

No. 12504

# Supreme Court of Illinois

Ill. Cent. R. R. Co.

---

vs.

Downey.

---

State of Illinois, }  
LEE COUNTY. } ss.

The People of the State of Illinois to the Sheriff of said County, GREETING:  
We command you that you summon

*The Illinois Central  
Rail Road Company*

if ~~he~~ *it* shall be found in your County, personally to be and appear before the Circuit  
Court of said County, on the first day of the next Term thereof, to be holden at the  
Court House in Dixon, in said County, on the fourth Monday of *April 1856*  
to answer unto

*James Dawney*  
in a plea of *Trespass on the Case*

to the damage of the said plaintiff as he say in the sum of  
Dollars.

And have you then and there this writ, with an endorsement  
thereon, in what manner you shall have executed the same.

WITNESS, ISAAC S. BOARDMAN, Clerk of our said  
Court, and the seal thereof at Dixon aforesaid, this  
day of *April* A. D. 1856. *1st*

*I. S. Boardman* CLERK. *of the Circuit Court*

*By Geo. H. H. Deputies*





Served the within by reading the same in the presence  
and hearing of James C. Clark the division Super-  
intendent at Anchoy and by delivering to said  
Clark a true copy of the within.

April the 10<sup>th</sup> 1856

William Butler Sheriff  
by Cyrus Wheeler Spt

Travel 60

Service 50

Copy 25

Return 10

\$ 1.45

James  
Apt 10<sup>th</sup> 1856

James  
Apt 10<sup>th</sup> 1856

James  
Apt 10<sup>th</sup> 1856

Apt 10<sup>th</sup> 1856

James  
Apt 10<sup>th</sup> 1856



Declaration Filed April 18<sup>th</sup> 1856

State of Illinois }  
 Sec County } Of the April Term of the Sec  
 County Circuit Court A.D. 1856

James Downey

The Illinois Central Rail Road Company }  
 } To Wit: James Downey  
 } plaintiff in this suit  
 } by S. G. Patrick his  
 Attorney complaining of the Illinois Central Rail  
 Road Company which has been summoned to  
 answer the said Plaintiff in a Plea of Trespass  
 on the Case. For that the said Plaintiff heretofore  
 To Wit; on the third day of November in the year  
 of our Lord One thousand eight hundred and  
 fifty five at the County of Sec aforesaid was law-  
 fully possessed of a certain pair of grey<sup>or white</sup> horses a  
 double harness and a lumber wagon of great  
 value to wit; of the value of four hundred dollars  
 lawful money, said horses being then and there  
 harnessed to and drawing said Wagon and in  
 which the said plaintiff was then and there  
 riding with five of his friends in and along  
 a certain public & common highway to wit; the  
 Main Street in the Town Aubrey in said County,  
 and the said defendant was then and there  
 possessed as owner and controller of a certain Rail  
 Road track called the Illinois Central Rail Road  
 and of a certain Steam Engine with a tender



4 thereunto attached and which said Steam engine and tender were then and there under the care government and direction of a certain then servant of the said defendant who was then and there driving and running the same along said Rail Road track where the same crossed said Main Street, to wit: at the town of Amboy in the County aforesaid. Nevertheless the said defendant then and there by its said servant so carelessly and improperly drove, governed and managed its said Steam Engine that by and through the carelessness, negligence & improper conduct of the said defendant, he having carelessly neglected to ring the bell or sound the whistle of said engine as by law required the said Engine of the said defendant then and there ran and struck with great force and violence upon and against the said horses and wagon of the said plaintiff at the point where said railroad track crossing the said main Street in the town of Amboy and there and there crushed the said several horses to the earth passing over the same, and broke to pieces, damaged and destroyed the said wagon and harness and one of the said horses, the wagon and harness of the said plaintiff, thereby then and there became and was rendered of no use or value to the said plaintiff, and thereby the said plaintiff and his said friends who were his passengers in his said wagon were then and there



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cast out and thrown with great force and  
violence from out of his said wagon upon the  
ground there; and the said plaintiff by means  
of the several premises aforesaid was then and  
there greatly bruised, hurt and wounded and pre-  
vented from performing his lawful affairs and  
business to his damage in the sum of fifty dol-  
lars, and also by means of the premises both paid,  
laid out and expended divers large sums of mon-  
ey amounting in the whole to a large sum of  
money to wit; the sum of seventy-five dollars in  
and about endeavoring to heal and cure the wound-  
s, hurts and bruises of his said horses and the  
damage done to his said harness and in and  
about the repairing his said wagon so damaged  
as aforesaid to wit; at the County of Lee aforesaid,  
and the said plaintiff avers that at the time of  
the carelessness and negligence aforesaid of the  
said defendant whereby the said damage to  
the said plaintiff was occasioned, the said plain-  
tiff with his said horses <sup>harness</sup> and wagon was passing  
along and in and upon the said Main Street in  
the town of Amby aforesaid as he lawfully might  
do that at the angle of intersection of said Railroad  
track with said Main Street, the said Illinois Central  
Railroad Company had before the time replaced  
and erected a Blacksmith Shop and other build-  
ings as to intercept, obstruct and render impossible  
the view between said Railroad track from the South



6  
and said Main Street from the East that said  
plaintiff was then and there passing along said main  
Street and on the same crossing the said Railroad  
track from East to west at an hour of the day when  
according to the published rules and regulations  
of said defendant no train was due at said  
point and no engine was to be expected, yet, the  
said defendant having erected any board or sign  
of caution to the passengers on said Main Street at  
the intersection thereof with said Railroad track as  
by law it was required to do and without giving  
from said engine by bell or whistle any alarm care-  
lessly and negligently by their said servant ran upon  
the said horse and the wagon of the said plaintiff  
thereby causing so attached as aforesaid causing the  
said damage to the said plaintiff as aforesaid of the  
said defendant's own wrong. To the damage of  
the said plaintiff in the sum of One Hundred  
and Fifty dollars and therefore he brings his suit

S. G. Patrick selfs Atty.



1  
Aff't. for Security for costs Filed May 6<sup>th</sup> 1856

7  
James Dooney  
vs

Allinois Central Rail Road Company

} April Term Sec County Circuit  
Court ad. 1856 Trespas on the case

John Stevens Attorney for the said Defendants  
in the above entitled cause, <sup>being</sup> duly sworn deposes  
and says that he is informed and verily believes  
that the said Plaintiff is unable to pay the costs  
that have accrued or may hereafter accrue to the  
the opposite party or to the officers of this Court, he is  
further informed that said Plaintiff is not  
the owner of any real estate in this State and that  
the officers of said Court will be endangered as  
to the collection of said costs unless said plaintiff  
be ruled to file security therefor.

Subscribed and Sworn to before  
me this 6<sup>th</sup> day of May 1856

} John Stevens

} J. S. Boardman (clerk)



9  
Hais Filed May 9<sup>th</sup> 1856  
M. C. R. R. Co. vs  
James Downey vs  
April Term  
County Circuit Court  
1856

And the said defendants by Sweet & Stevens  
their attorneys come and defend the wrong  
and injury when &c and say that they are  
not nor is either of them guilty of the said supposed  
grievances above laid to their charge or any  
or either of them, or any part thereof in manner  
and form as the said plaintiff hath above  
thereof complained against them and of this  
they put themselves upon the country &c  
Sweet & Stevens

And for a further plea in this behalf the said  
defendants by leave of the Court here first had  
and obtained says action now because they say  
that at the time of the committing the said supposed  
school grievances in the said Plaintiffs declara-  
tion mentioned, the said defendants were the  
owners of the said Railroad in the said declaration  
mentioned, and had a lawful right to run  
their engines and cars, over the same & to  
propel the same by steam, and the said defend-  
ants further aver that at the time, that at the  
time of committing the said supposed grievance  
they were by their servants lawfully running



their engine & tender on the said road, and that the said Plaintiffs having notice of the approach of the said engine carelessly negligently & wilfully drove the horses and wagon in the said declaration mentioned out & across the track of the said Rail Road and that the injuries complained of in the Plaintiff's Declaration, were caused by such careless, negligent & wilful driving the said team on the said road & without the fault of said defendants & that they are ready to verify &c

Sweet & Stevens

Atty for Defts

Demurrer to Plea Filed May 9<sup>th</sup> 1856

Deaoury

N.R.R. Co.

And the said Plaintiff comes and says that the said Defts second plea by him above pleaded, and the matter therein set forth are not sufficient &c. and that he is not obliged to answer the same; wherefore he prays judgment &c

And for cause of demurrer said plaintiff says that the said plea is a plea of the general issue

J. V. Eustace  
Atty for Plff



Instructions to the jury, dated Oct 1<sup>st</sup> 1886

Plaintiff asks the Court to instruct the jury  
That if the jury believe from the evidence  
that the defendants were driving an engine along  
their track across a Street, and that while so  
doing they drove said engine against the team  
of the Plaintiff, they are liable for the damages then  
and there done by said engine to said team whether  
the injury were committed wilfully or accidentally,  
that it was the duty of the defendants so to use their  
own rights as not to injure others, and unless the  
said Plaintiff wantonly placed or continued  
his property in the way of destruction he is  
entitled to damages to be assessed by the jury for  
the injury done to it, whether it be wilfully, care-  
lessly or accidentally.

But if the jury believe from  
the evidence that the Plaintiff or his agents or  
servants by his or their carelessness, negligence or  
misconduct contributed to the accident then  
the defendants are not liable.



## Verdict of the Jury

We find the defendant guilty and assess  
the Plaintiffs damages at One Hundred  
and twenty five dollars.

J. Mark Lawrence  
J. H. Crombie

Patrick M'Cauley

John Dow

J. M. Mason

Samuel Robinson

A. A. Deasman

Moore Crombie

Samuel Dwyer

W. H. Dranslow

Jacob Groh

Leith Crispin



Bill of Exceptions Filed November 28<sup>th</sup> A.D. 1857.

13  
In the Circuit Court of Co. County State of  
Illinois of the September Term A.D. 1856.

James Downey

Illinois Central Rail Road Company }

Be it  
Reminded that on the first day of October  
A.D. 1856 at the September Term of said Court  
came the said plaintiff by John C. Carter his  
attorney and the said defendants by John A. Jones  
their attorney and this case coming up for  
hearing and a jury of twelve men citizens of  
said County, having been sworn to try the facts  
in said cause on the trial of said cause the said  
plaintiffs offered in evidence the following Ex-  
hibitions to-wit:

Exhibit 1. Exhibit 2. Exhibit 3. Having  
been duly sworn testified that on the third  
day of December A.D. 1855 he in company  
with five others, got on board the Illinois  
wagon at the Court House in the Town of Union  
and started to drive along the Main Street  
in said Town across the track of the M. & W. R.R.  
that said Central Rail Road in passing through  
the Town of Union was in nearly a North  
and South line and said Main Street along



which plaintiffs wagon was passing was in nearly  
 an East and West direction that said street  
 crosses said Rail Road at nearly Right angles a  
 short distance North of the passenger house in  
 said town, that at the street point where said street  
 & Rail Road intersect in said town there is a <sup>regular</sup>  
 Rail Rail crossing, that on the said 3<sup>rd</sup> day of  
 November 1855 the said defendants had erected  
 a stock Smiths shop in the South East angle of said  
 street & Rail Road, and that in passing along said  
 street while immediately opposite said shop, said  
 shop had from view anything might be passing along  
 the line of said Rail Road on the North side of the  
 crossing, that at the time above referred to to wit,  
 said 3<sup>rd</sup> day of November, when the train of  
 Plaintiff had arrived within a short distance of the track  
 of said Rail Road, some saw the wagon called "look  
out for the engine" witnesses did not see it (the engine)  
 then but immediately after did, witnesses cried out  
 "whip up, go across" some others in the wagon said  
 to the driver "stop" and others "go ahead" the driver  
 undertook to go across when the engine came up and  
 struck the horses and wagon upsetting the wagon  
 and tore the helf from the foot of one of the horses  
 when said engine came up to said wagon witnesses  
 reached out their hands and took hold of any or one  
 railing in the front of the the engine and spring  
 from the wagon to the ground the locomotive at  
 the time of the accident was going slow it might



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have been travelling at the rate of eight or ten miles  
an hour, did not hear the bell upon said engine ring  
until the instant he saw it, there was nothing attached  
to the engine except a tender.

On the cross examination  
by Defendant's counsel said witness stated that  
the accident occurred about two o'clock in the  
afternoon of said day, that there was no train of cars  
that he saw waiting at the passenger house of said  
road to receive said engine, that said engine came as  
witness supposed from the Grand Station House, sit-  
uated some distance below the C.R. Crossing; that  
there was a switch or side track leading from said Grand  
House to the main track of said Road, that the point  
where said switch or side track intersected with  
said main track was about eight rods north  
of the said Rail Road crossing referred to above,  
that from the place where said train of Plaintiff first  
started at the Orient House, witness could have  
seen the point where said switch or side track in-  
tersected said main track, that it would be at  
that point the engine would have started from in-  
passing along the main track of said Road  
north to the passenger house, that said Clocksmith  
shop mentioned in direct examination was a common  
sized shop, that himself and those along with him  
got on board Plaintiff's wagon at the front door of  
the Orient House, that from that place he could have  
seen the engine when at the switch - that when the



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person in the wagon first heard the bell, and saw  
the locomotive coming, the horse heads were ten or twelve  
feet from the rail road track, that the engine was then  
about sixty or seventy feet below the C.R. crossing.

William D. Stunt, being called by the plaintiff and  
sworn as a witness, testified that at the time mentioned  
by Mr. Patrick he with four or five others got on board  
plaintiff's wagon at the Orient House in Ambrose and  
attempted to drive along the main street in said  
town across the track of the New York and Westchester  
Rail Road, that when within a short distance of the track some one  
in the wagon told the driver to stop that the engine  
was coming, that he looked down the track & saw the  
engine five or six rods off, it was coming toward  
them at the rate of four or five miles an hour, the bell  
was then ringing, but no one had not heard it before  
the person in the wagon had called to the driver to  
stop, that when the engine was first discovered  
there were different opinions among the company  
in the wagon, some said to the driver "go ahead"  
and others said stop, but they were a little excited &  
let the horses do about as they had a mind to, and  
went on to the track, one of the horses hoofs was hurt  
and the wagon upset, when the engine came up  
witness jumped out was struck by it but not hurt.

On the cross examination witness  
stated that when at the front door of the Orient House  
and while passing along the street between that place



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and the blacksmith's shop, he might have seen the engine <sup>approaching</sup> if he had looked, the accident happened about two O'clock in the afternoon, at that time every day it was customary for the engine to be taken from the Round House to the Passenger House in Ambury to take the train North, that on passing between said points it was necessary to pass over the Railroad crossing, witnesses lived in Ambury & knew that this was a regulation of the railroad company, that the engine at the time of the accident was backing up from the Round House to the Passenger House for the purpose of taking the Northern train, the person who had in charge the running of the engine between these two points, was more prompt at the regular time than the train there was space, that the engine at the time of the accident was running at the regular time, that the ground on each side of the railroad track was descending from the road bed for some distance, that when the horses of Plaintiff started from the Orient House they went on a slow trot until they came to where the ground began to ascend to the Aunt Road track, when they woke up and began to walk, that at the time the person in the wagon first discovered the engine, if the driver had stopped the horses, when they then were, the accident would not have happened the Plaintiff was in the wagon at the time of the accident -



John Dewney a witness on the part of the Plaintiff was then introduced & sworn who testified that when the horses first started off, they went out at a slow trot, but had broke up and were going on a walk at the time the alarm was given, that he was driving the horses, thinks he could have stopped them after the alarm was given & before the accident happened, but some in the wagon called out to him to "go across" and some to "stop" he was frightened and did not know what to do, he let the horses go upon the track, his son the Plaintiff was in the wagon, thinks that he gave one hundred & thirty or thirty five dollars for the horse that was hurt, he (witness) would not have given more than that for him, thinks it was not worth once, but was worth one hundred and fifty Dollars to the Plaintiff for his use, that Plaintiff would not have taken less for him, said he thought the horse was now worth <sup>about</sup> fifty Dollars.

J. V. Howard was then introduced as a witness on the part of the defendant who being sworn testified that he saw a number of persons including the witnesses sworn on the part of the Plaintiff in this case, get into a wagon at the Court House in Amboy & that it was the same



time referred to by plaintiff's witnesses - that at  
 the time the plaintiff & those with him left the  
 Great House to cross the A. R. track, the engine  
 that came in collision with the plaintiff's horse  
 & wagon was then leaving the switch or rail  
 track that connects the Great House with the  
 Ham Brook & passing up along said main  
 track to the passenger house, to take the regular  
 train. As plaintiff's team was advancing  
 towards the A. R. crossing someone immediately  
 cut to the persons in the wagon to "stop", the  
 "engine was coming" but that they paid no  
 attention to the alarm. Before the horses reached  
 the A. R. track, witness heard some persons in  
 the wagon tell the driver to "stop the engine  
 was coming" the horses was then in a walk  
 and the driver could have stopped if he had seen  
 the ground from the place where the alarm was  
 first given by the persons in the wagon to the A. R.  
 track was ascending in the switch where the engine  
 started from is about eighty rods below the place  
 where said Main Street crosses the A. R. track  
 the bell upon the engine was ringing from the time  
 it left the switch until it struck the team at  
 the crossing, it was ringing loud enough  
 for the persons in the wagon to have heard it be-  
 fore arriving at the railroad. The distance from  
 the place where the persons got on board the wagon  
 to the A. R. crossing witness thought is over three



hundred feet - thought that the west end of the  
 blacksmiths shop was from fourteen to fifteen  
 feet from the R.R. track, that an engine in going  
 from the switch, towards the R.R. crossing, could  
 be distinctly seen at the point where the Plaintiff's  
 wagon started from at the Orient House and also  
 for a distance of fifty feet further along the street  
 where the team passed until the wagon got nearly  
 directly opposite the shop, and that on arriving  
 at the west end of the shop an engine could again  
 be seen coming up from the switch, it is a regulation  
 of the Rail Road company to change the engine on  
 each train at Ambler, that in doing so the engine  
 designed to take the train out of that place must  
 pass over the R.R. crossing when the accident happened  
 the engine at the time of the accident was being taken  
 to the passenger house to take the regular passenger  
 train north, it was running on the usual time  
 & in the ordinary way, thought the team of the Plaintiff  
 was twenty five feet from the Rail Road track at the  
 time he first heard the alarm given by some one in  
 the wagon, that the engine was coming, and calling  
 upon the driver to stop, thought that twenty feet  
 was space enough for the driver to stop the horses in  
 Plaintiff in this case, told the witness immediately  
 after the accident occurred, that "it was owing  
 to carelessness on the part of the driver that it happened"

On the cross examination by Plaintiff's  
 counsel, the witness stated that at the time the



accident happened he was standing on the South end of the platform of the freight building nearly opposite the crossing, and on the opposite side of the rail road from the blacksmith's shop, that it was only a few feet distant from the crossing, that the persons in the wagon were talking and laughing before the accident, and seemed to be intoxicated, that he heard several persons in the door of the blacksmith's shop, call out to the persons in the wagon to stop, the persons giving the alarm in the shop door, might have been twenty feet or thirty feet from the wagon between the west end of the blacksmith's shop and the track of the rail road persons in the wagon could have seen the engine a distance of two hundred and fifty feet, the engineer upon the engine could have seen the horse at the same distance the blacksmith's shop was about eight feet high from the ground to the eaves the gable was perhaps four or five feet higher the stack of engine is generally about sixteen feet high did not know whether the stack of the engine could have been seen over the shop by the persons in the wagon, thought it could not witness said the bell upon the engine might not have been rung all the time from the time it left the switch. He thought it stopped to take in wood between the switch and the crossing & while doing so the bell might not have been rung but that all



the time the engine was in motion the bell was kept ringing, did not know whether the persons in the wagon heard the alarms or not. The conversation with Plaintiff was within about an hour after the collision.

Witness is and was then in the employ of said Company.

John Stevens another witness on the part of the defendants was then introduced and sworn, who testified, that at the time he saw the train coming driving up to the crossing, he called out to the persons in it to "stop" at the same time he heard a number of persons in the blacksmith's shop door, call out to them to stop, the shop door was about twenty five feet from the C.R. crossing the horses were then going slow and could have stopped in a step or two. Witness saw a Mr. Casper run up towards the train & heard him call out to the persons <sup>in it</sup> to stop that "the engine was coming" Casper was within fifty or twenty five feet of the train when he told them to stop, he called several times, witness did not hear Casper when he called to the persons in the wagon to stop, he was from three to four hundred feet distant <sup>from Casper</sup> at the time, and the train was at least one hundred feet from the C.R. crossing, when Casper ran up to it and gave the alarm. On the cross examination



by Plaintiff's counsel, witness stated that Cooper was standing in the door of the blacksmith's shop, when he first gave the alarm, that he ran up towards the train in the direction it was coming from, and continued calling on the driver to "stop". witness stated that he heard the engine bell ring before Cooper called upon the driver to stop, but does not know whether it was ringing all the time from the time it left the switch or not.

Witness is and was in the employ of said Company.

Merrett Per was sworn on the part of defendants, testified that immediately after the accident he heard the plaintiff James Deacon say "God Damn it I told him (the driver) not to drive upon the crossing" —

Jacob Doline was then sworn on the part of said defendants & testified that he was at the front door of the Great House when the plaintiff and several others got on board the plaintiff's wagon, that the engine was then running up towards the passenger house, — that as soon as he saw the persons in the wagon were going to cross the railroad, he ran after them and overtook them, when within about thirty feet of



the rail road track, called to the driver and those riding with him to stop. The engine was coming when he first told them to stop they all turned around and looked at him, but made no reply, he then repeatedly told them to stop. There were also several others calling to them to stop that he (witness) was sitting within a few feet of where the train started from at the Grind House and that the engine was in plain sight so when the train left, witness heard the engine bell ringing - it was ringing while he was calling to the driver to stop that the persons in the wagon talked and acted immotally after the accident, as though they were very much interested. On the cross examination by Plaintiff's Counsel, witness testified that the persons in the wagon did not answer him when he called to them to stop - that when they looked around towards him they were behind the blacksmith's shop & thought that then they could not see the engine, but they could have seen it some distance from the place they started from, did not know whether they heard him call to them to stop, but believed they did as he called loud enough to make them hear if they were not deaf, did not know that any of them were deaf.



Shepherd I. Patrick being recalled by Plaintiff's counsel, said that he drank liquor once, before leaving the Orient House but was not intoxicated did not see the engine until he was a short distance of the A. & C. crossing nor hear any person calling to the driver to stop; none of the persons in the wagons were intoxicated, Plaintiff went away with witnesses in about five minutes after the occurrence; went to attend a trial before a Justice of the Peace living about a mile from Embury; and was with witnesses until the close of the trial, and went back to Embury with witnesses some two or three hours after.

William D. Stuart being recalled by Plaintiff's counsel said that he drank liquor once before leaving the Orient House, was not intoxicated, did not see the engine until as stated in his former testimony, nor hear any one make any alarm.

John Downey being recalled stated he had been drinking once before he left Orient House, was not drunk did not see the engine until as stated in his former examination, nor hear any one call to him to stop.

Cross Ex. Did not hear Ordine call out to us, don't know where I saw him then before the accident. First I knew James Downey called out "look out for the engine" this was at the same



moment the engine came in sight -

The above was all the material evidence in the trial of said case, both on the part of the Plaintiff and the defendants, and after argument of counsel the attorney for Plaintiff, asked the court for the following instructions to the jury, which were given "What if the jury believe from the evidence that the defendants were moving an engine along their Track, across a street; and that while so doing they drove said engine against the team of Plaintiff, they are liable for the damages then and there done by said engine to said Team, whether the injury were committed wilfully or accidentally - that it was the duty of the defendants as to use their own rights as not to injure others, and unless the Plaintiff was lawfully placed, or continued his property in the way of destruction he is entitled to damages to be ascertained by the jury for the injury done to it whether it be wilfully, carelessly or accidentally" to which <sup>giving instructions</sup> the Court modified & added the following "But if the jury believe from the evidence that the Plaintiff or his agent, or servants, by his or their carelessness, negligence or misconduct contributed to the accident then the defendants are not liable" - And the jury after hearing the evidence and after argument of counsel, having



retired to deliberate upon the verdict, returned  
 into Court the following verdict "We find the  
 Defendants guilty and assess the plain tiffs  
 damages at One Hundred and twenty five  
 Dollars" Whereupon the defendants by their  
 Counsel came forward and entered their motion  
 for a New Trial; upon the ground that said verdict  
 was contrary to the law & the evidence in said cause  
 — And this cause coming up for hearing on the  
 motion for a new trial on the first day of October  
 1856 the Court after hearing the arguments of  
 counsel granted to the said defendants a new  
 trial for the reason that the verdict of the jury  
 was for a larger amount of damages than the  
 plaintiff had sustained according to the testimony  
 whereupon the Plaintiff's Counsel came forward  
 & entered a remittance of thirty Dollars for the  
 sum of thirty five Dollars & the Court thereupon refused  
 to grant said new trial. For which decision of said  
 Court the said defendants by their said Counsel  
 then & there excepted & they pray that this their  
 bill of exceptions taken by them as aforesaid  
 may be signed sealed and made a part of the  
 record in this cause, which is done

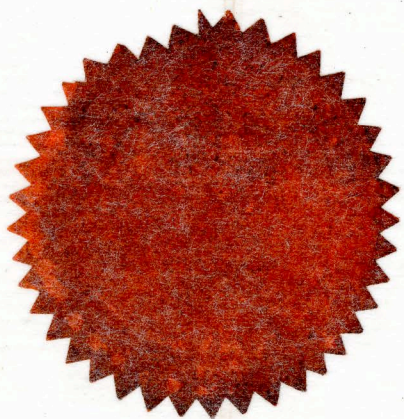
J. H. Doury *Seal*



State of Missouri }  
Lee County

I, the undersigned Clerk of the Circuit Court  
in and for said County do hereby certify that Writings  
herunto attached are true and perfect copies of  
certain Papers filed in my Office in a Cause <sup>lastly</sup> now  
determined  
pending in the Court aforesaid entitled James  
Dooley vs M & P Reed & Co. Witness my  
hand and the Seal of said Court this 19<sup>th</sup> day  
of March 1857

Geo. C. Haskins Clerk  
By Joseph Ball Jfy





James Downey

VS.

County Circuit Court,

Full

Term, 1856

M. C. R. C.

Doc cause 2 terms 20. - up 42 att 25. - Cont 30 Ord suit 20	85	
fil 9 p 45. - Call Jury 15. - Ent 10 Ord 10 Sum 40	1 10	
4 Sp 40 160. - 9 aft 90 6 att 30. - Jud 25 10 10	3 15	
Ent 3 ord 60 Call of Court 30 Copy 20 Cert & Seal 35	1 45	
Ent 40 fil 100 15. - Ret 10 Doc Ret 10 Sals 4	75	
Sheriff Fees Sum 145 (W) - Sp 95 - Sp 250	4 90	
" " Sp 40 (W) " 125 (Recd)	1 65	
Witness " John Downey 6 days - 12 mls - 4 days 12 mls	11 20	
" W. B. Stuart 7 " " " "	13 20	
J. McGarry " " " " " "	12 20	
W E Pres 5 days " "	10 20	
Jury Fee	3 00	62 65
Def <sup>t</sup> Cost		
up 42 att 15. - fil 4 p 45 30 aft 40 Cost 10 Ord 30 mls 20		
7 aft 70 7 att 35. - Sp 200. Sals 15		
Def <sup>t</sup> Cost 30 Copy 20 Cert & Seal 55		
Witness Fees M. Persons 7 days 12 mls - 4 days 12 mls	12 20	
" J. Bordin " " " "	12 20	
" Howard " " " "	12 20	
" Meney " " " "	12 20	
Sheriff " (Recd) Sp 150 - 1 95 - 12 265	7 10	
" " (Buller) Sp 100 265 - 1 80 -	4 45	
Docket Fee		

I, George E. Marshall

Clerk of the Circuit Court, do hereby certify, That the above is a true copy from my Fee Book, in

STATE OF ILLINOIS,

COUNTY OF Van

SS.

The People of the State of Illinois to the Sheriff of Van County, GREETING:

We command you, that if the above Fee Bill, amounting to

Dollars, and

Eighty Six Cents, shall not be paid within

thirty days after being by you demanded, you cause the same to be levied on the goods and chattels, lands and

tenements of the said Williamus Central Road

in your County, according to the statute in such case made and provided. And make return of this writ, within

ninety days, as the law directs, with an endorsement hereon in what manner you shall have executed the same.

WITNESS, George E. Marshall Clerk of the Circuit Court of

County and the seal thereof at Van in said County, this 10th

day of December A. D. 1856

George E. Marshall Clerk.

W Joseph Bull



Fees for the present Transcript \$ 8.50  
 Geo E Washell Ck  
 for Joseph Ball Esq  
 \$ 8.50 paid

Collected \$ 6.50



Memorandum  
Kendall & Company.

Edison & Lee Company.

James Downey.

3.

- Now comes the second  
plaintiffs in error by Mr. J. H. H. H. H.  
Attorney, and for cause of error begin  
1<sup>st</sup> The overruling the plaintiffs in  
error motion for a new trial.  
2<sup>nd</sup> The court used in giving judgment  
against said plaintiffs for the sum  
of \$1000.  
3<sup>rd</sup> for the other error.

Mr. J. H. H.  
Att. for plffs.



STATE OF ILLINOIS,

COUNTY,

The People of the State of Illinois, to the Sheriff of said County, Greeting:

WE COMMAND YOU, That of the Lands and Tenements, Goods and Chattels of

Defendant in your county, you cause to be made the sum of

Dollars and

Cents, which

Plaintiff lately in the

Court of said County, at a term thereof begun and held at

in said county, on the

last past, recovered against the said Defendant

and which by the said Court was adjudged to the said Plaintiff for

AND ALSO, the further sum of

Dollars and

Cents,

which were adjudged to the said Plaintiff for costs and charges in that behalf expended, whereof the said Defendant

convicted, as appears to us of Record: And have you these moneys ready to render to the said Plaintiff

for

and costs aforesaid, and

make return of this writ with an endorsement thereon in what manner you shall have executed

the same, in ninety days from the date hereof.

WITNESS,

seal thereof, at

Clerk of our said Court, and the

in said county, this

day of

A. D. 185

Clerk.



21

Damages \$ 90.00  
It's Cost 62.65  
It " 66.50

Int from Oct 30 }  
1856



Lee County Circuit Court

Spring Term A.D. 1856

Thursday, May 8<sup>th</sup> 1856

James G. Gentry

vs  
Missouri Central Railroad Company, & others

This day came the said parties by their attorneys  
and the Plaintiff's Counsel to the Defendant's  
second plea, coming in this case, coming in to be  
heard, and the parties being heard thereon, and the  
matters and things alleged in relation thereto, having  
been considered by the Court the said answer  
is sustained.

Fall Term A.D. 1856

Wednesday, October 1<sup>st</sup> 1856

This day came the Plaintiff by Gustave his attorney  
and the defendant by Stearns its attorney. The issues  
being joined came a jury of good and lawful men  
to wit: John Dow, Samuel B. Byrd, M. Cassin, Dr. J.  
S. Brumston, Leachman Robinson, Jacob Crook, Patrick  
McLann, Seth Crippen, John Lawrence, Moses Crowder,  
H. W. Crombie & Andrew Benjamin, who being duly  
elected tried and sworn, well and truly to try the  
issues joined between the said parties, heard  
the evidence adduced, as well in the part of the  
defendant, as on the part of plaintiff, retired to



consider of their verdict. Afterwards to wit on this day again came the said jury and returned into court the following verdict to wit: We the jury find the Defendant guilty and assess the plaintiffs damages at the sum of One Hundred and twenty five Dollars. Whereupon the defendant by Stevens its attorney moves the Court in arrest of judgment and for a new trial in this cause.

Fall Term A.D. 1856

Friday Oct 3<sup>rd</sup> A.D. 1856

Again on this day comes to the said Plaintiff and Defendant by their attorneys. The defendants Motion for a new trial and in arrest of judgment coming on to be heard, the Plaintiff now enters a verdict in the sum of thirty five Dollars from the verdict of the jury in this cause. The Court being now satisfied by advice in the premises the said motions are overruled. It is considered and adjudged by the Court that the Plaintiff have and recover of the said defendant the sum of ninety Dollars, his damages together with his costs and charges by him in this behalf expended, and that he have execution therefore.



St. of Illinois )  
 Lee County

I George E. Haskell Clerk of  
 the Circuit Court in and for said County  
 in the State aforesaid do hereby certify that  
 at a Term of the Circuit Court, begun and  
 holden in Dixon on the Fourth Monday of April  
 A.D. 1856, the foregoing proceedings were had so  
 far as regards the motion sustaining the  
 Verdict - and again at the Fall  
 Term of said Court begun and holden on the  
 fourth Monday of September A.D. 1856  
 on the days therein mentioned the final  
 orders were entered as appears from the  
 records of our said Court, this honor Nelson  
 J. Drury Presiding - and I further certify  
 that the foregoing is a correct copy of said  
 records -

In Witness whereof I George E.  
 Haskell Clerk of the Circuit Court  
 hereunto set my hand, and the Seal thereof at Dixon  
 this 18<sup>th</sup> day of March A.D. 1857  
 George E. Haskell Clerk  
 for Joseph Dill Jdy.





Let a Supersedeas issue upon filing this  
record together with a bond in the proper form  
in the penal sum of three hundred dollars  
with Miles S. Henry & John W. Douglass as  
sureties.

Albany March 19<sup>th</sup> 1857

J. S. Caton.





87

Transcript  
of  
Papers & Records  
in  
the Leland Court

James G. Leland  
M. C. R. A. Co.

No. 73, Fall, 1856

Filed March 26 1857

L. Leland  
Clerk



The Illinois Central  
Rail Road Company }  
vs  
James Downey }

Error to See

I desire to call the attention of the Court to the peculiar phraseology of the declaration -

After averring that the R.R. Co. were possessed of a certain Steam Engine & that the same was under the direction and control of the servant of the company the declaration proceeds as follows: "nevertheless the said defendant then and there by its said servant so carelessly and improperly drove governed & managed its said Steam Engine that by and through the carelessness negligence and improper conduct of the said defendant the said strike &c"

See page 4 Record in

On page 5 of the Record in declaration the following language is used "And the said plaintiff avers that at the time of the carelessness and negligence aforesaid of the said defendant whereby the said damages to the said plaintiff was occasioned &c"

The charge in the declaration cannot be true, If the engine was under the control of the servant of the Company



it might be true that the accident happened through his carelessness in managing the engine, or it might be true, that the accident happened through the negligence & carelessness of the company in hiring & employing such a man; but it could not be true that the accident happened from the carelessness of the company in managing the engine which is the case made in the declaration -

2. The allegation of the declaration is that by the negligence of the company in managing a certain steam engine plaintiff was damaged. There is no proof in the record at all tending to sustain this allegation - If there was negligence it was the negligence of the servant of the company and should have been so alleged. The proof does not tend to sustain the case made, but if the averment had been in proper form the proof would not have made out a case against the company -

The engine of the company was leaving the Round House for the purpose of going to the Passenger House and taking the passenger train north -

(Cross Examination of Wm B. Stewart, page 2 Abs.)

It was passing along at its regular time (same witness)



The Engine was running slow  
Testimony of Patrick page 2. Abs -  
Testimony of Stewart page 2 - Abs -

The Engine was running at its usual  
time and in its ordinary way -  
Testimony of L.S. Howard Page 4 - Abs -

The Bell was ringing the whole distance -  
Testimony of Wm Stewart page 2 - Abs -  
" " L.S. Howard " 3 - "  
" " John Stevens " 4 - "  
" " Jacob Bodine " 5 - "

The accident was the result of the care-  
lessness of the persons in the wagon -  
They knew the engine was coming be-  
fore they reached the track, and might  
have stopped if they had chosen to  
do so, after they were warned to stop

Testimony of Wm Stewart page 2 + 3 Abs -  
" " L.S. Howard " 3 - "  
" " John Stevens " 4 - "  
" " Meredith Pierson " 4 - "  
" " Jacob Bodine " 5 - "

The accident happened, not because  
the defendants were using their Road  
improperly or without due care, but  
from the drunken fool-hardy reckless-  
ness of the parties in the wagon -

Lane vs Crombie 12 Pickering 177 -

The Aurora Branch R.R. Co. v Brims

13. Ill - 585 -



Dyer vs Talbot 16. Ill. 300-

Chi Miss. R.R. Co. v Patchin 16. Ill. 198-

Salena R.R. Co. v Fay 16. Ill. 368-

The Instruction is clearly wrong. The Company are not liable for the wilful trespass of their servants, nor was it necessary that the plaintiff should wantonlly place or continue his property in the way of destruction to bar his right to recover, it is sufficient if he carelessly or negligently did so, as the Instruction originally stood, it did not contain a single proposition which was law. After it was qualified the first proposition in it was not law. The whole instruction as asked should have been refused even as qualified it tended to mislead the jury -

The kind of negligence charged in the declaration must be proved as



charged - It is not sufficient to charge one kind & prove another

Pliff in this case charges that the negligence consisted in neglecting to ring a bell or sound a whistle

The proof shows that the Bell was rung all the way -

The plea

The pleader probably intended to charge in the declaration that the R.R. Co. had not erected any board or sign of caution at the crossing, yet he did allege precisely the opposite.

See page 6 of Record -  
If he had averred this properly yet there is no proof on the subject

The pliff therefore has wholly failed to prove the kind of negligence which he has charged -

Whi v. R.R. Co. Patchin 16. L.L. - 200-

Blalock

of counsel for

Pliff in Error



The <sup>87</sup> Lieut. R.R.  
lee

James Downey

Argument

Lecky.

Filed May 19. 1857  
S. Leland  
Clerk



## State of Illinois--Supreme Court, 3d G. D.

THE ILLINOIS CENTRAL RAIL-ROAD COMPANY, }

vs.

JAMES DOWNEY,

} ERROR TO LEE.

Declaration in the usual form in case, alleges that the plaintiff was the owner of a span of horses and wagon ; that while he was crossing the R. R. on a public street in Amboy, the servants of defendant drove an engine of the defendants against plff's team ; that it it was done by and through the carelessness, negligence and improper conduct of the defendant, he having carelessly neglected to ring the bell or sound the whistle of the the engine, as by law required. The declaration also alleges that the accident happened by the carelessness of *defendant*.

1st Plea—General issue.

2d Plea—That the defendant was, at the time when &c. the owner of a Rail Road, and was lawfully running its cars upon the same. That the defendant having notice of the approach of the def'ts engine, carelessly, negligently and wilfully drove his horses upon the railroad track before the engine, and the injuries complained of were thereby caused.

To the 2d Plea a demurrer was sustained.

The following was all the evidence in the case.

Shepherd G. Patrick, having been duly sworn, testified, that on the third day of November, A. D. 1855, he, in company with five others, got on board the plaintiff's wagon at Orient House, in the town of Amboy, and started to drive along the main street in said town, across the track of the Ill. Cen. R. R.—That said Central Railroad in passing through the town of Amboy was in nearly a north and south line, and said Main street, along which plaintiff's wagon was passing, was nearly in an east and west direction. That said street crosses said Railroad at nearly right angles a short distance north of the passenger house in said town. That at the point where said street and said Railroad intersected in said town, there is a regular railroad crossing. That on the said 3d day of November. A. D. 1855, said defendant had erected a blacksmith shop in the south east angle of said street and railroad, and that in passing along said street while immediately opposite said shop, said shop hid from view anything that



might be passing along the line of said railroad on the north side of the crossing. That at the time above referred to, to wit: said 3d day of November, when the team of pl'ff had arrived within a short distance of the track of said railroad, some one in the wagon called, look out for the engine. Witness did not see it (the engine) then but immediately after, did. Witness cried out, whip up! go across! Some others in the wagon said to the driver, stop! and others, go ahead! The driver undertook to go across, when the engine came up, and struck the horses and wagon, upsetting the wagon, and tore the hoof from the foot of one of the horses. When said engine came up to said wagon, witness reached out his hand and took hold of an iron railing in the front part of the engine and sprang from the wagon to the ground. The locomotive, at the time of the accident was going slow. It might have been traveling at the rate of eight or ten miles per hour. Did not hear the bell upon said engine ring until the instant he saw it. There was nothing attached to the engine except a tender.

On the cross examination by defendant's counsel, said witness stated that the accident occurred about 2 o'clock in the afternoon of said day. That there was no train of passenger cars as he saw waiting at the passenger house of said road to receive said engine. That said engine came, as witness supposed, from the Round Station House, situated some distance below the railroad crossing; that there was a switch or side track leading from said round house to the main track of said railroad; that the point where said switch or side track intersected said main track, was about eight rods north of said railroad crossing; that from the place where the team of said plaintiff started at the Orient House, witness could have seen said point where said switch or side track intersected said main track; that it would be at that point the engine would have to start from in passing along the main track of said road north to the passenger house; that said blacksmith shop was a common sized shop; that he and those along with him got on board the plaintiff's wagon at the front door of the Orient House; that from that place he could have seen the engine when at the switch; that when the persons in the wagon first heard the bell and saw the locomotive coming, the horses heads were ten or twelve feet from the railroad track; that the engine was then about sixty or seventy feet from said railroad crossing.

William B. Stuart, being called by the plaintiff and sworn as a witness, testified, that at the time mentioned by Mr. Patrick, he, with 4 or 5 others, got on board plaintiff's wagon at the Orient House, Amboy, and attempted to drive along the main street in said town across the track of the Illinois Central Railroad; that when within a short distance from the track some one told the driver to stop! that the engine was coming! that he looked down the track and saw the engine five or six rods off; it was coming towards them at the rate of five or six miles an hour; the bell was then ringing, but witness had not heard it before the person in the wagon called to the driver to stop; that when the engine was first discovered, there were different opinions among the company in the wagon, some said to the driver go ahead, others said stop! But they were a little excited, and let the horses do about as they were a mind to. The horses went on to the track; one of the horses hoofs was hurt, and the wagon upset. When the engine came up, witness jumped out; was struck by it, but not hurt.

On the cross-examination, witness stated that when at the front door of the Orient House, and while passing along the street between that place and the Blacksmith Shop, he might have seen the engine approaching if he had looked. The accident happened at about 2 o'clock in the afternoon. At that time, every day, it was customary for the engine to be taken from the Round House to the Passenger House, in Amboy, to take the train North; that in passing between said points, it was necessary to pass over the Rail Road crossing. Wit-



ness lived in Amboy, and knew that this was a regulation of the Rail Road Company; that the engine, at the time of the accident, was passing up from the Round House to the Passenger House, for the purpose of taking the northern train. The person who had in charge the running of the engine between the two points, was more prompt at the regular time than the trains themselves were; that the engine at the time of the accident was running at the regular time; that the ground on each side of the Rail Road track, was descending from the Road bed for some distance; that when the horses of Plaintiff started from the Orient House, they went on a slow trot until they came to where the ground began to ascend to the Rail Road track, when they broke up and began to walk; that at the time the persons in the wagon first discovered the engine, if the driver had stopped the horses where they were, the accident would not have happened. The Plaintiff was in the wagon at the time of the accident.

John Downey, a witness on the part of the Plaintiff, was then introduced and sworn, who testified that when the horses first started off, they went on at a slow trot, but had broke up and were going on a walk at the time the alarm was given; that he was driving the horses; thinks he could have stopped them after the alarm was given and before the accident happened, but some in the wagon called out to him "go across!" and some to "stop!" He was frightened and did not know what to do. He let the horses go upon the track. His son, the Plaintiff, was in the wagon. Thinks he gave One Hundred and Thirty or Thirty-Five Dollars for the horse that was hurt; he [witness] would not have given more than that for him; thinks it was not worth more, but was worth One Hundred and Fifty Dollars to the Plaintiff for his use; that Plaintiff would not have taken less for him; thought the horse was now worth about Sixty Dollars.

G. G. Howard was then introduced as a witness on the part of the Defendants, who, being sworn, testified that he saw a number of persons, including the witnesses sworn on the part of the Plaintiff in the cause, get into a wagon at the Orient House; that it was the same time referred to by Plaintiff's witnesses; that at the time Plaintiff and those with him left the Orient House to cross the Rail Road track, the engine that came in collision with Plaintiff's horses and wagon, was then leaving the switch or side-track, that connects the Round House with the main track, and passing along the main track to the Passenger House, to take the regular train north. As Plaintiff's team was advancing towards the Rail Road crossing, several men called out to the persons in the wagon "to stop," "The engine was coming," but that they paid no attention to the alarm. Before the horses reached the Rail Road track, witness heard some persons in the wagon tell the driver "to stop," "The engine was coming." The horses were then on a walk, and the driver could have stopped if he had tried. The ground from the place where the alarm was first given by the persons in the wagon, to the Rail Road track, was ascending. The switch where the engine started from is about eighty rods below the place where said Main street crosses the Rail Road track. The bell was ringing from the time the engine left the switch till it struck the team at the crossing. It was ringing loud enough for the persons in the wagon to have heard it before arriving at the Rail Road. The distance from the place where the persons got on board the wagon to the Rail Road crossing, witness thought to be over three hundred feet; thought the west end of the Blacksmith shop was from fourteen to sixteen feet from the Railroad track; that an engine going from the switch towards the Rail Road crossing, could be distinctly seen from the point where Plaintiff's wagon started, at the Orient House, and also for a distance of fifty feet further along the street where the team passed, until the wagon got nearly opposite the shop, and that on arriving at the west end of the shop, an engine could have again been seen coming from the switch. It is a regulation of the company to change the engine on each



train at Amboy; that in doing so the engine designed to take the train out of that place must pass over the Rail Road crossing, where the accident happened. The engine, at the time the accident happened, was being taken to the Passenger House, to take the regular passenger train north. It was running on the usual time, and in the ordinary way; thought the team was twenty-five feet from the Rail Road track, at the time he first heard the alarm given by some one in the wagon, "that the engine was coming," and calling upon the driver to "stop!" Thought that twenty-five feet was space enough for the driver to stop the horses in. Plaintiff in this suit told witness, immediately after the accident occurred, that it was owing to carelessness on the part of the driver, that it happened.

On the cross-examination by Plaintiff's counsel, the witness stated that at the time the accident happened, he was standing on the south end of the platform of the freight building, nearly opposite the crossing, and on the opposite side of the Rail Road from the Blacksmith shop; that it was only a few feet distant from the crossing; that the persons in the wagon were talking and laughing before the accident, and seemed to be intoxicated; that he heard several persons in the door of the Blacksmith shop call out to the persons in the wagon to "stop!" The persons giving the alarm in the shop door might have been twenty-five or thirty feet from the wagon. Between the west end of the Blacksmith shop and the track of the Rail Road, persons in the wagon could have seen the engine a distance of two hundred and fifty feet. The engineer upon the engine could have seen the horses the same distance. The Blacksmith shop was about eight feet high from the ground to the eaves; the gable was perhaps four or five feet higher. The Stack of an engine is generally about sixteen feet high; did not know whether the Stack of the engine could have been seen over the shop by the persons in the wagon; thought it could not. Witness said the bell upon the engine might not have been rung all the time from the time it left the switch. He thought it stopped to take in wood between the switch and the crossing, and while doing so the bell might not have been rung, but that all the time the engine was in motion the bell was kept ringing; did not know whether the persons in the wagon heard the bell or not. The conversation with the Plaintiff was about one hour after the collision.

John Stevens, another witness on the part of the Defendants, was then introduced and sworn, who testified that at the time he saw the team driving up to the crossing, he called out to the persons in it to "stop;" at the same time he heard a number of persons in the Blacksmith shop door call out to them to stop. The shop door was about twenty-five feet from the Rail Road crossing. The horses were then going slow and could have stopped in a step or two. Witness saw Mr. Espier run up towards the team, and heard him call out to the persons in it to "stop," that "the engine was coming." Espier was within fifty or seventy-five feet of the team when he told them to stop. He called several times. Witness distinctly heard Espier when he called to the persons in the wagon to "stop." He was from three to four hundred feet distant from Espier at the time, and the team was at least one hundred feet from the Rail Road crossing, when Espier ran up to it and gave the alarm.

On the cross-examination by Plaintiff's counsel, witness stated that Espier was standing in the door of the Blacksmith shop when he first gave the alarm; that he ran up towards the team in the direction it was coming from, and continued calling on the driver to "stop." Witness stated that he heard the engine bell ring before Espier called on the driver to "stop," but does not know whether it was ringing all the time from the time it left the switch or not. Witness is and was in the employ of said company.

Meredith Pierson, being called and sworn on the part of the defendants, said



that immediately after the accident he heard the Plaintiff, James Downey, say, "God Damn it, I told him [the driver] not to drive upon the crossing."

Jacob Bodine was then sworn on the part of said Defendants, and testified that he was at the front door of the Orient House, when the Plaintiff and several others got on board the Plaintiff's wagon; that the engine was then coming up towards the Passenger House; that as soon as he saw the persons in the wagon were going to cross the Rail Road, he ran after them and overtook them when within about thirty feet of the Rail Road track. Called to the driver and those with him to "stop," "the engine was coming." When he first told them to stop they all turned around and looked at him, but made no reply; he then repeatedly told them to stop. There were also several others calling to them to "stop;" that he was sitting within a few feet of where the team started from at the Orient House, and that the engine was in plain sight when the team left. Witness heard the engine bell ringing; it was ringing while he was calling to the driver to stop; that the persons in the wagon talked and acted immediately after the accident, as though they were very much intoxicated.

On the cross-examination by Plaintiff's counsel, witness testified that the persons in the wagon did not answer him when he called to them to "stop;" that when they looked around towards him they were behind the Blacksmith shop, and thought that then they could not see the engine, but they could have seen it some distance from the place they started from; did not know whether they heard him call to them to "stop," but believed they did, as he called loud enough to make them hear if they were not deaf; did not know that any of them were deaf.

Shepherd G. Patrick, being re-called by Plaintiff's counsel, said that he drank liquor once, before leaving the Orient House, but was not intoxicated; did not see the engine until he was a short distance from the Rail Road crossing, nor hear any person calling on the driver to stop. None of the persons in the wagon were intoxicated. Plaintiff went away with witness about five minutes after the occurrence; went to attend a trial before a Justice of the Peace, living about a mile from Amboy; was with witness until the close of the trial, and went back to Amboy with witness some two or three hours after.

William B. Stuart, being re-called by Plaintiff's counsel, said he drank liquor once before leaving the Orient House; was not intoxicated; did not see the engine until as stated in his former testimony, nor hear any one make any alarm.

John Downey, being re-called, stated that he had been drinking once before he left the Orient House; was not drunk; did not see the engine until as stated in his former examination, nor hear any one call to him to "stop."

Cross-Ex.—Did not hear Bodine call out to us; don't know whether I saw him there before the accident. First I knew, James Downing called out, "look out for the engine;" this was at the same time the engine came in sight.

The Court, at the request of the Plaintiff, instructed the Jury as follows:

If the Jury believe from the evidence, that the Defendants were driving an engine along their track, across a street, and that while so doing they drove said engine against the team of Plaintiff, they are liable for the damages then and there done by said engine to said team, whether the injury were committed wilfully or accidentally. That it was the duty of the Defendants so to use their own rights as not to injure others; and unless the Plaintiff wantonly placed or continued his property in the way of destruction, he is entitled to damage, to be assessed by the Jury, for the injury done to it, whether it be wilfully, carelessly or accidentally done, with the following qualification:—But if the Jury believe from the evidence, that the Plaintiff, or his agents or servants, by his



or their carelessness, negligence or misconduct, contributed to the accident, then the Defendants are not liable.

The Jury found a verdict for Plaintiff. The Defendants moved for a new trial; which motion the Court overruled, and the Defendants excepted.

ERRORS ASSIGNED :

The Court erred in sustaining the demurrer to Defendants' 2d Plea.

The Court erred in giving the instructions asked for by Plaintiff.

The Court erred in overruling the motion for a new trial.

The Court erred in rendering the Judgment aforesaid, in manner and form aforesaid.

GLOVER & COOK, *Att'ys for Plff in Error.*



87  
The Ill. Cent. R. Co  
vs  
Downey

Filed May 2, 1887  
L. Leland  
Clerk

alorsing.

The Court erred in rendering the judgment aforesaid, in manner and form

the Court erred in overruling the motion for a new trial.

The Court erred in giving the instructions asked for by Plaintiff.

The Court erred in sustaining the demurrer to Defendant's 3d Plea.

Errors assigned:

1st; which motion the Court overruled, and the Defendants excepted.

The Jury found a verdict for Plaintiff. The Defendants moved for a new trial.

in their charges, negligence or misconduct, contributed to the accident, then



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,  
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Lee* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Lee* County, before the Judge thereof, between *James Downey*

plaintiff, and *The Illinois Central Rail Road Company*

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

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *26<sup>th</sup>* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

*L. Leland*  
Clerk of the Supreme Court.  
*By J. B. Rice Deputy*



The Gen. R. R. Company

vs

James Downey

Writ of Error

This writ of error  
is to operate as a sur-  
recedeas and as such  
is to be obeyed by all  
concerned.

L. Leland  
Clerk

By J. D. Rice Deputy

Filed March 26. 1854

L. Leland  
Clerk



of Our Lord One Thousand Eight Hundred and Fifty-  
four, this 26th day of March, in the Year  
Justice of our said Court and the Seal thereof, at Oc-  
WALTER B. SCAYLES Clerk

Clerk of the Supreme Court.

the Judge thereof, between  
of a plea which was in the Circuit Court of  
JUDICIAL. In the record and proceedings, as also in the rendition of the judgment  
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF  
SUPREME COURT.  
STATE OF ILLINOIS. The People of the State of Illinois,  
County, before  
GRANTING:



STATE OF ILLINOIS,  
SUPREME COURT,

ss. The People of the State of Illinois,  
TO THE SHERIFF OF THE COUNTY OF *Lee*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Lee* county, before the Judge thereof, between *James Downey* plaintiff

and *The Illinois Central Rail Road Company*

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

*Defendant*

as we are informed by *the* *of said Defendant* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *James Downey*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Tuesday after the* *third* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *James Downey* notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *26<sup>th</sup>* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*.

*S. Leland*  
Clerk of the Supreme Court.  
*By J. B. Rice Deputy*



April the 1<sup>st</sup> 1857

Ogden Wheeler Sheriff of Lee  
Co Ky Jerome Cooley Dpty

7  
The All. Gen. T. R. Downing

James Downey  
Seire facies

Feb 22 / Mar 22 1879  
Adelene  
Blanch



Supreme Court.      Matthew Dawson  
Illinois Central      ~  
Rail Road Company      ~ Error to Lee County.

vs.  
James Downey      ~  
Know all men by these  
presents, That we, Illinois Central Rail  
Road - John M. Douglas & Miles H. Hays,  
are hereunto fully bound unto James  
Downey in the penal sum of Three hundred  
dollars, for the payment of which we bind  
ourselves our heirs, executors & administrators  
jointly severally and jointly by these presents.  
Signed and sealed this 20<sup>th</sup> day of March  
AD 1857.

Subscribed this Constitution - Whereas  
at the October term of the Lee County Court  
State of Illinois, a judgment was rendered in the above  
entitled cause, in favor of the said  
plaintiffs below James Downey and against  
the said Illinois Central Rail Road  
Company for the sum of ninety dollars  
damages together with costs to be taxed against  
said Rail Road Company -  
And whereas the said Illinois Central  
Rail Road Company are about to sue out  
of the Office of the Clerk of the Supreme  
Court at Ottawa a writ of Error with a view  
of having said judgment reversed and



we about to ask that said suit of Error  
may be made a supersedeas.

Now therefore if the said  
Almon Central Rail Road Company  
shall prosecute said suit of Error with  
effect, and pay said judgment and all  
costs, and damages which have been  
or may be adjudged against them in case  
said judgment is not reversed—  
Then this bond to be void, otherwise to remain  
in full force and effect.



The M. Cent. R. R. Co

by W. L. Brown

Perot

John M. Douglas, Secy

Mrs. V. Henry, Esq

87  
All Gen. R. R. Company  
or  
James Downey  
Super Bond

Filed March 26 1855

L. Leland  
Clerk



87  
The Cen. Rail Road Company

vs

James Downey

87

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Rece.

1857