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RAILWAY MEN NOT GUILTY

Alexander and Hinchey were Acquitted of Charge
of Manslaughter in Connection with Fushimi
Wreck—Jury Recommends.

As announced last week the charge against Conductor W. E. Alexander and Engineer Thomas Hinchey, for manslaughter in connection with the Fushimi wreck on the morning of October 30th last, was being tried before Judge Prendergast and jury.

In both cases the accused were acquitted.

Alexander Case
In this case Mr. Alex. Ross acted as the prosecution, with Norman Mackenzie, K.C., for the defence; the jury was announced last week.

Mr. Ross in addressing the jury at the opening of the case explained the charge of manslaughter and afterwards gave a short sketch of the wreck which led up to the charge being preferred against the accused. He accused had received an order at Fushimi for his train to wait at Fushimi till eight o'clock on the morning of Oct. 30th last, to allow the extra 1413 to get on the siding. The jury would have to decide whether the accused allowed his train to proceed past Fushimi before 8 o'clock, and also whether accused was guilty of negligence.

The first witness called was Corp. Hogg of the R.N.W.M.P., who testified that the wreck took place about 150 yards east of Fushimi siding. He saw body of Fireman Brett on tender of wrecked engine, and saw body again at inquest.

L. E. W. Bailey, C.P.R. night foreman at Moose Jaw, knew Brett and saw his body at undertaking parlor in Regina on day after wreck.

Dr. Thomson testified that he was called to scene of wreck on October 30th. Saw Brett's body at wreck and afterwards at inquest. There were injuries to thighs and head. Injuries to thighs alone would cause death.

A copy of by-law 87 of the C.P.R. was filed and although Mr. Mackenzie objected, the objections were overruled, though noted.

R. J. Collins, train dispatcher at Moose Jaw, told how dispatcher controlled movement of trains. He sent an order to No. 6 at Regina to wait at Fushimi until 8 o'clock for extra 1413 on Oct. 30. Same order was sent to 1231 and 1413 at Balgonie, and order was acknowledged and never superseded or annulled. There was no telegraph station at Fushimi.

A. W. Caswell, operator at Regina was on duty on Oct. 30. Saw order received before 7.45 and gave him order referred to. Had as usual made three copies. Gave two to accused, one for himself and one for his engineer. Accused registered into Regina at 7.38, departing at 7.45. Accused booked his watch 30 seconds fast. Engineer should receipt to conductor for order.

A. Eaman, agent at Balgonie deposed that he had given identical order received from Moose Jaw to conductor Hayes of extra 1413, who booked out of Balgonie at 7.32.

Conductor G. M. Hayes of extra 1413 received order at Balgonie. Left Pilot Butte at 7.44, was riding on engine from Pilot Butte. Looked at his watch at the curve east of Fushimi and saw that he had about 7 1/2 minutes to get on siding. It was a foggy morning. Saw an engine coming and told the engineer to "give her the top notch and take a header." He meant to apply the emergency and jump. After gaining his feet after jumping collision had taken place. He looked at his watch and also compared time with a policeman. It was 4 minutes to eight by policeman's watch.

In cross examination he stated that a conductor had many duties to perform and that the taking of tickets, and seeing that engineer was following orders was a difficult problem at times. The company had it in for him if he neglected either.

Engineer Smith of extra 1413 testified that the wreck occurred at about 7.51. His train would have had time to reach Fushimi before eight.

Humble and Converse, brakemen on 1413 also testified that wreck occurred before eight o'clock, and that emergency brakes had been applied on their train.

R. E. Mickleborough, who was a passenger on the local that morning did not hear the whistle blow. He was giving his ticket to the accused

when the wreck occurred. He felt only one shock.

W. J. Hill, another passenger felt one heavy shock and two lesser ones. He didn't feel a shock such as might be expected if emergency brakes were applied.

Const. O'Connell felt three shocks. After wreck compared watches with Conductor Hayes. It was about 4 minutes to eight.

A. F. O'Brien, telegraph operator at Moose Jaw stated that the clock at Moose Jaw was two seconds fast on morning of Oct. 30th.

Other witnesses who deposed as to times, watches and clocks were J. D. Murray, yardmaster at Moose Jaw, T. D. Oaker, operator at Regina, and George Collins of Broadview section. The latter stated that the Broadview clock was correct on the morning of Oct. 30.

The prosecution did not call any more witnesses, and Mr. Mackenzie addressing the judge claimed that the prosecution had not made out a case to warrant sending it to the jury. He asked that the case be dismissed. His lordship, stated, however, that he thought differently from Mr. Mackenzie. The defence did not call any witnesses and the addresses to the jury began.

Mr. Ross in his address called attention to the fact that the case affected the transportation system. Passengers were entitled to the assurance that every precaution was being taken by the employees of a railway for their safety. One employee should not try to shift the responsibility on another, but take his own share. The train had passed Fushimi before eight o'clock, and the wreck occurred resulting in the death of Fireman Brett. Accused had received an order at Regina to wait at Fushimi until eight o'clock. It was his duty to see that that order was carried out. While it was no doubt, his duty to collect the tickets his first duty was to care for the lives of his passengers. He warned the jury against letting sympathy for the accused stand in the way of their duty to the facts. They were to find whether the accused had done his duty or whether he was guilty of willful negligence in that respect.

Mr. Mackenzie then addressed the jury on behalf of the accused. He referred to the fact that the bylaws of the railway company were made for the guidance of the employees like the bylaws of any other company. However, common sense had to be exercised. Accused had for engineer a man who was known to be responsible and trustworthy, consequently he trusted him to carry out the order of stopping at Fushimi while he went on with his duty of collecting tickets. Had he thought otherwise the accused might have been guilty of neglect. The conductor could not be constantly on the look out. No man was infallible and mistakes might happen. Mr. Mackenzie wound up by asking the jury if it had been proved to their satisfaction that the accused had killed Fireman Brett.

The judge then summed up the evidence and the jury retired before 12 o'clock on Thursday. They had reached a verdict by 4 o'clock. That verdict was "Not Guilty," and they also made the following recommendation:

"We the jury in the case of King vs. Alexander, recommend that more protection should be given to the public in the matter of unprotected sidings by the railway companies operating in this province."

When the jury pronounced the verdict of "not guilty" the crowd in the court room showed their approval in an uncertain manner by bursts of applause. For this they were censured by the judge who threatened to have the room cleared. Verdicts must be received in silence without signs of approval or disapproval.

The Hinchey Case
In this case also, Mr. Alex. Ross appeared for the prosecution, while Hon. F. W. G. Haultain, K.C., and R. A. Bonnar, of Winnipeg, represented the accused.

The jury selected comprised W. A. Benjafield, F. J. Simpkins, C. B. Kingsley, F. H. Mackenzie, J. A. Westman, T. A. Smeed, J. N. Stewart, G. R. Whitmore, J. G. Traub.

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W. H. Mulligan and A. D. Millar. The accused was charged on three charges, the first being manslaughter, the second contravention of the rules of the company, and the third disobeying orders in running by the siding thus endangering the lives of the passengers.

After argument the second count was quashed by the judge, but the evidence on the others were to be considered by the jury.

Mr. Ross after addressing the jury opened the case for the crown by calling Corp. Hogg, whose evidence was about the same as that given by him in the Alexander case.

L. E. W. Bailey, in cross examination by Mr. Haultain deposed that the engine was a new one and would require considerable attention. He had known accused since 1894 and believed him to be competent and careful.

Dr. Thomson in cross examination by Mr. Bonnar told of numerous wounds on body of Fireman Brett. He had not made post mortem on body. Brett might possibly have died of fright.

R. J. Collins, despatcher at Moose Jaw, testified of the despatching of Engineer Hinchey's train on the morning of Oct. 30. Special train orders were superior to time table instructions. No. 6 was a regular train. By reference to the register he found an order for No. 6 to wait at Fushimi for 1413 and 1231 at Balgonie. That order was in effect till 8 o'clock and was not annulled. No 6 was forbidden under company's rules to pass Fushimi until 1413 had arrived.

In being cross examined by Mr. Haultain witness said he knew nothing as to the correctness of the time received from Montreal. He thought McLean reported fog about the time that he gave the Fushimi crossing order. He could not say that it was not Balgonie that reported the fog. He did not take it as a comment upon the order. The passenger was late leaving Moose Jaw, but gave time, making a record run from Moose Jaw to Regina. From Balgonie to Fushimi was almost 11 miles. The freight had a short time as compared with No. 6. They did not have to make the crossing until it could be done in safety. No. 6 was 20 minutes late leaving Regina. He did not see that an order requesting No. 6 to wait at Fushimi would be better. He had known Mr. Hinchey for a number of years and thought he was a good and careful man.

A. W. Caswell testified similar to what he did in the Alexander case. F. E. Alexander was next called. His train took three minutes to Fushimi. Received "wait" order at Regina and gave one copy to engineer. Did not hear whistle blow when passing Fushimi.

To Mr. Bonnar witness said accused was a trustworthy man. He was busy taking up tickets and the whistle might have sounded and he not heard it. Fushimi was a new siding without an agent. A "wait" order he didn't consider the safest. In the case of a stem wind watch the time might accidentally get changed by engineer working around engine. He didn't see accused's watch after the wreck.

To Mr. Ross witness said that his watch was thirty seconds fast and Hinchey's 10 seconds fast. Had heard of watches changing by man working around where watch would run against objects. If a "wait" order in place of a "wait" order had been issued wreck might have been prevented.

G. M. Hays gave to Mr. Ross much the same evidence as before. To Mr. Bonnar witness stated that accused had a good reputation and was thoroughly competent. Witness was running about 45 miles an hour. Expected to be into Fushimi at 7.55. Would have to slow down to take siding. If not there at 7.55 would send out flag and use rockets in fog. Must have been some mistake on part of accused for his own life. Not a happy one, had not one a clip to hold orders, nor any clock. Orders were carried in greasy pocket, and had to have own watch. The conductor was the high mogul of a train. Hinchey was badly knocked out that morning and had to go to the hospital. He was bleeding and scarcely knew what had happened.

He examined by Mr. Ross. Had 2 1/2 minutes to make a mile and three quarters which he considered sufficient. Conductor and engineer were equally responsible for train movements. Several watches showed 4 minutes to 8 immediately after the wreck. They did not get down to seconds.

The evidence of A. J. Smith, T. H. Humble, Converse, Mickleborough Hill, O'Connell, O'Brien and Collins was much the same as in the Alexander case, and with the testimony of these witnesses the crown closed its case.

The case for the defence was opened by calling Jos. Hyland, a railway engineer. He related his experience with a stem winding watch. On one occasion it went two hours wrong in eight miles. On two other occasions it went 19 minutes wrong. Had known accused for 20 years. He was known as a careful man.

To Mr. Ross witness said it would not take long from Regina to Fushimi and the time made on October 30 was ordinary. If watch varied on so short a run it would likely occur to him.

It did not seem quite possible for an engineer to fail to see mile posts. The wait order required extra care.

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tion on a foggy morning at a blind siding. Engineer's duty was not to pass Fushimi until 8 o'clock and to show a long whistle.

To Mr. Haultain witness admitted that watches would go wrong. R. M. Piper, an engineer, corroborated the previous witness respecting variations of watches. Witness fired for the accused and considered him as competent as any running out of Moose Jaw.

To Mr. Ross: It did not take Hyland long to discover errors in his watch. E. A. Eaman testified to delivering the train order at Balgonie. His watch lost an hour in pocket owing to something, "winding" with stem.

This happened three days ago. To Mr. Ross witness said he was not sure that he reported fog on the morning of Oct. 30th. J. J. Munn, C.P.R. time inspector, testified that stem wind watches are unreliable. His own went wrong on Friday last. Had inspected watch carried by accused. It was a standard stem winder.

To Mr. Ross witness said going wrong depended upon strength of spring. An engineer was not supposed to regulate his own watch. He told Hinchey the accused, was next called. Examined by Mr. Bonnar he said he had 16 years' experience. This train had right of way. Westbound trains were required to take sidings. At Fushimi his watch showed 30 seconds after 8. He remarked this to deceased fireman before reaching east end of siding and said that 1413 was probably detained somewhere else. Fireman Brett answered him, "all right, let her go on." He blew his whistle on approaching Fushimi. The engineer of a train ran greatest risk of life in case of an accident of that kind. He sustained several injuries and was rendered unconscious. He did not thus injure himself purposely. He was rendered unconscious and spent sixteen days in the hospital. He was a married man with a family.

To Mr. Ross accused said he ran trains by watch and judgment. He did some fixing to engine at Regina and had to do some reaching over the rods. Was busy and did not remember all details. Packing blow out shortly before accident. A torpedo on the rail would have attracted his attention.

Ernest Drummond, an engineer, saw accused at Regina on morning of Oct. 30. Witness remarked that he was late, time being 7.46. Accused answered "about 27 minutes late. I will soon make that up." Head of wreck soon after.

G. H. Smith was baggage-car on No. 6 on fatal morning and was in wreck. Saw Hinchey's watch as he lay in car. It was seven minutes fast. He remarked this fact to others at the time.

To Mr. Ross witness said accused spoke to him when comparing watches. Mr. Godfrey, town clerk of Indian Head, was present when the previous witness compared the watches. Heard Hinchey say it was one minute past 8. Witness understood accused was referring to the time that accident occurred. Witness also heard G. H. Smith say Hinchey's watch was seven minutes too fast.

David Alexander testified that accused was one of the best men working on Moose Jaw.

Jas. Kerneghan was a conductor for six years and knew accused as one of the best engineers.

Fireman McLean knew accused for five years. He was first class for efficiency and carelessness. James Jenkins, another engineer, corroborated McLean's testimony.

This closed the defence. Mr. Bonnar then addressed the jury for the defence, and Mr. Ross for the crown, both being followed by the judge. The jury retired at 5.30 and at ten o'clock brought in a verdict of "Not Guilty," and the accused was accordingly discharged.

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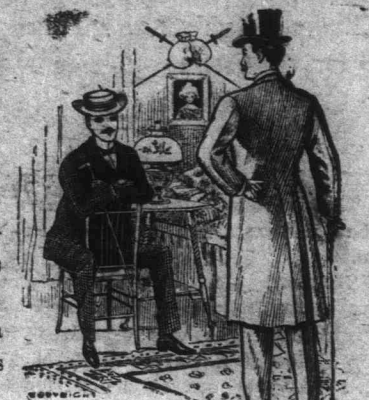
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