

It is by coin, and coin alone, we are under to our creditors, hence, capable of placing us in a position to meet our just engagements of our own legislature, which obligation, either flatly, or by

on the subject of taxation, for and over which, the government has no power or control. That government has no power, and can exercise no power necessary to carry into effect a law which has been, nowhere, delegated to the mode which a State may use for its own purposes, or the manner in which taxes are collected. This is a subject wholly under State control, and wholly under State authority, and by the State expedient to use, in the productions of its revenue, to interfere to forbid it. The rights in coin would exist, but the obligation. It is, from its very nature, there being no superior to it, that Congress cannot interfere

State constitution prohibiting, on the part of our legislature; and the law imposing no restriction, and the State is absolute, plenary, and complete, when taxation is imposed, for its own purposes. This being so, its right to collect such revenue in gold and silver. The law is the treasurer's duty to disregard or contemn. The law is not interfered with, by any legislative act, that body having no power

prohibitory mandamus is set aside,

no other funds but gold and silver coin, or auditors' warrants, being receivable in payment of the ordinary revenue of the State for State purposes.

*Order reversed.*

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD  
COMPANY, Appellant, v. JOHN M. CAUFFMAN, Appellee.

APPEAL FROM BUREAU.

If a party is guilty of negligence, or the want of ordinary care, and allows stock to run in a highway near a railway crossing, he cannot recover for injuries received by such stock, although the servants of the railway company may also have been guilty of negligence.

A railroad has the right to the use of its track as well at highway crossings as elsewhere, and no person has the right to have animals stand or come upon a railroad track at or near a crossing, so as to come in collision with a train, thereby endangering human life; and if he is negligent in this regard, provided those in charge of the train ring the bell or sound the whistle as required, his carelessness contributes to any loss he may sustain, and he cannot recover; moreover he would be liable for any damage which might accrue to persons on the train in consequence of such neglect.

It appeared from the testimony of appellee's witnesses, that the train struck some colts on a crossing; three of them were struck by the train and killed. The colts ran some distance near the track, and the three that were killed wheeled upon the track. The colts were feeding near the crossing, but in the highway. The witnesses either called it a freight train, or thought it to be so. The whistle sounded some rods before reaching the crossing, as these witnesses say, from twenty to ten rods. They also say the colts could have been seen from the train some seventy rods off.

The engineer and fireman testified for appellant, that they saw the colts from forty to eighty rods off, that they passed off the track which was left clear, that three of them suddenly turned upon the track and were killed. That there were trees to obstruct a view of the track—that the bell was rung for some distance, eighty rods or more. That the whistle was