

HESSE CASE.

Close of the Testimony for the Defence.

And Dr. Pugsley Will Address the Jury This Morning on Behalf of Railway Co.

James S. Ford, Organist of St. John's Church, Gave Some Important Evidence—A Sharp Tilt Between the Judge and Counsel.

In the Hesse case on Saturday morning David S. Roberts was recalled and produced the pieces of the broken brake. The break was in the screw of the bolt. The bolt was seven-eighths of an inch thick, or allowing for the cutting of the screw, nearly three-quarters.

To Mr. Palmer on cross-examination he said there was no flaw, the bolt being perfectly good. All the points of the controller are operated by looking down into them while in operation to see if they are working properly.

Mr. Palmer then began a technical cross-examination from a manual on electricity, but was stopped by Judge Vanwart, who said witness had already stated that he had no knowledge of the theory of electricity.

To Mr. Pugsley he said the inspection he made of the car had been sufficient and all that was necessary.

HENRY WILEY, a constable, sworn, said he had heard the evidence of Thos. X. Gibbons in court.

This evidence was objected to, and the judge ruled it out on the ground that sufficient foundation had not been laid to warrant a contradiction.

Mr. Pugsley then asked that Gibbons be recalled that time and place might be fixed, but his honor refused to allow it. Wiley was therefore not questioned further.

HENRY A. KENNY swore that he had been in the employ of the company as motorman ever since it was started. He was in charge of car #1 on the morning of the accident and ran her six trips, handing her over to Charles Garfield. It was a single end car with a controller on one end, and he had to reverse the motor at Indiantown. He found the brakes and everything else working all right. If the field wire was burned off the controller he would notice it by a flash and smoke. To take a car with such a burned out wire it would go slowly and jerk along. The power in the generator would be simply used as a drag. It would be of no value to start the car.

To Mr. Palmer he said it was only when the wheels were revolving that that power was of use. The faster the wheels went the greater the power. Had worked the generating power when the direct power was cut.

Re-examined by Mr. Pugsley, witness said he had been a motorman ever since electric had been introduced in St. John. Though not an electrician, he knew enough to run his car under instructions. Had there been anything wrong with the car, he would have noticed it.

To Judge Vanwart, he said he had never lost control of his car and did not therefore know the effect.

To Mr. Pugsley he said he had tried the use of the generating power to reverse his car when it was only going at half speed. Then it worked very nicely.

CHARLES H. WATTS, conductor on railway for the last five years, was conductor on car #1 the morning of the accident, handing over to George Brown. There was nothing wrong with the car or he would have noticed it. If there was anything wrong the car would start with a jerk. If anything burned out it would be noticed by a strong rubber smell.

Cross-examined by Mr. Palmer, he said the smell would be caused by the doctors on the wires burning. If the magnets on the motor were dead he did not know if there would be any way of knowing it. The brakes would be of no use after such a use. The conductor of a car had entire control over the car. In such a case he (witness) would not have started. The instructions of the company were in all cases to take the safest course. Had known the power was to be shut off, the power house when the car would stop. There was no car being run such a distance without brakes.

charge of a case would, of course, owe to the patient the duty of a physician.

DR. THOMAS D. WALKER was the next witness. A physician practicing since 1892 and a graduate of Edinburgh; he was a member of the hospital staff. On the day of the accident was telephoned for, did not know by whom, and on arriving at the scene of the accident found Prof. Hesse was in the ambulance and attended to by Dr. Broderick. There was a consultation on the Sunday as to the limbs. The rule as to amputation was the same as to other matters. A man might express his opinion and afterwards might change it. The majority decided on that day that the limb should be left on. Saw that everything was arranged properly after the patient was put to bed. Dr. Quigley came to witness's office asking him to represent the plaintiff in looking after the case. Witness declined, as he had before been employed by the railway company. There was talk then of the lawsuit. Dr. Quigley, however, had desired witness to act as the plaintiff's medical adviser, but witness understood it also had connection with an action. Heard Dr. Broderick's evidence. Had the limb been saved, would think from the authorities there would have been a fair chance of mobility of the joint. There would be sensation in the foot. Later on the decision was to amputate. At the first the injury progressed favorably. There was a great deal of pain, which was to be expected. On one occasion, acting instead of Dr. White, was dressing the wound. Prof. Hesse began complaining about the limb taken off before and, hollered out. Witness had to stop him calling out as it would disturb the other patients. Rode up in the ambulance with Prof. Hesse, who then asked to have the foot saved. Just before going on the operating table witness asked plaintiff whether he was thrown or jumped off. Said he jumped off, but owing to his condition at that time, might not expect the plaintiff to be very accurate. Had some conversation with Dr. Broderick in the street car a day or two before the amputation.

Cross-examined by Judge Palmer—Either in the ambulance or at the hospital found out that Prof. Hesse was an organist. Could not say that it was with reference to his profession alone that plaintiff wanted him limb saved. It was undoubtedly an element that entered into witness's mind as to the question of amputation. At the first consultation Dr. Emery, Dr. T. Walker and witness favored the retention of the limb; two others were against it and for operation.

Witness had it in mind that it would save money to the company if the patient's limb could be saved. If they were at all liable. His duty as a surgeon was above that, however. If the limb could be saved with perfect safety to the patient's life it would be his duty as a surgeon to save it.

Knew for a considerable time before the consultation with Dr. Broderick that the latter had been selected as plaintiff's physician. Understood that the object of appointing a physician was to keep any possible damage down as much as possible. Did not remember saying anything to Dr. Broderick to the effect that it might be arranged to take the leg off if it would not be used by Dr. Quigley to work on the sympathies of the jury.

Up to the last consultation never gave his voice for amputation. Was informed at the last consultation that there was blood poisoning feared, which had come suddenly. Voted then for amputation.

Re-examined by Dr. Pugsley—For some few days before the last consultation did not see the patient other than casually.

Adjourning until Monday morning at 11 o'clock.

The Hesse case was resumed at 11 o'clock Monday morning.

H. A. Brown, the company's electrician, was the first witness called. To H. A. Brown he said he had been in the employ of the company since its organization, and before that ten years with the Royal Electric Co. of Montreal as electrical expert. Was called and arrived on the scene about 20 minutes after the accident. He described the position of the car. Garfield, the motorman, then told him that the brake gave way after passing Union street. Examined the motor the afternoon when the car was taken to the shed and found one of the field wires burned out. There was a lever to reverse the controller, a canopy switch to shut off the direct power from the trolley and brakes to stop the car.

Witness produced a blue print and showed to the jury the position of the brake. The plan was put in evidence. Continuing, witness said the flaw in the brake rod would not have been discovered on any inspection even if the bolt were taken out and examined. The truck on the car was one of the best on the road. The iron brake rod would stand a strain about 30,000 pounds. The motorman would not be able to put on a strain of more than 6,000 pounds.

The direct breaker, witness said, is an automatic device to shut off the direct power when too much power is reached. It prevents machines from burning out. It occurs quite frequently. The restoration of the power depends upon the quickness of the man in the power house to put the breaker back. The field wire in the car in question was burned out on Mill street by the car being started or stopped too suddenly, as by reversing the power too suddenly without opening the canopy switch.

Cross-examined by Mr. Palmer, witness said a man in charge of the electrical system of a railway should understand the mechanical appliances used. Both mechanical and electrical apparatus should be inspected. It would not be necessary to have an inspection every eight hours. From June 14th to time of accident made no inspection and the whole matter of inspection between that time was with Mr. Roberts. Power is created in the motor by the revolution of the wheels. Since the accident a swivel

was put in the brake on this car about a foot from the place where it broke. This would make it safer.

Witness was at examination of conductor and motorman in company's office. Did not know their statement was untrue. Knew both brakes would be useless if brake were broken on King street. Thought the men did not know that the hind brake was useless.

Judge Vanwart—"Do you mean to say that your conductors and motorman in charge of cars would not know that it would not affect both brakes?"

Witness—"I mean Garfield."

Judge Vanwart—"Would you have a man in your employ five years who did not understand this?"

Witness—"He should have known."

Judge Vanwart—"Then you kept an incompetent man in your employ for five years?"

Witness—"We thought him competent."

Continuing, witness said to Mr. Palmer that the man could not have been a competent man if he did not know this.

To Judge Vanwart, he said it was his duty to know that the men understood their work. Examined the new brake on the old road.

To Mr. Palmer he said the brake was tied up when he saw the car.

been repaired and yet worked perfectly. Had the field wire been burned out at the foot of Dock street, the controller would not have started the car at the third or fourth north, in fact, not until it was put the whole way around. Motors were inspected three times in 24 hours. Did not know of anything that could have been done to make the system more perfect. Heard Garfield's statement of what he did. The effect of it in his judgment would be to give too sudden and powerful a current and burn out the field wire and open the circuit broken, thus cutting off the direct power.

To Judge Palmer—Garfield acted imprudently in his conduct in applying the power.

THOMAS IRWIN, chief engineer of the defendant company, was in charge of the steam power. It was all right on the day of the accident.

MATTHEW NEILSON, the general manager of the company for the last three years, was the next witness. Told of the construction of the road bed on the most approved manner. Before the accident about \$120,000 had been expended on the power house, some new open and new closed cars. All the equipment and running gear was as good as could be. Was at the scene of the accident within 15 or 20 minutes after it happened. The only damage to the car was to the canopy and the head light. The seats of the passengers and underneath gear were all right. Next night had a conversation with the motorman on the Sunday looked at the broken part of the brake. Later went in the pit and saw where the nut was broken off. Careful examination before the accident would not have discovered it. The brake gear was the standard Beams pattern. Had no conversation then with either conductor or motorman, nor made any remarks to them. Did not make any statement that witness could not see why one brake would work in the presence of Garfield at the car shed. Received a letter from Garfield and Strang from Boston. Produced letter.

Cross-examined by Judge Palmer—Had charge of company's business at St. John. The eight new open and two closed cars cost about \$130,000.

Early witness's business to inquire into accidents and liability. Would give opinion to conductor, that is managing committee, as to whether or not company would be liable. Reports from conductor and motorman in this case would be source of information. Knew at once that conductor or motorman had erred in their judgment. Knew the accident was through their fault in not obeying the rules of the company. Knew by Dr. Quigley's letter that Prof. Hesse was going to make a claim against the company. Never told anyone that he did not think the company was liable. Witness appointed Dr. T. D. Walker to represent the company. The object was to get for Prof. Hesse all the care and comfort possible. Did not think the idea of keeping down the damages was a plan from Dr. Quigley. This was while witness was absent. Mr. Hopper was then in charge of the office and while he would not be the proper person to reply to a letter on all subjects would have a right to acknowledge the receipt of communications. First knew of Hopper's letter on his (witness's) return. Could not tell what part of the letter he had read. Knew that Hesse had been seriously injured and that it was a very unfortunate, nasty case. Knew that Hopper had written Quigley, but did not know that witness had ever replied.

Shown a letter. This was written by witness promising to lay the letter to the president and directors of the company.

Judge Palmer asking for the production of the letter of 22nd August, this portion of the examination was deferred awaiting its production.

When witness looked at the broken nut he knew at once that the brakes were useless. Knew that on the evening of the accident, Miss Lavo had a word or two with the conductor or the motorman that day, just there showing the nut. Over at the pit thought Brown was around and the motorman. Might then have said something, but could not remember it. As soon as the accident happened witness's mouth was sealed. Could not tell what he might have said at the time.

Knew the men made a mistake when in charge of the car. Would not like to say whether the company were liable or not; was not the witness's place to try the question whether the company was liable or not, as a matter of law. Had nothing to do with the issuing of commissions, a very little at least, and nothing to do with putting off the trial.

Shown letters of Dr. Quigley of 22nd August. This was the letter to which witness replied promising to refer it to the board of directors. Was not positive of any answer being made by the directors. The letter was turned over to Hon. Mr. McLean, and had nothing to do with it since. Dr. Quigley wrote other letters subsequent to that of 22nd August, but did not think he got answers to them. Had nothing to do with the investigations at Indiantown. Had some talk with Mr. Robinson after he came back. Had inquiries made after Prof. Hesse frequently while he was at the hospital. Might have made a statement after the accident that it was due to the brakes giving out and to loss of power. It was due to those causes. Would not swear that he did not say to Frank B. Ellis that the men told him that they knew the brakes were out of order at the foot of King street. Did not think he did. Did not remember going into any details. Thought he had said that an accident at the power house just then had shut off the power.

Re-examined by Dr. Pugsley—Mr. Ellis had seen witness on Monday. The investigation was not until the Monday evening. Ellis did not take any notes at the time of what wit-

ness said. Witness said it was an unfortunate affair. The brakes had given out and the power gone off at the same time, and such a thing might not occur once in a hundred years. Thought then that the circuit breaker had gone out because of the way the man had handled the car on Dock street. The men had told him that the brake worked at King street. Had no reason to disbelieve the men when they said they must have been wrong, but thought the men believed what they said. Had no reason to believe that the men were lying.

The Judge—Do you think that men having little knowledge as that were competent to have charge of a car in a hilly place like St. John?

Witness—No, I wouldn't now. Every man should understand the brakes. Thought most of them did.

To Dr. Pugsley—Thought Garfield had been a motorman from the start of the road. He had the best possible opportunity of being familiar with the brake mechanism. Neither Hesse nor his counsel ever asked for anything while in the hospital.

Judge Palmer—After the accident continued running cars with these men until they left in October. These men would be better than before; they had got a lesson that would last them for a lifetime.

To Dr. Pugsley—They had broken the rules of the company, and they would be content not to do so again.

To the Judge—About the men were instructed about the brake afterwards, possibly by Brown. Asked their attention to it on the night of the investigation. This was personally.

Adjourning until this morning at 11 o'clock.

At Tuesday morning's session of the circuit court, Archelus Condell of New York, manufacturer of artificial limbs for over thirty years, was examined. He said he made all kinds of artificial limbs, suitable for all kinds of accidents. He sells from 500 to 1,000 limbs a year. These go to all parts of the world. Witness knew Mr. Irvin and recognized him in court. He used a limb made by witness.

Mr. Palmer objected to this evidence, on the ground that it was irrelevant.

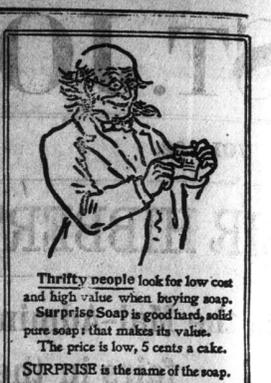
Mr. Pugsley said the plaintiff contended his life was destroyed, and the defence wished to show that so far as the plaintiff was concerned his accident will not make the slightest appreciable difference, and also that he will be able to make a comfortable living in other walks of life.

The Judge allowed the evidence, and the witness continued.

He said he made feet with the ankle movements. He has made limbs for engineers, firemen, farmers, miners, and men in all walks of life. He also knows numbers of persons who have played the piano with artificial limbs, and who do it without any trouble or difficulty.

Mr. Palmer again objected to this evidence, and Judge Vanwart said if he were deciding the question of fact this man's evidence would not make the slightest difference, as he did not think he was capable of testifying as to music, not having an artificial limb himself.

To Mr. Palmer the witness said in playing the piano there must be a sense of feeling. This cannot be obtained through an artificial limb.



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ness said his accident had not handicapped him in the least.

Witness here jumped from a chair, lighting on his artificial foot, and walked backward and forward, to show the jury what he could do.

Continuing, he said he felt no pain on the stump.

Mr. Palmer here started to cross-examine the witness, and asked him to sit down and cross his leg with the artificial one over the other. This the witness did, and then Mr. Palmer asked him to go through the ankle movement. This the witness could not do, because, as he said, amid loud laughter, he had no pressure there. This finished the cross-examination.

Mr. Pugsley then asked the witness to twist his leg around, this he did, and Judge Vanwart asked if there was any movement at the ankle. The witness replied there was not, because there was no flesh and blood there.

JAMES S. IRVIN of Ottawa, who also possesses a wooden leg, was next examined. He is a trainman, and is able to do his work with the other trainmen.

Witness here went through several movements to show the control he has over his foot. Continuing, he said he felt no pain in the stump.

Mr. Palmer—If you got a knock on the artificial limb you would not feel it half as much as if it was on the artificial one, would you?

Witness—No.

Mr. Palmer—That is all. (Laughter.)

JAMES S. FORD, sworn, organist of St. John's (Stone) church, and player of the pianoforte, said he was in court all morning, and had heard the witnesses and seen the movements of their limbs. He had never seen persons with artificial feet play the piano, but he thought if they had the proper ankle movement they would be able to play it. With the organ it would be entirely different.

Cross-examined by Mr. Palmer, witness said he had seen people with wooden legs play the organ. This was Monday afternoon at Stone church. Witness knew the men there were brought to St. John as witnesses in this case, and the rehearsal there was to show him how well they could play.

Continuing, witness said from a popular standpoint they did beautifully. That is, the ordinary person would naturally be interested in seeing a person with a wooden leg try to play the organ. From his standpoint it was not playing the organ, but playing with it. It was a farce. Two persons tried to play the organ. Mr. Condell was there. Witness would not say they were musicians. If they were they did not show it.

To the witness six months was then Palmer; the use of having to play time that but knew something told before wanted as to play the play it could be man. It served how Some must alling than stand a veal fairly difficult anything a Believed th under the good music, would require self and d required to b the ankle r capable of foot on the has only the boot could by teaching the free use To Dr. P tried yester on the ped foot on the man did no play an org the pedals; ary music. man's ped. Would no purposes of could be an got accousto ficial foot. To the J they could neither of To Juge ded different could not d movement with an ar Lid German, ph player of Bridgeport, the organ, right side. I was amputa not a flexi rubber foot yesterday. His artificia would have an autchme do so. Was what he cou ing. He did just tried it pedals thig artificia limb used his na pedals. Cross-exa Salary as o W'o den leg in the ped day evening money. W'otograph bust the men in S the pedal to it as well as it in the san If his othe the right on pedal shied Judge Pal ment or Pro hospital, as Board and Dr. Daniel a Carriage M'r McDiarmid, and expense from and to nurse. This subject to d ing. The on fused to reced had an infec he was broe Judge Wilkin ray to appli Judge. Leslie Sut mayor of Yo which that manager, W native of Ne Don't lays the future v Take o own inte FERVESC best knowe It's daily spirits brigh —keep making gish sell large bo