No. 12455

Supreme Court of Illinois

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

---

vs.

George

236

L. B. & C. R. R.

vs

Georgia

1858

1245

Supreme Court.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,
vs.
ALEXANDER GEORGE, APPELLEE.
} APPEAL FROM KANE.

ABSTRACT OF RECORD.

This was an action on the case, brought by the Appellee for injuries to his person, alleged to have occurred by the negligence of the Appellants, in running their cars. The injury was alleged to have been occasioned by a collision between the cars of the Chicago, Burlington & Quincy train and the Galena train, at Wheaton, Du Page County, on the 27th of August, 1857.

The declaration is in the usual form, for negligence, and the plea, not guilty. The case was tried, at the December term of KANE COUNTY CIRCUIT COURT, and a verdict was rendered for the Appellee for $1300.

A motion for a new trial was made and overruled.

The principal grounds of Error assigned, are,

The admission of incompetent evidence on the part of the Appellee, and giving and refusing instructions by the Court.

The following extracts from the Record will show the grounds of error, in relation to the admission of incompetent evidence:

See p. 17 certified copy of Records.

"ALEXANDER GEORGE,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.
} Trespass on the case.

Be it remembered that on the trial of this cause the plaintiff introduced the following witnesses who testified as follows:

HORACE H. FULLER.—The Plaintiff's Counsel asked the witness 'What time was the G. & C. U. R. R. Co. Train due at that station?' (The Defts' Counsel here interposed, and asked witness if he had any knowledge as to what time trains were due at that station, except what he obtained from the printed time cards or tables of the G. & C. U. R. R. Co. The Plaintiff objected to the question. The court sustained the objection and refused to allow the question to be answered, stating that could be ascertained on cross-examination; to which ruling and decision of the court, in refusing to allow the question to be answered, the Defendant's by their counsel at the time excepted.) In answer to the Plaintiff's question the witness said, the G. & C. U. R. R. train was due from the west at three o'clock and thirty or thirty-two minutes P. M.; not certain which. The Plaintiff then asked the witness 'What time was the Chicago, B. & Q. train going west due at Wheaton?' The Defendant's counsel objected to the witness answering, if he had no other knowledge or information than that derived from the printed time table or cards. The Court overruled the objection and allowed the witness to answer; to which decision and ruling of the Court the Defendant's Counsel excepted). The witness answered, 'The train was due at ten o'clock and forty minutes A. M.' The Plaintiff's Counsel then asked the witness, 'Was you expecting a collision?' To which question the Defendants objected; the Court overruled the objection, and allowed the question to be put and answered; (to which ruling of the Courts, the Defendants by their Counsel at the time excepted). The witness answered, 'I was, and was listening to hear it."

The Plaintiff's Counsel then asked the witness, 'What is the regulation of those wild trains?' The Defendants objected to witness answering the question if he had no other knowledge or information about the regulations except what he obtained from the printed card or table. The Court overruled the objection and allowed the question to be put and answered; (to which decisions of the Court the Defendants by their Counsel at the time excepted). The witness answered, 'To keep out of the way of all regular trains.'"

See p. 20 of Abstracted Records

"*On Cross Examination*, the witness said 'All that I know about the *rules and regulations of the running of trains* on the road and the time when they are due at the Station, I obtained from reading the printed time card of the G. & C. U. R. R. Co., which governs the running of all trains on that road east of the Junction, the time and manner of running all trains on that road, and the time card is made by the G. & C. U. R. R. Co. All I have testified to about the time when trains were due at Wheaton, and about the regulations of the road, is from information obtained from the G. & C. U. R. R. Co.'s time card. It was kept at the station and I frequently examined it. Cannot tell how long trains had been running on that time card. Not two months. The time table is often changed. Two or three changes have been made since August.' The Defendants by their Counsel then moved the Court to exclude from the jury all the testimony given by said witness, in relation to the time and manner of running trains on the road, and the rules and regulations and time when trains were due at Wheaton station, according to said printed time card or table, from which he derived his information; which motion the court overruled (to which ruling and decision of the Court, in overuling such motion, the Defendents by their Counsel excepted). 'There are from twelve to twenty rules on the time table.'

See p. 25 of Abstracted Records

"JOSEPH JAMES—A witness introduced by Plaintiff.—The Plaintiff's Counsel asked witness the following question: 'Did you know the proper time you had to be at the switch?' to which question the Defendants objected, which objection was overruled by the Court and the witness allowed to answer; (to which ruling and decision of the Court, and allowing said question to be put and answered, the Defendents, by their Counsel, at the time excepted). The witness answered, 'I know the time.'

The Plaintiff, then asked the witness, 'How many minutes was it after the C. B. & Q. train was at your switch before the Galena & Chicago U. R. R. train was due?' to which question the Defendants by their Counsel objected, which objection was overruled by the Court, and the question allowed to be put and answered. (The Defendants, by their Counsel, at the time excepted.) The witness answered, 'Two or three minutes.'

See p. 26 Abs. Records.

"*On Cross Examination*, witness said, 'I derive my information of the time trains were due at Wheaton, from the time card, had no other means of knowing. Had not examined the card that day; always went to the switch by the time on the card and not from the direction of the station agent. The card I mean is the Galena Co. time card. Had run a week, I should think, at the time on the card of that time, after the accident. The time of the trains of both Roads is on the same table or card.'"

p. 30 Abs. Rec'ds

"LEWIS C——, a witness for Plaintiff.—The Plaintiff's Counsel asked the witness the following question: 'Was it necessary for the Physician to visit him as often as he did?' to which question the Defendants, by their Counsel, objected, which objection was overruled by the Court, (to which decision of the Court, overruling said objection, and allowing the question to be put and an-

swered (the Denfendants by their Counsel at the time excepted). The witness answered, 'It was necessary.'

"*On Cross Examination*, witness said, 'I had no experience in taking care of sick persons.'"

Page 38 Abs. Records.

"The Plaintiff asked the Court to give the Jury the following instructions, which was done, viz:

Given.

"No. 1.—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 last, and that the cars of the Defendants came into collision with another train of cars, by reason of the negligence of the Defendants or their Agents, and that by reason of such negligence the Plaintiff was injured in person, they will find a verdict for the Plaintiff, and assess his damages.

Given.

"No. 2.—That if the Plaintiff was injured by means of an accident on the said road of the Defendants, while he was a passenger on their cars, that the burden of proving that such accident was not the result of the negligence or unskilfulness of the Defendants or their Agents, is cast upon the Defendants.

Given.

"No. 3.—That if the Jury believe, from the evidence, that the Plaintiff received an injury while riding on the cars of the Defendants, by reason of a collision of said cars, that constitutes a *prima facie* case of negligence, and the Defendants must rebut that presumption, in order to exonerate themselves; in other words, the burden of proof is upon the Defendants, to show that they by their Agents and Servants did use due care and precaution.

Given as amended.

"No. 4.—That in estimating the damages which the Plaintiff may 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 Plantiff by loss of time and expenses of medical attendance, but may give such additional damages, for the loss of the natural use of Plaintiff's limbs, if anything, the pain and suffering, mental anguish, which the Jury exercising a sound discretion may deem proper and just.

Given.

"That if the Jury believe, from the evidence, that the Plaintiff was riding on the Defendants' cars as a passenger, to the place of collision from Chicago, it is not necessary to entitle the Plaintiff to recover, to prove any payment of fare, under the last count in Plaintiff's declaration.

Given.

"No. 5.—That if the Jury believe, from the evidence, that the Plaintiff received injuries while on board of the Defendants' train of cars, while riding as a passenger from Chicago to Aurora, through the negligence of the Defendants or their Agents, then it is the duty of the Jury to find a verdict for the Plaintiff in a sum that will compensate said Plaintiff for all injuries sustained by him, either in broken bones, bruises, or lacerations, pains or sickness, and that the Jury may take into consideration any damages that they may believe, from the evidence, the Plaintiff may sustain or suffer thereafter, growing out of said injuries.

"To the giving of which said instructions the Defendants, by their Counsel, at the time excepted."

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"The Defendants then asked the Court to instruct the Jury as follows:

Given.

"The Jury must find for the Defendants in this case unless the Plaintiff has proved that he was a passenger on the cars or train of the Defendants and received the injury complained of, through the negligence or carelessness of the Defendants or persons in their employ.

Given. "If the Jury believe, from the evidence, that the injury to the Plaintiff was solely and entirely the result of accident, without the fault of the Defendants, then the Jury should find for the defendants.

Given. "If the Jury believe, from the evidence, that the injury to the Plaintiff was occasioned by circumstances over which the Defendants had not control, then the Jury should find for the Defendants."

Which was done.

Page 41. "The Defendants also asked the Court to give the Jury the following instructions:

Given as amended. 1—"If the Jury believe, from the evidence, that the Plaintiff's own negligence or want of care, contributed to the injury which he sustained, on the occasion of the collision, then the Jury should find for the Defendants.

Given as amended. 2—"That unless the Plaintiff has proved that the injury complained of was occasioned by the negligence or carelessness of the Defendants, or their servants, and also, that the said Plaintiff was not guilty of any carelessness or negligence on that occasion, then the Jury should find for the Defendants.

Refused. 3—"If the Jury believe, from the evidence, that the injury to the Plaintiff was occasioned by the negligence or want of care of the Galena & Chicago Union Railroad Company, or their Agents or Servants, over whom the Defendants had no control, then the Jury should find for the Defendants.

Refused. 4—"If the Jury believe, from the evidence, that both parties were guilty of negligence or want of care, then they should find for Defendants.

Refused. 5—"The Jury are instructed, in considering this case, to disregard the testimony of the witnesses, Fuller and James, in reference to the time at which the various trains were due at the Wheaton Station, according to the printed time cards, mentioned by said witnesses.

Refused. 6—"Unless the Jury believe, from the evidence, that the Defendants' train of cars at the time of the collision, was not entitled to the road, then they should find for the Defendants.

Refused. 7—"If the Jury believe, from the evidence, that the Galena & Chicago Union Railroad Company had the sole control and regulation of the time and manner of running all trains on the road where the accident occurred, and that the Defendants' train at that time was run according to such established rules and regulations, and that the collision was occasioned by or was the result of following such rules or regulations, by the Defendants or their servants, on that occasion; then the Galena & Chicago Union Railroad Company are liable for such injury, and the Jury should find for the Defendants.

Page 41. "Which the Court refused, but gave Nos. 1 & 2 amended or qualified as follows:

1—"If the Jury believe, from the evidence, that the Plaintiff's own negligence or want of proper care caused the injury which he sustained, on the the occasion of the collision, then the Jury should find for the Defendant.

2—"That unless the Plaintiff has proved that the injury complained of was occasioned by the negligence or carelessness of the Defendants, or their servants.

"To which decision of the Court, in refusing said instructions, as asked, and amending or qualifying any of the same, the Defendants, by their Counsel, at the time excepted."

236-99

State of Illinois.

Supreme Court.

Chicago, Burlington & Q. R.R. Co. Appellant

-vs-

Alexander George

Appeal

Appeal from Kane

Abstract of Record

Isaac N. Arnold

Counsel for R.R. Co.

Supreme Court
Northern Division.

The Chicago, Burlington & Quincy
Rail Road Company, Appellants

-vs-

Alexander George, Appellee

Assignment of Errors

And now come the said Appellants by Arnold & Plato their attorneys and say that in the Record and proceedings and in the judgment rendered there is manifest error, and that the judgment should have been for the appellants.
And the said appellants come and assign the following special grounds of error.

1. The court erred in permitting the witness Fuller to give from reccollection the contents of the printed time table and printed rules and regulations of the Rail Road.

2. The Court erred in not permitting the appellants to put to the witness the preliminary question, as to whether he had any knowledge of the time trains were due at Wheaton Station, except what he derived from the printed time table?

[12455-5]

3. The Court erred in permitting the witness Fuller to be asked whether he was expecting a collision.

4. The Court erred in permitting the witness to give "the regulations" of "mild trains" when he had no knowledge except what he received from reading the time tables.

5. The Court ought to have excluded the parol evidence of the contents of the time tables and printed rules and regulations.

6. The Court erred in recieving incompetent evidence and excluding that which was competent.

7. The Court erred in giving each and every of the instructions asked for by the Appellee.

8. The Court erred in modifying the instructions asked by Appellants, marked numbers 1 & 2. And erred in not giving them as asked.

9. The Court erred in refusing the 3, 4, 5, 6 & 7, instructions asked for by Appellants.

For these and other Error's the Appellants pray that the judgment may be reversed with costs.

Arnold Ed Plato
for Appellants.

[2455-4]

(Over)

Supreme Court. 3d Division - April Term 1858

The Chicago Burlington & Quincy
Rail Road Company
vs.
Alexander George

Now comes the said appellee by Leland & Leland, & Parks & Bradley his attorneys, & says that in the record & proceedings aforesaid there is no such error as is above assigned—

Leland & Leland, & Parks & Bradley
for appellee

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United States of America
State of Illinois
Kane County } ss.
City of Aurora

Pleas before the Honorable Alexander Gibson. The Judge of the Court of Common Pleas of the City of Aurora. at a regular Term of the Court of Common Pleas of the City of Aurora begun and held at the Court Room at the City of Aurora in said County on the fourteenth day of December in the year of our Lord one Thousand Eight hundred and fifty Seven

Present The Honorable Alexander Gibson Judge
" B. F. Parks States Attorney
" George C. Corwin Sheriff

Attest " James G. Parr Clerk

Be it remembered Dowit: That on the 24th day of September A.D. 1857. there was filed in the office of the Clerk of the Court of Common Pleas of the City of Aurora aforesaid a certain precipe for Summons which is in the word & figures following Dowit.

Alexander George
vs
The Chicago Burlington & Quincy Rail Road Company

Court of Common Pleas of the City of Aurora. October Term A.D. 1857

Please issue a Summons in the above

$1.00 [illegible]

2 entitled case in an action of Trespass upon the case
damages Ten Thousand Dollars ($10.00) directed
to the Sheriff, returnable on the first day of next
Term and delay

Parks & Dudley
Pltffs attys

And afterwards to wit on the same day last aforesaid
there issued out of the office of the Clerk of said Court
of Common Pleas within the City of Aurora aforesaid a
certain Peoples Writ of Summons directed
to the Sheriff of Kane County, which said
Writ is in the words & figures following to wit,

State of Illinois
County of Kane } ss.
City of Aurora } The People of the State of Illinois to
the Sheriff of said County. Greeting:
We Command you that you summon The Chicago
Burlington and Quincy Rail Road Company
if they shall be found in your County, personally
to be and appear before the Court of Common
Pleas of the City of Aurora in said County on
the first day of the next Term thereof, to be holden
at the Court Room in the City of Aurora, in said
County on the second Monday of October next
to answer unto Alexander Gorge, in a plea of
Trespass on the case to the damage of the said
Plaintiff as he says in the sum of Ten
Thousand Dollars — and have you then
and there this Writ with an endorsement
thereon in what manner you shall have
executed the same

Witness James G Barr Clerk
of our said Court and the Seal

being at Aurora aforesaid this 24th
day of September A.D. 1857

J. G. Barr Clerk

And on the back of said last mentioned writ appears an endorsement which is in the words and figures following Dowit,

Filed Oct 2d 1857

J. G. Barr Clerk

Personally served by reading to and leaving a true copy of the within with William H. Hawkins agent of said Defendants. The President of said Company John Van Buren not being found in the County

September 30th 1857

Geo. E. Brown Sheriff of Kane Co
By C. Penney Dept

1 Service	50
Copy	50
7 M. Trav	35
Return	10
	$1.45

And afterwards to wit on the same day the 24th day of September A.D. 1857 was filed in the office of the Clerk of said Court of Common Pleas aforesaid a certain declaration which is in the words and figures following Dowit;

State of Illinois
Kane County
City of Aurora and the Court of Common Pleas thereof
for the October Term A.D. 1857

Alexander Gross by Parks & Dudley his attorneys complains of the Chicago, Burlington and Quincy Rail Road Company defendant in a plea of trespass

L 12456-B]

3

4 as the case. For that the said Defendants heretofore to wit: on the 27th day of August A.D. 1857 and ever since have been the proprietors of a certain Rail Road known and called The Chicago Burlington and Quincy Rail Road. located in the State of Illinois. running from the City of Chicago in the State of Illinois to East Burlington in the State of Illinois and passing through the Town of Wheaton in the County of DuPage and the said City of Aurora in the County of Kane, and also and were the owners of divers Rail Road Cars for the carriage and conveyance of passengers, And the said Defendants on the day and year aforesaid were the owners of and running and propelling a certain Train of passenger Cars upon said Road for the carriage and conveyance of passengers for certain reasonable hire and reward paid to the said Defendants. And the said Defendants in consideration that the said Plaintiff would take a seat in one of said Cars at the City of Chicago in the County of Cook, to the City of Aurora for a reasonable hire and reward namely one dollar and thirty five cents paid to the said Defendants therefor by the said Plaintiff. They the said Defendants undertook and faithfully promised the said Plaintiff safely and securely to carry him in and by said Car from said City of Chicago to said City of Aurora and safely and securely deliver him the said Plaintiff at said City of Aurora with all due care diligence and skill.

And the said Plaintiff confiding in the said promises and undertakings of the said Defendants did on the to wit 27th day of August

5

A.D. 1887 engage and take a seat in the said Car of the said Defendants to be conveyed from said City of Chicago to said City of Aurora, and the said Plaintiff did then and there pay the said Defendants said sum of one dollar and Thirty Five cents — Yet the said Defendants not regarding their promises and undertakings but contriving and intending to injure the said Plaintiff, the said Defendants did not use due care, diligence and skill in carrying and conveying the said Plaintiff as aforesaid, but on the contrary thereof so grossly and carelessly conducted said Train of Cars in one of which the said Plaintiff was seated, that said Train of Cars in and upon which the said Plaintiff was being carried came into collision with a certain other Train of Cars, and breaking in pieces the Car in and upon which said Plaintiff was then and there riding, by means whereof the said Plaintiff was greatly hurt bruised wounded and injured, his left arm was broken, his shoulder bone was broken and his left arm dislocated thereupon, his hand and face badly bruised, his legs skinned and suffered great pain, was sick lame sore and disabled for a long space of time to wit from thence hitherto, and the life of the said Plaintiff was greatly despaired of and was put to great expense for nursing medicine and medical aid other injuries at Wheaton in the County of DuPage to wit at the City of Aurora in the County of Kane

And also for that heretofore to wit, on the 27th day of August A.D. 1887 the said Defendants being in possession of a certain other Rail Road Track commencing at Chicago in the

6 County of Cook and State of Illinois and termi-
=inating at East Burlington in the State aforesaid
And the said defendants were on the day and
year last aforesaid the owners of certain Rail
Road Cars for the carrying and conveyance
of passengers between said City of Chicago and
said Place called East Burlington. And on the
day and year last aforesaid the said defendants
received the Plaintiff into one of their said Cars
to be by them the said defendants safely
conveyed thereon upon and over the said Rail
Road from said City of Chicago to the City
of Aurora for a certain sum of money to
them the said defendants paid by the said
Plaintiff. Whereby it became the duty of
the said defendants, to use proper care
diligence and skill in the carriage and
conveyance of said Plaintiff

Yet the said defendants not regarding their
said duty in that behalf conducted themselves
so grossly careless and negligent by their Servants
that the said Train of Cars of the said defendants
in which the said defendant was being con-
=veyed came into collision with a certain
other Train of Cars by reason of such gross
Carelessness and negligence of the said
defendants, smashing and breaking in pieces
the said Car
of the said defendants in which the said Plaintiff
was being conveyed, by means whereof the left
arm of the said Plaintiff was broken, his collar
bone broken, his arm dislocated his head and
face greatly bruised, scarred and disfigured
his legs hands, arms, Knees and feet bruised
and Skined and otherwise greatly bruised
and was sick sore, lame and disabled

and his life greatly dispaired of for a long
space of time to wit: from thence hitherto,
and was put to great expense for nursing
medicines and medical aid to wit, Three
Hundred Dollars, and was unable to
pursue his lawful business and avo-
cation and otherwise greatly injured
at Wheaton to wit, at the City of Aurora

And also for that the said Defendant
heretofore to wit, on the 27th day of August
A.D. 1857 were the owners of certain Rail Road
cars for the carriage of passengers, for hire
and drawn over certain Rail Road Tracks
Commencing at the City of Chicago passing
through the Town of Wheaton in the County
of DuPage and the City of Aurora in the
County of Kane and terminating at East
Burlington, and the said Defendants on said
day received the said Plaintiff into their
said cars to be by them safely and securely
carried therein over the said Rail Roads
from said City of Chicago to said City of
Aurora for a certain sum therein and then
paid by the said Plaintiff to the said
Defendants to wit, One Dollar and Ninety
Five cents whereby it became the duty of
the said Defendants to use proper care
diligence and attention that the said Plaintiff
might be safely and securely carried from
said City of Chicago to said City of Aurora

Yet the said Defendants not regarding
their said duty in the premises by their agents
and servants with said Train in so grossly
careless and negligent a manner that by
reason of such gross carelessness and negligence

$12455-12

8 the said passenger Train of the said defendants running at a great rate of speed Towit Twenty miles per Hour near a place called Wheaton in the County of DuPage Illinois and between said City of Chicago and said City of Aurora and on the line of said Roads. came in collision with another Train of passenger Cars. running at a great rate of speed. smashing and breaking in pieces one of the cars of the said defendants being the Car in which the said Plaintiff was then and there seated —

By means whereof the said Plaintiff was grievously bruised and Hurt. his left arm was broken. and dislocated his collar bone was broken. his face and head was scarred. bruised. and disfigured his head legs. arms and feet. were greatly injured and his left arm was and is rendered useless. to the said Plaintiff so that he the said Plaintiff is and will be disabled for life from pursueing his lawful business of which he makes wherby he gains his living and has and can make great gains and profits. and the said Plaintiff suffered great pain and anguish and his life was greatly despaired of for a long Space of time thereafter. To wit Two Weeks. and he was put to great expense in procuring nurses. medicines and medical aid to the Three Hundred Dollars. and other injuries at Wheaton Towit at the City of Aurora. heretofore Towit on the 27th day of August A.D. 1857 —

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And also for that heretofore To wit on the 27th day of August A.D. 1857 the said Defendants were a corporation duly created by the laws of the State of Illinois under the name and style of the Chicago Burlington & Quincy Rail Road Company and as such were the common Carriers of passengers for a certain reasonable hire and reward between the City of Chicago in the County of Cook and State of Illinois and the City of Aurora in the County of Kane and were carrying and conveying passengers for hire over certain Rail Road Tracks between said City of Chicago and said City of Aurora in certain Rail Road Cars owned by them the said Defendants And on said day the said Defendants received the said Plaintiff into their said Rail Road Car to be by them conveyed securely and safely from said City of Chicago to said City of Aurora. whereby it became the duty of the said Defendants to use proper care and diligence that the said Plaintiff should be safely and securely carried as aforesaid. Yet the said Defendants not regarding their said duty conducted themselves so carelessly and negligently by their agents and servants that the said train of passenger cars in one of which said cars said Plaintiff was seated came into collision with a certain other train of cars, breaking in pieces the said Car in which the said Plaintiff was seated and greatly bruising and injuring the said Plaintiff - By means whereof the left arm of the said Plaintiff was broken and

[12455-11]

dislocated and parted from his shoulder his collar bone was broken. his hands. arms feet legs. face head. were greatly bruised wounded and mutilated and the said Plaintiffs life was greatly despaired of. and the said Plaintiff suffered great pain and anguish for a long space of time to wit from thence hitherto the said Plaintiff was and is unable to pursue his lawful business of water maker and thereby lost great gains and profits to wit Ten Dollars per day and was put to great expenses for nursing medicines medical aid. at Wheaton to wit at Aurora on the 2nd day and year aforesaid

By means of which said several premises the said Plaintiff saith that he is injured and hath sustained damages to the amount of Ten Thousand Dollars and therefore he brings suit &c

by
Parks & Hibbard
his Attorneys

And afterwards to wit on the 13th day of October A.D. 1857 there was filed in the office of the Clerk of the Court of Common Pleas of the City of Aurora aforesaid a certain Plea which is in the words and figures following to wit:

Chicago Burlington
& Quincy R.R. Co. } Court of Com. Pleas

11

at
Alexander George } Aurora &c

And the said Defendants by Plato their atty come and defend the wrong and injury when &c and say they are not guilty of any or either of said supposed grievances above laid to their charge in manner and form as the said Plaintiff has alleged complained &c

And of this they put themselves upon the Country &c

W B Plato
atty & Defts

And the said Plaintiff doth the like

By Ruks & Hadley
his attorneys

And afterwards Court on the 21st day of October A D 1857 it being one of the days of the October Term of the Court of Common Pleas of the City of Aurora aforesaid the following among other proceedings were had and entered of record in said Court Viz:

Alexander George
vs
The Chicago, Burlington & Quincy Rail Road Company } Trespass on the Case

This day came the Parties to this suit by their attorneys, and the Defendants enter their motion for a continuance of this cause, which motion is sustained by the Court at Defendants costs of the Term

[124.55-12]

12 Therefore it is considered that the Plaintiff have and recover of the defendants his Costs & this Term expended and have Execution therefor —

And afterwards Towit: on the 14th day of December A.D. 1857 the following among other proceedings were had and entered of Record in said Court. the same being one of the days of the Regular December Term A.D. 1857 of said Court of Common Pleas of the City of Aurora — Towit;

Alexander George
vs
Chicago. Burlington & Quincy Rail Road Company
} Trespass on the Case

This day come Defendants motion this cause is continued until the 15th inst at their Costs of the day — Therefore it is considered by the Court that Plaintiff have & recover of the Defendants his Costs & this day expended and have Execution therefor —

And afterwards Towit on the fifteenth day of December A.D. 1857 the same still being one of the days of said December Term of said Court. & thereof the following among other proceedings were had and entered of record in said Court Towit;

Alexander George
vs

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The Chicago. Burlington & Quincy Rail Road Company } Trespass on the Case

This day comes the Plaintiff by Parks & Tuthy his attorneys and the Defendants by Plato their attorney also come, and issue being joined therein on motion of Plaintiff it is ordered that a jury come. Thereupon come a jury of good and lawful men To Wit;

Abel Jenks	Isaac T. Bevier	William K. Goldsmith
A. E. Durant	Noah Thayer	Israel T. Leonard
William Gunnison	George Myers	G. R. Wells
Henry D. Bruce	Richard Dewey	Hy. Wells

who being severally called tried elected and sworn also come and after hearing a portion of the Testimony. It is ordered that when the Court adjourns the Jury may seperate and meet the Court to morrow morning

And afterwards To wit on the 16th day of December A.D. 1857 the same still being one of the days of said December Term of said Court the following among other proceedings were had and entered of Record in said Court To Wit;

Alexander George

vs

The Chicago. Burlington & Quincy Rail Road Company } Trespass on the Case

This day again come the parties to this suit by their said attorneys and the Jury heretofore empannelled in this cause also come and after hearing the

ballance of the proofs and a portion of the arguments of Counsel. It is ordered that when the Court adjourns the Jury may seperate and meet the Court tomorrow morning —

And afterwards Towit on the 17th day of December A.D. 1857 the same still being one of the days of said Term of said Court, the following entry of the proceedings were had and entered of Record in said Court Towit;

Alexander Gorgi
vs
Chicago Burlington & Quincy Rail Road Company
} Trespass on the case

This day again come the parties to this suit by their Attorneys, and the Jury herein impannelled herein also come and after hearing the ballance of the arguments of Counsel, instructions of the Court, retire in charge of a sworn officer of the Court to consider of their verdict. And by agreement of the parties it is ordered by the Court. That if the Jury shall agree upon a verdict after the adjournment of the Court for the day. They may seal up their verdict, and meet the Court tomorrow morning

And afterwards Towit on the 18th day of December A.D. 1857 the same still being one of the days of said Term of said Court aforesaid the following among other proceedings were had and entered of Record in said Court Towit;

15

Alexander George
vs
The Chicago Burlington &
Quincy Rail Road Company
} Trespass on the Case

This day again come the parties to this suit by their attorneys and the jury herein impannelled in this suit also come into Court and for a verdict upon their oaths say. We the jury find the Defendants guilty in manner and form as charged, and assess the Plaintiffs damages at Thirteen hundred Dollars. Whereupon come the Defendants by Plato their attorney and enter their motion for a new trial herein.

And afterwards Towit on the Twenty Third day of December A.D. 1857. the same still being one of the days of said December Term of said Court aforesaid. The following among other proceedings were had and entered of record in said Court Towit;

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Rail Road Company
} Trespass on the Case

This day this cause coming on to be heard upon the Defendants motion for a new trial herein, and the Court being fully advised of and in the premises said motion

It is therefore considered by the Court that Plaintiff have and recover of the Defendants his damages of Thirteen Hundred

16 Dollars in form as hereto for prayed. and also his costs and Charges by Bill about his suit Expended. and have Execution therefor

To which decisions of the Court overruling said motion and rendering judgment herein. the Defendants at the time Excepted and prayed an appeal of this cause to the Supreme Court of the State of Illinois —

It is ordered by the Court that said appeal be allowed. and on motion of Defendants it is further ordered. that Defendants have thirty days to make out and file their Bill of Exceptions and file Bond herein. and that Defendants enter into Bonds in the sum of Two Thousand Dollars with Either of the following named persons as sureties to wit. William H. Hawkins. Edward R. Allen or Lorenzo D. Brady

And afterwards to wit on the 12th day of January A.D. 1858 the said Defendants filed in the office of the Clerk of the Court of Common Pleas of the City of Aurora aforesaid, their certain appeal Bond with William K. Hawkins as surety, and also their certain Bill of Exceptions in the Cause aforesaid, which said Bill of Exceptions is in the words and figures following to wit

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Be it remembered that on the trial of this cause the Plaintiff introduced the following Witnesses who testified as follows

Horace K. Fuller on about the 27th day of August 1857 was in the employ of the Galena and Chicago Union Rail Road Company as Station agent at Wheaton in DuPage Co. The Galena & Chicago Union Rail Road lead from Chicago to Freeport. There were other cars than the G. & C. U. R. R. Cars running over that Road— The Cars of the Chicago, Burlington & Quincy Rail Road Co. run on that road— The Chicago

Burlington & Quincy Rail Road runs from Burlington & Quincy to the Junction — There was a Collision took place about the 27th August 1857 about a mile west of Wheaton between the Trains of the Chicago, Burlington & Quincy Rail Road, and the Galena and Chicago Union Rail Road. The C B & Q Train passed Wheaton going west about 28 minutes past 3 o'clock P.M. — + The Plaintiffs Counsel then asked the Witness what time was the G & C. U.R.R.C Train due at that Station — (The Defts Counsel here interposed and asked Witness if he had any knowledge as to what time trains were due at that Station, Except what he obtained from the printed Time Card or Tables of the G & C. R.R.C. The Pltff objected to the question The Court sustained the objection and refused to allow the question to be answered. Stating that Could be ascertained on Cross Examination To which ruling and decision of the Court in refusing to allow the question to be answered The Defendants by their Counsel at the time Excepted — In answer to the Plaintiffs question the Witness said, the G & C. U.R.R. Train was due from the west at 3 o'clock and thirty or thirty two minutes P.M. not certain which, My business was to keep Himself right about the Station to know what time Trains were due there — The Plaintiff then asked the Witness " What time was the Chicago C & Q. Train going West due at Wheaton? The Defts Counsel objected to the Witness answering if he had no other knowledge or information than that derived from the printed Time Table or Cards — The Court overruled

19 the objection and allowed the witness to answer — To which decision and ruling of the Court the Defts by their Counsel Excepted The Witness answered the train was due at ten o'clock & forty minutes A.M. about 2 minutes after the Burlington train passed the Station I heard them come together — +

(1) The Plaintiffs Counsel then asked the Witness — Was you expecting a collision? To which question the defendants objected The Court overruled the objection, and allowed the question to be put and answered to which ruling of the Court the Defts by their Counsel at the time Excepted

The Witness answered — I was, and was listening to hear it ± — The Conductors name was Clark dont know where he is. The train did not stop at the Station it slacked up a little — Joseph Daines was at the switch I went to the place of Collision. I only saw one that was wounded. The baggageman was killed. There was a car ran back to the Station with those hurt it was pushed back. I first saw the Pltff sitting on a sill at Wheaton he was one of the persons that came back in the car. I dont know the name of the Engineer on the Burlington train he was called I have been in the employ of the C. & A. R. R. Co. for six years. The name given to trains not running on time is wild trains.

Drs Hagaman & Vallett attended to the Plaintiff at Wheaton — I saw the cars after the collision. They were piled on top of each other and broken and injured. The baggage car was

$1/2455-12$

into a passenger car. a Lady was hurt and two or three others slightly (2) The Plaintiffs Counsel then asked the Witness "what is the "regulation of those mile Trains?" The Defts objected to Witness answering the question if he had no other knowledge or information about the regulations, Except what he obtains from the printed time card or Table. The Court overruled the objections and allowed the question to be put and answered. To which decisions of the Court the Defts by their Counsel at the time excepted. The Witness answered "To keep out of the way of all regular Trains"

Wheaton is the second Station East and five miles from the Junction.

On Cross Examination Witness said I was in the employ of the G.R.&I.R.R.Co. at the time of the accident. My business was to sell the Freight and know the time Trains arriving at the Station, have no control over any of the Trains. — all that I know about the rules and regulations of the running of Trains on the road and the Style & when they are due at the Station I obtained from reading the printed time Card of the G.R.&I.R.R.Co. which governs the running of all Trains on that road East of the Junction. the time and manner of running all trains on that road and the time Card is made by the G.R.&I.R.R.Co — all that I have testified to about the time when Trains were due at Wheaton. and about the regulations on the road is from information obtained

from the G. & C. U. R. R. Co's time card. It was kept at the Station, and I frequently examined it. I am not certain that the G. & C. U. R. R. Co. train was due precisely at 3.30. it might have been 3.32. If there had been another train due at the same time, the C. B. & Q. R. R. train would have been on time 35 minutes after its time on the printed card or time Table. Cannot tell how long trains had been running on that time card. Not two months. The time Table is often changed. Two or three changes have been made since August. Think the Galena Baggage car, was on top of the Burlington passenger car. I think it must have been the Baggage car of the Galena train on the passenger car of the same train. These are what are called delayed trains they are not mild trains. The 35. minute rule applies to delayed trains. Mild trains are those that have no time allowed them on the time Table. Trains that start out without any time. Winfield is a Station 2½ miles from Wheaton between Wheaton and the Junction. Burlington trains do not stop at Stations between the Junction & Chicago except to leave passengers they do not take on any between Chicago and the Junction. The Defendants by their Counsel then moved the Court to Exclude from the jury all the testimony given by said witness in relation to the time and manner of running trains on the road and the rules and regulations and the time when trains were due at Wheaton Station, according to said

[12455-47]

printed time card or Table from which he derived his information — which motion the Court overruled, to which ruling and decision of the Court in overruling said motion the defendants by their Counsel Excepted.

On Re-examination by Pltff. Witness said if a Train comes on time at four Corners after time it is a delayed Train. It is the duty of Eastern trains to wait at Stations thirty five minutes for delayed Trains coming West in some Cases. — I have no recollection of Examining the time Table since the Collision. There are from twelve to twenty Rules on the time Table —

Jud C. Hagaman resided at Wheaton Dupage County August 27th 1857 am Physician and Surgeon — on the 27th of August last was called to go to a place about a mile or two fourths west of Wheaton where a Collision of Trains had occured — the first person I saw was the Pltff. in an insensible condition. The Pltff and a lady who was hurt were taken to Wheaton. I took charge and attended them. First saw the Pltff in the Car on the C. B. & Q. R. Road — a car was sent back to Wheaton. They had put the Pltff & Lady in before I got there — after the Pltff was taken to the Hotel I Examined him

found the left Clavicle or collar bone broke his left shoulder badly injured. the injury might be permanent — The injury to the shoulder was a general contusion. there were other bruises about the body the collar bone was not broken Squareoff but split he was faint

On Cross Examination Witness said I treated him about 24 hours. put a bandage on applied ether to his nose and liniment to his body when I found bruises. Staid with him about two hours after dressing his wounds. Then went away. saw him again same night. Staid with him part of the next day. when he was taken to Aurora — There was a Physician assisted me to dress the Ettys Wounds his name is Vallette The next time I saw Ettys after he was taken away. was at the last Term of this Court in October. he came to Wheaton after me —

On Re Examination Witness said When I returned from Elgin that night found Ettys in a very easy condition under the circumstances. The bandage I put on had been taken off — I know the bone was broken. I charged fifty dollars for my services — I put on the figure Eight bandage — The simple bandage had been put on in my absence. The fracture would with the injury to the shoulder joint be very painful — I stated I think the ligament to the shoulder joint was fractured. The Bracket I adopted was

(12455-18)

the old school practice

John D. Vallett resides at Wheaton. after Dr Keagaman at the time spoken of by him we first attended to the Lady - then to the Plff, the way or appearances visible at first. The left collarbone was broken. There was an injury on the right Temple, his arm was badly bruised - no pasengers injured on the Express train. The ordinary charge for my services would be Ten Dollars - The Plff remained at Wheaton from 4 o'clock P. M. of the 27th August until 6 o'clock next day and was then taken away by Dr Keagaman and Father Lewis. Plff had requested me to write to them. and I did so. and they came after him the next day -

On cross Examination Witness said I went to the place of collision with Dr - Keagaman and was at Hotel with him and assisted in dressing Plffs wounds Have had some experience in cases of this kind - The next time I saw him after the accident was about three weeks. and the next time after that was at the last Term of this Court in Oct. and the next time was yesterday. when he was asked to let me and Dr Howell Examine his Shoulder and he would not -

Joseph James; was at Whiteton. was at the switch at the time the C.B.&Q. Train came along I went to switch the Galena Train. The Burlington train came along. Slacked up and turned on, heard next both Engines Whistle to the brakes about a minute after the B. train passed — I was in the habit of going to the Switch before the Trains came along to switch the Trains going east on the double track. Had switched on that line 3.30, for a meeting two

The Plaintiffs Counsel then asked the Witness the following question " Did you know the proper time you had to be at the switch?"

To which question the Defts objected, which objection was overruled by the Court, and the Witness allowed to answer. To which ruling and decision of the Court, and allowing said question to be put and answered the Defts by their Counsel at the time Excepted)

The Witness answered I knew the time, after I heard the whistle I saw a Car that was run back with the wounded passengers, saw the Sheriff sitting at the Depot. he went from there to the Hotel

The Plff then asked the Witness "How many minutes was it after the C.B.&Q. Train was at your switch before the Galena & Chicago U.R.R. Train was due?" To which question the Defts by their Counsel objected, which objection was overruled by the Court and the question allowed to be put and answered. To which ruling and

decision of the Court in allowing said question to be put and answered the defendants by their Counsel at the time Excepted)

The Witness answered, two or three minutes - The time of the C. B. & Q. Train I knew to be 10.40. I had switched for the Galena Train. That may have been the time for two or three weeks. I were going west when I switched for them at 10.40. made no stop at that time. I never was at the Wreck Fuller was at the same Station with me

The Plffs Counsel then asked the Witness (Did you expect a Collision after they had passed 3. To which question the defendants by their Counsel objected. The Court overruled the objection and allowed the Witness to answer, to which ruling and decision of the Court in allowing said question to be put and answered the Defendants by their Counsel at the time Excepted)

The Witness answered, Yes. If the Galena Train was on time I did.

On Cross Examination Witness said

I derive my information of the time Trains were due at Wheaton from the time Card. had no other means of knowing. Had not Examined the time Card that day. always went to the Switch by time on the Card, and not from the direction of Station agent. The time Card I mean is the Galena

Co. Time Card. Had run a week & should think on the time on the card of that time after Accident — The time of the trains of both Roads is on the same Table or Card.

David Murphy. I was the Engineer on the C. B. & Q. R. Train on the 27th August at the time of accident was running at rate of 20 or 25 miles an hour. Should judge we were running at usual rate of speed.

On Cross Examination Murphy said I was running on that occasion by the Galena & Chicago U. R. R. Time Card.

On Re-examination Murphy said I did not look at Card before but after the Collision. Clark was the Conductor on that Train I followed his directions. He had been in the employ of the Co. two years.

I should think that we were behind time at Wheaton that day. I should call the Train a delayed Train running wild. I am not in the employ of the Co. now —

On Cross Examination again Murphy said — Engineers were under the direction of Conductors. Except when they conflict with directions on the Time Card.

Clark had been on the road as Conductor two years to the best of my Knowledge.

[124.55-2D]

Abram Spalding. I am acquainted with Plaintiff. my business has been Jewelry. I understand the business. The Plaintiff is a Jeweler. He was not the best nor the poorest. but a medium workman. He is work whilst in the employ of Mr Childs was worth Fifty Dollars per month or Twelve and a half Dollars per week —

Cross Examination — Twelve dollars and a half per week is a reasonable compensation for his labor. by our system we work from morning till night not by 10 Hour system. Have known Pltff a year and a half. he worked pretty steady for Mr Childs —

Wm Hemmiker I am acquainted with Pltff. Resided in Aurora on the 27th August last. I went up with Father Lewis the day after the accident to Wheaton. found Mr George at the Hotel sitting in a rocking Chair complaining of great pain in his leg and shoulder. The bandage was loose. I would not fix it until I got him to Aurora Saw him two or three times a day He sent for Dr Hemmeter of Chicago Pltff could not move the shoulder. The Membranes and tendons were very much bruised in the shoulder. I have practiced 20 years. Pltff was hurt worst in shoulder joint. which would make him subject

to chronic disease. he is over 45 years of age. a bone in older persons is more dry and breaks easier. a fracture in a young person will heal quicker

The effect of the injury on him is that he will not have the same strength in his arm. it is hard to tell what will be the Extent of the injury now. the effect naturally of such an injury is that I think he will have a weakness in his arm for a long time. I attended Pfff Six weeks. My attendance was worth one Hundred and Seventy dollars

Was there Two or three times a day stay 2 or 3 hours. he had a nervous fever during the time

On Cross Examination Mr Hinds said. he was hurt on his arm & both legs & generally bruised. I went to Wheaton the next day after the accident. me left Wheaton about seven o'clock. arrived at Aurora about Eight. Pfff was taken to Father Lewis. I attended him six weeks. the first three weeks three times a day. the remainder of the time once or twice a day. I visited him to see how he did. regulated the bandage every day or two. applied lotions every day to the bruises for five weeks. it was the left. that was injured the collar bone united in in five weeks collar bones are difficult to heal and this was bad. he has got a good shoulder. it was a good cure. he

had on when I first saw him. a new kind of bandage. Figure 8. bandage was not proper kind to put on. The fracture was nearly across a little transverse.

Joseph A. Vaughn. I was a passenger on the C. B. & Q. train at the time of the collision. first saw the Pettit that day at depot in Chicago. saw him again in cars after we left. he was in the fore part of front pass Car. Chicago the next I saw of him was after the collision about 20 minutes. He was standing at the side of the train. I assisted him into the Car that went back to Wheaton.

Lewis C. on the 26 August last Pettit left Aurora to go to Chicago. I saw him at Wheaton on the 27th and brought him to my house. He could not help himself when at my house. he sent for Dr Kenyon in Chicago one of the best Physicians in Chicago. Dr Kenyon came out and Examined him. I furnished Pettit with a home and charged him nothing. I knew

think it was worth three dollars per day it was worth five or ten dollars to go to Wheaton, after him I should think — The Pltffs Counsel then asked the Witness the following question

+ "Was it necessary for the Physician to "visit him as often as he did?"

To which question the defendants by their Counsel Objected. Which objection was overruled by the Court. To which decision of the Court overruling said objection, and allowing the question to be put and answered the defts by their Counsel at the time excepted)

The Witness answered it was necessary. + George was not able to put on his clothes for four weeks. I saw the bruises on the Pltffs person, arm was black and blue. Skin off his leg & shoulder was badly swollen. in my opinion. the Pltff is from 40 to 50 years old.

On Cross Examination — Witness said I was at home most of the time George was at my House. I could not do anything for him. I had no Experience in taking care of sick persons. I considered it necessary for the Dr. to visit him as often as he did

I dont know whether another person or nurse could take care of the Pltff in his situation as well as a Doctor

My profession is a Priest of the Catholic Church. have resided here one year. Pltff was there when

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I came here. he is a member of the Catholic Church

Joseph D. Heuroton. I reside in Chicago been there 9 years am Physician & Surgeon. am Belgian Consul. was not acquainted with Pfaff until I saw him at St Lewis. The bone had been broken 5 or 6 days before I saw it. The shoulder was bruised. The collar bone fractured near the External end. he was considerable irritable. The contusion was directly on the shoulder joint. any man who has had a dislocation of the shoulder is miserable to a second dislocation. The arm will be weaker all his life not so much swing. Dr Howell & Dr Heinicker were present when I made an Examination. The usual fee for me to come here from Chicago & make the Examination was worth One Hundred Dollars.

On Cross Examination Witness said I should think it worth that to visit him as I did. Physicians in Chicago charge one Dollar per mile for visiting patients out of the City & something for their time. I found that he had been properly treated by his Physicians. I could not tell of my own knowledge whether shoulder had been dislocated. The Contusion was the greatest injury in

my opinion. I have practiced in Europe 15 years.

Sidney C. Child am acquainted with Pltff. He is a watch maker. has been employed by me his services are worth from 15 to 18 dolls per week in this place. I paid him twelve dollars and a half per week at first and fifteen the last weeks

The Pltff here rested. and the Defendants introduced witnesses who testified as follows

Orrin D. Howell. I am a Physician and Surgeon. reside here Know the Pltff. have known him a year he is a watch maker. I called on him to treat his case the 31st of August last. he was at Mr Lewis. found contusion over the right temple. the left shoulder. and on one of the legs. left collar bone fractured outer portion He has received tolerable proper treatment. The shoulder has dropped a little forward & down. presented no appearance of having been dislocated I visited and attended him daily as a Physician until the fifteenth day of September. he was then able to be out. I called to see him on the 17th and he was absent. I called again on the 19th and he was out. then in two or three days after that I saw him out again.

[12456-25]

I was present when Dr. Kenosline was there at that time there was considerable swelling over the shoulder. in the course of three or four days the swelling & discoloration had disappeared. The bruises on arm & leg appeared superficial — The last time I Examined him was on the 15th ult Sept No unfavorable symtoms at that time I visited him as often as was necessary in Case like his — He would need a Nurse who could apply the lotions.

The only necessity for a Physician after the first few days was to see that the bandages were kept right. He needed no other Medical attendance than I gave him — When I Examined him last on the 15th, his shoulder was doing well. The injury was not Calculated to result in a permanent injury to him.

The services of Dr Hagaman at Wheaton was worth Ten Dollars. It was worth from the time he first came here for a Physician to visit all that was necessary from 20. to 25 dolls.

Dr Kenosline services were worth 25 dollars, that would be a fair fee.

I don't know what the Charges of Physicians coming out of Chicago are.

The injury the Pltff received I apprehended would not be a permanent one I could tell better by an Examination now. I have asked him to let me Examine him. perhaps few days after I got my regular. I met him in the street and asked him to let me Examine

him. He agreed to come to my office but did not. I met him again two or three days after and requested him to come to my office and let me see his shoulder. He agreed he would and set a time but did not come. On yesterday I asked him to go to my office and let me & Dr Vallett examine him he shook his head and said "No!"

From my observation & Experience all fractures Collar bones get well. The Contusion in this case would only retard the case — Should judge Pltff to be 40 or 45 years old — I consider there is no probability that the Pltff will be injured permanently from the injuries on that occasion — From faintness after the Concussion, and from fright he might become insensible.

I should think that 150 or 200 dolls would cover all necessary reasonable Expenses of Physicians. Nurses. care and attention and taking care of Pltff from the time he was injured until he would need no such further services. Care or attention. Should think Dr Hemmekers Services were worth from 20 to 25 dollars. It would be worth 1.50 per day for a man to do all that was necessary, for 3 or 4 weeks

On Cross Examination Witness said I saw the Pltff first on the 31st of August. I charged 5.00 for first visit. Technically speaking I set his Collar bone. It was a transverse

fracture, but very difficult to ascertain at that time. The contusion stands a case — Swelling was over the region of the Clavicle, badly swollen, black & blue black & blue spots had nearly disappeared in 15 days. I visited about 12 or 15 times and charged 18 dolls. I was not called by Plff. Sent them by some one for Deft. They paid me. Collar bone would not stick up when broken at the ends, but would appear so. — When I asked him to let me look at his shoulder I spoke in English. At the first time he said he would. I asked him to come to my office.

This would have been a great amount of irritation if he had gone from the 27 of Augt. to the 31st without a Physician! He may be as sound as ever, but not able to bear as much Physical fatigue, and are not liable to rheumatic pains — as far as the fracture and contusion is concerned I agree with Dr Hemsoline —

Plff would be subject to pains of a Neuralgic character, but not of rheumatic — Weakness would exist probably 5 or 6 months.

E. H. Angell says a Physician & Surgeon in Aurora have heard a portion of the Evidence. It would be worth ten dolls. to dress and attend Plff as he was attended at Wheaton

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It would be worth about from 20 to 30 dolls to come from Chicago & visit the Pltff in consultation with another Physician — our regular charge is one dollar a visit — From my knowledge if the bone does unite properly it will be as useful as ever it might take five or Eight mos to get entirely well. — I am a partner of Dr Howell, was not at the time treated Pltff.

D. M. Young am Physician & Surgeon in Aurora. Have heard the Evidence of Pltffs injuries, and the treatment — The services of Dr Hagerman at Wheaton were worth 8. or 10. dollars. worth about 2 dollars a day to attend him whilst at Mr Lewis. a nurse worth 1.50 per day

Dr Howells services were worth from 25 to 50 dolls. a collar bone so broken would in 3 or 6 months perform the functions belonging to it as well as ever

The Defendant here rested. and the Pltff called Peter. I was present when Dr Howell & Mr Hawkins yesterday wanted Pltff to show his shoulder Pltff said did not want to do so then Howell told me to speak to Geo It was in the drug Store. George is a Dutchman and talks Dutch —

[12455-25]

38

The foregoing is all the Evidence given in the case—

The Plaintiff asked the Court to give the Jury the following instructions which was done viz!

No. 1. That if the Jury believe from the Evidence that the Plaintiff was a passenger onboard of the Cars of the Defendants in the month of August last and that the Cars of the Defendants came into Collision with another Train of Cars by reason of the negligence of the Defendants or their agents and that by reason of such negligence the Plaintiff was injured in his person. they will find a verdict for the Plaintiff and assess his damages

Given

No. 2 That if the Plaintiff was injured by means of an accident on the said Road by the Defendants while he was a passenger on their Cars That then the burden of proving that such accident was not the result of the negligence or unskillfulness of the Defendants or their agents is cast upon the said Defendants

Given

No. 3. That if the Jury believe from the evidence that the Plaintiff received an injury while riding on the Cars of the Defendants by reason of a Collision of said Cars. that constitutes a prima facie case of negligence and the Defendants must rebut that presumption in order to Exonerate themselves in other words the burthen of proof is upon the Defendants to show that

Given

they by their agents and servants did use due care and precaution.

No 4. Given on behalf of Defendants

That in estimating the damages which the Plaintiff may 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 Expenses of medical attendance but may give such additional damages for the loss of the natural use of Plaintiffs limbs if any thing, the pain and suffering Mental anguish which the jury exercising a sound discretion may deem proper and just.

That if the jury believe from the Evidence that the Plaintiff was riding on the Defendants cars as a passenger to the place of Collision from Chicago. it is not necessary to entitle the Plaintiff to recover to prove any payment of fare under the last count in Plaintiffs declaration

Given

No 5. That if the Jury believe from the evidence that the Plaintiff received injuries while on board of the Defendants train of cars while riding as a passenger from Chicago to Aurora, through the negligence of the Defendants or their agents, then it is the duty of the jury to find a verdict for the Plaintiff in such sum that will Compensate said Plaintiff for all injuries sustained by him. either

Given

[12455-DL]

in broken bones. bruises. or lacerations pains or sickness. and that the jury may take into consideration any damages that they may believe from the evidence the Plaintiff may sustain or suffer thereafter. growing out of said injuries—

To the giving of which said instructions the Defendants by their Counsel at the time Excepted—

The Defendants then asked the Court to instruct the Jury as follows

The Jury must find for the Defendants in this case unless the Plaintiff has proved that he was a passenger on the Cars or Train of the Defendants and received the injury complained of through the negligence or carelessness of the Defendants or persons in their employ

Given

If the Jury believe from the Evidence that the injury to the Plaintiff was solely and Entirely the result of accident without the fault of Defendants. then the Jury should find for the Defendants

Given

If the Jury believe from the evidence that the injury to the Plaintiff was occasioned by circumstances over which the Defendants had no control then the Jury should find for the Defendants.

Given

which was done. The Defen

=dants also asked the Court to give the
Jury the following instructions

1

If the Jury believe from the evidence
that the Plaintiffs own negligence, or
want of proper care contributed to the
injury which he sustained on the
occasion of the collision. Then the Jury
should find for the Defendants

2

That unless the Plaintiff has proved
that the injury complained of was occa
=sioned by the negligence or carelessness
of the Defendants or their servants and
also that the said Plaintiff was not
guilty of any carelessness or negligence
on that occasion then the Jury should
find for the Defendants

3

If the Jury believe from the evidence that
the injury to the Plaintiff was occasioned
by the negligence or want of care of the
Galena & Chicago Union Rail road Company
or their agents or servants over whom the
Defendants had no control. Then the Jury
should find for the Defendants

4

If the Jury believe from the evidence
that both parties were guilty of negli
=gence or want of care. Then they should
find for Defendants.

5

The Jury are instructed in considering
this case to disregard the testimony of
the Witnesses. Fuller and Sawyer in

[12455-27]

42 reference to the time at which the various trains were due at the Wheaton Station according to the printed time cards mentioned by said Witnesses—

6

Unless the Jury believe from the evidence that the Defendants Train of Cars at the time of the Collision was not entitled to the road then they should find for the Defendants.

Refused

7

If the Jury believe from the Evidence that the Galena & Chicago Union Rail Road Company had the sole control and regulation of the time and manner of running all Trains on the Road where the accident occurred, and that the Defendants Train at that time was run according to such established rules and regulations, and that the collision was occasioned by or was the result of following such rules or regulations by the Defendants or their servants on that occasion, Then the Galena & Chicago Union Rail Road Company are liable for such injury, and the Jury should find for the Defendants—

Refused

Which the Court refused but gave No 1 & 2 amended & qualified as follows

If the Jury believe from the Evidence

1 that the Plaintiffs own negligence or want of proper care "Caused" the injury which he sustained on the occasion

of the collision. then the jury should find for the Defendants.

2. That unless the Plaintiff has proved that the injury Complained of was occasioned by the Negligence or Carelessness of the Defendants or their Servants.

To which decision of the Court in refusing said instructions as asked and in amending or qualifying any of the same. the Defendants by their Counsel at the time Excepted — The jury thereupon rendered a verdict for the Plff of 1300 dolls. and thereupon said Defendants by their Counsel entered the following Motion

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and now comes the said defendants and moves the Court to set aside the verdict in this case and grant the Defendants a new trial for the following Reasons.

1. The Court erred in allowing improper Evidence to be given to the Jury

2. The Court erred in allowing the Plff to give parol evidence of the contents of a printed paper or time card.

3. The Court erred in excluding proper evidence offered by the Defendants —

[12455-B]

4. The Court erred giving the instruct-ions asked by the Plaintiff

5. The Court erred in refusing the instructions asked by Defendants

6. The Court erred in qualifying the instructions asked by Defendants.

7. The verdict is contrary to law and the Evidence

8. The verdict is contrary to the Instructions of the Court

Plato for Defts.

which motion was overruled by the Court and a Judgt rendered on said verdict to which ruling and decision of the Court in overruling said motion for a new trial. and rendering Judgment on said verdict the Defts by their Counsel at the time Excepted. and pray that this their Bill of Exceptions may be signed. which is done

N. Gibson

The forgoing is correct

Plato for Defts

W. W. Parks for Plff

45

State of Illinois
Kane County } ss.
City of Aurora

I James G. Parr Clerk of the Court of Common Pleas of the City of Aurora in said County and State do hereby certify that the above and foregoing Transcript is a true, perfect and Complete Copy of the Writs, Declaration Plea Replication and pleadings in said cause together with all the orders entered of Record, the Instructions of the Court and Bill of Exceptions, and the Judgment of the Court upon the proceedings in the Court of Common Pleas of the City of Aurora in said County & State in a case lately pending in said Court wherein Alex Sandy George was Plaintiff and the Chicago Burlington & Quincy Rail Road Company were Defendants and of the whole thereof as appears from the Record.

In witness whereof I have hereunto set my hand and affixed the seal of our said Court at Aurora this 22d day of March A.D. 1858

James G. Parr
Clerk

Fees 15½ Folio $15.65
Cert & Seal 35 = $16.00

[12455.29]

236

The Chicago Burlington & Quincy R.R. Co

vs

Alexander George

Record & assgt of Errors

Filed April 22 1858

S. Leland
Clk

SUPREME COURT.

THE CHICAGO, BURLINGTON AND QUINCY RAIL ROAD COMPANY
vs
ALEXANDER GEORGE.

The Judgment in this case ought to be reversed, on the ground of the admission of incompetent evidence.

The appellee in presenting his proofs of alleged negligence, which was the ground of his action, found it necessary to establish the fact of the time at which the Galena and Burlington Rail Road Trains were due at Wheaton Station. It was near this Station that the colision occurred in which the appellee was injured, and such injury was caused by the Galena Trains running out off, of time. It became therefore of the utmost importance of the appellee to prove, not only the *time* at which the trains were due at Wheaton, but also the *rules* and *regulations* which governed the running of trains on the two roads, the Galena, and the Burlington Rail Roads.

It clearly appears in evidence that there was printed, and in use what is called *a time card*, on which is printed, the time at which trains are due, and the rules and regulations which *under all circumstances govern the running of the trains.* The appellee alleged, and attempted to prove that the appellants had been guilty of negligence, in violating this rule.

Clearly the best evidence of what these rules were and what this time card contained, was to be found in the *time card itself.* The appellee could have given the appellants notice to produce it, or have subpoenaed a witness, a conductor or other agent *duces tecum*, to produce this document; instead of doing this, the appellee calls upon witnesses to swear to the contents of this paper from memory.

The witness Fuller distinctly stated that "all he knew about the *rules* and *regulations*, and the time when trains are due at the station, I obtained from reading the *printed time card*, &c., which governs the running of all trains, and the time and manner of running all trains, &c."

{12403-31}

This witness was permitted, against the objection of the counsel for the appelants, to answer:

"*What is the regulation of these wild trains?*"

"*At what time were trains due?*" &c.

So the witness *Joseph James*, the switch tender, testifies that he derived his information of the time trains were due at Wheaton Station from the *time card*, and had *no other means of knowing*, and he is asked and testifies as to the contents of the time card.

1. We ask the court, then, to reverse the judgment, because the court below permitted the witnesses *Fuller and James* to testify as to the contents of the printed time table and the *printed rules and regulations governing the running of trains.*

See 1 Greenleaf's Evidence § 82.

"Parol evidence cannot be given of the contents of a written instru-"ment in the power of the party to produce."

Humphreys v. Collier & Powell, Breese 232.
Cross v. Bryant, 2 Scam.. 42.
Ferguson v. Miles, 3 Gil., 364.
Abrams v. Pomeroy, 13 Ills., 133.
Harlow v. Boswell, 15 Ills., 57—58.

2. The following question, asked and answered by the witness Lewis C———, was clearly incompetent:

"Was it necessary for the physician to visit him (appellee) as often as he did?"

This witness was not a physician—not an expert—and he himself states that he "had no experience in taking care of sick persons." The question called for the opinion of a witness having no skill, as to the necessity of the very large expenditures in the case for medical attendance.

See The Alton &c., Railroad Company v. Northcott, 15 Ills., 50.
Massive v. Noble, 11 Ills., 531.

In regard to the instructions, they do not present a correct exposition of the law in regard to the case, and are obviously calculated to mislead.

The instructions present several propositions as law which are erroneous.

1. That if appellee was a passenger, and was injured, this was a *prima facie* case, and the burden of proof on defendant's—appellants—to rebut the presumption of negligence.

2. The measure of damages, laid down in the 4th and 5th instructions is too broad.

3. The court refused to give the first and second instructions asked by defendants. The court refused to say to the jury that if plaintiff's own negligence *contributed* to the injury he cannot recover, but amended so as to say, that the plaintiff's negligence must have "caused" the injury.

See 1st and 2d instructions asked for by appellants and modified by the court striking out the words "*contributed to*" and inserting "caused by," so as to give the jury to understand that although plaintiff's negligence may have contributed to the injury, yet if it did not directly cause it he could not recover.

This is clearly *not* the law and was well calculated to mislead the jury.

See Galena & Chicago U. R. R. Co. v. Sarwood, 15 Ills., 468.
Galena & Chicago U. R. R. Co. v. Fay, 16 Ills., 558.
In the case of Chicago & M. R. R. Co. v. Patchin, 16 Ills., 202.

"The injured party must be free from such negligence as *contributes* to the injury."

G. & C. U. R. R. Co. v. Loomis. 13 Ills., 551.
Aurora B. R. R. v. Grimes. 13 Ills., 586, &c,

The case of Galena and C. R. R. vs Fay 16 Ills. 558 settles the law in this case, and sustains the instructions asked by appellants as sound law.

The seventh instruction asked fer by appellants was clearly the law and ought to have been given.

It is in effect that if the appellants were not guilty of negligence, but that the plaintiff was injured by the exclusive fault of the Galena Road, the plaintiff could not recover of defendant — certainly this is the law, unless the Burlington Road can be made to respond for the wrong of the Galena Road.

(12455-32)

236 - 99

Supreme Court

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

vs.

Alexander George

Apts. Argument

Filed May 17, 1888

S. Leland
Clk

J. W. Arnold
Atty for Apelts

1858

Supreme Court – 3d Division – April Term.

Chicago Burlington & Quincy
Rail Road Company
vs.
Alexander George } Appeal from Kane.

Was it competent to prove by a witness who had acted by attending to duties at the times mentioned in the time table, (when a train was due at a Station) where means of knowledge when a train was due, were derived from such table, ~~the time when a train was due at a station~~?

The question raised, is probably that such evidence was in violation of the rule requiring the best or primary evidence to the exclusion of that which is secondary, & that the time table itself should have been produced; or perhaps it may be insisted that the fact that such time table was posted up, is incompetent.

This is one of the exceptions to the rule – Such evidence being allowed when it is in relation to collateral facts.

It might as well be objected

to the witness saying that he knew that the cars were those of a particular company, because the name was lettered on the outside. The cars would be the best evidence of this. It is a matter of every day practice to prove similar collateral facts.

To prove what name was on a sign over the door of a store containing goods, about the possession of which there is a controversy, is competent, without bringing the sign into Court.

The quo animo of a riotous assembly may be proved by mottoes & devices on banners carried by persons participating. That a ~~portion~~ posted ordinance is a copy of one adopted by a municipal incorporation may be proved without bringing in the ordinance & copy.

~~Kingsbury~~ 3 B & S 917

The plaintiff had no more right to take down the time table & bring it into Court, than he would, to take a merchant's sign, or a rail road car & use it for a similar purpose.

The question was, not whether what the contents of the time table were, but

whether the car in which the plaintiff was, was negligently placed where another train would come in collision with it — and it was negligence to have it at a place where the other Railroad Company had posted a notice that their train might be at the same time, & it was clearly competent for the witness to state that the reason why he thought the other train would be there at a particular time was, that there was such information posted up in the shape of a time table & which table contained the time of both roads.

1st Greenl's. Ev. Sec. 90.

5th Eng. Com. Law 377 — Rex vs Hunt — 3 Barn. & Ald. 566

Jeff — vs. Sizz 5 Gilm. 432.

~~King vs. Hodnett,~~

[12458-84]

There is one other sharp objection, of no use for the purposes of justice, but made for the purpose of reversal — one of "those nice sharp quillets of the law" (Shakspeare - page not recollected), a too frequent resort — which by railroad corporations begets hard feeling against them on the part of jurors. A Catholic Priest who says he has no experience in taking care of the sick, says, also he thinks the attendance of the physician as often as he attended, was necessary — to all which the defendants by their counsel excepted &c —

Suppose the witness was not Doctor enough to tell whether the attendance was necessary or not, the doctors had been on the stand & what harm could the opinion of the witness if not strictly professional, have done?

But the opinion was one right in itself as men of ordinary common sense could perceive, though they had no diplomas. It was one of those statements that any man ought to be permitted to make — at any rate, a judgment should not be reversed because it was made, unless it is apparent that injustice has been done by it. If judgments are to be reversed for every trifling, harmless inaccuracy, few will stand the test.

The question to the witness "did you expect a collision" was proper, because it tended to show that the mind of the witness was in an attentive condition & his evidence in relation to events making a deep impression, would be better than that concerning events to which his attention was not particularly called.

In relation to the instructions it may be said, generally, that there is no evidence tending to show any neglect on the part of the plaintiff which could have contributed to produce the injury.

Instructions based on an imaginary negligence on his part are to that extent mere abstract propositions of law.

The evidence shows him inside of a car which formed part of one train & a collision between that train & another. How could care, or want of care on the part of a passenger under such circumstances, have any influence in relation to the injury?

The qualification of the 1st & 2d instructions changed the form of expression only, not the idea or proposition of law. Read them together as qualified & they are correct.

[12455-36]

If the jury brlieve from the evidence that the plaintiff's own negligence or want of proper care caused the injury which he sustained on the occasion of the collision then the jury should find for the defendants; & unless the plaintiff has proved that the injury complained of was occasioned by the negligence or carelessness of the defendants or their servants, and also that the plaintiff was not guilty of any carelessness or negligence on that occasion, then the jury should find for the defendants.

The proposition ~~is here~~ this notwithstanding the words "contributed to" were changed to "caused", is as follows

If the negligence of the plaintiff caused the injury, & if the plaintiff was not free from any carelessness or negligence he could not recover.

The instruction was really, that plaintiff must prove that he was not guilty of any carelessness or negligence.

It does not clearly appear from the bill of exceptions how the instructions mentioned as 1st & 2d appeared before & after the change by the Court — Whether they were originally in one & separated into two by the Court, or were originally asked as two, does not appear. That part of the 2d one without the qualifying words, was evidently not the 2d instruction as it stood when presented to the Court. Omitting the qualifying words, it would read "And also that the said plaintiff was not guilty of any carelessness or negligence on that occasion, the jury should find for the defendant". This looks as though it was the conclusion of the 1st instruction & could not have been the whole of an instruction.

[13455-37]

The third instruction, applied to a proper case, might be good law — that is, if the Plff. had been a passenger on one of the cars of the Gal. & Ch. U. R.R. Co., or not being such passenger, had been run over by them, the defendants would not be liable & the instruction would have had something to do with the case — but, as applicable to this case, it is not the law, because it does not follow, if, as between the two companies the Galena & Chicago one was the one chargeable with the whole blame of the collision, that therefore, the defendants were free from blame as between them & the plaintiff.

It is an impossibility that the injury could have been occasioned wholly by the Galena road — the defendants' train & cars must have

been there to have produced the the collision & injury, & as between the defendants & the passengers, they must have them where the Galena cars could not be negligently & carelessly brought in contact with them - And it is negligence on the part of the defendants to have the cars where the others could injure them.

The instruction should, in order to make it law as applicable to this case, have contained a statement that the injury was wholly occasioned by the negligence of the Galena & Chicago Company & should have negatived negligence on the part of the defendants. The injury may have been occasioned by the negligence of the Galena & Chicago Co. & yet there may have been negligence on the part of the defendants.

Without such qualification it was calculated to mislead the jury & create the impression that, if, as between the two companies the Galena & Chicago was in fault, the plaintiff

[10455.3]

could not recover though the defendants were negligent as between them & him.

The 4th was clearly wrong on the general ground of inapplicability, because a negligence on the part of the plaintiff not contributing to produce the injury would not excuse the defendants from liability.

The 5th raises a question already considered.

The 6th is clearly wrong. Although the defendants' cars were entitled to the road, there may have been negligence on their part in not avoiding a collision which could, by the exercise of proper care, have been guarded against.

The 7th is not law. It can make no difference whether the defendants run the cars under regulations made by themselves, or under those made by

[12455-89]

others for them. They must make or adopt such regulations as will avoid negligence on their part. Adopted negligence is no better than that of their own begetting -

Leland & Durand
for aft in error

236—99

Ch. Bur. & Quincy
R. R. Co.
vs
Alexander George

Brief of appellee

SUPREME COURT.

THE CHICAGO, BURLINGTON AND QUINCY RAIL ROAD COMPANY
vs
ALEXANDER GEORGE.

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[12455-41]

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2. The measure of damages, laid down in the 4th and 5th instructions is too broad.

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Supreme Court.

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

vs.

Alexander George

Apl.ts Argument

J. M. Woods