decree is not in conformity to the bill, and that the plaintiff could not properly bring the bill in her own name, but "it is of no avail to show that there are errors in the record, unless they be such as prove that the court had no jurisdiction of the case, or that the judgment rendered was beyond its power." *Cooper* v. *Reynolds*, 10 Wall. 308.

In an action upon a judgment, interest thereon is, as a rule, allowed by the courts of this country, in the absence of a compulsory statute, upon the amount of the original judgment, as damages for the detention of the money, and as equitably incident to the debt. *Williams* v. *American Bank*, 4 Metc. 317; *Klock* v. *Robinson*, 22 Wend. 157; *Nelson* v. *Felder*, 7 Rich. (S. C.) Eq. 395. This is the general rule, but exceptional cases arise where it is inequitable that interest, by way of damages, should be allowed. *Redfield* v. *Ystalyfera Co.* 110 U. S. 174; S. C. 3 Sup. Ct. Rep. 570.

The judgment of $1,424.21 is made up of $719.23 principal and $713.98 interest, at 8 per cent., the legal rate. In the original amount of $1,852.18, found to be due from Allen, Hopkins & Co., $521.07 interest are included. Five years and seven months' interest upon that interest is included in the judgment of $2,804.97. The amount of the two judgments is $4,226.18, of which $2,187.84 is interest at 8 per cent. If interest should now be allowed upon these two judgments, a large and inequitable compounding of interest would be the result. In the case against John Allen let judgment be entered against the defendant for $1,424.21, and costs; and in the case against John Allen and James McLean, (McLean not served,) let judgment be entered against said Allen for $2,804.97, and costs. The bill in equity is dismissed, without costs.

NISKERN v. CHICAGO, M. & ST. P. RY. CO.[1]

(Circuit Court, D. Minnesota. December Term, 1884.)

1. RAILROAD COMPANIES—FIRES CAUSED BY SPARKS—BURDEN OF PROOF—PRESUMPTION OF NEGLIGENCE—GEN. ST. MINN. 1878, CH. 34, § 60.
   In an action under the Minnesota statute against a railroad company to recover damages for destruction of property, caused by fire set out by sparks or coals from an engine, the burden of proof is on the plaintiff to show that the fire was caused as alleged, but when this is proven, a *prima facie* case of negligence is made out, and the burden is shifted to the company to rebut the presumption of negligence thus raised, by proof that it performed its whole duty in the premises, and did not use a defective engine, or manage it in an unskillful manner.
2. SAME—CONTRIBUTORY NEGLIGENCE.
   When the railroad company fails to overcome the presumption of negligence thus raised, the plaintiff will be entitled to recover, unless the company prove that he was himself guilty of negligence which contributed to the destruction of his property.

[1] Reported by Robertson Howard, Esq., of the St. Paul bar.

Action against a Railroad Company to recover damages caused by fire set out by sparks from locomotive.

Marsh & Searles and *Mr. Hodgson*, for plaintiff.

W. H. Norris and *Bigelow, Flandrau & Squires*, for defendant.

NELSON, J., (*charging jury.*) This case is one of considerable importance. The questions presented are those peculiarly and eminently the province of a jury to decide. They are issues of fact. The law applicable to the facts of this case, I think, is quite simple. I am satisfied you will investigate these issues without prejudice or sympathy, and solely with a view of arriving at the truth. The case is an important one, and I have given both parties full opportunity, in the examination of their witnesses, to present all the facts so as to enable you to arrive at the truth. You have patiently and attentively listened to all of the evidence, and I have no doubt you will be able to give a satisfactory and conscientious verdict.

The plaintiff, Martin Niskern, in 1879, owned a hotel, in which he resided, and out-buildings, including a livery stable and barn, situated in the village of Farmington, in the state of Minnesota. On the night of November 22d of that year all the buildings and contents, valued at $6,408, were destroyed by fire. The plaintiff brings this action against the defendant, the railroad company, to recover compensation for the loss, and charges that the fire was caused by the negligence of the defendant. Niskern's real property, on which the buildings were located, adjoined on the east the land owned by the defendant, who operated a railroad running nearly north and south through its land.

The defendant also operated a railroad running nearly east and west, which crossed its north and south road some distance north of the point where Niskern's land joined the defendant's, and by a V track both roads were connected, which enabled trains to pass from one track to the other. On the night of the fire, about 9 o'clock in the evening, a train came up from the east and passed onto the track running north and south of the company's land, west of Niskern's property, and the locomotive was operated on the tracks running north and south, the depot being there, and the company's wood, and water-tank. It is claimed by Niskern that while the locomotive was on one of the tracks running north and south, a stack of corn-stalks piled up against his barn was set on fire, by sparks or coals communicated to it from this locomotive, by the negligence of the company. The defendant was in the performance of its authorized and chartered privileges in running this train; so you will perceive that the gist of this action is negligence,—an alleged failure to perform a duty which it owed the plaintiff.

The first question to be determined by you is this: Did the sparks or coals emitted from this locomotive of the defendant set fire to the plaintiff's property? An answer to this question in the affirmative is vital to the success of the plaintiff. Your decision on this issue,

if in the negative, settles the controversy. The burden of proof is upon the plaintiff—that is, upon Niskern—to satisfy you, by a fair preponderance of the evidence, that the fire, which he claims started in the corn-stalks which were piled up against the barn, came from the locomotive. If the sparks from this locomotive, whether from the smoke-stack or from the ash-pan, did not cause the fire, there is no foundation for this cause of action. To determine this first question in the case,—to-wit, was the fire which destroyed this property set by sparks or coals from the defendant's locomotive?—you must take into consideration all the facts and circumstances testified to, tending to throw light upon this issue.

You must judge of the credibility of the witnesses on both sides, the weight to be given to their evidence, and the probabilities of the truth of their statements, their opportunities for knowledge, their interest in the subject-matter of the suit, the manner in which their testimony is given, and every circumstance in the case which the testimony discloses. You must consider all the evidence, and all the facts and circumstances submitted to you, bearing upon this question; not only the evidence introduced by plaintiff to prove that the fire was communicated from this locomotive to the corn-stalks, but also the evidence of the defendant's witnesses in regard to the probabilities of fire being communicated to the barn and corn-stalks from other sources; and, after full consideration of the testimony bearing upon this issue, determine the origin of the fire, recollecting that the burden of proof is upon the plaintiff to satisfy you, by the weight of evidence, that the corn-stalks were set on fire by the locomotive. This is the plaintiff's theory of the origin of the fire. He says that this fire was communicated from the locomotive to the corn-stalks which burned up his property. That is his theory of the case. If, upon full consideration, you should determine that the fire which destroyed this property was not set by defendant's locomotive, then, of course, the plaintiff cannot recover in this action, and the defendant will be entitled to your verdict. That is the first question for you to determine.

But if, after full deliberation, considering all the testimony tending to show the origin of the fire, you believe that the plaintiff, by a fair preponderance of evidence, has proved that the fire was communicated from this locomotive, and that the fire was started in the corn-stalks piled up against the plaintiff's barn by sparks or coals scattered or thrown from this locomotive, then you will still further consider the case in the light of the statute which I will read to you. I might here state that on this statute the plaintiff virtually rests his case. This statute enacts—although it might be, perhaps, the rule without the statute—that "all railroad companies or corporations, operating or running cars or steam-engines over roads in this state, shall be liable, to any party aggrieved, for all damage caused by fire being scattered or thrown from said cars or engines, without the owner or owners of