therein  
stated lie within his own personal  
knowledge and that he knows said  
facts to be true

Subscribed & Sworn to  
Illusion

before me this 29<sup>th</sup> April

A.D. 1862 L. Leland Clerk  
J.P. - in Cr.

Believing the narrative of the  
counsel's adventures in this  
case to be true - it is respectfully  
submitted on the part of the plaintiff  
in Error - that no legal excuse  
is presented - why the Circuit  
Court business of Stephenson  
Co - should have preference  
over the business of this court  
~~or why~~ The judgment in the  
case was rendered by the court  
in strict conformity to the  
rules of this - The plaintiff's  
brief were handed to the clerk  
on the 1st day of this term  
and were marked filed on the  
morning of the 29 day - the case  
was not called until about  
4. O Clock in the afternoon of  
said second day and I believe  
that a strict compliance  
with the rules of this Court  
were observed.

E. C. Anthony  
for Plaintiff in Error

53 - 167

Dulena v Lebuays

vs  
H. R. Lee

vs

Daniel W. Appleby

& c

Motion & Cff.

Filed April 29 1882

L. Seland

clerk

Motion allowed

Motion to dismiss  
because appellant had  
not filed his points  
and authorities one  
day before dismissal

Know all Men by these Presents, That the Galena and  
Chicago Union Rail Road Company

as principal, and Walter

L. Newberry as security, are held and firmly bound

unto Daniel W. Appleby who sues as well for the State  
of Illinois as for himself and said State of Illinois

in the penal sum of Twelve Hundred Dollars  
good and lawful money of the United States, for the payment of which, well and truly

to be made, the said Galena & Chicago Union Rail Road  
Company & its successors & said Walter L. Newberry

binds himself & heirs, executors and administrators,  
jointly, severally and firmly by these Presents.

Witness, the corporate seal of said Galena & Chicago  
Union Rail Road Company and the seal of Walter  
L. Newberry this 17<sup>th</sup> day of March A. D. 1861

The Condition of the above Obligation is such, That, whereas the above named  
Daniel W. Appleby who sues as well for the State of  
Illinois as for himself

did, at the March Term of the Ogle Circuit Court,  
held in and for the County of Ogle in the  
State of Illinois, A. D. 1860 recover a judgment against the above bounden

Galena & Chicago Union Rail Road  
Company

for the sum of Six

Hundred Dollars

to reverse which said judgment, the  
said Galena & Chicago Union Rail Road  
Company

have sued out a Writ of Error from the Supreme Court, within and for the Third  
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the  
said Galena & Chicago Union Rail Road  
Company

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said  
judgment, and all judgments, costs, interest and damages which the said Supreme Court  
shall adjudge against said Galena & Chicago Union Rail Road  
Company and abide the order and judgment of said Su-  
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full  
force and effect.

[SEAL.]

Galena & Chicago Union Rail  
Road Company per

W. L. Newberry Jr. [SEAL.]

W. L. Newberry [SEAL.]

Attest  
W. M. Garrabell  
Secretary.

State of Illinois }  
Cook County }

Elliott Anthony of said

county being duly sworn deposes and says that he is well acquainted with Walter L. Newbery the security in the within bond & that said Newbery is possessed of a large amount of real estate and is abundantly able to pay the amount of the penalty of said bond or any judgment that may be pronounced in said case.

Elliott Anthony.

Sworn to before me the Undersigned  
Clerk of the Superior Court of Chicago.

Witness my hand & the Seal of  
said Court at Chicago in said  
County this 13<sup>th</sup> day of March A.D. 1881

Walter Kunitall Clerk

No.

SUPREME COURT

THIRD GRAND DIVISION.

Galena & Chicago Lumber  
Rail Road Company

vs.  
David W. Appleby

SUPERSEDEAS BOND.

Filed March 15<sup>th</sup> 1881

L. L. Lewis  
Clerk.

Supreme Court Third  
Grand Division  
April Term A.D.  
1861.

Galena & Chicago Union Rail  
Road Company  
vs Plaintiff in Error  
Daniel W. Appleby who sues  
as well for himself as for  
the State of Illinois

State of Illinois }  
La Salle County }

Elliott Anthony  
being duly sworn deposes  
and says that he is the  
attorney for the plaintiffs  
in Error in the above entitled  
cause and that he obtained  
the subpoenaed in this cause  
as is stated by Joseph A. Cain  
in his affidavit which  
he has filed in this cause.

This deponent further  
swears that when said subpoena  
was granted - that he received by

from J B Rice deputy clerk of the court  
letter, dated either the 15th or 16th  
of March 1861 - informing him that  
the writ of supersedeas had  
been granted & enclosing a  
certificate to that effect. This  
deponent further saith that  
immediately upon the receipt  
of said certificate he forwarded  
it to the sheriff of Stephenson  
county directing the same to  
Messrs Burchard & Boston attorney  
at Freeport. This deponent further  
saith that he then wrote to  
the clerk of this court directing  
him to send a cert of  
supersedeas to the sheriff  
of Stephenson county and  
thought no more about the  
matter until about three  
or four days after the time  
when he had sent the certificate  
to the sheriff Stephenson  
county as above stated when  
he received a letter from  
the sheriff of Stephenson  
county informing <sup>him</sup> that he  
had <sup>not</sup> presented to him by  
Messrs Burchard & Boston

The certificate of a writ  
of error had been allowed  
but that Messrs Sweet & Cain  
the attorng for Appleby were  
still urging him to levy  
upon the railroad property  
& that they did not consider  
the certificate of a writ  
of error had been granted  
a writ <sup>supersedeas</sup> sufficient to arrest proceedings  
or requesting me to furnish him  
some process. Upon the  
receipt of this information I  
immediately wrote to the clerk  
of this <sup>court</sup> a letter explaining  
the matter & requesting  
him to send to the sheriff  
of Stephenson county a  
"writ of supersedeas or  
Oce facias or some writ  
that would stop said  
Sheriff and all concerned  
from further proceedings"  
using to the best of this  
deponent's recollection  
these very words.

In response  
to this the deponent ~~recalled~~

no answer ~~but~~ <sup>enclosed in a letter</sup> excepting another  
certificate that a writ of  
error had been allowed.  
His deputy then forwarded  
that certificate also to  
the sheriff & telegraphed  
him that he <sup>the sheriff</sup> would also  
receive from the clerk  
a regular *scire facias*  
process. His deputy  
further saith it is entirely  
false & untrue that  
he either neglected or  
refused to request the  
clerk of this court to  
issue a writ of *scire*  
*facias* - on the contrary  
his deputy saith that  
he did request said  
clerk to issue the proper  
writ of *scire facias* to  
issue - and that he  
supposed & believed that  
said writ had been issued  
to the sheriff of Stephenson  
county - and never knew  
that it had not issued until  
the 18th inst.

This deponent further saith  
that he did all in his power  
to get the proper writ issued  
from the Clerk of this Court -  
and that he sent said certificate  
that a writ of ~~certiorari~~ <sup>had been allowed</sup>  
to the said Sheriff with all  
the despatch that he was  
capable of. This deponent further  
saith that he has not  
received any notice whatever  
from the said defendants  
in error that they desired  
to try this case at this  
term as required by the  
rules of this Court and  
that the said defendant in  
error ~~did not~~ enter his  
appearance in this cause until  
this day - This deponent  
further saith that he has  
in good faith done all in  
his power to prepare the case  
and should not be held  
responsible for ~~the~~ <sup>the</sup> ~~in~~ <sup>the</sup>  
~~preparation~~ <sup>the</sup> ~~of~~ <sup>the</sup>  
misapprehension of the  
Clerk - This deponent therefore

respectfully submits to this  
Court that this case accords  
to the rules of the Court  
cannot be heard by this  
Court at this term - and  
that the same was properly  
continued - and that said  
continuance should not  
be set aside.

Subscribed & sworn to }  
before me this 19<sup>th</sup> } Elliott Anthony  
Day of April 1861. }  
L. Island Ck.

Gulna & C. U. R. Co

vs

Daniel W. Appleby  
who sues as well  
for himself as for  
the State of Illinois

Affidavit of  
E. Anthony  
showing cause why  
the continuance should  
not be set aside.

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GALENA & CHICAGO UNION R. R. Co.,  
Plaintiff in Error,

vs.

DANIEL W. APPLEBY, WHO SUES AS WELL  
FOR HIMSELF AS FOR THE STATE OF ILLINOIS,  
Defendant in Error.

## ABSTRACT OF THE RECORD.

### *Statement of Case.*

PAGE OF REC. THIS was an action of debt, commenced in the Circuit Court of Stephenson County, by one Daniel W. Appleby, against the Galena and Chicago Union Railroad Company, to recover certain alleged penalties which said Company incurred under the statute, for not blowing a steam whistle or ringing a bell in the neighborhood of a public highway.

2, 3

### *Præcipe and Summons.*

5 First Count of Declaration, in substance, as follows: Daniel W. Appleby, by William Brown, State's Attorney of the Fourteenth Judicial Circuit of the State of Illinois, who sues as well for the People of the State of Illinois as for himself, in this behalf, complains of the Galena and Chicago Union Railroad Company, being summoned, &c., of a plea that they, the said Defendants, render to the People of the State of Illinois, and to the said Dan'l W. Appleby, the sum of one thousand dollars that the said Defendants owe and unjustly detain from them. Avers that Defendants, on the 24th of July, A. D. 1855, were the owners of said Railroad, situated in part in said county, over which road at said time Defendants propelled engines and cars; that said Railroad crossed a public highway in said county; that, on the day and year aforesaid, the said Defendants propelled an engine across said highway without blowing a steam whistle or ringing a bell of thirty pounds weight at the distance of eighty rods from the place where the said Railroad crossed the said public highway and while crossing the said highway, contrary to the statute, whereby an action hath accrued, &c.

7, 8, 9, 10, 11,  
12, 13, 14, 15,  
16, 17 Contain eleven other counts of the said Declaration, each for a separate penalty; they are all substantially the same as the first count.

*See record for the  
Conclusion*

Record,  
Railroad  
to the  
Daniel W.  
the said one  
hereof; but to  
said Galena and  
olly refused, and  
the People of the  
Daniel W. Appleby

“WILLIAM BROWN,  
of 14th Judicial Circuit.”

ation.

ed by the Judge of Stephenson Cir-  
Court.

rer, and judgment against the Defendant

and judgment.

Term, the Defendant filed two pleas; 1st, that  
Defendant is exempted from the operation of the statute  
this action is based, because the 38th section of the  
statute of the Railway Act was repealed as far as it ap-  
the Galena and Chicago Union Railroad Company, which  
was passed Feb. 24, 1854.

The 2d plea sets out and avers that the said action of the said  
Plaintiff is brought and founded upon a supposed amendment  
of the Defendant's charter, which was passed Feb. 16, 1855,  
stating the title of said act and setting forth that the act repeal-  
ing the 38th section of the General Railway Act, so far as it ap-  
plied to the Defendant, was repealed; and then states that a  
special section was enacted applying specially to the said Galena  
and Chicago Union Railroad Company, requiring it to carry a  
bell of thirty pounds, &c; and then states that this pretended  
amendment to the charter of the Defendant was rejected by the  
Defendant by a formal vote, which resolution of the Defendant  
is set out in the words used by the Defendant.

To these pleas a general demurrer was interposed, which was  
sustained by the Court, and Defendant electing to stand by its  
Demurrer, a judgment for \$600 was entered against Defendant.

CIT

ings  
adant

contained,  
to maintain

d in the aforesaid  
right to prosecute  
of Illinois, or *qui*  
e said State of Illinois.  
judgment in favor of the  
Appleby, and the State of

ering a judgment in favor of the  
A. W. Appleby, and the State of

sustaining the demurrer to the Plaintiff

should have been for the Plaintiff in Error,  
Chicago Union Railroad Company, and not for  
in Error.

the said Galena and Chicago Union Railroad Com-  
that the judgment aforesaid, for the errors aforesaid  
other errors apparent in the Record and proceedings  
aid, may be reversed, annulled, and altogether held for  
ing.

E. ANTHONY,  
*Att'y for Plaintiff in Error.*

53 140-3167

The Galena Libr.

Mr R. B. Co  
As

D. W. Appleby

Abstract

Filed Apr 18. 1861

A. Leland  
Clerk

Supreme Court of Illinois  
Third Grand Division  
April Term AD 1862

Galena & Chicago  
Union Rail Road Co  
vs. Pltff in Error  
Daniel W. Appleby who  
was &c

Ernest S. Cople

And now comes  
said defendant by Sweet & Crain his  
attorneys and moves this Hon. Court  
to set aside the order heretofore at  
the present term of said Court entered  
in this case reversing & remanding  
said case because of no printed  
points on behalf of defts. found filed  
on first call of this case.

And for reason why said  
plaintiff should and could not have  
inserted in the entry of the order  
aforesaid, this defendant calls the  
attention of the Court to the fact  
appearing by the Records of this case  
that said plaintiff had not, as required  
by rule of this Court, filed a copy—  
(for use of defendants counsel)—of  
plaintiffs printed brief of points and  
authorities, to be used by him in argument

Of this cause - one day previous to  
the day when this cause was reached  
on first-call, and was reversed &  
remanded as aforesaid. The said  
Records showing that said plaintiff's  
points & authorities were filed on  
the 23<sup>d</sup> day of April 1862 - The same  
day said order of reversal was by said  
plaintiff taken as aforesaid

For the reasons aforesaid  
this defendant - Respectfully asks this  
Court - to reinstate this cause in its  
former order when this defendant  
will be and now is ready and willing  
to proceed to argument - when it  
shall be the pleasure of this Court  
to hear the same.

Dunt & Leman  
Jfto Attor's

53-  
Galvan & Cahoy  
v R. R. o

Rec'd by Mr. [unclear]  
[unclear]

[unclear]

Filed Apr. 26 - 1862

L. Leland

Clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GALENA & CHICAGO UNION R. R. Co.,  
Plaintiff in Error,  
*vs.*  
DANIEL W. APPLEBY, WHO SUES AS WELL  
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### *Præcipe and Summons.*

5 First Count of Declaration, in substance, as follows: Daniel W. Appleby, by William Brown, State's Attorney of the Fourteenth Judicial Circuit of the State of Illinois, who sues as well for the People of the State of Illinois as for himself, in this behalf, complains of the Galena and Chicago Union Railroad Company, being summoned, &c., of a plea that they, the said Defendants, render to the People of the State of Illinois, and to the said Daniel W. Appleby, the sum of one thousand dollars that the said Defendants owe and unjustly detain from them. Avers that Defendants, on the 24th of July, A. D. 1855, were the owners of said Railroad, situated in part in said county, over which road at said time Defendants propelled engines and cars; that said Railroad crossed a public highway in said county; that, on the day and year aforesaid, the said Defendants propelled an engine across said highway without blowing a steam whistle or ringing a bell of thirty pounds weight at the distance of eighty rods from the place where the said Railroad crossed the said public highway and while crossing the said highway, contrary to the statute, whereby an action hath accrued, &c.

7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 Contain eleven other counts of the said Declaration, each for a separate penalty; they are all substantially the same as the first count.

PAGE OF REC. The conclusion of the Declaration, on page 17 of the Record, is as follows: "Yet the said Galena and Chicago Union Railroad Company (although often requested) have not paid to the People of the State of Illinois and to the said Daniel W. Appleby, who sues as aforesaid, or either of them, the said one thousand dollars above demanded, or any part thereof; but to pay the same to them, or either of them, the said Galena and Chicago Union Railroad Company have wholly refused, and still do refuse, and, therefore, as well for the People of the State of Illinois as for himself, the said Daniel W. Appleby brings his suit.

"WILLIAM BROWN,  
"State's Att'y of 14th Judicial Circuit."

- 18 Security for costs.
- 19 General Demurrer to Declaration.
- 21 A change of venue ordered by the Judge of Stephenson Circuit Court to Ogle Circuit Court.
- 23, 24 Overruling of Demurrer, and judgment against the Defendant for \$600.
- 25 Vacation of said judgment.
- 26, 27 At the March Term, the Defendant filed two pleas; 1st, that the said Defendant is exempted from the operation of the statute upon which this action is based, because the 38th section of the general statute of the Railway Act was repealed as far as it applied to the Galena and Chicago Union Railroad Company, which act was passed Feb. 24, 1854.
- The 2d plea sets out and avers that the said action of the said Plaintiff is brought and founded upon a supposed amendment of the Defendant's charter, which was passed Feb. 16, 1855, stating the title of said act and setting forth that the act repealing the 38th section of the General Railway Act, so far as it applied to the Defendant, was repealed; and then states that a special section was enacted applying specially to the said Galena and Chicago Union Railroad Company, requiring it to carry a bell of thirty pounds, &c; and then states that this pretended amendment to the charter of the Defendant was rejected by the Defendant by a formal vote, which resolution of the Defendant is set out in the words used by the Defendant.
- To these pleas a general demurrer was interposed, which was sustained by the Court, and Defendant electing to stand by its Demurrer, a judgment for \$600 was entered against Defendant.
- 33 Clerk's certificate to the Record.

The Errors Assigned in this case, are as follows:

1. That the declaration of record and the matters and things therein contained, are not sufficient in law for the said Defendant in Error to maintain the aforesaid action.

2. The declarations and matters and things therein contained, are insufficient for the Defendant in Error, Appleby, to maintain the aforesaid action.

3. Daniel W. Appleby was improperly joined in the aforesaid action with the State of Illinois, and had no right to prosecute the aforesaid action jointly with the State of Illinois, or *quidam* in his own name and in behalf of the said State of Illinois.

4. The Court erred in rendering a judgment in favor of the Defendants in Error, Daniel W. Appleby, and the State of Illinois.

5. The Court erred in rendering a judgment in favor of the Defendants in Error, Daniel W. Appleby, and the State of Illinois.

6. The Court erred in sustaining the demurrer to the Plaintiff in Error's pleas.

7. The judgment should have been for the Plaintiff in Error, the Galena and Chicago Union Railroad Company, and not for the Defendants in Error.

Therefore the said Galena and Chicago Union Railroad Company prays that the judgment aforesaid, for the errors aforesaid and for other errors apparent in the Record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing.

E. ANTHONY,  
*Att'y for Plaintiff in Error.*

