

No. **11999**

Supreme Court of Illinois

<sup>A</sup>  
Galena & Chicago Union R.R. Co.

vs.

Loomis.

71641  7

*Cook*

*Galena & Chicago  
Union R.R. Co.*

*vs.  
Abner Loomis*

*63*

**1852**

*11999*

*Pupard*



State of Illinois  
County of Cook

Was before the Honorable  
Hugh S. Sickey Judge of the  
seventh Judicial Circuit Court of the State of Illi-  
nois and sole presiding Judge of the Circuit Court  
of the County of Cook in said State and Circuit at  
a term thereof begun and held at the Court House  
in the City of Chicago in said County on the first Mon-  
day (it being the first day of December in the year of  
our Lord one thousand eight hundred and fifty one  
and of the Independence of the United States the  
seventy sixth.

Present Honorable Hugh S. Sickey Judge of said Court  
Daniel M. Stroy State Attorney prothon  
William S. Church Sheriff of said County  
Attest. Louis O. Heard Clerk of said Court  
Abner Loomis

vs.  
Galena & Chicago Union  
Rail Road Company

Messrs Larned Woodbridge for Plaintiff  
" Collins & Williams " Defendant

Be it remembered that heretofore to wit  
in the 21st day of October in the year One thousand  
Eight Hundred and fifty one there issued out  
of the Circuit Court of Cook County in said State  
of Illinois under the seal of said Court the  
Process writ of Summons which is in words  
and figures as follows that is to say

State of Illinois  
Cook County

The People of the State of  
Illinois to the Sheriff of said County, Greeting;  
We Command You That you summon



The Galena & Chicago Main Rail Road Compa  
 ny 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 Chicago, in said County, on the first  
 Monday of December next, to answer unto Abner  
 Loomis in a plea of trespass on the case to  
 the damage of said plaintiff as he says, in  
 the sum of two Thousand Dollars, and how  
 you then and there this writ, with an endorse  
 ment thereon, in what manner you executed  
 the same. Witness Louis D Howard, Clerk  
 of our said Court, and the seal  
 thereof at Chicago, this 21<sup>st</sup> day  
 of October Anno Domini 1851  
 L. D. Howard, Clerk

204  
 d. s.

On the back of which, was endorsed the follow  
 ing words and figures to wit:

Executed the within by Reading to Geo B  
 Turner and Wm W. Larabee as President and  
 Secretary of G. & C. M. R. R. Co. Oct 21<sup>st</sup> 1851.

2 Services	\$ 1.00
2 Copies	1.00
2 Miles	10
1 Ret.	10
	<u>2.20</u>

Wm G Church Sheriff  
 By D T Wood  
 Sept.

And afterwards to wit: on the 21<sup>st</sup> day  
 of November One thousand Eight hundred  
 and fifty One the said plaintiff by his  
 Attorneys Lane & Woodbridge filed his



declaration which is in words and figures as follows, to wit,

Cook County Circuit Court.

Of the December Term of Cook County Circuit Court in the year of our Lord One Thousand Eight Hundred & Fifty One.

State of Illinois }  
County of Cook } 3

The Galena and Chicago Union Rail Road Company a body Corporate & politic doing business & having power to sue and be sued, under a Charter from the State of Illinois the defendants in this suit were summoned to answer Abner Loomis plaintiff in this suit of a plea of Trespass on the Case &c.

And thereupon the plaintiff by Larned & Woodbridge his attorneys complains for that whereas the plaintiff heretofore, to wit, on the twentieth day of December in the year of our Lord one thousand Eight Hundred & Fifty at said County was lawfully possessed of a certain Carriage, to wit; a two horse wagon of great value, to wit, of the value of two Hundred dollars & also of a pair of bay horses then & then drawing the same & of great value to wit, of the value of two hundred dollars each in which said carriage the Plaintiff was then riding in & along a certain public & Common highway & the defendants were also then & there possessed of a certain other Carriage commonly called Rail Road Cars & of a certain Carriage



commonly called a Locomotive then & there  
drawing the same & which said Locomotive  
was impelled by Steam with great noise &  
disturbance & in a manner calculated to  
frighten horses & which said Cars & Locomotive  
were then and there under the care government  
& direction of divers servants of the defendants  
who were then & their directing & managing  
the same in & along the Rail Road of the de-  
fendants which crosses the said highway  
to wit: at the County aforesaid, And whereas  
also the plaintiff after using due diligence  
drove his said horses drawing his said wagon  
with great care & attention near the said cross-  
ing at the time and place aforesaid,  
Nevertheless the said defendants then & there  
by their said servants so carelessly and  
improperly directed & managed their said  
Cars & Locomotive & so entirely neglected to  
give any notice of their approach & neglected  
to ring their bell in conformity with the form  
of the statute in such case made and provided  
to their crossing on said highway, that  
by & through such negligence, carelessness  
& improper conduct, the said Cars & Loco-  
motive of the defendants, came up to  
said plaintiff & to said wagon & horses of  
the plaintiff immediately after the same  
had approached said crossing, to wit: at  
said County, & the said defendants by  
their said servants then & there let off  
Steam from the said Locomotive with  
great noise, by means whereof said horses  
of the plaintiff then & there took fright  
& ran away with great speed & threw the  
plaintiff out of his said wagon & over-



-turned said Wagon & broke away from  
the same & threw themselves into a certain  
Slough or pond & thereby the said Wagon  
of the plaintiffs was crushed, broken to  
pieces, damaged & destroyed & the pole  
or shaft thereof & then & there became &  
was of no use or value to the plaintiff &  
& thereby & thereby, then & there the plaintiff  
was greatly injured, bruised & wounded &  
became & was sick, sore lame & disordered  
& so remained & continued for a long space  
of time to wit; hitherto during all which  
time the plaintiff suffered great pain & was  
hindered & prevented from transacting  
his lawful business by him during that  
time to be done & transacted & thereby then  
& there said horses of the plaintiff were  
drowned & utterly lost to the plaintiff  
& by reason of the premises the plaintiff  
has paid & expended divers sums of  
Money to wit; the sum of One hundred  
dollars in & about the repairing his said  
Wagon so broken as aforesaid & the sum of  
One hundred dollars in to be healed and  
cured of his wounds, hurts & bruises oc-  
casioned as aforesaid & the sum of fifty  
dollars in and about searching for his  
said horses, lost as aforesaid to wit, at  
said County.

And the plaintiff further  
says that whereas the plaintiff before &  
at the time of the committing by the Defen-  
dant of the grievances hereafter mention-  
ed was lawfully possessed a certain  
other Carriage to wit a two horse Wagon  
& of a certain other pair of horses of great



value, to wit of the value of \$200. Each drawing the same, and of a pair of harness then & there upon said horses, in which said two horse wagon the plaintiff was then riding in & along a certain public & Common highway & the defendants were then possessed of certain other Carriages, to wit, Rail Road Cars, which said Rail Road Cars were impelled by steam in such a manner as to produce great noise & confusion & were calculated to frighten any horses to which they might approach & which said Cars were then under the care government & direction of certain, then servants of the defendants in & along the Rail Road of the defendants which crosses the said highway, to wit, at the County aforesaid.

Nevertheless the defendants by their said servants so carelessly, unskillfully & improperly directed & managed their said Cars that by & through the carelessness, negligence, unskillfulness & improper conduct of the defendants by their said servants the said Cars of the defendants then ran & struck with great force & against the said wagon & horses of the plaintiff & let of steam with great noise & thereby then & there frightened said horses of the plaintiff & the said horses of the plaintiff then & there ran away in consequence thereof & crushed brake to pieces & damaged said wagon of the plaintiff & and the pole or shaft thereof & the said wagon became & was rendered of little or no use or value to the plaintiff & the plaintiff



was necessarily subjected to & incurred great expense, to wit, \$100. in repairing said wagon, & was deprived of the use thereof for a long time, to wit two months during which time the plaintiff was obliged to hire another wagon at great expense to wit; \$100 = & thereby also said harnesses of the plaintiff then were broken & utterly destroyed & became & were of little or no use & value to the plaintiff & the plaintiff was subjected to and incurred a great expense to wit \$100. in buying other harnesses with which to carry on his lawful and necessary business & by reason of their fright occasioned as aforesaid said horses of the plaintiff ran away & threw themselves into a certain slough or pond and became and were drowned, and utterly lost to the plaintiff and the plaintiff was necessarily subjected to and incurred a great expense, to wit \$500. in searching for said said horses and in purchasing other horses where with to transact his lawful business and necessary business.

And whereas the plaintiff heretofore to wit, on the 25<sup>th</sup> day of December A.D. 1850 at said County was lawfully possessed of a certain other carriage to wit a two horse wagon of great value to wit of the value of two hundred dollars, and also of a pair of bay horses then and there harnessed to and drawing the said wagon which said horses were of great value to wit of the value of two hundred dollars each & in which said wagon the plaintiff was then and there driving with due care and skill in a lawful and proper man-



ner in and along a certain public & com-  
mon highway to wit. in said County, the  
defendants then & there being the owners of  
a certain other Steam Carriage commonly  
called a locomotive which said locomotive  
was propelled by steam power with great  
noise in a manner calculated to alarm  
horses and other animals, the said defendants  
did then and there so carelessly, negligently  
unskilfully and unlawfully manage  
use & propel & take care of their said loco-  
motive, that by reason of said carelessness,  
unskilfulness, negligence and want of proper  
care the said locomotive was propelled and  
directed across the said public and com-  
mon highway aforesaid in such a manner  
as to frighten the said horses of the plaintiff,  
which were driven by the plaintiff along said  
common & public highway as aforesaid by  
reason of the said negligence and unskilful-  
ness and want of care of the defendants,  
the said horses of the plaintiff took fright  
and ran away & overthrew the said  
wagon & threw the plaintiff out of said  
wagon with great force & violence & in con-  
sequence thereof the said horses were wholly  
lost to the plaintiff and the said wagon of  
the plaintiff was greatly damaged & the  
plaintiff suffered great injury & became and  
was, sick, poor, lame & disordered for a long  
space of time, to wit. hitherto, during all  
which time the plaintiff suffered great pain  
and was prevented from performing his neces-  
sary and lawfully business, and there-  
upon expended divers large sums of money, to wit:  
the sum of Two Hundred Dollars in en-



- desirous to be healed of his wounds and  
bruises occasioned as aforesaid, and also di-  
vers other large sums of money, to wit: the  
sum of One hundred dollars in searching after  
said horses, and also the sum of One hundred  
dollars in repairing said wagon and the  
plaintiff avers that in consequence of said  
improper, careless, negligent, and unlawful  
conduct of the defendants, & without any fault  
on the part of the plaintiff the injuries, loss and  
damage aforesaid took place.

Wherefore by reason  
of the premises the Plaintiff saith that he  
is injured & hath sustained damage to the  
amount of two thousand dollars & therefore  
he brings suit &

Larned Woodbridge  
Plffs Atty.

And afterwards, on the 8th day of December  
One thousand Eight Hundred and fifty one  
the said Defendant by his attorneys Mess<sup>rs</sup>  
Collins & Williams & files his plea which is  
in words and figures as follows to wit:

Cook Circuit Court  
The Galena & Chicago  
Union Mail Road Company  
vs  
Abner Loomis

And the said Defendant  
by Collins & Williams their attorney comes  
& defends, the wrong & injury when & says  
that they are not guilty of the said several  
supposed grievances above laid to their  
charge in manner & form as the said plain-



stiff hath above thereof Complained against  
them & in this they put themselves upon the Coun-  
try & - Colling Williams  
Steffs Atty.

And afterwards to wit on the 30<sup>th</sup> day of Dec-  
ember in the Year One Thousand Eight Hun-  
dred and fifty one, it being one of the days  
of the December Term the following proce-  
dings were had to wit;

Abner Leomin }  
or } leave  
Galena and Chicago Union }  
Rail Road Company }  
Now this <sup>day</sup> came the  
said parties by their Attorneys and issue  
being joined it is ordered that a Jury come  
thereupon come a Jurors of a Jury of good  
Law & ~~Wisdom~~ and lawful men to wit.

Levi Chipman	Carville Taber	W. Colman
Asa Stone	St. M. Ditch	W. N. Phillips
L. M. Wooster	W. P. Eaton	J. Andrews
W. Gorham	St. Johnson	J. M. Conant

who being duly elected tried and sworn  
well and truly to try the issue joined  
according to Law and the evidence and  
they having heard the testimony of Witnes-  
ses and arguments of Council and instruc-  
tions of the Court retire under charge of  
an Officer of the Court to consider of their  
verdict. And thereupon by agreement of  
parties it is ordered that when the jury  
shall have agreed upon a verdict they may  
reduce the same to writing, Seal it and







Question by Plffs. Atty. Was there any bell rung or whistle sounded as cars approached crossing, or was there any board erected over crossing,

Question objected to by Defts. & objection overruled by the Court. Ans.

No board was erected & no whistle or bell sounded. I should think the road by which the plaintiff approached the crossing was lower than the cars. I could not hear cars inside the house when they were going towards Chicago (if talking was going on) until they were close up to the house. The noise of a Wagon going over the frozen ground would be enough to prevent a person from hearing the cars. I could hear a Wagon further than I could hear the cars.

Cross examined by Defendants

Our house is about fifteen rods north west of the crossing I can't say I saw plaintiff cross the track he had just crossed the track when I saw him, I did not see cars touch plaintiffs wagon. The horses were jumping when I saw Plff. They went into the ditch one moment afterwards. They were frightened when I first saw them at the sight of the engine. The ditch was very near the crossing. The wagon was left in the ditch, horses became detached from wagon. The wagon was drawn up to the house half an hour after the accident. The engine & plaintiffs wagon were both moving when I saw them. I think the horses were over



The Crossing when I first saw them They were near the Crossing. Might have been on it.

Reexamined by plff.

Have seen horses scared at this Crossing often by rail Road Cars. The ditch is the Rail Road ditch & is between our House and the Rail Road. It was about Christmas last year when accident happened near Six O'clock in the Evening. Cars can be heard some times 3 or 4 Miles when coming from Chicago. Cars were now going to Chicago. Could hear them in this direction when still weather about a mile. Could in any case hear them 30 or 40 Rods. I should think plaintiff could not have heard Cars when riding in wagon. The Cars had no light except from Engine. There was a light there.

Fitz Henry Caburn, being sworn testified on the part of Plff. That he was keeping Six mile house when accident happened. My wife called to me and said that there was a man in trouble. I was in the back part of the house, when she called me. When I came to the door horses ran passed Plaintiff came up to house. It was candle light. I saw no light from Cars. My house is about 15 Rods from Crossing many teams pass at the Crossing every day. Sometimes five hundred may have passed in one day. There is a gradual descent on the Rail Road from Chicago to my place the turnpike is lower than the Rail Road. I think if a man



Sat in the bottom of his Wagon as he approached the Crossing he could not see the cars from the Turnpike. Loomis seemed stiff and sore when I first saw him, I assisted him into the wagon. Plaintiff was at my house several times searching for horses, was searching for them 3 or 4 weeks after accident. The ground was frozen, The cars did not make noise enough to drown the noise made by a team in driving along the road. Cars were going at the usual speed. The turnpike runs between the Rail and Rail Road ditch directly after passing the Crossing. It is difficult to hear or see under the same circumstances in which Loomis was placed. I have been in similar circumstances all except the accident when I never heard or saw the cars. The light in air will pass at a distance might be mistaken for a light from a window.

Cross examined.

When I came to the door the cars had passed, Can generally see fire from the fire pan of engine when one coming towards you, The light is plainer then. The ditch is about 20 feet from Crossing, All I know of the place where Wagon crossed ditch is from tracks of Wagon. Might hear cars coming that might perhaps half a mile. Can generally hear the puffing of steam from  $\frac{1}{4}$  to  $\frac{1}{2}$  a mile. The turnpike is 4 or 5 feet below Rail Road track and as you approach Crossing there is a rise of ground between the turnpike & the Rail Road track, For a  $\frac{1}{4}$  of a



1  
mile from the crossing the ground is lower than it is further on toward Chicago. The Rail Road is on the highest part of the land. The turnpike runs along about 40 rods from the Rail Road. I have never examined the the land near the Crossing carefully. At a distance from the Crossing the eye can distinguish objects upon the Rail Road better than when near it. The ground descends as you approach the Crossing. Plaintiff would have a side view as he approached crossing. A few minutes after the accident two men came up in a wagon & took plaintiff in. The Turnpike runs parallel with the Rail Road after you pass the crossing. The Turnpike runs between the Rail Road and the Rail Road ditch, the ditch being on the North side of Turnpike. Before reaching the Crossing the Turnpike runs for 10 or 12 rods parallel to Rail Road & at a short distance from it.

John Bloomfield, sworn on part of Plaintiff  
I was standing close to track with my team when cars passed, they almost glazed my eyes heads, Plaintiff passed me before I came to Rail Road track. He was driving at the rate of seven or eight miles an hour when he passed. I was going west towards six mile house. Did not see cars hit plaintiffs wagon it was dusk. I could not tell that I was near Rail Road track as I approached the crossing. Just as cars passed track they let off steam. There is a good deal of travelling on this road. I was a very few seconds



after I first saw Cars before they passed the Crossing. The first thing I saw was the light from the pine pan. The land is lower on the Turnpike near the Crossing, than at a distance from it. I heard no sound when I first saw the light from the ash pan, saw no light but from ash pan when cars passed, The team made a great deal of clatter.

### Cross Examined

I saw the train just as Loomis passed me I was 20 or 30 Yards from the Crossing then. Loomis passed by me quick and that was the last I saw of him. Cant say whether a Car hit plaintiffs wagen or not. Snow was drifting that evening. I cant state how it was at the time he passed me I was walking beside my team, my attention was never called to the lay of the land untill now. Had not known Loomis before, did not know that it was he who passed me except from his own statement. Loomis was with Fuller and Marshall when I first saw him, Plaintiff was sitting with his Shoulder to the Wind when he passed me. He was sitting on a seat, am sure he was not sitting in the bottom of the wagen.

Thomas Dumstad Sworn in part of Pff.

A man came to my house about two months after the accident spoken of by witnesses, went with him and dug a spin of horses



out of Ice. Horses were Cornell horses about  
6 Years old. One had a Star in his forehead  
and had two white hind feet. I gave up  
the harness that was upon the horses to the  
Rail Road Company. It was a long tugged  
harness with breeching. It was iron mount-  
ed. The lines were broken & one trace was gone

### Cross Examined

Harness might have  
been used a year and a half. Could not  
tell whether horses were 4, 5, or six years old.  
I am well acquainted with Turnpike  
pass over it twice or thrice a week. Cars  
can be seen from any place on Turnpike  
for two Miles before you reach the crossing.  
There is nothing in that distance to obstruct  
the view of the Rail Road from the Turn-  
pike. There is not a sufficient rise of  
Land between the Turnpike & Rail Road  
to prevent one travelling the Turnpike  
from seeing the Rail <sup>Road</sup>. The ridge is not high  
enough to obstruct the view. Think  
I am more familiar with the road than  
Colburn is. Colburn's house is about 30 Rods  
from the place where Turnpike crosses Rail  
Road.

### Miriam Hoyt sworn on part of Plaintiff.

Saw Loomis on the night  
of the accident. Took my team next day  
and carried him home. He was quite  
lame. I examined the side of the plaintiff,  
it was purple from his thigh to his knees



Hantiff employed me to search for horses,  
We searched a good deal afterwards, I  
searched one day with his son. At the time  
I searched for horses with plaintiffs son plain-  
tiff was not able to be about.

### Cross Examined

Next Monday after the  
accident Loomis & I looked for horses,  
was out all day. The week after accident  
Loomis was about. Monday & Tuesday he  
was travelling with me. He travelled in  
woods 3 or 4 hours. He was lame.

Alyson. Water sworn in the part of Piff  
Was seen Loomis' team a num-  
ber of times. They were light bay or sor-  
rel. were young horses. I think the  
horses were worth from \$70. to \$80 each  
if sound.

### Cross Examined

I don't know whether  
they were sound. I don't know their age  
I think about 5 perhaps 4 years old I don't  
know whether they were well broke or not.

Abner S. Loomis, sworn on the part of Piff  
Was at home when father was  
brought home. I looked at his bruises,  
his side was purple & he walked lame,  
We searched for horses many times.  
Searched nearly all the time until home.



were found two months afterwards. Had  
one team 2 days & another 3 days in reach-  
ing for horses. I have had the care of horses  
for 3 Years. Horses were kind and well broke,  
Sound so far as I knowed. Saw nothing like  
of the Wagon but the tongue.

Cross Examined

Father had horses about  
a Year, Had driven horses on road. We  
got the harness which was on horses at the  
time of the accident at the time we bought  
the horses. The harness had been used be-  
fore we bought them. The horses were spir-  
ited, they bore on the bit. They were fright-  
ened by the Cars, When I drove them to de-  
pot could never get them near Cars when  
in motion Not nearer than 20 feet.

Warren <sup>is</sup> sworn on the part of Plaintiff.  
Have seen Loomis's horses. Ex-  
amined them with a view to make a  
trade I thought horses worth from \$80.  
to \$85. a piece.

Cross Examined

Horses were about 6 or 7 Years  
I should think, were a Matched team,  
I saw them near a Year ago. I know  
that after horses were lost Loomis adverti-  
sed them.



The Plaintiff having rested the  
Defendants they introduced as a witness,

John Livingston who being duly sworn,  
saith, that he is a repairer of the Rail Road  
track, and that he has been over the road  
described by the witnesses once a day on  
an average for the 3 Years last past. The  
Cars can be seen from the Turnpike at  
any point for two or three miles this side  
of the Crossing as you go westward. There  
is nothing between the Turnpike and  
the railroad to obstruct the view. I do  
not know of a point on the Turnpike for  
four miles this side of the Crossing from  
which the Cars could not be seen. Caburns  
house is about thirty rods from the Crossing,  
The Cars on the rail road usually run about  
16 Miles an hour, including stops for  
watering. They do not run as fast on this  
rail road, as on other roads, from 5 to  
8 Miles an hour less. Run slower in  
Winter than in Summer. The Cars can  
be heard at a distance of from 2 to 4 or 6  
Miles depending upon weather. There  
is never any difficulty to hear them  
when 6, rods distant. The ash pan  
sparks from the engine can be seen at  
a distance of Two Miles. The ash pan  
is three feet long and 8 inches wide & is  
elevated 8 or 10 inches above the surface  
of road, & generally filled with live coals.

Thomas Fuller, being duly sworn on the  
part of the defendants saith, That he



resides 50 Miles from Chicago Was driving along road at the time of accident. I met plaintiff at the six mile house At the road Loomis was about 100 Rods ahead of me. I saw him first about the time he went over the Crossing. Loomis was driving fast then. I stopped about 15 rods from Crossing to let the Cars go by. I did not think it safe to go nearer, lest my horses should be scared. I saw the cars about a mile and a half beyond the six mile house. I saw them all the time until they came up to the Crossing. Any man could have seen them if he had not had his eyes shut. There was fire in the fire pan and light from the lamps in the cars. after Crossing the rail Road I saw Wagon of plaintiff in the ditch. It looked as if backed down. The wagon was 5 rods from the Crossing. I saw plaintiff at six mile house. Cars when I saw them at the Crossing were going at about 8 Miles an hour. Heard the noise of Cars at the place where I stopped, before I came to the Crossing. Heard no steam let off. The Cars went right on without stopping. I did not hear the noise of the Cars until they got opposite the six mile house. Marshall was with me. I was driving. Marshall saw the Cars first & pointed them out to me

Robert Marshall sworn for Defendants  
I was along with Puller the night spoken of, when we were half a mile from the Crossing. I saw the Cars.



they were then at the sand ridge. I noticed a team from 50 to 100 Yards ahead of us. I saw the team when it came to the crossing. Plaintiff was driving fast not less than 6 Miles an hour. I saw the plaintiff when he reached the Crossing. The Cars were then two or three rods from him. When we drew near to Crossing I says to Fuller that it was not prudent to go in - When we came to plaintiffs wagon it lay on its side in the rail road ditch. I first saw Cars at the sand ridge, more than a Mile and a half beyond the Six mile house. I saw the fire in the ash pan, and the lights in the Cars, when Cars arrived at the Crossing. No Steam was let off. I was noticing the Cars, had nothing else to do. Fuller was holding the Horses.

Fuller recalled,

Snow was drifting some but did not prevent our seeing.

Merrill recalled,

Snow did not prevent our seeing Cars.

It was admitted by defendants Council that the horses and harness spoken of by the witnesses were the Horses and harnesses of the plaintiff.

The foregoing was all the Testimony given in cause. The Plaintiffs Council then asked the Court to give the Jury the following instructions



1st. If the Jury believe from the evidence that the defendants omitted to erect any sign board at the place where the rail Road crosses the Public highway, such omission is a fact tending to establish negligence.

2<sup>nd</sup>. If the Jury shall believe from the evidence that the plaintiff has sustained damage, in consequence of the gross negligence of the defendants, the amount of damages which the plaintiff may recover is not limited to the amount of actual pecuniary loss, which has been proven, but the jury may take into consideration in estimating such damages the bodily injuries and sufferings, the fright & injury to the plaintiff's feelings, his loss of time & mental suffering his services and expenses in searching after his horses & the other circumstances, and they are not bound to any precise rule of damages, but are at liberty to find such as they deem a full & adequate compensation.

To which instruction the Court added the following qualification, "This instruction is given provided it appears by the evidence that the defendants were guilty of Malice or gross Negligence."

3. If the Jury believe from the evidence that the defendants omitted to ring a bell or sound a whistle in the manner required by law, such omission constitutes a prima facie case of negligence & the defendants are liable to the plaintiff for the loss & damage

Mine

Winn vs. M. & N. R. Co.

Mine



proved to have been suffered by him unless the  
defendants prove that such loss & damage were  
not occasioned by such omissions

4 If the Jury believe from the evidence that  
the defendants omitted to ring their bell or  
sound their whistle in the manner required  
by Law then the Plaintiff is entitled to  
recover for all injuries sustained by reason  
of such omission notwithstanding that the  
plaintiff may also have been guilty of negligence

5 If the Jury believe from the evidence that  
the defendants have been guilty of negligence  
in not giving proper & sufficient notice of  
their approach to the Crossing of a public  
highway & the Plaintiff in consequence of  
such neglect has without negligence on  
his part sustained damages by reason  
of such acts of the defendants he is en-  
titled to recover for such damages in this  
action.

6 If the Jury believe from the evidence  
that the witnesses Bloomfield & Marshall are  
equally worthy of belief, and that the  
opportunity of observation of Bloomfield  
was as great as that of Marshall, then the  
testimony of Bloomfield affirming that  
the locomotive let off steam when going  
over the Crossing is entitled to more credit  
than the testimony of Marshall negating  
that fact.

The Court gave the 1<sup>st</sup>, 3<sup>rd</sup> & 6<sup>th</sup> of  
the above instructions and the second as



amended by the Court as above mentioned, to the giving of all which instructions the defendants objected by their Council then & there excepted, and refused to give the 4 & 6th of said instructions, to which refusal the plaintiff by his Council excepted.

The Defendants Council then moved the Court to give the Jury the 8 following instructions.

- 1 If the Jury believe from the evidence that the injury complained of resulted in anyway from the negligence of the plaintiff then he cannot recover, even though the Defendants may have been guilty of negligence themselves.
- 2 If the Jury believe from the evidence that ~~the Plaintiff~~ <sup>the Plaintiff</sup> did not use proper care in crossing the Rail Road track & in driving along the road while the cars were passing, then he cannot recover.
- 3 If the Jury shall believe from the evidence that the Plaintiff was guilty of any negligence, and that such negligence concurred with the negligence of the Defendants to produce the injury, then the plaintiff cannot recover.
- 4 That the plaintiff cannot recover unless unless he shows that the injury complained of was occasioned by the negligence or improper conduct of the



defendants without any fault or negligence on the part of the Plaintiff

5 If the Jury believe from the evidence that the defendants were at the time of the injury running & operating their locomotive cars in the usual and ordinary manner & as authorized by their Charter and that the horses of the plaintiff became frightened by the usual noise incident to the operation of said road, then the verdict should be for the defendants.

6 If the Jury believe from the evidence that the injury complained of occurred by the fright of the plaintiffs horses, occasioned by the passing of the train and that the same was run in the usual & ordinary manner of running trains on Rail Roads generally, then the verdict should be for the defendants.

7 If the Jury believe from the evidence that the Plaintiff might with ordinary care and observation have seen them it was not necessary for the defendants to ring a bell or to give any other notice of the approach of the train.

8 That in this case the plaintiff must himself be without fault or negligence or he cannot recover.

The Court then gave the 1<sup>st</sup> 2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> & 8<sup>th</sup> instructions & refused to give the 6<sup>th</sup> instruction.



The Court then gave the same instructions as modified by the Court as follows.

If the Jury believe from the Evidence that the defendants were at the time of the injury running & operating their Locomotive & Cars in the usual & ordinary manner & and were guilty of no negligence & as authorized by their Charter, and that the horses of the plaintiff became frightened by the usual noise incident to the operation of said road then the verdict should be for the defendants.

If the Jury believe from the Evidence that the plaintiff might with ordinary care and observation have seen the train before he arrived at the crossing, and that he did not use ordinary care and observation then the defendants would not be liable for omitting to ring a bell or to give any other notice of the approach of the train.

To which said refusal of the Court to give the 6<sup>th</sup> instruction & the 5<sup>th</sup> & 7<sup>th</sup> as asked by defendants Counsel & to the giving of the modified instructions by the Court the said defendant by his Counsel then & there excepted.

After the giving of said instructions the Jury retired to Consider of their verdict and on the 2<sup>nd</sup> day of January A. D. 1852 rendered their verdict in favor of the Plaintiff for Two hundred



Hollars, & thereupon the defendants filed  
their Motion for a New trial as follows

Cook Circuit Court

Galena Chicago Union

Rail Road Co.

vs

Abner Loomis

December Term

Ad. 1851


And now Comes the  
said Defendants by Hollins & Williams  
their attorneys & moves the Court for a New  
trial on the above Cause for the following  
reasons

1. That the verdict is against Law
- 2<sup>d</sup> That it is against Evidence
- 3<sup>d</sup> That it is against both Law and  
Evidence
- 4<sup>th</sup> That the Court erred in the in-  
structions to the Jury on the part of  
the Plff
- 5<sup>th</sup> That the Court erred in refusing  
the instructions of Deft  
Hollins & Williams

Jan'y 2<sup>nd</sup> 1851.

Defts attys.

After hearing the Arguments of Counsel up  
on the said Motion the Court overruled said Mo-  
tion for a New trial to which decision of the  
Court the said defendants excepted & prayed the  
Court to sign & seal this bill of exceptions according  
to the Statute in such Case made & provided  
which is done

Hugh T. Sickey   
Judge



went the Court yesterday morning at 10 o'clock  
& 1/2.

And afterwards to wit on the 2d day of  
January A.D. 1859 the following among  
other proceedings were had to wit.

Abner Loomis

vs

Galena and Chicago Union Case

Rail Road Company

This day again came  
said parties by their attorneys and the jurors  
of said also come and deliver their verdict  
and say in of the Jury find issue for the  
plaintiff and assess his damages at the  
sum of Two hundred dollars.

Whereupon  
the said defendants move the Court for a  
New trial thereof.

And afterwards to wit on the 7th day  
of January in the Year last aforesaid the  
following proceedings were also had to wit:

Abner Loomis

vs

Galena & Chicago Union Case

Rail Road Company

Ordered by the  
Court the said plaintiff be allowed all his  
witnesses sworn on the trial of this cause and  
that their fees be taxed in the fee bills in  
this cause.



And afterwards to wit on the 9th Day  
of January in the Year last aforesaid the  
following proceedings were had to wit;

Abner Loomis's  
vs  
Galena and Chicago  
Great Road Company } Case

This day again came  
the parties by their attorneys, and the Court being  
fully advised as to the said defendants Motion  
for a new trial and the question of law arising  
thereon. It is ordered that said motion be over-  
ruled.

Therefore it is considered that the said  
plaintiff do have and recover of the said Defen-  
dants his damages of Two Hundred Dollars  
by the Jews aforesaid, in form aforesaid assessed  
together with his costs and Charges by him about  
his suit. in this behalf expended, and have ex-  
ecution therefor. Whereupon the said Defendants  
perceiv<sup>ing</sup> appeal to the Supreme Court of this  
State, and which is granted upon the filing  
a Bond in the sum of four Hundred Dollars  
with Thomas Tyler as security on or before the  
Nineteenth day of January instant. and it is  
further ordered that the bill of exceptions be settled  
and signed by said Nineteenth day of January  
1852.

And afterwards on the 19th day of January  
in Year aforesaid the the Defendants filed  
their Bond which is in word and figures  
as follows to wit;



Straw all men by these presents that we  
the Galena Chicago Union Rail Road Com-  
pany as principal and Thomas Lyer as  
surety are held and firmly bound unto  
Abner Loomis in the penal sum of Four  
Hundred Dollars lawful money of the  
United States to be paid to the said Abner  
Loomis or his certain attorney executors  
administrators or assigns for which pay-  
ment well and truly to be made we do  
bind ourselves our Successors executors  
Administrators and each and every  
of them jointly & severally firmly by these  
presents. Sealed with the Seal of the said  
Galena and Chicago Union Rail Road  
Company, acting by their President and  
Secretary and with the seal of the said  
Thomas Lyer this seventeenth day of  
January A. D. 1852.

Whereas at the Decem-  
ber Term of the Cook County Circuit Court  
A. D. 1851. Judgment was rendered by  
said Court in favor of the above named  
Abner Loomis against the said Galena  
Chicago Union Rail Road Company  
for the sum of Two Hundred Dollars <sup>damages</sup>  
besides costs of suit.

And whereas the said  
Galena Chicago Union Rail Road Com-  
pany have payed an appeal from the  
said Judgment to the Supreme Court  
of the State of Illinois.

Now therefore the  
condition of the above obligation is  
such that if the above bounden Galena  
and Chicago Union Rail Road Company



Shall prosecute the said appeal with effect & shall and will pay or Cause to be paid the said Judgment, Costs, interest & damages, in case the said judgment shall be affirmed, then the said obligation to be void, otherwise to be & remain in full force & virtue.

John B Turner  
President



Wm. Larabee

Sec.

Thos. Sizer

State of Illinois  
Cook County Secy.

I Louis D Hoard Clerk of the Circuit Court of the County of Cook in the State of Illinois do hereby certify, that I have compared the foregoing pages with the original records and files remaining in my office in the above entitled cause, and that the same is a full true and perfect transcript of such records and files and of the whole thing.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago in said County this 7th day of June A.D. 1882

L. D. Hoard Clerk



See 112 folio 11. 20  
Ct. Rec. 35  
11. 53



Supreme Court  
The Galena & Chicago Union  
Railroad Company  
vs  
Abner Louis

J. J. Errow,  
June Term 1852.

And now at this day comes  
the said Galena and Chicago Union Railroad Com-  
pany plaintiff in error by Collins & Williams their  
attorneys & say that in the record & proceedings afore-  
said & in the giving of judgment aforesaid there is  
Manifest Error in this, to wit,

First - The Court erred in giving the first  
third & fifth instructions asked for by the Defen-  
dant in error -

Second - The Court erred in refusing the fifth  
sixth & seventh instructions of the plaintiff in  
error -

Third - The Court erred in giving the fifth  
and seventh instructions as modified by the  
Court -



Fourth

The Court ruled in admitting the testimony as to the erection of a board at the crossing and to the ringing of a Bell or the blowing of a whistles all near the crossing -

Fifth

The Court ruled in overruling the Motion for a Neutral in said cause

Collins & Miriam's  
attys for plaintiff in error



511999-18

Cook.

Abner Loomis

v

Sub. Chicago Union  
Rail Road Co.

Transcript.

Filed June 30<sup>th</sup> 1852.

J. Seland Atty.  
in P. to Seland & Co.



Abner Loomis

Friday Morning January 2<sup>nd</sup> 1852

Galeana & Chicago  
Rail Road Company

This day again came  
the said parties by their attorney, and the  
jurors aforesaid also come and deliver their  
verdict, and say, we of the Jury find, in favor  
of the plaintiff and assess his damages at the  
sum of two hundred dollars whereup the  
said defendants moved the court for a retrial  
therein.