Be it remembered that on the 16th day of January A.D. 1861 came John M. Cauffman by Taylor and Paddock his attorneys and in the Circuit Court of the County of Bureau and State of Illinois filed his precipe for summons therein in the words and figures following to wit:

State of Illinois } In Circuit Court
Bureau County } ss March Term 1861

John M. Cauffman
vs. } Trespass on the Case
The Chicago Burlington & Quincy Rail Road Company } Dam. $200 cts

The Clerk of said Court will please issue a summons in the above entitled cause against the above defendant, lay the action in case, and the Plaintiffs Damages at two hundred dollars

Princeton Jany 16th 1861.

Taylor & Paddock attys for Plff.

Whereupon summons issued out of said Court in the words and figures following, to wit:

State of Illinois }
Bureau County } ss 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 Circuit Court of said County, on the first day

of the next term thereof, to be holden at the Court House in the Town of Princeton, in said County, on the second Monday in the month of March next, to answer unto John M. Cauffman in a Plea of Trespass on the Case to the damage of the said Plaintiff as he says in the sum of Two Hundred dollars; and have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

L. S.

Witness George M. Radcliffe Clerk of our said Circuit Court, and the Seal thereof at Princeton, in said County, this 16th day of January in the year of our Lord one thousand eight hundred and sixty one

Geo. M. Radcliffe Clerk
Je Chas. J. Peckham
Deputy Clerk

Which said Writ was returned into said Court endorsed as follows to wit:

"I have served the within Writ this 5th day of February A. D. 1861 by delivering a true and certified copy of this Writ to Charles Barrie an agent of the within named Chicago Burlington & Quincy Rail Road Company at Princeton in said County of Bureau

D. McDonald
Sheriff of Bureau County
Illinois"

And on the same 16th day of January A. D. 1861 came Jeremiah Steinick by Taylor and Paddock his attorneys and filed his precipe for summons herein in the words and figures following, to wit:

State of Illinois } In Circuit Court
Bureau County } ss March Term 1861

Jeremiah Steinick

vs

The Chicago Burlington & Quincy Rail Road Company } Trespass on the Case Dam. $100.00

The Clerk of said Court

Will please issue a summons in the above entitled cause against the above defendant, lay the action in case, and the Plaintiffs damages at one hundred dollars

Taylor & Paddock attys

for Plff.

Whereupon Summons issued out of said Court in the words and figures following, to wit: State of Illinois }
Bureau County } ss. 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 Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court House in the Town of Princeton, in said County, on the second monday in the

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month of March next, to answer unto Jeremiah Weirick in a Plea of Trespass on the Case to the damage of the said Plaintiff as he says in the sum of one hundred dollars; and have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

Witness George M. Radcliffe Clerk of our said Circuit Court, and the Seal thereof, at Princeton, in said County, this 16th day of January in the year of our Lord one thousand eight hundred and sixty one

L. S.

Geo. M. Radcliffe Clerk
Per Chas. J. Peckham Deputy Clerk

Which said Writ was duly returned into said Court endorsed as follows, to wit;

"I have served this Writ this 3rd day of February A. D. 1861 by delivering a true and certified copy to Charles Barrie an agent of the within named Chicago Burlington and Quincy Rail Road Company at Princeton in said County of Bureau."

D. McDonald
Sheriff of Bureau County
Illinois

And on the 28th day of August A.D. 1861 came the parties aforesaid, Plaintiffs by Taylor and Paddock & Defendants by Kendall and Sale and filed their agreement herein in the words and figures following, to wit:

State of Illinois } In the Circuit Court
Bureau County } 2d. of the August Term A.D. 1861.

John M. Cauffman
vs
Chicago Burlington & Quincy Railroad Company
and
Jerremiah Weinick
vs.
Chicago Burlington & Quincy Railroad Company

Case
In the Circuit Court of the August Term A.D. 1861.
Case

It is agreed by the parties Plaintiffs and Defendants in each of the above entitled Causes that both Causes shall be consolidated for the purposes of trial of the same in the Supreme Court. That one Bill of Exceptions shall be sufficient and the same shall be applicable to each case. Separate appeal Bonds shall be given and on trial separate judgments in each case are to be given, but the same Bill of Exceptions shall be applicable and pertinent to each case. And this agreement shall be made a part of the record of said cases.

Witness the said parties by their attorneys this 15th day of said August Term of the said Circuit Court A.D. 1861 Being the 28th day of August 1861

J. D. Taylor atty for Cauffman & Weinick
Kendall & Sale attys for C. B. & Q. R. R. Co.

Pleas before the Hon. M. E. Hollister
Judge of the 9th Judicial Circuit of
the State of Illinois at a term of the Circuit
Court begun and held at the Court House in
Princeton within and for the County of Bureau
on the second Monday in the month of August
in the year of our Lord one thousand eight
hundred and sixty one

Present Hon. M. E. Hollister Judge
Geo. M. Radcliffe Clerk
Daniel McDonald Sheriff
Wm D. P. Jones States Attorney

On the fifth day of said term, to wit:
Friday Morning August 16th A. D. 1861
8 o'clock A.M. Court met pursuant to
adjournment. Present same as at first

John M. Cauffman
vs.
The Chicago Burlington &
Quincy Rail Road Company } case

And now come
the parties by their attorneys aforesaid and
on motion of defendant this cause is set for
trial upon Monday next to which day it is
continued at defendants costs

Jeremiah Weinick
vs.
The Chicago Burlington &
Quincy Rail Road Company } case

And now come the parties by their attorneys aforesaid and on motion of defendant this cause is set for trial upon Monday next, to which day it is continued at defendants costs

And on the ninth day of said term, to wit: Wednesday morning 8 o'clock August 21st A.D. 1861. Court met pursuant to adjournment. Present same as at first.

John M. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company
Case

And now this cause is given to the Jury aforesaid upon the testimony & bounded with the arguments of Counsel and the instructions of the Court, and said Jury retire to consider of their verdict herein.

And afterwards, to wit: upon this same day said Jury return into Court and for their verdict herein say, "We of the Jury do find the defendant guilty as alleged in plaintiffs declaration, and do assess plaintiffs damages at One Hundred and Twenty Dollars" Whereupon defendant by its attorneys aforesaid moves the Court for a new trial of this cause, which motion, the Court, being fully advised in the premises, considers and orders be overruled.

And it is thereupon considered and determined by the Court that the Plaintiff have and recover of defendant the said sum of one hundred and twenty dollars for his damages herein and also his costs of this suit expended and that he have execution therefor.

Jeremiah Weirick
vs.
The Chicago Burlington & Quincy Rail Road Company
Case

And now this cause is given to the Jury aforesaid upon the testimony produced with the arguments of counsel and the instructions of the Court, and said Jury retire to consider of their verdict herein. And afterwards, to wit, upon this same day said Jury return into Court and for their verdict herein say, "We of the Jury do find the defendant guilty as alleged in Plaintiffs declaration, and do assess Plaintiffs damages at Sixty Five dollars".

Whereupon defendant by its attorneys aforesaid moves the Court for a new trial of this cause, which motion, the Court being fully advised in the premises considers and orders be overruled. And it is thereupon considered and determined by the Court that Plaintiff have and recover of defendant the said sum of Sixty Five dollars for his damages herein, and also his costs of suit

expended in this suit, and that he
have execution therefor.

On the 17th day of said Term, to wit:
Friday morning 8 o'clock August 30th
A.D. 1861 - Court met pursuant to
adjournment - Present same as on first day

John M. Cauffman
vs.
The Chicago Burlington and
Quincy Rail Road Company
case

And now comes
defendant by Kendall & Ide its attorneys
and files its Bill of Exceptions herein in the
words and figures following, to wit:

Jeremiah Weirick
vs.
The Chicago Burlington and
Quincy Rail Road Company
case

And now comes
defendant by Kendall & Ide its attorneys
and files its Bill of Exceptions herein in
the words and figures following, to wit:

On the 18th day of said Term, to wit:
Saturday Morning 8 o'clock August 31st
A.D. 1861 - Court met pursuant to ad-
journment - Present same as at first.

John M. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company
Case

And now comes defendant by its attorneys aforesaid and on their motion it is considered and ordered by the Court that an Appeal be allowed to the Supreme Court on defendant filing Appeal Bond with the Clerk of this Court within thirty days from this day in the sum of Four Hundred Dollars with Milo Kendall as surety.

Jeremiah Weirick
vs.
The Chicago Burlington & Quincy Rail Road Company
Case

And now comes defendant by its attorneys aforesaid and on their motion it is considered and ordered by the Court that an appeal be allowed to the Supreme Court on defendant filing with the Clerk of this Court within thirty days from this day appeal bond in the sum of Four Hundred Dollars with Milo Kendall as surety

And to wit on the 3rd day of July A. D. 1863 came the Plaintiff aforesaid John M. Cauffman and filed his amended Declaration herein in the words and figures following, to wit:

State of Illinois } In Circuit Court
Bureau County } 3rd August Term A.D. 1863

John M. Cauffman the Plaintiff by Taylor and Paddock his attorneys complains of the Chicago Burlington & Quincy Rail Road Company defendants in a plea of case. For that whereas heretofore, to wit: on the twenty third day of November in the year of our Lord one thousand eight hundred and fifty nine at the said County of Bureau, the Plaintiff was the owner of and possessed two certain mare colts, one a dark brown colt, then two years old past, of the value of ninety dollars, the other a dun colt then one year old past of the value of seventy dollars, which said colts were then and there lawfully being within the enclosure of the Plaintiff in Center Township in said County and afterwards on the day and year last aforesaid at the County aforesaid, the said colts accidentally, and without the knowledge of, & against the will of the Plaintiff, escaped from the said enclosure of the Plaintiff, into the enclosure of adjacent premises then occupied by one Jerome Daniels, and without the knowledge and against the will of the Plaintiff the said

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colts then and there escaped from the said inclosure occupied by the said Jerome Daniels into a certain public highway in the Township of Center in said County of Bureau, said highway leading from Princeton to Green River in said County of Bureau. And the Plaintiff says that the defendants were then and there the proprietors of a certain Rail Road "A" known as the Chicago Burlington and Quincy Rail Road which said Rail Road then and there crossed the said highway near the point where said Rail Road then crossed the Section line between Sections Eleven (11) and Fourteen (14) in said Town of Center.

And the said defendants were then and there the proprietors of a certain Locomotive Engine, and train of passenger cars thereto attached, which said Engine & cars were then and there running upon the said Rail Road, under the care, control and direction of certain agents and servants of the defendant then and there having the said train in charge and that whilst the said train of cars were running upon the said Rail Road under the direction and control of the agents and servants of the defendant as aforesaid, approaching the said crossing from a Southwesterly direction, the said colts without the knowledge, consent, or fault, of the plaintiff had then and there wandered along the said highway from the point where they had escaped into the same as aforesaid to the said crossing

and then and there without the knowledge consent or fault of the Plaintiff, the said colts were being upon or near to the said crossing of said highway, and the Plaintiff avers that whilst the said Train was so approaching to the said crossing as aforesaid "B" it was the duty of the said agents and servants of the defendants so having the same in charge as aforesaid, so soon as the said Train had approached as near as Eighty Rods to the said crossing to have then and there commenced to ring the bell, or to sound the whistle upon the said Engine (attached to said Train) and to have so continued to ring said bell or sound said whistle from said point until the said Train had passed the said crossing, so as thereby to have scared & affrighted the said colts away from the said crossing, yet the Plaintiff avers that the said agents and servants of the defendants so controling and directing the said Train as the same approached the said crossing as aforesaid, then and there carelessly, and negligently omitted their duty in the premises, in this that they did not ring the said bell or sound the said whistle when the said Train had approached as near as Eighty Rods to said crossing, but then and there carelessly and negligently omitted to ring the said bell or to sound the said whistle upon the said Engine until the said Engine had approached to within Ten Rods of said crossing and then

and there run the said Engine & cars upon the said crossing at a great rate of speed so that the said Engine then and there struck the said colts so being upon the said crossing as aforesaid with such great force and violence that the said colts were thereby then and there crushed, maimed and killed so that they were totally lost to the Plaintiff.

And for that whereas also the said Plaintiff afterwards, to wit: on the said 23d day of November A. D. 1859 at the said County of Bureau was the owner of and possessed two certain other mare colts one a dark brown colt then two years old past, of the value of ninety dollars; the other a dun colt then one year old past of the value of seventy dollars which said colts were then and there being upon the premises of the Plaintiff, at a great distance from the Highway, and Rail Road crossing hereinafter mentioned, to wit, at the distance of three miles, and seperated from the said highway by the enclosed farm of one Jerome Daniels. and the Plaintiff says that on the day and year last aforesaid, the said colts without the knowledge, and against the will of the Plaintiff, escaped from his the Plaintiffs said premises into the said enclosed farm of the said Jerome Daniels, and the said colts then and there without the knowledge or consent or fault of the Plaintiff escaped or were turned out of the said enclosed farm of the said Jerome Daniels into a certain

other
public highway leading from Princeton to Green River in said County of Bureau. That said colts before then were never upon the said highway, and were then and there on said highway without the consent, knowledge or neglect of the Plaintiff—

And the Plaintiff says that the defendants were then and there the proprietors of a certain other Rail Road (The Plaintiff here alleges as in his first count above he has alleged from the letter "A" to the letter "B" occurring in said County) That the said colts could then and there have been seen by the said agents and servants on the said train for a great distance before the said train approached the said crossing, to wit: for the distance of one mile. That according to the Statute it was the duty of the said agents and servants so having the said Train in charge then and there to have rang the bell or sounded the whistle continuedly upon said engine from the point on the said Rail Road Eighty Rods from the said crossing until the said Train had passed the said crossing so as thereby to scare the said colts away from the said crossing. And the Plaintiff further avers that it was the duty of the said agents and servants of the defendants so directing the said Train and driving the said engine on to the said crossing to have slackened the speed of the said Train so that said colts so being upon the said crossing as aforesaid might escape from the said crossing

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yet the Plaintiff avers that the said agents and servants of the defendants so controlling and directing the said Train as aforesaid, then and there carelessly, culpably and negligently omitted their duty in the premises, in this that they did not ring the bell or sound the whistle upon the said engine when the same had approached to the distance of Eighty rods from said crossing nor did they continue to ring the bell or to sound said whistle, from said point to said crossing nor did they slacken the speed of said train so directed by them, as the same ran upon the said crossing, but then and there carelessly and negligently omitted to ring the said bell, or sound the said whistle, or to check the speed of the said Train as the same ran upon the said crossing, but then and there carelessly and negligently as aforesaid ran the said Train of cars at great speed, to wit, at the rate of fifty miles per hour upon the said crossing and then and there the said Engine struck the said colts of the Plaintiff so being upon the said crossing as aforesaid, with such great force and violence, that the said colts were then and there thrown one hundred feet into the air, so that said colts were thereby maimed crushed and killed, and wholly lost to the Plaintiff.

And the Plaintiff avers, that if the said agents and servants of the defendant so having the said Train in charge had rang

the said bell or sounded the said whistle on said Engine as aforesaid as required by the Statute, or if they had slacked the speed of said Train as the same approached the said crossing that the said colt would have escaped from the said Engine whereby and by reason of the premises he the said Plaintiff hath been greatly damaged, in the sum of Two hundred dollars and thereupon he brings his suit &c.

By Taylor & Paddock his attys.

And, to wit, on the same 31st day of July A.D. 1863 came Jeremiah Weirick by Taylor and Paddock his attorneys and filed in said Circuit Court his amended Declaration in the words and figures following, to wit: State of Illinois } In Circuit Court
County of Bureau } 3rd August Term A.D. 1863

Jeremiah Weirick the Plaintiff by Taylor & Paddock his attorneys complains of the Chicago Burlington & Quincy Rail Road Company defendants in a plea of Case, For that whereas heretofore, to wit, on the twenty third day of November in the year of our Lord one thousand eight hundred and fifty nine at the said County of Bureau, the Plaintiff was the owner of and possessed a certain bay mare colt of great value, to wit, of the value of eighty dollars which said colt was then and there lawfully being within the enclosure of the Plaintiff in Center

Township in said County and afterwards, on the day and year last aforesaid at the County aforesaid, the said colt accidentally and without the knowledge of, and against the will of the Plaintiff escaped from the said enclosure of the Plaintiff into the enclosure of adjacent premises then occupied by one Jerome Daniels and without the knowledge and against the will of the Plaintiff the said colt then and there escaped from the said enclosure occupied by the said Jerome Daniels into a certain Public highway in the Township of Center in said County of Bureau said highway leading from Princeton to Green River in said County of Bureau. And the Plaintiff says that the said defendants were then and there the proprietors of a certain Rail Road "A" known as the Chicago Burlington and Quincy Rail Road which said Rail Road then and there crossed the said highway near the point where the said Rail Road then crossed the Section line between Section Eleven (11) and fourteen (14) in said Town of Center and the said defendants were then and there the proprietors of a certain Locomotive Engine and train of passenger cars thereto attached which said Engine and cars were then and there running upon the said Rail Road under the care control and direction of certain agents and servants of the defendants then and there having the said Train in charge. And that whilst the said Train of

cars were so running upon the said Rail Road under the direction and control of the agents and servants of the said defendants aforesaid approaching the said crossing from a Southwesterly direction the said colt without the knowledge, consent or fault of the said Plaintiff had then and there wandered along the said highway from the point on said highway from where it had escaped into the same as aforesaid to the said crossing and then and there without the knowledge, consent or fault of the Plaintiff the said colt was standing and being upon or near to the said crossing of said highway and the Plaintiff avers that whilst the said Train was so approaching to the said crossing as aforesaid "B" it was the duty of the said agents and servants of the defendants so having the same in charge as aforesaid so soon as the said Train had approached as near as Eighty Rods to the said crossing to have then and there commenced to ring the bell or to sound the whistle upon the said engine (attached to said Train) and to have so continued to ring said bell or to sound said whistle from said point until the said Train had passed the said crossing, so as thereby to have scared and affrighted the said colt away from the said crossing. Yet the Plaintiff avers that the said agents and servants of the defendants so controlling and directing the said Train as the same approached the said crossing as

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aforesaid then and there carelessly and negligently omitted their duty in the premises in this that they did not ring the said bell or sound the said whistle when the said Train had approached as near as Eighty Rods to said crossing, but then and there carelessly and negligently omitted to ring the said bell or to sound the said whistle upon the said Engine until the said Engine had approached to within ten Rods of said crossing and then and there ran the said Engine and cars upon the said crossing at a great rate of speed, to wit, at the rate of thirty miles per hour so that the said Engine then and there struck the said so colt upon the said crossing as aforesaid with such great force and violence that the said colt was thereby then and there crushed maimed and killed so that it was totally lost to the Plaintiff.

And for that whereas also the said Plaintiff afterwards, to wit: on the 23d day of November A.D. 1859. at the said County of Bureau was the owner of and possessed a certain other bay mare colt of the value of Eighty dollars which said colt was then and there being upon the premises of the Plaintiff in said Center Township at a great distance from the Highway and Rail Road crossing hereinafter mentioned, to wit: at the distance of three miles and separated from the said highway by the enclosed farm of one Jerome Daniels and the Plaintiff

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says that on the day and year last aforesaid the said colt without the knowledge and against the will of the Plaintiff escaped from his, the Plaintiffs, said premises into the said enclosed farm of the said Jesse Daniels and the said colt then and there without the knowledge or consent or fault of the Plaintiff escaped or was turned out of the said enclosed farm of the said Jesse Daniels into a certain other public highway leading from Princeton to Green River in said County of Bureau; that said colt before then had never been upon the said highway, and was then and there on said highway without the consent knowledge or neglect of the Plaintiff And the Plaintiff says that the defendants were then and there the proprietors of a certain other Rail Road (the Plaintiff here alleges as in his first count above he has alleged from the letter "A" to the letter "B" occurring in said count) that the said colt could then and there have been seen by the said agents and servants on the said train for a great distance before the said train approached the said crossing, to wit: for the distance of one mile. That according to the Statute it was the duty of the said agents and servants so having the said train in charge then and there to have rung the bell and sounded the whistle

continuously upon the said Engine from a point on the said Rail Road Eighty Rods from the said crossing until the said Train had passed the said crossing, so as thereby to scare the said colt away from the said crossing.

And the Plaintiff further avers that it was the duty of the said agents and servants of the defendants so directing the said Train as aforesaid on driving the said Train on the said crossing to have slackened the speed of the said Train so that said colt might escape from the said crossing, yet the Plaintiff avers that the said agents and servants of the defendants so controlling and directing the said Train as aforesaid then and there carelessly, culpably and negligently omitted their duty in the premises in this that they did not ring the said bell or sound the said whistle upon the said Engine when the same had approached to the distance of Eighty Rods from said crossing nor did they continue to ring the said bell or sound the said whistle from said point to said crossing nor did they slacken the speed of said Train so directed by them as the same ran upon the said crossing but then and there carelessly and negligently omitted to ring the said Bell or to sound the said whistle or to check the speed of the said Train as the same ran upon the said crossing but then and there carelessly and negligently as aforesaid

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ran the said Train of cars at great speed, towit, at the rate of fifty miles per hour upon the said crossing and then and there the said Engine struck the said colt of the Plaintiff so being upon the said crossing as aforesaid, with such great force and violence that the said colt was then and there thrown one hundred feet into the air so that said colt was thereby maimed, crushed and killed, and wholly lost to the Plaintiff. And the Plaintiff avers that if the said agents and servants of the defendants so having the said Train in charge had rung the bell or sounded the whistle on said Engine as aforesaid as required by the Statute, or if they had slackened the speed of said Train as the same approached the said crossing that the said colt would have escaped from the said Engine, whereby and by reason of the premises, the said Plaintiff, hath been greatly damaged, in the sum of one hundred dollars and thereupon he brings his suit. &c.

By Taylor & Paddock his attys.

Pleas before the Honorable Madison E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois, at a Term of the Circuit Court within and for the County of Bureau in said State, begun and held at the Court House in said at Princeton, on the second Monday in the month of March (being the Ninth day of said month) in the year of our Lord one thousand eight hundred and sixty three Present Hon. M. E. Hollister Judge

George M. Radcliffe Clerk

Silas Batley Sheriff

David P. Jones States Attorney

John M. Cauffman

vs.

The Chicago Burlington and Quincy Rail Road Company } Trespass on the case, Redocketted—

Now come the said parties by their said attorneys, and on motion of said Plaintiff, it is considered by the Court that this cause be continued until the next term of this Court, at the costs of said Plaintiff; also that said Plaintiff have leave to amend his declaration filed herein.

Jeremiah Heirick

vs.

The Chicago Burlington and Quincy Rail Road Company } Trespass on the Case Redocketted

Now come the said parties by their said attorneys, and on motion of said Plaintiff, it is considered by the Court that this cause be continued until the next Term of this Court at the cost of said Plaintiff. also that said Plaintiff have leave to amend his [illegible]

Heard before the Honorable M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a term of the said Circuit Court within and for the County of Bureau in the State aforesaid begun, held and continued at the Court House in Dunicton in said County on the second Monday in the Month of August (being the tenth day of the said Month) in the year of our Lord One thousand, eight hundred and sixty three

Present Hon M E. Hollister Judge
George M. Raddiffe Clerk
Silas Battey Sheriff
And David P. Jones State Attorney

On the 4th day of said Term, towit; Thursday morning 8½ Oclock August 13th A.D. 1863 Court met pursuant to adjournment. Present same as on the first day.

John M. Kauffman }
vs. } Case Remanded
The Chicago Burlington & Quincy Raie Road } from Supreme Court

Now comes the said Plaintiff by his attorneys aforesaid and on motion a rule is taken on the said defendant to file its plea herein by monday morning next.

Jeremiah Weirick }
vs. } Case Remanded.
The Chicago Burlington & Quincy Raie Road } from Supreme Court

Now comes the said Plaintiff by his attorneys aforesaid and on motion a rule is taken on the said defendant to file its plea herein by Monday Morning next.

On the 7th day of said Term, to-wit:
Monday morning 9 o'clock August 17th 1863
Court met pursuant to adjournment
Present, the same as on the first day.

John M. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company
} Case Remanded from Supreme Court

Now comes the said defendant by its attorneys aforesaid and files its pleas to the amended declaration of the said Plaintiff filed herein, in the words and figures following, to-wit:

State of Illinois } In the Circuit Court of
Bureau County } ss. the August Term 1863

Chicago Burlington & Quincy Rail Road Company
vs
John M. Cauffman
} Case

And the said defendant by Kendall & Dole its attorneys comes and defends the wrong and injury when &c. and says that it is not guilty of the said supposed grievances above laid to its charge in the Plaintiffs amended declaration or any or either of them or any part thereof in manner and form as the said Plaintiff hath above

thereof in the said amended declaration complained against the said defendant. And of this the said defendant puts itself upon the country &c.

Kendall & Ide for the defendant

And the Plaintiff doth the like

Taylor & Paddock for Pl'ff.

Jeremiah Weinick
vs
The Chicago Burlington and Quincy Rail Road Company

Case Remanded from Supreme Court

Now comes the said defendant by its attorneys aforesaid and files its Plea to the amended declaration of the said Plaintiff filed herein. in the words and figures following, to-wit;

State of Illinois } In the Circuit Court
Bureau County } ss. of the August Term A.D. 1863

Chicago Burlington and Quincy Rail Road Company

ats.

Jeremiah Weinick

Case

And the said defendant by Kendall & Ide its attorneys comes and defends the wrong and injury when &c. and says that it is not guilty of the said supposed grievances above laid to its charge in the Plaintiffs amended declaration herein, or any, or either of them, or any part thereof in manner and form as the said Plaintiff hath above thereof in his said amended

Declaration complained against the said defendant. And of this the said defendant puts itself upon the country &c.

Kendall & Ide attys for deft.

And the Plaintiff doth the like

Taylor & Paddock for Plaintiff

On the Tenth day of said Term, to wit; Thursday morning 8½ Oclock August 20th A. D. 1863 - Court met pursuant to adjournment Present: same as on the first day

John M. Cauffman

vs.

The Chicago Burlington & Quincy Rail Road Company

Case Redocketted &c

Now come the said parties by their attorneys aforesaid and by agreement of the said parties it is considered by the Court that this Cause be continued generally to the next term of this Court.

Jeremiah Steinick

vs.

The Chicago Burlington & Quincy Rail Road Company

Case Redocketted &c

Now come the said parties by their attorneys aforesaid, and on motion and by agreement of the said parties, it is considered by the Court that this cause be continued generally to the next term of this Court.

Pleas before the Honorable M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois, at a term of the said Circuit Court within and for the County of Bureau in the State aforesaid, begun held and continued at the Court House in Princeton in said County on the Second Monday in the month of December (being the fourteenth day of said month) in the year of our Lord one thousand eight hundred and sixty three Present, George M. Ridcliffe Clerk

David P. Jones States Attorney

Silas Battey Sheriff

And now on this first day of said Term are present as aforesaid. but the Hon M. E. Hollister Judge of said Court is not present- and thereupon according to the Statute in such case made and provided the Court stands adjourned until tomorrow.

On the Second day of said Term, towit; Tuesday morning 10 o'clock December 15th A.D. 1863 - Court met pursuant to adjournment- Present same as yesterday and also the Hon M. E. Hollister Judge of said Court.

John M. Cunffman

vs

The Chicago Burlington & Quincy Rail Road Company

3 Cases - Remanded from Supreme Court

Now come the said parties by their attorneys aforesaid, and on

motion it is considered by the Court that this suit be set for a hearing on Wednesday morning of the second week of the present term of this Court.

Jeremiah Weinck
vs.
The Chicago Burlington and Quincy Rail Road Company
} Case - Remanded from Supreme Court

Now come the said parties by their attorneys aforesaid and on motion it is considered by the Court that this suit be set for a hearing on Wednesday morning of the second week of the present Term of this Court and that this and the preceding case between the said defendant and John M. Cauffman be tried together

On the sixth day of said Term, to-wit, Wednesday morning 9 o'clock December 23d A.D. 1863. - Court met pursuant to adjournment. Present the same as on the second day.

John M. Cauffman
vs.
The Chicago Burlington and Quincy Rail Road Company
} Case Remanded &c

Now come the said parties by their attorneys aforesaid, and on motion and by agreement of the said parties this suit is set for trial on next monday morning.

Jeremiah Weinck
vs.
The Chicago Burlington and Quincy Rail Road Company
} Case Remanded &c

Now come the said parties by their attorneys aforesaid, and on motion and by agreement of the said parties this suit is set for trial on next monday morning.

On the Thirteenth day of said Term, to wit: Monday morning 10 o'clock December 28th A.D. 1863 - Court met pursuant to adjournment. Present, the same as on the second day.

John M. Cauffman
vs.
The Chicago Burlington and Quincy Rail Road Company
} Case Remanded &c

Now comes the defendant by its attorneys aforesaid and on motion it is considered by the Court that this cause be continued to the next term of this Court at the cost of the said defendant.

It is therefore further considered by the Court that the said Plaintiff have and recover from the said defendant all his cost and charges by him in and about his suit, in this Court at the present term thereof in this behalf expended and that he have execution therefor.

Jeremiah Weinick
vs.
The Chicago Burlington and Quincy Rail Road Company
} Case remanded &c

Now comes the said defendant by its attorneys aforesaid and on motion it is considered by the Court that

this cause be continued to the next Term of this Court at the costs of the said defendant It is therefore further considered by the Court that the said Plaintiff have and recover from the said defendant all his costs and charges by him at this Term of the Court in this behalf expended and that he have execution therefor.

Pleas before the Honorable M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois, at a Term of the said Circuit Court within and for the County of Bureau, in the State aforesaid, begun held and continued at the Court House in Princeton, in said County, on the second Monday in the month of March (being the fourteenth day of said Month) in the year of our Lord one thousand eight hundred and sixty four

Present, Hon. M. E. Hollister Judge
Geo. M. Radcliffe Clerk
Silas Batty Sheriff
And D. P. Jones State Attorney

On the third day of said Term, to-wit;

Wednesday morning 8½ o'clock
March 16th A. D. 1864
Court met pursuant to adjournment — Present the same as on the first day.

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John M. Cauffman

vs.

The Chicago Burlington & Quincy Rail Road Company

Case Remanded &c

Now come the said parties by their attorneys aforesaid and by agreement of the said parties it is considered by the Court that this suit be consolidated, for trial with case number 29 on this Docket, wherein Jeremiah Weinick is Plaintiff and the said Rail Road Company is defendant And the court orders that a Jury be empanneled to try the issues herein; and a Jury comes of twelve good and lawful men, to wit: I. W. Battey, Sylvester Harrington, James S. Swift John Peal, Thomas Walker, Oscar Bartlett, James Corbett, Abraham Gifford William Mercer, John McDaid, William Smith and Lewis Pratt, who are duly elected, tried and sworn well and truly to try the issues herein, and a true verdict to render according to the evidence

Jeremiah Weinick

vs.

The Chicago Burlington & Quincy Rail Road Company

Case Remanded

Now come the said parties by their attorneys aforesaid and by agreement of the said parties it is considered by the Court that this suit be consolidated, for trial, with case number 28 on this docket, wherein John M. Cauffman is Plaintiff

and the said Rail Road Company is defendant.

And the Court orders that a Jury be empannelled to try the issues herein and a Jury comes of twelve good and lawful men, towit: S. H. Battey, Sylvester Harrington, James P. Swift, John Pearl, Thomas Walker, Oscar Bartlett, James Corbett, Abraham Gifford, William Mercer, John McDaniel, William Smith and Lewis Pratt, who are duly elected, tried and sworn well and truly to try the issues herein and a true verdict to render according to the evidence

On the 5th day of said Term, towit: Friday morning 8½ o'clock March 18th A.D. 1864 - Court met pursuant to adjournment. Present same as on first day.

John W. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company

Case Remanded &c.

Now come the said parties by their attorneys aforesaid, and also come the Jury aforesaid and said Jury upon their oaths say: We of the Jury do find the said issues herein in favor of the said Plaintiff and assess the damages which the said Plaintiff hath sustained herein, by reason of the premises, at the sum of one hundred and twenty dollars.

and the said Rail Road Company is defendant.

And the Court orders that a Jury be empannelled to try the issues herein and a Jury comes of twelve good and lawful men, towit: S. H. Battey, Sylvester Harrington, James P. Swift, John Pearl, Thomas Walker, Oscar Bartlett, James Corbett, Abraham Gifford, William Mercer, John McDaniel, William Smith and Lewis Pratt, who are duly elected, tried and sworn well and truly to try the issues herein and a true verdict to render according to the evidence

On the 5th day of said Term, towit: Friday morning 8½ o'clock March 18th A.D. 1864 - Court met pursuant to adjournment. Present same as on first day.

John M. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company

Case Remanded &c.

Now come the said parties by their attorneys aforesaid, and also come the Jury aforesaid and said Jury upon their oaths say: We of the Jury do find the said issues herein in favor of the said Plaintiff and assess the damages which the said Plaintiff hath sustained herein, by reason of the premises, at the sum of one hundred and twenty dollars.

Jeremiah Heinick
vs.
The Chicago Burlington and Quincy Rail Road Company
Case, Remanded &c.

Now come the said Parties by their attorneys aforesaid; and also comes the Jury aforesaid; and the said Jury upon their oaths say; We of the Jury do find the said issues herein in favor of the said Plaintiff, and assess the damages which the said Plaintiff hath sustained herein by reason of the premises, at the sum of sixty five dollars

On the Sixth day of said Term, towit: Saturday morning 8½ oclock March 19th A.D. 1864- Court met pursuant to adjournment- Present same as on first day

John Mc. Cauffman
vs.
The Chicago Burlington and Quincy Rail Road Company
Case- Remanded &c

Now comes the said defendant by its attorneys aforesaid and enters its motion for a new trial herein

Jeremiah Heinick
vs
The Chicago Burlington and Quincy Rail Road Company
Now comes the said defendant by its attorneys aforesaid and enters its motion for a new trial herein

On the 15th day of said Term, to wit: Wednesday morning 8½ o'clock March 30th A. D. 1864 - Court met pursuant to adjournment - Present same as on the first day

John M. Cauffman
vs.
The Chicago Burlington & Quincy Rail Road Company
} Case - Remanded &c

Now come the said parties by their attorneys aforesaid, and after argument of counsel and the Court being now fully advised in the premises, it is considered by the Court that the said defendants motion for a new trial herein, be overruled. It is therefore further considered by the Court that the said Plaintiff have and recover from the said defendant the said sum of one hundred and twenty dollars his damages assessed as aforesaid together with all his costs and charges by him in and about his suit in this behalf expended &c that he have execution therefor.

And now on motion, the said defendant is, by the Court, allowed an appeal herein to the Supreme Court of the State of Illinois, upon the said Rail Road Company entering into bond to the said Plaintiff in the penal sum of one thousand dollars conditioned as the law directs with Nils Kendall Esq. as security. The said Appeal Bond and the Bill of Exceptions herein, to be filed

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Jeremiah Weinick

vs.

The Chicago Burlington & Quincy Rail Road Company

Case Remanded &c.

Now come the said parties by their attorneys aforesaid, and after argument of counsel, and the Court being now fully advised in the premises, it is considered by the Court that the said defendants motion for a new trial herein be overruled. It is therefore further considered by the Court that the said Plaintiff have and recover from the said defendant the said sum of sixty five dollars, his damages assessed as aforesaid, together with all his costs and charges by him in and about his suit in this behalf expended and that he have execution therefor.

And now on motion the said defendants is, by the Court, allowed an appeal herein to the Supreme Court of the State of Illinois, upon the said Rail Road Company entering into bond to the said Plaintiff in the penal sum of one thousand dollars conditioned as the law directs, with Wils Kendall Esq. as security. The said Appeal bond and the Bill of Exceptions herein to be filed herein in thirty days from this date nunc pro tunc

Now come the said defendants on the 15th day of April A.D. 1864 and file their appeal Bonds and Bill of Exceptions herein nunc pro tunc as of March 30th A.D. 1864

Said Appeal Bonds are in the words and figures following, to-wit:

Know all men by these presents that we the Chicago Burlington and Quincy Railroad Company and Wells Kendall of Bureau County and State of Illinois are held and firmly bound unto John M. Cauffman of said County and State in the penal sum of one Thousand Dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves, our successors, our heirs executors and administrators jointly severally and firmly by these presents.

Witness our hands and seals this thirty first day of March A.D. eighteen hundred and sixty four.

The condition of the above obligation is such that whereas, the said John M. Cauffman did on the thirtieth day of March A.D. eighteen hundred and sixty four, in the Circuit Court in and for said County and State recover a judgment against the above bounden Chicago Burlington and Quincy Railroad Company for the sum of one Hundred and twenty dollars damages and costs of suit from which said judgment of said Circuit Court, said Chicago Burlington and Quincy Railroad Company has prayed for and obtained an Appeal to the Supreme Court of said State

50 cents Internal Revenue

Now if said Chicago Burlington and Quincy Railroad Company shall duly prosecute its said appeal with effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against it in case said judgment shall be affirmed in said Supreme Court, then the above obligation to be void otherwise to remain in full force and virtue

(Signed) The Chicago Burlington & Quincy Railroad Company by
C. P. B.
John Van Nostwick President
Attest Wells Kendall Seal
A. T. Hall Sec.

And Know all men by these presents that we the Chicago Burlington and Quincy Railroad Company and Wells Kendall of Bureau County and State of Illinois are held and firmly bound unto Jeremiah Weirick of said County and State in the penal sum of one Thousand Dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our successors, our heirs, executors and administrators, jointly severally and firmly by these presents.

Witness our hands and seals this thirty first day of March A. D. 1864

The condition of the above obligation is such that whereas, the said Jeremiah

Warwick did on the thirtieth day of March A. D. Eighteen Hundred and sixty four, in the Circuit Court in and for said County and State, recover a judgment against the above bounden Chicago Burlington and Quincy Railroad Company for the sum of Sixty five Dollars damages and costs of suit, from which said judgment of said Circuit Court, said Chicago Burlington and Quincy Railroad Company has prayed for and obtained an appeal to the Supreme Court of said State.

Now if said Chicago Burlington and Quincy Railroad Company shall duly prosecute its said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against it, in case said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue

50 cents Internal Revenue

Signed, The Chicago Burlington & Quincy Railroad Company
by John Van Nortwick
President
Weilo Kendall (Seal)

E. S. P.

Attest
A. T. Hall
Secy.

Said Bill of Exceptions is in the words and figures following, to wit:

State of Illinois } In the Circuit Court
Bureau County } ss. Of the March Term A. D. 1864.

John M. Cauffman

vs.

Chicago, Burlington and Quincy Railroad Company } Case

And

Jeremiah Weirick

vs.

Chicago, Burlington and Quincy Railroad Company } Case

Be it remembered that on the 16th day of March A. D. 1864 being the 3d day of the said term of Court the above entitled causes came on to be tried and by agreement of the said parties to said suits both suits were tried together by the Court and a Jury. It was also agreed that no evidence of the value of the colts in question need be given, but that if the Jury should find for the plaintiffs, that they should render a verdict for the plaintiff Cauffman for the sum of $120. and a verdict for the plaintiff Weirick for the sum of $65., being the amounts found by the former verdict.

The plaintiffs to maintain the issue on their part introduced witnesses who testified as follows:

Hiram Cauffman sworn. testified, I know the plaintiffs - the one is my father - the other

brother in law - was living with father in Fall of
1859 - There was three colts, one two & the other
coming 3 years old - father's colts were one a dun
and the other brown - the brown was the oldest -
the colts of father were mares - Weinick's was
a mare - father's premises was within the neighborhood
of 2 miles of the R.R. crossing - there was a farm
between fathers and the crossing - it was Daniel's
farm - the highway runs E. & W. at the crossing -
the R. Road runs from N.E. to S.W., a little S. of
West - I had been at father's 4 or 5 years before
the colts were killed - they were running in the
stock field at father's at that time 2 miles from
the crossing - Daniels' farm was fenced - the
colts never was on the Green River highway crossing
before - Weinick lives 3/8 mile from father's West -
The crossing from Weinicks is S.W. - Weinick's colt
run with father's - our farms are in one enclosure -
the colts never were on that highway until the
day they were killed - they would have to go
4 miles around to get to the crossing - The
day on which the colts were killed they got
over the fence some way - they were in the road -
went west and went out of the highway into
Daniel's field - a pair of bars let them into
Daniel's field - there was still another fence
on the South side of Daniels field on the
South side - Don't know know whether Daniels
fence was up then or not - he had the farm
in cultivation - had crops in - his farm was
fenced on the highway - father always looked
after the colts every evening and morning to

" see that the colts were at home - I saw the
" colts at the crossing after they were killed -
" I next seen the colts before the colts were
" killed the day or two before - I might have
" seen them that same morning - I was at
" home the morning they were killed - It was
" in Nov. 1859 - we had gathered part of our
" corn - the highway running by Father's farm
" is 1 mile north of the R.R. & does not touch
" the R.R. but runs west from Father's farm - the
" colts never were known to range on the other
" highway which crossed the R.R. - we always
" kept them on the farm - the colts when they did
" range out in summer ranged E. and N.E. in the
" opposite direction from the R.R. crossing - father
" was at home the day the colts were killed,
" not doing anything - that day there was a man
" came the same day & informed us that the
" colts were killed - I don't know whether
" father knew the colts were in Daniels field
" I don't think he did - I had no knowledge
" of the colts being in Daniels' field - The colts
" could not go to the creek for water - at the
" time they were killed they were in the stock
" field - the creek did not extend into the
" field - they got out of the stock field
" between father's and Weirick's into Daniels'
" field - I don't know but father knew they
" were out that day - there was 2 other colts
" of father's with them - they ran together - I
" saw the colts at the crossing and identified
" them as the plaintiffs colts - they looked as

" though they had been freshly killed - they
" were carried in across the cattle guard - 2
" on one side of the R. road & one on the other -
" The colts could have seen a locomotive from
" our house - I expect they had been nigher
" the R. R. than 1/2 mile - they could hear the
" R. R. whistle every day - they were not very
" wild - I don't think they had ever been whistled
" at by the R. Road - before they were unbroken -
" Cross Examined - Father lives 2 miles from
" the crossing where the colts were killed - It is
" North East - The road father lives on is a
" mile north of the R.R. - the road is laid out
" to the creek - our farm comes up to the R.R. -
" the colts would have to go four miles by the
" road to get to the crossing - to go through
" Daniels field they would have to go 2 miles -
" I am positive that I saw the colts the day
" before they were killed - they might have
" been running around the farm - we generally
" kept them up at night - don't know that
" they were penned up the night before - I don't
" know except from what I heard Daniels say
" that the colts were in Daniels field - the day
" before they were killed I saw them on the
" farm somewhere - we turned them into the
" field every morning - that was our custom -
" the way in which I remember seeing them
" the day before is because I was in the habit
" of seeing them - in turning them into the
" stock, I mean the 160 acre field - The
" 1/4 section between our farm & Daniels is only

" 1/2 mile to the R. road, 1/4 Sec. between our farm
" & R.R. Highway - The 2 roads are 1 mile
" apart & the colts would have to go to Daniels'
" house to get out - I don't know where the colts
" go out onto the R.R. - I supposed they got
" out of our farm on to Daniels' farm - Where
" they went to get water is off our farm - We
" would leave them out in the morning and
" they would go and get water - Don't know
" that they had been shut up the day before
" they were killed - From the watering place they
" could go into the North Road or South Road.
" The watering place is 1/4 mile from the E. line
" of our farm - it is east - I mean the Bureau
" Creek - The colts could have gone down the
" Creek and got on to the road - It is more
" than 5 miles from Plaintiffs' farms to the Crossing
" to go around by the Creek - they would have
" to go by the Creek about 6 miles to the crossing -
" Their watering place is above the R. Road bridge -
" Our fence was down leading in to the North highway
" running by our farm. - It appears to me there
" was a portion of the fence down between us and
" Daniels' - Daniels has a 2 board fence & we
" have a three rail fence - I don't know what
" part of the farm the colts were on the day
" before they were killed - we were picking corn
" the day before they were killed - there were
" 5 colts the day the colts were killed, together -
" I think we were doing nothing that day -
" Dr Chief resumed - The colts would take
" the west end of the road they would have to go

" 4 miles to get to the R. R. crossing - I don't think
" from the nature of the Creek, we would go by
" the Creek - We never allowed them to go west -
" If the colts got into the highway from Latter's
" land they would not get into Daniels' land -
" Dee's land is immediately South of our land & was
" inclosed and in cultivation at that time -
" Daniels had a section of land which runs
" from one road to the other - The colts were
" killed on the Green River road - I know the
" crossing where the colts were killed - The grade
" of the R. Road is about two feet higher than
" the prairie - The track is straight for more
" than a mile west of the crossing - There was
" at that time no obstacle to prevent a colt
" from being seen on 50 ft. either side of crossing
" for ½ a mile West on R. R. - The Engineer
" could have seen the colts for more than ½ a
" mile -
" Cross Ex. resumed - I examined the location
" of the road - there was some small cotton
" woods there along the track - the Road was
" fenced with a 4 or 5 board fence on both sides
" of the Rail Road extending to the cattle guards.
" I thought the R. R. was about 2 feet higher
" than the general surface of the ground. I
" never measured the depression of the prairie
" in contrast with the Rail Road - I do think
" that a colt could have been seen on the
" North side of the Rail Road in the depression,
" from the Locomotive - If a colt had been on
" the South side within 50 feet of the Rail Road

" it could have been seen - I swear positively
" that a colt could have been seen from the
" train next to Daniels' fence - I could have
" seen it - A colt could have been seen any
" place on the 50 feet South of the highway -
" I said there was something like 10 or 12 apple
" trees in Wilcox' orchard - there might have
" been 20 trees - I don't know the exact number -
" the trees were small at the time - I don't know
" how great space there is between the board fence
" and the Rail Road - I did not say 8 or 10
" apple trees as a positive statement of the
" number - I have never seen colts at that
" crossing - I don't travel that road very often -
" We don't go over that road to market - I
" have seen cattle and colts in the highway
" from the R. R. track - I never tried to see
" whether from the R. R. track between that & the
" next west crossing that colts could have been
" seen through the orchard & trees -
" Jerome Wilcox - In chief - In the
" month of Nov. 1859 was living on Sect. 14 - Line
" near the crossing of the Princeton & Green River
" highway & the C. B. & Q. R. R. - it is a public
" highway - the highway crosses the R. R.
" on Sec. line between 11 & 14 - I owned that
" farm in Nov. 1859 - I owned the land for 70 rods
" west and South of the Rail Road crossing in
" Nov. 1859 - I was gathering corn in the field
" on the South side of the R. road - I was driving
" up with a load of corn from the South towards
" my barn headed towards & opposite to the said

" crossing & the passenger train came along
" running East - I then saw the horses or part
" of them on the South side of the Road in the
" highway while the train was down near the
" crossing - As the train approached they went
" to west side R.R. where they stood on the
" west side & seemed to be in a sort of huddle
" and when train had got within 7 to 10 rods of
" cattle guards of the whistle sounded & I saw
" one of the colts turn a sort of somerset, and
" the colts were carried over the crossing - 2 of
" the colts were dead & the other was yet alive -
" I then sent word to Kauffman supposing
" them to be his colts - It was about 12 o'clock
" M. in daylight - it was from 7 to 10 rods
" from the crossing when they sounded the
" whistle - The cars were down in the Fisher
" field when I first saw them about 100 rods
" from the crossing - I saw the colts near
" the crossing on the E. side when I first
" saw the cars - they then went towards
" Daniels' house - it was after I first saw
" the cars that the colts crossed over the
" track - when I first saw the colts they were
" crossing over the track - they were on the
" South side going west - I was looking out
" to see how the colts were going to get out
" of the difficulty - I was on the load of
" corn headed towards the crossing - I had
" had a good deal of stock killed there
" & was looking and listening to see what
" would become of the colts - I was 40

" or 50 rods South of the Crossing - The ground
" was not entirely level - the spot I was driving
" over was rather high - I could see everything
" that moved - I saw the colts - The fence between
" me and the colts did not obstruct my view
" of the Colts from my position on the load of
" Corn - I don't know that there would be
" any difficulty in seeing the colts at that
" Point from the locomotive - It would be
" as good view of the Crossing from the
" locomotive as from my wagon - The grade
" for 100 rods west of the crossing is higher
" than at the ~~crossing~~ surface of the ground -
" I have owned that farm some 14 years -
" I think I know the nature of the ground
" at the Crossing - My house 12 rods from
" the Crossing, East - The highway on the
" South side of Crossing is about 1 foot lower
" than the grade of the Rail Road - On the
" west side the highway is from 2 foot to
" 2 1/2 feet lower than the grade of the R. R. track
" Animals standing where the colts huddled
" up could have been seen from a locomotive
" on the R. Road some 90 to 100 rods easy enough -
" there was I think no place where the colts
" could have been concealed from the view of
" the engineer - There is no place on the Rail
" Road for 50 feet from the Rail Road but
" that they could have been seen for 90 rods
" west of the crossing - The engineer could
" have had a very fine view of the colts
" when they passed over the Rail Road when

" I saw them first - I don't know whether the
" ground was frozen or not - The wagon I was
" on was loaded with Corn - I don't think
" my wagon made much noise, though I
" would not swear positively - when I first
" saw the Cars my attention was attracted
" to the Stock - I could hear the Cars running
" heard the wheels - when whistle first sounded
" I saw the Colts spring at the sounding of the
" whistle - the Colts were huddled up on the
" North side of the track next to Daniels fence -
" It's pretty hard to tell how far they were
" from the ~~fence~~ track - My attention was attracted
" to the Cars by the rumbling of the car wheels
" & not by the Bell or whistle - did not hear
" any bell or whistle until they were within
" 7 to 10 rods of the R. R. Crossing - if the bell
" or whistle had been sounded there is a
" probability that I would have heard
" it - They might have rung the bell or
" whistled and I not have heard it - I
" should think I would have been as likely
" to hear the sound of the bell or whistle
" as the sound of the wheels - my attention
" was so much taken up with the destiny of
" the Colts that the whistle might have sounded
" and I not have heard it - the Colts were
" 3 or 4 rods from the R. road & they might
" easily have been seen by the Engineer on
" the R. Road from the time I first saw the
" Cars - I cannot tell whether the Cars were
" checked up any from the time I first saw

" the Cars until they reached the crossing -
" My attention was taken up with the Colts
" more than to the Cars - My impression is they
" were running a pretty good jog when they
" passed - One Colt went up seemingly over
" the smoke pipe - the Cars throwed up the
" Colts pretty high - I have an orchard there
" along the track - they have the right of
" way for 100 feet in width, 50 feet on
" each side of the track - there was a quaking
" ash tree on each side of the track - the
" one on the South side was about 4 inches
" in diameter, the other 2 or 2½ inches in
" diameter - These trees were 20 or 25 rods
" below the crossing - The orchard would
" not be any obstacle in the way of seeing
" the Colts - the orchard had been out 4 or
" 5 years - the first that I saw the Colts
" were passing from South side of the R.R.
" to the North side - then the Cars were 100
" rods west - the Colts all passed over to
" the west side & halted 3 or 4 rods from the
" R.R. by the side of Davids' fence - When
" the whistle sounded the sprang and ran
" back towards my house - I did not see
" the Colts break until the whistle sounded -
" I don't know whether I ever saw the Colts at
" that point before - I don't remember seeing
" them there before -
" Cross Ex. - I was a witness when this
" case was tried here before - I think my
" recollection would be more correct at

52 " that time than now - the colts were killed
" 4 years ago last November - At the time this
" accident occurred (I don't what I swore the
" distance it was on the other trial) I was some 40 or
" 50 rods from the place of accident - If I swore
" the other time that I was some 70 rods away, on
" the former trial, I should think I was correct -
" I don't recollect swearing before that I did
" not see the cars until I heard the whistle -
" If I did swear so before that was probably
" the most correct - I don't think I could have
" avoided seeing the cars - If I did swear so
" I cannot see why I did so swear - My
" recollection is now that I did see the cars
" before the whistle sounded - I don't think
" I swore before that I did not know whether
" it was a passenger train or freight - I am
" satisfied that I did know the other time
" I was sworn what ~~kind~~ of a train it was -
" I noticed the colts going over the track when
" I saw the cars 100 rods away - I will not
" take anything back as to what I swore - there
" are 50 apple trees in my orchard - The R.R.
" track cut off 3 trees - I took them up - R.R.
" left none on South side of the track - I have
" rode over the road on engines both ways, ~~On engines~~ some
" times with Frank - Sometimes with Knott - Some-
" times on gravel trains - I don't know how
" many times I rode over the road from the
" west - Think 1/2 doz. times - Sometimes got off -
" Sometimes go to Princeton - both before and
" since the accident I have rode on the trains -

" I have seen stock near the crossing when I
" have been riding on the cars within 4 or five rods
" of the R. road crossing - when riding on the locomotive -
" I thought I knew the colts when I saw them
" killed - I was somewhat acquainted with
" Kauffman's colts - I can't say whether or not
" that I had these same colts at or near the
" same crossing - from the crossing to the highway
" running North & South is about 150 rods west of
" the crossing - from the crossing at my house
" to the crossing west it is some 160 rods - the
" road was partially angling - That North &
" South road ran directly up to the road that
" Kauffman lives on - from my house to Kauffman's
" around by the road running west then North
" then East it is about 2 3/4 to 3 miles - from
" Kauffman's diagonally running across the
" fields to the R.R. crossing it would be 1 1/4 to
" to 1 1/2 miles - from Kauffman's by the way of
" the main Bureau or any other road - by the
" way of Swifts it would probably be 2 1/2
" miles - Daniels' fences were a post & 3 board
" fence - I think Daniels' fences were frequently
" down - I have often seen stock in Daniels'
" field - The Rail Road fences at the
" crossing was a 5 board fence, with the lap
" put on to each joint which run up to the
" cattle guard - I have most forgotten
" whether R. R. Co. put up that before colts
" were killed - if it was the old fence it was
" 3 or 4 board fence - When I saw the
" colts they were crossing over the track & the

" cars were Some where in Fisher's field - About
" 70 to 100 rods from the Crossing - when the
" Colts had passed over the track the Cars
" were about 60 rods away - the Colts passed
" over the R. R. track about 3 or 4 rods and
" gathered by Daniels' fence and were huddled
" together with their heads up - Some headed
" one way and Some another way - I think
" they kept moving around a little - when I
" first saw the colts they were going west -
" The train of cars would be between me and
" the colts when they were struck - I think
" there was 2 or 3 of the colts that passed
" over to the track to the E. Side before the
" others were struck - On the North Side of
" the track there were Some bushes on the
" Fisher farm, within the 50 feet of the right
" of way - Don't think there was any bushes
" on right of way of R. R. any where on west
" Side of Crossing till get to Fisher's - Don't
" think there was any trees on my land for 70
" rods west of Crossing except the two I spoke
" of, for I have plowed that land - it may
" be 60 or 70 rods before you reached Fisher's
" trees from the Crossing - there was no whistling
" post there at that time - I have never measured
" the depression on the west Side of the R. road
" as Compared with the Rail road track, but
" think it was about 2 1/2 feet - The ground
" near the crossing has been plowed and Scraped
" out Since that accident - I was distant
" from the R. R. when coming up through my

" field to the crossing 40 or 50 rods & I was
" about the same distance from any other part
" of the R.R. - The corn was on the South side
" of my farm that I was gathering - I don't
" recollect whether I was entirely out of the
" corn fields - don't know whether the ground
" was frozen - I was riding on a wagon and
" it rattled - I cannot tell whether I heard
" or saw the Cars first - I think I may have
" seen them first - I don't recollect swearing
" on the other trial that I swore I could
" not hear the Cars - it is my impression that
" I heard the rumbling of the wheels - my
" impression is that I had a side view
" of the Cars - Don't recollect of swearing
" on the other trial that the Cars had got
" almost in front of me when I first saw
" them - my recollection is that my first
" view of the Cars was in Fisher's field - I
" was driving my team north and the Cars
" were running North east - my view was a
" side view - they were about 90 rods away
" when I first saw the Cars - I was sitting
" on the left hand side of the wagon as I
" was driving North - I might have been
" further South from the Cars when I first
" saw them than I have sworn - My recollection
" about the matter at this time is very dim -
" it was up grade running from W. to East -
" the line of the Rail Road through Fisher's
" field is higher than the general surface of
" the ground - where the R.R. Crosses the

highway it was 1 foot higher on the South
side than the general surface - from the time
the Cars passed the South line of the highway
my view of the colts was almost entirely
obstructed - and all I saw of the colts was
that they were being tossed up in the air -
it looked to me as if the colts was being
thrown as high as the smoke stack - don't
know the height of a smoke stack - don't
know that the colt was thrown ten feet -
did not intend the Jury should understand
that the colt was thrown as high as the
smoke stack - it looked to me as though
the colt was as high as the smoke stack -
my impression is that the three colts were
all thrown over the cattle guards - my
impression is that those colts that got
over the highway went close to the cattle
guards - I had a fence on the South
side of the highway on the north line of
my farm which ran up to the R. R. fence -
I had to look over that fence to see the
colts - the most of the ground descends towards
the South from the R. R. - the general surface
of the earth falls off going south -
Recalled in chief - The fence on the
South side of the highway had I think three
or four boards - the fence did not obstruct
the view of the colts going from my side
to Daniels - I saw the colts grouped
together and the first that I heard the
whistle the colts sprang and ran towards

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" my house - 2 or 3 of them got over safe -
" There is a new highway running North &
" South Connecting with Kauffman's highway,
" which I am not certain was opened at
" that time - Don't Know that the Colts
" could have gotten to the crossing by this
" last way - If that road was not opened
" then the distance for the colts to come on
" to the crossing would have been 1 mile
" further of travel - it would have been
" about 4 miles from Kauffman's to the
" crossing - The colts would go west from
" Kauffman's to a road going South then west
" then South then East - then the colts would
" be at the crossing - don't Know of any
" pasture on that route except what was on
" the highway - Don't Know where Kauffman's
" stock ranged - I don't Know that Greenamire
" had fenced up the pasture in the bottom -
" I think it was not fenced up at the time
" the colts was killed - from Kauffman's
" watering place to Capt. Swift's it is about
" 1/2 a mile - it was about 1 mile from Swift's
" to Kauffman's - from Swift's to the main
" highway it might be from 100 rods to
" 160 rods - My impression from Swift's to the
" corner it was open prairie - from the corner
" of the fence to the crossing it was a mile
" & 1/2

" D. C. Wilcox testified as follows: -
" We were picking Corn on the lower part of
" Jerome's farm when the colts were killed

" Jerome & myself & hired help - I heard
" the whistle of cars at Wyanet - About the
" time the train got down to the road west I
" heard the whistle sound - I says there is
" some of our horses - I was about 80 rods
" from the crossing when I first saw the
" cars - I was going due north - my brother
" was ahead of me - I was just going out
" of the corn when I first saw the cars -
" there was no obstacle to hinder me from
" a full view of the cars from the time
" they struck Fisher's field - I heard the
" whistle at Wyanet 2 miles away - The
" rumbling of the wheels attracted my attention
" to the cars first when I saw the cars. I
" had heard a whistle at the west crossing -
" about near 1/2 mile from Crossing in question -
" whether I saw the cars before they struck the
" west crossing I can not say - They were
" some where in Fisher's field when I first
" saw them - I was alarmed for the safety
" of the colts at the crossing - they were going
" from the S.E. side of the track to the west &
" the cars were some 100 rods from the crossing
" when I first saw the colts - I saw the
" colts had got over the track & stopped &
" looked up to see the train a coming - they
" were then from 3 to 5 rods from the crossing
" where they appeared to stop, straightened up
" & looked towards the train - I kept looking
" at them - I could see the colts - I know
" the nature of the ground - I sent my first

" man to drive colts away but Jerome told him
" to come back, that he could not get to
" crossing in time - I have worked there on
" that farm for 8 or ten years - Know the nature
" of the ground - from where the colts were killed
" to the west it was down grade - I think
" a man on the Rail Road could have seen
" the colts for 100 rods, from a locomotive -
" If I was walking along the track and saw
" an Engine Coming, I would look if there
" was any stock on the track - there was no
" obstacles for 50 feet on each side of the
" Rail Road for 80 Rods west except two
" Quaking Ash trees - These trees were fifty
" rods west from the Crossing - Near the
" Crossing there were two or three bushes on
" the North side of the track - there were
" sprouts of Quaking Ash - I don't think
" the bushes would obstruct the view because
" they were not high enough - they might
" have been 6 ft. high - Don't remember
" whether they had leaves on or not - My
" brother had an orchard which I think
" did not obstruct the view - the orchard
" was five or six rods from the track - the
" fencing along the sides of the Rail road
" was wire fence - The Rail Road was 1 to
" 1½ feet higher than the wagon road at
" the west side of Rail road track at Crossing -
" I don't know that the colts were in the barn -
" on the N. W. side of the R. R. track - I
" think when I saw them they were in the

" road and not in the basin - I saw them
" wherever they were - I could see them
" from the wagon where I was - The colts
" were not out of my sight from the
" time they ~~train~~ passed west until the
" time the train entered between me and
" the colts - Just before the train got to the
" crossing there were two or three of the colts
" crossed over the road & were in my view
" all the time till after the collision - The
" train was from 7 to 10 rods from the crossing
" when I heard the first whistle after it
" whistled at the west crossing - the colts
" crossed over when the train was at the
" other crossing & stood there - I don't
" know why the colts could not have
" been seen from the approaching train -
" The nature of the ground was as good
" for the engineer to see them as for me
" where I was - the whistle blowed until
" the train crossed the Rail road crossing -
" I could not see what started the
" colts but I had the idea that the
" whistle started them - there was no
" perceptible time between the sound of
" the whistle and the starting of the colts -
" I had no trouble in hearing the whistle -
" If the whistle had sounded 80 rods I
" think I would have heard it - I heard
" no bell ring at any time - If the bell
" had rung within 80 rods I thought I
" would have heard it - It might have

" been rung and I not heard it - I
" expected if those colts got back to the
" track they would have been killed -
" I watched to see if the train would halt -
" It did not halt - & I watched the colts -
" In my judgment the engineer could
" have seen the colts for 100 rods before
" reaching the crossing - the colts stood
" up together - I did not know these colts -
" I saw one colt which the cars struck
" going up towards the smoke stack - I
" think it went as high as the lamp - The
" colts stood on the North side of the road
" somewhat together - I don't know that
" I ever saw the colts there before - There
" was about 60 acres on the North side
" of the highway & S.E. of the R.R. which
" was laying open, belonging to Daniels -
" The road running N. & S. connecting the
" road where the colts were killed with
" road by Cauffman's house was not open -
" The colts would have to go West from
" Cauffman's 1/4 miles, then South 1/2 a
" mile, then west 1/2 a mile then South a
" piece then East, then South, then East, I
" think about 4 miles from Cauffman's to get
" on to the crossing - there was no pasturage
" on the route of that road - East of
" Cauffman's they would have to go by
" Capt. Swift's, then up the hill on to the
" highway, the Green River Road, to the crossing,
" which would be over 3 miles - There was

" Some feed on the bluff at Swifts - The
" day colts were killed was I think a mild
" day in Nov. - don't know that it was cloudy
" don't know whether it was windy or Calm.
" It was Passenger train that killed the
" Colts running a good jog - which speed
" did not seem to be abated before reaching
" the Crossing - The cars were moving faster than usual -
" I had lived there from March previous to time of this
" accident - I have lived there nearly 4 years -
" I moved away 1 year ago last Dec. - I think I
" was 80 rods from the cars when I saw them first -
" I think the cars was further away than the crossing
" at the time I discovered the cars - I was then out
" of the corn stalks - The cars then were in Fisher's
" field - this killing was done up pretty quick -
" My brother might have been 25 rods ahead of me
" at the time - I said to the hired man to go and
" drive the colts away from the track - the cars were
" running faster that day than common - The grade
" descends towards Wyanet - the train was running
" up grade at the time of the collision I was 60 to 80
" Rods South from the R.R. crossing -
" Cross Ex. I don't know whether I discovered
" the colts before I did the train or not - I discovered
" the colts about the time I saw the train - At
" the time I heard the whistle at Wyanet I was
" in the corn not looking for colts - I told my
" help that we would go to dinner - It was 80
" rods from the North side of the corn-field to the
" R.R. track - When I first saw the colts some
" were standing around the track headed till to

" ways - Some on the South side of the Rail Road
" track - They were all on the 50 feet belonging
" to the Rail Road & all passed over the R.R. to
" the North side perhaps a rod or two & came to a
" halt - they stood in the highway - I think
" they were in the travelled track - there was
" no one passing along the highway at the time -
" there was 5 colts - The colts went over 1 or two
" or even they might have gone over some 4 rods
" beyond the crossing - I kept watch to see
" if the colts would run back - when the man
" started they were on the track, but when he got
" as far as brother's wagon he stopped - The
" colts remained in that position across the
" track until the train approached within 7 to
" 10 rods - No man could tell which way the
" colts would run - up to that time no man
" could tell which way the colts would jump -
" I did not intend the Jury to infer that if
" the whistle had not been sounded the colts
" would not have been killed - when the train
" approached within 7 to 10 rods & the colts were
" 4 rods away, then the train would obstruct
" my view of the colts except those that passed
" over the crossing uninjured - Did not hear
" the bell ring - I had more attention on the
" colts than on the train - the Bell might have
" rung - if it rung it must have been a very
" poor bell - I heard the whistle at the other
" crossing west - I don't know that the fences
" were down - the corn was not all then picked -
" the people mostly kept their fences up - I don't

" know that I had ever seen these Colts before -
" I had seen Colts, horses and cattle running
" there - There was 1/2 section between Gauffman's
" farm and the crossing -
" James M. Fisher - When the colts were
" killed I was 30 or 35 rods west of the crossing
" where the colts were killed - I was inside the
" field 4 rods from the highway unloading corn -
" Brown was with me - he is now in Iowa - I was
" facing the R.R. throwing out corn - Saw the
" Colts right at the crossing - I saw the colts
" before in Daniels' field - they were about 1/2
" a mile from the crossing in Daniels' field about
" 9 or 10 o' clock in the morning when I was husking
" corn - I next saw the colts at the R.R.
" Crossing - I saw them there when we drove
" up with the corn - there was no obstacles obstruct-
" ing my view of the colts - They were kinder
" picking inside the 50 feet of the R.R. track at
" the crossing - they had been there about 15 or
" 20 minutes before I saw the cars - they were
" then feeding - when I first saw the cars they
" were about Griffith's field - Griffith's field is
" between Fisher's and Wilcox' - I heard the
" car wheels rumbling - that was what attracted
" my attention - I heard no bell from the
" time I saw the train until they crossed the
" crossing - If it had rung I think I should
" have heard it - I was pretty close to the
" cars - there was no whistle sounded until
" they got within 10 or 15 Rods of the crossing -
" There was no obstacle in the way of Engine

" the cars until they passed Crossing from the
" time I first saw train - I saw the cars all the
" time - I was sitting on the wagon watching
" the cars - they were running a pretty good
" gait - They did not slacken their speed -
" I expected to hear the whistle - What attracted
" my attention to the cars was the ~~~ rumbling
" of the wheels - they were 125 or 150 rods from
" me when I first saw the cars - The whistle
" can be easily heard - More so than the wheels -
" When the cars first Came in view there was
" some of the colts on the South side of R.R. Crossing
" & passed to the North side - the colts were standing
" there together in a group - the group was inside
" the 50 feet of the R.R. when the cars came in
" view - The colts sprang over the track when
" the cars whistled - 2 got over & 3 were killed -
" The colts might have occupied (while grouped)
" some ten feet square - The noise of the R.R.
" whistle was rather shrill - it gave two or three
" toots - it was a very short time from the whistle
" until the Collision - My attention was drawned
" to the colts for I was satisfied they would
" get killed - I had no colts running out then -
" I have known this crossing ever since the
" Rail Road was built - the R.R. track is higher
" than the bed of the highway - I never travelled
" up the track west of the crossing - I think
" there was some small underbrush growing
" there - I could easily see the colts from
" where I was - I don't know that there is any
" low place in which the colts could have

" stood west of the track to prevent the Engineer
" of seeing them. For 80 rods west on the track-
" The collision threw the colts over the cattle
" guards on the R. R. ground- The cars was
" running I think as they usually did - Don't
" know whether the highway running North & South
" connecting with Kauffman's road was open at
" that time or not - Know Wilcox' orchard
" & don't think it would obstruct Engineers view
" of the colts -
" Cross Ex. I was husking corn for brother
" in law that day - I was husking corn 1/2
" mile from the road on the day of the accident -
" I was 3 or 4 rods from the highway when the
" accident happened - Don't recollect of
" any building where we were unloading corn -
" I was 30 or 35 rods west of the crossing -
" From where I was to Griffith's field it was
" 1/4 to 1/2 mile - The first I heard of the cars
" was the rumbling of the wheels - did not hear
" the whistle at Wyant or at the crossing next
" west - I don't know whether the bell or whistle
" sounded - If they did ring or whistle I did
" not hear them - I could hear a whistle
" further than a bell - Don't know how far one
" can hear the car wheels - I saw the colts in
" Daniels' field - The colts were in the same
" field where I was husking corn and Daniels
" drove the colts away - I think he drove the
" colts towards the S. W. towards the Rail R. Crossing
" I was working in the same field with Daniels -
" Daniels did not say what he was going to do

" with the colts. He was driving them Southwest.
" He drove them 8 or 10 rods. I did not see Daniels
" after he left the Corn field & did not see the
" colts again until I saw them on the R.R. track.
" These were the same colts which I saw in the
" field which I saw on the R.R. track. I had
" not unloaded the Corn when I first saw the
" cars. When the colts stopped in the group,
" they were within the 50 ft. of the R.R. track.
" Edward Triplett. In the fall of 1859,
" I was living in the Town of Centre. I lived 1 mile
" South of the R.R. Crossing where the colts were
" killed. The R.R. had been constructed in
" the year 1854. I was acquainted with the lay
" of the land through which the R.R. runs through
" Wilcox's farm. the ground was cultivated before
" the road was opened. there were no trees along
" there when the R.R. was opened. I know how
" the ground lays. there were no trees up until
" 1859 on the R.R. track for 80 rods west of the
" crossing. The ground on the north side of the
" crossing is about two feet lower than the R.R.,
" not so low on the South side of the R.R.
" There was no obstacles on the R.R. to obstruct
" the view of the R.R. engineer in seeing stock on
" or near the crossing for 80 rods west of the
" crossing. I passed there very frequently. Wilcox
" had a small orchard. in 1859 it didn't make
" much show. I should think it would be no
" obstacle. it would not obscure animals on the
" R.R. Animals 50 ft. on R.R. right of way could
" be seen on the R.R. for 100 rods. I am positive

" they could have been seen for 80 rods - I am
" positive I could see colts in every part of 50
" feet on either side of the crossing for 80 rods
" west - The general surface of the R.R. is higher
" than the general surface of the prairie running
" west 80 rods from the crossing - There is nothing
" on the land in the shape of improvements except
" Wilcox's barn and house - I did not know
" Kauffman's colts - don't know the highways
" by Kauffman's, east. -
" Cross Ex. I have frequently been looking for
" my stock and have noticed what could be
" seen on this R.R. crossing - I never made the
" experiment on the R.R. 80 rods west to see whether
" stock could have been seen on the crossing -
" don't think if I was looking to see stock on the
" line of the R.R. that I would likely see
" stock that were off of the R.R. track - The
" view of the colts beyond the fences would not
" be as plain as though they were directly on
" the R.R. crossing - the view would not be so
" clear - If the colts were standing behind a
" fence 4 1/2 ft. and on land 1 1/2 ft. lower than
" the R.R. then the engineers view of the colts
" would be obstructed - There were no trees
" along there as high as the Locomotive -
" Charles Knox - In fall of 1859 lived at
" Centre Grove 2 miles S. of the R.R. crossing - I
" owned 80 acres lying west joining Wilcox -
" but had sold it before that time came around -
" I had owned it for 4 years - I am acquainted
" with the nature of the ground - through my

" land the R.R. was thrown up by great ditches -
" the land is prairie through which the R.R. ran -
" there was cotton wood came up along the R.R.
" after the R.R. was laid out - the Springs was
" not large - I do not think that the cotton
" woods would obstruct one's view on the R.R.
" for 80 rods west - I could easily see the
" cattle on the crossing for 60 Rods - In '59 the
" Quaking ashes were but little sticks - The orchard
" would furnish no obstruction to the view of the
" Engineer if the animals were 50 ft. East or west
" of the track at the crossing - There would be
" no difficulty in seeing the colts if they were
" standing near the R.R. for 80 rods west of
" crossing - The board fences on the South side
" ran up to cattle guards - The R.R. is graded
" up pretty high where the crossing is - There
" was a 3 board fence there in the fall of 1859 -
" If engineer was coming up from the west on his
" engine he would have no difficulty in seeing
" the colts if on 50 ft. on either side of the
" highway any where along there -
" Amos Fisher - Lived on the Centre prairie
" in the fall of 1859 - I had known that field
" of Wilcox' for 15 years - it was partly cultivated
" when R.R. was laid - there was no timber
" there except his apple trees - just at the
" crossing there is not much of a elevation -
" for 80 rods before reaching the crossing the
" opportunities are good for seeing colts within
" the 50 ft. of the R.R. Crossing - for 80 rods
" as you approach the crossing I think a man

" could see a colt on that 50 feet if he would be
" looking for it - Don't know that a colt could hide
" itself unless it would lay down - Some Quaking
" ashes - don't think they would obstruct the view -
" S. M. Knox - I have travelled the R.R. frequently
" up to that crossing - for 80 rods west an engineer
" might have discovered the stock on the 50 ft. of
" the R.R. land - he might see for 100 ft. on either
" side of the crossing - don't think there was any
" particular obstructions to the view - From Wyant
" it is a straight line - My recollection is there
" was a few cotton woods along there - all small -
" a man coming up along that R.R. from west could
" see along a good part of that highway -
" Warren Eastman - Knew Kauffman's colts
" and Weirick's colts - During the summer they ran
" on the Commons as other horses - I lived North -
" The colts ranged in between me and Kauffman's
" and off East - I saw the horses quite frequently -
" They could go 80 rods North & then there was
" quite a range - the general range of the colts
" was in between him and me & by the creek -
" Most generally in sight - most of the time could
" see them every day - their range was not near
" this R.R. crossing - they would have to go from
" 4 t. 5 Miles to get on the crossing by the East
" route - don't recollect of ever seeing them by the
" R.R. - I have looked on the Rail Road after
" their killing with a view to see what the chances
" for the Engineer would have been to see the colts
" & I am of opinion that there was no obstruction
" for 80 rods west to obstruct his view - There

" was some small Cotton woods along the line
" of the R. R. west - there was nothing for 1/4 mile
" on highway west of Crossing to prevent colts
" being seen from R. R. for 80 rods west of crossing -
" There were Crops raised between Kauffmans
" & Wilcox - The lands were inclosed between
" Kauffmans & Wilcox - the colts would have to
" go some 4 miles East to get on the crossing - the
" same distance west to get on the crossing -
" Cross Ex. - I have travelled on the R. R.
" track from the crossing to Wyanet - I have been
" going along and have looked to see whether
" the Engineer could see the colts at the crossing
" & off at the sides - & I am of the opinion that
" he could easily have seen the stock - I would
" swear that the orchard would not obstruct
" the Engineers view particularly - there was a
" fence running along the R. R. to the cattle
" guards - The colts usually watered wherever
" they could find water - in the winter time
" they watered from 1/4 to 1/2 mile above the bridge -
" They could get into Woodruffs road and then
" they would be running at large - If the colts
" got into Daniels field on the west it would
" be 1/2 mile to the R. R. crossing - The colts
" were in the habit of running around the creek
" that summer -
" By Consent of Deft. Taylor (Attorney for plaintiffs)
" read verdict of former Jury it being stipulated
" that if Jury found for the plaintiffs they
" should assess the amount of said verdicts,
" which are as follows, to wit:

72 " John M. Kauffman
" vs. Case
" The Chicago, Burlington
" & Quincy Rail Road
" Company
" We of the jury do find the
" defendant guilty as alleged in plaintiff's
" declaration, and do assess plaintiff's damages at
" One Hundred and twenty Dollars.
" Jeremiah Weirick
" vs. Case
" The Chicago, Burlington
" & Quincy Rail Road
" Company
" We of the Jury do find the
" defendant guilty as alleged in plaintiff's
" declaration, and do assess plaintiff's damages
" at Sixty-five Dollars.
" Here plaintiffs rested, and defendant Called
" witnesses who testified as follows:—
" F. H. Cooley - in chief - (the witness exhibited
" to the Court a release from his liability to
" the defendant) And then testified as follows:—
" I was in the employ of C. B. & Q. R. R. Company
" when these Colts were killed - I had been
" employed by the Chicago, Burlington & Quincy
" Rail Road Company as engineer some 7 years -
" Had been acting as engineer for 10 years - I
" was the engineer on the train which killed
" these Colts in question - It was a Passenger
" train - about 12 o'clock at Noon - I am well
" acquainted with grounds about this Crossing -

" for the last five years from the time the accident
" happened I had run over the ground every
" day - I have a great many times pulled
" leaves off of the trees along the track between
" the Wilcox crossing & the crossing next west - from the R. R. it
" was hard to see the colts especially if they
" stood there feeding - I measured the ground
" where the colts stood - The bushes have been
" on the road until within a year - it leaves it
" very clear except this low place where the
" orchard might obstruct the view - the train
" was running East - The train was running at
" the rate of 15 to 20 miles per hour - Our time
" over the road was 22 miles per hour - When
" I approached the further crossing we was
" making 22 miles per hour - Our time is not
" uniform over the whole route - Our time from
" Princeton to Wyanet is slower than almost any
" other portion of the road on account of the
" bridges - When we crossed the other crossing
" we rang the bell - After that I saw a colt
" step on the track & then shut off steam to
" get control of the train - I blowed the whistle
" I don't recollect what I blowed it for, down
" brakes, or what - at the time I first saw the colts -
" At the time I first saw the colts I was 60 to
" 70 rods away from crossing - At that instant
" the colt passed out of my sight - I was on
" the look out for colts and could see none -
" He passed on the left, or the West - The
" track looked perfectly clear until I got to
" within 7 to 8 rods of crossing - then I saw

" colts wheel & rush from that sink close to fence
" towards the R.R. - I then pulled the lever of
" the engine but found I could not save them -
" I then let my engine go, that is, I threw my
" lever forward & put on steam - Previous to
" that time I could not see the colts - When
" I first saw them they wheeled & started to
" run & then I reversed the engine which tends
" to throw the force of the engine backward - It
" was impossible to save the colts when I first
" saw them turn on the track - it would take
" a distance of 20 rods to stop the train running
" as we then were running - I could not possibly
" stop the train and save the colts - The true
" policy with engineers is when we cannot save
" stock is to hit it with all the force we can
" put on - I had to strike the stock - There
" was not anything within the 50 feet to warn
" me that there was stock near the crossing -
" The colts when I saw them the second time
" was beyond the 50 ft. - they were jumping -
" they were running as fast as I went - the
" accident occurred about 23d Nov. - this is
" the same occurrence that the other witnesses
" have testified to - It is the crossing known
" by the R.R. men as the middle crossing
" between the 2 Bridges - it occurred in 1859 -
" it is 160 rods to the next crossing west - There
" was a fireman aboard when the accident occurred
" he rung the bell from the next crossing west
" until we struck the colts - the firemans name
" was Sweetland - It was only 25 or 30 seconds

" from the time we saw the colt on the track,
" until the accident - I think it was 60 or 70
" rods from where I first saw the colts - I did
" not let on the steam until after I had struck
" the colts - the engine would not run far until
" she stopped - I was on the look out for
" this same colt thinking it might return -
" the colts had started to run when the whistle
" was blown & the bell was ringing by the fireman -
" the fireman was about 3 feet from me - I have
" noticed the fences coming up to the cattle guards -
" board fences - the last new fence is higher
" than it was then - Standing west of the
" crossing the orchard and other trees and the
" fence, hides stock considerable - it is impossible
" to see them if they were in some positions - I
" always look for stock on the track - It is
" an engineer's duty - The colts were about 3
" rods from the crossing when I saw them coming
" on to the crossing - and they were going as
" fast as I was - If I had seen the colts
" standing there I could not tell which way
" they would run - The colts standing there
" with their heads up I could not tell whether
" they would run on the track or not - I
" frequently have stopped the train and drove
" off stock - The train I was running always
" rang the bell - I always rang the bell at
" that crossing - I always had it on my
" mind - We had heard that they were watching
" us at that crossing, and were instructed
" to be careful -

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" Cross Ex.- I was the engineer on this train-
" the right of way for some distance west of
" the crossing is so obstructed as not to be able
" to see stock- for 80 rods I could not have seen
" the stock on the highway on the west side-
" the trees and other obstructions- The trees were
" 8 or 10 inches in diameter- the nearest tree is
" within 10 rods of the crossing- the trees were
" very thick so that you could not tell whether
" there was a fence or not- it was so the most
" of the way between these Crossings- it was
" underbrush of all kinds- Some trees were 25
" ft. high- The trees did not all interfere
" with me- there was a row of trees that did
" obstruct my view- The apple trees stood
" well apart- The bell rang through from the
" west- I did ring the bell the day before
" from Wilcox to the Crossing west- I have
" seen stock at this ~~stock~~ Crossing frequently-
" I registered my name & engine every trip and
" noted whether I missed ringing the Bell through
" for 80 rods at any crossing- & have it so down
" in my register that I rang the bell on that
" day- There are six crossings from Princeton
" to Malden & have no doubt but that I rang
" the crossings between this & Malden- I registered
" the fact when I got to Aurora that I rang
" the bell at the Crossing for 80 rods west
" of Wilcox- I put down if I miss any
" Crossing, that I omitted to ring- In the
" fall of '59 I am clear in my mind that
" I rang the bell every day from Wilcox

" West for 80 rods - Between those bridges on
" the Bureau I think I always rang the
" bell - If I had seen these Colts as the other
" witnesses I might have been just as liable
" to have killed them - As long as the colts
" stood 3 or 4 rods off of the track I don't think
" I was bound to see after the safety of the colts -
" If I had seen the colts in danger I would
" have tried to save them - When stock is not
" nearer than 4 rods of the track I don't think
" I am bound to see after the colts - in the fall
" of 1859 it was my practice to ring the bell
" for 80 rods before we come to the crossing -
" I don't know who cut those trees down - I
" presume I have passed over that track oftener
" that any person who owned the farm - I
" noticed all the trees along the track - the
" trees were on the right of way - there was
" leaves on them - I have not been engineering
" since Nov. 1863 - I am in the employ of the
" C. B. & Q. R. R. Co. at this time - I have no
" great desire that the R. R. Co. should win
" this suit - I have no prejudice at all against
" this Co. - I think this Defft. ought to gain
" this cause - I have no feeling as to who
" gains this suit - I should rather the Defts.
" should gain this Case - I have been in the
" employ of this Co. ever since those Colts were
" killed - Kendall allowed me to see my
" testimony on another trial - I might have
" had a reason to see the testimony before -
" I wanted to swear now as I did then on the

" other trial - I don't know who cut the trees
" down - I have been over the Road since they
" were cut down -
" Recalled - I don't desire the Defts. to gain
" this suit against justice & law - The reason
" why I feel that the Defts. ought to gain in
" this Case is because I think they should not
" Pay for Stock killed in this way - The was
" no act omitted to be done by me as Engineer
" to Save the Stock & Passengers - I have examined
" my register to see whether there was any
" omission to ring the bell at that crossing - If
" I miss any Crossing to ring the bell then I
" note the fact in my register - I am required
" by the Company rules to keep a register of my
" acts in ringing the bell or whistling.
" Sam. Sweetland - I live in Hamilton
" Ohio - My business is dye Sinking in Grain &
" Campbells Ohio - I was in the employ of the
" R.R. Co. 3 years - the year 1859 - I was on the
" train that killed the Stock in question - I
" was Fireman on the Passenger train going East
" between 11 & 12 o'clock in the forenoon - When
" I first Saw one of the colts the train was 60
" to 80 rods away - the colts passed off to the
" left hand side out of view - the trees & fence
" hid the view of the Colt - We were on the
" look out for the Colt - I rang the bell from
" the crossing west to the crossing where the
" Colts were killed - The distance from Wilcox
" crossing to the crossing west is about 160
" rods - I rang the bell myself through

" that whole distance - I was sitting with
" my head out of the window when I first
" saw the colt - We were 50 rods from the
" colt when it passed off - I had been
" ringing the bell up to that time - I kept
" looking for the colt - Cooley was on the
" engine with me - We shut off the steam
" when we first saw the colt & Cooley blew
" the whistle - then there was nothing to be
" seen for 50 ft. within the line of the R.R. -
" When we had got within 7 to 8 rods we saw
" a lot of colts whirl on the track - the colts
" were on a jump coming on the track - there
" was 1 or 2 which got over safe - & 2 or 3 got
" caught & one jumped on to the pilot of the
" engine - the colts were at the north side of the
" road when I first saw them - The steam had
" been shut off for 60 rods from the time we first
" saw the colts - I don't think it was possible at
" the time we saw the colts come on the track to
" stop the train and save them - It would require
" 20 to 25 rods to stop this train at the time it was
" running -
" Cross Ex. - I was fireman on this train - I looked
" out on the left hand side - I was looking out
" all the time - I could not see any of the
" highway scarcely on account of the obstructions -
" I could not see anything on the highway until
" we got within 7 to 10 rods - When I first saw
" the colt we was 50 to 60 rods away - The
" trees on the side of the track was large and
" small - Were not large enough for Rail cut -

" Don't Know how thick - I think they grew
" less thick as we approached the crossing -
" Some were higher than the Smoke Stack -
" I think I rang the bell at other crossings between
" Quincy & Chicago - I remember this Particular
" ringing on account of colts being Killed - every
" day we were in the habit of ringing the bell
" for 1/2 Mile west - there might have been
" times when we did not whistle - We Sounded
" the whistle at a distance of 50 to 60 rods
" for the colt to Pass off on the West - Don't
" Know that the brakes were whistled down from
" one crossing to the other - I have been on
" R.R. for 3 years - with the Steam off & brakes
" down at that grade the cars would been going
" Slow - I don't Know that there was any
" brakesman on the train - I would not Swear
" that there was or was not - It was not my
" business to Know that - I can Sometimes tell
" when the brakes are put on - Do Know that
" the brakes were whistled down and were not
" whistled up until we Passed the crossing -
" I live in Hamilton, Ohio - Have Come here
" 3 times to testify in this Cause - Last December
" the Company Paid me for coming out here -
" They wrote me to Come out here - Did not
" Promise me if I would Swear well that
" they would Pay - I read my testimony
" in the Bill of Exceptions to See that I would
" Swear now as I did then - I looked at it to
" See if my memory was the Same now that
" it was then & found it the Same - there

" were some trees on the South side of the
" track - Kendall did not tell me to look
" the abstract over - Ide handed me the abstract
" when I was here last winter - Kendall handed
" it to me - this man Ide showed it to me the
" first time I read the Bill of Exceptions.
" Recalled - When the engineer blows for
" stock, the brakesman if he sees the stock
" pass off does not wait for signals to let up
" the break - when we came to the Crossing & the
" collision occurred the train went right on -
" did not see the colt fly up, but saw it
" tumble off the Cow Catcher - the foot board
" where we stood I think was not more
" than 3 feet above the bed of the R.R. - The
" trees grew less thick as we approach the
" Crossing - don't know that the brakes were
" hugging the wheels - and it is the custom
" of the brakesman to let up the brake of his
" own ~~accord~~ volition when the stock is off the
" track -
" A.B. Proctor - I reside in Ottawa - In 1859
" I lived in Princeton - I moved from here 2
" years ago - One year I lived in LaSalle Co.
" on the farm & the balance of the time in Ottawa -
" I was on the train that killed the Colts in
" question - It was the Passenger train going
" East about 11 or 12 o'clock - it was in 1859
" 23 Nov. - After we crossed the bridge I
" rode on the platform until 1/2 way between
" the Crossing where the Colts were killed and
" the Crossing next west - Before we got to the

" west crossing the bell was ringing and rang all
" the time until I went into the cars & when I went
" in I heard the whistle - two toots - two different
" times - I was on the left side of the cars - there was
" not much time from the time I went into the cars
" until I raised the window on the North side and
" looked out - After I shut the door and was going
" to sit down I heard the whistle - Instead of
" sitting down I raised the window - the bell
" was ringing when I went in the car, but couldn't
" say after that whistle whether it rang or not -
" I raised the window because I thought there
" was stock on the track - I looked out of the
" window & kept looking out until I saw the movement
" of some colts & remained so until I saw the
" accident - the accident was on the side I was
" sitting - The colts were on the North side of the
" R.R. - At the time I discovered the colts they
" were headed to go East - they were running when
" I saw them - from the time I heard the first whistle
" until I saw the colts the cars had run some
" 20 rods or perhaps more - I could not say
" positively about the distance - there was not much
" time elapsed from the time I heard the whistle
" until the colts were killed - the whistle toated
" along some distance - I heard it 3 or 4 times -
" when I first heard the whistle toot I thought
" they were 1/2 way between the two crossings -
" when the whistle first was toated it was some
" 60 rods from the crossing where the colts were
" killed - the second time the whistle blew it was
" within 10 rods of the crossing - I think the

" Cars run slower after the first whistling - there
" must have been some bushes or fence obstructing the
" view of the colts for I could not see any stock -
" I was looking for stock - The colts when I first
" saw them run over towards the cattle guards - that
" highway run east & west - the cattle guards were
" on the North side of the highway - I could not
" see whether any of the colts got over the R. R.
" embank - When I first saw the colts they were about
" 3 rods west of the Rail way & they were then on the
" run - They seemed to run angling across the road
" to get ahead of the engine - I don't recollect of
" hearing the bell ring after I went in the cars - My
" attention was attracted by the whistle & I raised
" the window thinking there was stock on the R.R. - If
" any of the colts had been within the 50 feet of the
" R.R. track on the North side I could have seen
" anything on that line - I could not see any animals
" on the street - I could have seen them if I could
" have seen over the tops of the fences and brush - I
" have never been in the employment of the C. B. & Q.
" R. R.
" Cross Ex. I had been at Galva - I had travelled
" over the Rail Road that season or summer 40 or 50
" times - I was working at Galva - I don't know that
" I ever raised the window at any other time when
" riding over the Wilcox farm - I never did look out
" at any other time before that at that place that
" I remember - I have before that rode on the
" platform from Wyanet to Princeton - there was not
" anything before that which called my attention to the
" topography of the country there - it is not a very

" Satisfactory way of viewing a country by looking off of
" the platform of a car - There was brush & timber growing
" on the right of way on the west side so as to obstruct
" the vision - I remember that I could not see the
" colts until they jumped to get around the engine -
" did not see them before that time - I have no
" better propensities for measuring than other persons on
" the cars - Heard the bell ring at Galva - The officers
" did not charge me to remember the ringing of the
" bell - I told the parties before the trial - I told
" it to Ide more than one year after this happened -
" I told Wadham soon after - I told quite a number
" about the horses being killed - Never told the
" circumstances in particular to any one but Ide -
" I heard the whistle sound - I was 40 or 50 rods
" from the crossing - it was about ½ way between
" the crossings when I heard the whistle sound -
" I most always raise the window when I hear
" a stock whistle - there was 2 or 3 toots before I
" raised the window - If the engineer swears it
" was a down brake whistle then I would take
" their conclusion - I think there are circumstances
" which made me remember the ringing of the bell -
" A man 10 rods from the crossing could hear
" the bell as well as I could - The company
" has paid my fare to come here and paid my
" fees - They paid my fees and fare - I have
" never had anything more than legal fees - I have
" no interest in the result of this suit - I cannot
" say what the thickness of the trees were west
" of the crossing - Some I think was 25 feet high -
" This side of the bridge there are some trees 40 feet

" high - I don't pretend to say that all of these
" trees were 25 feet high - never knew a tree to
" germinate & grow 25 feet in 4 years - Some of the
" trees were cotton wood - the leaves were generally
" off of the tops of the trees - I was along near Ide's
" office door & he was talking to one of there men
" about killing the colts near Wilcox' & I told him
" I was on the train at the same time - The circumstances
" of my hearing the bell ring - there was a friend of
" mine on the train with whom I had business & I
" noted the date on my book - Another circumstance
" that makes me remember that the bell rang between
" the Crossings was this, there was a man who tried
" to jump on the Cars near the West Bureau Bridge
" a mile west of the Crossing because the Bell
" rang - The bell rang near the bridge, I supposed
" because there was a man walking on the track -
" The man tried to get on the Rail Road train -
" I did not know the man who was on the track -
" George Hoffman - I was in the employ of
" C. B. & Q. R. R. Company as track repairer from 1857
" up to last Fall - I am working for the Co. as a
" laborer - I was in their employ as track repairer
" on 23d Nov. 1859 - My beat was from Buda to a
" mile west of the Main Bureau bridge - I passed
" over the track generally once a day - I passed
" over on a hand car - there were bushes growing
" up all along the track between the two Crossings
" spoken of here - they were thicker towards west
" Crossing than other place - Some of the bushes
" were 20, 10, 15 feet high & some might have been
" a little higher at that time - I would call them

" poplar - The trees would I think obstruct the
" view some - I afterward took particular notice
" and the trees had considerable in a year - I looked
" 2 years afterwards with a view to see & found some
" 40 rods west of the crossing that I could not
" see anything on the wagon road - could tell
" how they would obstruct at the time of the
" accident - Those trees were cut down last
" summer - some of them had got pretty large -
" I was there the next day after the colts were
" killed - they were 2 on the North side & one on
" the South side - I am now working for the
" Rail Road Company - I would not swear
" that stock could have been seen 50 feet off of the track -
" I would not swear that the bushes would so
" obstruct, that stock fifty feet on either side
" of the crossing could not be seen for 80 rods
" west of the crossing on the R.R. - I don't think
" it could 80 rods - 40 rods might make some
" difference - Bushes were thickest about 1/2 way
" between crossings on North side -
" Here the defence rested.
" The plaintiffs then called D. C. Wilcox & Jerome
" Wilcox to prove that the defendants in running their
" trains over that part of their road at other times
" and on other occasions were not in the habit usually
" of ringing their bell - the defendant objected to
" the giving of such evidence - the objection was
" overruled by the Court and the witnesses were
" allowed to testify and did then testify that
" the defendants both before & since the accident
" had been in the habit frequently of running their

" trains over that part of their road between these
" crossings without ringing their bell, but that after
" Wells was killed at a crossing East of Princeton
" that for a while they kept up a pretty constant
" ringing & whistling -
" To the order of the Court allowing the said testimony
" to be given the defendants then & there excepted -
" This is all the testimony and all the evidence in
" the case - The Court instructed the Jury on behalf
" of the plaintiffs, as follows: -
" 1. If the Jury believe that the colts in question
" were killed on the crossing of a public highway
" by the engine and cars of the defendant while
" said engine & cars were directed by the agents or
" servants of the defendant, and the Jury further
" believe that such killing of said colts might have
" been avoided by the exercise of ordinary care and
" caution on the part of such agents or servants &c
" having the said engine and cars in charge, and
" the Jury further believe that said colts were the
" property of the plaintiff when the same were &c
" killed, on this state of facts the Jury will find
" for the plaintiff, and the measure of damages is
" the value of the colts when the same were &c
" killed: Provided, it does not appear from the
" proofs that the plaintiffs negligence or carelessness
" in suffering the colts to cross the road at the
" time, did not contribute to the accident.
" 2. The defendant was bound by law to have
" had upon the locomotive in question a bell of
" at least thirty pounds weight, or a whistle, and
" by their agents or servants directing the engine in-

88 " question, to have rung said bell or sounded said
" whistle at the distance of 80 rods from the crossing
" in question, and to have so continued the ringing
" of said bell or sounding of said whistle until the
" said engine & cars had crossed the said crossing,
" and if the Jury believe that such agents or
" servants of defendant directed the engine and
" cars in question upon the crossing in question
" (the Jury believing the same to be a public highway)
" and the Jury believe that said engine and cars
" were so directed without a continuous ringing
" of such bell or sounding of such whistle for
" the said space of 80 rods before said engine and
" cars reached the said crossing, and the Jury
" believe that the colts in question were killed by
" said engine in consequence of such omission
" to continue the sounding of said whistle or
" ringing of said bell for said 80 rods, and
" the Jury further believe that the said colts
" were the property of the plaintiff when they
" were so killed, on this state of facts they will
" find for the plaintiff: Provided, the Jury
" believe from the evidence that the carelessness
" or negligence of the Plff. did not contribute to the
" killing.
" 3. The Jury must determine as to the credit
" due to the several witnesses who have testified in
" this case, and if the Jury believe that there
" is a conflict of the testimony between the
" witnesses for the plaintiff and the witnesses Cooley
" and Sweetland, it is proper for the Jury to consider
" the relations of said witnesses Cooley & Sweetland

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" to the defendant; the contradictions of each other
" (if any) in their respective statements about the ringing of the
" bell in question and putting down the brakes; the fact
" (if proved) that the witness Dooley was engineer on the
" engine & cars in question, and liable to the defendant for
" his negligence in directing said engine; and the fact
" (if proved) that he has been released by defendant to
" enable him to swear as a witness in this case, and if
" upon the whole testimony the Jury are in doubt as to
" the correctness of the statements made by said Dooley
" and Sweetland and the Jury believe from the weight
" of all the testimony that the colts in question were
" killed on the crossing of a public highway by
" defendants engine as charged in plaintiffs declaration and
" that said colts were the property of the plaintiff & the
" Jury believe such killing might have been avoided by
" the exercise of ordinary care by the servants of defendant
" directing said engine, they will find for the plaintiff.
" To the giving of which instructions the defendant
" then and there excepted.
" The Court instructed the Jury on behalf of the
" defendant as follows:
" 1st The defendant is not liable in this case
" unless the plaintiff has proven by a preponderance
" of testimony, that the horses were injured or killed
" by collision with defendants cars, through the negligence
" or carelessness of defendant or its servants & that the
" plaintiff himself exercised proper care & circumspection
" to guard against such injury or killing of his
" horses. The mere fact that the horses were injured
" or killed by defendants cars is not in itself
" sufficient to entitle the plaintiff to recover.

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"2nd Even if plaintiffs' horses were injured or killed
"through the negligence of the servants of defendant
"in running their train, yet if the want of ordinary
"care on the part of the plaintiff in allowing his
"horses to run on the road near the railroad crossing
"enabled them to get in the way of said train at the
"crossing & contributed to cause such killing or
"injury, the law is for the defendant.
"3rd The defendant has a right to use its rail-
"road track at the crossing as well as other parts
"of the line & to run its cars thereon without obstruction;
"& the plaintiff had no right to have his horses stand
"upon the track of said rail road, or jump across it,
"or pass over it in the way of, or so as to come in collision
"with, an approaching train; provided the defendants'
"servants in charge of said train observed the usual
"signal on approaching a crossing by sounding the
"whistle or ringing a bell at least eighty rods from
"such crossing.
"4th If the Jury believe from the evidence that plaintiffs'
"horses were injured or killed by the defendants' cars
"while standing upon a rail road crossing or attempting
"to pass over the same in the way of an approaching
"train, and that defendants' servants controlling said
"cars used ordinary caution to avoid a collision
"with such horses by sounding the whistle or ringing
"the bell, or in checking the speed of the train, the
"Jury will find for the defendant.
"5th The burden of proof in this case is on the
"plaintiff, and it is for him to show to the Jury
"by a preponderance of testimony that it was
"practicable & easy to have avoided the collision

" & that in not doing so those in charge of the train
" were guilty of the negligence which the law requires
" to establish the liability of the defendant. The
" defendant is not bound to prove that its Servants
" exercised ordinary Care to prevent the killing of Plain-
" tiffs horses-
" 6th The defendant is not liable in this Case
" if plaintiffs horses were killed by collision with
" defendants Cars at a crossing, through accident
" or any other Cause not occasioned by the negligence
" of defendants' Servants in driving, running & directing
" said train.
" 7th The Servants of defendant Controlling said
" Cars were only bound to use ordinary Care and
" Skill to prevent the killing of plaintiffs horses. They
" were not bound to use extraordinary Care or Skill.
" 8th If the Jury believe from the evidence that the
" plaintiff was equally negligent with regard to his
" horses as the defendant with regard to the management
" of its train, at the time of the alleged Collision; or
" that upon the question of the alleged negligence
" of defendants' Servants there is as much weight of
" proof for the defendant as for the plaintiff,- the
" Jury should find for the defendant.
" 9th Even though the Jury should find from the
" evidence that defendants Servants did not ring the
" bell or sound the whistle at the distance required
" by law, yet the defendant is not liable in this Case
" for such omission unless the plaintiff has shown to the
" Satisfaction of the Jury by evidence that such
" omission to ring or sound Caused the killing of
" plaintiffs' horses, or in other words that such ringing

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" or whistling would have prevented such killing -
" 10th The Jury are instructed that the positive
" testimony of witnesses that the bell rang or whistle
" sounded is entitled to more weight than the negative
" testimony of witnesses who testify that they did not
" hear the bell ring or whistle sound. The testimony of
" the engineer & fireman to the fact that the bell was
" rung for at least 80 rods prior to the approaching to the
" crossing where the collision occurred (if the Jury
" believe from the testimony that such was their evidence)
" is such positive testimony; if the Jury believe from
" the evidence that the witness Pratt was a passenger
" on said cars & heard the bell ring before the approach
" to said crossing & shortly before said collision
" then his testimony tends to corroborate & strengthen
" the evidence of said fireman & engineer.
" 11th If the Jury believe from the evidence that the
" engineer upon his discovering the plaintiffs horses upon
" the track whistled down brakes, threw off steam, or
" took ordinary precautions usually taken in such
" cases to frighten the colts away from the track, with
" the endeavor to prevent injury, then such acts are
" evidence of the exercise of ordinary care & caution on the
" part of the defendant in this case, and if the jury
" believe from the evidence that ordinary care or caution
" were exercised by the servants of the defendant on
" the occasion of the killing of plaintiffs horses, then
" the Jury will find for the defendant.
" 12th If the Jury believe from the evidence that the
" colts first seen upon the track passed off upon the
" sounding of the whistle & that the track was clear
" afterwards until the train approached within sight

7.2

" or eight rods of the crossing, and that the colts
" then suddenly started to cross the track & were
" struck & killed or injured in the act, & that there
" was no sufficient previous indication of their attempting
" to cross the track in that manner in time for the
" engineer to have prevented a collision, then the
" defendant is not liable in this action.
" 13th If the Jury believe from the evidence that the
" bushes and trees along the track & the fences along
" the highway where the colts were, so obstructed
" the view that the engineer & fireman either could
" not see the colts in the highway or seeing them
" could not sufficiently discern their movements; or
" if ~~xxxxxx~~ discernible their movements did not indicate
" any attempt to go upon the track until the train
" had approached so near that all attempts to check
" the speed of the train were useless, & that the colts
" suddenly started to cross the track & were killed
" or injured in the attempt, - then the defendant is not
" liable in this action.
" 14th When such obstructions as cattle or colts,
" which may be thrown from the track are discovered
" by those in charge of a train of cars, too near the
" train to avoid collision by stopping the train, then
" under such circumstances an increased speed is
" not in itself evidence of negligence. The increased
" speed may be necessary for the safety of the train
" and the passengers thereon.
" 15th Although the Jury are the judges of the weight
" and credibility of the evidence, they have no right
" to decide this case except upon the evidence given
" and the law as given to them by the Court; and they

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"Given as qualified by Pltff's 3d instruction"

" cannot wantonly or Carelessly reject the Sworn
" testimony of any of the defendants witnesses, unless such
" witness has been impeached; and such witness can
" only be impeached by a direct attack upon his
" testimony and character, and in accordance with these
" principles of law, the Jury are bound to receive as evidence
" in this Case the testimony of defendants witnesses Cooley
" and Sweetland, unless they have been impeached as
" above indicated.
" 16th The Jury are further instructed that in making
" up their verdict in this Case, they are to be governed
" by the evidence in the Case as given by the witnesses,
" and by the instructions as given by the Court, and
" not by the assumptions, statements or arguments of
" the Counsel who address the Jury.
" The Jury returned their verdict as follows:—
" John M. Kauffman
" vs.
" The Chicago, Burlington
" and Quincy Rail Road
" Company

Case - Remanded &c

" We of the Jury do find
" the said issues herein in favor of the said plaintiff,
" and assess the damages which the said plaintiff hath
" sustained herein by reason of the premises, at the Sum
" of One hundred and twenty Dollars.
" Jeremiah Weirick
" vs.
" The Chicago, Burlington
" and Quincy Rail Road
" Company

Case - Remanded &c

" We of the Jury do

find the said issues herein in favor of the said plaintiff, and assess the damages which the said plaintiff hath sustained herein by reason of the premises, at the sum of Sixty-five dollars.

Whereupon the defendant moved the Court for a new trial in said cases for the following reasons: 1st Because said verdict is contrary to law. 2nd Because the verdict is contrary to the evidence. 3rd Because the verdict is contrary to the instructions of the Court. 4th Because improper evidence was allowed to be given to the Jury. 5th Because the Court gave instructions for the plaintiff which were not law and should not have been given. Which motion for a new trial was then and there overruled by the Court, and the Court thereupon entered judgments in favor of the plaintiffs and against the defendant upon the verdict of the Jury; to the orders of the Court overruling the motion for a new trial and rendering judgments upon the verdict of the Jury against the defendant, the defendant then and there excepted and prayed the Court to sign and seal this his Bill of Exceptions and make the same a part of the records in said cases which is accordingly done.

W. E. Hollister (Seal)
Judge

95.

State of Illinois }
Bureau County } ss

I Geo. W. Radcliffe Clerk of the Circuit Court in and for said County and State do hereby certify that the foregoing is truly copied from the records and proceedings shewn by the files of my office in the cases mentioned in said Manuscript as will fully appear by reference to said Records and files Given under my hand and the Seal of said Court at Princeton in said County this 2d day of December A.D. 1864

Geo. W. Radcliffe Clk
By Cairo D. Simmons Depy.



Clerks fees 22.35
Ctf stamps .05 $22.40

Caufman vs C. B. & Q. R. R. Co.
Wetrick vs C B & Q R R Co.

In these causes the Jury are instructed on behalf of the respective Plaintiffs:

1st That by the Statute in force at the time of the alleged killing of the colts in controversy it was the duty of the defendant to have on each of its locomotive engines a bell of at least 30 pounds weight or a steam whistle to be rung or whistled at the distance of at least 80 rods from the road crossing at Jerome Wilcox's, spoken of by the witnesses, and kept ringing or whistling until such engine should have crossed such road; and if the Jury believe from the evidence in the case that the colts in question came to their death by reason of any neglect on the part of the agents of defendant operating the train in question so to ring a bell or sound a whistle and without the fault or negligence of the owner of such colts, then defendant would be liable to such owners for such killing.

Given

2d Though the Jury may believe that the servants of the defendant directing the train in question did ring the engine bell continuously for eighty rods before the train reached the crossing in question yet this act alone will not excuse the defendant

from liability if it appears to the jury from the evidence that the said servants could have avoided the killing of the colts by the precaution of sounding a whistle or slacking the speed of the train, not endangering the safety of said train and passengers by so doing: if the jury further believe from the evidence that said colts were present at said crossing without the fault or neglect of their owners, and could have been seen by said servants in time to have been saved by the exercise of ordinary care in managing said train,

Given

3d

If the Jury believe from the evidence in this case that the testimony of Cooley and Sweetland to the effect that there was such a growth of trees & bushes on the sides of said road track West of the place of collision as materially obstructed a view of objects within a space of 50 feet West of the crossing in question, if any such was given, is wilfully false, they would be warranted in holding the entire testimony of said witnesses Cooley and Sweetland so far as not corroborated by other witnesses to be successfully impeached ~~xxxxxxxxx~~ and in disregarding anything testified to by them unless so corroborated; it not being the law that the only mode of

4) Mains 4/10-414

Given

impeaching a witness is by swearing other witnesses as to his reputation and credibility

State of Illinois
Bureau County } ss I Henry S. Royce Clerk of the Circuit Court in and for said County and State do hereby certify that the foregoing is a true copy of the instructions given in the causes therein named, and consolidated for trial, at March Term 1864 of Circuit Court aforesaid

Given under my hand and the Seal of said Court at Princeton in said County this 4th day of March A.D. 1865

Henry S. Royce Clk
By Cairs D. Trimble Dep.

In the Supreme Court of Illinois

April Term A.D. 1865

State of Illinois } ss.
Third Grand Division }

The Chicago Burlington & Quincy Railroad Company, Appellant
vs.
John M. Cauffman, Appellee
} Assignment of Errors -

And now the said The Chicago Burlington & Quincy Railroad Company, the appellant herein comes that in the record and proceedings aforesaid there is manifest Error in this, to wit,

1st The Circuit Court Erred in giving the instructions asked by the appellee on the trial of the cause in the court below

2nd The Circuit Court Erred in refusing to give the instructions asked by the appellant

3rd The Circuit Court Erred in permitting the appellee on the trial of said cause in the court below to give in Evidence to the jury incompetent and improper testimony -

4th The said verdict is contrary to the Law and the evidence in the case—

5th The court erred in overruling said motion for a new trial—

6th The court erred in giving judgment for the said appellee and against the said appellant whereas by the Law of the land judgment ought to have been given for said appellant and against the said appellee—

And because of the Errors aforesaid and for other Errors in the said record contained. the said appellant prays that the verdict and judgment aforesaid may be set aside reversed and for nothing held &c

By Walker & Dexter attorneys for appellant

And the appellees by J. J. Taylor their attorney Come and say that the said supposed errors above assigned do not exist in the foregoing Record & proceedings of the said Circuit Court, but that the said Record is in all respects proper, legal & correct

J. J. Taylor atty for appellees.

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Supreme Court of Illinois.

1865.

The Chicago Burlington & Quincy R.R. Co. — appellant.

vs.

Solon M. Cauffmann. appellee.

Appeal from Bureau.

Record.

Filed March 24. 1865

L. Leland Clerk

Walker & Dexter. for appellant

JAMESON & MORSE, Printers, Chicago.

ILLINOIS SUPREME COURT,

Third Grand Division.

THE CHICAGO, BURLINGTON & QUINCY RAIL ROAD COMPANY

vs.

JOHN M. CAUFFMAN.

ABSTRACT OF RECORD.

Record p.

1 to 10 The record shows that the cause was commenced in January, 1861—that it was subsequently tried and judgment rendered for the plaintiff—that the cause subsequently came to this court, and the judgment reversed, and the case sent down for further proceedings.

5 It is stipulated that the cause of Jeremiah Weirick against the same defendant, should abide the result of this suit.

THE DECLARATION

11 Alleges in substance, that on the 23d of November, 1859, the plaintiff was the owner of the two colts which were killed, which were then in his enclosure, in Centre Township, in Bureau County, and on the same day, without the knowledge, and against the will of the plaintiff, escaped from his enclosure into that of his adjoining neighbor, Jerome Daniels, and from there into the highway leading from Princeton to Green River.

12 That the defendants were the proprietors of the Chicago, Burlington & Quincy Railroad, which crossed that highway in the Town of Centre—that the defendant was also the proprietor of a certain engine and train of passenger cars, then running on said railroad, under the control of the defendant's agents and servants, that while the same was approaching the said crossing from the south-west, the colts, without the knowledge, consent or fault of the plaintiff, had wandered along the highway, from where they escaped into the same, to the said crossing, and without the plaintiff's knowledge, consent or fault, were upon or near the crossing.

13 That it was the duty of the defendant's servants, when 80 rods distant from the crossing, to have commenced to sound the whistle or ring the bell of the engine, and to continue sounding the whistle or ringing the bell till the crossing was passed, so as to scare and frighten the colts
13 away; that they neglected to whistle or sound the bell at all till the engine was within ten rods of the crossing, and that the train, going at great speed, struck the colts, then upon the crossing, and killed them.

14 The second count alleges, that on the 23d November, 1859, the colts were three miles from the crossing, on the plaintiff's premises, and separated from the highway by the enclosed farm of said Daniels, that they got into Daniels' enclosure, and then escaped or were turned into the highway, where they never were before and where they were without the knowledge, consent or fault of the plaintiff.

15 That the defendant was the owner of the railroad, engine and cars, and was running the same by its agents as stated in the first count; that the agents could have seen the colts for the distance of a mile before
15 reaching the crossing; that it was their duty to have sounded the whistle or rung the bell for 80 rods before reaching the crossing, and to have
16 slackened the speed of the train; that the defendant omitted its duty, and did not sound the whistle or ring the bell, and did not continue to do so for 80 rods, and did not slacken the speed, but run the train at 50 miles an hour on to the crossing, and struck and killed the colts, then on
17 the crossing; that if the defendant had sounded the whistle or rung the bell or slackened the speed of the train, the colts would have escaped.

27 To this declaration the defendant pleaded the general issue.

The case was tried by a jury, on the 16th March, 1864, and on the trial the plaintiff introduced

41 HIRAM CAUFFMAN, who testified in substance, that the plaintiff was his father, and that two of the colts were his; that plaintiff's farm is about two miles from the crossing; Daniels' farm is between it and the crossing; the highway at that crossing runs east and west, and the rail road from north-east to south-west; the colts were running in the stock field two miles from the crossing, and never were on the Green River crossing before, nor on the Green River road; they would have to go four miles round to get to the crossing. The day on which the colts were killed, they got over the fence some way; *they were in the road*, and went west out of the highway into Daniels' field, through a pair of bars; Daniels' farm was fenced on the Green River highway, but don't know whether his fence was up or not. Plaintiff looked after the colts night and morning, *to see that they* were at home; I saw the colts a day before they were killed. The highway running by plaintiff's farm does not touch the railroad, but runs west from the farm. The colts were never known to range on the highway which crossed the railroad; we always kept them on the farm, *but when they did range out in summer they ranged in the opposite direction from the railroad crossing.* Father was home the day the colts were killed, *not doing anything*, and I don't know whether father knew the colts were in Daniels' field or not; I did not; they got out of the stock field into Daniels' field; *I don't* know but father knew they were out that day. The colts when killed were carried across the cattle guards. Colts could have seen locomotive from father's house; they had been nigher the railroad than half a mile; could hear the whistle any day; had not been whistled at by a locomotive; they were unbroken and not very wild. The road father lives on is a mile north of the railroad, and is laid out to the creek. The colts would have to go four miles by the road to get to the crossing, and but two miles across Daniels' farm. I know I saw the colts the day before they were killed, somewhere on the farm, and remember it because I was accustomed to see them. We generally shut them up nights, but don't know as they were shut up the night before they were killed. I don't know where the colts got out on to the railroad; I suppose they got from ours on to Daniels' farm.

Where they went to get water is off our farm; we would leave them out in the morning and they would go and get water; from the watering place they could go on to the north or south road, and could have gone down the creek, and got on to the railroad, but to go by the creek it is more than five miles to the crossing, and *our fence was down* leading into the north highway, running by our farm. *We were doing nothing the day the colts were killed.* If the colts got into the highway from father's land, they would not get on to Daniels' land, which was south of our farm.

The grade of the railroad is raised about two feet at the crossing; track is straight for more than a mile west; the engineer could have seen the colts within fifty feet on each side the crossing, for half a mile; no obstruction to prevent. There was some small cotton wood trees along the track, and the road was fenced with four or five board fence clear up to the cattle guards; *I do not think a colt could have been seen in the depression on the north side from the locomotive*, but could on the south side within fifty feet of the track, and could have been seen next to Daniels' fence from the train. There were ten or twelve and may be twenty apple trees in Wilcox's orchard, but they were small, and I do not know how great a space there is between the boards of the fence on the railroad. Never tried to see whether from the railroad track, between there and the cross-
47 ing next west, cattle could be seen through the orchard and trees.

The plaintiff then introduced

47 Jerome Wilcox, who testified in substance: the Green River crossing is a public highway. In November, 1859, I was gathering corn in field south of the railroad, and was on a load of corn approaching the crossing from the south, and the passenger train going east came along at about noon; saw some horses on the south side of the railroad, in the highway, and as the train approached the crossing, they went to the west
48 side of the railroad, and stood there in a sort of a huddle. When the train got within seven to ten rods of the crossing, the whistle sounded, and I saw one of the colts turn a sort of a somersault, and the colts were carried over the crossing; two were killed and the others lived.

First saw the cars about 100 rods from crossing, and at this time the colts were on the east side of track going west, and they crossed to the west side after this. I was forty or fifty rods south of the crossing at the time
49 of the accident; I don't know that there would be any difficulty in seeing the colts from the locomotive; the road-bed west of crossing is higher than the surface of the ground; animals standing on the west side, when they were huddled up, could have been seen from the locomotive, for 90 or 100 rods easy enough, and also, if they were within fifty feet of the railroad; and the engineer could have had a fair view of them when they crossed from the south to the west side. My attention was first attracted by the noise of the train, and not by the bell or whistle; I saw the colts spring at the sound of the whistle; they were at that time huddled up on the west side
50 near Daniels' fence; I did not hear any whistle till the cars were within 7 to 10 rods of the crossing; if they had sounded there is a probability that I would have heard it; they might have sounded the whistle and rung the bell, and I not have heard it, my attention was so much taken up with the destiny of the colts that the whistle might have sounded and I not hear it.

50 The colts were three or four rods from the crossing, and might have been seen by the engineer. I have an orchard on the track of fifty
51 trees, but they would not prevent the colts being seen twenty-four rods
51 from the crossing. The colts all passed from the south to the north side and huddled together near Daniels' fence, some three or four rods from the railroad, and when the whisle sounded they sprang and ran back towards my house on the south side. When the colts had passed over
54 to the north side, the cars were about sixty rods away; they passed over three or four rods from the track, with heads up, some headed one way and some another; I think two or three of the colts passed over to the east side again, before those killed were struck. There were some bushes along the right of way on Fisher's farm, some sixty or seventy rods west of the crossing, but none on right of way on my farm,
54 except two trees before mentioned. Have never measured the depression on the west side of the railroad, but should think it was about two and a half feet.

55 Was distant from the crossing forty or fifty rods, and about the same distance from every other part of the railroad; I was riding on a wagon which rattled; my first view of the cars was in Fisher's farm, and about
55 ninety rods away when I first saw them; I might have been further
55 south of the railroad when I first saw them; my *recollection about the matter now is very dim.*

56 The colts when struck, were carried over the cattle guards, and it looked to me as if they were thrown as high as the smoke stack, do not know as they were; do not know that they were thrown up ten feet, and do not intend the jury to understand that I so swear, but it looked to me as though they were thrown as high as the smoke stack.

57 The fence on the south side of the highway had three or four boards and did not obstruct the view. When the whistle sounded the colts all
57 started to run across to the south side of the track, and two or three of them got over safely. The colts, to go from Cauffman's to the crossing by the road, would have to go about four miles; they would go west to the road going south, then west, then south, then west to the crossing; don't know of any pasture on that road except the highway, and don't know where the plaintiff's stock ranged.

57 From plaintiff's watering place to Swift's it is about half a mile, from Swift's to main highway it was about one hundred rods to one hundred and sixty, and was open prairie, and from the corner of the fence to the crossing, it was about a mile and a half.

The plaintiff then introduced

57 D. C. WILCOX, who testified in substance, that at time of accident, he was about eighty rods from the crossing with Jerome and hired help picking corn; heard the whistle at Wyanet; heard it next about the time
58 the train got to the road west; heard it again. I was going north, and my brother was ahead of me; saw the cars from the time they struck Fisher's farm; heard the whistle at the next crossing, about half a mile from the crossing in question. Was alarmed for the safety of the colts at the crossing; they were going from the south to the north or west side, and the cars were one hundred rods from the crossing when I first saw the colts. Saw they had crossed the track some three to five rods, and
59 stopped to look at the train; *I sent our hired man to drive the colts away, but Jerome told him to come back, that he could not get to the crossing in time.*

59 I think a man on the railroad could have seen the colts for one hundred rods from the locomotive; no obstacle for fifty feet on each side for eighty rods west except two ash trees, which were fifty rods from the crossing; near the crossing there were two or three bushes on the north
59 side of the track; there were sprouts of quaking ash, but don't think they were high enough to obstruct the view; they might have been six feet high; my brother had an orchard five or six rods from the track, which I think did not obstruct the view. The railroad fence was wire, and the track was one and a half feet higher than the wagon road at the crossing on west side. Don't think the colts were in the basin but in the road; could see them from the wagon where I was; they were not out of my sight after I first saw them, till train passed between me and them; just as the train got to the crossing, two or three of the colts passed back to the south side.

60 The train was seven to ten rods from the crossing when I heard the first whistle, and the whistle at the west crossing; the whistle blowed
60 until the train passed the crossing; I had an idea that the whistle started the colts but don't know; they started at the instant the whistle blowed. Had no trouble hearing the whistle, if it had sounded eighty rods distant I think I should have heard it. Heard no bell rung at any time, and if it had rung within eighty rods think I should have heard it; it might have rung and I not heard it. The train did not halt.

61 Think one of the colts was thrown as high as the lamp.

The colts would have to go about four miles by the road, to get from Cauffman's to the crossing, and no pasturage on the route of the road. From Cauffman's by Capt. Swift's it would be about three miles to the

crossing; some feed on the way. It was a passenger train, was running a good jog, and the speed was not altered before reaching the crossing;
62 the cars were moving faster than usual. I was eighty rods from the cars when I saw them first. It was an up-grade the way the cars were going.

63 When I first saw the colts they were standing around the track heading different ways, some on the south side of the railroad, and they all passed on to the north side some four rods, and came to a halt in the traveled track of the highway, five colts in all; the colts remained in that position till the train was within from seven to ten rods, and no man could tell which way they would run or jump. I did not intend the jury to infer that if the whistle had not been sounded the colts would have
63 been killed. When the train approached within *seven to ten rods, the colts were four rods away; did not hear the bell ring, I had more attention on the colts than on the train.* The bell might have rung, but if it
64 did, it must have been a poor bell. There was one half section between the plaintiff's farm and the crossing.

The next witness for plaintiff was

James M. Fisher, who says in substance: that when the colts were killed he was thirty to thirty-five rods west of the crossing, inside the field, four rods from the highway, unloading corn. Saw the colts about 9 or 10 o'clock about half a mile from the crossing, in Daniels's field, and next saw them at the crossing, when we drove up with the corn; they were in full view, and on the fifty feet of the track, and had been there 15 or 20 minutes before I saw the cars in Griffith's field, between Fisher's and Wilcox's. The rumbling of the wheels attracted my attention; heard no bell; if it had rung think I should have heard it. No whistle till the cars were within ten to fifteen rods of the crossing, and then it sounded sharply two or three times. No obstacle to prevent my seeing
65 the cars all the time; they were running their usual speed and did not slacken it.

When the cars first came in sight, some of the colts were on the side and they passed over to the north side, and were standing together in a group inside the fifty feet when the cars came in view; they sprang over the track when the whistle sounded, two got over and three were killed.

My attention was drawn to the colts. I never traveled up the track west of the crossing. There were small under-bushes growing there. The collision threw the colts over the track. Don't think Wilcox's orchard would obstruct the engineer's view.

66 Did not hear the whistle at Wyanet, or at the crossing next west; don't know whether the bell or whistle sounded; if they did I did not hear them; could hear whistle further than a bell. I saw the colts in
67 Daniels' field when I *was husking corn, and Daniels drove the colts away to the south-west, towards the railroad crossing; Daniels did not say what he was going to do with them, and I did not see them again till I see them at the crossing.*

The plaintiff next produced

67 Edward Triplett, who says he is acquainted with the lay of the land at the crossing. The railroad was opened in 1856, and there were no trees there then nor until 1859, for eighty rods west of the crossing. The ground on the north side of the crossing was about two feet lower than the railroad; nothing to obstruct the view of the engineer for eighty rods west; Wilcox's orchard would not obstruct animals on the railroad; they could be seen for one hundred rods, I think, and for eighty rods I am positive; never made the experiment, to ascertain whether I could see
68 them or not; don't think, if I were looking to see stock on the line of the railroad, I should see them if off the railroad track; the view beyond the fence would not be as plain as on the crossing. *If the colts were standing* behind a fence four and a half feet high, and on land one and a half feet below the railroad, then the engineer's view would be obstructed. There were no trees along there as high as the locomotive.

The plaintiff then produced

Charles Knox, who says substantially, that he is acquainted with make of the country; that after the railroad was laid out, cotton wood came up along the track, but do not think they were large enough to obstruct one's view for eighty rods west. Neither the fence nor the orchard would prevent the engineer seeing the colts, if within fifty feet of the track.

On the part of the plaintiff,

68 Amos Fisher says he is acquainted with the land at the crossing, and thinks there is nothing to obstruct the view of the engineer from seeing colts for eighty rods west, if he is looking for them.

For the plaintiff,

70 S. M. Knox says: thinks for eighty rods west of the crossing, the engineer could see stock on the track if within fifty or one hundred feet; there was nothing to prevent it; there were some cotton wood growing along the track.

For the plaintiff,

71 WARREN EASTMAN testifies that he knew plaintiff's colts; during the summer they ran on the common, they ranged north and east of plaintiff's, but not near the railroad; would have to go four to five miles to get to the crossing by the east route. They were in the habit of running over the creek. If they got into Daniels' field, they would be within half a mile of the railroad. I don't think there is any obstacle for eighty rods west to prevent cattle being seen on the right of way at the crossing, by the engineer. There was some cotton wood growing along the track.

72 The plaintiff then introduced the former verdict to show the value of the colts to be $120, which was done by consent for defendant.

DEFENDANTS' TESTIMONY.

For the defence,

72 F. H. COOLEY testified, that he was the engineer, and had charge of the engine by which the colts in question were killed; that at that time he had been an engineer ten years, and had been in defendant's employ for seven years. It was a passenger train, and the time was about 12 at noon. Am well acquainted with the grounds about the
73 crossing in question; for the five years next previous to the accident I had run over the ground nearly every day. Have a great many times pulled
73 leaves off the trees along the track between the Wilcox crossing and the one next west. From the railroad it was hard to see the colts, especially if they were feeding. I measured the ground where the colts stood. The bushes have been on the road till within a year; it now leaves it very clear, except this low place where the orchard might obstruct the view. The train was running east at from fifteen to twenty miles an hour; our time over the road was twenty-two miles an hour, and we were making this speed when I approached the west crossing; our time is not uniform, it is slower between Princeton and Wyanet than elsewhere, on account of
73 the bridges. When we crossed the west crossing we rang the bell; after that I saw a colt stop on the track, and then shut off steam to get control of the train; I blowed the whistle, but whether to put on brakes or not, I do not now recollect. At the time I first saw the colts we were sixty
73 or seventy rods from the crossing; at that instant the colts passed out of my sight; I was on the lookout for colts, and could see none; the colt I saw passed on the left or west side, and the track was perfectly clear until I got within seven or eight rods of the crossing, then I saw the

74 colts wheel and rush from that sink close to the railroad; I then pulled the lever of the engine, but found I could not save them; I then let my engine go, that is, I threw my lever forward and put on steam; previous to that time I could not see the colts. When I first saw the colts, I reversed my engine, which tends to throw the force of the engine backwards.

When I first saw the colts the second time, they wheeled and started to run, but it was impossible to save the colts when I first saw them turn on the track; it would take twenty rods to stop the train, running as we then were. As I could not possibly stop the train and save the colts, the true policy of engineers is to hit the stock with all force we can put on; I had to strike the stock. There was not anything within the fifty feet to warn me that there was stock near the crossing. When I saw the colts the second time, they were beyond the fifty feet; they were jumping and running as fast as I went. From the Wilcox's crossing to the one next west, it is one hundred and sixty rods.

74 *There was a fireman aboard when the accident occurred; he rung the bell from the crossing next west until we struck the colts;* the fireman's name was Sweetland. It was only twenty-five or thirty seconds from the time we saw the colts on the track until the accident; I think it was sixty or seventy rods from where I first saw the colts. I was on the look out for the same colt, thinking it might return, and the colts had
75 started to run when the whistle was blown, and the bell was being rung by the fireman; the fireman was about three feet from me. Standing west of the crossing, the orchard and other trees, and the fence considerably obstructed the view, and it is impossible to see stock standing in some positions. I always look for stock on the track, it is an engineer's duty. The colts were about three rods from the crossing when I saw them coming on to it. We always rung the bell at the crossing; I had it on my mind to do so, for we were told that we were watched.

76 When cross-examined, he says: the right of way west for the distance of eighty rods was so obstructed by trees and other obstructions, that I could not have seen the stock on the highway on the west side. The nearest tree is within ten rods of the crossing; the trees were so thick that you could not tell whether there was a fence or not; it was underbrush of all kinds, and some trees twenty-five feet high. There was a row of trees that did obstruct my view; the apple trees stood well apart. The bell was rung through from the west crossing; I registered my name and engine every trip, and noted if the bell was not rung for eighty rods at any crossing; I have it noted in my register that I rang the bell that day; I noted the fact when I got to Aurora, that I rang the bell for

eighty rods west of Wilcox's crossing. In the fall of 1859, it was my practice to ring the bell for eighty rods before coming to a crossing. The
78 trees were on the right of way, and had leaves on them. I am now in the employ of the defendant; am required by the company's rules to keep a register of my acts in ringing the bell or whistling, and I have examined my register to see whether there was an omission to ring the bell at that crossing; there was no act omitted to be done by me as engineer, to save the stock and passengers.

For the defence,

78 Samuel Sweetland testified in substance, that he was the fireman on the train that killed the stock in question; and was then in defendant's employ, but am now in the employ of Gwin & Campbell, Ohio. When I first saw one of the colts the train was sixty or seventy rods away, and the colt passed off to the left hand side of the track, out of view; the trees and fence hid the view of the colt. We were on the look-out for the colt; I rang the bell from the crossing west, to the crossing where the colts were killed, a distance of about one hundred and sixty rods; I rung
79 the bell myself through that whole distance. I was sitting with my head out of the window, when I first saw the colt. We was fifty rods from the colt when it passed off; we kept looking for it. We shut off steam when we first saw the colt, and Cooley blew the whistle. There was then nothing to be seen within the line of the railroad.

79 When within seven or eight rods, we saw a lot of colts whirl on the track; they were on the jump, and one or two got over safe, and two or three got caught. One jumped on to the pilot of the engine. The steam had been shut off for sixty rods, from the time we first saw the colts. I don't think it was possible, at the time we saw the colts come on to the track, to stop the train and save them. It would have required twenty or twenty-five rods to have stopped the train.

On cross-examination, witness says: I looked out on the left; on account of the obstructions, I could see nothing on the highway, till we got within seven to ten rods. The trees were large and small. Do not know how thick they were, but I think grew less thick as we approached the crossing. Some of them were higher than the smoke-stack.

80 I remember the bell was rung at this particular time, on account of the colts being killed. Don't know whether the brakes were whistled down between one crossing and the other. They were not whistled up till we passed the crossings. When the steam was off, and the brakes
81 down, the cars would be going slow. When the engine blows for stock, the brakeman, if he sees the stock pass off, does not wait for signals to let up the brakes, but does so of his own volition.

When we came to the crossing, and the collision occurred, the train went on, and I did not see the stock fly up, but saw the colt tumble off the cow-catcher. The foot-board where we stood was about three feet above the track.

For the defendant,

81 A. C. PROUT testified, that he resides at Ottawa; moved there two years ago, from Princeton, and was on the train that killed the stock in question. It was a passenger train going east, about noon on 23d of November, 1859. After we crossed the bridge, I rode on the platform till we were half way between the crossing where the colts were killed, and the one next west.

82 Before we got to the west crossing, the bell was ringing, and rung all the time till I went into the cars, and when I went in, I heard the whistle toot, toot, two different times. I was on the left side of the cars, and immediately raised the window and looked out. As I was sitting down, I heard the whistle, and instead of sitting down, raised the window. The bell was ringing when I went into the car, but cannot say whether it rung after that or not. I looked out of the window, and continued to look till I saw the movement of the colts, and saw the accident. The colts were on the north side of the track. At the time I saw the colts, they were headed east, and were running. From time I heard the whistle till I saw the colts, the train had run twenty rods, perhaps more. Not much time between the whistle and the killing of the colts. The whistle tooted along some distance; I heard it three or four times. When I first heard it, I thought they were half way between the two crossings, and were some sixty rods from the crossing where the colts were killed. The second time the whistle blew, it was within ten rods of the crossing; think the cars run slower after the first whistling.

83 There must have been some bushes or fence obstructing the view of the colts, for I could not see any stock, though I was looking for it. The colts, when I first saw them, were towards the cattle guards, on the north side of the road. When I first saw the colts, they were about three rods west of the track, and were then on the run, and seemed to be angling across the road, to get ahead of the engine. Did not hear the bell inside the car. My attention was attracted by the whistle, and I raised the window, thinking there must be stock on the track. If any of the stock had been within fifty feet I could have seen them, but I could not see any animals on the start. I could have seen them if I could have seen over the tops of the fences, and bushes. Have never been in the employment of defendant. There was brush and timber growing on the west side so as to obstruct the view. Could not see the colts till they

jumped to get ahead of the engine. Some of the trees, I think, were twenty-five feet high. Some of the trees were cotton wood; the leaves were generally off the tops.

For the defense,

85 GEORGE HOFFMAN testified, that he was in defendant's employ from 1859 to last fall, and was track repairer in November, 1859, and passed over this track once a day, in a hand car. There were bushes all along the track, between the two crossings spoken of; they were thicker towards the west crossing than at any other place. They were ten, fifteen and twenty feet high, and some might have been higher at that time; would call them poplar. They would, I think, obstruct the view. I looked a year or two after the accident, and found, some forty rods west of the crossing, that I could not see anything on the wagon-road, and could tell how they would obstruct the view at the time of the accident. They were cut down last summer, and some of them had got pretty large. The bushes were standing about half way between the crossings, on the north side.

"The plaintiff then called D. C. Wilcox, and Jerome Wilcox, to prove that the defendants, in running their trains over that part of their road at other times, and on other occasions, were not in the habit, usually, of ringing their bell. The defendant objected to the giving of such evidence; the objection was overruled by the court, and the witnesses were allowed to testify, and did then testify that the defendants, both before and since the accident, had been in the habit frequently of running their trains over that part of their road between these crossings, without ringing the bell; but that after Wells was killed at a crossing east of Princeton, that for a while they kept up a pretty constant ringing and whistling.

"To the order of the court, allowing the said testimony to be given, the defendant then and there excepted. This is all the testimony, and all the evidence in the case. The court instructed the jury on behalf of the plaintiffs, as follows:

"1. If the jury believe that the colts in question were killed on the crossing of a public highway, by the engine and cars of the defendant, while said engine and cars were directed by the agents or servants of the defendant, and the jury further believe that such killing of said colts might have been avoided by the exercise of ordinary care and caution on the part of such agents or servants having so the said engine and cars in charge; and the jury further believe that said colts were the property of the plaintiff when the same were so killed; on this state of facts, the jury will find for the plaintiff, and the measure of damages is the value

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In these causes, the jury are instructed on behalf of the respective plaintiffs:

1st. That by the Statute in force at the time of the alleged killing of the colts in controversy, it was the duty of the defendant to have on each of its locomotive engines, a bell of at least thirty pounds weight, or a steam whistle, to be rung or whistled at the distance of at least eighty rods from the road crossing at Jerome Wilcox's, spoken of by the witnesses, and kept ringing or whistling until such engine should have crossed such road; and if the jury believe from the evidence in the case, that the colts in question came to their death by reason of any neglect on the part of the agents of defendant operating the train in question, so to ring a bell or sound a whistle, and without the fault or negligence of the owner of such colts, then defendant would be liable to such owners for such killing.

2d. Though the jury may believe that the servants of the defendant directing the train in question did ring the engine bell continuously for eighty rods before the train reached the crossing in question, yet this act alone will not excuse the defendant from liability, if it appears to the jury from the evidence, that the said servants could have avoided the killing of the colts by the precaution of sounding a whistle, or slacking the speed of the train, not endangering the safety of said train and passengers by so doing; if the jury further believe from the evidence, that said colts were present at said crossing without the fault or neglect of their owners, and could have been seen by said servants in time to have been saved by the exercise of ordinary care in managing said train.

3d. If the jury believe from the evidence in this case, that the testimony of Cooley and Sweetland, to the effect that there was such a growth of trees and bushes on the sides of said road track, west of the place of collision, as materially obstructed a view of objects within a space of fifty feet west of the crossing in question, if any such was given, is wilfully false; they would be warranted in holding the entire testimony of said witnesses Cooley and Sweetland, so far as not corroborated by other witnesses, to be successfully impeached, and in disregarding any thing testified to by them, unless so corroborated; it not being the law that the only mode of impeaching a witness is by swearing other witnesses as to his reputation and credibility.

"The court instructed the jury on behalf of the defendant as follows:

"1st. The defendant is not liable in this case, unless the plaintiff has proven by a preponderance of testimony, that the horses were injured and killed by collision with defendant's cars, through the negligence or carelessness of defendant or its servants, and that the plaintiff himself exercised proper care and circumspection to guard against such injury or killing of his horses. The mere fact that the horses were injured or killed by defendant's cars, is not in itself sufficient to entitle the plaintiff to recover.

"2d. Even if plaintiff's horses were injured or killed through the negligence of the servants of defendant in running their train, yet if the want of ordinary care on the part of the plaintiff in allowing his horses to run in the road near the railroad crossing, enabled them to get in the way of said train at the crossing, and contributed to cause such killing or injury, the law is for the defendant.

"3d. The defendant has a right to use its railroad track at the crossings as well as other parts of the line, and to run its cars thereon without obstruction; and the plaintiff had no right to have his horses stand upon the track of said railroad, or jump across it, or pass over it in the way of, or so as to come in collision with an approaching train. *Provided*, the defendant's servants in charge of said train observed the usual signal on approaching a crossing, by sounding the whistle or ringing a bell, at least eighty rods from such crossing.

"4th. If the jury believe from the evidence that plaintiff's horses were injured or killed by the defendant's cars, while standing upon a railroad crossing, or attempting to pass over the same in the way of an approaching train, and that defendant's servants controlling said cars used ordinary caution to avoid a collision with such horses, by sounding the whistle or ringing the bell, or in checking the speed of the train, the jury will find for the defendant.

"5th. The burden of proof in this case is on the plaintiff, and it is for him to show to the jury by a preponderance of testimony that it was practicable and easy to have avoided the collision; and that in not doing so, those in charge of the train were guilty of the negligence which the law requires to establish the liability of the defendant. The defendant is not bound to prove that its servants exercised ordinary care to prevent the killing of plaintiff's horses.

"6th. The defendant is not liable in this case, if plaintiff's horses were killed by collision with defendant's cars at a crossing, through accident, or any other cause not occasioned by the negligence of defendant's servants in driving, running and directing said train.

"7th. The servants of defendant controlling said cars were only bound to use ordinary care and skill to prevent the killing of plaintiff's horses. They were not bound to use extraordinary care or skill.

"8th. If the jury believe from the evidence that the plaintiff was equally negligent with regard to his horses, as the defendant with regard to the management of its train, at the time of the alleged collision; or that upon the question of the alleged negligence of defendant's servants, there is as much weight of proof for the defendant as for the plaintiff, the jury should find for the defendant.

"9th. Even though the jury should find from the evidence that defendant's servants did not ring the bell, or sound the whistle at the distance required by law; yet the defendant is not liable in this case for such omission, unless the plaintiff has shown to the satisfaction of the jury by evidence, that such omission to ring or sound, caused the killing of plaintiff's horses, or in other words, that such *ringing* or *whistling* would have prevented such killing.

"10th. The jury are instructed that the positive testimony of witnesses that the bell rung or whistle sounded, is entitled to more weight than the negative testimony of witnesses who testify that they did not hear the bell ring or whistle sound. The testimony of the engineer and fireman to the fact that the bell was rung for at least eighty rods prior to the approaching to the crossing where the collision occurred, (if the jury believe from the testimony that such was their evidence) is such positive testimony; if the jury believe from the evidence that the witness Prout was a passenger on said cars, and heard the bell ring before the approach to said crossing, and shortly before said collision, then his testimony tends to corroborate and strengthen the evidence of said fireman and engineer.

"11th. If the jury believe from the evidence that the engineer, upon his discovering the plaintiff's horses upon the track, whistled down brakes, threw off steam, or took ordinary precautions usually taken in such cases to frighten the colts away from the track, with the endeavor to prevent injury, then such acts are evidence of the exercise of ordinary care and caution on the part of the defendant in this case; and if the jury believe from the evidence, that ordinary care or caution were exercised by the servants of the defendant, on the occasion of the killing of plaintiff's horses, then the jury will find for the defendant.

"12th. If the jury believe from the evidence, that the colts first seen upon the track passed off upon the sounding of the whistle, and that the track was clear afterwards until the train approached within six

or eight rods of the crossing, and that the colts then suddenly started to cross the track, and were struck and killed, or injured in the act, and that there was no sufficient previous indication of their attempting to cross the track in that manner, in time for the engineer to have prevented a collision, then the defendant is not liable in this action.

"13th. If the jury believe from the evidence that the bushes and trees along the track, and the fences along the highway where the colts were, so obstructed the view that the engineer and fireman either could not see the colts in the highway, or seeing them, could not sufficiently discern their movements; or if discernible, their movements did not indicate any attempt to go upon the track until the train had approached so near that all attempts to check the speed of the train were useless, and that the colts suddenly started to cross the track, and were killed or injured in the attempt; then the defendant is not liable in this action.

"14th. When such obstructions as cattle or colts, which may be thrown from the track, are discovered by those in charge of a train of cars, too near the train to avoid collision by stopping the train, then, under such circumstances, an increased speed is not, in itself, evidence of negligence. The increased speed may be necessary for the safety of the train, and the passengers thereon.

"15th. Although the jury are the judges of the weight of the credulity of the evidence, they have no right to decide this case except upon the evidence given, and the law as given to them by the court, and they cannot wantonly or causelessly reject the sworn testimony of any of the defendant's witnesses, unless such witness has been impeached; and such witness can only be impeached by a direct attack upon his testimony and character; and in accordance with these principles of law, the jury are bound to receive as evidence in this case, the testimony of defendant's witnesses, Cooley and Sweetland, unless they have been impeached, as above indicated.

"16th. The jury are further instructed that in making up their verdict in the case, they are to be governed by the evidence in the case, as given by the witnesses, and by the instructions, as given by the court, and not by the assumptions, statements or arguments of the counsel who address the jury.

"The jury returned their verdict as follows:

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"We, of the jury, do find the said issues herein, in favor of the said plaintiff, and assess the damages which the said plaintiff hath sustained herein, by reason of the premises, at the sum of one hundred and twenty dollars.

"Whereupon the defendant moved the court for a new trial in said cause, for the following reasons:

"1st. Because said verdict is contrary to law.

"2d. Because the verdict is contrary to the evidence.

"3d. Because the verdict is contrary to the instructions of the court.

"4th. Because improper evidence was allowed to be given to the jury.

"5th. Because the court gave instructions for the plainttff which were not law, and should not have been given.

"Which motion for a new trial was then and there overruled by the court, and the court thereupon entered judgments in favor of the plaintiffs, and against the defendant upon the verdict of the jury; to the orders of the court overruling the motion for a new trial, and rendering judgments upon the verdict of the jury against the defendant; the defendant then and there excepted, and prayed the court to sign and seal this, his Bill of Exceptions, and make the same a part of the records in said cases, which is accordingly done.

M. E. HOLLISTER, Judge. [SEAL.]

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vs

Kauffman

Abstract.

Filed April 5, 1865

C. Leland Clk