

8605

No. _____

Supreme Court of Illinois

Illinois Central R.R.Co.

vs.

Wm.R.Phelps

71641  7

Pleas in the Jackson County Circuit Court

OF THE

DECEMBER SPECIAL TERM, A. D. 1857.

Present—Honorable WILLIAM K. PARRISH, Judge of the 3d Judicial Circuit in the State of Illinois, and sole presiding Judge of the Jackson County Circuit Court, ED. H. REES, Clerk, and WILLIAM COX, Sheriff.

Be it remembered that heretofore, to wit: On the 8th day of December in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the Clerk's Office of the Jackson Circuit Court, an appeal from the judgment of D. N. Hamilton, Police Magistrate, &c., in a certain cause wherein William R. Phelps was plaintiff, and the Illinois Central Rail Road Company, was defendant, which judgment was rendered on the 30th day of October, A. D., 1857, in favor of the said plaintiff, and against the said defendant for the sum of sixty-five dollars debt (\$65) and seven dollars and twenty-two cents costs, making together the sum of seventy-two dollars and twenty-two cents (\$72.22); all of which appears from the papers of said appeal, filed as aforesaid, which is in the words and figures following, to wit:

[Page 2.]

COPY OF PRECIPE.

William R. Phelps,
vs.
Illinois Central Railroad Company. } Before D. N. Hamilton, Police Magistrate.

The said William R. Phelps, by L. Kean his attorney, complains of the Illinois Central Railroad Company, being summoned, &c., of a plea of trespass on the case.

For that, whereas heretofore, to wit: On the first day of June, A. D., 1857, at the county of Jackson and State of Illinois, the Illinois Central Railroad Company did own a certain locomotive used in drawing trains upon their said road, which locomotive was managed so careless and neglectful by the servants of said company, that said locomotive run over and killed one brown colt mare, being the property of the plaintiff, and greatly bruised, mangled and killed said colt mare, to the damage of the said plaintiff \$95.00, and therefore he brings his suit.
L. KEAN, Attorney for Plaintiff.

[Page 3.]

COPY OF SUMMONS.

STATE OF ILLINOIS, } SS. The People of the State of Illinois,
Jackson County. } To any Constable of said County, GREETING:

You are hereby commanded to summon the Illinois Central Railroad Company to appear before me at my office in Carbondale, on the 30th day of October, 1857, at 10 o'clock, A. M., to answer William R. Phelps, in action on the case for killing a horse, and for a failure to pay him certain damages, not exceeding one hundred dollars; and hereof make due returns according to law.

Given under my hand and seal this 21st day of October, 1857.

D. N. HAMILTON, Police Magistrate. (SEAL.)

COPY OF RETURN ON SUMMONS.

Executed the within, by delivering a true copy to William S. Mason, Station Agent of said Company at Carbondale, on the 22d October, 1857.
ELIAS HINDMAN, T. C.

Filed December 8th, 1857, ED. H. REES, Clerk.

[Page 4.]

COPY OF APPEAL BOND.

Know all men by these presents—That we, the Illinois Central Railroad Company, and Cyrus G. Simons are held and firmly bound unto W. R. Phelps, in the penal sum of one hundred and fifty dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents. Sealed with our seals and dated this 17th day of November, 1857.

The condition of the foregoing obligation is such that, whereas, the above named W. R. Phelps, did, on the 30th day of October, A. D., 1857, before D. N. Hamilton, Police Magistrate, within and for the town of Carbondale, county of Jackson and State of Illinois, recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of \$65.00, besides cost of suit, from which judgment the said Company wishes to take an appeal to the Circuit Court of said County.

[Page 5.]

Now, if the said Illinois Central Railroad Company shall prosecute their said appeal with effect, or in case of failure therein, shall well and truly pay or cause to be paid, whatever judgment may be rendered by the court upon the trial or dismissal of said appeal, then this obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY. (SEAL)

by C. G. SIMONS, their Attorney in fact. (SEAL)

CYRUS G. SIMONS.
W. S. MASON.

Taken and approved by me, this }
18th day of November, 1857. }

not in abstracts filed

COPY OF TRANSCRIPT.

William R. Phelps,
vs.
Illinois Central Railroad Company.

Judgment, - - - - - \$65.00
Justice's Cost, - - - - - 1.75
Constable's " - - - - - 1.72

WITNESSES.

Wm. B. Spiller, - - - - - 50
Josiah Goodwin, - - - - - 50
John Goodwin, - - - - - 50
William Dixon, - - - - - 50
R. H. Morrison, - - - - - 50
Bond 50, Transcript 25, Affidavit 25, Certificate 25, - - - - - 1.25

Given under my hand and seal, this 30th October, 1857,

On this 21st October, 1859, precipe filed by L. Kean, attorney for plaintiff, and summons issued to E. Hindman, returnable 30th October, 1857, at 10 o'clock, A. M. Summon served by copy, on W. S. Mason, Station Agent, on the 21st of October, 1857. Now, on this 30th October, 1857, came the plaintiff and proved his charge, but the defendant came not. Judgment is therefore given against the said defendant for the sum of sixty-five dollars, the amount of damage proved by the plaintiff, and cost of suit.

D. N. HAMILTON, P. M. SEAL

Bond filed and approved, 18th November, 1857.

STATE OF ILLINOIS, }
Jackson County, } SS.

I. D. N. Hamilton, a police magistrate within and for the town of Carbondale, in the county of Jackson and State of Illinois, do certify that the above is a true transcript, and that the accompanying papers are all that have come to my hand in the above entitled cause.

Given under my hand and seal, this 19th day of November, A. D., 1857.

D. N. HAMILTON, Police Magistrate. SEAL

COPY OF INDORSEMENT ON THE BACK THEREOF.

William R. Phelps,
vs.
Illinois Central Railroad Company. } Appeal.

COST BEFORE J. P.

D. N. Hamilton, P. M. \$3.00
E. Hindman, Constable, 1.72
Wm. B. Spiller, Witness, 50
Josiah Goodwin, " 50
John Goodwin, " 50
William Dixon, " 50
R. H. Marrion, " 50

\$7.22

And afterwards, to wit: On the 8th day of December, A. D., 1857, summons issued from the Clerk's office of the Jackson county Circuit Court, against the said plaintiff, returnable on the 4th Tuesday in the month of December, 1857, to said appeal, which summons was in the words and figures, to wit:—

STATE OF ILLINOIS, } SS. The People of the State of Illinois,
Jackson County. } To the Sheriff of said county, Greeting:—

We command you to summon William R. Phelps, if he shall be found in your county, to be and appear before the Circuit Court of said county, on the first day of the next Term thereof, to be holden at the Court House in the town of Murphysboro, in said county, on the fourth Tuesday in the month of December next, to answer an appeal taken from the judgment of D. N. Hamilton, a Justice of the Peace, in and for said county, by the Illinois Central Railroad Company, which judgment was rendered on the 31st day of October, A. D., 1857.

SEAL Witness, ED. H. REES, Clerk of our said Circuit Court, and the seal thereof, at Murphysboro this 8th day of December, A. D., 1857.

ED. H. REES, Clerk.

And afterwards, to wit: On Tuesday, the 30th day of December in, the year of our Lord one thousand eight hundred and fifty-seven, the foregoing cause came on for trial. Wherein the following orders of court were made and entered of record in the Clerk's Office of the said Jackson County Circuit Court, to wit:

William R. Phelps, } Tuesday, December 30th, 1857.
vs. }
Illinois Central Railroad Company. } Appeal.

And now on this day came the plaintiff by his attorney, Logan & Allen, as well as the defendants by their attorney, Cyrus G. Simons. And this cause being ready for trial, by order of the court came a jury of good and lawful men, to wit: Davis Cox, C. C. Cully, Wm. E. Tolbot, John Butcher, jr., Daniel Bowers, Sabe Pate, J. G. Conner, Edward M. Ripley, Alexander M. Burke, Joseph Whipkey, William L. Brown and Hugh McMillen. Who, being duly elected, tried and sworn, after hearing the evidence, arguments of counsel and instructions of the court, upon their oaths return the following verdict, to wit: We, the jury, find the defendants guilty, and assess the plaintiff's damage at seventy-five dollars (\$75.00). Whereupon, the said defendants, by their said attorney, Cyrus G. Simons, entered their motion for a new trial in arrest of said judgment.

And afterwards, to wit: On Wednesday, the 31st, day of December, A. D., 1857, the following order of court was made and entered of record as aforesaid:

Page 6

7

" 7

Main abstract filed

" 8

William R. Phelps,
vs.

Wednesday, December 31st, 1857.

Illinois Central Railroad Company.

} Appeal.

And now this day came again the parties hererein by their said attorneys; whereupon the said defendants, by their counsel, proceeded to argue the motion, which they had heretofore entered for a new trial, which motion is now by the court overruled, and it is ordered by the court, that the said plaintiff have judgment, and do recover of the said defendant the said sum of seventy-five dollars (\$75.00), together with his cost and charges herein to be taxed, &c.

And afterwards, to wit: On the day and year last aforesaid, the said defendant, by their said attorney, C. G. Simons, comes and prays an appeal to the Supreme Court of the State of Illinois, which motion is allowed upon condition that they enter into bond, in the sum of two hundred and fifty dollars (\$250.00) with Cyrus G. Simons security, within thirty days of the date hereof.

Note.—Bill of exceptions may be signed in vacation.

And afterwards, to wit: On the 1st day of January, A. D., 1858, the said defendant by their said attorney, Cyrus G. Simons, filed in the Clerk's office of said Jackson County Circuit Court, their appeal bond in manner and form as required by an order of court heretofore made in relation thereto.

Which bond is in the words and figures following, to wit:

Know all men by these presents, that we, the Illinois Central Railroad Company and Cyrus G. Simons are held and firmly bound unto William R. Phelps, of Jackson county and State of Illinois, in the penal sum of two hundred and fifty dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents, sealed with our seals, and dated this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

The condition of the above foregoing obligation is such, that, whereas, the above named William R. Phelps did, on the 3d day of December, in the year of our Lord aforesaid, in the Jackson county circuit court, at the December special term of said court, which was commenced and holden on the 22d day of said month, and on the eighth day of said term recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of seventy-five dollars damage, besides cost of suit; from which judgment, the said Illinois Central Railroad Company wishes to take an appeal to the Supreme Court of the State of Illinois, for the purpose of reversing said judgment and proceeding of said circuit court. Now, if the said Illinois Central Railroad Company shall well and truly prosecute their said appeal with effect, or in any case of failure therein shall well and truly pay and satisfy whatever judgment shall be rendered by the court, together with all interests, costs and damages which may be rendered, ordered or awarded by said court; then this obligation to be void; otherwise to remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY,

by C. G. SIMONS, their Attorney in fact.

{ SEAL }

CYRUS G. SIMONS.

{ SEAL }

COPY OF INDORSEMENT.

Wm. R. Phelps vs. Illinois Central Railroad Company.

APPEAL BOND.

Filed January 1st, 1858.

ED. H. REES, Clerk.

And afterwards, to wit: On the 9th day of January, A. D., 1859, there was filed in the Clerk's office of the said Circuit Court, a bill of exceptions to the aforesaid judgment, which bill of exceptions, are in the words and figures, to wit:

William R. Phelps,
vs.

Illinois Central Railroad Company.

} Appeal.

In the Jackson Circuit Court, December Special Term, A. D., 1857.

Be it remembered that on the calling of the above entitled cause for trial, a jury was empaneled, and the plaintiff introduced the following evidence, viz:

Robert H. Morrison was called as a witness for the plaintiff, who, after being duly sworn, stated as follows:

"I was in the town of Carbondale on the day some horses were killed. I happened to come down on the train that day, and at the time of the accident was proceeding from the station to my residence, which is about three hundred yards south of the station. I was walking on down the street, when I saw some horses running down the line. I only had a momentary sight of them. They were running down in the direction of the cattle-guard, which is south of the station. I only saw them a few seconds, when they got behind a house from me, which excluded them from my sight. At the time I saw them, they were about one hundred yards from the cattle-guard. The train of cars were in motion at the time. My impression is, that the horses were a little in advance of the train, but not on the road. I can't say whether the horses were in view of persons on the train or not.

There was wood piled up for some distance on the east side of the road. The pile of wood extended down to the street one hundred forty feet, perhaps into cattle-guard. There was no obstruction to the view from there to the cattle-guard. I did not see the horses get on the road. I think persons on the train could have seen the horses if they had been looking out in the direction they were. The train was not running very fast—ordinary speed in leaving a station; did not notice that the speed was slackened. There is a street running across the road about seventy-five feet north of the cattle-guard. The street is laid off in the town limits—did not ring the bell or whistle from the time they left the station house till they got to the cattle-guard.

1200
"I had just got off the train. I saw three dead horses. One was lying a little to the left of the track as you go south. I don't recollect of seeing a brown filly killed. It was the same train that Josiah Goodwin's horses were killed. I speak of that time. I can't say how far it is from the station house to the cattle-guard, but think perhaps it is one hundred yards. It is very level, and a person may be deceived about the distance."

CROSS EXAMINED.

"I never was engaged in running an engine. I don't know anything about the business. The horses were running on the east side of the track. The wood was piled on the east side of the road—can't say how long the rank of wood was—can't give any definite idea, but think probably twenty yards or so. In some places it was as high as a man's head, and in other places not so high.

"The wood was piled along on the Company's ground—a part of the road along there is cut lower than the surface of the ground. The ground is a little descending from the road in an easterly direction.

11 15
When I first saw the horses, I suppose they were a hundred yards from the cattle-guard. They were running as fast as they could run, I suppose. They were not upon the track at that time, but were east of the road. They appeared to be on the right of way, perhaps on the edge of the right of way, somewhere in the neighborhood of a hundred feet of the track. The fences extend out nearly square from the cattle-guard—not a hundred feet on each side of the track—lacks about a rod on each side of extending a hundred feet from the track.

The fences turned a square corner, and then run south. The horses, when I saw them, were running south toward the fence—no impediment to prevent the horses from turning east. The horses were running down south. I was a good piece from them at the time I saw them running. I think they were a hundred yards from the cattle-guard the last I saw of them before they were killed—I only had a glance at them. It was my supposition that the arrival of the train started the horses to running, but can't say certainly. There was nothing to prevent the horses from turning around the railroad fence, or turning down the street. There was no crossing put in on the street, but the street was opened on both sides of the road—the street was not obstructed with wood. It was sometimes used by persons on foot and on horseback, but was not used for wagoners."

RE-EXAMINED BY PLAINTIFF'S COUNSEL.

11 16
"I think if the whistle had been sounded, it might have scared the horses off the road, but I can't tell. I have seen horses frightened off the road by whistling. I have seen some horses run on the side of the road and then leave it. It is impossible to tell what a horse will do—a man can't judge what they will do."

Spiller was then called as a witness by the plaintiff, and after having been duly sworn, deposed as follows:

"I was not in Carbondale at the time of the accident. I went to the place where the horses were killed two or three hours afterwards.

11 17
"I was a repair hand on the road, and was sent for to remove the horses. I would say, when I came to where the brown filly lay, she was some thirty yards below or south of the cattle-guard, and east of the road, lying up on a little bank. The mare was badly crippled. The muscles of the fore leg and shoulder were all completely mashed, so that it was entirely useless. I saw some horses' tracks some ten or twelve feet from where she lay. They looked like they had come from railroad track. No other horse was by her at the time. The wound appeared to have been done by cars. I can't say where the mare was struck. She might have been struck above and went up to where she lay. I can't say whether she was struck at, above or below the cattle-guard. The brown filly belonged to W. R. Phelps, and was worth \$75 or \$80. The boss of the repair hands sent me down to remove the horses. The mare was wholly ruined and worthless, and we knocked her in the head and hauled her off over beyond where Robert H. Marrison lives, about three hundred yards from the road. She was lying down when we came to her—we did not try to get her up—we thought it was no use to try. She made one effort to get up, but failed.

There has been lots laid off on both sides of the railroad below the cattle-guard, before the accident occurred. Lots are laid out fifty or seventy-five yards below where the filly lay—think lots are laid out one hundred yards below the cattle-guard—don't know whether these lots are a part of Carbondale or individual enterprise."

John Fight was then called as a witness by the plaintiff, and after being sworn, deposed as follows:

11 18
"I was in Carbondale on the day the horses were killed. I was on the side of the road at the time, between the depot and the cattle-guard. I saw some horses running in towards the road and cars running on down. The cars got between me and the horses, and I suppose hit them. I was about half way between depot and cattle-guard. There was a dark colored sorrel mare and colt and a grey horse, that I noticed. The horses were coming from the east side of the road in the direction of the cattle-guard. The horses were about fifty yards from the cattle-guard when I first saw them. There was nothing that I know of to obstruct the sight of the horses from the road. The persons on the train and engine were up higher than I was. There was nothing that I know of to have prevented the engineer from seeing the horses if he had been looking in that direction. The last I saw of the horses they were coming on to the road after the train had passed—I saw the sorrel mare and colt and brown filly.

"The sorrel mare was lying near the cattle-guard, and the colt in the cattle-guard, and the brown filly about two rods south of it. The brown filly's shoulder was mashed all to pieces. Nothing else that I saw could have done the damage except the cars. Don't know whose property the brown filly was—she is the same horse beast spoken of by Spiller. The train left the depot not very fast, but about as usual for them to leave—did not hear the bell ring or whistle sounded. It is about two or three hundred yards from the depot to the cattle-guard."

CROSS EXAMINED.

1290
" 19
" 20
" When I first saw the horses they were in an open space, in the town of Carbondale—don't think I was more than half way from the station to the cattle-guard. I have stated all that I saw till I went down to where the horses lay. I had started down on the line before the train came in—I was walking by the side of the tract on the east when I first started, but crossed over on the west side, and was on the west side of the track when I first saw the horses. I don't think the horses were on the west side of the track. If they had passed over on the west side of the track I think I would have seen them. I don't think they ever got on the west side at all. I don't know how far east I could have seen, but could see as far as the fence on the side of the road. I could see the fence very near the cattle-guard on both sides of the road. I perhaps could have seen the horses jump the fence if they had jumped it. I did not see the horses jump the fence. They got in the road before they got to the fence. The horses were running pretty good speed—as fast as they could run. The running of the train frequently makes a noise or rattling which frequently frightens horses. The engine puffed a good deal at starting—all the engines that ever I have seen do so. The horses were forty or fifty yards from the railroad track—when I first saw them they were running in a southern direction, nearly the same direction the cars were going. The horses were a little nearer the cattle-guard when I first saw them than the cars were. The horses started about the time the train started, and began to make good speed just as they passed me. It was but a little bit after they passed me that they got on the road. When the horses made the turn to come on to the road they went out of my sight, I suppose, when they made the turn they were attempting to cross. They turned their heads south when they started to run—they were going south the last I saw of them. I was standing at the time ten feet or farther from the track—when the horses got on the road the train was within twenty or thirty steps of the cattle-guard, perhaps, less or more. I reckon it was not more than twenty-five or thirty steps from the cattle-guard, or about that distance."

Elias Hindman was then called as a witness for the plaintiff, who, after being sworn, deposed as follows:

"I was in Carbondale on the day the horses were killed—was about the platform or station. I don't think they whistled or rung the bell when they started. They started as usual, and kept getting faster and faster. They were running faster at the cattle-guard than when they started. I don't know how far it is from the station to the cattle guard, but suppose it is two or three hundred yards."

Here the plaintiff closed his evidence. The defendants then called Mr. Hastings as a witness, who, after being sworn, deposed as follows:

"I am an engineer by trade—have been engaged as an engineer on railroads and running trains four years last April, and had charge of trains for that time, except three months. I was engineer on the Illinois Central Railroad the first of June last. I flatter myself that I understand the business of an engineer, and the management of trains. I was running the train as engineer when some horses were killed in Carbondale last June. It was a passenger train. The train was due at Carbondale ten minutes past three o'clock, in the afternoon. We arrived about ten minutes behind time. I think we left the station about twenty minutes past three o'clock. In leaving the station I think I sounded the bell. There was no appearance of road crossing or street between the station and the cattle-guard at that time."

"After leaving the station I run along up till I got pretty near up to the cattle-guard. I could see the centre of the pilot. I saw a horse's head on the left hand side of the pilot. I was then in two or three feet of the cattle-guard. Just at that moment I felt a jar. When the cars strike a horse or two, we can generally feel it when on a light engine, and that was a light engine I was then running. I was on the right hand side—it was my duty to be on that side. In going south, as we were then, I was on the west side. The cars occupy about eight and a-half feet width—the train was made up of the engine, tender, baggage car, and two passenger cars. The passenger cars were thirty-four feet long, each baggage car thirty-two feet long, and the engine and tender thirty-six feet in length. There is a dome in the centre of the boiler. If horses were from four to eight rods from the road on the east side and ahead, I could not have seen them for the dome. I worked at Carbondale, on leaving the fireman was throwing in wood. When he got in all the wood there necessary to put in the furnace, and just as he raised or straightened up, he said, horses. I jumped to the left hand side and saw the horses just as they were struck. The fireman was at his post, necessarily engaged in the discharge of his duty. I was engaged at my place. There is no power on earth that could have stopped the train before the horses were struck after I saw them. The horses were struck the moment I saw them. If the horses had got upon the track and run twenty-five or thirty yards, I would have seen them. I think I saw them the moment they got upon the track. If the sides of the track is clear, stock are as liable to go upon the track as not; but if not clear, eight chances to four they will go upon the track when frightened. When stock are coming out of the brush, and I think I can pass them before they come upon the road, I never stop. When the whistle is sounded when stock is on the road where there are no bushes at the sides, they are as likely to leave the road as to keep it: but if there are obstacles or obstructions, such as dumps and bushes, they generally keep the road. I think at the place where the horses were killed, there were bushes in the inside of the fence."

CROSS EXAMINATION.

"It was impossible to stop after I saw the horses. I might have stopped before running forty yards. I swore yesterday that I thought I could stop a train in five and a-half rods. I still think I could stop a train in twenty-seven and a-half feet by reversing the engine and putting on the brakes, and in twenty-eight and a-half feet by putting on the brakes simply. I think I could have stopped the train before I got to the cattle-guard if I had seen the horses on the road forty yards north of the cattle-guard. There was an old man on the engine at the time, but he was not in the service of the Company. I was the engineer in charge of the train at that time. A train can not always be stopped in running the distance I have mentioned. That depends upon the road, and whether the brakemen are at their posts. I suppose it is the duty of the brakemen to be always at their posts."

869
Brakemen have to keep up fires and attend to the lights. They have more duties to perform than simply to wind up the brakes between stations. It is their duty to keep up fires, look after the lights, and a great many other things to attend to.

CROSS EXAMINED.

It is not unusual to have fire in the cars in June, nor to light up at three o'clock in the evening. I don't recollect how many taps I gave the bell on starting, but I rang just before we started.

Then the defendants closed their evidence.

The foregoing is all the testimony offered in the cause, and all the evidence in the case.

The court then instructed the jury at the instance of the plaintiff, as follows:

124 If the proof shows that plaintiff's horse was killed in consequence of *gross negligence* on the part of the defendants or other servants, the verdict should be guilty.—GWIN.

2. Gross negligence, as known to the law, means less care or caution than a man of ordinary care or prudence would exercise for the protection of his own property.

3. If the jury believe from the evidence that the defendants in this case or their servants acted in such a manner at the time of the killing of plaintiff's horse (if it was killed by them) as to show a wanton or reckless disregard of the safety of property, the verdict should be guilty.

The court instructs the jury that the fact of killing the horse may be proven as well by circumstantial evidence.

The Court also gave the following instructions to the jury, at the instance of the defendants:

The court instructs the jury, that the burden of proof is on the plaintiff, and it devolves upon him to show by facts and circumstances, and by those acquainted with the management of trains, who can speak understandingly on the subject, that it was practicable and easy to have avoided the collision, and that in not doing so, those in charge of the train were guilty of wanton, wilful or gross negligence, or carelessness, before he is entitled in law to recover in this case.

125 The court is asked to instruct the jury that in this case ~~gross~~ negligence will not be presumed from the killing of the horses only by the railroad train of defendants, it must be shown by the plaintiff that there has been wanton or wilful, or gross negligence on the part of the defendants in killing the horses in question, before the plaintiff is entitled to recover.

2d. That the question as to whether the said railroad was fenced or not, is not in issue in this case.

3d. Railroad Companies have an absolute ownership in fee of the lands on which their roads are built, for their purposes, and if horses graze upon their lands it must be as favor, not as right; and cattle or horses will not be protected in trespassing upon them, except as against wilful and malicious injuries or gross negligence.

That if the jury should believe from the evidence that the engineer did not ring his bell at starting from Carbondale station, nor while crossing a street, this fact would not entitle the plaintiff to recover unless the horses were killed in consequence of such neglect—and that fact must appear from the testimony.

The jury retired from the bar and soon returned a verdict—finding the defendant guilty, and assessing damages at \$—

126 The defendants, by their counsel, moved the court for a new trial, and assigned the following grounds:

- 1st. The verdict is against the evidence.
2. The verdict is against the law.
3. The verdict is against the law and evidence.

But the court overruled the motion for a new trial and rendered judgment for the plaintiff on the verdict of the jury; to which opinion of the court in overruling the defendants' motion for a new trial, the defendants, by their counsel, then and there excepted, and pray that this their bill of exceptions may be signed and sealed, and made a part of the record, which is done accordingly by

WILLIAM K. PARRISH, Judge Jackson Court.

William R. Phelps,
vs.
Illinois Central Railroad Company.

} Jackson Circuit Court—Special December Term, 1859.
} Appeal.
Cost Bill.

COST BY PLAINTIFF.

Clerk's Fee.—Filing papers of appeal, 50,	-	-	-	\$ 50
" " Docketing suit, 10; issuing summons, 35,	-	-	-	45
" " Filing same, 5; entering Sheriff's return, 10,	-	-	-	15
" " Filing two precipes, 10,	-	-	-	10
" " Issuing three subpoenas \$1.05; filing same, 15,	-	-	-	1 20
" " Entering appearance of plaintiff's attorney, 10,	-	-	-	10
" " Calling cause for trial, 20,	-	-	-	20
" " Calling and serving jury, 15; entering same, 10,	-	-	-	25
" " Swearing five witnesses, 25,	-	-	-	25
" " Swearing to and filing six affidavits of witnesses, 60,	-	-	-	60
" " Entering verdict of jury, 20,	-	-	-	20
" " Judgment. 25; docketing same, 10; satisf, 15	-	-	-	50
" " Recording plaintiff's cost bill, 30,	-	-	-	30—\$4 80
Deputy Davis, Jury fees,	-	-	-	3 00
" " Serving summons, 50; mileage, 40; returning, 10,	-	-	-	1 00
" " " Subpoena on six witnesses, 1.50,	-	-	-	1 50
" " Mileage on same, 3 40; returning, 30.	-	-	-	3 70— 6 20

127
not in obs book find

Witnesses.—R. H. Marion, six days, \$6.00; John Fisher, seven days, \$7.00, -	13 00
“ W. B. Spiller, seven days, \$7.00; Thos. Thornton, seven days, \$7.00,	14 00
John Goodwin, seven days, \$7.00; Josiah Goodwin, seven days, \$7.00,	14 00—41 00
Cost before Justice D. N. Hamilton, on transcript, \$3 00 - - -	3 00
E. Hindman, on transcript, \$1 75, - - - - -	1 75
Witness before Justice, Wm. E. Spiller, one day, 50; Josiah Goodwin, one day, 50	1 00
“ “ “ John Goodwin, one day, 50; Wm. Dixon, one day, 50, -	1 00
“ “ “ R. H. Marion, one day, 50; Thomas Thornton, one day, 50,	1 00— 7 75

DEFENDANT'S COST BILL.

Clerk's Cost.—Filing Precipe, 5, - - - - -	5
“ “ Issuing 2 subpoenas, 70, filing same, 10, - - - - -	80
“ “ Filing two papers, in progress of suit, 10, - - - - -	10
“ “ Entering appearance of defendant's attorney, 10, - - - - -	10
“ “ Entering motion for new trial, 20, - - - - -	20
“ “ Order granting an appeal, 20, - - - - -	20
“ “ Filing bond, 5; do bill of exceptions, 5, - - - - -	10
“ “ Recording defendants' cost bill, 30 - - - - -	30
“ “ Copy of same, - - - - -	35
“ “ same, with certificate and seal, 35, - - - - -	35
“ “ Making copy of record, containing 7,240 words, at 10 cents per 100 words,	7 42
“ “ Certificate and seal to same, 35, - - - - -	
Wm. Cox, sheriff.—Serving subpoena on one, 25; mileage 40, - - - - -	65
Returning, 10, - - - - -	10
Deputy Davis.—Serving subpoena, 25; mileage, 60; returning, 10, - - - - -	95— 1 70
Witness.—Henry Hastings, six days and sixty-four miles travel, \$9.20, - - - - -	9 20

STATE OF ILLINOIS, }
Jackson County, } SS.

I, Edward H. Rees, Clerk of the Circuit Court of Jackson County and State of Illinois, do hereby certify that the foregoing is a true and correct copy of the original papers, orders of court, fee bills, &c. in the above entitled cause, as appears on record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office at Murphysboro, this 15th day of November, A. D., 1859.
ED. H. REES, Clerk.



Errors Assigned.

- 1st. The court erred in admitting improper evidence against defendant below.
- 2d. The court erred in excluding proper evidence offered by defendant below.
- 3d. The court erred in refusing a new trial.
- 4th. The court erred in rendering judgment for plaintiff below.
- 5th. The court erred in rendering judgment against defendant below.
- 6th. The court gave improper instructions for plaintiff below.
- 7th. The court refused proper instructions for defendant below.

HAYNIE, for Plaintiff in error.

Not in records filed

28

29

~~1810~~
 Abstracts for
 May 1810

William R Phelps
 as
 SCRIBER

Filed Nov 14 1861
 St. Johnston, N.H.

Witnesses—M. H. Stanton, six days, \$3.00; John Fisher, seven days, \$2.00;
 W. B. Phillips, seven days, \$2.00; John Hamilton, seven days, \$2.00;
 Good before Justice D. M. Hamilton, on township, \$3.00
 John Goodwin, seven days, \$2.00; Joseph Goodwin, seven days, \$2.00;
 W. B. Phillips, seven days, \$2.00; Wm. Dixon, six days, \$2.00;
 John Goodwin, one day, 50¢; Wm. Dixon, one day, 50¢;
 Wm. E. Phillips, one day, 50¢; Joseph Goodwin, one day, 50¢;
 on township, \$1.00
 M. H. Stanton, one day, 50¢; Thomas Thornton, one day, 50¢;
 John Goodwin, one day, 50¢; Wm. Dixon, one day, 50¢;
 Wm. E. Phillips, one day, 50¢; Joseph Goodwin, one day, 50¢;
 on township, \$1.00
 M. H. Stanton, six days, \$3.00; John Fisher, seven days, \$2.00;
 W. B. Phillips, seven days, \$2.00; John Hamilton, seven days, \$2.00;
 Good before Justice D. M. Hamilton, on township, \$3.00

BREKIDANT'S COST BILL.

of my office at Northampton, this 15th day of December, A. D. 1861.
 In testimony whereof, I have hereunto set my hand and seal at the place
 of the said office, the 15th day of December, A. D. 1861.
 D. H. TERRY, Clerk.

Pleas in the Jackson County Circuit Court

OF THE
DECEMBER SPECIAL TERM, A. D. 1857.

Present—Honorable WILLIAM K. PARRISH, Judge of the 3d Judicial Circuit in the State of Illinois, and sole presiding Judge of the Jackson County Circuit Court, ED. H. REES, Clerk, and WILLIAM COX, Sheriff.

Be it remembered that heretofore, to wit: On the 8th day of December in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the Clerk's Office of the Jackson Circuit Court, an appeal from the judgment of D. N. Hamilton, Police Magistrate, &c., in a certain cause wherein William R. Phelps was plaintiff, and the Illinois Central Rail Road Company, was defendant, which judgment was rendered on the 30th day of October, A. D., 1857, in favor of the said plaintiff, and against the said defendant for the sum of sixty-five dollars debt (\$65) and seven dollars and twenty-two cents costs, making together the sum of seventy-two dollars and twenty-two cents (\$72.22); all of which appears from the papers of said appeal,

COPY OF TRANSCRIPT.

William R. Phelps,
vs.
Illinois Central Railroad Company.

Judgment,	- - - - -	\$65.00
Justice's Cost,	- - - - -	1.75
Constable's "	- - - - -	1.72

WITNESSES.

Wm. B. Spiller,	- - - - -	50
Josiah Goodwin,	- - - - -	50
John Goodwin,	- - - - -	50
William Dixon,	- - - - -	50
R. H. Morrison,	- - - - -	50
Bond 50, Transcript 25, Affidavit 25, Certificate 25,	- - - - -	1.25

Given under my hand and seal, this 30th October, 1857,

On this 21st October, 1859, precipe filed by L. Kean, attorney for plaintiff, and summons issued to E. Hindman, returnable 30th October, 1857, at 10 o'clock, A. M. Summon served by copy, on W. S. Mason, Station Agent, on the 21st of October, 1857. Now, on this 30th October, 1857, came the plaintiff and proved his charge, but the defendant came not. Judgment is therefore given against the said defendant for the sum of sixty-five dollars, the amount of damage proved by the plaintiff, and cost of suit.

D. N. HAMILTON, P. M.



Bond filed and approved, 18th November, 1857.

[2605-7 A]

Page 6

4

[2605-7 AB]

William R. Phelps,
vs.
Illinois Central Railroad Company. } Wednesday, December 31st, 1857.
Appeal.

And now this day came again the parties hererein by their said attorneys; whereupon the said defendants, by their counsel, proceeded to argue the motion, which they had heretofore entered for a new trial, which motion is now by the court overruled, and it is ordered by the court, that the said plaintiff have judgment, and do recover of the said defendant the said sum of seventy-five dollars (\$75.00), together with his cost and charges herein to be taxed, &c.

And afterwards, to wit: On the day and year last aforesaid, the said defendant, by their said attorney, C. G. Simons, comes and prays an appeal to the Supreme Court of the State of Illinois, which motion is allowed upon condition that they enter into bond, in the sum of two hundred and fifty dollars (\$250.00) with Cyrus G. Simons security, within thirty days of the date hereof.

Note.—Bill of exceptions may be signed in vacation.

And afterwards, to wit: On the 1st day of January, A. D., 1858, the said defendant by their said attorney, Cyrus G. Simons, filed in the Clerk's office of said Jackson County Circuit Court, their appeal bond in manner and form as required by an order of court heretofore made in relation thereto.

Which bond is in the words and figures following, to wit:

Know all men by these presents, that we, the Illinois Central Railroad Company and Cyrus G. Simons are held and firmly bound unto William R. Phelps, of Jackson county and State of Illinois, in the penal sum of two hundred and fifty dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents, sealed with our seals, and dated this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

The condition of the above foregoing obligation is such, that, whereas, the above named William R. Phelps did, on the 3d day of December, in the year of our Lord aforesaid, in the Jackson county circuit court, at the December special term of said court, which was commenced and holden on the 22d day of said month, and on the eighth day of said term recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of seventy-five dollars damage, besides cost of suit; from which judgment, the said Illinois Central Railroad Company wishes to take an appeal to the Supreme Court of the State of Illinois, for the purpose of reversing said judgment and proceeding of said circuit court. Now, if the said Illinois Central Railroad Company shall well and truly prosecute their said appeal with effect, or in any case of failure therein shall well and truly pay and satisfy whatever judgment shall be rendered by the court, together with all interests, costs and damages which may be rendered, ordered or awarded by said court; then this obligation to be void; otherwise to remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY, { SEAL }

by C. G. SIMONS, their Attorney in fact.

CYRUS G. SIMONS. { SEAL }

COPY OF INDORSEMENT.

Wm. R. Phelps vs. Illinois Central Railroad Company.

APPEAL BOND.

Filed January 1st, 1858.

ED. H. REES, Clerk.

And afterwards, to wit: On the 9th day of January, A. D., 1859, there was filed in the Clerk's office of the said Circuit Court, a bill of exceptions to the aforesaid judgment, which bill of exceptions, are in the words and figures, to wit:

William R. Phelps,
vs.

Illinois Central Railroad Company. } Appeal.

In the Jackson Circuit Court, December Special Term, A. D., 1857.

Be it remembered that on the calling of the above entitled cause for trial, a jury was empaneled, and the plaintiff introduced the following evidence, viz:

Robert H. Morrison was called as a witness for the plaintiff, who, after being duly sworn, stated as follows:

"I was in the town of Carbondale on the day some horses were killed. I happened to come down on the train that day, and at the time of the accident was proceeding from the station to my residence, which is about three hundred yards south of the station. I was walking on down the street, when I saw some horses running down the line. I only had a momentary sight of them. They were running down in the direction of the cattle-guard, which is south of the station. I only saw them a few seconds, when they got behind a house from me, which excluded them from my sight. At the time I saw them, they were about one hundred yards from the cattle-guard. The train of cars were in motion at the time. My impression is, that the horses were a little in advance of the train, but not on the road. I can't say whether the horses were in view of persons on the train or not.

There was wood piled up for some distance on the east side of the road. The pile of wood extended down to the street one hundred forty feet, perhaps into cattle-guard. There was no obstruction to the view from there to the cattle-guard. I did not see the horses get on the road. I think persons on the train could have seen the horses if they had been looking out in the direction they were. The train was not running very fast—ordinary speed in leaving a station; did not notice that the speed was slackened. There is a street running across the road about seventy-five feet north of the cattle-guard. The street is laid off in the town limits—did not ring the bell or whistle from the time they left the station house till they got to the cattle-guard.

"I had just got off the train. I saw three dead horses. One was lying a little to the left of the track as you go south. I don't recollect of seeing a brown filly killed. It was the same train that Josiah Goodwin's horses were killed. I speak of that time. I can't say how far it is from the station house to the cattle-guard, but think perhaps it is one hundred yards. It is very level, and a person may be deceived about the distance."

CROSS EXAMINED.

"I never was engaged in running an engine. I don't know anything about the business. The horses were running on the east side of the track. The wood was piled on the east side of the road—can't say how long the rank of wood was—can't give any definite idea, but think probably twenty yards or so. In some places it was as high as a man's head, and in other places not so high.

"The wood was piled along on the Company's ground—a part of the road along there is cut lower than the surface of the ground. The ground is a little descending from the road in an easterly direction.

When I first saw the horses, I suppose they were a hundred yards from the cattle-guard. They were running as fast as they could run, I suppose. They were not upon the track at that time, but were east of the road. They appeared to be on the right of way, perhaps on the edge of the right of way, somewhere in the neighborhood of a hundred feet of the track. The fences extend out nearly square from the cattle-guard—not a hundred feet on each side of the track—lacks about a rod on each side of extending a hundred feet from the track.

The fences turned a square corner, and then run south. The horses, when I saw them, were running south toward the fence—no impediment to prevent the horses from turning east. The horses were running down south. I was a good piece from them at the time I saw them running. I think they were a hundred yards from the cattle-guard the last I saw of them before they were killed—I only had a glance at them. It was my supposition that the arrival of the train started the horses to running, but can't say certainly. There was nothing to prevent the horses from turning around the railroad fence, or turning down the street. There was no crossing put in on the street, but the street was opened on both sides of the road—the street was not obstructed with wood. It was sometimes used by persons on foot and on horseback, but was not used for wagoners."

RE-EXAMINED BY PLAINTIFF'S COUNSEL.

"I think if the whistle had been sounded, it might have scared the horses off the road, but I can't tell. I have seen horses frightened off the road by whistling. I have seen some horses run on the side of the road and then leave it. It is impossible to tell what a horse will do—a man can't judge what they will do."

Spiller was then called as a witness by the plaintiff, and after having been duly sworn, deposed as follows:

"I was not in Carbondale at the time of the accident. I went to the place where the horses were killed two or three hours afterwards.

"I was a repair hand on the road, and was sent for to remove the horses. I would say, when I came to where the brown filly lay, she was some thirty yards below or south of the cattle-guard, and east of the road, lying up on a little bank. The mare was badly crippled. The muscles of the fore leg and shoulder were all completely mashed, so that it was entirely useless. I saw some horses' tracks some ten or twelve feet from where she lay. They looked like they had come from railroad track. No other horse was by her at the time. The wound appeared to have been done by cars. I can't say where the mare was struck. She might have been struck above and went up to where she lay. I can't say whether she was struck at, above or below the cattle-guard. The brown filly belonged to W. R. Phelps, and was worth \$75 or \$80. The boss of the repair hands sent me down to remove the horses. The mare was wholly ruined and worthless, and we knocked her in the head and hauled her off over beyond where Robert H. Marrion lives, about three hundred yards from the road. She was lying down when we came to her—we did not try to get her up—we thought it was no use to try. She made one effort to get up, but failed.

There has been lots laid off on both sides of the railroad below the cattle-guard, before the accident occurred. Lots are laid out fifty or seventy-five yards below where the filly lay—think lots are laid out one hundred yards below the cattle-guard—don't know whether these lots are a part of Carbondale or individual enterprise."

John Fight was then called as a witness by the plaintiff, and after being sworn, deposed as follows:

"I was in Carbondale on the day the horses were killed. I was on the side of the road at the time, between the depot and the cattle-guard. I saw some horses running in towards the road and cars running on down. The cars got between me and the horses, and I suppose hit them. I was about half way between depot and cattle-guard. There was a dark colored sorrel mare and colt and a grey horse, that I noticed. The horses were coming from the east side of the road in the direction of the cattle-guard. The horses were about fifty yards from the cattle-guard when I first saw them. There was nothing that I know of to obstruct the sight of the horses from the road. The persons on the train and engine were up higher than I was. There was nothing that I know of to have prevented the engineer from seeing the horses if he had been looking in that direction. The last I saw of the horses they were coming on to the road after the train had passed—I saw the sorrel mare and colt and brown filly.

"The sorrel mare was lying near the cattle-guard, and the colt in the cattle-guard, and the brown filly about two rods south of it. The brown filly's shoulder was mashed all to pieces. Nothing else that I saw could have done the damage except the cars. Don't know whose property the brown filly was—she is the same horse beast spoken of by Spiller. The train left the depot not very fast, but about as usual for them to leave—did not hear the bell ring or whistle sounded. It is about two or three hundred yards from the depot to the cattle-guard."

CROSS EXAMINED.

119
120
" When I first saw the horses they were in an open space, in the town of Carbondale—don't think I was more than half way from the station to the cattle-guard. I have stated all that I saw till I went down to where the horses lay. I had started down on the line before the train came in—I was walking by the side of the tract on the east when I first started, but crossed over on the west side, and was on the west side of the track when I first saw the horses. I don't think the horses were on the west side of the track. If they had passed over on the west side of the track I think I would have seen them. I don't think they ever got on the west side at all. I don't know how far east I could have seen, but could see as far as the fence on the side of the road. I could see the fence very near the cattle-guard on both sides of the road. I perhaps could have seen the horses jump the fence if they had jumped it. I did not see the horses jump the fence. They got in the road before they got to the fence. The horses were running pretty good speed—as fast as they could run. The running of the train frequently makes a noise or rattling which frequently frightens horses. The engine puffed a good deal at starting—all the engines that ever I have seen do so. The horses were forty or fifty yards from the railroad track—when I first saw them they were running in a southern direction, nearly the same direction the cars were going. The horses were a little nearer the cattle-guard when I first saw them than the cars were. The horses started about the time the train started, and began to make good speed just as they passed me. It was but a little bit after they passed me that they got on the road. When the horses made the turn to come on to the road they went out of my sight, I suppose, when they made the turn they were attempting to cross. They turned their heads south when they started to run—they were going south the last I saw of them. I was standing at the time ten feet or farther from the track—when the horses got on the road the train was within twenty or thirty steps of the cattle-guard, perhaps, less or more. I reckon it was not more than twenty-five or thirty steps from the cattle-guard, or about that distance."

Elias Hindman was then called as a witness for the plaintiff, who, after being sworn, deposed as follows:

" I was in Carbondale on the day the horses were killed—was about the platform or station. I don't think they whistled or rung the bell when they started. They started as usual, and kept getting faster and faster. They were running faster at the cattle-guard than when they started. I don't know how far it is from the station to the cattle-guard, but suppose it is two or three hundred yards."

Here the plaintiff closed his evidence. The defendants then called Mr. Hastings as a witness, who, after being sworn, deposed as follows:

121
" I am an engineer by trade—have been engaged as an engineer on railroads and running trains four years last April, and had charge of trains for that time, except three months. I was engineer on the Illinois Central Railroad the first of June last. I flatter myself that I understand the business of an engineer, and the management of trains. I was running the train as engineer when some horses were killed in Carbondale last June. It was a passenger train. The train was due at Carbondale ten minutes past three o'clock, in the afternoon. We arrived about ten minutes behind time. I think we left the station about twenty minutes past three o'clock. In leaving the station I think I sounded the bell. There was no appearance of road crossing or street between the station and the cattle-guard at that time.

22
" After leaving the station I run along up till I got pretty near up to the cattle-guard. I could see the centre of the pilot. I saw a horse's head on the left hand side of the pilot. I was then in two or three feet of the cattle-guard. Just at that moment I felt a jar. When the cars strike a horse or two, we can generally feel it when on a light engine, and that was a light engine I was then running. I was on the right hand side—it was my duty to be on that side. In going south, as we were then, I was on the west side. The cars occupy about eight and a-half feet width—the train was made up of the engine, tender, baggage car, and two passenger cars. The passenger cars were thirty-four feet long, each baggage car thirty-two feet long, and the engine and tender thirty-six feet in length. There is a dome in the centre of the boiler. If horses were from four to eight rods from the road on the east side and ahead, I could not have seen them for the dome. I worked at Carbondale, on leaving the fireman was throwing in wood. When he got in all the wood there necessary to put in the furnace, and just as he raised or straightened up, he said, horses. I jumped to the left hand side and saw the horses just as they were struck. The fireman was at his post, necessarily engaged in the discharge of his duty. I was engaged at my place. There is no power on earth that could have stopped the train before the horses were struck after I saw them. The horses were struck the moment I saw them. If the horses had got upon the track and run twenty-five or thirty yards, I would have seen them. I think I saw them the moment they got upon the track. If the sides of the track is clear, stock are as liable to go upon the track as not; but if not clear, eight chances to four they will go upon the track when frightened. When stock are coming out of the brush, and I think I can pass them before they come upon the road, I never stop. When the whistle is sounded when stock is on the road where there are no bushes at the sides, they are as likely to leave the road as to keep it: but if there are obstacles or obstructions, such as dumps and bushes, they generally keep the road. I think at the place where the horses were killed, there were bushes in the inside of the fence.

CROSS EXAMINATION.

23
It was impossible to stop after I saw the horses. I might have stopped before running forty yards. I swore yesterday that I thought I could stop a train in five and a-half rods. I still think I could stop a train in twenty-seven and a-half feet by reversing the engine and putting on the brakes, and in twenty-eight and a-half feet by putting on the brakes simply. I think I could have stopped the train before I got to the cattle-guard if I had seen the horses on the road forty yards north of the cattle-guard. There was an old man on the engine at the time, but he was not in the service of the Company. I was the engineer in charge of the train at that time. A train can not always be stopped in running the distance I have mentioned. That depends upon the road, and whether the brakemen are at their posts. I suppose it is the duty of the brakemen to be always at their posts.

Errors Assigned.

- 1st. The court erred in admitting improper evidence against defendant below.
- 2d. The court erred in excluding proper evidence offered by defendant below.
- 3d. The court erred in refusing a new trial.
- 4th. The court erred in rendering judgment for plaintiff below.
- 5th. The court erred in rendering judgment against defendant below.
- 6th. The court gave improper instructions for plaintiff below.
- 7th. The court refused proper instructions for defendant below.

HAYNIE, for Plaintiff in error.

RE-EXAMINED BY DEFENDANT'S COUNSEL.

Brakemen have to keep up fires and attend to the lights. They have more duties to perform than simply to wind up the brakes between stations. It is their duty to keep up fires, look after the lights, and a great many other things to attend to.

CROSS EXAMINED.

It is not unusual to have fire in the cars in June, nor to light up at three o'clock in the evening. I don't recollect how many taps I gave the bell on starting, but I rang just before we started.

Then the defendants closed their evidence.

The foregoing is all the testimony offered in the cause, and all the evidence in the case.

The court then instructed the jury at the instance of the plaintiff, as follows :

" 24 If the proof shows that plaintiff's horse was killed in consequence of *gross negligence* on the part of the defendants or other servants, the verdict should be guilty.—GWIN.

2. Gross negligence, as known to the law, means less care or caution than a man of ordinary care or prudence would exercise for the protection of his own property.

3. If the jury believe from the evidence that the defendants in this case or their servants acted in such a manner at the time of the killing of plaintiff's horse (if it was killed by them) as to show a wanton or reckless disregard of the safety of property, the verdict should be guilty.

The court instructs the jury that the fact of killing the horse may be proven as well by circumstantial evidence.

The Court also gave the following instructions to the jury, at the instance of the defendants :

The court instructs the jury, that the burden of proof is on the plaintiff, and it devolves upon him to show by facts and circumstances, and by those acquainted with the management of trains, who can speak understandingly on the subject, that it was practicable and easy to have avoided the collision, and that in not doing so, those in charge of the train were guilty of wanton, wilful or gross negligence, or carelessness, before he is entitled in law to recover in this case.

" 25 The court is asked to instruct the jury that in this case ~~gross~~ negligence will not be presumed from the killing of the horses only by the railroad train of defendants, it must be shown by the plaintiff that there has been wanton or wilful, or gross negligence on the part of the defendants in killing the horses in question, before the plaintiff is entitled to recover.

2d. That the question as to whether the said railroad was fenced or not, is not in issue in this case.

3d. Railroad Companies have an absolute ownership in fee of the lands on which their roads are built, for their purposes, and if horses graze upon their lands it must be as favor, not as right; and cattle or horses will not be protected in trespassing upon them, except as against wilful and malicious injuries or gross negligence.

That if the jury should believe from the evidence that the engineer did not ring his bell at starting from Carbondale station, nor while crossing a street, this fact would not entitle the plaintiff to recover unless the horses were killed in consequence of such neglect—and that fact must appear from the testimony.

The jury retired from the bar and soon returned a verdict—finding the defendant guilty, and assessing damages at \$—

" 26 The defendants, by their counsel, moved the court for a new trial, and assigned the following grounds :

- 1st. The verdict is against the evidence.
2. The verdict is against the law.
3. The verdict is against the law and evidence.

But the court overruled the motion for a new trial and rendered judgment for the plaintiff on the verdict of the jury; to which opinion of the court in overruling the defendants' motion for a new trial, the defendants, by their counsel, then and there excepted, and pray that this their bill of exceptions may be signed and sealed, and made a part of the record, which is done accordingly by

WILLIAM K. PARRISH, Judge Jackson Court.

" 27 William R. Phelps,
vs.
Illinois Central Railroad Company.

} Jackson Circuit Court—Special December Term, 1859.
} Appeal. Cost Bill.

COST BY PLAINTIFF.

Clerk's Fee.—Filing papers of appeal, 50,	-	-	-	\$ 50
" " Docketing suit, 10; issuing summons, 35,	-	-	-	45
" " Filing same, 5; entering Sheriff's return, 10,	-	-	-	15
" " Filing two precipes, 10,	-	-	-	10
" " Issuing three subpoenas \$1.05; filing same, 15,	-	-	-	1 20
" " Entering appearance of plaintiff's attorney, 10,	-	-	-	10
" " Calling cause for trial, 20,	-	-	-	20
" " Calling and serving jury, 15; entering same, 10,	-	-	-	25
" " Swearing five witnesses, 25,	-	-	-	25
" " Swearing to and filing six affidavits of witnesses, 60,	-	-	-	60
" " Entering verdict of jury, 20,	-	-	-	20
" " Judgment. 25; docketing same, 10; satisfact, 15	-	-	-	50
" " Recording plaintiff's cost bill, 30,	-	-	-	30—\$4 80
Deputy Davis, Jury fees,	-	-	-	3 00
" " Serving summons, 50; mileage, 40; returning, 10,	-	-	-	1 00
" " " Subpoena on six witnesses, 1.50,	-	-	-	1 50
" " Mileage on same, 3 40; returning, 30.	-	-	-	3 70—6 20

Sup. Court

1st Grand Division

Nov. Term 1861

Illinois Central R.R. Co Appellant

vs
William R. Phelps Appellee

This was an action brought by said Appellee vs. said Appellant before a Justice of the Peace, taken by Appeal into the Circuit Court of Jackson County, and at the December Term AD 1857 of that Court a judgment was rendered for \$75 + costs against said Appellant who thereupon prayed an Appeal to this Court.

Wayne & Green
for Plffs in Error.

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Ill. C. R. R. Co

v
Am. R. Pheep

Receipt

Jul 20 1861

A. Schuster Clerk

Pleas in the Jackson County Circuit Court

OF THE

DECEMBER SPECIAL TERM, A. D. 1857.

Present—Honorable WILLIAM K. PARRISH, Judge of the 3d Judicial Circuit in the State of Illinois, and sole presiding Judge of the Jackson County Circuit Court, ED. H. REES, Clerk, and WILLIAM COX, Sheriff.

Be it remembered that heretofore, to wit: On the 8th day of December in the year of our Lord one thousand eight hundred and fifty-seven, there was filed in the Clerk's Office of the Jackson Circuit Court, an appeal from the judgment of D. N. Hamilton, Police Magistrate, &c., in a certain cause wherein William R. Phelps was plaintiff, and the Illinois Central Rail Road Company, was defendant, which judgment was rendered on the 30th day of October, A. D., 1857, in favor of the said plaintiff, and against the said defendant for the sum of sixty-five dollars debt (\$65) and seven dollars and twenty-two cents costs, making together the sum of seventy-two dollars and twenty-two cents (\$72.22); all of which appears from the papers of said appeal,

COPY OF TRANSCRIPT.

William R. Phelps,
vs.
Illinois Central Railroad Company.

Judgment,	\$65.00
Justice's Cost,	1.75
Constable's "	1.72
WITNESSES.	
Wm. B. Spiller,	50
Josiah Goodwin,	50
John Goodwin,	50
William Dixon,	50
R. H. Morrison,	50
Bond 50, Transcript 25, Affidavit 25, Certificate 25,	1.25

Given under my hand and seal, this 30th October, 1857,

On this 21st October, 1859, precipe filed by L. Kean, attorney for plaintiff, and summons issued to E. Hindman, returnable 30th October, 1857, at 10 o'clock, A. M. Summons served by copy, on W. S. Mason, Station Agent, on the 21st of October, 1857. Now, on this 30th October, 1857, came the plaintiff and proved his charge, but the defendant came not. Judgment is therefore given against the said defendant for the sum of sixty-five dollars, the amount of damage proved by the plaintiff, and cost of suit.

D. N. HAMILTON, P. M.

{ SEAL }

Bond filed and approved, 18th November, 1857.

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William R. Phelps,

vs.

Illinois Central Railroad Company.

Wednesday, December 31st, 1857.

Appeal.

And now this day came again the parties hererein by their said attornies; whereupon the said defendants, by their counsel, proceeded to argue the motion, which they had heretofore entered for a new trial, which motion is now by the court overruled, and it is ordered by the court, that the said plaintiff have judgment, and do recover of the said defendant the said sum of seventy-five dollars (\$75.00), together with his cost and charges herein to be taxed, &c.

And afterwards, to wit: On the day and year last aforesaid, the said defendant, by their said attorney, C. G. Simons, comes and prays an appeal to the Supreme Court of the State of Illinois, which motion is allowed upon condition that they enter into bond, in the sum of two hundred and fifty dollars (\$250.00) with Cyrus G. Simons security, within thirty days of the date hereof.

Note.—Bill of exceptions may be signed in vacation.

And afterwards, to wit: On the 1st day of January, A. D., 1858, the said defendant by their said attorney, Cyrus G. Simons, filed in the Clerk's office of said Jackson County Circuit Court, their appeal bond in manner and form as required by an order of court heretofore made in relation thereto.

Which bond is in the words and figures following, to wit:

Know all men by these presents, that we, the Illinois Central Railroad Company and Cyrus G. Simons are held and firmly bound unto William R. Phelps, of Jackson county and State of Illinois, in the penal sum of two hundred and fifty dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents, sealed with our seals, and dated this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

The condition of the above foregoing obligation is such, that, whereas, the above named William R. Phelps did, on the 3d day of December, in the year of our Lord aforesaid, in the Jackson county circuit court, at the December special term of said court, which was commenced and holden on the 22d day of said month, and on the eighth day of said term recover a judgment against the above bounden Illinois Central Railroad Company, for the sum of seventy-five dollars damage, besides cost of suit; from which judgment, the said Illinois Central Railroad Company wishes to take an appeal to the Supreme Court of the State of Illinois, for the purpose of reversing said judgment and proceeding of said circuit court. Now, if the said Illinois Central Railroad Company shall well and truly prosecute their said appeal with effect, or in any case of failure therein shall well and truly pay and satisfy whatever judgment shall be rendered by the court, together with all interests, costs and damages which may be rendered, ordered or awarded by said court; then this obligation to be void; otherwise to remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY,
by C. G. SIMONS, their Attorney in fact.

SEAL

CYRUS G. SIMONS.

SEAL

COPY OF INDORSEMENT.

Wm. R. Phelps vs. Illinois Central Railroad Company.

APPEAL BOND.

Filed January 1st, 1858.

ED. H. REES, Clerk.

And afterwards, to wit: On the 9th day of January, A. D., 1859, there was filed in the Clerk's office of the said Circuit Court, a bill of exceptions to the aforesaid judgment, which bill of exceptions, are in the words and figures, to wit:

William R. Phelps,

vs.

Illinois Central Railroad Company.

Appeal.

In the Jackson Circuit Court, December Special Term, A. D., 1857.

Be it remembered that on the calling of the above entitled cause for trial, a jury was empaneled, and the plaintiff introduced the following evidence, viz:

Robert H. Morrison was called as a witness for the plaintiff, who, after being duly sworn, stated as follows:

"I was in the town of Carbondale on the day some horses were killed. I happened to come down on the train that day, and at the time of the accident was proceeding from the station to my residence, which is about three hundred yards south of the station. I was walking on down the street, when I saw some horses running down the line. I only had a momentary sight of them. They were running down in the direction of the cattle-guard, which is south of the station. I only saw them a few seconds, when they got behind a house from me, which excluded them from my sight. At the time I saw them, they were about one hundred yards from the cattle-guard. The train of cars were in motion at the time. My impression is, that the horses were a little in advance of the train, but not on the road. I can't say whether the horses were in view of persons on the train or not.

There was wood piled up for some distance on the east side of the road. The pile of wood extended down to the street one hundred forty feet, perhaps into cattle-guard. There was no obstruction to the view from there to the cattle-guard. I did not see the horses get on the road. I think persons on the train could have seen the horses if they had been looking out in the direction they were. The train was not running very fast—ordinary speed in leaving a station; did not notice that the speed was slackened. There is a street running across the road about seventy-five feet north of the cattle-guard. The street is laid off in the town limits—did not ring the bell or whistle from the time they left the station house till they got to the cattle-guard.

"I had just got off the train. I saw three dead horses. One was lying a little to the left of the track as you go south. I don't recollect of seeing a brown filly killed. It was the same train that Josiah Goodwin's horses were killed. I speak of that time. I can't say how far it is from the station house to the cattle-guard, but think perhaps it is one hundred yards. It is very level, and a person may be deceived about the distance."

CROSS EXAMINED.

"I never was engaged in running an engine. I don't know anything about the business. The horses were running on the east side of the track. The wood was piled on the east side of the road—can't say how long the rank of wood was—can't give any definite idea, but think probably twenty yards or so. In some places it was as high as a man's head, and in other places not so high.

"15 The wood was piled along on the Company's ground—a part of the road along there is cut lower than the surface of the ground. The ground is a little descending from the road in an easterly direction.

When I first saw the horses, I suppose they were a hundred yards from the cattle-guard. They were running as fast as they could run, I suppose. They were not upon the track at that time, but were east of the road. They appeared to be on the right of way, perhaps on the edge of the right of way, somewhere in the neighborhood of a hundred feet of the track. The fences extend out nearly square from the cattle-guard—not a hundred feet on each side of the track—lacks about a rod on each side of extending a hundred feet from the track.

The fences turned a square corner, and then run south. The horses, when I saw them, were running south toward the fence—no impediment to prevent the horses from turning east. The horses were running down south. I was a good piece from them at the time I saw them running. I think they were a hundred yards from the cattle-guard the last I saw of them before they were killed—I only had a glance at them. It was my supposition that the arrival of the train started the horses to running, but can't say certainly. There was nothing to prevent the horses from turning around the railroad fence, or turning down the street. There was no crossing put in on the street, but the street was opened on both sides of the road—the street was not obstructed with wood. It was sometimes used by persons on foot and on horseback, but was not used for wagoners."

RE-EXAMINED BY PLAINTIFF'S COUNSEL.

"16 I think if the whistle had been sounded, it might have scared the horses off the road, but I can't tell. I have seen horses frightened off the road by whistling. I have seen some horses run on the side of the road and then leave it. It is impossible to tell what a horse will do—a man can't judge what they will do."

Spiller was then called as a witness by the plaintiff, and after having been duly sworn, deposed as follows:

"I was not in Carbondale at the time of the accident. I went to the place where the horses were killed two or three hours afterwards.

"17 I was a repair hand on the road, and was sent for to remove the horses. I would say, when I came to where the brown filly lay, she was some thirty yards below or south of the cattle-guard, and east of the road, lying up on a little bank. The mare was badly crippled. The muscles of the fore leg and shoulder were all completely mashed, so that it was entirely useless. I saw some horses' tracks some ten or twelve feet from where she lay. They looked like they had come from railroad track. No other horse was by her at the time. The wound appeared to have been done by cars. I can't say where the mare was struck. She might have been struck above and went up to where she lay. I can't say whether she was struck at, above or below the cattle-guard. The brown filly belonged to W. R. Phelps, and was worth \$75 or \$80. The boss of the repair hands sent me down to remove the horses. The mare was wholly ruined and worthless, and we knocked her in the head and hauled her off over beyond where Robert H. Marrion lives, about three hundred yards from the road. She was lying down when we came to her—we did not try to get her up—we thought it was no use to try. She made one effort to get up, but failed.

There has been lots laid off on both sides of the railroad below the cattle-guard, before the accident occurred. Lots are laid out fifty or seventy-five yards below where the filly lay—think lots are laid out one hundred yards below the cattle-guard—don't know whether these lots are a part of Carbondale or individual enterprise."

John Fight was then called as a witness by the plaintiff, and after being sworn, deposed as follows:

"18 I was in Carbondale on the day the horses were killed. I was on the side of the road at the time, between the depot and the cattle-guard. I saw some horses running in towards the road and cars running on down. The cars got between me and the horses, and I suppose hit them. I was about half way between depot and cattle-guard. There was a dark colored sorrel mare and colt and a grey horse, that I noticed. The horses were coming from the east side of the road in the direction of the cattle-guard. The horses were about fifty yards from the cattle-guard when I first saw them. There was nothing that I know of to obstruct the sight of the horses from the road. The persons on the train and engine were up higher than I was. There was nothing that I know of to have prevented the engineer from seeing the horses if he had been looking in that direction. The last I saw of the horses they were coming on to the road after the train had passed—I saw the sorrel mare and colt and brown filly.

"The sorrel mare was lying near the cattle-guard, and the colt in the cattle-guard, and the brown filly about two rods south of it. The brown filly's shoulder was mashed all to pieces. Nothing else that I saw could have done the damage except the cars. Don't know whose property the brown filly was—she is the same horse beast spoken of by Spiller. The train left the depot not very fast, but about as usual for them to leave—did not hear the bell ring or whistle sounded. It is about two or three hundred yards from the depot to the cattle-guard."

CROSS EXAMINED.

"19
"20
" When I first saw the horses they were in an open space, in the town of Carbondale—don't think I was more than half way from the station to the cattle-guard. I have stated all that I saw till I went down to where the horses lay. I had started down on the line before the train came in—I was walking by the side of the tract on the east when I first started, but crossed over on the west side, and was on the west side of the track when I first saw the horses. I don't think the horses were on the west side of the track. If they had passed over on the west side of the track I think I would have seen them. I don't think they ever got on the west side at all. I don't know how far east I could have seen, but could see as far as the fence on the side of the road. I could see the fence very near the cattle-guard on both sides of the road. I perhaps could have seen the horses jump the fence if they had jumped it. I did not see the horses jump the fence. They got in the road before they got to the fence. The horses were running pretty good speed—as fast as they could run. The running of the train frequently makes a noise or rattling which frequently frightens horses. The engine puffed a good deal at starting—all the engines that ever I have seen do so. The horses were forty or fifty yards from the railroad track—when I first saw them they were running in a southern direction, nearly the same direction the cars were going. The horses were a little nearer the cattle-guard when I first saw them than the cars were. The horses started about the time the train started, and began to make good speed just as they passed me. It was but a little bit after they passed me that they got on the road. When the horses made the turn to come on to the road they went out of my sight, I suppose, when they made the turn they were attempting to cross. They turned their heads south when they started to run—they were going south the last I saw of them. I was standing at the time ten feet or farther from the track—when the horses got on the road the train was within twenty or thirty steps of the cattle-guard, perhaps, less or more. I reckon it was not more than twenty-five or thirty steps from the cattle-guard, or about that distance."

Elias Hindman was then called as a witness for the plaintiff, who, after being sworn, deposed as follows:

"I was in Carbondale on the day the horses were killed—was about the platform or station. I don't think they whistled or rung the bell when they started. They started as usual, and kept getting faster and faster. They were running faster at the cattle-guard than when they started. I don't know how far it is from the station to the cattle-guard, but suppose it is two or three hundred yards."

Here the plaintiff closed his evidence. The defendants then called Mr. Hastings as a witness, who, after being sworn, deposed as follows:

"21
"I am an engineer by trade—have been engaged as an engineer on railroads and running trains four years last April, and had charge of trains for that time, except three months. I was engineer on the Illinois Central Railroad the first of June last. I flatter myself that I understand the business of an engineer, and the management of trains. I was running the train as engineer when some horses were killed in Carbondale last June. It was a passenger train. The train was due at Carbondale ten minutes past three o'clock, in the afternoon. We arrived about ten minutes behind time. I think we left the station about twenty minutes past three o'clock. In leaving the station I think I sounded the bell. There was no appearance of road crossing or street between the station and the cattle-guard at that time."

"22
"After leaving the station I run along up till I got pretty near up to the cattle-guard. I could see the centre of the pilot. I saw a horse's head on the left hand side of the pilot. I was then in two or three feet of the cattle-guard. Just at that moment I felt a jar. When the cars strike a horse or two, we can generally feel it when on a light engine, and that was a light engine I was then running. I was on the right hand side—it was my duty to be on that side. In going south, as we were then, I was on the west side. The cars occupy about eight and a-half feet width—the train was made up of the engine, tender, baggage car, and two passenger cars. The passenger cars were thirty-four feet long, each baggage car thirty-two feet long, and the engine and tender thirty-six feet in length. There is a dome in the centre of the boiler. If horses were from four to eight rods from the road on the east side and ahead, I could not have seen them for the dome. I worked at Carbondale, on leaving the fireman was throwing in wood. When he got in all the wood there necessary to put in the furnace, and just as he raised or straightened up, he said, horses. I jumped to the left hand side and saw the horses just as they were struck. The fireman was at his post, necessarily engaged in the discharge of his duty. I was engaged at my place. There is no power on earth that could have stopped the train before the horses were struck after I saw them. The horses were struck the moment I saw them. If the horses had got upon the track and run twenty-five or thirty yards, I would have seen them. I think I saw them the moment they got upon the track. If the sides of the track is clear, stock are as liable to go upon the track as not; but if not clear, eight chances to four they will go upon the track when frightened. When stock are coming out of the brush, and I think I can pass them before they come upon the road, I never stop. When the whistle is sounded when stock is on the road where there are no bushes at the sides, they are as likely to leave the road as to keep it; but if there are obstacles or obstructions, such as dumps and bushes, they generally keep the road. I think at the place where the horses were killed, there were bushes in the inside of the fence."

CROSS EXAMINATION.

"23
"It was impossible to stop after I saw the horses. I might have stopped before running forty yards. I swore yesterday that I thought I could stop a train in five and a-half rods. I still think I could stop a train in twenty-seven and a-half feet by reversing the engine and putting on the brakes, and in twenty-eight and a-half feet by putting on the brakes simply. I think I could have stopped the train before I got to the cattle-guard if I had seen the horses on the road forty yards north of the cattle-guard. There was an old man on the engine at the time, but he was not in the service of the Company. I was the engineer in charge of the train at that time. A train can not always be stopped in running the distance I have mentioned. That depends upon the road, and whether the brakemen are at their posts. I suppose it is the duty of the brakemen to be always at their posts."

Errors Assigned.

- 1st. The court erred in admitting improper evidence against defendant below.
- 2d. The court erred in excluding proper evidence offered by defendant below.
- 3d. The court erred in refusing a new trial.
- 4th. The court erred in rendering judgment for plaintiff below.
- 5th. The court erred in rendering judgment against defendant below.
- 6th. The court gave improper instructions for plaintiff below.
- 7th. The court refused proper instructions for defendant below.

HAYNIE, for Plaintiff in error.

RE-EXAMINED BY DEFENDANT'S COUNSEL.

Brakemen have to keep up fires and attend to the lights. They have more duties to perform than simply to wind up the brakes between stations. It is their duty to keep up fires, look after the lights, and a great many other things to attend to.

CROSS EXAMINED.

It is not unusual to have fire in the cars in June, nor to light up at three o'clock in the evening. I don't recollect how many taps I gave the bell on starting, but I rang just before we started.

Then the defendants closed their evidence.

The foregoing is all the testimony offered in the cause, and all the evidence in the case.

The court then instructed the jury at the instance of the plaintiff, as follows:

If the proof shows that plaintiff's horse was killed in consequence of *gross negligence* on the part of the defendants or other servants, the verdict should be guilty.—GWIN.

2. Gross negligence, as known to the law, means less care or caution than a man of ordinary care or prudence would exercise for the protection of his own property.

3. If the jury believe from the evidence that the defendants in this case or their servants acted in such a manner at the time of the killing of plaintiff's horse (if it was killed by them) as to show a wanton or reckless disregard of the safety of proper, the verdict should be guilty.

The court instructs the jury that the fact of killing the horse may be proven as well by circumstantial evidence.

The Court also gave the following instructions to the jury, at the instance of the defendants:

The court instructs the jury, that the burden of proof is on the plaintiff, and it devolves upon him to show by facts and circumstances, and by those acquainted with the management of trains, who can speak understandingly on the subject, that it was practicable and easy to have avoided the collision, and that in not doing so, those in charge of the train were guilty of wanton, wilful or gross negligence, or carelessness, before he is entitled in law to recover in this case.

The court is asked to instruct the jury that in this case ~~gross~~ negligence will not be presumed from the killing of the horses only by the railroad train of defendants, it must be shown by the plaintiff that there has been wanton or wilful, or gross negligence on the part of the defendants in killing the horses in question, before the plaintiff is entitled to recover.

2d. That the question as to whether the said railroad was fenced or not, is not in issue in this case.

3d. Railroad Companies have an absolute ownership in fee of the lands on which their roads are built, for their purposes, and if horses graze upon their lands it must be as favor, not as right; and cattle or horses will not be protected in trespassing upon them, except as against wilful and malicious injuries or gross negligence.

That if the jury should believe from the evidence that the engineer did not ring his bell at starting from Carbondale station, nor while crossing a street, this fact would not entitle the plaintiff to recover unless the horses were killed in consequence of such neglect—and that fact must appear from the testimony.

The jury retired from the bar and soon returned a verdict—finding the defendant guilty, and assessing damages at \$—

The defendants, by their counsel, moved the court for a new trial, and assigned the following grounds:

- 1st. The verdict is against the evidence.
2. The verdict is against the law.
3. The verdict is against the law and evidence.

But the court overruled the motion for a new trial and rendered judgment for the plaintiff on the verdict of the jury; to which opinion of the court in overruling the defendants' motion for a new trial, the defendants, by their counsel, then and there excepted, and pray that this their bill of exceptions may be signed and sealed, and made a part of the record, which is done accordingly by

WILLIAM K. PARRISH, Judge Jackson Court.

William R. Phelps,
vs.
Illinois Central Railroad Company.

} Jackson Circuit Court—Special December Term, 1859.
Appeal.

Cost Bill.

COST BY PLAINTIFF.

Clerk's Fee.—Filing papers of appeal, 50,	-	-	-	-	\$ 50
" " Docketing suit, 10; issuing summons, 35,	-	-	-	-	45
" " Filing same, 5; entering Sheriff's return, 10,	-	-	-	-	15
" " Filing two precipes, 10,	-	-	-	-	10
" " Issuing three subpoenas \$1.05; filing same, 15,	-	-	-	-	1 20
" " Entering appearance of plaintiff's attorney, 10,	-	-	-	-	10
" " Calling cause for trial, 20,	-	-	-	-	20
" " Calling and serving jury, 15; entering same, 10,	-	-	-	-	25
" " Swearing five witnesses, 25,	-	-	-	-	25
" " Swearing to and filing six affidavits of witnesses, 60,	-	-	-	-	60
" " Entering verdict of jury, 20,	-	-	-	-	20
" " Judgment. 25; docketing same, 10; satisf, 15	-	-	-	-	50
" " Recording plaintiff's cost bill, 30,	-	-	-	-	30—\$4 80
Deputy Davis, Jury fees,	-	-	-	-	3 00
" " Serving summons, 50; mileage, 40; returning, 10,	-	-	-	-	1 00
" " " Subpoena on six witnesses, 1.50,	-	-	-	-	1 50
" " Mileage on same, 3 40; returning, 30.	-	-	-	-	3 70— 6 20

No 10. 10

Mrs. C. Rail road

vs.

Wm. R. Phelps

8605

1861