No.____12293

Supreme Court of Illinois

Galena & Chicago Union R.R.Co.

VS.

Yarwood.

71641

Stale of Ollinis Nans County
Hear by the Honorable Isane & Unlin dudge of the Shribein the Undicial Ceverit and freshing Judge of the Manne Eventy ceremit leant of the Shats of Illinio at a derm of burd bount byun and held at he coult House in Geneva in our County on the Southenth day of may in the year of our don't one Thousand Eight Aundred and fifty fino busent The How Cource of Milan Undye Various & Bussler Sheriff Attest Luthen Dearbon Clus To it remembered that in the 13 day of October AD 18 23. Then was circuit devout a puerhas which is in the mis State of Illimis Mandeound & Obane County berrent bomb.

Otor by As 1888 The balena schrengo (Case)

will the clux of a summons in the above suitely of lever being lever term of our levers Danungest 11. 11111, Oct 31853 Edn Gifford Steff all was ifund which is in the words of iguns folling State of Illining the Scople of the State of Alling In the chriff of love County Guiling the Command you to Summins The Galena + Chicago Union Rad Road Compag if they shall be found in your count permale In be and uphear before the circuit court of said County on the fruit day of the mext term thereof In but holden at the court House interior ensund County onthe furt monday of Thornton suxt to answer unto Sems It yarwood en aplea of loase In the damages of the said plaintiff as he says inthe sum of ten Thousands Dollars and have you then when this wint with an Endowement thereon inwhat munn you Shall hard beenled the dam Men sucher Deurbon clin ofour Sun Court and the Tent thenoful serieva

ensur learning this 13th day of Coloh Sylat Blanchard Deinty was the Endorsement of the Shirt with words Level & reading to William Im Varrabee Lecretary of the within named had boul Company October 19 1833. and John S. Tunn pusalent of the inthe named Raid Road Company october 24/1883 odelwany to Eacholy them a copy of this unit Cyms & Brudley By Stroken Deputy and afterwards to wit on the Har van fled in sud bleek office when is in the words officers fallowing to not Late of Minors 1 f.

Name County Manie County Circuit bount Month of Adress

Servis, H. Larwood

The Galina & Chicago Union Pair Read Company Case

Suris. A. Janvood by Amord & Gifferd his attenies Complains of the Gelina & Chicago Union Rail Road Company a conferration only organized much the Statute of the State of Ellissois who have been dely summorned to in a please of trespap on the case. For that on the second very of angust in the year leighten hand na fifty two at legin in the said want of ten to said Defindents were then other the oroners of exofenition Pail Road then constructed Abuilt from Chicago in the county of book in said State, to Betorden in the county of Boon State aformaid and were then and there common carried upon said road, and the owners of cutain ingines, papergu freight ears, which the said defendents were then ofer a long time before that him herd been running over said would way any excepting Sundays from time to time from to the said lehrago & Bel viden from the Intermediate Stations on so Road for the earning reouvigance of Jaapungsis from to the said places for him & reverd to them in that behalf and thumpson afterwards (to wit) on the day year last aformin at begin in said county of tame the send Defindents received the raid plaintiff into one of their said cars as a papenger, or a reasonable compeneation to them the said Defindents in that behalf to be conveyed from the said algin to Clinton in said County of Kenn I said begin I clinton bring then the Nations or stopping places for the said cars on said

and it then and their became and was the auty of the said Definements to early the said plaintiff sufily I canfully without any loss to him, by my carlefonies, night gener or brack of duty of the said definants in that or half and to furnish suitable cars brigan, sond ferneurs, confere Ishelful engineers reorductors to conduct ricemagn the serve, and also to provide of furnish a permanent, entstantial, safe Istraiser was rail to un the said cars and Engine whom at the said have County, yet the said Defindants not regarding their duty in that behalf knowingly rollfully violented their said outy, and elia then I there suffer spirmit their said wood I rails to be Premain n inscense, unach examgenous situation to run saw lengin Hears upon & min penticularly aid knowingly earlifely oughignest, suffer farmet the iron swooden rail upon which the said lengine & cars then 4then run, to be constructed of favor material & to be improperly sinsufficients, fastund stroumed to said wood in so much so, that on the day ryran lust aformand the said plaintiff then king one of the said ears of the said defendants as papenger afensaid and while the said care were were bring run from the said legges to the said clinton, by the said defindents thing. by the engineer review thereof Servents of the send defendants, and just before reasting the said dation or stofaling palace at the said Clinton by the action of the wheels of the said lengine rears the said iron? wooden ruits were town up fir a great distance (to wit) for the distance of bound, feet in consequence of the & reals being

Aird whereas afterwards (tourt) on the day and your last aformaid, at begin aformaid, the I Defendants being then of the the owners of peroperities of a certain Rail Road called the Galina & Chicago Anion, Rail Road, then constructed from the said Chicago to the said Beliau I also being then I there the owners peroperators of enterin engins, papenger ofreight ears, which the said define ants were then for a long time before has been running from time to time on the said wad from to the said lehreago & Belviden & from to intermaiale thations on the said would and earning papengu of might thuis from the the series peace of the said intermediate stations for him I revoured to them in that hehalf, aid never the said precintiff into one of their said cars to be carried safely reanfully as a paperger, for a reasonable compressation to be paid to them in that behalf from the seried belgin to clinton in the said County of Kenn, and the said defendants were then I there in law bound to convey the said plaintiff sufely I canfully without loss or injury to him by any can leprus, ingligence or wet of any on their parts from the said Relging to the said Cinton, and also to provide a proper I safe wad, proper & skieful eraginus, conanother & truckman, to conduct from the senne on acid road I to nin the said engine Fears in a safe & lawfiel manner for not regarding their said outy tobligations in that behalf, the said definants, on the day and year of macin, at legar aformand carelyply rugling only

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constructed the said road, and suffered the senne to remain I to be I remain dangerously out of re-Jaan, taid not in any manner perovide a sufe I new road to min their said engine I cars upon & aid not provide prudent rekieful enginurs, con auctus & brakmen to conduct the same, but on the contrary the said cars, into one of which the said pleins tiff was received ting one of which he then was being con orged from the o legins to the said clinton, as afinsend. by the said afterdants, was own own the said road at double the ordinary speed annah faster them the same couldbe run over the said wad without fauting the lives of all the papingus in said cars in great danger Planie, and in consequence of the great & designous spend at which the said lengin rears were then, there rund ranuon over the said Road from the said beigin, to the said clinton ofner hefor, na ching the usual stopping place at the of clinton the non twooden rail of the said road was tom, up for a quat circuma (to unt) for the distance of twenty fut & the car in which the 3 plaintiff then was as papinger afinaid was thrown violently. of the said track by naron of which the life of the pleintiff was in great paid and while the said ear was so off of the said truck I said can being thill arion, at a very repaid rate over the ties of said mad tappearently about to be arion down a very stup bank then other bring the said plaintiff to execupe the

impending danger, to save himself, prinfeed from the said car, to the ground & by navon of which his left lig was broken men the unkle, his ance severely Minumed Strand & bruned this body otherin sweely bruised singuna, all of which was canned by the imperious, cantipul engligence of the said defendants their revants the said engineer evenderetor Abrahmen, by nacon of the secied injurus so neword as aformaid the said presentiff was confined to his room, for a great lingth of him (to wit) for the space of form months and was sich, In sleine rouffered grat frein both of body? mind for a great lingth of time, I to wit , I he therto antivas obliged & aid pay, ley out referred large sums of money 1 to with fin humand wollers for mude cime mudical aid, nursing to in Kabout indiavering to be curd of the injuries and by nason of the said injuries was faindened & forwarded from Jonforning & transacting his murpary affairs obrainers by him to be fewformed throuser that aming that time at legan aformand to the samege of the said plaintiff our Thousand Dot-

And while aforming afterward, to wir in the day ryper last aformaid at begin aformaid the said Defendents were the rowers for fertiles of a entire Rail Road rates of entain Cars rugines & were then of here running thosaw on the raise Road over them of here engages in, earning freight spackingers for him & reward

to them in that whalf from begin in said County to Clinton also in said County thing such carriers of papergus, the said sufindents then there received the peraintiff note one of their said cars as a paperiger for a nasonal compensation to be paid to them in that whalf to we safrly, canfully I severally carried from the said Selams to the said Clinton it became twas the duty of. the said definaents to heavy their in order Igood repair a good, safe; proper recen track on which their Laid ligin Hars thous um in rufity leeles to heir suitable reafe cars rengines for the country and of & transportation of purpurgues lates to have good faithful, who thefur raiserest engineers, commenter thrukmen to um said cars ringines with perofen spend Rafely taanfully own a war raid road yes the said cufinaents not nacioning their duty in that he half, and not provide a good, safe, seeme & proper track on which their said cars surgine should run with safely; buton the contrary thereof. The said track was imperofenty insecurely, negligibly teaulifely constructed trous dem groundy out of repairs so their I Engine reus were not run our supons the said Koad in safety - moraid the said defendants, to urt, on the day typan hat the place afen said empery suitable engineras, conductors Abrahemon I sum their I cars rugine at a seep o proper speed but on the contrary thereof, the said aufundants then um thein send cans so evenlighly trugligents & with such dangerous reflicity over a report the said road to them in that whalf from begin in said County to Clinton also in said County Alving such carriers of papergus, the said sufindents then there weined the peraintiff note one of their said cars as a papering for a nasonal compensation to be paid to them in that whalf to we safily, canfully reverally carried from the said Celans to the said Clinton it became twas the duty of. the said definaents to heavy their in order egood repair a good, safe; propen recen track on which their Laid ligin Hars thous um in rufity beles to heior suitable reafe cars rengins for the convey and of D transferreation of purposes lates to have good faithful, soba, shiefur raiserut engineers, contractor thruk men Ito run said cars ringines with perofen spend Rafely Lacufully over a war sound roud yet the said aufinaents not organing their duty in that he half, and not provide a good, safe, seeme & propon track on which their said cars surgine should non with safely; baton the contrary thereof. The said track was imperoperly insecurely, negligently reunliply constructed twas dem grownly ont of repairs so their I Engine reus were not run our enfaors the said Koad in safety - mor aid the said defendants, to urt, on the day your tat the place afen said employ suitable engineers, conductors Hrahemon I mu their of cars orngine at a seef of propen speed but on the contrary thereof, the raid aufundants then men thein send cans so centify trugliquety & with such dangerous reflicity own o report the said road

are in consequence of such improper reaches speed sunferopen, condition of the said track, that huntofin, to wit, the day syrar aformered, at I'm counts aformered I while I praintiff as such papenger as afonaud the car in which said plaintiff was rising was thown with qual violence off the seid truck othe said plaintiff with out fault on his peut I by reason of said early sus and in peropen evaduet of said suferaments thereby come with qualfore & vivine upon the earth, and his left lig was thursy roben men the anch, his unch awardy strained & burined withen parts of his body sweety brained ringined by navn of which, injuries the plaintiff was confined. to his room for a quat lungth of time to unt-for the space of four months, and suffered great pain both ofbody & mind was sick, son Hame for a long time to wit hither to Thy mason of the said injuries was obliged raid pay, tay our refound large rums of money, to wit, - five humand 201lass teabout macabining to be could therof sevas also by the said inpuries so received as afenraina hindura promites from performing thanseisting his nearpary business by him then & there at belgin afiniaid to be perfumed and trunser chet, to the damage of the o pleintiff Jen thousand Dollars -And whereas after raids to unt on the day ryran last a forsaidat begin in said County of Name the said definaents were common carriers andwere propiled of a locomotion with cars theuto attached, engaged rupleloyed upon the Rail Road track of the said defendants in the business of the said de-

fundants in rabout carrying papingers in said County of Kam

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I while the said train was arrown, grider, managed & controlled along the said track by an engine and servants of the said afindants of while the said Defendants by their sevents efendant had they man agunest of the said train, the said plaintiff, at the special instance & rignest of the said referents breune twas a papering ind upon said train to be conveyed & carried from begin in the said bounty of how to beliston also in the said country fire entain fair o reward in that behalf, another said Defendents then There remore the said plaintiff as such papunger afernaice & thereupon it became rwas the outy of said definaents, to have, a good, safe & peroper back shaw cur speroper care that the said plaintiff should be rafely & security conveyed reasoned to the said Clinton in the acid country of law yet the said defendants, not regarding their outy in that behalf them & there had a truck so imparofactly consuiter bly & dangerously made o so badly and dangerously out of repair, I by their said enginee so early by timpersonly drove, managed the hanted said train, Hocomotives that by & through, the caulifornes, my beginn simprofen evaduat of the said defendants by their said engineer, in consequence of said improfer track the said can of the said defineauti in, which saw plaintiff was a papenger as a fine and was then of there thrown of the track with great violence of the by the send plaintiff come with quat violence & thereby the send plain tiff came with quat-fire violence upon the earth this left lig was thinky troke mear the and, is and bady strained brusia, and the parts of his body sworty buised ringined by receive fraid injuries so received as a formacion the praintiff was confined to his worn for a quat angth of time to wit for the space of four months twas obliged & did pay layout & Espand large sums of severy to wit

and afterward with with 10th 13 they of Chovento AS 858 the following the wind which is in the words of yours following to with Name levent leout The Galena + Chicago Lewis A Yawood and the sund defendent y Comes and defends the wrongs and enjuries when no and Long that they are not quell of the said Several Supposed grewaners about land to their charge in manner and form as the sur plantiffs bath about there of Complained against them tof this they ful themselves whom the county of Vax Alcallins Defts ally and the fleft dock the Like : Chr 17, 1888 alty fulliff Sefful Tollar and afterment to enton the 23 day of may ASISOT the was State of Ollinis feleden And affrair wholis in the word of synne follows to sich 11293-47

Ut a Eufrem Coint try an and held at Ottown on monday the 12" day of come inthe year of our Tork one Thousand Eight Humbred Eran Direpin of the State of delines Rusent the Homenthe Summet Break Chiffentin Stalker B. Seulis Arivay august H. 1804. Galena & Chierno aimi
Rud Road Company & Error In Tano Lenis Holynewood outhis day came again the Sand fraction and the court harmy deligenty Examined and inspected aswell the heart and Trocubings aforesaid as the matters and things therein afigued for Evon and tring now sufficiently advised of and concerny the premier are of opinion that en, he heart and Proceedings afousaid und in the unother of the futyment afusaid there is munifist lover. Therefor this considered of the court that for that Eroor and others inthe Record and brocubing a foresaid the furgment of the circuit court enthis though undered by moused annulled detaside wwhally for

nothing Extremed and that this cause to remained 15to the circuit levent for such other and further proceedings us to San and Lustin shall appendain and it is frusten considered of the Court that the Suns. plaintiff in Error recover of & from the Definitude in Error its costs of them in this behalf Sevense Seland clus of the Suprem Court of the State of Allinis do hery certify that the freyoing is a true copy of the final astrogethe suit supreme don't enthe above butitled cause of reent in my officer In Testiming when of I have det my hand and affixed the veal of the seed of the 18, May of my entho year foundown no Thousand high Humbred and fifty five Letans Clin of the supulsoms State of Alimis Is eras ihned insuid canse from the circuit court of sam be a fourning which is inthe work of your following to wit Shit of allins Kun levny the Riopler State of Suite of Suite of Sundleng Southing 112293-8)

The Command you that you 16 Summons, The Galena or Chicingo Union Mails Road Company if they shall be found in your County of personally to be and appear before the Crown learns of Sand County on the first days Comb House en server ensur learny this anto Sevis A yarvood inihera oflare to the damingrap saw blantiff as he sugs instr Sum of Lew Thousand Dollars and having then and then this with with an Endousement thereon in what mann you shall have Executit The Same Withing Suther Dearton ches from Said Sund County this 21 Hay of Decr AD1854 Luch Dearban Emmos is the Endousement of the chieff in the words of ryons following to mit I beregally Served thousand with by delivering only ayent of the Galenn ochicup umi Aud Bond Compay this 21st this of December 1854.

and whenes on the 15th days of January AD1805 the sum king on of the days of the junny special Sens of Sail comt the following during other few endings Salina Chreizo Chi Pay Comis Union Rollo Chi partiri dichi Suis y then allowing by Consent of Jacking this ordered of the court that this Suit dud afterwards drist on the 3300 day of may the same bring one of the bays of the North Serm of saw booms (451833 - the fallowing any other proceedings were hat mint Sq She Galena + Chicago lease Shi day Comes the Union Baskondles Hainlift & Blackwell Herzum Aubley his attorney other Defe & Muto and Famourth also come tow mation of Humliff it is intrived & the court that a fuy come whumpn cume uguy of good and Lawful men louit Fushamil brush Charles & Harlbonh Dennem Down desh Sherwood 112293-97

Innothy Sufield Somothy Fronly John & 18 Robinson dens log John Van Siekle, Charles Thomason Onis le Hinds Hurrey. E Dunske who bring deverally bleched trust & swom who Come & after heaving a portion of the Evidence. It is agreed that the jury may deparate I must the court in morrow money at & Je lou and afterwards brief on the 24 holay of may AD 1853 the Jum bring one of the days of the may africant may Term of Sand Court the following army orther Jeweudings were had to mit Salina r Chicing of Case
Sum Roud Roubles Shir day Ormer the parties fury terriofm bufunuled herein also come suffer heaving a fortun of the Earlement a portion of the asymment of Counsel it is agreed that the juny may deparate much The court to morow many at 8/20 clock 35 hay of my the dum truis me of the days
of the affers my dem your leans the

following among other proceedings were had to into Temi A Yarvood V This day comes the factions The Galena Chicaryo Ito this suit by their altomis Umin Rad Road lev orthe jung hereto for hupamely the ballance of the argument of counsel and bring instances ly the court rehis units change of a swom office of this court to consider of their verdict and Subsequently when into court and for avertich upon their outs Sury we the pury first the Juns Jouned in furor of the Harntiff and whele his dumages at the Sum of Swenty we Hundred Dallars. and Therefor Comes the Defendant y its attorney moves the court for when trial, after anyument of comments the Comb buny fully advised overmeles said mation It is therefore Ornistral of the court that the said plaintiff have and recover from the defendant the afmound sun of Swenty five Annived Dollars damages together with his costs en this behalf Exprended whave Execution therefor and therenton the Defendants prays in appeal to the Supreme comits of the State of orllins which is allowed in constain that the Defendants file a Bont herin conthuit according to San und John & Bum or Millim HBrown as decenty

en the Sum of Four Thousand Dollars. 20 Bond In defiled & Bill of Exceptions boo Secuted in thing days from this date 18 hay of June AD1853 the following till of by captions was filed insuit Cause which es inthe words of yours followy tout Sini H Yamod (Wantercutloomt Galena Mienzo Muy Term 1855 Unin Rul Roadeo

Of it remembered that
on the trial of this cause the Hamliff introduced
the following testimony in this cause Vannet le dones iv hi testified as follons d'reside in Hyin still en dengart 1802 about the friet day of august 1802 I Took paleage then on the rail round on the work side of the living to Clinton about then ir four miles, myself, Lay and yamood would boyesten. Umylenzins was conductor in that day the left Elyin in the forefrent of the afternoon. From Elyin In the rest strap - Think the Trail was near half of the way it is a down grade to clinton

Elyin to the bridge it is about thirty feet to the mile, Ihmin it is a down grade most of the way I discovered no change in the speed after leaving the Trail The can run off the track nearer Clinton than Elgin I and others jumped off, I saw yourors lying on the ground, he said he felt faint. I went to get Some water for him. I fainful from the Patform of the Bazzage cane agreat deals of molin on that car at the time not steady with nowing drown a little a little buent of the center of the Bayyonge car, Could not wais steady got In the platform dest thick litt the und blowd away the dust sun what ever the matter and ennfred alighted in all fours. It was the motion of the cars and not the effect that made me fall it was apparently from things in the Bay guinge lear that Something has happened of Knew Simily ever wrong inthe train when I jumped, I thun from the motion of the lows of duphous that it was a Lnush heard that canned the according apart of the train was off of the track Ih find belas leur mes of or handly of I am Certain the dint End of the second telap or fre Emb of the frit alup evere off don'them when the Hamliff was when he rempedo dont storow when Lay was he much have been in the secur class can when

ever ran offe Don't recealled any Warm

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from Socomotion. User Joing Slow when I jumped can't till the vale of Speed from the true I fust noticed myhoup we van about und when the flanges of the while had been on the his Knin the care wird off. On the East side of the track was graded off git level when we Stopen a Bund on the west side und a de tet cub drows not enjured by firmping of anys Consequence - did not Examine the track from troularly - noticed a plice of flat rail fuch broden six or Eight fut long it was buck Twhen I found youwood buck of the him and of the first elapleur. Don't rembusinten more than one peier of rail. after the accident yata Small cur and look yourood and Fary to Elyin on the brack outh Eenst Side of the 1 now love yourvas to Parelfus rode in the hand lear out them, Then noticed the track part of the way noticed 2 or 3 places when the End of the vails was whe we went buck part of the way outh Sum track in had passed down my impression that one of the loose rails was brosten he cous comprimed to his book worm for to dix werses, when he got out used two crutetos then a Enteh und a cane was confined to his but

Some time, He had attendunce day o might was attended of Dr. In Class, Vacy and Onlerof Kammatin Witings Said Then com them or from Cars inthe train the Jayyang lear, Second let afelown and frist lelaplown jussemmer lear don't stnow whithen then was a freight lear or not, Myzins assed plainty to go so out Tay st may to we arried him first Myzins vaid we had better youth the Dongyange car us the pureye Cur was full or nearly full I find assert Telumitiff In go Then Myzins Van Come along Myzins sund what bitter go into the Buzzazi Cur as the Passenger lear was full. That bussemmer car was full and end better go into the Buyyange Cour the former words are correct as new as I can recelled Don't recallent that I some on the other trial that conductor suit the passenger our was full and we would have to get into the Bazzage Ours the all their got into the Buyyaye cur it was warn trusten They had could and punts on and no verts. John Demond war anome others was en the Bayyaye lear, Jawood Fay and of Euch ortens Shirts Iwent out of the Stranger our our yamond your ful ohin Day followed

my impussion is that Harvood pulled up 24 Hays Shirt and startet, Lay fulled down forward into the seems Clup cur Guinord was then on the Hat form or just going into frish cluf can of then turned and want back this ever avery short time before the accidents Fag has not got buck don't stron the rate for perd my attention was athervise buston who noticed on the I rail we was ninny puty fast. I am an immer or have been a civil by inur never aun an Engine. The Curs were in a Shallow cuts we were all lingle men, Then was no cenffling about fulling up the linen, There was some Exertions, user to do its und some to frevent it Gamond had had been at alyn more than the years beford that but Examination of Clumbiff withings said Myzins Sun we had better yo ent the Buyzaglour that he would be in the peetly coon or in a few minutes wrivered all then acquamber with the conductor thingins Gaywood and thyzins we related thizzins is his emel They had not been out before this Shirt fulling they quit about theretime we Croped the Bridge ach before we struck the strap rail had Jun a quarter or half a mile after we guit fluring on the Strap rail. On crop Wummalin Unum Mitrufo Saint Mygins Saint

bus are full, hearly full or netty full hus wor must take the Bayyans Car. Cant while the Hack Language. I have before Stated as near as I can.

Stay Vestified that herous on the train

Ath in to go to clinton, Jones myself Plaintiff I was I rad from Elyin In the Sundin wish the but branch nearly three quarters of a mile, bullon of the way to clinton Strap rail It is down grade The sheet was as I though pretty facts no greats Change in the speed accident occurred over In miles from bliston what been mining about a mile enth flat rail when the accident occurred the cour runoff the track I was in The Statem of the 3" class cur when I fum full her I the Bayyays can I everingured & the fall the fait I dan of youround herons on the handlean. I trund up the trans one or truck and pumped I suppose the lies word the asual distance a part, the motion of the curs when I pumped was violing und zry zaz reurerned over I jumped because I thought Iwas in dunger the Brakeman was in the opposite glatfor your od was in the bid when Inix! aun him come six weeks afterwards his Ley un anche bryan to swill outho way up

youron before the accident war Byor Keep 26 get out fu dix were I did not know of Lis going into business until Jummy afterness anlerof Exammata Mitnife Sind I don't reccalled whether I heard the whiste is not, Iwas inside of the second Celapsteur when the cars van off I followed y and he pussed in the first clap can I went was Standing then then was but, very few in them I did not go into the first cluf car atall. I noticed when the cons hud out the ties, Iwas not in much fram at first I cume down in a heap when lighted the aus ran nearly the length of the care after I fumped your out had been pulling Euch other Shirt out the scuffly and This fulling occupied but a short limit Mornes pulled my which we were only going bolinta we part no four. I expected in fray fare before the him when the accidents pappened without not Seen the conductor after learning lyin Shubrole to clinton General times before Euro Conductor at Elyin he made come remark that the curs wer freety full a that ever had bitting is

into the Bayyayo car andword did so, the then went 27 into the Brygage car and Suppose from the servered the conductor made, I have a suit against the company for the same injury. I have heard some remains about the decission of the Suprim Counts hard not read the decission Devoct Gummution resumed by Hamitiff we were not Commanded to get into the Juzzano Cun I Cannot use his pusise work, There was Something dark about the cars bring full and Combretor Sandwiched biller yet ent the Buzzyon relent lassenger Some times consider it a privilege to get into a borgginge Cur, The was no particular buryain about going into the buyyaye car the Kind of Shirt Sail scriffling we had was the Shirts am fulled apone I don't Know ywhom fruits I don't stron whose Shirts were fulled fruits what no Suspenders our shirts were pulled up come and puffed out and we pulled them then was no chasering We all went out into the other car before the accident house place Crop Ex ammatin Resumed at come time pufor sitting noring inthe ded not sit in the second club card wish down in the buyyange. The scriffling bym while eve were Litting, part of us even Litting

most of the line we were in the Buggage Car the Scuffling Commenced Soon after wo left alyin When the Cars stopped of was at the him and of the first clap car the fluintiff had a rest and cout on Thurn destified as fullows I was an injum of the train, draw the Snake head before Socomative Jussed Some I'en ir fiftein rods ahead Could not have avoided it is reversing the engine we went many twilves in forten miles In the hour. at the rate of Speed it could probably betrought who from Sevent time hundred fut if trans wereathled at the dignal if granewas level had un over the track before has seen Enake Leads then before such a rail is subject to snave hends don't min us furtan glat mil alway slowed the train onthe flat mil sun hourt five miles to the hour in I ruit Craf Examinata Melnifesand Vorlor er funtin milis is a Infe rati of sheet on that round. This rous was a better rous them the mas fliver Lover Sun before then they sun the Same Speed wo did here I do not recollect whichin

not but have no doubt I did, when I thught I dun a Snara head, The reason I am not milling 29 W Iwour I counted the whith is breams I com Cumt. Say whiten I did er not at any particular lime Diroch Evanimula visimul Strap rail es not as oufe as I mit and that is the reason we men slower Unusu hearts will raise with the but of care on flat rail The Humbiff here admitted that this would was as good asplat and could brounde Malher McArely Testifued as follows the train on the hind unost passenger our It was not full it was not over It full the hamliff Commel then usked the witing the following question, What was the Countrin of things in that car at the time of the y then counsel objected, the Count overmeld the objection and allowed the question to be ausured awhich ruleny and decision of the court in allowing sund guestin to be put and unswered to the buy the Defendants of their Counsel at the Commerciation to which answered then was a good deal of

of Confusion in the cars, was very unpleasant and Mught nother dangerous but Iwas not very much excited If I had been when I could have jumped off a think I should have done so the cur run about Six rods off the track the first clup cur leaned toward the wish a thought at one time it probably would tipour I got on at Elyin I was near the center of the Curs. Those who continued in the cars ward not injured Buzzane cur was not of the truck That a little girl setting beside me I don't realler Seeing any one Naming in the curs. no pussenger jumped from that can the Passenger went on in the Longrage Cur In the function W. Wiggins testified as follows I was consucted of the train at the time am still in the employ of the company - I think the spend was fifteen or Sixteen will an hour - I think I stated so on the other trial, just be for the accident I had seen for wood in the first class can be ushed off the platform total Growood the cars were of the truck before he jumped On Crof leconimation. Mitrues said belgins about the middle of the first cluf can - he said to me we have had a regular tear in the baggings car - I think I repeired, take can you wont ten yourself off the brush - I went to the door and he followed me in said I believe, are and

of the track now cannot resolved whether car was full or not - The farmore aid not take a reat in the cars - that rate of exect was ease, it was the usual formation to everher speed on feat rail - no one was injured, that remain was injured, that remain the own farmore and Tay jumper off and they were the only persons injured. The hind truck of the second class, and the forward truck of the first class were off the truck is no other car was off the truck. The train consisted of a bocorrotion, tender, huggings can I class can I class

John of Brusin - tradifica as follows - I was on the train on the first clap can - I turned the Brakes and got off the train, the train went a little over half the laugth fa can before Robbing, after 1901-off sweet over the road of the congray for some days - I keeped over the road form hims a day till accident happened - I was in employ of michigan central Pail Poad at that thin

On grof examinetian Witness said - I heard the White which and took hold also I fimped of the brake immediately - Miggins took hold also I fimped - peut of the trucks only were off the track - I wont think there was every danger on the inside of the car - there is always men denige, on the platform than on the inside of the car - Papergus were not allowed to steered on the platform could not ear what when the platform

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Frederick Swain - testified as follows - I was on the train as bruke man - I was on the hind and of the second clap car, I turned the brak and imposoff because I thought I was sufer on the ground - I thought I was in danger on the train theufon I jumped Mr Brun and Jumped together -I was not hunt, can rem about the lingth of a ceir and a half after they left the track John Cor testifica as follows I was in the employ of the company as truck repenies my instructions were to Keeps the road in one the road in question has not been examined, after the promany has papedoon - one fright train wentoon On crop examination Withus said - I have harge of the road - I was our the road twice a day - I went over twice that day -I procuded the Papenger trois on a hund can - Specifica the wad to see that it was in order, it was in order, it was a good oston road for a strap ruit rous, well graveled. I was as jurdus any war The plaintiff him admitted that it is impossible to make as strap ruit was without herry Down Clark telified as follows-I was in the employ of the road as Superintendent of track repairs - her cox was writer me the instructions were that men show pass over as often as was meipany - as a general thing it was mapary

to make snake heads don't know what eare was taken 33 on the day of the accident On Crop examination Mituus said - all due and peroperi care was taken of this road by the company to keep it Doct The Ken testifier en fallows-Former plenistiff at begin with a. fraction of the left leg on the outside and of the anche on the inside _ both troken don't think the leg will be as good as befor - he was confined sional mike Definants admits they are are a rail road company and were evenion carrier of perfunger. The Plaintiff here Gilman A. Muriel who testified as follows Mow the Resintiff I had co non sation with him some six or eight muchs after he was injund, he was at the office - he said he "dians blance my one but himself for his injury because he was such a dumma food as to jump off he series he had paped through the train from the Baggage can he bearing himself for his ment of self popepine".

There come tech with farmous come after he was hurt, - he said he "did not can so much asmost the hurt as about how foolish, he done it" - I have been con [2293-17]

This part of the was the met before and made a therough rowhauling of it by removing the injured rails-Saidnot think it me pany to go over this pant of the road after each trains - I is impossible to somet make heads - that was the best sent of my road - it was in as good spain as I could be - I was a spine set form - this is better than val - I passed over the road setered allowed and Twelve yelock of the seems day - The accessor was about 40'C PM, - there was no snahe heads when

Ou cropo examination - withus said of their cano a snahe had after 12 o'clock I should not have known in

Down Dermaond listified as follows - I was on the train as Stage agent-Iwas in the Berggage lear from beigin until the accident Jawood - Lay - forus and baggagemen Clark were there young men forus, Janvood and Fay were scuffling when we first felt algin, they continued until a short true befor the accident - I saw them all go out just before they left they were pulling up their shirts they were senffling together on a sist of a good neutrina your Tremains in the Beigging can with the Beiggings, man- Ganvood, forus and Fray wentout togother, they went out fast - they seemed to be charing one another - there was something who motion in that can - not violent - I did not consider myself in any deniger that can was on the make all the time - the Baggage men went to the bake - Turnord and the others left

the Baggage care there or four minutes before the cars On crop beremination withins said _ The scuffling was facility, not shirt tails - they signed how of each others whits, they washed out of the cur ruther miches than usual Musigins bing nealled lestified as followed - Is wers not safe for paperagers to um about the cars or stema on the partien - her Germood had frequents, paped over this road - there steering about the cars are most hathe to be injured On crop Gammation Whomas said - Sdout remember that there were my printed rules, not in the habit of having rules in the hattagguen cours - Janvova was on the pelutform when I told him the cars were off the truck Saout remember what ametious I gave as to when Farrivor Fay and forms should go we commented endeaver to heep the papergue off the Platform. The fungoing, was all the evidence given in the cause the Plaintiff them asked the court to instruct the July Le ame learnity leirait Court May Jum Chorsos Lewis . A. Januara. Union Rail Road le' Ana now comes the said plaintiff by

the pay emparmelled herin as follows - That if the pary bring from the widence that the Plaintiff was a papinger on hours of the cars of the Definaunts in the month of August 1852 at the County of Kenne, that the cars of the Definaents wire thrown off the track of the road by reason of the smshillful nep or nightgure of the Definants or their agents und that by means of such account the Plaintiff was injuned in his purious they will find a versite for the Plaintiff end aprip his dameges " That if the presentiff was injured by ants while was a peapenger on their cars, that then the buran of peroving that ench accident was not the usual of the negligence or makellfulnes of the Definants or their agents is east upon the said Defineents. to unthing, the day to find a maiet for the plaintiff it is not making for the pary to be ratisfied that the Definants win quilty of große or even ordinary maket in the reparation of their was is management of their train, butif the pay believe from the eviance that slight night of the Definants or their agents was the cause of the accident embining of the plaintiff and aprophis annages, peroviced the Juny britis from the winne that the plaintiff was a paperger in bound the curs of the defendances at the time of such account

That carries of pageingers by railroad an some to use all presentions as far as homean forstight well go, for the safety of their papengers, and are emounable and agents in the representation of the track and conduct and munagement of their trains whereby injury answer. The omision of any perecention which would fero due or increase the safety of or reduce the perobablishing of vanger to the papenger, constitutes such a night in carriers of papengers as will make them emswerable in demages to a featurger injured by memo of such nights. That Railroad Companies are universable for injuries to w parkinger, usuating from a defect in their track which might have been discovered by a most canful and therough eramination, and the pay believes from the eviance, that the injury complained of in this case was o ceasioned by the night of the Company or thin agents to evanine the track prior to the papage of the train on which the accident recumed they will find a vinuet or the presentiff andapip his namuges. gh That if the pay believe, from the evidence that the acci aint more enjury occurred by naron of the two rapide spend of the train by reason of the night to apply the but in time or because of any other mighest or unshill fulrus man agriment of the hain they were find a viracet for the plaintiff 21,2293-19]

That if the views from the views from the views that the acciount morning complained of happined by wason of the night of the engineer in charge of the locomotion attached to the Defindents trains or to blow his whith ins time, or by reason of the night of the conductor to man the lengine in time, or by new son of the night of the brakeman to appay the rukes in heason, they will find a visual for the praintiff Into That if the my believe from the widen a that the accident and injury happened by reason of the bad own of the track undiversit of are care unwattention of the Company or any of their eigents in the repersation of the track, is in the management and consuct of the train on which, the Plaintiff was they will find a maiet for the plaintiff undapel his damages ". That the new fact that the Plaintiff pumper from the cars, while they were in motion to the ground and thus sustained the injury complained off, will not alow deferior hims of his right to a neavon against the Definants if the pay believe from the evidence that an acciount had recurred, that the cars were off the track and running at the rate of from 8 to 5 miles an hour and the plaintiff had vaconable ground to believe and did believe that his life or limb were in danger, and

that it was merpany to hap from the cars in order

to avoid the danger which threatened him, provided

that the injury was not occasioned by the plaintiffs own reglect, our that his nightgener contributed to produce the injury complexime of That although the pury may believe, that the Plennitiff would not have received injury had he not haped from the cars, and that as the west proved his purping was an unione act that was not neceparity perount the Maintiff from recovering in this case. The question is not so much which in there was in point of fact any danger as whether, the Plaintiff was reasonably appulended danger and so hafer from the cars and in maging of his state of mind the pay should take into consideration whation circumsterness of aleum and confusion winter at the time, the law not requiring the sense coolness in accuracy of Inagment in a person under a State of withment undularum as much other circums That in determining the question whether the plaintiff had reasonable ground to believe, himself in danger the pary have the right to consider the experience and knowledge of the plaintiff in regard to peries of this charactes, the commotion and couster nation if among the papingers and the fact if it he so that one of the brakemen abanded his post 13th Shat the mun fact that the plain tiff was a fine minutes previous to the recumence of

the accident and injury, scuffling and playing 40 in a spention manner with others on the ears, mil not aufairs the peaintiff of his right to never from the Refindents or their agents were quiety if the pay relieves from the evidence that the Defindants or their agents mere quilty of any night however slight whereby the accident undinging occurred provided the injury was not occasioned by the Claimtiffs own night her that his negligence contributed to personce the injury complained of That in estimating the demages which the peainlift may have sustained by naron of the injury comprained of the pury if they find for the Plaintiff are not everfined to ench accurages as may have resulted to the pleintiff by loss of time, and a pieur of undied for the loss of natural new of the plaintiffs limb which the pury exercising a sound discretion and in view of all circumstances may see proper to award not excusing the amount claimed in the dislanation That unless the pay believes from the evidence that the paperings can wow full and that it was a faut of the contract that the I laintiff should occupy aming the trip the baggage can the mere fact that the Plaintiff left that can and mut into the first day parfainger cer. is not of itself such nightigenee on the Maintiff's s to defeat a nevery in their case

16 " That papingers upon Rail Road are not 41 to be towns a affected by rules extablished by such Roads in relation to the conduct of papengers mulife the proof shows that the paperger had a chrowleague of such rules and ugulations - Which instruce Definants then asked the Court to instruct the Juny as follows - That if the pay relieves from the evidence that there mying to the Plaintiff in this suit happened to him by mure acciaint without fandt on the part of the Defindants then the plaintiff cannot recon in this action If the my believe from the evidence that the preintiff while on his paperge from begins to clinton was quilty of carelpines and unaceparity exposed him. self to dange by constring and suffery on the cars, or by the ears were in motion, and that said carelpines or in fername contributed in any argue to produce the injury, then the plaintiff cannot never. Definaents cars informant, and cantify while on 112293-317

42 himself to accurace by unstring, playing, running of jumping and that the injury to him was in any way peroduced by such carelpours or impendences or that such carehouss and improvence in any way contributes to parauce the injury then the pleasatiff commat never com though the carry may believe that the definants heur are seen quiety of negligence of the pay shall bleion, from the evidence that the plaintiff was quiety of neglique while a papenger upon the definants can and that his nightgance concume with the nightgance of the Defundants in procuring the nymy then the plaintiff can If the or my shall believe from the evidence that the presentiff leafew from the cars the Definerents under a ruch and mudic affectionsions of desirger when in nally then was no danger and that the myring to the folimately was the result of such haping then the plaintiff of the pary believe from the evidence that the plaintiff caulifuly haped from the cars of the definants and that such canbeness mennin of baking contributed to farvourse the injury to the Reinstiff then the Jury should frie for the Definant If the stary believes from the evidence ical though that the Plaintiff happer from the car of Definants without while it was in motion under a rash and under afsferhinsion of acanger, when in really there was not

dunger, and that the jujury was caused by such lapsing 43 they should find for the defindents, although the Plaintiff inight heur no leg thought himself in dunge and happed from to the ground to seen himself from harm the question is whether man the encurrences, his from the widerne that the injury to the Plaintiff was the result of the nightgence or impernaence of took plain liff and Defindants their virail- should be for the Defindents - Thick was aone by the Court - She & The Definaant then also asked the Court to instruct the Juny If the pay shall believe from the evidence that the Definants wereised and can sulligence and shill in the preservation and repair of their track, and in managing and afairating their road at the him of the accident and that the accident could not have been presented by the use of said one, silligener and shew then the plaintiff cannot never in this action _ but an care required the use of the whosh formaine & cention; a carrier of papergers bring liable for shight my That way havelle in partie which must must the risks incident to the mode of trust he endofats, and of the pay shall relieve that the riging to the Plaintiff was the result of an accident which would not be avoided 512293-22]

by the envise of am can and shier in the perpendice and memagement of the means of conveyance on the 44 part of the definants then the promotest count recon but an eare requires the use of the retwork produce & contions 82/10 That the Plaintiff before he can sicover in this action must not only show that the injury to him was the usual of carelegenes or nightymes of the defendants but also that he himsel was without fault in prouvering said That in this action, the plennintiff cannot 9 11 S never unless the any shall believe that he exercised prop er can und incomspection while on his papage from begin, to circutor and that the arguments were quiet, of nightyme from which the injury received, and the mader of peroof is upon the Plaintiff to show not only that the defindents were nightigent but he himself was not quiet of majagine & 13 h Onlip the Claimtiff has perove to the dat isfaction of the carry, that the defendants was quiety of the pary ugligence or amseonant, and also that Plaintiff now proper can and founder e, and that his own miscon and, went of can ir nighigener dional contribute to proonce the inging complained of the Jung should find for the Defindents & Qualification to Defti for go of 5th Instructions & Burferrof that the felf was a paperinger of the

accident, and the injury, make a pairma facile case of ing-ligures & theories the burden of explaining whom the defendant 45-The very are also instructed that it is their outy to regard, untoby the law as given them by the Court 18.16 and the pay an not at litily to disnyma or Which the leout refund to give, as as he but your with the following qualifications in my adding the first of said instructions there mords. But due can sequind the use of the estimost fernance and can tion, a carrier of paperagers ting liable for sleight might give "-And by againg to the 2° of said instructions these moras But au caro require the use of the whost fernaine and by acaing to the must there of said instruct twens, the mores - qualification to Defter & go of 15th matructions " But favor that the Peff was a papering a of the accident, and the injury, make a prima facie can of mighigener and throws the binain of aplaining upon the And the last of said instruction by atribing out the following mas therefrom ing " Once that the law as laid about by the Infarm Court in their accisions is the highest prairie anthinty of the land " The which Decision of the which in regarding said maturations as asked reach of them and gracifying them reach of them as aformaid the

And the Definants the court to give, the day the following in 46 If the ony believe from the evidence that the Plain tiff haped from the can of Definances man circum stances that would not have justified such an act on the part of a fernaent canful man, and that the injury was the usual of such purping from the cars, then the plain tiff cannot never, unless the pury believes that such injury was wilfully caused by the Defendant—

That the Defend ants as a common remin of palengers is not an insum of the purmae safety of the pagingers against all accidents but is habee only for the mount of each ear and ailigine as is characteristic of courtions ferrous, and the aufundants exercised such care embailigine in the trumpentation of the plaintiff, then the plaintiff cannot never in this Salena & Chicego Lustmetins for Definamets Jawood The court is asked to instruct the day on the fact of the said Definants. That if they Filing from the winere that Janwood and his compand in the cars of Deft at Elgin were told by the conductor that the paperngers care come

47 full. but they could go in the bagging cars, and that there afour they got into the baggage can to now to clinton, then It was the any of yourvoice to remain and vide in that can Me And if the day further believes from the evidence that at the him of the accident, and when the plaintiff pumper off the cars, the baggage can was not off the truck, nor in any dem gur but that the pleintiff with his companions had got into a play and scuffle, which burght on a racing through the The ears and in one of which Jarwood was brought to that appendingion of immenent piril, which maneed him to leap from the cars, and thinky received the injury complained of - then the Paintiff cannot never and the July shouldfind for the Defindents. And the Jury are further instructed that if they drawny believe from the widence that Lawood the plaintiff with his companions, at the time they took paapage in aufmants cars at Elgin to ride to Clinton were told by Capet Miggins the Conductor, to go in the Baggage ear, as the parfeinger lears were full, and that plaintiff in prosumer thereof went into said haggings can, then it was his out, to contin now their said Clinton. Andif the pay fin the blived from the wience at the time of the acciouns, the plaintell has left the buggage can unsgown into another eur and had thereby placed himself into a profestion of affactionsion of immenent paril, which indered him to hap (Wx=273=4)

48 from the cars, and thereby received the injury com pearind of and that the baggage can mus not of the truck at all or in any manger. Then such conanct of the plaintiff was empasse nightgener and the pay should find for the definaints. dener, that the standing upon the facultum of cars or going about from can to can by a facilinger, which the cours an suming an acts of informance angligme, andif they further believe that at the time the ears sun off Hu track, the premitiff was so etanding, or going about and that such conduct of the facintiff incuased his ap fortherious of Jamil, and he was thinky induced to heaf from the ears when in motion, and in consequence of such heap received the reging, when, had he remained in the cars he would not have bun injund, he is notenththe to never in this weting If the Jury briens from the widener that the Plaintiff haped from the eard of the Definant under circumstances has would not have justified such an act on the part of an orannerity perudent eareful mean another the injury was the usuch of such leaping, then the Plaintiff cannot recorns tion asked by Defindants to Plentiffs Instruction Mg But miles the plaintiff has proved to the satisfaction of the pay that his own carelepours a suglegaria air not

of then the chay should find for the Definant and the button of such proof is upon the Plaintiff.

If the day believe, from the evidence that at him the plaintiff took paper on the Definance's cans at beign, he was not directed by the conductor to lake his perace in the Baggage can because these was not worn for him in the paperague case, and that the Plaintiff did go on board of the baggage can at the time of starting and that whilst on the very from Elgin to believe and that the injury to the Resintiff happened in consequence of his as having the can then he is not writted to never in this arction to

the saw noused Is which areision of the levent in refused gives said last mentioned instructions, the Definewants then and there were passed

thus also asked the levent to give, the ony the following instructions,

liff with his companions, at the time they took papage in Defind and at leigher, to side to Clinton sure told by the consumeter of the train that the papenage, can mus full, or much full, and that they could go in the baggage card, and that plaintiff in personance thurs much much said baggage car, then

(consent)

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Sugarant

then it was his any to continue then miles it was makery to lear the same and if the buy further believes from the evicence, that at the time of the acciount the paraintiff has unneceparity left the baggage can and you into unother car, andwar walking about, or standing upon the pearfirm of the hind car and had thurby preaced himself in a position of famil, or appear hursion of great Asind Jame - While the buggage car was not off the truck, or in damage, then such conduct was enfaute nighgener If the Sury believes from the evidence that Jamood was immedipantly standing upon the platform of our of definants cans at the home of accident then he was quilty of improper conduct and nightymes That it is the auty of long passings on a rail road can, to take his place in the can in which, he takes papage, and to remain thering meless it is neapay to have the seems for neconate uprosponent or some other mer purpose. ser "gions" "consent", and when the bourt new the last mentioned instructions to the Juny, he remembers to the pury anding their hearing presence, that he gave those by the consent of plaintiff - To which usual of the Courtas aformaid the Refinants then and then excepted -

The pury thumpson rating and afterwards came into levert, and rendered the following viralet

"He the pures find the defendants quitty and aprif the damages Twenty five theman Dollars"

Forman _ John Vandickle" the undition of said variet the defendance by their leven ul movie the bourt for a new trial, which motion. mus overmela by the lovet more pragment uneund for the Plaintiff on said vurdict, to which direction of the bount in overriling the said Defendents motion for a new trat, the said Defendents by their Council at the true yespeted involucings that this their Die of Exceptions may be signed and seared - which is down Isaac I, Wilson Green Bear And after wards, to wit, on the 8 day of July 1855 the following Afabeau bond was find, to with the now are new by these Presents that the Jalura und Chi cago Union Kail Road Company as Jerineifour and John. B. Turner as surely are hed and firmly homed unto Swis, A, Janvood in the penal ann of Four Thousand Dollars lawful morny of the United States to be paid unto the said Sewis, A. Garwood or his cutain attrony, Executors, admin stratus or afrigues, for which frayment will and truly to be made. we find omesters, succepors, hers, executions tellministrators and reach and vory of them, formtly and servally

firmly by the presents sealed with the Seal of the said

Launa and Chicago linion tail Road levenframy acting

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by their president and Secretary and with the acus of the said this beight any of from AD1833 5-2 Whenas at the May From of the Kum les mit, Circuit levent AD1833 fragment was rendered by the Raid court in favor of the above name seevis. A, Various organist the said Salma and Chicago Unions Rail Road Company for the arm of bound fin homand Rollens dermages, braides coets of suit and whenas the said Salina and Chicago him Cail Road lompany have prayed an afapeal from said mayness to the despereme leout of the State of Ellins Now Therifin the condition of this Aligation is such that if the about bounder Galina Whetricay Jumm Rail Road Company, shall only prosecute the Raid appear and were pay or came to be paid the said thragment, ever and mituat and armages in case the said judgment shall be affermed then the above obligation to be void otherwise to be and remain In Witness Whereof the said Galina tchreage Tunion Kail Rouse company have attended their Corporate Sed to this Bond and han cansisthe same to be signed by their Persident and Frentary - and the said John B. Turn has Confermed Me Sarraber of John B Turner President humto us his hand and real the day and your atom uniter

State of Illinia ! I such Dearton Class of the aren't court in ofer said County in the State aforesaid do here's Certify that the above of everyong is a full perfices and complishe copy of all the Headings Bill of Exceptions, been of supreme bount and of all orders in said Cause Kine the filing of the Round of Suhum Court vereing the gulyment in this cause.) as appears from the Records of ofiles of said levent looms Mhule Swither Dearton click of Sand Comb County this 28 though of may Ad for Cather Searland Ell of I the court ente in repring to gen the succession? In the court end in giving Each of the most - Cauly, and allowing the Law Witness to and we the to the guiltien asked the Witness Water Me The Court and in overreling the objection following far mon in the boregoing heart & J. J. Freneworth their allowing oferfor and now the Said appellant, by E. Rela 1/2293-27]

I J. Faresworth their attomys afriga fa Evror in the foregoing Eccond the following The Court Erred in overriling the objection to the Justion asked the Matterfs Watter Me-Carly, and allowing the Said Mitterfs to answer it-I The court Evred in giving Each of the instructions asked of given on the hart of Jamood. The Court erred in refusing to give the Second fourthe Eighth, Minth fiftrenth & Eightsenth instruction as asked by the appullants. & Each of them. The Court rared in qualifying the Said last mentioned instruction, and rach of them. 5. The Court Erred in refusing to give the They the instruction Amentured \$4.3. And letters & O. R. S. J. W. W. and X. and Each of the 6. The Court Erred in telling the Juny that he gave them the instructions Marker. J. B. D. and "Consent". by the Consent of the plaintiff. I. The Court Erried in overruling the motion of appellants and refusing to grow a new trist. E. Pech. & J. F. Farrisworth

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SUPREME COURT

GALENA & CHICAGO UNION RAIL R. Com.

APPELLANTS.

VS.

LEWIS H. YARWOOD

Appeal from Kane.

APPELLEE.

ABSTRACT OF RECORD.

Trespass on the case, by Yarwood against the Appellants, for personal injuries.

The 1st count of the declaration avers that Yarwood was a passenger on the cars of the appellants from Elgin to Clinton in the county of Kane, on the second of August 1852.

That "just before reaching the said station or stopping place at the said Clinton, by the action of the wheels of the said engine and cars, the said iron and wooden rails were torn up for a great distance (to wit) for the distance of twenty feet, in consequence of the said rails being constructed of poor material, and so insufficiently and insecurely fastened as aforesaid, the said car on which the said plaintiff was then and there a passenger as aforesaid, was thrown violently off of the said road, by reason of which the life of the said plaintiff was put in great peril and danger, insomuch so that the said plaintiff was obliged, and did jump from the said car to the ground (the said car being then and there so off the said track, and still running at a rapid rate over the ties of said road, and apparently about to run off a very steep bank then and there being) "in doing which the said plaintiff"s left leg was broken near the ankle, "his ankle badly and severely strained and bruised, and his body otherwise severely bruised "and injured, all of which was caused by the unskillfulness and carelessness of the said defend-"ants and their servants, and by reason of the said injuries so received as aforesaid, the said "plaintiff" was &c"—concluding with the damage.

The second count is substantially like the first, only avering that the cars were run at double their usual rate of speed, and at a dangerous rate of speed, &c.

And avering that the car which the plaintiff was a passenger in, was off the track &c., like the first count.

The third count avers that "the car in which said plaintiff was riding was thrown with great vio"lence off the said track, and the said plaintiff without fault on his part, and by reason of said
"carelessness and improper conduct of said defendants, thereby came with great force and vio"lence upon the earth, and his left leg was thereby broken near the ankle" &c. &c.

12 Fourth count substantially like the third.

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13 Plea. General Issue.

The case was tried the 23rd of May 1855, by a Jury.

19 Verdict for plaintiff of twenty-five Hundred Dollars.

Motion for new trial overruled and Judgment upon the verdict—and exceptions, and appeal.

Testimony.

Samuel C. Jones., a witness for Yarwood, testified:

That about the first of August 1852, he took passage on the said Road at Elgin for Clinton-about three or four miles. Himself, Fay and Yarwood went together. Wm. Wiggins was conductor on that day. We left Elgin in the forepart of the afternoon. From Elgin to Clinton the first part of the Road was 'T' rail, and the rest strap. Think the 'T' rail was near half of the way-it is a down grade to Clinton. Elgin to the bridge it is about thirty feet to the mile. Think it is a down grade most of the way. I discovered no change in the speed after leaving the "T" rail. The cars ran off the track nearer Cliuton than Elgin. He and others jumped off. He saw Yarwood lying on the ground. He (Yarwood) said he felt faint. Witness went to get some water for him-he jumped from the platform of the baggage car-a great deal of motion to that car at the time—not steady—rough riding. He, (witness) was a little back of the centre of the baggage car-could not walk steady-got to the platformdust thick till the wind blowed away the dust. Saw what was the matter, and jumpedalighted on all fours. It was the motion of the cars and not the speed, that made him fallit was apparently from the Baggage car that something had happened-knew something was wrong when he jumped; knew from the motion of the cars. Supposed it was a snake head that caused the accident. A part of the train was off the track. The first class car was off, or partly off. Was certain the hind end of the second class, and fore end of the first class were off; did'nt know where the Plaintiff was when he jumped; din'at know where Fay was; he (Fay) must have been on the second class car when car ran off; did'nt recollect any alarm (22) from Locomotive; were going slow when he jumped; could'nt tell the rate of speed; from the time he first noticed roughness ran about two hundred feet; from examination of the poOn the east side of the track was graded off quite level where they stopped; a bank on the west side, and a ditch cut; was not injured by jumping of any consequence; did not examine the track particularly; noticed a piece of flat rail, fresh broken, six or eight feet long. It was back of where he found Yarwood; back of the hind end of the first class car; didn't remember more than one piece of rail; After the accident, got a small car and took Yarwood and Fay to Elgin, on the track on the east side of the river; took Yarwood to Padelford; rode on the hand car with them; then noticed the track part of the way; noticed two or three places where the end of the rail was up; they went back part of the way on the same track they had passed down. His impression that one of the loose rails was broken. He (Yarwood) was confined to his room four to six weeks; when he got out used two crutches; then a crutch and a cane; was confined to his bed (23) sometime. He had attendance day and night; was attended by Doctors Mc Clure, Vacy & Kerr.

On cross examination Witness said:

There were three or four cars in the train; the Baggage car; second class car; and first class passenger car; did'nt know whether there was a freight car or not. Wiggins asked Plaintiff to go: so did Fay and Witness. May be they (F. and Witness) asked him first. Wiggins said we had better go into the baggage car, as the passenger car was full, or nearly full. Witness first asked Plaintiff to go; then Wiggins said come along.

Wiggins said they had better go into the Baggage car, as the passenger car was full, that passenger car was full, and they better go into the baggage carthe former words are correct, as near as he could recollect. Did'nt recollect that be swore on the other trial that Conductor said the passenger car was full, and they would have to get into the baggage cars. They all then got into the baggage car; it was warm weather. They had coats and pants, and no vests. John Demond and some others was in the baggage car. Yarwood, Fay, himself began playing. They commenced pulling up each others shirts; he went out of the baggage car; saw Yarwood go out front; then Fay followed (24) His impression is that Yarwood pulled up Fay's shirt and started. Fay pul led down his shirt and followed him. He (Witness) went forward into the second class car. Yarwood was then on the platform, or just going into first class car. He (Witness) then turned and went back. This was a very short time before the accident. Fay had not got back. Did'nt know the rate of speed; his attention was otherwise taken up; he noticed on the "T" rail they were running pretty fast. He was an Engineer, or had been; a civil Engineer; never saw an engine. The cars were in a shallow cut. They were all single men; there was no scuffling about pulling up the linen; there was some exertions used to do it, and some to prevent it. Yarwood had been at Elgin more than two years before that time, and had been on the road before.

On Re-examination by Plaintiff, Witness said:

Wiggins said they had better go in to the baggage car, that he would be in there pretty soon, or in a few minutes. They were all then acquainted with the Conductor Wiggins. Yarwood & Wiggins were related; Wiggins is his uncle; they had not been out before this shirt pulling; they quit about the time they crossed the bridge, just before striking the strap rail; bad near a quarter or half a mile after they quit playing, on the strap rail. On cross examination again Witness said: Cars were full, nearly full, or pretty full, and they must take the baggage car; could'nt repeat the exact language; had before stated as near as he could.

Albert R. Fay:

Testified, was on the train with Jones and Yarwood; the speed he thought pretty fast; no great change in the speed—accident occurred over two miles from Clinton; had been running about a mile on the flat rail when the accicent occurred. The cars run off the track.—He was on the platform of the second class car when he jumped, next to the baggage car. He was injured by the fall—the first he saw of Yarwood he (Yarwood) was on the hand car. He (witness) turned up the brake once or twice and jumped—supposed the ties were the usual distance apart—the motion of the cars when he jumped was violent and zig zag, and careened over. He jumped because he thought he was in danger—the brakeman was on the opposite platform. Yarwood was on the bed when he (witness) first saw him, some six weeks afterwards—his leg and ancle began to swell on the way up. Yarwood, before the accident, was book-keeper to the Elgin Manufacturing Company—he did not get out for six weeks.—He (witness) did not know of his going into business untl January afterwards.

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On Cross Examination, Witness said didn't recollect whether he heard the whistle or not. Was inside of second class car when the cars ran off; followed Yarwood; he passed to the first class car. He (witness) went to the middle of second class car, and was standing there; they were but very few in there; did not go into the first class car at all; noticed when the cars cut the ties. He (witness) was not in much fear at first; he came down in a heap when he alighted; the cars were ran nearly the length of two cars after he jumped. Yarwood and witness had been pulling each others shirt out; the scuffling and shirt pulling occupied but a short time. His, witness, shirt, pulled but once he thought; Jones pulled his shirt; they were only going to Clinton; they paid no fare; he expected to pay fare before the time when the accident happened. They had not seen the conductor after leaving Elgin; he rode to Clinton several times before; saw Conductor at Elgin; he (conductor) made some remark that the cars were pretty full, and that they had better get into the baggage car, and he (witness) supposed from the remark the conductor made. He had a suit against the company for the same injury. Had heard some remarks about the decision of the Supreme Court; had not read the decision.

Direct examination resumed by Plaintiff.

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They were not commanded to get into the baggage car; he could not use the precise words; there was something said about the cars being full, and conductor said they had better get into the baggage car. Passengers sometimes consider it a privilege to get into a baggage car. There was no particular bargain about going into the baggage car. The kind of shirt tail scuffling they had was—the shirts were pulled some: did not know by whom first. Did not know whose shirt was pulled first; had no suspenders over shirts; were pulled out some and puffed out, and they pulled them; there was no chasing. We all went into the other car before the accident took place.

Cross-Examination Resumed:—At some time prefer riding in the baggage car to the second class car. He did not sit in the second class car; they sat down on the baggage; the scuffling began while they were sitting; part of them were sitting most of the time; they were in the baggage car; the scuffling commenced soon after leaving Elgin; when the cars stopped he was at the hind end of the first class car. The Plaintiff had a vest and coat on.

L. D. Johnson, Testified as follows:

Was an Engineer of the train; saw the snake head before locomotive passed, some ten or fifteen rods ahead. Could not have avoided it by reversing the engine. They were running twelve or fourteen miles to the hour. At this rate of speed it could probably be brought up from seventy to one hundred feet, if brakes were applied at the signal, if grade was level.—Had run over the track before; had seen snake heads there before; such a rail is subject to snake heads; dont run as fast on flat rail; always slowed the train on the flat rail; run twenty five miles to the hour on "T" rail.

Cross-Examination, Witness said,

Twelve or fourteen miles is a safe rate of speed on that road. This is a better road than the Mad River Road, which is the only flat rail road he ever saw before; there they run the same speed they did here. Did not recollect whether he sounded the whistle or reversed the engine, or not, but had no doubt he did, for he always did, when he thought he saw a snake head. The reason he was not willing to swear he sounded the whistle, was because he sounded it so constantly whenever anything h——; could not say whether he did or not, at any particular time.

Direct Examination resumed by Plaintiff:

Strap rail is not so safe as "T" rail, and that is the reason they run slower. Snake heads will raise with the best of care on flat rail.

The Plaintiff here admitted that this road was as good as flat rail could be made. Walker McAuley, Testified as follows:

Was on the train on the hindermost passenger car; it was not full; it was not over three-fourths full. The Plaintiff's counsel then asked the witness the following question:

"What was the condition of things in that car at the time of the accident? To which question the defendants, by their counsel objected. The court overruled the objection, and allowed the question to be answerd, to which ruling and decision of the court, in allowing said question to be put and answered to the Jury, the defendants by their counsel, at the time, excepted. The witness answered—"there was a good deal of confusion in the cars—was very

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unpleasant, and I thought rather dangerous, but I was not very much excited. If I had been where I could have jumped off, I think I should have done so; the cars ran about six rods off the track; the first class car leaned toward the west; I thought at one time it probably would tip over."

On cross-examination witness stated he got on at Elgin. Was near the centre of the cars; those who continued in the cars were not injured. Baggage car was not off the track. He had a little girl sitting beside him. Did't recollect seeing any one standing in the cars. No passenger jumped from that car; the passengers went on in the baggage car to the Junction.

Wm. Wiggins, testified as follows:

He was conductor of the train at the time, and is still in the employ of the Company. He thought the speed was fifteen or sixteen miles an hour; thought he stated so on the other trial; just before the accident he had seen Yarwood in the first class car; he rushed off the platform; told Yarwood the cars were off the track before he jumped.

On cross-examination, witness said he first saw Yarwood after they left Elgin, about the middle of the first class car. He (Yarwood) said to him "we have had a regular tear in the baggage car" He (Wiggins) thought he replied—"take care you dont tear yourself off the track." He (witness) went to the door, and Yarwood followed him and said "I believe we are off the track now;" did not recollect whether car was full or not. Mr. Yarwood did not take a seat in the cars; that rate of speed was safe; it was the usual practice to slacken speed on flat rail; no one was injured that remained in the car. Yarwood and Fay jumped off, and they were the only persons injured; the hind truck of the second class, and the forward truck of the first class were off the track. The train consisted of a locomotive, tender, baggage car, 2nd class car, and 1st class car.

John J Brewer—testified as follows:—Was on the train, on the forward platform of the first class car. He turned the brakes, and got off the train; the train went a little over half the length of a car before stopping, after he got off. He went over the road often, every day for some days. He passed over the road four times a day till accident happened. He was in employ of Michigan Central Rail Road at the time.

On cross-examination witness said he heard the whistle and took hold of the brake immediately; Wiggins took hold also. He (witness) jumped off; he ran half the length of a car after he jumped; part of the trucks only were off the track. He dont think there was any danger on the inside of the car—there is always more danger on the platform, than on the inside of the car. Passengers were not allowed to stand on the platform; could not say whether any printed rules to that effect on that train or not.

Frederick Swain—testified as follows:—Was on the train as brakeman; was on the hind end of the second class car; he turned the brake and jumped off, because he thought he was safer on the ground; he thought he was in danger on the train, therefore he jumped. Mr. Brewer and he jumped together. He (witness) was not hurt. Cars ran about the length of a car and a half after they left the track.

John Cox—testified as follows:—Was in the employ of the Company as track repairer.— His instructions were to keep the road in order; the road in question had not been examined after the preceding train had passed down; one freight train went over the road.

On cross examination, witness said—he had charge of the road; he went over the road twice a day; went over twice that day; he preceded the passenger train on a hand car; he passed the road to see that it was in order; it was a good road for a strap rail road; well graveled; it was a good as any road.

The plaintiff here admitted that it is impossible to make a strap rail road without having snake heads.

John Clark testified as follows:-

He was in the employ of the road as Superintendent of track repairs; Mr. Cox was under him. The instructions were that men should pass over as often as was necessary; as a general thing it was necessary after every train; the passage of every train has a tendency to make snake heads; dont know what care was taken on the day of the accident.

On cross examination, witness said, all due and proper care was taken of this road by the Company, to keep it in order; it was in good repair.

Doct. Thos. Kerr, testified as follows:—Found plaintiff at Elgin with a fracture of the left leg on the outside, and of the ankle on the inside; both broken; did'nt think the leg would be as good as before; he (plaintiff) was confined several weeks. Defendants admitted they are a rail road company, and were common carriers.

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The plaintiff here rested his case, and the defendants introduced as witness, Gilman H Worrell—who testified as follows:

He knew the plaintiff; had conversation with him some six or eight weeks after he was injured; he (plaintiff) was at the office; said he "did'nt blame any one but himself for his injury, because he was such a damned fool as to jump off"; he said he "had passed through the train from the baggage car"; he blamed himself for his want of self-possession.

John Cox (recalled) testified as follows:

Had some talk with Yarwood soon after he was hurt; he (Yarwood) said he "did'nt care so much about the hurt as about how foolish he done it." He (witness) had been over this part of the road the week before, and made a thorough overhauling of it by removing the injured rails; he did not think it necessary to go over this part of the road after each train; it is impossible to prevent snake heads; that was the best part of his road; it was in as good repair as it could be; it was a pine ribbon; this is better than oak; he passed over the road between eleven and twelve o'clock of the same day; the accident was about 4 o'clock P. M. There were no snake heads when he passed over it.

On cross examination, witness said, if there came a snake head after 12 o'clock he should not have known it.

John Drummond, testified as follows:—Was on the train as stage agent. He was in the baggage car from Elgin, until the accident; Yarwood, Fay, Jones and Baggageman Clark were there; these young men, Jones, Yarwood and Fay were scuffling when they first left Elgin; they continued until a short time before the accident; he saw them all go out; just before they left, they were pulling up their shirts; they were scuffling together on a sort of a good natured spree. He remained in the baggage car with the baggageman. Yarwood, Jones and Fay went out together; they went out fast; they seemed to be chasing one another; there was some extra motion in that car; not violent. He (witness) did not consider himself in any danger; that car was on the track all the time; the baggageman went to the brake; Yarwood and the others left the baggage car, three or four minutes before the car can off.

On cross examination, witness said—the scuffling was pulling out shirt tails; they seized hold of each others shirts; they walked out of the car rather quicker than usual.

Wm. H. Wiggins, being recalled, testified as follows: It was not safe for passengers to run about the cars, or stand on the platform. Mr. Yarwood had frequently passed over the road; those standing about the cars are most liable to be injured.

On cross examination, witness said—he did'nt remember that there were any printed rules; not in the habit of having rules in the baggage cars. Yarwood was on the platform when he (witness) told him the cars were off the track; he did'nt remember what directions he gave as to where Yarwood, Fay and Jones should go; endeavored to keep passengers off the platform.

The foregoing was all the evidence given in the cause. The Plaintiff then asked the court to instruct the jury as follows:

KANE COUNTY CIRCUIT COURT.

LEWIS H. YARWOOD

vs.
THE GALENA & CHICAGO UNION RAIL ROAD CO.

May Term, A. D. 1855.

And now comes the said Plaintiff by his counsel, and moves the court to instruct the Jury empannelled herein as follows:

- 1st. That if the Jury believe from the evidence that the Plaintiff was a passenger on board of the cars of the Defendants, in the month of August 1852, at the county of Kane; that the cars of the Defendants were thrown off the track of the road by reason of the unskillfulness or negligence of the Defendants or their agents, and that by means of such accident the Plaintiff was injured in his person, they will find a verdict for the Plaintiff, and assess his damages.
- 2. That if the Plaintiff was injured by means of an accident occurring on the rail road of the Defendants, while was a passenger on their cars; that the burden of proving that such accident was not the result of the negligence or unskillfullness of the defendants or their agents is cast upon the said defendants.
- 3. That in order to authorize the jury to find a verdict for the Plaintiff, it is not necessary for the jury to be satisfied that the Defendants were guilty of gross or even ordinary neglect in the reparation of their road, or management of their train: but if the Jury believe from the

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evidence that SLIGHT NEGLECT of the Defendants or their agents, was the cause of the accident and injury of the Plaintiff, and assess his damages; provided the jury believe from the evidence that the Plaintiff was a passenger on board the cars of the Defendants, at the time of such accident and injury.

4. The carriers of passengers by rail road are bound to use all precautions, as far as human foresight will go, for the safety of their passengers; and are answe able to injured passengers for SLIGHT NEGLECT of themselves and ageits, in the reparation of the track, and conduct and management of their trains, whereby injury ensues.

5. The omission of any precaution which would produce, or increase the safety of, or reduce the probability of danger to the passenger, constitutes such a neglect in carriers of passengers, as will make them answerable in damages to a passenger injured by means of such neglect.

6. That Rail Road Companies are answerable for injuries to a passenger resulting from a defect in their track, which might have been discovered by a most thorough and careful examination; and if the Jury believe from the evidence, that the injury complained of in this case, was occasioned by the neglect of the Company, or their agents, to examine the track prior to the passage of the train on which the accident occurred, they will find a verdict for the plaintiff, and assess his damages.

8. That if the Jury believe from the evidence that the accident and injury occurred by reason of the to rapid speed of the train; by reason of the neglect to apply the brake in time, or because of any other neglect or unskillfulness, management of the train, they will find a verdict for the plaintiff, and assess his damages.

9. That if the Jury believe from the evidence that the accident and injury complained of happened by reason of the neglect of the engineer in charge of the Locomotive attached to the defendants train, or to blow his whistle in time; or by reason of the neglect of the conductor to warn the engineer in time; or by reason of the neglect of the brakeman to apply the brakes in season, they will find a verdict for the plaintiff, and assess his damages.

10. That if the Jury believe from the evidence, that the accident and injury happened by reason of the bad order of the track, and want of due care and attention of the Company, or any of their agents, in the reparation of the track, or in the management and conduct of the train on which the Plaintiff was, they will find a verliet for the Plaintiff and assess his damages.

11. That the mere fact that the plaintiff jumped from the cars, while they were in motion, to the ground, and thus sustained the injury complained of, will not alone deprive him of his right to a recovery against the Defendants, if the Jury believe from the evidence that an accident had/occurred; that the cars were off the truck, and running at the rate of from 3 to 5 miles an hour; and the Plaintiff had reasonable ground to believe, and did believe, that his life or limb were in danger, and that it was necessary to leap from the cars in order to avoid the danger which threatened him, provided that the injury was not occasioned by the Plaintiff's own neglect, nor that his negligence contributed to produce the injury complained of.

11½. That although the Jury may believe that the Plaintiff would not have received injury, had he not leaped from the cars, and that as the event proved his jumping was an unwise act; that does not necessarily prevent the Plaintiff from recovering in this case. The question is not so much whether there was in point of fact any danger, as whether the Plaintiff reasonably apprehended danger, and so leaped from the cars; and in judging of his state of mind, the Jury should take into consideration whatever circumstances of alarm and confusion existed at the time, the Law not requiring the same coolness nor accuracy of judgment, in a person under a state of excitement and alarm, as under other circumstances.

12. That in determining the question whether the Plaintiff had reasonable ground to believe himself in danger, the Jury have the right to consider the experience and knowledge of the Plaintiff in regard to perils of this character, the commotion and consternation if among the passengers; and the fact, if it be so, that one of the brakemen abandoned his post and leaped from the cars.

13. That the mere fact that the Plaintiff was a few minutes previous to the occurrence of the accident and injury, scuffling and playing in a sportive manner with others on the cars, will not deprive the plaintiff of his right to recover from the defendant's, if the Jury believe from the evidence, that the Defendant's or their agents were guilty of any neglect, however

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slight, whereby the accident and injury occurred; provided the injury was not occasioned by the Plaintiff's own neglect, nor that his negligence contributed to produce the injury complained of.

- 14. That in estimating the damages which the Plaintiff have sustained by reason of the injury complained of, the Jury if they find for the Plaintiff, are not confined to such damages as may have resulted to the Plaintiff by loss of time, and expense of medical attendance, but may give such additional damages for the loss of natural use, of the Plaintiff's limb, which the jury, exercising a sound discretion—and in view of all circumstances, may see proper to award, not excluding the amount claimed in the declaration.
- 15. That unless the Jury believe from the evidence, that the passenger cars were full, and that it was part of the contract, that the Plaintiff should occupy during the trip, the baggage car; the mere fact that the Plaintiff left that car and went into the first class passenger car, is not of itself such negligence in the Plaintiff as to defeat a recovery in this case.
- 16. That passengers upon Rail roads are not to be bound or effected by rules established by such roads in relation to the conduct of passengers, unless the proof shows that the passenger had a knowledge of such rules and regulations.

Which instructions were given by the Court, to the giving of which instructions on the part of the said Plaintiff, the Defendants by their counsel, at the time excepted.

Defendants then asked the Court to instruct the Jury as follows:-

- 1, A.—That if the Jury believe, from the evidence, that the injury to the Plaintiff in this suit, happened to him by mere accident without fault on the part of the defendants, then the plaintiff cannot recover in this action.
- 5, B.—If the Jury believe from the evidence that the Plaintiff while on his passage from Elgin to Clinton, was guilty of carelessness, and unnecessarily exposed himself to danger by wrestling and scuffling on the cars, or by imprudently passing from one car to another while in motion, and that said carelessness or imprudence contributed in any degree to produce the injury, then the plaintiff cannot recover.
- 6, C.—If the Jury believe from the evidence, that the plaintiff, while on defendants cars imprudently and carelessive exposed himself to danger, by wrestling, playing, running or jumping; and that the mjury to him was in an way produced by such carelessness or imprudence, or that such carelessness and imprudence in any way contributed to produce the injury, then the plaintiff cannot recover, even though the Jury may believe that the defendants have been guilty of negligence.
- 7, D.—If the jury shall believe from the evidence that the plaintiff was guilty of negligence while a passenger upon the defendants cars, and that his negligence concurred with the negligence of the Defendants in producing the injury, then the Plaintiff cannot recover.
- 10, E.—If the Jury shall believe from the evidence that the Plaintiff leaped from the cars of the Defendants under a rash and under apprehensions of danger, when in reality there was no danger, and that the injury to the Plaintiff was the result of such leaping, then the Plaintiff cannot recover.
- 12, F.—If the Jury believe from the evidence that the Plaintiff carelessly leaped from the cars of the Defendants, and that such careless manner of leaping contributed to produce the injury to the Plaintiff, then the Jury should find for the Defendant.
- 13, G.—If the Jury belieze from the evidence that the Plaintiff leaped from the car of the Defendant while it was in motion, under a rash and undue apprehension of danger, when in reality there was not danger, and that the injury was caused by such leaping, they should find for the Defendants, although the Plaintiff might have really thought himself in danger, and leaped to the ground to save himself from harm; the question is whether under the circumstances his jumping was an act of rashness.
- 16, H.—If the Jury believe from the evidence that the injury to the Plaintiff was the result of the negligence or imprudence of both Plaintiff and Defendants, their verdict should be for the Defendants.

Which was done by the Court.

The Defendants then also asked the Court to instruct the Jury as follows, viz:-

- 2, I.—If the Jury shall believe from the evidence that the Defendants exercised due care, dilligence and skill in the preservation and repairs of their track, and in managing and operating their road at the time of the accident, and that the accident could not have been prevented by the use of said care, dilligence and skill, then the Plaintiff cannot recover in this action.
- 4, J.—That every traveler in a public which must meet the risks incident to the mode of travel he adopts, and if the Jury shall believe that the injury to the Plaintiff was the

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result of an accident which could not be avoided by the exercise of due care and skill in the preparation and management of the means of conveyance on the part of the Defendants, then the Plaintiff cannot recover.

8, K.—That the Plaintiff, before he can recover in this action must not only show that the injury to him was the result of carelessness or negligence of the Defendants, but also that he

himself was without fault in producing said injury.

9, L.—That in this action the Plaintiff cannot recover, unless the Jury shall believe that he exercised proper care and circumspection while on his passage from Elgin to Clinton, and that the Defendants were guilty of negligence, from which the injury was received, and the burden of proof is upon the Plaintiff to show not only that the defendants were negligent, but he himself was not guilty of negligence.

15, M.—Unless the Plaintiff has proved to the satisfaction of the Jury that the Defendants was guilty of negligence or misconduct, and also that Plaintiff used proper care and prudence, and that his own misconduct, want of care, or negligence, did not contribute to produce the

injury complained of, the Jury should find for the Defendants.

Qualification to Defendants 8th. 9th, and 15th Instructions.

"But proof that the Pl'ff. was a passenger, of the accident, and the injury make a prima facie

case, of negligence, and throws the burthen of explaining upon the Defendant.

18, N.—The Jury are also instructed that it is their duty to legard and obey the Law as given them by the Court, and that the law as laid down by the Supreme Court in their decisions, is the highest Judicial authority of the law—and the Jury are not at liberty to disregard or override it.

Which the court refused to give as asked, but gave with the following qualifications, viz:—by adding to the first of said instructions these words—"But due care required the use of the utmost prudence and caution; a carrier of passengers being liable for slight negligence;" and by adding to the second of said instructions these words—"But due care required the use of the utmost prudence and caution."

And by adding to the next three of said instructions these words—"Qualification to Defendants 8th 9th and 15th instructions—"But proof that the Pl'ff was a passenger, of the accident, and the injury, make a prima facie case of negligence, and throws the burden of explaining upon the Defendant."

And the last of said instructions by striking out the following words therefrom, viz: "And that the law as laid down by the Supreme Court in their decisions, is the highest Judicial authority of the land"

thority of the land."

To which decision of the Court in refusing said instructions as asked, and each of them. and qualifying them and each of them as aforesaid, the defendants then and there excepted.

And the defendants then also asked the court to give the jury the following instructions—14, O.—If the jury believe from the evidence that the plaintiff leaped from the car of defendants under circumstances that would not have justified such an act on the part of a prudent careful man, and that the injury was the result of such jumping from the cars, then the plaintiff cannot recover, unless the jury believe that such injury was willfully caused by the defendant.

3, P.—That the defendants as a common carrier of passengers, is not an insurer of the personal safety of the passengers against all accidents, but is liable only for the want of such care and dilligence as is characteristic of cautious persons. And if the defendants exercised such care and dilligence in the transportation of the plaintiff, then the plaintiff cannot recover in this action.

GALENA & CHICAGO RAIL ROAD COMPANY ads YARWOOD. Instructions for Def'ts.

The court is asked to instruct the jury on the part of the said defendants,

Q.—That if they believe from the evidence that Yarwood and his companions when they took passage in the cars of defendant at Elgin, were told by the conductor that the passenger cars were full, but they could go in the baggage cars, and that thereupon they got into the baggage car to ride to Clinton, then it was the duty of Yarwood to remain and ride in that car.

R.—And if the jury further believe from the evidence that at the time of the accident and when the plaintiff jumped off the cars, the baggage car was not off the track, nor in any danger, but that the plaintiff with his companions had got into a play and scuffle, which brought on a racing through the other cars, and in one of which Yarwood was brought to that appre-

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hension oimminent peril which induced him to leap from the cars, and thereby received the injury complained of, then the plaintiff cannot recover, and the jury should find for the defendants.

S.—And the jury are further instructed, that if they believe from the evidence, that Yarwood, the plaintiff, with his companions, at the time they took passage in defendants cars at Elgin, to ride to Clinton, were told by Capt. Wiggins, the conductor, to go in the baggage car, as the passenger cars were full, and that plaintiff, in pursuance thereof, went into said baggage car, then it was his duty to continue therein to the said Clinton.

T.—And if the jury further believe from the evidence, at the time of the accident, the plaintiff had left the baggage car, and gone into another car, and had thereby placed himself into a position of apprehension of imminent peril, which induced him to leap from the cars and thereby received the injury complained of, and that the baggage car was not off the track at all, or in any danger, such conduct of the plaintiff was culpable negligence, and the jury should find for the defendants,

W.—If the jury believe from the evidence that the standing upon the platform of cars, or the going about from car to car by a passenger whilst the cars are running, are acts of im prudence, and if they further believe that at the time the cars run off the track, the plaintiff was so standing or going about, and that such conduct of the plaintiff increased his apprehension of peril, and he was thereby induced to leap from the cars when in motion, and in consequence of such leap received the injury; when had he remained in the cars, he would not have been injured, he is not entitled to recover in this action.

V.—If the jury believe from the evidence that the plaintiff leaped from the cars of the defendant under circumstances that would not have justified such an act on the part of an ordinarily prudent careful man, and that the injury was the result of such leaping, then the plaintiff cannot recover.

Qualifications asked by defendants to plaintiff's instruction Number 9.

W.—But unless the plaintiff has proved to the satisfaction of the jury that his own carelessness or negligence did not contribute or assist to produce the injury complained of, then the jury should find for the defendant, and the burden of such proof is upon the plaintiff.

X.—If the jury believe from the evidence, that at time the plaintiff took passage on the defendants cars at Elgin, he was directed by the conductor to take his place in the baggage car, because there was not room for him in the passenger cars, and that the plaintiff did go on board of the baggage car at the time of starting, and that whilst on the way from Elgin to Clinton he left said car without any reasonable cause, and that the injury to the plaintiff happened in an equence his so leaving the car, then he is not entitled to recover in his action.

Which the court refused, and marked the same refused—to which decision of the court in refusing to give said last mentioned instructions, the defendants then and there excepted.—And the defendants then also asked the court to give the following instructions—

Y.—If the jury believe from the evidence that the plaintiff with his companions at the time they took passage in defendants cars at Elgin, to ride to Clinton, were told by the conductor of the train, that the passenger car was full, or nearly full, and that, they could go in the baggage car, and that plaintiff in pursuance thereof went into said baggage car, then it was his duty to continue there, unless it was necessary to leave the same; and if the jury further believe from the evidence, that at the time of the accident, the plaintiff had unnecessarily left the baggage car and gone into another car, and was walking about or standing upon the platform of the hind car, and had thereby placed himself in a position of peril, or apprehension of great peril, while the baggage car was not off the track, or in danger, then such conduct was culpable negligence.

Z.—If the jury believe from the evidence that Yarwood was unnecessarily standing upon the platform of one of defendants cars at the time of accident then he was guilty of improper conduct and negligence in so doing.

&.—That it is the duty of every passenger to take his place in the car in which he takes passage, and to remain therein, unless it is necessary to leave the same for a reasonable refreshment, or some other necessary purpose.

Which the court marked "given" "consent," and when the court read the last mentioned instructions to the jury, he remarked to the jury, and in their presence, that he gave these by the consent of plaintiff—to which remark of the court as aforesaid, the defendants then and there excepted.

The jury thereupon retired, and afterwards came into court, and rendered the following ver-

"We the jurors find the Defendants guilty, and assess the damages Twenty Five Hundred Dollars,

Foreman-JOHN VAN SICKLE."

Upon the rendition of said verdict, the defendants by their counsel moved the court for a new trial, which motion was overruled by the court, and a judgment rendered for the plaintiff on said Verdict, to which decision of the court in overruling the said defendants motion for a new trial, the said defendants by their counsel at the time excepted, and prays that this their Bill of Exceptions may be signed and sealed—which is done.

E. PECK & J. F. FARNSWORTH,
Att'ys for Appellants.

ISAAC G. WILSON,
Judge. (Seal)

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S.—And the just are firther instructed, that if they believe from sod, the plaintiff, with his companion, at the time they took parameter, the conduction of the plaintiff with his companion of the time the conduction of the plaintiff.

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