

11990

No. \_\_\_\_\_

Supreme Court of Illinois

Aurora Branch R. R. Co.

vs.

Grimes.

71641  7

Name

Aurora B. Rail R. Co.  
<sup>vs</sup>  
Jacob Grimes

27

1852

76 700.

11990

Repaired



Kanaw County Cir Clerk Office  
28<sup>th</sup> 1852

Be it remembered that on the  
21<sup>er</sup> day of January 1852. was filed in the Clerk's  
Office of the Circuit Court of Kanaw County, a  
Raw: which is in words and figures following  
to wit:

State of Illinois } In the Kanaw Cir Court  
February Term 1852  
Kanaw County, to wit:

Jacob Gagner, the plaintiff  
in this Suit by G. C. Mory, his attorney. Complain  
of the Aurora Branch Rail Road Company  
defendants in this Suit, who have been summoned  
to answer to the said plaintiff in a plea of Trespass  
on the Case

For that whereas, the defendants, before  
and at the time of the commencement of this  
Suit, and after injury and damage accruing  
as hereinafter mentioned, were the owners and  
occupiers, of a certain Rail Road Messuage  
and premises with the appurtenances situate  
in the Town of Patawip Kanaw County aforesaid  
on which said premises there was a certain common  
or public grounds, and in which, <sup>suppl</sup> Common or  
public grounds and premises, there was a  
certain Hole dug by the said defendants;  
Yet the said defendants, well knowing the  
premises whilst they were so possessed and  
occupiers of the said Messuage premises Common  
and appurtenances, and whilst there was such  
a hole as aforesaid hitherto to wit on the  
fifteenth day of December A.D. 1851, wrongfully  
negligently, unjustly, and contrary to their



duty in that behalf permitted the said hole  
to be and continue: and the same was then  
so badly, insufficiently, and defectively covered  
that by means of the premises, and for want  
of a proper and sufficient covering to said  
hole the said plaintiff; who was then and  
then lawfully passing in and along the said  
premises, and public ground, with the horse  
to wit the man of the said plaintiff, then neces-  
sarily and unavoidably ran upon the covering  
to said hole and then and then necessarily  
and unavoidably slipped and fell through  
the said covering into the said hole; and  
by means thereof, thereby then and then the  
said man of the said plaintiff was instantly  
killed. Wherefore, the said plaintiff saith he  
is injured and hath sustained damage, to  
the amount of One Hundred and fifty dollars  
and therefore he brings his suit &c

Thos. C. Moore  
Atty for Plff

Afterwards to wit on the 10<sup>th</sup> day of February  
A.D. 1852 the following pleas were filed, which  
are in words and figures following to wit

Amos Branch R.R.Co

vs  
Jacob Grimes

} New Circuit Court  
} Feby Term 1852  
Case

and the said defendants by Plato  
their attorney come and defend the wrong  
and injury when &c. and say that they are



not guilty of the said supposed grievances  
above laid to their charge or any of either of them  
in manner and form as the said plaintiff  
has above thereof complained against them  
and of this they put themselves upon the County  
&c

W. B. Plato  
atty of deft

And the said plaintiff doth the like by  
Moore  
His atty

afterwards to wit: on the 17<sup>th</sup> day of May A. D. 1853  
the following proceedings were had to wit:  
Jacob Grimes

75. Aurora Branch } lease  
Rail Road Company } This day comes the plaintiff  
by Moore and Jamesworth  
his attorneys: and the defendant  
by Plato their attorney also come. and on motion  
of the plaintiff it is ordered by the Court that a  
jury come whereupon came a jury of good  
and lawful men to wit:

Jubius Alexander	Harvey Eddy	Janson Morgan
Reuben Tyck	Robert Frost	Ethan S. Cordes
Robert Rodgers	David Shear	George E. Corwin
Simyon R. McKinley	Alfred Henington	Walter Hull

being severally elected tried and sworn. also  
come. and after hearing the evidence argument  
of counsel and instruction of Court retire under  
the charge of any Officer of the Court to consider of  
their Verdict Subsequently return into Court and  
for a verdict upon their Oath. Say that we the



jury find the defendant Guilty and assess  
the plaintiffs damages at the sum of One  
Hundred and Ten Dollars. thereupon comes  
the defendant and moves for a new trial

Afterwards to wit On the 22<sup>d</sup> day of May A.D. 1852  
the following among Other proceedings were had  
to wit:

Jacob Gaimex

75.

v

Among Branch  
Rail Road Company

} Case

This day comes on  
to be heard the defendants  
Motion heretofore entered  
herein for a new trial. the Court being fully  
advised overrules the same. it is therefore Considered  
by the Court that the plaintiffs have and recover  
from the defendant the sum of One Hundred  
and Ten Dollars and his Costs in this Suit  
expended and have execution therefor. to which  
the defendants by their Counsel excepted and  
prays an appeal to the Supreme Court of the  
State of Illinois. which is allowed on condition  
that they enter into bond in the penal sum  
of three Hundred Dollars with C. R. Brady  
Benjamin Hackney. William H. Hawkins or  
E. R. Allen as security to be filed by the 20<sup>th</sup> day  
of June next



and afterwards went on the ~~day~~  
~~of the~~ <sup>same day</sup> there was filed in said  
Clerk's Office a Bill of exceptions of which  
the following is a copy.

Jacob Grimes

vs  
Arrow Rail

Road Company

W. H. Circuit May Term

1852

Case

Be it remembered that on  
the trial of this Cause the Plaintiff produced  
as a Witness Russel Grimes, who testified that  
he knew the Patavia Depot of the Arrow  
Rail Road Company, there is a well south of  
the Depot building between the two tracks  
of the Rail Road, the space between the tracks  
at the well is from fifteen to eighteen feet, the well  
is from six to eight feet from each track, the well  
and grounds between the tracks are not enclosed  
the well was covered with Oak Boards,  $\frac{3}{4}$  or  $\frac{1}{8}$  of an  
inch thick: the surface of the ground about the  
well and between the tracks is about level. In  
the latter part of December last the plaintiff  
had some Lumber come on the Cars of the Company  
from Chicago, and the Car was left standing  
on the east track of the Rail Road South of the  
Depot, some two or three inches of Snow on the ground  
at the time, the plaintiff wanted to get the lumber  
around to his lumber yard North West of the  
Depot, on the West track of the road, and with  
the Witness called on W. A. Lord who had  
Charge of the Depot at Patavia & spoke to him  
about helping get the Lumber around.



Lord said he could not help, it was not his business, and said the Car stood where they discharged freight, but said if you will get the Car around we will discharge it at the Yard. The lumber belong to the plaintiff & Plaintiff said he did not know as he could get it around alone; Lord remarked put your horse on, Plaintiff said he did not know as he would go: Lord said try her and see; the Car of Lumber stood two or three rods South of the Depot on the East tract of the road; the plaintiff hitched on his man, and drew the Car five or six rods South to the Switch, then back on the west track just the way to whom he wanted the lumber unloaded two or three rods East of the road ~~near~~ Depot building. two or three days afterward, we had another load of Lumber come on the Car, and was left about the same place as the first. Plaintiff hitched on the same horse again, and started South and on coming back on the West-track, and after we had passed the way a little the Man stopped & backed down off the track tangled his legs in the traces and floundered about got on the board over the way his hind parts fell through the boards, and in trying to get up she fell into the way and was killed, some of the board, that covered the way was found in the way broken.

The Plaintiff Counsel then asked the Witness this question, what was the Custom of the Company in regard to allowing horses to be hitched to the Cars, the Witness answered I have seen it done, and have seen Mr. Huillett hitch his horses on and draw Cars. to



which <sup>question</sup> and answer the defendants by their Answer  
objected to at the time, and the objection was  
overruled by the Court, to which decision of the  
Court the defendants by their Answer excepted.  
at the time, the Witness further testified that he  
was engaged with the Plaintiff assisted by one  
Haupten (a hired man by Defendants) in moving  
the Car of lumber at the time of the accident, that  
the Plaintiff was driving his Man and Witness and  
Haupten were engaged with pinch bars in assisting  
to move the Car, that the Plaintiff and Witness are  
brothers, and engaged in the lumber business at  
Batavia when the Plaintiff has resided since  
1845 & been in the lumber business about two years,  
the Plaintiff was leading the Man at the time she  
fell off the track, do not know that the Man  
was halkey, she was a high bred <sup>smoke</sup> animal never  
knew her to balk, while hitched she stopped draw-  
ing and backed up a few times, knows of the well  
being there over a year previous to the accident.

The Plaintiff then called in P. H. Youst  
as a Witness who testified that he had seen the  
Man & spoken of by the Witness before, she was  
rather a fine high bred animal & he had tried to  
buy her for the purpose of selling again, she  
would have been worth thirty, one hundred and  
Twenty Dollars; Witness also testified that he had  
seen the Well spoken of, and was well acquainted  
with the situation and condition of the ground  
about it, the well and surface of the ground between  
the tracks of the road are about level and six or  
eight inches below the ties on the track, the well is  
situated not over two feet from the east track  
and thirty two or four feet from the west track.



that teams do not and cannot travel over  
the ground between the tracks, south of the Depot  
building.

The Plaintiff then called Larsen Morgan  
who testified that he lived near the Depot grounds  
at Batavia, the well spoken of is eight or ten  
rods south of the Depot building, between the tracks  
of the rail road, it was covered with oak boards,  
and in part with two thicknesses of boards, there  
being one thickness across and the other boards  
laid on as battens on the cracks, the well is  
five or six feet across, the boards were inch board,  
about twelve feet long, and lay about level  
with the surrounding ground, the boards indicated  
the location of the well, and were easily seen,  
when not covered with snow, the Plaintiff's  
Man was a high life animal, and worth thirty  
or thirty five dollars. Witness has seen several  
use his horses to draw cars at that place, they  
were steady, true horses, the well had been there over  
a year, and the Plaintiff had been in the habit  
of receiving lumber from the defendant's Car at that  
place.

Cross examination had seen the Man at work in  
the Lumber yard both alone and in double team  
never knew her to balk

The Plaintiff here rested his case and the  
defendants called as a witness James Hampton  
who testified that he was and had been for some  
time in the employ of the defendants at the time  
of the accident spoken of by the Witness James  
that he was present and heard the conversation  
between Plaintiff and Mr. A. Lord mentioned



by the witness Grimes the plaintiff and his brother said something to Lord about getting the lumber around to their yard Lord said that he did not consider that he had anything to do with that, as it was when they discharged the freight something was said about using Plaintiff's horse by some one do not remember who, Plaintiff said he did not know unless horse would work on the car Witness told plaintiff he did not think she would Lord said try and see the plaintiff then hitched on his man and drew the car around to his lumber yard north west of the depot the witness and Russell Grimes assisting to move the car and the plaintiff leading his horse. a few days after this the Plaintiff had another load of lumber come on the car and was left at about the same place as before south of the depot on the East tracks and hitched his man on to the car and started the Plaintiff leading his man and witness with Russell Grimes following behind the car with pinch bars assisting the man did not draw much but as well as the first time they however moved the car south to the junction of the tracks then back on the west tracks a little past the well when the man stopped again and backed up against the car and fell off the track got her legs tangled in the traces floundered about and fell on to the covering of the well and in kicking about in trying to get up



Kicked the board off and fell into the well and was killed. the well was about fifteen feet from where the man went off the track and six feet from the tracks and at the time was covered with a double thickness of wide narrow boards about twelve feet long. which had been put on by the witness about a month previous to the accident the boards were not nailed but laid on loose. the well had been kept covered in that way since the time it was dug and I think the boards were sufficient to sustain the weight of a horse I do not think that any of the boards were broken. I had taken care to see that the well was kept covered. the plaintiff had been leading his man until the last time she stopped and at the time she went off the track he was behind her and had hold of the lines driving her. and I think the lines dragging over the harness as she was backing up helped to pull her over when the plaintiff was leading her if she undertook to back up he held her on the tracks by the bridle or halter when the first car was taken around the plaintiff led her all the way and she worked better than she did the last time she was a highly lived animal and I did not consider her suitable to be used for such a purpose. as the man was floundering about on the ground. the plaintiff said she will go into the well I think if the plaintiff had kept hold of her bridle or halter he might ~~have~~ perhaps have kept her on the track



Cross Examination the car was heavy and hard to start very few horses will draw well at first on being hitched to a very heavy load of any thing when they find it starts hard

The foregoing is all the evidence given in the case

The plaintiffs then asked the Court to instruct the jury as follows

The Court will please instruct the jury that if they believe from the evidence that the plaintiff with his mare was on the premises, with the consent of the defendants or their agents, and that in consequence of the defective covering of the well the plff mare fell into the same with-  
-out any mismanagement or fault on the part of the plff and that the mare was thereby killed then the law is for the plaintiff

It was the duty of the defendants to enclose the well or cover it over in such manner as would have prevented injury to the property of others who should be lawfully on the premises and if the plaintiff with his mare was lawfully on the premises in question, and the mare was killed in consequence of an insuffi-  
-ent protection around or over the well then the law is for the plff unless the jury believe that the injury was occasioned by the mismanagement or fault of the plff

given

given



*given*  
If the jury should find for the plaintiff then it is their province to assess his damages at whatever they believe it to be taking into consideration all the facts and circumstances in the case. Which instructions were given to which the defendants by their counsel at the time excepted. The defendants then asked the court to instruct the jury as follows: If the jury believe from the evidence that the injury done to the plaintiff's horse was the ~~fact~~ result of the fault or negligence of the plaintiff or the fault or negligence of both the plaintiff and defendants without any intentional wrong on the part of the defendants, then the plaintiff can not recover and the jury must find for the defendants. Which instruction was refused by the court to which decision of the court in refusing said instruction the defendants by their counsel at the time excepted.

*Refused*  
The court then gave the following instruction. *given* If the jury believe from the evidence that the injury done to the plaintiff's horse was the result of the fault or negligence of the plaintiff then the law is for the defendants and the plaintiff cannot recover.

The jury found a verdict for the plaintiff and assessed his damages at one hundred and ten dollars and then upon the defendants moved the court



for a new trial for the reasons that the  
Court erred in overruling the defts objection  
to the questions put to and answered by the witness <sup>Chimes</sup>  
in reference to the custom of the company  
in allowing horses <sup>to be</sup> hitched to their cars.

The Court erred in giving the instruction  
asked for by the plaintiff.

The Court erred in refusing the instruction  
asked for by the defendants.

The Court erred in refusing the

The verdict is contrary to evidence  
the law which motion was overruled by  
the Court and a judgment rendered upon  
the verdict to all of which dissensions and  
judgments of the Court the defendants by  
their counsel at the time excepted and  
prays that this their bill of exceptions may  
be signed & made a part of the record which  
is done

Isaac G. Wilson (Seal)  
Judge &c



Afterwards to Wit on the 11<sup>th</sup> day of June A.D. 1852 a Bond was filed which is in words and figures following to Wit

Know all men by these presents that we the "President Directors & Company of the Aurora Branch Rail Road Company" and Edward R. Allen of the County of Kane & State of Illinois are held and firmly bound unto Jacob Grimes in the penal sum of Three Hundred Dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and assigns jointly and severally by these presents

Witness Our hands and seals this 5<sup>th</sup> day of June 1852

The condition of the above obligation is such that whereas the said Jacob Grimes did at the May 1852 Term of Kane County Circuit Court recover a judgment against the said Aurora Branch Rail Road Company for the sum of One Hundred and Ten dollars and Costs from which said judgment of the said Circuit Court the said Aurora Branch Rail Road Company have taken an appeal to the Supreme Court of the State of Illinois

Now if the said Aurora Branch Rail Road Company shall prosecute this appeal and shall pay the judgment Costs interest and damages in case the said judgment shall be affirmed on the trial of said appeal in the Supreme Court and shall pay and satisfy whatever judgment may be rendered on the dismissal or trial of said appeal in said Supreme Court then



the above obligation to be void: Otherwise to  
remain in full force and Virtue

P. A. Hall Secy for the  
President Directors Company of the  
Amos Branch Rail Road Company  
E. R. Allen Seal

State of Illinois,  
Kane County, ss. I Charles B Wells Clerk  
of said County, Circuit  
Court do hereby certify that the foregoing is  
a true and perfect copy of the Saw. Pleas  
ord of judgment. order overuling the motion  
for New trial. order taking appeal. Bond  
Bill of exceptions. and Instructions of  
Court. in the foregoing entitled cause  
In Witness Whereof I have hereunto  
Set my hand and affixed the seal  
of said Court at Geneva this 27<sup>th</sup>  
day of June A. D. 1852  
C. B. Wells  
Clerk



And now comes the Aurora. Bennett Raid Race  
company and says that in the course of proceeding  
aforesaid and in the rendition of the Judgment  
aforesaid there is manifest error in this writ  
The court erred in

- 1<sup>st</sup> The court erred in admitting the testimony of  
the witness Russell Ginn which was objected to
- 2<sup>d</sup> The court erred in giving the instructions asked  
for by the plaintiff
- 3<sup>d</sup> The court erred in refusing the instruction asked  
for by defendant.
- 4<sup>th</sup> The court erred in overruling the motion for a  
new trial
- 5<sup>th</sup> The court erred in rendering the Judgment aforesaid  
in manner aforesaid

Plato v. Cook  
for pl'tf in error



cases cited in support of motion for supersedeas  
 Parker vs Adams 12 Met 415  
 Butterfield vs Forrester 11 East 60.  
 Smith vs Smith 2 Pick 621 & cases there cited  
 Kennard vs Beaton 12 Shupley 39  
 Pluckwells case 5 Harrington & P. 375  
 Williams vs Holland 6 " " 23  
 Weyde vs Lady Carr 2 Dougl & Ry 255

Name

Aurora Branch Rail  
 Road Company  
 vs

Jacob Genies

Transcript.

Filed July 6, 1852.  
 C. N. and Clerk.

\$5. per. Clk. by book



Jacob Grimm }  
    do }  
Aurora Branch } Appeal from Kanaw  
Rail Road Co }

B. C. Cook states on oath that he for the  
appellant in this cause that he certifies  
copy of the record has been sent to the  
clerk of this court but has not been filed  
for the reason that the <sup>copy of the</sup> record is manifestly  
erroneous in this that it states that a certain  
instruction was given by the circuit court  
which is manifestly refused & was refused  
by the court as affirmed is injurious & the  
appellant has no doubt that the error is a  
clerical one and made by the clerk in  
making up the record. And by reason of  
such error appellant is prevented from  
presenting the real question in this cause  
for adjudication

B. C. Cook

Subscribed & sworn to before me  
June 28. 1852.  
Hiland Clk.



name  
Chloro Branch Rail  
Road Company

Jack Genies

att.


Filed June 28, 1852  
L. Seland Clk.




Know all men by these presents that we the  
Chicago and Aurora rail road company and  
Edmund R. Allen of the County of Vermilion and State of  
Illinois are held and firmly bound unto Jacob  
Grimes in the Penal Sum of three hundred Dollars  
for the payment of which well and truly to be made  
we bind ourselves our heirs executors and administrators  
jointly severally and finally by these presents

Witness our hands and Seals this thirteenth  
day of July A.D. 1852

The Condition of the above  
obligation is such that whereas the said Jacob  
Grimes did at the May term A.D. 1852 of the Peace  
County Circuit Court recover a Judgment  
against the above bounden rail road company  
under the name style and description of the  
Aurora Branch rail road company for the  
Sum of one hundred and ten dollars and costs  
upon which said Judgment of the said Circuit  
Court the said rail road company have sued  
out a writ of Error to the Supreme Court of said  
State of Illinois and have prayed for and obtained an  
order to be entered in said Court that said writ of Error  
be made a Supersedeas, - Now if the said rail  
road company shall prosecute the said writ of Error  
with effect and shall pay the Judgment costs interest  
and damages in case the said Judgment shall be  
affirmed on the trial of the said appeal in the said  
Supreme Court then the above obligation to be void  
otherwise to remain in full force and effect

Edmund R. Allen 

J. N. Hall. Supt. C. & A. R.R. Co. 



Name  
Aurora B. N. N. Company  
by  
Jacob Gurnis  
Bond

Filed July 18. 1852  
L. Leland Clk.



**AN ACT**  
GRANTING A CHARTER TO  
**THE AURORA BRANCH RAIL ROAD COMPANY.**

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all such persons as shall become stockholders agreeably to the provisions of this act in the corporation hereby created, shall be, and for the term of seventy years from and after the passage of this act, shall continue to be, a body corporate and politic, by the name of the "Aurora Branch Railroad Company," and by that name shall have succession for the term of years above specified; may sue and be sued, complain and defend, in any court of law or equity; may make and use a common seal and alter the same at pleasure; may make by-laws, rules, and regulations for the management of property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the existing laws and constitution of this state, and of the United States; and may, moreover, appoint such subordinate agents, officers, and servants as the business of the said corporation may require, and allow to them a suitable compensation; prescribe their duties, and require bond for the faithful performance thereof, in such penal sums and with such sureties as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.

SEC. 2. The said corporation shall have the right, and during its continuance, to maintain and continue a railroad with a single or double track, and with such appendages as may be deemed necessary for the convenient use of the same, from the town of Aurora, in the county of Kane, to some eligible and convenient point in the county of Du Page, there to connect with the Galena and Chicago Union railroad.

SEC. 3. The capital stock of said corporation shall be one hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each. The capital stock of said corporation may at any time hereafter be increased to a sum not exceeding one million of dollars, if the same shall be judged necessary to the completion of the said work, and the same shall be subscribed for and taken under the direction of the directors of the said corporation, at such time and place as may by them be deemed expedient.

SEC. 4. That A. C. Gibson, Benj. Hackney, Chas. Hoyt, E. R. Allen, and Stephen F. Gale, shall be commissioners for securing subscriptions to the capital stock of said corporation. Each subscriber at the time of subscribing shall pay to the commissioners one dollar on each share of the stock subscribed for by him; and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount so received.

SEC. 5. The affairs of said corporation shall be managed by a board of five directors, to be annually chosen by the stockholders from among themselves, as soon as may be after one-fourth of the stock is subscribed; at which time they may commence the work. The commissioners shall give notice of the time and place at which a meeting of the stockholders will be held for the choice of directors, and, at such time and place appointed for that purpose, the commissioners, or a majority of them, shall attend and act as inspectors of said election, and the stockholders present shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election under their hands; which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All future elections shall be held at the time and in the manner prescribed by the by-laws and regulations of the said incorporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of such election, and a plurality of votes shall determine the choice, but no stockholder shall be allowed to vote at any election after the first, for any stock which shall have been assigned to him within thirty days previous to holding such election. The said directors shall hold their office for one year after their election, and shall elect one of their number as president of the board.

SEC. 6. The said corporation is authorized to contract, make, and use a single or double railroad or way, of suitable width and dimensions, to be determined by the said corporation, on the line, course, or way which may be designated and selected by the directors as the line, course, or way whereon to construct and make the same; and shall have power to regulate the time and manner in which goods, effects, and passengers shall be transported, taken, and carried on the same, and to prescribe the manner in which the said railroad shall be used, by what force the carriages to be used thereon may be propelled, and the rate of toll for transportation of persons or property thereon, as may be deemed suitable to their interests; and it shall be lawful also for the said corporation to unite with any other railroad company upon such terms as may be agreed upon by the directors of said companies, and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient.

SEC. 7. In case the corporation shall not be able to acquire the title to the lands through which said road shall be laid, by purchase or voluntary cession, it shall be lawful for the corporation to appropriate so much of said land as may be necessary for its own use, for the purpose contemplated by this act, on complying with laws made and provided to govern such matters on all public works.

SEC. 8. The board of directors shall hereafter consist of such number of directors as shall be determined upon from time to time by the stockholders of said company, at any meeting thereof, for the choice of directors; *Provided*, that such number shall not be less than five nor more than eleven. Said directors shall be stockholders in said company, and shall be elected annually by the stockholders, either in person or by proxy, and shall hold their offices for one year and until their successors shall be elected and qualified. But any vacancy occurring in said board between elections, may be filled by the board at any legal meeting of the directors, and the person so elected to fill the vacancy shall hold his office until the next annual meeting.

SEC. 9. The said corporation shall be allowed two years from the passage of this act for the commencement of the construction of said work; and in case the same shall not be completed within five years thereafter, the privileges herein granted shall be forfeited.

SEC. 10. The said corporation shall be bound to repair all public highways, bridges, water courses which may be injured in constructing said railroad or its appendages, and shall restore them, as far as practicable, to as good a condition as they were before they were injured.

SEC. 11. Any person who shall wilfully injure said railroad or any of the appendages thereto, shall be deemed guilty of a misdemeanor, and shall forfeit to the use of the corporation a sum equal to three times the amount of damages occasioned by such injury; to be recovered with costs of suit, in the name of such corporation, in an action of debt before any court having cognizance thereof, or before any justice of the peace in the county where such offence may have been committed.

SEC. 12. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein specified or intended, and all copies thereof printed by or under the direction of the general assembly of this state, shall be received in all courts and places whatsoever in said state, as sufficient evidence thereof, without further proof.

SEC. 13. For the purpose of facilitating the construction of said rail road, said company are hereby authorized to negotiate loans to the amount of the capital stock, and to pledge all its personal and real property for the security thereof; *Provided*, that the individuals of said corporation shall be liable, to the extent of their stock, for the payment of its debts.

SEC. 14. This bill to take effect from and after its passage.

APPROVED February 12, 1849.

**AN ACT TO AMEND THE CHARTER OF THE AURORA BRANCH RAIL ROAD COMPANY.**

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the Company incorporated by an act entitled "An Act granting a Charter to the Aurora Branch Rail Road Company," approved Feb. 12th, 1849, be and it is hereby authorized to extend its Road from Aurora, in Kane County, crossing Fox River at a point not further south than the present mill-dam across Fox River in the village of Aurora in said county, in the most direct practicable line, thence in a south-westerly direction on the most direct practicable route to a point at least fifteen miles north of La Salle, and where such Extension may intersect any Rail Road built or to be built northward from the town of La Salle in La Salle County, and there to form a connection with any such Rail Road.

SEC. 2. The said Company is hereby authorized to use and exercise all the powers for obtaining the right of way for the use of said Company, in the construction of said Road, that are given or expressed by the act to provide for a general system of Rail Road Incorporations, approved Nov. 5th, 1849; and the name of said Company is hereby changed to that of "CHICAGO AND AURORA RAIL ROAD COMPANY." Said Company is also authorized and empowered to increase its Capital Stock to a sum not exceeding two millions of dollars.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED June 22, 1852. AUG. C. FRENCH.

UNITED STATES OF AMERICA, }  
STATE OF ILLINOIS, } SS.

I, David L. Gregg, Secretary of State of the said State of Illinois, do hereby certify that the foregoing is a true copy of the enrolled law now on file in my office in testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State, at Springfield, this 22d day of June, A. D., 1852.

SIDNEY BREESE, Speaker of the House of Rep's.  
WM. McMURTRY, Speaker of the Senate.

DAVID L. GREGG, Secretary of State.







State of Illinois, ss.

Clerk's Office of the Supreme Court—Third Grand Division:

I HEREBY CERTIFY, That a Writ of Error hath issued from this office, for the reversal of a Judgment obtained by *Jacob Grimes* \_\_\_\_\_ against *the Aurora Branch Rail Road Company* in the Circuit Court of *Kane* \_\_\_\_\_ county, at the *May* \_\_\_\_\_ Term, in the year of our Lord one thousand eight hundred and *fifty two* in a certain action of *Trespass on the Case* which Writ of Error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the said Supreme Court, at Ottawa, this *fifteenth* day of *July* — A. D. 18 *52*.

*L. Leland* Clerk of the Supreme Court.  
By *P. H. Leland* Depy. Clk.



State of Illinois, set.

The People of the State of Illinois,  
To the Clerk of the Circuit Court for the County of *Kane* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Kane* county, before the Judge thereof, between

*Jacob Grimes* plaintiff, and *Aurora Branch  
Rail Road Company* —

defendant *S* it is said manifest error hath intervened, to the injury of the aforesaid *Aurora Branch Rail Road Company* — as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *1<sup>st</sup> Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *fifteenth* day of *July* — in the year of our Lord one thousand eight hundred and fifty *two*.

*S. Seland* Clerk of the Supreme Court.  
By *P. W. Seland* Esq. Clk.

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Wane.

Aurora Branch Rail  
Road Company -  
Jacob Grimes,

Writ-of Error.

Filed July 15<sup>th</sup> 1852.

L. Leland Clerk  
By P. W. Leland Depy.

This writ-of error is made  
a Supersedeas, & as such  
is to be obeyed accordingly  
by all concerned.

L. Leland Clerk  
By P. W. Leland Depy.

Witness the Hon. Ezzard H. Terry, Chief Justice of our said  
Court, this 15<sup>th</sup> day of July 1852.



Know all men by these presents that we the  
~~President Directors & Company of the Aurora~~  
Aurora Branch Rail Road Company and Edward  
P. Allen of Kane County Illinois are held  
and firmly bound unto Jacob Grimes in the  
penal sum of Three hundred dollars for the  
payment of which well and truly to be made  
we bind ourselves our heirs executors and  
administrators jointly severally & firmly by these  
presents

Witness our hands and seals this  
thirteenth day of July A.D. 1852

The condition of the above  
obligation is such that Whereas the said Jacob  
Grimes did at the May term A.D. 1852 of the Kane  
County Circuit Court recover a Judgment against  
the said Aurora Branch Rail Road Company  
for the sum of one hundred and ten dollars  
and costs ~~for~~<sup>upon</sup> which said Judgment of  
the said Circuit Court the said Aurora Branch  
Rail Road Company has sued out a writ of  
error to the Supreme Court of said State of Illinois  
and has prayed for and obtained an order  
to be entered in said Court that said writ  
of error be made a supersedeas

Now if the said Aurora Branch Rail  
Road Company shall prosecute the said writ  
of error with effect and shall pay the Judgment  
costs interest and damages in case the said  
Judgment shall be affirmed on the trial of the  
said appeal in the said Supreme Court then  
the above obligation to be void otherwise to remain  
in full force and virtue

Edward P. Allen 

J. W. Hall Secy.



Name  
Aurora. R. R. Company  
by  
Jacob Guines

Supt. Bond

Filed July 15. 1852  
C. Leland Clk.