

No. 12784

Supreme Court of Illinois

Galena & Chicago Union R. R.
Co.

vs.

Dill

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Wm. G. W. 86

W. G. W. 86

1857

1859

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1284

John C. Will
58-153 ~~200~~

Indiana & Chicago
Union Rail Road

Received
Snow & Jones

Filed April 23 1855
J. C. Will
C.R.

State of Illinois, }
Clerk. } s. s.



I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of all the papers filed & occurring last entering
in a certain cause lastly pending in said Court on the
law side thereof, wherein John L
Dell was Plaintiff and
The Galena & Chicago Union Rail Road Co defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 26th day of March A. D. 1858

True for Record \$11⁰⁰

Wm L Church
Clerk.

The Galena and Chicago
Union Rail Road Company
vs
John Le Dill

In the Supreme Court of the
State of Illinois of the third
Grand Division April Term 1859

Argument of R. S. Blackwell for the Appellee.

This was an action upon a case by the Appellee against the Appellants. The ground of the action was and is an injury occasioned by the negligence of the Rail Road Company upon the person of the Appellee at the crossing of a highway in Kane County which intersected the Railway of the Appellants. The cause originated in Kane County and was transferred thence to the Cook Circuit Court. In that court the cause was tried, and resulted in a verdict for the plaintiff below for the sum of 15500 \$ damages. The Appellee moved for a new trial. Upon the granting of said motion the said Circuit Court arbitrarily docketed the verdict 3000 \$. The reason of this was simply that the verdict was excessive. The cause was fairly tried.

But the Appellants are dissatisfied with the judgment and verdict below. ~~He~~ now complains to this court 1. That the court below permitted improper evidence in behalf of the plaintiff below 2. That the said court gave improper instructions to the jury who tried the cause. 3 That the said court ~~gave~~ refused proper instructions for the defendant below. 4 That the said court ought to have granted a new trial to the said defendant below.

And 5. The damages awarded by the jury were excessive.

In reply we defend the verdict and judgment below from these attacks for the following reasons

1. Was illegal evidence introduced? The complaint is that Mr Dodson a witness in his evidence detailed a conversation with the President of the Railway in which Dodson stated the facts, and requested the Rail Road Company to send the Appellee to a hospital. This request was denied. This evidence was objected to. The court below admitted it. Is this error. We answer, no that the evidence was competent for these reasons

1. To prove the inhumanity of the Rail way company.
2. To establish their negligence in the commission of the injury aforesaid
3. To prove the excuse of the Railway company, for their conduct which is an implied admission that they were bound to give a signal at a highway crossing.
4. If the evidence was admissible upon the last ground it was the duty of the Appellant by instructions to confine the evidence to the "signal" question
5. This question as to the necessity of giving a "signal" at the Highway crossing became important for the reason that

the general Statute law of the State required a signal. The law was afterwards repealed as to the Appellants. The common law required such a signal, if necessary, independent of any statutory obligation. This will be explained more fully in discussing the legality of the instructions of the court below.

6. The established rule of this court is that where testimony is introduced upon the trial of a cause in the inferior court, which is legal for some purpose and illegal for another, it is the duty of the party impeached by the admission of the testimony to call the attention of the court to the facts and request the court to instruct the jury that the evidence is entitled to no weight except upon the ~~particular~~ point upon which the testimony is legally admissible. This rule the Appellants failed to comply with and cannot now take advantage of their omission.

7. The particular point of objection to this testimony was not pointed out in the court below. The practice of making "fishing" objections in the inferior courts of the State is becoming so common. It imposes upon this court an extraordinary amount of labor, misleads the counsel and occasions delays to suitors. It is about time

that this court should conform strictly to the
precedence. It would cause an immense amount
of Supreme Court litigation, and compel counsel
to be a little more astute. No Attorney ought to
try a cause without understanding it, No client
ought to be subjected to the expense and delay
occasioned by their blunders, and no appellate
court to the labor of examining errors of omission
such as occur in this assignment of error. The law
is well settled. That a bill of exceptions as a plea-
ding of the accepting party to. It must be construed
most strongly against him. 3. He must point out
the precise objection as contra-distinguished from
a fishing one. If in this case the counsel for the
Appellant had pointed out his objection to the
testimony of Mr Dodson the court below would
undoubtedly have confined the jury to the legal
effect of the evidence. Shall a verdict and
judgment be reversed under these circumstances?

8. The only conceivable objection to the admissibil-
-ity of Mr Dodson's testimony is that, It proves
malice on the part of the Railway company -
If this be true it ought to have been admitted.
If untrue there is no reasonable ground of com-
-plaint.

9 This court will not reverse a judgment because
of the illegality or irrelevancy of evidence

unless the court can discover upon a critical examination of the entire record that the jury have been misled or that, injustice has been done in the trial below

2. The next ground of reversal is the plaintiffs instructions below. The particular ground of attack upon those instructions are, that the Appellee had the superior right to the use of the highway and that the Appellants were bound to use extraordinary diligence in approaching the crossing. This question arises if at all from instructions numbered one and two. Our answer is, that neither instruction authorizes such a construction.

Instruction No 1 contains these propositions

1. That the Railway was bound to exert reasonable care and diligence in approaching said highway
2. If the Appellee was at the time of the accident traveling on the highway aforesaid-
3. That the Appellee was guilty of negligence in approaching said highway-
4. That the Rail road company were guilty of negligence in approaching said highway and that the Railroad company committed the injury in question

5. These facts constitute a ground of recovery

Does not this instruction embody the law of the case. This instruction was the law of the land. The only other construction of instruction No 1 is the insinuation of the Appellants counsel that said first and second instructions recognize a "superior right" to the track in a highway traveler to a railway train. Our answer to this suggestion is that the motive power of a railway train being steam and that of a highway traveler being either leg, horse, or ox power, and the steam power being comparatively uncontrollable must use a more extraordinary degree of diligence than the highway traveler. This principle was ably discussed and recognized in

Again, a traveler upon a highway has just as much right to the track as the Railway. Each are bound in law to use that degree of circumspection which is necessary in order to prevent colliding. If the Railway is in law entitled to the precedence its extraordinary motive power by means of a superior locomotion becomes an engine of injury. If the highway traveler neglects the ordinary precaution which are commonly regarded as essential in his approach to a Railway crossing he evidently invites a collision. Now the great question upon this branch of the case is whether either Conductor of these several motive powers must not conform to in some degree to those reciprocal duties which each owe to the

other. If they are thus to be governed in their relation to each other the court will perceive that the Appellee's instructions No 1 & 2 constituted the law of the land, and that the writ of the Appellants counsel in his brief upon this point is entitled to no consideration whatever. Thus much for the general attack upon instructions No 1 & 2. Let us now proceed to investigate the particular objections which are urged against instruction no. 2. That instruction was "That if the jury believe from the evidence, that the plaintiff was free from negligence on his part in approaching and attempting to cross the Railway track; and that the defendants by reason of any negligence either in running over the crossing in question, at a greater rate of speed than is usual and was proper or in not ringing the bell or sounding the whistle of the locomotive within a reasonable distance of the crossing of the highway upon which the plaintiff was traveling; if the jury find such facts from the evidence this is sufficient to charge the defendants, and the jury will find a verdict for the plaintiff, and assess his damages - The first attack upon the verbiage of this instruction, is that the words "and was proper" left for the consideration of the jury, a question of law without any proof to guide them. Our answer is

1. That the word "proper" is restrained by the word "usual" which precedes it and the evidence furnished the jury with the facts upon which this instruction was based. If the words conveyed a technical and or an ambiguous meaning, it was the duty of the counsel for the Appellant to ask

of the court explanatory instructions. This court has so decided.

2. This court has decided that where an instruction is based upon conceded facts it is not necessary to make any explanatory remarks in the instruction. White vs People 13 Ill. R.

3. In as much as the word "proper" had no technical meaning, but was plainly defined by the lexicographers, it was not the duty of the counsel for the Appellee in ~~drafting~~ drafting the instructions aforesaid, to go one step farther, and explain the definition of each word used in the instruction.

4. The great controversy in the case upon the trial in the court below was whether the rail way company were bound to use reasonable diligence by statute or at common law in approaching and passing the highway crossing in question. There was no statute law on the subject, the common law did not undertake to define the meaning of the word proper, therefore the use of a plain and unmistakable english word could possess no legal tendency to mislead a jury. This question on the merits will be discussed more fully hereafter

Another point of attack upon instruction No 2. is that the words "Reasonable distance from the crossing" was used by

the counsel for the appellee in his instruction. The words reasonable diligence, reasonable care, reasonable notice, and "reasonable distance," ordinarily ~~constitute~~ involve a mixed question of law and fact. In this particular instance the words "ordinary distance" reminded the jury that they must find the facts, and apply the legal definition of reasonable, to the facts of the case.

Instruction No 3, is objected to because the preceding argument is not the law. That the Appellee was not vigilant enough.

Instruction No 4. It is alleged was so drawn as to mislead the jury by implying various excuses for the conduct of the Appellee. The answer to this objection is that every fact recited in said instruction was at the time of the trial either true or constituted a proper hypothesis for the assumption.

Instruction^{No 5}, is attacked because it uses the words "reasonable care and diligence". The answer to this is obvious. This court has decided where technical language is used in an instruction it is the duty of the opposing counsel to ask explanatory instructions as to their meaning.

The complaint against instruction No 6 is that it suggested a large verdict. In point of fact it was precautionary and evidently intended to prevent a

reversion in this court -

Instruction No 7 presents but one question. The Appellant propelled ~~a railway~~ ^{his} train and ran a railway train. The appellee was the bailee of two horses and a buggy which he had hired of a livery stable keeper to go from Seneca to Elgin. The highway upon which he traveled intersected a railway. In crossing that railway the Buggy was destroyed. He had a special property in the Buggy and might be bound by his own negligence to compensate the owner. If on the other hand the destruction of the buggy was occasioned by the negligence of the railway company he ^{or} his bailor had an election to sue the company for the injury occasioned by the collision -

The next class of errors assigned in this cause grow out of the refusal and modification of the instructions asked by the Appellants in the court below.

The first question which arises upon this branch of the record is what degree of diligence the agents of a railway corporation must exercise in their approach to a highway crossing and by what law is this diligence to be regulated. The general railway act of this state (Cooks Statutes 948 Sections 38 to 41 inclusive)

contains certain police regulations relating to this precise question - 1. That A Railway company must provide a bell of at least 3 lbs weight or a steam whistle, whel

must be placed upon each "Locomotive engine" -

2. This bell must be rung or the whistle sounded at the distance of at least 80 rods from each highway intersected by the Railway. 3. The railway company must in addition must erect at each highway crossing a sign-board in an elevated position so as to be easily seen by a highway traveler. And the following words must be painted on each side of the sign-board in Capital letters each letter of the words to be 9 inches in diameter viz: "Rail Road Crossing - Look out for the Cars while the bell rings or the whistle sounds."

This court in 13 Ill Rep page 548. decided that this police regulation was equally applicable to the railways of the State, which might then or thereafter become organized under a special act of the Legislature. In this case no bell was rung or whistle sounded in approaching this highway crossing in question. Such is the undisputed fact. But it so happens that a short time prior to this particular collision, by some hocus-pocus lobby legislation a special act was passed on the day of which is inserted among the private session laws of that year exempting the Appellants in this cause from the operation of that general rule - thus making that railway company the especial pet of the legislative power of this State - To my astonishment this private act was produced before the court and put upon the trial of this cause in the court below. Thus throwing upon my shoulders I was compelled in defence of my clients rights to insist upon the

common law obligation of diligence ~~and imposed~~ imp-
-posed upon every owner of property of every kind and
character which might in its use work an injury to a
stranger. This was the law of the case, and was directly
presented to the jury by the appellee's instructions and
also in the refusal and modification of those asked by
the appellants in the court below. To sustain these
rulings of the circuit court I maintain two propositions
1 That the private act aforesaid was and is unconstitu-
-tional, 2. But if its validity is upheld by the court I insist
that the common law sustains the rulings of the court.
In relation to the constitutionality of the special act in
question I refer the court without repeating the argument
to Blackwell on Tax Titles pages 27 to 36 both inclusive;
and for fear the court may overlook two of the cases there
cited as precedent, I respectfully beg leave to call its
attention to *Budd vs The State* 3 *Munroe* 488 and
Holden vs James 11 *Mass. R.* 396, and also to the argu-
-ment of Daniel Webster quoted at large on page 32 of
my book. The court will perceive upon examination
of the authorities that the words of our constitution - "Law
of the land" mean a general, uniform enactment
operating alike upon every citizen, resident and inhabi-
-tant of a State, or at least embracing every particular class
of natural or artificial persons to ~~which~~ whom the enact-
-ment applies if it were a general and uniform law -
This rule ought to be extended to every railway corporation
in Illinois. The Galena and Chicago Union railway company
is especially exempted from the operation of the general

rule. That corporation has an ist immunity by virtue of this private act aforesaid. To this just and in conformity with the letter or spirit of any American constitution. This question without further argument I respectfully submit to the candor of this honorable court as a question deserving of ^{its} ~~the~~ serious consideration.

The next ~~exception~~ point in this connection, I submit this further proposition. The rights and liabilities of property holders. The maxim of the common law is "Sic utere tuo ut alienum non laedas" which translated from the latin to our vernacular means, Enjoy your own property in such a manner as not to injure that of another person. (Brooms maxims reported in volume 25 law library page 118 top 160 on the margin where the whole of this doctrine is amply illustrated. It will be perceived that the rule is literally applied to property. But the colliding rights of persons and powers is alike embraced within its spirit. I therefore ~~submit~~ ^{submit} this simple question to the court in concluding this argument. Ought not the human agents conducting a dangerous and controllable motive power like a steam engine, when there is a probability of their coming into collision with the persons and the property of others so manage this extraordinary power as not to commit willful injuries upon such persons and property or omit those reasonable and necessary precautions which if omitted may even by possibility destroy the life injure the person or the property of those human beings that they may happen to come in contact with?

There are some verbal criticisms which may be pretty made upon the ~~to the~~ in reference to the action of the

counsel and court below in the drafting, giving, refusing and modifying the several instructions embodied in this record. I will not detain the court with a critical analysis of and reply to these objections. but simply remind the court of Blackstone's suggestion in reference to judges that they are presumed to know the law and that precedents and arguments are useful only to refresh their memory.

P. S.

May 30. 1859. My amusement was compelled to suspend on account of a dispatch from my wife which will be manifested more fully by a letter which I have this day written by way of explanation to your clerk.

See next page.

The assignment of errors numbered 4 & 5 (upon the printed abstract furnished me) present the question whether the Court below erred in refusing the appellants, a new trial. The reasons stated in that abstract are 1. That the verdict was contrary to the evidence and 2. That the damages awarded were excessive. Of each in their order.

1. Was the verdict against the evidence? In other words, did it conflict? and if so, is there any marked preponderance on either side? The rule of this appellate court, is substantially, that ~~it is~~ it will not examine ordinarily questions of fact, and the weight of evidence, but only those questions of law, which arise upon admitted or undisputed facts. The reasons upon which this rule is founded are familiar to the court, but a reminder may not be useless.

1. This Court cannot confront the witnesses
2. This is the especial province of a jury to determine questions of fact, and of the Court, those of law, which may happen to arise upon the trial of a cause.
3. It imposes an extraordinary burden upon an appellate Court.

Such was the common law, and the reasons therefor

The consequence of which was that all of the appellate Courts of England and the United States laid down the rule that a motion for a new trial was discretionary in the inferior Court; and therefore ~~not~~ its decision thereon could not be assigned for error. Every intendment was made, not only to sustain the jurisdiction, but the various rulings of the Court below, in a given Cause. This rule has been changed by our Statute. Consequently the duty is imposed upon this Court, to examine and determine, the question, whether a given verdict was contrary to the evidence or not. Still the presumptions of the Common Law in favour of the inferior Court and its jury are indulged by this Court; and the rule has been laid down, and inflexibly adhered to that a new trial can only be awarded by an appellate Court. ~~When~~ in cases where.

The verdict is "manifestly and palpably, at fault blush" against the evidence. This was the language of this Court in Slawson v Hobbs 5 Gilw R. . The expressions in the opinion were strong. But the authority of the judgment is much stronger, when it is remembered that the Court in deciding & delivering their opinions, ~~declined~~ declined to weigh the evidence, but but took

especial pains to select such portions of the evidence, as. Tended to sustain the verdict, without noticing the opposing ~~facts~~ proofs. This doctrine was substantially repeated in a Cause reported in 19. Khurist. Again the appellants Counsel does not in his printed points and authorities argue the question that the verdict is against evidence, except incidentally. I am not therefore called upon to argue the question myself, but will do so, in conjunction with this next point, so as to kill two birds with one stone.

2. Are the damages excessive? 3. This is a mixed question of law and fact. What is the law? There is no general rule. Each case depends upon its own peculiar facts. Courts have however laid down the general rule that "Where the damages are excessive, they will grant a new trial." And in deciding each particular case, the judges, in delivering their opinions, have used ~~language which is to be regarded as~~ adjective for the purpose of demonstrating what they conceived to be the meaning of the words "excessive damages". For example.

1. "Outrageous"

2. "Exceeding the bounds of moderation"

3. "Beyond the bounds of justice"
4. "Beyond the established bounds of morality"
5. "Passionate damages"
6. "Partial verdict"
7. "Malicious verdict"

and the like.

They have also attempted to lay down a general rule defining what shall constitute "an excessive verdict". For instance, That where it manifestly appears that the jury, in forming a conclusion upon this point, have gone so far beyond the inquiry actually proven upon the trial; and where by the rules of Law great money is not justifiable, it is manifest that the jury must necessarily have been governed not by the proofs, but by passion growing out of the nature, manner and effect of the injury, and thus translated by ~~sagacity~~ ~~malice~~ or anger or malice beyond the legal vindictiveness or anger, then the verdict must be set aside.

2- That where it appears that the verdict is so excessive that it can only be justified by assuming that the jury must have been partial, prejudiced, or carried away by the eloquence of the advocate, then the verdict will be vacated.

But these propositions are simply to be regarded as land-marks or rather warnings to juries and appellate courts, or guides to each in forming opinions. After all, my rule is the only safe one for a court to adopt, and I will repeat it here.

"The facts of the case."

1. The manner. }

2. The effect } of the injury

Now tested by this rule we are entitled to an affirmance of the judgment upon this point, if any reasonable verdict can be sustained by this Court against a railway Company.

Now let us look at the facts. The verdict rendered by the ~~Railway Co.~~ jury was for \$15,500.00. The appellants moved for a new trial. The Court below in substance overruled the ~~motion~~ motion for a new trial, provided the appellee would remit \$3000.00. This was done, and the verdict and judgment now stand for \$12,500.00 damages awarded by the jury and Court. This course in my estimation was illegal. But inasmuch as the plaintiffs below had no power to assign Cross errors in this Court, and we were compelled to submit to the reduced verdict, on the expense and delay of a new trial; the appellees Counsel submitted to the

arbitrary exaction aforesaid. The overruling of
a motion for a new trial may be assigned for error,
the granting of the motion cannot. The latter order
is still regarded as discretionary. May I not
under these circumstances ask this Court to rebuke,
in pleasant language, the Court below, for this
~~exercise of power~~ assumption of power. True
it is not necessary in this cause, but the
ruling is a wise praiseworthy precedent. But
every bitter has its sweet; and I confidently
rely upon the arbitrary exaction aforesaid, as
conclusive evidence that the verdict, as it
now stands, is not excessive; it has not
only the sanction of the jury below (as
the greater includes the lesser) but that
of the ~~Court~~ above Circuit Court. before whom
the cause was tried. We are therefore entitled
to a double presumption in behalf of the verdict.

But upon the facts. we are in position
to sustain this verdict and judgment according
to legal principles. Now take the strongest
construction of the evidence, in behalf of the
appellee, and what are the facts of the
Case? A railway Company approached
a highway crossing, at a speed of at least
20 miles per hour, which was unusual under
the circumstances. They rang no bell —

1.
Sounded no whistle - and gave no other ~~signal~~
warning signal. To the highway traveller.
The latter was upon a common highway,
and as he was about to cross, discovered
on a sign board, erected by the railway
Co, these warning and promissory words
"Railroad Crossing - Look out for the engine ^{and} Cars
While the bell ~~now~~ rings or whistle sounds"
He heard no sound of a bell or whistle. The
snow deadened the noise of the train in its
speedy approach to the highway. He was in
a top buggy, and his view of the coming
train was obstructed. The highway and
railway did not cross each other at right
angles, but diagonally, but ~~at~~ the degree
~~of~~ is uncertain from the evidence. The intersection
of the highway and railway was ~~at the~~
in a valley. ~~The train~~ The railway train
was going westward, the buggy north east-
ward. Eastward of the highway crossing
the hill was excavated in order to make
a proper grade for the train. The highway was
not. On the brow of the hill, a traveller
could see the approach of a train, by turning
his head from north east to east, if on horseback
or in an uncovered vehicle. But if in a
top buggy, he must in order to see the approach

of the train put out his head and turn his face almost backward. There were scattering trees by the side of the highway. The highway was higher than the railway. The collision took place near sunset. A person on the railway engine could see a highway traveller 2 miles before he reached the crossing. The highway traveller could see the sign board 40 rods from the crossing. The train was behind time. The persons in the top buggy did not see the train before they reached the crossing, nor did they hear them until the collision occurred. The collision took place at the time the horses were past the eastern rail, and while the buggy was ~~traveling~~ athwart the railway track. The horses were uninjured. The buggy demolished. The companion of the appellee seriously injured, and the appellee himself rendered unable for life. So great was the speed of the locomotive, that ~~before it could be brought to a stand~~ it ran 242 1/2 feet westward of the highway crossing before it could be brought to a stand, and then was backed to the place of the collision. Such are the facts in substance as proven upon the trial of this cause in the court below, on the part of the appellee. The only evidence

for the defence, which militates against that
of the appellee, is that of Mrs. Maudslayi & Mr.
Whelan who respectively testify that the
appellee struck his horses and put them
into a gallop, as he reached the crossing.
From this wilfulness is inferred. My answer
is 1. That they resided several hundred yards from
the crossing, and 2 That the probability is
that the appellee had so far reached
the crossing, ~~and~~ ^{that} it was impossible for
him to recede. When he became aware
of the approach of the car. This is
a question of fact, and the law upon
this point was fairly presented to the
jury. Now, under these circumstances
this Court cannot say, that at "first
glance" the verdict was against the
evidence, and it was. "Manifestly &
palpably" wrong. Nor can it be
said that the damages awarded
were excessive. This simple statement
of fact ought to be sufficient upon
each point. as to the new trial. Besides
all this it so happens that the record
shows, tho' the abstract does not, that the
counsel for the appellants in the courts
below. moved to dismiss the writ, after

the evidence for the plaintiff appellant was closed, upon the ground that the appellee was insane, and could not sue in his own name, but must sue in the name of a conservator, guardian or next friend. This motion was overruled, because it was a mere matter of abatement. Now it is now assigned for error.

But one thing is certain, that it may be now treated as an admission by the appellants that the effect of the collision was to render the appellee insane for life. This is true. Is the verdict against evidence under these circumstances, and are the damages excessive? Here I leave

the question of facts in the hands of the Court. In this connection another reason is inferentially assigned by the appellants. Why the damages are excessive, it is, that the Statute of this State only gives \$5000 for killing a human being; and the conclusion drawn from it is, that to render another being insane by a negligent collision ~~is not~~ does not entitle a

partly to greater damages. This objection or rather reason is too futile to require an answer. It is sufficient however to reply, That the Statute is arbitrary, while the common law allows a ~~desc~~ description as to the quantum of damages. I here leave this question as to the ~~quant~~ measure of damages and the allegation that the verdict is against ~~the~~ evidence.

I will discuss briefly one other suggestion of the appellants; i.e., that the appellee was guilty of negligence. The only evidence of this negligence which the appellants rely upon is

1. That the appellee was a contractor upon a branch road of the appellants.
2. That he whipped his horses at the crossing.

Now to these evidences of negligence I respectfully suggest.

1. That there is no evidence that the appellee ever travelled over the crossing in question, or that he knew where it was. Admit that he knew that the highway upon which he

was travelling intersected the railway of the appellants, the evidence does not show that he was aware of this precise point of intersection. Again, with due deference to those Courts which have been silent upon this point, I may be permitted to remark that this signboard of the appellants, at the intersection of the highway in question, constituted a promise to the highway traveller, that if the bell rang, or whistle sounded, he must look ^{out} for himself. No bell did ring or whistle sound in this particular case. And it is evident that the appellee had no warning of the approach of the train, for Miss Wood & Co. stated that they reached the crossing at sunset, that:

1. They did not see the Cars.

2 That they did not hear rumbling of the cars.

3. That they heard no bell ring or whistle sound.

4 They saw the sign-board

They relied upon the signboard promise, that if the railway train approached a crossing they would give the signal indicated upon the sign. The railway Co. neglected

to give the Signal.

2. Miss Wood swears positively that the appellee did not strike the horses upon his approach to the railway crossing. The other ladies, Mrs Wheeler and Mrs Blawie swear that he did. This presents a simple conflict of evidence. Upon whom shall we rely. I answer. Miss Wood was with the appellee, in the buggy, at the time the accident occurred. The other women, were some distance off from the crossing. This question of conflict was fairly presented to the jury, and they sustain by their verdict Miss Wood.

Thus much for the law and facts of the case.

A word or two as to outside pressures, which ought not, under ordinary circumstances to be alluded to, but for the protection of my client's interests. I deem it absolutely essential to state them to this appellate Court.

1. It has so happened that this Court has almost uniformly decided Railway

Causes in behalf of the railway. Whether the facts and laws of each particular Case justified the decision I have, not taken the pains to examine; nor do I care to do so. But it is evident that there is a popular complaint against the Court upon this topic or class of Cases. This vein of the matter has led me to argue this particular Case more at large than I would under ordinary circumstances. Not that I suspect the Court of partiality or ~~any~~ prejudice, but because my clients' interests seem to demand the suggestion.

2. Mr. Peck the Reporter ~~and~~ of this Court, and Clerk of the Council Chamber, and who is usual present at Consultations, is the regularly employed attorney of the appellants, and attends to the lobbying interests of that Co. in the legislature. This I remark creates a very natural suspicion upon my mind. But I will add that I do not doubt the integrity of the Court, nor do I wish to censure Mr. Peck. - he however occupies a position - in a double capacity - which induces

me to make these suggestions.

3. Again. The case was not argued orally. Mr Peck, your reporter, has filed no written or printed argument in extenso, but contents himself with a simple ~~compliance~~ Compliance with the rule of this Court. ~~This course~~ I have demanded of him his written argument, which I had a right to do because ~~he~~ I permitted the case to be submitted upon a written or printed argument, when I had a right, upon the second call of the docket to ~~dismiss~~ the cause. Mr P. wrote an argument, handed it to me, and before I had time to read and answer it, he demanded its return; his only justification was that he did not intend to file it. In a case of this ~~importance~~ importance, involving \$12,500.00 this course was unusual.

With these concluding remarks I respectfully submit this argument, and trust that this honorable Court will take no offence at my frank suggestions.

W B Blackwell
att'y for appellee.

1853
The Galena &
Chicago Union.
R R Co.

vs E
Molehill

Argument of
J A Blackwell
for the appellee

Filed May 31, 1859
L Lelan

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

THE GALENA AND CHICAGO
UNION RAIL ROAD COMPANY,

vs.

JOHN C. DILL.

The testimony of Dodson was improperly admitted; its only effect was to prejudice the Jury against the defendant. Dodson was a stranger to both parties, not authorized to make or receive propositions; he was an intermeddler, and if his propositions had been acceded to, Dill would not have been bound by it.

The President of the company was not employed to make admissions, or Mr. Dodson to receive them.

2 Dues Repts., 341.

Dill was himself the author of his injury. He had been in the employ of the same company, on a branch of the same road, near the place of the collision. He had been driving for some time, near the rail road, and knew he was approaching it; his companion, Miss Wood, says they saw the sign over the carriage road; he hastened his horses by whipping them, and rushed carelessly into the danger.

4 Zabriskie, 268.

19 Georgia 440.

Rock Island R R Co. vs. Still, 19 Ill, 499.

24 Penn. State Rep. 465.

19 ditto, 298.

1 Dutcher's Rep., 556.

21 Barbour's Rep., 339.

25 ditto, 600.

8 Carr and Payne, 435 and 485.

12 Metcalf 415
22 Barbour 574

The first and second instructions for plaintiff below, declare that Dill had the superior right to the use of the highway at the rail road crossing, and that all diligence and care was to come from the company, and were, therefore, wrong.

The second instruction, by using the words "and was proper," left the jury to decide what was proper, without any proof to guide them. There is no evidence that the train was running faster than the time table required, or at an unusual or improper speed. There was no proof as to the "reasonable distance" of the crossing where a bell or whistle should be sounded; the distance was left to the caprice of the jury.

Chic. and M. R. R. Co. vs. Patchin, 16 Ill., 198.

4 Zabriskie, 268.

The third instruction implies that because Dill was riding in a top buggy, he was, therefore, entitled to claim more attention from the Rail Road Company; whereas he ought to have been, for that reason, all the more vigilant. Such an instruction furnished an excuse for his carelessness, and implied that the plaintiff in error was bound to observe an extraordinary regard for his safety. This was erroneous.

21 Barbour, 339.

The fourth instruction was so drawn as to mislead the jury, by implying various excuses for the conduct of Dill; and if the supposed facts or cases existed, then his negligence was to be overlooked, and the company made liable.

6 B & O R R Co v George 14th Ill. 570
Since the preparation of these points Mr. Blackwell
says, that what I termed the fourth instruction was a
part of the third - so be it - it makes no difference -

The fifth instruction directed the jury that the plaintiff in error, in approaching the crossing of a highway, must use reasonable care and diligence. This is too uncertain, and left too wide a range for a jury. Rail road cars, in motion, are constantly approaching highways, and unless required by statute to give a signal, are not bound to use extraordinary diligence at such places. It is presumed that persons using the highway will remove themselves from danger, rather than remain to encounter it, or place themselves in jeopardy. The cars cannot deviate from the track; other vehicles can. One is bound by an iron rule to a single direction; the other can move in any direction, at the pleasure of the party driving. Ordinary vehicles can halt almost instantly; a rail road train cannot. The traveler on the common road is warned by the sign.

4th. Zabriskie, 268.

The sixth instruction was a mere suggestion to the jury that a large verdict might be given. There was no evidence or presumption of malice or criminal negligence; and this instruction was negatively drawn, to convey an affirmative suggestion to the jury, and designed to defeat the very object it affected to protect.

The seventh instruction is of the same character. There was no proof that Dill had any property injured by the collision; but the proof was that the property injured, belonged to the witness, Marshal Clarke.

10 McAllister 510

The first and second instructions asked for by defendant below, were proper as asked, and the court below erred in weakening or diluting the *my* modification of them by the court, was improper.

4 Zabriskie. *268*

The sixth instruction asked by defendant below, was proper. The legislature had granted an immunity to this company, and it was entitled to the benefit of that immunity. This company was not by law required or bound to ring a bell or blow a whistle, before arriving at a road crossing. See Session Laws of 1854, p. 165.

The seventh instruction was proper as asked, and should have been given; it was designed to overcome any wrong impressions created on the minds of the Jury by the testimony of Dodson.

The eighth instruction asked by defendant, and which the court refused, was certainly proper; it is almost the language used in the opinion of the court in Patchin's case.

See this case in 16th Ill., 198.

4 Zabriskie, 268.

1 Dutcher, 556.

19 Penn. State Rep., 298.

The damages were excessive. Such unreasonable verdicts would, if *they* could so operate, invite the rail road companies to kill; on the score of economy the inducement would be strong.

3d Sanford's Rep., 19.

12 Barbour, 492.

C. B. & Q. R. R. Co. vs. Parks, 18th Ill.

Deck for appeal

No 58-153

The Galena & Chicago
River R.R. Company

or

Dill

Prints & authorities
of appellants

Chief Justice Caber

Filed May 21. 1859

L. Leland
Clerk

Argument of B F. Bradley for Dill
Answer to the points made by the Rail
Road Company

Third Point - There was no admission made
by the officers of the Rail Road Company
procured by Jackson, Jackson says that
he made a suggestion to Turner when
he called the officer of the road came in said
he could prove that the signal was
given before the buggy was struck.
Jackson's evidence is material from
the County road for many years known
Dill says he was a healthy man and
foreman on the Rail Road (See Jackson's
evidence it is short.)

Answer to R R Co Points

2nd Fact Dill was not the author of his Injuries
He never was employed By The R R Co
on a Branch of the Same Road or other
swin The evidence is that Dill was
foreman under the contract on the
~~the~~ Airline. Miss Wood Did not
swain that Dill Whipped his Horses
But swears positively that Dill did
not Whipp his Horses at the crossing
Road miss Wood evidence it is short

3rd Fact 1 + 2 The first + Second Instruction for
Dill Does not declare that Dill had
the Superior Right to use the highway
(as is in the Points + Relief of the R R Co
assumed) it is only necessary to read
them

4th Fact The third instruction Does not
imply Because Dill was riding
in a top Buggy he was to claim
more attention from the R R Co
the R R Co could see a top Buggy
farther than without top (the Court
will ^{see} By the evidence that Dill was
going to Elgin the cars was also going
to Elgin the Both going to the same
Point the Locomotive + Train came
up on the Back of Dill + Behind the

Buggy of course the Buggy Top would
prevent Bill from Looking Back
Has a man a Right to use
a top Buggy and nearly or must
be Ride Backwards with the top
Down to watch for the Train

6th Point The point of the Rail Road Company made on the 5th instruction for ~~the~~ side, It is only necessary for the Court to ~~look~~ read the ~~5th instruction~~ first instruction the point assumes that the Court must tell the jury what is reasonable care and ~~diligence~~ diligence

7th The points made on the 6th & 7th instructions for side It is only necessary for the Court to read the instructions

8th The first instruction asked for by Rail Road was properly modified by the Court The instruction as asked, presumed to tell the jury what negligence was The jury are to pass upon the facts The 2^d instruction was given as asked for by Rail Road The Rail Road Company are attempting to cheat the Court in the record

9th The Point made by the Rail Road Company on their 6th instruction as asked for that the legislature had granted them an immunity and therefore

all persons traveling there must
keep out of the way Now this
is not the case Rail Road Corporation
have no Natural rights equal to
that of the Citizen They have no
rights by law as against the
Citizens traveling upon the Highway
in the ordinary manner The High-
way had been condemned and paid
for by the Citizens, did as one of them
and they had a right to continue to
use it - ordinarily and the right
of the R R Co was secondary to
the right of the Citizen did the
R R Co ever condemn the land
of the Highway and pay the
Citizens therefor and thereby get
a better right than did any
any other Citizen to use it - This
the Court knows is not so Now
is it sufficient for the Court to
say that Bill would not have
been injured if he had not been
upon the Rail Road track
or that he might have watched
and kept out of the way of the
cars, would that be a sufficient
cause to decide against him
and if so decided would such a
decision alter the great fundamental

principles of the case and takes away
every right of other citizens to use
the highway in an ordinary manner.
It is bad enough to say that all
persons must stand back and
surrender their rights to the highway
as the case
at the ringing of the bell as
summing of the whistle of the Rail
Road Company. The Court in Suit
6th instruction did tell the jury that
the Rail Road Company were not
bound to ring a bell or blow a
whistle. The instruction reads right as
modeled and calculated to mislead
the jury as asked for originally.

16th The 7th instruction asked for by R R Company
was given precisely as asked for by
~~the Rail Road Company, The 7th instruction for~~
~~was a correct instruction of the law, no~~
~~error the request to give an instruction~~
~~was given is a case found upon~~
~~the Court~~
~~damages~~

11th The 8th instruction asked for
by R R Company contains an abstract
proposition of law which should not
be applied to a Rail Road cropping a
highway. Can this Court say that Speed of
from 25 to 30 miles per hour is
reasonable in cropping a highway.

by a Rail Road Company is no
proof of negligence as is that left to the
jury

12th The Rail Road Company say the
damages were excessive, That such
verdict would make the Rail Road
Companies to kill on the Loan of
Conscience If this rule has been
adopted by the Rail Road Companies
it goes far to explain the evidence of
Doolson They wanted Bill to die They
would not put him in a hospital
Is it to be said that it is improper to speak
to the President of the Road on
important business of the R R Company
this is what they complain of in one
part of Doolson's evidence The damages
are not excessive, The jury found a
verdict of fifteen thousand five hundred
dollars \$15,500, Judge Newman after
taking the matter under advisement
compels Bill to limit three thousand
dollars Now we have the jury not
of the Court who found the case
as well as the jury upon that
subject - We are compelled to take
the thousand dollars less than

what the jury thought that
Bill should know. We are only
narrowing down what the jury
would have found had he power
to have tried the case for the
purpose of finding the amount of
damages. Judge Monahan was not
president in favor of Bill because
he must have made a strong collection
on what the brains of a man
was worth either by the best
or pound. The evidence is that
Bill is injured in his intellect
that he is badly disfigured in his
face by scars and wounds that
his collar bone which was broken
is held up on a cup so that
he is disfigured and deformed
that he cannot turn his head without
turning his whole body that he was
a young healthy man twenty four
years old, that he was a man
of intellect and energy of character
that he was employed as an
overman to direct work and instruct
intellect to others. Now he is not able
to take care of himself in body or in
mind. None talk to me about

excessive damages based
the strong point - that the Rail
Road Company made in the
Court below as the usual damages
was that Dill had been so injured
in mind and body that he was
incapable of bringing suit - But
that point is abandoned
in this Court - the Rail Road
Company have not noticed
it - leaving their point -

P. H. Fridley
Attorney for Dill

~~22256~~ 150/53
Galena & Chicago
Union R.R. Co

Key vs. E. J.
B. F. Friday
Pro Se

Argument of
B. F. Friday
for the appellee

Filed May 31. 1859
L. Leland
clerk

Galeus & Chicago R R Co. } Appeal from Cook
vs. } County Court of
John L. Bell } Common Pleas.

In the Supreme Court of Illinois
Third Grand Division

Robert S. Blackwell being duly sworn
deposes & says that he was Counsel
and attorney of the defendant in
this Court below & now is in this
Court in conjunction with B. F. Bradley
Esq.; that he has examined the
record in this cause, and from
his memory as to the facts which
transpired upon the trial below is
of opinion that a true copy of
the instructions of the Court below
are not embodied in this record.
Therefore moves for a special
certiorari.

Robert S. Blackwell

Subscribed & sworn to
April 26 1859.

L. Leland Clerk.

By J. B. Rice Deputy

No. 58-1513

Galena & Chicago
Union Rail Road Co

by
Jake B. Dill

Attest.

Filed April 26. 1879

L. Leland
Clerk

And now comes the said appellant
and says that in the said
record and proceedings there
are manifold errors apparent
on the face of said record, which
should be and are good causes
for reversing said judgment, and
assigns the following -

- 1 The Court ~~below~~ permitted improper
evidence to be given on the part of the
plaintiff in the Court below.
- 2 The Circuit Court gave improper instructions
on the part of the plaintiff.
- 3 The Circuit Court refused to give proper
instructions on the part of the defendant
below.
- 4 The Circuit Court improperly overruled
the motion for a new trial.
- 5 The Circuit Court should have set
aside the verdict, because the verdict
was contrary to law and evidence, and
because the damages were excessive.

Edw. C. Peck
for appellee.

In mulla est oratione

Reception H. Friday 18
J. H. Macdowell
Genl. J. J. Dece

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George M. Munroe

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
Ninth Monday, (being the second day) of
March in the year of our Lord one thousand eight hundred and
fifty seven and of the Independence of the said United States the
Eighty Ninth

Present, Honorable George M. Munroe Judge of the 7th Judicial
Circuit of the State of Illinois.

Charles J. Hefner
John A. Nelson States Attorney.
John S. Wilson Sheriff of Cook County.

Attest; Paul L. Church Clerk.

Be it remembered that heretofore to wit, on
the tenth day of December in the year of our
Lord one thousand eight hundred and fifty
five there was filed in the office of the Clerk of
the Circuit Court in and for the County of
Cook in the State of Illinois a certain copy of
a record certified by the Clerk of the Circuit
Court of Kane County in the State aforesaid,
which record is in the words and figures follow-
ing, to wit,

United States of America }
State of Illinois Kane County }

Plas before the
Honorable Isaac G. Wilson Judge of the
thirteenth Judicial Circuit & presiding judge
of the Kane County Circuit Court of the State
of Illinois at a term of said Court begun and
held at the Court House in Geneva in said
County on the fifth day of November in the
year of our Lord one thousand eight hun-
dred and fifty five

Present the Hon. Isaac G. Wilson Judge

Mr. M. Boyce State Attorney

Lawrence P. Barker Sheriff

Attest L. Dearborn Clerk

Be it remembered
that afterwards, to wit, on the 17th day of

November A. D. 1855 the same being one of the days of the November Term A. D. 1855 of the said Kane County Circuit Court the following among other proceedings in said Court were had and entered of Record in the words and figures following, to wit,

John C. Dill
 74 vs.
 The Galena & Chicago
 U. Rail Road Company } Case

The venue in this case is changed to the Cook County Circuit Court on account of the Judge of this Court being interested in the subject matter of this suit.

State of Illinois } ss.
 Kane County }

I Luther Dearborn Clerk of the Circuit Court in and for said County in said State do certify that the above and foregoing is a true and complete abstract of all the proceedings had in the above entitled cause as appears from the records of said Court. I also further certify that the accompanying papers marked respectively "A" "B" "C" "D" & "E" are all of the papers appertaining to said cause as appears from the files of said Court.



In witness whereof I have hereunto set my
hand and the seal of said Court
at Geneva this 5th day of December
A. D. 1855

Luther Dearborn
Clerk.

And afterwards, to wit, on the day and
year aforesaid (to wit, December 10th 1855) there
was filed in the office of the Clerk of the Court
first aforesaid a certain precept, being one
of the papers referred to in the certificate to
the record aforesaid, which is in the words
and figures following to wit;

John C. Dill
vs.
The Galena and
Chicago Union
Rail Road Company

Kane County Circuit
Court May Term
A. D. 1855

The Clerk of said Court
will please to issue a summons in the
above entitled cause in an action upon
the case Damage Twenty Thousand Dollars
To the Sheriff of Kane County

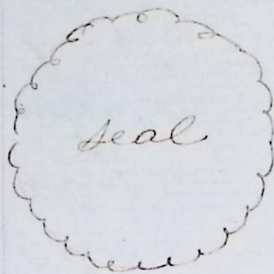
Blackwell & Fridley
(Attys. for Plaintiff)

4
And afterwards, to wit, on the day and
year aforesaid, (to wit, December 10, 1855) there
was filed in the office of the Clerk of the
Court first aforesaid a certain process of sum-
mons, being one of the papers referred to in the
certificate to the record aforesaid which is in
the words and figures following to wit,

State of Illinois }
Kane County } ss.

The People of the State of
Illinois to the Sheriff of said County, Greeting
We command you that you summon the
Galena & Chicago Union Rail Road Com-
pany 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 Geneva in said County, on the
second Monday of May next, to answer unto
John C. Dill in a plea of action on the case
to the damage of said plaintiff as he says
in the sum of Twenty Thousand Dollars.
And have you then and there this writ,
with an endorsement thereon in what
manner you shall have executed the
same.

Witness, Luther Dearborn,



Clerk of our said Court, and the
seal thereof at Geneva, in said
County this 2nd day of May.

A. D. 1855

Luther Dearborn Clerk

On the aforesaid writ appears the following
endorsement, to wit, "Executed this 3rd day of
"May by reading to Frederick C. Parmley con-
"ductor on the Galena & Chicago Union Rail
"Road and by giving him a copy of the within
"summons

"J. P. Barker

Sheriff of Kane County"

And afterwards, to wit, on the day and
year aforesaid (to wit, December 10th 1855) there
was filed in the office of the Clerk of the Court
first aforesaid a certain declaration, being
one of the same papers referred to in the certi-
ficate to the record aforesaid, which is in
the words and figures following, to wit,

State of Illinois } ss. Of the May Term of the
Kane County } Kane County Circuit Court
in the year of our Lord one
Thousand Eight hundred and fifty five.

The Galena and Chicago Union Rail Road Company were summoned to answer unto John C. Dill in an action upon the case and thereupon the said John C. Dill by Blackwell and Fiedley his attorneys complain

For that whereas the said defendants heretofore to wit, on the first day of June in the year of our Lord one thousand eight hundred and fifty four, at the County of Kane aforesaid were a body corporate and politic duly incorporated under the laws of the State of Illinois and then and there had the exclusive use, management and ownership of a certain Railway or Rail road commonly known and designated as the Galena and Chicago Union Railroad, that in the County of Kane aforesaid, through which the said Railroad was constructed and operated there was a certain common and public highway leading from the Town of Elgin in said County to the Town of Geneva in the same County, which was then and there intersected and crossed by the said Railway, which said common and public highway was then and there used for all of the People of the said State of Illinois with their Horses, Coaches, Carts, Carriages, Suggies and other vehicles to go, return, pass, repass, ride and labour upon at their free

will and pleasure, that the said plaintiff was then and there travelling and passing along said highway in a certain vehicle called a buggy drawn by two horses, the said plaintiff and a lady being then and there in said Buggy and were then and there upon that portion of said highway which was intersected and crossed by the said Railway and were then and there in the act of crossing the said railway with all reasonable care diligence and speed, and the said plaintiff avers, that a Locomotive with a train of passenger cars attached thereto and belonging to and under the management and direction of the agents of the said defendants ~~were~~ ^{were} then and there passing along said railway approaching the said crossing of the said highway without the knowledge of the said plaintiff, that it then and there became and was the duty of the said defendants to ring the bell or blow the whistle attached to the said locomotive at least eighty rods from and before the said locomotive and train reached said crossing of the said highway and it also then and there became and was the duty of the said defendants to slacken the speed of their said locomotive and train and approach the said crossing of the said highway slowly and cautiously and the

said plaintiff avers that the said defendants by their servants in charge of the said locomotive and train there and there so negligently, carelessly and improperly managed and conducted the said locomotive and train in the approach to and crossing of said highway by not slackening the speed of the said Locomotive and train and by giving no warning as aforesaid nor otherwise of the approach of the said locomotive and train to the said Plaintiff who was then and there upon the said crossing of the said railway over the said Highway, in the said Buggy drawn by the said horses that the said locomotive came into contact with and ran against the said buggy and utterly destroyed and rendered the same worthless and of no value and then and there with all the power and violence of a locomotive and train thereto attached forced and threw the said plaintiff out of the said buggy into the air to a great height, to wit, to the height of fifty feet and the said plaintiff then and there came down from the said height with great force and violence and fell upon the cow catcher attached to and in front of the said locomotive and was then and there dragged and carried upon said cow catcher for the distance of about forty rods, and in and by said fall the

said plaintiff was then and there greatly injured
bruised, wounded and otherwise ill treated, and
the said plaintiff then and there received by means
of said collision and fall severe and lasting in-
ternal bodily injuries, and the said plaintiff
then and there by means of the premises became
sick and languished for a long space of time
to wit, from the said first day of June thence hith-
erto. and the said plaintiff then and there by
means of the said collision fall and injuries
became and has ever since remained stupidified
and diseased and deranged in mind and
body from the effects of which he can never
entirely recover. And the said plaintiff avers
that by means of the premises aforesaid he has
been necessarily forced to pay, lay out and expend
a large sum of money to wit, the sum of Five
hundred dollars to the owners of the said
buggy from whom he hired the same, and
the further sum of Three hundred dollars
for his board, nursing care and attendance
from the day of said injuries until the com-
mencement of this suit and the further sum
of Five hundred dollars for Medicines and
the service and attendance of Physicians, sur-
geons and nurses used and employed in
and about the curing, management, care
and attendance upon said plaintiff, and

the said plaintiff further avers that he has been greatly and permanently injured in body and mind and also suffered great bodily pain and anguish in ~~consequence~~ consequence of the collision and injuries aforesaid and the said plaintiff by means of the premises has been and is otherwise much injured and damaged therein to wit, at the County aforesaid to the damage of the said plaintiff Twenty thousand dollars and therefore he brings ^{this} suit

vc,

Fridley & Blackwell
 (Plffs. Attorney)

And afterwards, to wit, on the day and year aforesaid (to wit, December 10th 1888) there was filed in the office of the Clerk of the Court first aforesaid a certain bond for costs, being one of the same papers referred to in the certificate to the aforesaid record which is in the words and figures following to wit,

State of Illinois	{	do.	Flame County
Flame County			Circuit Court.

John C. Dill

vs.

The Galena & Chicago
 Union Rail Road Company

} action on the case

I do hereby enter myself security for
costs in this cause and acknowledge myself
bound to pay or cause to be paid all costs which
may accrue in this action either to the opposite
party or to any of the officers of this Court in
pursuance of the Law of this State
Dated this first day of May A.D. 1855

J. Wood

And afterwards, to wit, on the day and year
aforesaid (to wit, December 10th A.D. 1855) there was
filed in the office of the Clerk of the Court first
aforesaid certain Pleas, being one of the same pa-
pers referred to in the certificate of the record afore-
said, which is in the words and figures following
to wit,

Galena & Chicago
Union P. R. Co.

vs

John C. Dill

Same Circuit Court
May Term A.D. 1855

And the said defendants by
Plato their attorney come and defend the wrong
and injury when &c. and say that they are not
guilty of the said supposed grievances above
laid to their charge or any or either of them
in manner and form as the said plaintiff
has above &c. thereof complained against

them and of this they put themselves upon the
County vs.

W. B. Plato

Atty. of Defts

And the said
Plaintiff doth the like
by Blackwell & Fridley
their Attornies.

And afterwards to wit, at the November
Term of the said Court in the year of our Lord one
thousand eight hundred and fifty six to wit, on
the third day of December in the year last aforesaid
the following among other proceedings in said
Court were had and entered of record to wit,

227 John C. Dill
vs. } Case
Galena & Chicago Union
Rail Road Company }

It is Ordered by the
Court that this Cause stand continued until
to-morrow morning

And afterwards to wit, on the fourth
day of December in the year last aforesaid
and of the Term of said Court last aforesaid
the following proceedings among others
in said Court were had and entered of
record therein to wit,

227 John C. Dill
vs.
Galena & Chicago Union
Rail Road Company } Case

And now comes the
said defendant by its attorney and on motion
it is ordered by the Court that this Cause be con-
tinued at the costs of the said defendant until
Monday next.

And afterwards to wit, on the eighth day of
December in the year last aforesaid, and of the same
Term of the Court last aforesaid the following pro-
ceedings among others in said Court were had
and entered of record therein to wit,

227 John C. Dill
vs.
Galena & Chicago Union
Rail Road Company } Case

This day again comes
the said Plaintiff by Blackwell and Fridley his
attorneys and thereupon also comes the said
defendant by Peck and Farnsworth its attorney
and issue being joined in this cause, It is ordered
that a jury come. Whereupon come the jurors
of a jury of good & lawful men, to wit, B. F.
McCarthy, James Turner, C. A. Hainer, J. C.
Knights, Christian Olson, H. Skwood, Henry

Hammon, A. W. Segner, E. C. Stevens, W. F. Robinson, William Justice & Eugene P. Bisbee who being duly elected, tried and sworn well and truly to try the issue aforesaid, after hearing the evidence adduced, arguments of counsel and instructions of the Court, retire to consider of their verdict, and afterwards return into Court and say, We the Jury find for the plaintiff and assess his damages herein to the sum of Fifteen thousand and five hundred Dollars, and there^{upon} the said defendant enters its motion herein for a new trial of this Cause.

And afterwards, to wit, at the March Vacation Term of the said Court for the year of our Lord One thousand eight hundred and fifty seven, to wit, on the twenty seventh day of March in the year last aforesaid the following proceedings among others in said Court were had and entered of record therein, to wit,

147 John C. Dill
vs.
Galena & Chicago Union
Rail Road Company } Case

And now come the said parties by their respective Attorneys and the Court having heard Counsel on the motion of the said Defendant for a new trial of this Cause made and entered herein at the last

November Term of this Court, and having had the same under advisement and due consideration being thereupon had and the premises being now well considered and fully understood doth order a new trial of this cause unless the said plaintiff will remit three thousand dollars of the verdict of the jury aforesaid and consent to take judgment for the sum of Twelve thousand and five hundred dollars. And thereupon the said plaintiff by his counsel comes and fully remits the said sum of Three thousand dollars of the verdict of the jury aforesaid and consents to a judgment for the sum of Twelve thousand and five hundred dollars. Whereupon the motion of the said defendant for a new trial is hereby overruled by the Court and to the ruling of the Court in overruling their said motion the said defendant by its attorney now here accepts.

And afterwards to wit, on the first day of April in the year last aforesaid and of the term of said Court last aforesaid the following proceedings among others in said Court were had and entered of record therein to wit,

147
John C. Dill
vs.
Galena & Chicago Union
Rail Road Company } Case.

This day again come the said parties by their respective Attorneys and the said plaintiff having at a former day entered his remittitur of three thousand dollars of the verdict of the jury and consented to a judgment for the sum of Twelve thousand and five hundred dollars in this cause.

Therefore it is ordered and considered by the Court that the said plaintiff do have and recover of the said Galena & Chicago Union Rail Road Company defendant as aforesaid the sum of twelve thousand & five hundred Dollars in form aforesaid, together with his costs and charges by him in this behalf expended and that he have execution therefor.

Whereupon the said defendant by its Attorney excepts to the form of the judgment and prays an appeal to the Supreme Court of the State of Illinois, which is allowed on condition that said defendant file a bond within seven days in the penal sum of twenty five thousand dollars with William H. Brown or William M. Larabee as surety conditioned as the law directs.

And afterwards, to wit, on the third day of April in the year last aforesaid the said defendant filed its certain appeal bond in the office of the Clerk of the Court aforesaid.

which bond is in the words and figures following
to wit,

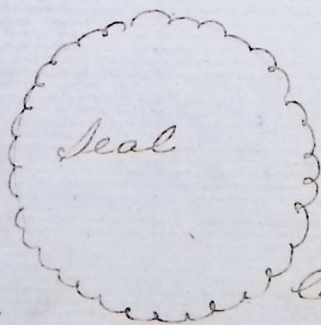
Know all men by these presents that the
Galena and Chicago Union Rail Road Company
a body politic and corporate of the State of Illinois
the principal office of which is in the City of
Chicago, in the County of Cook, in the State of
Illinois, and William M. Larabee of the said
County and State are held and firmly bound
unto John C. Dill in the penal sum of twenty
five thousand dollars current money of the
United States, for the payment of which
well and truly to be made we bind the said
Galena and Chicago Union Rail Road Com-
pany and its successors, and the said William
M. Larabee binds himself, his heirs, executors
and administrators jointly, severally and
firmly by these presents as witness the corpo-
rate seal of the said Galena and Chicago Union
Rail Road Company and the signatures of
the President and Secretary thereof and the
hand and seal of the said William M. Larabee
this fourth day of April A. D. 1857

The condition of the above obligation
is such, that whereas the said John C. Dill did
on the first day of April A. D. 1857 in the Circuit
Court in and for the County and State afore-
said recover a judgment against the above

bounden Galena and Chicago Union Rail Road Company for the sum of twelve thousand and five hundred dollars damages together with the costs of suit, from which said judgment of the said Circuit Court the said Galena and Chicago Union Rail Road Company has prayed for and obtained an appeal to the Supreme Court of said State,

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

John B. Turner President
of the Galena & Chicago Union R.R.C.



W. M. Larabee

seal

Attest

W. M. Larabee

Secretary

And affirmed Taken and entered
into before me this day of April A. D. 1857

And afterwards to wit, on the thirtieth day of May in the year last aforesaid the said defendant filed in the office of the Clerk of the Court aforesaid its certain Bill of exceptions which is in the words and figures following to wit,

Jno. C. Dill

vs.

In the Cook Circuit Court

Galena & Chicago Union

Rail Road Company

X

Be it remembered that on the trial of this case the said Plaintiff Jno. C. Dill to maintain and prove the issue on his part gave in evidence the following testimony, to wit,

Testimony of Elijah Wilcox

Resides at Elgin. was about the twenty third of December eighteen hundred and fifty four on the train from Elgin to Chicago, the train ran over a carriage with a gentleman and lady two miles East of Clinton near Mr. Wheeler's house, this side of Elgin. The man in the carriage was a stranger to me, they called his name Dill. The train was going West, the carriage very nearly North. We stayed at this point on account of the accident about half an hour. The first I saw was the horses cleared from the carriage running towards Mr. Wheeler's. I went forward and saw the man and got him into the cars or train -

The Plaintiff was insensible, almost lifeless, apparently so.

I did not suppose he would live to get to Elgin. He was injured about the head and shoulders, and his leg was cut, no bones broken or fractured.

I thought the head was the worst injured. I had never seen him before.

Was in the cars when the accident happened. Did not leave my seat till car was about stopping. We were running at pretty good speed.

Don't know whether train was behind time or not. Had not heard any agent of the Company say that the train was behind time.

The road upon which Dill travelled has been a public highway since 1839.

The road has been repaired and kept open. The road went from St. Charles to Elgin.

The train was running pretty fast, it was a down grade.

Did not hear any signal before they approached the crossing.

Heard a whistle or bell at the time ~~of~~ crossing or soon after.

Can't say whether it was a bell or whistle, it was one or the other.

The collision was just about the time I heard the sound.

There was something startled us all.

I was informed very soon after the collision of what had taken place.

The crossing could be seen quite a distance. I should think two miles, perhaps more.

There was no obstruction between the railroad track and crossing.

The plaintiff was in a top buggy.

On the highway there may be a few scattering trees. The wagon road is a little higher than the railroad. No cut in the railroad before it approaches the crossing. Dill was carried from fifteen to twenty rods from the crossing.

The buggy was completely demolished, broken all to pieces.

The train passed beyond the wagon road and then backed up to the crossing.

The lady was injured. She was insensible.

The Plaintiff was utterly unconscious.

This crossing was five or six miles from Geneva.

An cross Examination

The wagon road was higher than the railroad for forty rods.

The rail-way was visible from the wagon road for forty rods.

The accident was near sun set.

I think there was a sign-board over the wagon road reading "Look out for the cars or engine"

while the bell rings, or whistle sounds."

This could be seen for about forty rods on the wagon road.

An Re-examination

The a person on the look-out on the engine could see the buggy two miles.

A person in the buggy could see the train approaching for two miles.

The distance between the wagon road and the rail-road when at two miles from the crossing was from half to three quarters of a mile.

The train was running about twenty miles an hour. Horses and buggy usually go from seven to eight miles an hour.

The people in the buggy could have seen the cars far rods off by looking across or back.

If the top of the buggy was up they could not see the rail-road ^{to cut} without turning their heads around.

This occurred a little before Christmas, the ground was frozen.

An Cross-examination

When the wagon road was within forty rods of the crossing the roads were thirty five rods apart.

Cars can always be heard at any house night or day, forty rods off. I live on the road.

I cannot conceive of anything to prevent those in the buggy from hearing the cars except the

creaking of the buggy wheels in the sand.

There is no difficulty at all in hearing trains half a mile off.

Testimony of Luther Dearborn

I was on the same train with Mr. Wilcox the first I saw of Dill after the train stopped, he was sitting in the bench supported by two men I didn't see the horses at all.

I didn't know when the cars struck the carriage. There was no collision at all that I perceived nothing to indicate it.

I heard a whistle. Could not state positively about blowing the whistle. The first thing I heard was the whistle. The windows were sweaty. Rubbed off the sweat on the windows.

The brakemen sprung to their breaks.

Whether the whistle sounded before or after the crossing can't state.

Saw the plaintiff from three to four minutes after.

The Plaintiff was from a hundred to a hundred and fifty feet ^{beyond} the crossing when I first saw him.

When I first heard the whistle it was at or near the crossing.

I did not hear anything about the train being behind time.

The train was running from twenty to twenty

five miles an hour.

(Dill was taken in the cars to Elgin. I was going from Chicago to Elgin.

On Cross examination

I have travelled the wagon road often. The roads half a mile from the crossing would be from a third to a quarter of a mile apart.

I live on the rail-road. In ordinary times can hear the trains approaching for half a mile.

On Re-examination

Train makes less noise when the ground is frozen than at other times.

Testimony of B. W. Ranstead

Was upon the train of cars — Saw a man upon the ground whom they said was Mr. Dill. He was badly hurt.

He was put into the cars and taken to Elgin. The cars were going twenty or twenty five miles per hour.

I heard no bell or whistle until they gave the signal to break up.

I should think that the locomotive had crossed the road before they gave the signal. Mr. Tail the conductor after they started for Elgin said they were behind their time from one half to one quarter of an hour.

~~had the boxes of the engine on the cow catcher.~~

(To the admission of which testimony as to the declaration of the conductor, the Defendant by its attorney objected. The Court overruled the objection at the time to which of the Court the Defendant then there excepted and allowed the testimony to go to the jury but

the Court subsequently directed the jury not to consider any admissions of Tail except such as were made at the time of the accident.)

Testimony of Marshal Clark

Knew the Plaintiff, had known him for nearly two years at Geneva.

He was an overseer on the rail road when I first knew him.

I hitched up the team for him. He had two horses and a top-buggy, they belonged to me, the top was up. The weather was inclined to be stormy.

Miss Wood was with him in the buggy. I next saw the buggy after the collision; it was broken all to pieces.

One piece of the buggy was from seventy to eighty rods from the crossing. It was a new buggy.

I went the next day and saw it.

I found my horses in Wheeler's barn.

I was accustomed to drive these horses near locomotives. One was sensitive the other was not. A man must put himself forward in the buggy to see the track.

The buggy was worth one hundred and seventy five dollars.

Dill was twenty five or twenty seven years old. He started to go to Elgin.

I next saw Dill the next day on his bed at Elgin. He was crazy and made a good deal of noise. Did not know me or anything at all. I saw him a week afterwards, he was not so raving. Three weeks after I saw him, he did not know me. I did not see him again until he was brought to Geneva. I never saw him in his right mind after. He had scars on his head and body and a bad cut about his eye.

On Cross Examination

He had a gang of hands grading on the railroad when I first knew him, on the Fulton Air Line road. He was a conductor on a railroad in Indiana. Dill lived at Geneva. The summer and fall he was there frequently.

Dill started for Elgin about Three O'clock in the afternoon - It was a little misty did not rain or snow.

Testimony of Joshua Testhill

Was on the train at the time of collision.

I did not see Dill until he was picked up and laid in the car. I did not hear any whistle or bell at any time.

The lady was, when I got out of the cars, on her

feet. The man was unconscious. The horses were standing at the crossing when we backed down, they then ran off to Wheeler's.

I recognized Dill on the cars. I had known him before. Saw his wounds dressed.

He was unconscious. He was very badly hurt, ^{about the head}. He breathed and that was about all. I gave him a restorative from a flask of brandy cock-tail which helped him. I think without this he would not have lived until we got to Elgin. He was a hearty man before. I worked with him every day all the summer before.

I saw him a week after the accident and he was then unconscious.

On Cross Examination.

I worked with Dill as foreman at Geneva on the railroad grading. He told me that he had been Conductor of a train on the Michigan railroad. Geneva and Elgin are twelve miles apart.

Dill and I were working on the same job.

≡ The road was building for the same Defendants. I was at Geneva the day he was hurt. He was going to Elgin in a buggy.

On Re-examination

I was at work on the Fulton Road not on the old road but it all belonged to one Company.

Testimony of B. B. Dodson

I know the County road from Geneva to Elgin. Have travelled the road many years.

I know Dill he was a foreman on the Rail Road.

He was a healthy man.

I saw him repeatedly after he was brought back to Geneva, saw him there every day or two.

I saw Mr. Turner the President of the Rail Road Company and related the circumstances as I had heard them talked about. I suggested to him that Dill was destitute and had no friends and that I desired the Company to send him to the hospital. Captain Turner said he could do nothing for him. Mr. Hall the assistant superintendent came into the room and said that he could prove that the signal was given before the buggy was struck and that the Company was not liable.

Mr. Dodson the witness said that he did not go to Mr. Turner at the instance of the Plaintiff or any one in particular and that Dill did not know of his going. To the admission of which testimony the Defendants counsel objected at the time but the Court overruled the objection. To which ruling of the Court in permitting said testimony to be given to the jury the defendant then and there excepted.

Testimony of S. Dill

I am half brother to the Plaintiff.

My brother was twenty four or twenty five years old

at the time of the accident.

He was a healthy boy up to seventeen.

I took him home the February after the accident.

He was then very wild.

He is not well and I don't consider him rational.

His shoulder troubles him.

He is unfit for business where there is anything like figuring to be done in the store or anything like that.

He works some at light work.

We don't have to watch him. He goes to see his sister seventeen miles off and pretends he is coming out West but we persuade him out of it. His mind is

affected. He is not a rational man. He is lame in the shoulder so that he can't do heavy work.

He is not disfigured.

I found my brother at Webster's Hotel at Geneva.

He could not have got back home without assistance. He was very wild when I first saw him—

Though he knew me soon afterwards. He was with me in Maine fifteen hundred miles from here.

Testimony of Miss Bretta Wood

Was with Dill when the accident happened on the twenty third of December 1854. We started from Geneva going to Elgin to attend a Christmas party. Left Geneva between three and four in the afternoon, perhaps not so late, in a covered buggy with two horses.

We reached the crossing at nearly sunset. Did not see the cars before I reached the crossing. Did not hear a rumbling on the track. Did not hear the bell ring or whistle sound before we were struck.

I have no remembrance of receiving the injury whatever. I first became conscious of the injury at the Waverly Hotel at Elgin. I had known Mr. Dill since the Rail Road commenced building at Geneva.

I saw Dill between five and seven weeks after the accident, he did not know me. He did not seem conscious that I was present. I did not see him after that until he returned to Webster's. I returned to from Elgin the next day after the accident. When Dill returned to Geneva he did not recognize me. He treated me as a stranger. When saluting ^{his} friends he would, instead of turning his neck, turn his whole form.

An Cross Examination

The Plaintiff had many acquaintances in Geneva. He drove at the usual speed, going very slow at the time of the accident. He had not whipped his horses for some time. The horses had not been on the canter or gallop. Am positive that he had not struck the horses for some time. I saw the sign board over the road.

The weather was very cold. I had not known that there was a rail-road there. I asked Dill if he knew of it. He did not answer. He did not answer, we were not further off than the length of this room. When I saw the sign the horses were going very slow.

We did not stop between Geneva and ^{Crossing} Elgin.

Testimony of Mrs. M. E. Webster.

I resided at Geneva in the winter of 1854. I knew the Plaintiff. He came to our house in June 1854. My husband kept a hotel there. Dill boarded there. He boarded with us some two or three months before the accident.

He left to go to Elgin with Miss Wood on Friday the twenty second or twenty third ^{of December} 1854. His health was good when he left to go to Elgin. I saw him again the next morning at Elgin. He was then a mangled form of humanity. Had to hold his hands to keep him from tearing himself to pieces. He was held by two gentlemen. He seemed to be in great agony.

I saw him in Elgin again three weeks afterwards, he was brought to our house the ensuing week.

He remained at ~~our house~~ Geneva a number of weeks before he went East. He was insensible while he remained at our house. He constantly

talked about going to Mr. Webster's for they would take care of him - that was at our house. He did not seem conscious, I took to Maine. I learned his brother's residence from incoherent speeches.

His brother Seward came after him. They started back to Maine together. He rested most of the time sitting. Complained incessantly of his head saying "Oh my head." Had a watchman at night to keep him in his room.

We had a man to take care of him.

I had seen Dill have money. Couldnt say how much. He had money when he came back from Elgin. I saw him have nine dollars and a half. He said he had been a Conductor on one of the Michigan Rail Roads. He came to Geneva expressly to go to the party. When he boarded with us in the summer he was a loss on the rail-road.

On Cross Examination

I dont know that he had ever been to Elgin. He said he was going to Chicago.

Testimony of J B Hammond

I know the crossing at Wheeler's. I know the collision took place about sunset.

I was about sixty five or seventy rods North West of the track. I dont recollect hearing the bell or whistle. Once in a while they rung the bell and once in a while they didnt. My house

stands two or three rods from the track. I generally hear the bell or whistle. My house is so that I have a fair view of the crossing.

Am Cross-examination

Mr. Burroughs said there was a team coming. He said it was time they checked up. He looked around, and just then the train struck the buggy.

Testimony of J. H. Plaisted

I know J. C. Dill, have known him since he was a little boy. Knew ^{him} when he started to come to this County. He was about sixteen or seventeen years old, of good habits and could be relied upon for any business.

He worked for my father three months before he came West. He was a reliable man. I have seen him frequently since his return to Maine. He is a man that has apparently no mind at all. I have seen him sometimes three or four times a day, sometimes once a week. His brother has followed him once or twice to my house and told me not to let him go off. I don't consider him a man of sound mind. He has a stiff shoulder, a scar on his forehead and another on his eye.

Am Cross-examination

His brother said he did not want him to come to Illinois.

Testimony of Dr. Waite

I reside at St. Charles and am a Physician. I examined

the Plaintiff at my office. He was brought there by his brother. He was brought there in December or January two years ago.

There were several scars upon his head, they were healed or nearly healed, none of them were very extensive. Some of them had been deep wounds. The collar bone had been broken and united upon a flap, which made it shorter, impairing the proper use of the arm. His appearance as far as his mind was concerned was unnatural, he appeared like a man bewildered not knowing what he had said or what he was going to say next.

Testimony of Edward Dill recalled
by Plaintiff

The person I took to Doctor Waite was the Plaintiff. It was a year ago last February.

Testimony of R. C. Goodenow
I saw Plaintiff a year ago last June.

I conversed with him a few moments and was convinced that his faculties were impaired. He was marking some weights in a store and his calculations were strangely erroneous.

And the Defendant by its Counsel then moved the Court for a nonsuit upon the ground that the Plaintiff by his proof had shown that he was before, at the time and since the commencement of this suit and till now incompetent to

from want of mental ability to authorize the commencement and prosecution of this suit, and that the same was without warrant or authority from him, which motion the Court overruled, to which decision the Defendant then and there excepted.

The Defendant then in support of the issue on its part offered ^{introduced} the following evidence

Testimony of Daniel Wheeler

I live at Wayne in DuPage County State of Illinois. I was forty rods from the rail-road. I heard that some one was run over. I went down and saw Dill. I saw the horses fifteen minutes after they had left the carriage, they were cool and did not appear to have been driven fast.

On Cross-examination

I was North East of the crossing and heard the whistle about the time of the collision. Forty rods from the crossing on each road, the roads are about forty rods apart. The sign ^{over the crossing} reads "Look out for the cars while the bell rings or whistle sounds."

Testimony of Mrs Luinda Blaisdell

I was visiting at Mr. Wheeler's house. Mrs. Wheeler asked me to go to the door to see if the cars ran as near to their house as to our house. We saw a

carriage coming down the hill. I said they would be run over. Mrs. Wheeler said they would stop when they got down the hill. The man in the buggy struck the horses, they then galloped, they had been trotting before. He struck the horses twice smartly when within five or six rods of the track they might have gone a rod between the two blows.

On Cross examination

It was a top-buggy and the top was up. Mr. Wheeler's house was about thirty rods from the crossing. I had just arrived there. I live in Catteraugus County New York.

Testimony of Mrs. Sarah Wheeler

I was at home at the time of the accident. Mrs. Blaisdell and I stepped to the door, we saw a buggy with two horses coming down the hill. Mrs. Blaisdell said they would be run over. I said it would stop at the bottom of the hill. The man in the buggy struck the horses and they galloped he reached forward and struck. I saw his head and hands, this was five or six rods from the crossing.

Mrs. Blaisdell and I were sitting in the sitting room, we heard the cars coming, I asked her to go to the door and see if the cars passed as near her house as they did to ours. The outside doors and windows were all closed. We heard the cars coming distinctly before we started for the door.

We went through another room to reach the outside door and saw what I described after we got to the door.

Testimony of David Blaisdell

I was at Wheeler's barn or yard. Some one came and said that somebody was hurt. I went down to the track crossing. The horses were standing near the track. The cars backed up and I assisted in putting the lady into the cars.

I can't say whether I heard the train coming or not. The horses were quiet and cool and did not appear to have been driven hard.

On the west right side of the ^{wagon} road there is nothing to intercept the sight or hearing of the cars for eighty rods.

The foregoing was all the evidence introduced on said trial.

Instructions asked by Plaintiff

John C. Dill

vs.

Galena & Chicago

Union Rail Road Co.

In the Circuit Court of Cook

County Illinois

Of the Term of November A.D. 1886

The Plaintiff by his Counsel moves the Court to instruct the jury impanelled in this cause as follows that is to say

The Counsel for the plaintiff then asked the Court to instruct the jury as follows —

1st That the Defendants in running their engines over crossings of public highways are bound to exert reasonable care and diligence to prevent injury therefrom to travellers on such highways, and if the Jury believe from the evidence that the Plaintiff at the time of the injury complained of was rightfully travelling on a public highway which intersected the Defendants railway, and that the said Plaintiff was guilty of no negligence on his part, but that the Defendants on account of their neglect to use reasonable care and diligence in crossing said highway came in collision with and injured the Plaintiff they will find a verdict for the Plaintiff and assess his damages.

2nd That if the Jury believe from the evidence that the Plaintiff was free from negligence on his part in approaching and attempting to cross the track and that the Defendants by reason of any negligence either in running over the crossing in question at a greater speed than is usual and was proper, or in not ringing the bell, or sounding the whistle of the locomotive within a reasonable distance from the crossing of the highway upon which the Plaintiff was travelling. If the Jury find such facts from the evidence this is sufficient to charge the Defendants and the Jury will find a verdict for the Plaintiff and assess his damages.

3. That in determining the question whether the

Plaintiff was guilty of negligence on his part, the jury may take into consideration the particular facts in evidence tending to establish whether or not the Plaintiff was aware that the highway on which he was travelling intersected the railway of the Defendants, whether or not he was travelling in a top buggy and how far such fact if found was likely from the evidence to prevent him from seeing such an object as the rail-road.

Whether or not the ground was frozen and snow upon it, whether or not there was an unusual noise of the buggy and if so how far such fact was calculated from the evidence to prevent the Plaintiff from hearing the noise which would naturally indicate the approach of the Defendants' train of cars. And the further if any evidence showing the condition of the ground upon which he was travelling - intervening object if any between him and the railway and all other facts in evidence which to establish the proposition as to whether or not the Plaintiff was guilty of negligence.

5 That at common law independent of Statute, it is the duty of the Defendants in running their locomotive and trains over their railway to use reasonable care and diligence in their approach to the crossing of a highway, and if the jury believe from the evidence that by reason of any omission or neglect of a reasonable character on the

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part of the Engineer and Conductor of the Defendants or either of them, the collision in question took place and the Plaintiff was injured, They will find from the Plaintiff and assess his damages, unless the Jury further believe from the evidence that the Plaintiff himself in approaching and attempting to cross the Rail Road track was guilty of such negligence as contributed to the accident and injury in question.

6 That if the Jury shall find from the law and the evidence that the Plaintiff is entitled to recover, in estimating damages the Jury will not give exemplary damages unless they find that the Defendants or their agents were guilty of criminal negligence or malice in inflicting the injury upon him.

7 If the Jury shall find from the law and evidence that the Plaintiff is ^{entitled} ~~bound~~ to recover and that the injury was not the result of gross ~~and~~ or criminal negligence or malice, then in estimating the damages the Jury may take into consideration the age of the Plaintiff, the extent of the injuries of body and mind which they will find him to have sustained from the injury and whether or not such injuries are of a permanent character and how far they do or are likely from the evidence to disable him in the future from taking care of himself, and all other circumstances in evidence tending to show the

extent and character of the injuries sustained by the Plaintiff, and enable the jury to determine what amount of damages will be a compensation. And to this the jury will add the value of any personal property belonging to the Plaintiff, which the jury shall find to have been injured or destroyed at the same time.

Which instructions the Court gave, to which ruling of the Court in giving the same, and each of them the defendant then and there excepted,

And thereupon the said defendant requested the Court to give the following instructions—

1 If the jury believe from the evidence that the plaintiff knew by the sign board erected over the roadway or otherwise that he was approaching and about to cross the railroad track and hastened his horses by whipping them into a gallop and thereby increased his hazard, they may infer from such act that he did not exercise proper prudence and was guilty of negligence.

Which instruction the Court refused to give as asked, but modified said instruction so as to make it read as follows,

If the jury believe from the evidence that the plaintiff knew by the sign board erected over the roadway or otherwise that he was ap—

approaching and about to cross the rail road track, and has
 henna his horses by whipping them into a gallop and thereby
 increased his ~~galling~~ hazard, these circumstances may
be taken into consideration in determining whether
the plaintiff exercised proper prudence at the time
the injury occurred, or was guilty of negligence

To which refusal of the Court to give said instruc-
 tion as asked, and and modifying the same as aforesaid
 the defendant at the time excepted.

Defendants Instructions

1 If the jury believe from the evidence that the
 Plaintiff knew by the sign-board erected over the
 road-way or otherwise that he was approaching and
 about to cross the rail-road track and hastened his
 horses by whipping them into a gallop and thereby
 increased his hazard, ~~they may infer from such~~
~~these circumstances may be taken into consideration in determining~~
~~whether the plaintiff~~ ^{at the time the injury occurred}
~~that he did not~~ exercised proper prudence, and
 was guilty of negligence

2nd The rail-road Company, the Defendant in this
 case, is not liable for damages to the Plaintiff although
 the Company may have omitted to give a signal
 at the road crossing by sounding the whistle or ringing
 the bell; if the Plaintiff has been guilty of negligence on
 his part in driving or attempting to drive across the rail
 road track when the locomotive and train were
 passing the road-way -

3 It is not sufficient for the Plaintiff in this suit to show that the rail-road Company, defending was in fault but he must also show ^(or it must appear from the evidence.) that himself was without fault, or he cannot recover in this action.

The Court refused to give the said third instructions as asked but modified the same by adding the words in brackets, and the defendant at the time excepted to the same.

4 It is as much the duty of a traveller upon a wagon road if he knows that he is approaching a rail-road or about to cross one, to see that he is not likely to encounter a train, as it for the Conductor or Engineer of a rail-road train to watch for him, and he is guilty of negligence if he omits to do so.

5 If the jury believe from the evidence that the Plaintiff himself was guilty of negligence in attempting to drive upon the rail-road track with his horses and buggy at the time complained of by this suit then he cannot recover, although the jury may believe that the Rail-road Company should have given a signal at the crossing. For if both parties are in fault, the plaintiff cannot recover in this action.

6 The Defendants in this case were not bound by any statute at the time of the happening of the injury to blow a whistle or ring a bell at any rail-road crossing on the or along the line of said rail-road - and the jury should not in

making up their verdict consider that any such obligation existed by statute but the jury may take such omission if proved into consideration as a circumstance in determining the question whether the defendant omitted any proper care and precaution which should have been observed by them at the time and place where such accident took place in not ringing their bell or blowing their whistle)

X If the jury shall find from the law and evidence that Plaintiff is entitled to recover and that the accident occurred without

6th The Defendants in this case were not bound by law to blow a whistle or ring a bell at any road crossing on or along the line of said Rail-Road and the jury should not in making up their verdict consider that any such obligation existed.

Which 6th instruction the Court refused to give as asked, but modified said instruction so as to make it read as follows—

"The Defendants in this case were not bound by any statute at the time of the happening of the injury to blow a whistle or ring a bell at any road crossing on or along the line of said rail-road and the jury should not in making up their verdict consider that any such obligation existed by statute. But the jury may take such omission

if proved, into consideration as a circumstance in determining the question whether the defendants omitted any proper care and precaution which should have been observed by them at the time and place where such accident took place, in not ringing their bell or blowing their whistle —

To which ruling of the Court in refusing said instruction & modifying the same as aforesaid, the defendant at the time excepted. —

7th If the Jury shall find from the law and the evidence that the Plaintiff is entitled to recover and that the accident occurred without malice or criminal negligence, then the Jury cannot give damages by way of punishment, nor take into consideration any circumstance of refusal on the part of the Defendants to pay damages which the Plaintiff may have sustained for the purpose of aggravating the damages which the Jury may find the Plaintiff to have actually sustained by the injuries complained of.

§ Speed in the transit of cars, promptness in arrivals at stations is necessary and lawful and required in conveyance by rail road, and a rate of speed at twenty five or thirty miles per hour is not ^{of itself} evidence of negligence on part of the Defendants.

This last instruction asked for on the part of

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The Defendant by its counsel the Court refused to give.

8 Speed in the transit of cars and punctuality in arrivals of at stations is necessary and lawful and required in conveyance by Rail Road, and a rate of speed of twenty five or thirty miles per hour is not of itself any evidence of negligence on the part of the Defendant."

Which last instruction the Court refused to give - to which ruling of the Court in refusing to give the same the defendant there and then excepted -

Thereupon the jury retired and subsequently returned into Court & rendered a verdict for the plaintiff assessing his damages at the sum of Fifteen thousand five hundred Dollars.

Upon the rendering of which verdict the defendant moved the Court to set aside the same and to grant a new trial for the reasons -

1. That the verdict was against the evidence, 2. That it was against the Law, 3rd That the Court erred in giving the plaintiff's instructions and each of them, 4th That the Court erred in refusing to give the Defendant's 1st 2nd 6th & 8th instructions as asked - 5th That the damages given by the jury were excessive -

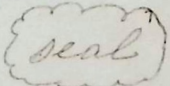
Which motion the Court overruled and

rendered judgment upon the verdict,

To all ^{of} which decisions of the Court the defendants
at the time there & then excepted —

On the argument of this motion the following
objections only were pointed out and relied upon
viz,

And the Defendant now prays the Court to
sign and seal this bill of exceptions — which is
done in open Court —

George Manierre 
Judge of 7th Judicial Dist.
Illinois