ARGUMENT: DELIVERED MAY 1ST AND 2ND, 1855, IN THE CASE OF ROSS WINANS VS. THE NEW YORK AND HARLEM RAIL ROAD COMPANY, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, BEFORE A JURY: THE HONORABLE SAMUEL R. BETTS

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JOHN H. B. LATROBE

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ARGUMENT

OF

JOHN H. B. LATROBE,

DELIVERED MAY 1ST AND 2ND, 1855,

IN THE CASE OF

ROSS WINANS vs. THE NEW YORK AND HARLEM RAIL ROAD COMPANY,

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK,

BEFORE A JURY:

THE HONORABLE SAMUEL R. BETTS,
DISTRICT JUDGE, PRESIDING.

BALTIMORE:
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1855.

The following argument was reported with much accuracy by Messrs. Roberts and Warburton, of New York. In revising their report for publication, the object has been to condense, as far as practicable, the substance of what was said, without depriving it of its character as a speech to a jury, involving almost constant references to drawings and models. If those who heard it delivered, find any omission, it will be of that, which, although suitable at the time, perhaps, it was unnecessary to preserve: and if, here and there, an addition may be noticed, it will be found to be of something, which the desire of the Judge to have no argument on the law, prevented being said, or something that is inserted for the purpose of a fuller explanation, than, owing to oversight, or the rapidity of speaking, was given at the time.

J. H. B. L.

ARGUMENT.

With the permission of the Court,

Gentlemen of the Jury.

It seems to have been assumed that the summing up for the Plaintiff is to be a brief one.

Two days are left to me out of the six, which the Court has allotted to the discussion of this cause.

My promise to be brief, when the testimony closed, was made before the Counsel for the defence had piled up the mass of matter that now lies heaped before you as the argument to which I am to reply.

It is difficult to say, on what ground my learned friend supposes, that just one-half the time consumed by him will suffice for me. But, at any rate, I shall endeavor, gentlemen, to justify his anticipations.

In the outset, however, there is one thing, that I desire to have distinctly understood. I am here as the representative of Ross Winans, and of no one else, directly or indirectly. The allegation, made to rouse your prejudices, that this Patent is the property of speculators, is absolutely untrue. In 1838, the Plaintiff, as you have heard, sued the New Castle and Frenchtown Rail Road Company, in the Maryland District. He was then a person of very humble means, struggling against adverse circumstances.

He wanted the pecuniary ability to prosecute an extensive litigation. Years were, therefore, spent by him in fruitless negotiations for amicable settlements. Finally he employed Mr. Charles D. Gould as his Attorney, Mr. Gould agreeing to bear the expenses of the suits, and to look to collections for recompense and remuneration. This was in 1846. At the end of eight years, Mr. Gould, whose means had been exhausted in the conflicts which his agency involved, cancelled his agreement with Mr. Winans: and the latter, with the improved fortunes, which, under God's Providence, have, in the meanwhile, crowned his industry, now wages the present contest single handed and alone. The only interest that Mr. Gould has in the matter is a stipulated sum, to be paid to him out of the collections, as a compensation for the unrequited toil of those years of the prime of his manhood which he has wasted in the Courts.

And now, gentlemen, to the business more immediately before us.

You can find, a dozen times a day, the amplest illustration of the subject matter of this controversy at the corners, around which railway tracks are laid, in the City of New York.

Stand, for instance, at the corner of Centre and Grand Streets, and take notice of the cars that pass you.

First, there comes along the four-wheeled car of the city roads, unsteady in its motion, laterally as well as vertically, and taxing the full powers of its pair of horses to drag it round the curves. This is the type of the car used on rail roads before the eight-wheeled car came into existence. It is still the car of England, and of the greater part of Europe

Presently, on the same track, the cars of the Defendants, on their way from Boston, make their appearance. They are upon eight wheels. They move with great steadiness. The four horses attached to them exert themselves less at the curves than does the pair of horses of the four-wheeled car; and yet, it is apparent, that they are more than double the size, much more than double the weight, and carry thrice as many passengers. These cars are those of which the Plaintiff claims to be the inventor. They have wholly superseded, except for street purposes, the four-wheeled car of Europe. They may be called, emphatically, the car of America.

Between those two kinds of cars, the most casual observer may institute a correct comparison, and understand almost at a glance, why one is better than the other.

Of the difference in the number of their wheels, their length, weight and capacity, we have already spoken. But there are other distinguishing characteristics.

The wheels of the eight-wheeled car are grouped, in sets of four each, at or near the extremities of the body.

These grouped wheels form separate bearing carriages, having a freedom of motion round a central bearing, that may be likened to the king-bolt of a common road wagon.

Looking upon these carriages as substitutes for the axles and their pairs of wheels in the four-wheeled car, it will be seen, that, while the former, as already said, are at, or near the ends of the body, the latter are considerably within them.

A moment's reflection furnishes the reason for this difference. Were the axles nearer the ends of the four-wheeled car, the work of the horses to drag the cars round the curves would be even greater than it is; indeed, it is evi-