

THE COMPANY BLAMED.

Responsibility for the Bridge Disaster Held to Rest Upon the Tramway Company.

The City Council of Victoria Found Guilty of Contributory Negligence.

After Ten Days' Investigation the Coroner's Jury Return Their Finding.

After spending ten days in the hearing of evidence, and six and three-quarter hours in deliberation upon the testimony adduced, the coroner's jury empaneled to fix the responsibility for the fatality of May 26 at Point Ellice bridge, yesterday afternoon brought in their verdict and were dismissed from further attendance. The finding holds the Consolidated Electric Railway Co. directly responsible for the catastrophe, the City Council of Victoria being found guilty of contributory negligence; and is in full as follows:

"We, the undersigned members of the coroner's jury empaneled to inquire into the cause of the death of Harry Talbot, George Farr and others, being duly sworn, find as follows, in accordance with the oath administered, and in accordance with the evidence produced before us, to wit:

"That the said Harry Talbot, George Farr and others came to their death by drowning, the result of the accident which befell the Point Ellice bridge at or about two o'clock of the afternoon of Tuesday, the 26th day of May last;

"That the said accident was the result of the sudden collapse of the eastern Whipple truss of the said bridge, and was caused by the weight of car No. 16 of the Consolidated Electric Railway Company and its immense load of passengers, which was in excess of the capacity of the bridge in question as originally constructed, and that the said Consolidated Electric Railway Company is guilty of negligence in not having taken proper precautions for the safe conduct of its passengers accordingly;

"That car Number 16 was dangerously overloaded with passengers, and in the interest of public safety it is imperative that restrictions should be imposed upon the traffic of this and similar corporations in the future.

"Furthermore, it is manifestly the duty of all corporations of this kind who are entrusted with the safety of human lives to see that all roads and bridges over which it passes are in a safe condition, and to take such steps as are necessary to ensure this condition of things being carried on by the proper authorities.

"That the said bridge being within the limits of the city of Victoria, the city council having assumed control of the said Point Ellice bridge, it was manifestly their duty to the public to maintain it in a proper state of repair and efficiency, and to take steps to restrict the traffic of the said railway company within the limits of safety to the structure, and consequently of the public;

"That if they do not possess this power legally, it was and is their duty to obtain this power by legislation accordingly, as it is the duty of every corporation that the citizens look for protection in matters of this kind against the imposition and abuses of corporations enjoying privileges within the city for their profit and advantage;

"That the bridge in question was adequate in strength to the ordinary traffic for which it was constructed and was under ordinary circumstances suitable for the ordinary railway traffic, which the railway company obtained permission to use it from the government department for whom it was constructed; but the design was poor, the system of construction obsolete, and the contract was not carried out according to specification by the contractors.

"We desire to call attention to and to condemn the system of public works which has been in vogue in the public works department of the city. We find that the city engineer and heads of departments under him who should be held personally responsible for the good and efficient execution of the details of their department, are so hampered and interfered with by untechnical, elective superiors, that they are without authority necessary to carry on their work, and are consequently without responsibility, which is certainly not conducive to good results.

"We further find occasion, in the interests of public safety, to call attention to the fact that the government department under which this bridge was constructed did not exercise proper supervision over the construction of same, particularly in the matter of ironwork. We find that the specifications call for welded iron, but that the ironwork is in almost all cases welded, and in many cases of inferior quality, and that the factor of safety provided for in the specifications is an unknown quantity.

"It is quite evident from the evidence produced before us, that the primary cause of the accident was the breaking of one certain iron hanger, shown as number 5 on the diagram, produced in evidence, resulting finally in the collapse of the bridge; said hanger being part of the original construction.

"We find therefore that the Consolidated Electric Railway Company are primarily responsible for the accident, and that the city council is guilty of contributory negligence.

(Sd.) "JOHN NICHOLLES, foreman.
"D. CARMEL.
"H. HAWOOD.
"S. A. STODART.
"W. LORIMER.
"S. CARTER.
"E. A. MORRIS.
"W. S. CLARKE.
"F. T. SHEERBOURNE.
"W. WALKER.
"W. RIDGWAY, WILSON."

To this verdict the following rider was appended: "We desire to suggest to the authorities the desirability of all bridges, streets, etc., both municipal and the property of railway companies, being placed under complete governmental inspection and control, and the carrying capacity thereof posted thereon."

On the reopening of the inquiry yesterday E. A. Wilmut, city engineer, was recalled to the stand, and stated that he had no absolute charge of his department. It had been the custom of chairmen of the various city departments to give directions regarding works coming under them; in matters not considered to require particular knowledge or engineering the chairmen have not considered it necessary in ways to consult him. He had no letter of instructions defining his duties; he had made recommendations, sometimes to the street committee, that had not been carried out. He recalled one instance where his plans were interfered with; he had prepared plans for a bridge on the Lansdowne road and the work was not carried out according to them; the street committee had power to ignore his work. He had no power to carry out work irrespective of the council—the council reserved the right to dismiss his assistants without his consent. This had inconveniently him sometimes, as he had not notice same authority over his subordinates as if he appointed them himself. He had been consulted about the appointment of his subordinates, but not always. Cox, the city carpenter, was in what was called before his death became city engineer; streets, sidewalks and bridges all came under Wilmut now. Witness' duties were too numerous to allow him time to thoroughly inspect the bridges. There was more work for him to do than he could accomplish in office hours. He had never had a vacation since he had been appointed, not that he had been refused, but he had felt he had not time to take one.

Street Superintendent Wilson, also recalled, stated that he was appointed bridge inspector, his letter of appointment stating that he was to take charge under Mr. Wilmut's instructions. In 1895 a street foreman he took orders for trifling jobs from the chairman of the streets committee, but in larger ones from Mr. Wilmut. Witness did not employ the men working now on the James Bay bridge. When asked how it was that someone else had employed men to work on a structure he had charge of, witness replied: "That's what I want to know myself."

Witness considers himself responsible for all the bridges in the city, even for the work being done by those men on James Bay bridge; if the work was not done properly he would "kick" to Mr. Wilmut, and if Mr. Wilmut did not interfere that was where witness' responsibility ended. On important points his "kicks" were in writing, so he could keep a record of them; he considered it should have been consulted before the men were engaged to work on James Bay bridge. He could not call Cox a competent bridge man.

This completing the testimony, the coroner proceeded to address the jury. There were three main things they had to consider, he said. First, when and where the persons into whose death they were inquiring came to their death; secondly, what was the cause of their death; and thirdly, what led to the breaking of the bridge. They must start at the beginning of the history of the bridge. Was it, when it was built, properly constructed for the traffic it had to carry, was it capable of being used for tramcar traffic? He thought they would find that when the bridge was put up in 1885 it was a good enough bridge for highway traffic, but it was built with a view to carrying tram cars. As to whether it was fit in 1890 to allow tramway traffic to be carried over it, there was a difference of opinion among the witnesses. In considering this, they must remember that no expert had said that cars weighing more than twelve tons should be permitted to run over the bridge; that all the expert testimony agreed that 18-ton cars were beyond the capacity of the bridge. When the government first gave permission to the tramway company to use the bridge the cars were small, and it must be considered that it was the duty of the company when they put on heavier cars to notify the city; but, as far as he knew, the company had neither done this nor had they taken any steps towards finding out if the bridge was strong enough to carry the heavier cars. The tramway company were under a moral obligation to find out if the bridge were safe, and it was their legal and moral duty to see that the bridge was in a safe condition. No company had the right to take it as a matter of fact that because they were given the right to run over the bridge, the structure was safe. He proceeded to read from the Criminal Code the following sections bearing on the broad principle of responsibility:

"Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person, conveyed or being in or upon a railway, or aids or assists therein.

"Every one who lives in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care may endanger human life, is under legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty.

"Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty."

The jury should consider whether or not any responsibility rested on the tramway company, if, when they increased the size of their cars they took no precautions. The company seemed notified to have had the bridge inspected, but they had tried to find out if the bridge was safe. Then the jury must find out if the bridge were maintained in a state of safety by those responsible for it. The evidence did not show that the bridge had been utterly neglected from the time that it was built and there had been no proper inspection of it. Whose duty was it to keep the bridge in a state of safety? The Mayor and council acted in exactly the same capacity as the government of the country, and so were primarily responsible for the safety of life and property in the city. Their responsibility was generally shifted to the shoulders of the servants under them, but in this particular instance there was quite a difference of opinion—some witnesses held that the responsibility of looking after the bridge fell on the city engineer, others that the city carpenter had it under his charge. It had been stated in evidence that the city engineer never had his duties explained to him or definitely defined, and moreover, it had been shown that he was completely under the thumb of the council. It was shown that his recommendations to the council have at times been completely ignored. For instance, the probability is that if his advice had been taken about putting in iron floor beams when the bridge was repaired in 1892 would have been no inquiry like this to-day. Under the circumstances the coroner could not see how the engineer should be held responsible. A man to be responsible must have full control of that for which he was responsible. As to the city carpenter, it was too absurd to hold him responsible for Point Ellice bridge. An ordinary mechanic could not be expected to do the work of a skilled engineer. Then again, had the city council taken any steps to have the bridge inspected? The only thing that could be found in the evidence was that a report by Cox last year stating that the bridge was in good condition; and as the city council seemed to be satisfied with that report, it seems to show that they looked upon Cox as responsible. As to the exact cause of the accident, whether it was a floor beam or a hanger to go first mattered not. The cause of the accident was undoubtedly the neglect to maintain the bridge in an efficient condition. The work upon it. He would advise the jury not to put the blame on half a dozen parties but to limit the responsibility as clearly as possible to the parties actually and really responsible. After being instructed, the jury retired shortly before 11 o'clock, and almost seven hours later returned the verdict given above.

A SENSIBLE SPEECH.

The readers of the COLONIST have no doubt read of the young Hamilton lawyer, Henry Carscallen, Q.C., who a few weeks ago openly and manfully left the Liberal party and joined the Conservatives. They will be able to form an idea of the kind of man Mr. Carscallen is when they read the following vigorous speech, which he made at a meeting of the Hamilton Conservatives in their central committee rooms on the evening of the 5th inst.:

Mr. Carscallen thanked the audience for its kind reception, but wanted every one to understand that he was not converting to the principles of the Liberal-Conservative party. Their strong point to him had been the trade tariff. No one could have said years he had urged that some fixed trade policy be adopted by the Reform party. But, as the editor of the *Colonist* had said, he did not know whether in this instance the tail was as good as the dog, but he rather thought it was. He was coming over to the Conservative party if he had taken all the courage he could command, but it was with him a question of principle, and he had to do it. Those who knew him best knew he could not talk or advocate a thing unless he believed in it himself. He was not a politician, he was a lawyer. (Laughter.) He believed the Conservative party to be the party of progress, and he believed the Liberal party to be the party of reaction. 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