

HESSE CASE.

Conclusion of the Evidence for the Plaintiff.

H. H. McLean's Opening Address on Behalf of the Street Railway Company.

David S. Roberts, and Harry Irons Called and Examined for the Defence— Roberts is Foreman of the Street Railway Shop; Irons is a Motorman.

In the Hesse case Thursday morning, I. J. D. Landry, organist of the Cathedral in this city, was first examined. He had heard, he said, nearly all the leading organists and thought Prof. Hesse the finest he had ever heard. Prof. Hesse was a true artist. It would be impossible to play the organ without the left foot, which was the principal foot in pedal playing. The motion must be very elastic. Witness here took off his shoes and illustrated the dexterous movements of the feet necessary to playing on an organ.

Cross-examined by Mr. Pugsley, witness said musicians were rarely good business men. He had never heard of Prof. Hesse before he came to St. John, but had seen his name on some music. Unless a man can move his heel and toe he cannot play the organ, and it stiff as it he could not play it well.

Continuing, witness said his salary as organist at the Cathedral was \$600 a year. He felt that he could earn \$1,000 in the streets.

JEROME McLEOD, formerly of St. John, but now of Providence, was next examined. He said he at one time applied to Prof. Hesse for lessons, but could not engage Prof. Hesse, as he was busy. Later he was able to get lessons from Prof. Hesse at his house. He had not finished his course when the accident occurred. Witness was with plaintiff the day of the accident and detailed the events of the accident until Prof. Hesse was taken to the hospital. Witness did not see Prof. Hesse leave the car, as he was busy looking after his own safety.

Mr. McLean here started to cross-examine Mr. McSorley and began by asking several questions about witness's career.

Judge Vanwart asked what Mr. McLean wanted to prove by this, and thought it was taking up time for nothing.

Mr. McLean became angry at what he called interference and said that if he could not cross-examine his own way he would sit down, which he accordingly did.

left foot. It felt as if there was somebody dragging at it. He took a couple of steps on his left foot and looking-down saw that it was injured. He fell on his side and was then surrounded by a crowd. Later he was taken to the hospital.

Prof. Hesse here detailed the events at the hospital and the treatment received during the seven weeks he was there.

Since going back to Providence witness has been unable to play the organ, teach pupils or earn anything. Continuing, he said "the whole foundation was knocked from me, socially and physically maimed in body and mind. I would sooner be in my grave were it not for my wife and children. The future, as yet, is a blank to me."

He had, he continued, no ambition outside his music, except the care of his family. He had no money saved and had received \$1,000 a year up to this time by the authorities of the church, but could not tell how long it would last. The Street Railway Company never offered to pay any of his expenses, and, as far as he knew, never inquired about him.

AFTER RECESS.

the examination of Prof. Hesse was resumed. He explained that he could not play the organ without his left foot. He explained the motions of the feet and their use in controlling the notes and stops. Feeling in the feet was as necessary as feeling of the manual notes by the hand. The ability to use the foot required long and careful training. He had trained from his seventh year. It would be impossible to teach successfully without demonstration. To teach the piano the hands could be used alone, but there would be no shading, life, tone or color in the music without the use of the pedals. Witness was handicapped in getting piano pupils for want of the left foot.

At some services he received \$25 to \$50 in the case of the funeral of a distinguished person. As to vocal music, a thorough knowledge of the vocal organs was required; also vocal ability. In teaching a choir, the singers came already trained and were simply bleated into harmony by him, as component parts of the choir. There would be nothing in chorist training for witness to do.

He then spoke of Prof. Singenbeger as the foremost promoter of Cecilian music in America. He had arranged for a considerable portion of the whole of that class of music. Was a first class musician. Witness studied under him.

Cross-examined by Pugsley, Q. C.— Apart from what was done by Dr. Quigley, witness had not asked for anything which he did not get. With one or two exceptions, he was treated kindly in the hospital. After this was stopped shouting out in the hospital the doctor assumed a kindly tone. At times requested morphine because of the pain, but did not always get it. No reason was given. Did not feel the doctor's touch. He took a great deal of morphine to affect his memory was distinct and perfect as to details of accident, but had been impaired as a result of the accident. Names and events were not now as readily recalled as before. Was conversing with Fr. Reary while in the car at the foot of King street. Could remember what took place on 17th July, as it was a memorable day, the recollection of which could never fade from his memory. At the hospital Dr. Quigley was sent for by Dr. Broderick. Dr. Broderick was got by Dr. Quigley. Did not know Dr. Broderick was not on the hospital staff.

Heard Dr. Broderick say in evidence that the loss of his foot would not make any more difference than a stiff member so far as organ playing was concerned. Could not say as to whether that opinion was right or not. Had tried to get an artificial foot and had used one for some time every day. Began to use it in January. Wore it a little at a time. Mr. Knight told witness he would need two years before he could be used to it. Had had pneumonia in February and after that wore the foot a little every day until coming here to this trial.

Witness was fairly well educated. Did not keep accounts, because money came in as cash and there was no need to keep books. Was connected with the cathedral for six years before marriage. Kept house then. Spent all he earned; would think it was \$4,000 or \$5,000. Could not say what it cost him to live before he was married. Had about \$800 saved up before he was married. Each year since marriage had cost about \$4,000 to live. Rent was \$200 a year generally. Sometimes \$350. Outside of rent expenses would be about \$3,500 a year. Did go to some expense in social functions. Had about \$2,000 ahead at the time of the accident. The cross-examination then went into details of the receipts from playing at funerals and other masses. Was paid for services, frequently, of which no record was kept. Was paid for more than 12 high masses in 1897; probably for 200 or more ordinary masses. For so many high masses could not say how many.

Know he would be expected to give an idea to jury of how many masses he was paid for. Could not get it fairly accurately from the records in the cathedral. The reactor would have his records, but it would not show all or by any means all. As to pupils in 1898, could not exactly say as to number of organ pupils. In 1897 only had one concert, for which he was paid. A piano was used at this concert. Did not train their voices, but trained them to sing in chorus. Was with them twice a week for two months, for which he received \$50 and for the service got \$50. For Mr. West's funeral in 1897 got \$50. Did not recollect any in 1898. Those spoken of were all the sources of income in connection with church work. In 1897 could not give the exact number of organ pupils at any one time. What he taught was not necessarily Cecilian music, but was to play the organ. Might have taught seven or eight in 1898. Could not recollect for 1897. For both kinds of music in 1897 had more than 7 or 8 pupils in both kinds of music. Could not recall the number. Had Mr. Kelly; had at least two or three ladies. Had eight or nine lady pupils on the organ in 1897. Could not give a name. Miss Cun-

ingham was a pupil, but not in 1897, he thought. Had Kelly in 1897; could not give the names of others. In 1898 might have been 8 or 9 pupils. Witness gave the names of three pupils; could not recall the others. Most of them learned in the Cecilian style. They got over one lesson a week. Could not give an idea of what his commission upon sale of pianos or music in 1897 or 1898 came to. In 1898 could not think of a single commission or a piano that he got. There would be ten piano pupils in 1897. Kept him busy from 10 to 12 and from 1 to 5 o'clock each day. Probably 7 or 8 in 1898. Would give lessons all the year around. Continued to give lessons during the summer season. Had not gone into details to show his income. Could have got more pupils and had more money, but was unable to give instruction in vocal music. Could not say whether or not in a year he could train himself to be a teacher of vocal music. There were many who, at that profession, earned still more than he had done. Did not think he could manage a living at the pianoforte business. Thought what was his standing and was already partly forgotten by reason of the loss of his position through his accident. Would have to find out what he would be able to do and had decided to wait until the suit was over to find out. Could not say what he would do now and what could he do at present? Who would want the services of a man who could not talk?

Did not recollect telling any doctor that he had jumped from the car at the accident.

Re-examined by Judge Palmer—Did not know where he could get capital for the piano business. Was not a business man. Would not think his money, if he had it, would last very long in business. Would have to do for a living the very best he could. Had said he was not a business man. Did not throw his money away. Did not spend it. Could only judge of his earnings by the time he was busy; kept no record. Was busy practically all the time. Always had plenty of scholars to teach whenever he had the time to teach. Did not know means of knowing the exact amount he had received or the number or names of the pupils. Was now affected in the nervous system. Did not think a person whose nervous system was affected was in perfect health. Had not practiced on the artificial leg in St. John. It was his habit to practice in the city. Could only keep it on half an hour or so at a time.

Did not really know that it was a positive duty of the reactor to keep a record of funeral and other masses.

Dr. Pugsley—Could not say but that it is guess-work on his part as to his earnings.

Dr. Pugsley then suggested an inspection of the car this afternoon. He wished to have the operation of the direct and indirect power shown to the jury.

Judge Palmer wished the jury to see the car, but objected to any demonstration of the power.

It was finally agreed that the jury should visit the plant and inspect the car this afternoon, James Hunter to act as showman.

In the Hesse case yesterday morning, Mr. Palmer offered in evidence the affidavits filed before Judge McLeod in connection with the first summons.

There was anything wrong in the power house during the year over a million passengers were carried with only one accident. Was not this an excellent record?

Mr. McLean then described the circuit breaker in the power house, and continuing, said it was proved that the motor in the cars was shown to be in order going up Dock street. If an accident occurred after the journey commenced the company could hardly be held liable if it has used good precaution in using proper appliances.

Referring to the conductor and motorman of the car, Mr. McLean strongly criticized them and claimed they were not to be relied on and their evidence could not be believed, as they had falsely reported to the company after the accident.

As to the question of damages, the company proposed to show that the plaintiff was not as "helpless" as he tried to make out. Persons with artificial limbs can get along fairly comfortably and it will be shown that they can occupy various positions. It will be shown, too, that a person with a wooden leg is not prevented from playing a piano and doing other work. It has been further claimed that the company did not help Prof. Hesse while at the hospital. No assistance was asked for and the company was not approached in any way for assistance. The defence will be able to show that the plaintiff said he jumped, and the evidence of some of the witnesses show he jumped. The evidence also shows that had he remained in the car he would not have been injured.

DAVID S. ROBERTS was the first witness called. Examined by Mr. McLean, he said he was foreman of the Street Railway Shop. His duty was to look after all repairs in connection with the cars and conductors and motormen. Witness was out of town the day of the accident. He left Saturday before, and just before leaving examined the car that was in the accident and found everything all right. The car was thoroughly overhauled and inspected in the June previous. The brakes were set a day or two previous to the accident. The trucks were Beamish trucks and were in good order and condition and have been running since the accident. The brake rod was 7-8 inches in diameter. Witness's instructions were to spare no expense to have everything in perfect order, especially the brake gear. He inspected the break in the brake rod after the accident. He noticed a defect in it but it would be impossible to detect a flaw in it before. The flaw was in the thread of the rod.

Cross-examined by Mr. Palmer, witness said he thought from the break in the rod both brakes were entirely disabled. He understood that the safety of passengers depended on the working of the brakes. A man could run a car without brakes, but he thought it gives carelessness for a company to carry passengers with out brakes. The flaw extended 1-4 of an inch, and witness thought it was in the rod when purchased. The manufacturers should test it. If the grease and dirt on rod had been cleaned off by chemicals the flaw could be seen.

The witness here explained the electrical appliances in the cars. The motor and electricity is conducted from the power house to the motors and the appliances at the control of the motorman to handle his car.

Witness attributed accident to the fact that the motorman neglected to turn off the canopy switch before reversing the power. The trucks on the car were used on the old cars.

Roberts was further examined this afternoon.

As Soup's, Soup, So is Soap, Soap.

You must classify soup, soap, or anything. There are many kinds, grades, qualities. In soap, that word Surprise stamped on guarantees finest quality. A pure hard soap. When you buy Surprise you have the best. 5 CENTS A CAKE.

WEDDING AT ST. STEPHEN.

ST. STEPHEN, March 29—The marriage of Julius Thompson Whitlock of St. Stephen to Miss Madeline Sisson of Fredericton took place at the residence of Mrs. Charles Freeland Beard this afternoon at 3.30 p. m. The ceremony was conducted by Rev. O. S. Newtham, assisted by Dr. McKenzie. Only the immediate relatives and friends of the contracting parties were present. The room was prettily decorated with potted plants and flowers. The bride was attired in a travelling suit of navy blue cloth with hat to match, and carried a prayer book. After the ceremony luncheon was served and the bride couple took the C. P. R. en route to Montreal, Toronto, Ottawa, Hamilton and Portland. The bride was the recipient of many handsome and costly gifts, that of a green gem being a gold watch and chain.

THE LATE T. E. OULTON.

Death of the Oldest Postmaster in the Maritime Provinces.

Many of the Sun readers will learn with sincere regret of the death of Thos. Edwin Oulton of Westmorland Pict., Westmorland Co. The deceased was one of the most prominent land marks of that part of the province. Born in Joliette in 1814, he moved to Westmorland Point, on the old post road to Halifax, about 50 years ago, where he has resided ever since. He there continued his mercantile pursuits and for many years carried on a large and successful business, and was recognized by all as an honorable business man, a kind and steadfast friend and a good and sympathetic neighbor. A generous hospitality has always been a well recognized characteristic of the "Oulton household."

Mr. Oulton was, it is believed, the oldest postmaster in the maritime provinces, having been appointed to that office by the provincial government shortly after his removal to the point. He filled the office with the greatest credit and satisfaction ever since his appointment up to Tuesday last, when in his 85th year, and without pain he was suddenly called away. The deceased was a member of the Church of England and took a warm interest in the affairs of his church. He was a conservative, had a large influence, and in his younger and active years, took a very prominent part in politics. His sterling qualities endeared him to his friends and neighbors, and he will be greatly missed.

His funeral, which was largely attended, took place on Friday afternoon, March 24th, at St. Mark's church. The rector, Rev. Mr. Elias, officiated, being assisted by Rev. J. Roy Campbell of Dorchester and Rev. Mr. Wiggins of Sackville. Among the mourners were Mr. Justice Hannington of Dorchester and J. T. Smith, Jr., of Amherst, they being old friends.

Mr. Oulton leaves a widow, of about his own age, and two sons and four daughters. They are Charles H. of Philadelphia, and George of the postal service of St. John. The daughters are Mrs. Samuel Freeman of Cumberland Co., Mrs. C. P. Clarke and Mrs. Fred Estey of St. John, and Mrs. Clarence Knapp of Sackville. The late Judge Oulton of Dorchester was also a son of the deceased, and Dr. Rufus Oulton of Amherst, a brother.

MOUNT ALLISON.

Acadia—A Pictorial Issue of the Argosy.

MOUNT ALLISON, March 29—Last evening Rev. Dr. Kierstead of Acadia college, preached the first of the university sermons for this year. His text Colossians iii. 1. A large audience assembled and listened with great interest. The next sermon is to be by Rev. Geo. Bond, editor of the Wesleyan.

LOCAL LETTERS

Premier Emme to His Room

The Government the Discovery of Na

Mr. Venoit; Mr. Joe Mr. Richard H. Notices

FREDERICTON house sat from afternoon. The time was taken Premier Emme which was past journeyment. The house was Wednesday, he provincial secret have the report, laid before the W. V. Wells in an address to committee on W. The Carleton arms because chosen speaker, sorts of threats day, at which with the govern was understood counted men w and are beginna there is left for The kicking Carleton county share in the esp lesser Mr. McK ing solicitor gen wick Mr. Carve ever in the electi his colleagues o be made sollicito some sympathize tcn county, and be good after al Urial Johna Every effort that its supporters of him has been u resign his seat ard of Westmor gave the matter ation and this agreement, anno not give way. The financial part of brought to bear sear a seat. Pressure has also from Ottawa. M mined not to go are said to hav Johnston. One was that he would his seasonal in with that office by the provincial governme ment shortly after his removal to the point. He filled the office with the greatest credit and satisfaction ever since his appointment up to Tuesday last, when in his 85th year, and without pain he was suddenly called away.

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What Mr. Har tennon relative eralship was ab the promise to b ried out because faith on the part of liberal party the recent electi for the govern or was it becq generaship still easier to induce sign to make p Kent?

Mr. Robertson afternoon which give the Hortici John power to will secure the Rockland Park for legislation w driveways in the public roads thre.

The amendmen law extends the ver from two to Messrs. Lafor respondents rived here Thu sworn in by C morning.

In his annual ton of the Prov refers to the fact taken place dur ident officers. out, has proven those who have well as rendering easy and effec has been comple ing the year, w his asking in th have been pro amusements of very much bene well as to the says, to give a steadily fit and then as would.

READ THE WEEKLY SUN.

Abbey's Effervescent Salt. Trial 25 C. A trial of a good article takes its own time. The merit of the preparation will do the rest. All druggists. Large bottle 60 cts.