

EXCHEQUER COURT.

Taking of Evidence in Colpitts Case Finished,

And Arguments of Counsel Will be Heard at Ottawa on the 28th of December.

Importance of the Case—A Keen, Business-like Judge—E. H. MacAlpine Not Only an Orator, but a Lover of Up-to-Date Flowers.

When the exchequer court resumed its session on Thursday morning Dr. Teed was recalled, and examined by Dr. Pugsley said: Knew of no cut on Colpitts' head; did not direct any application of ice to his spine and knew of none; up to the third day prescribed some champagne; he might use, properly, three bottles a day; after the third day did not prescribe any champagne.

Cross-examined—Dr. Gaudet was at the wreck. He prescribed for some. Didn't know whether he prescribed for Colpitts or not. Champagne was prescribed for nerves. Prescribed application of hot iron.

W. R. Croke, reporter of the Moncton Transcript, attended inquest and heard H. B. Peck give evidence as to rate of speed. Heard him after the accident speak of the speed; interviewed him as a reporter; he said in witness' presence after the accident that train was running about 30 miles an hour.

Cross-examined—This occurred at Dorchester. Peck was examined at the inquest, he thought; if he were not examined at the inquest then it was in an interview with him.

To Dr. Pugsley—Heard Mr. Peck make that statement.

To Mr. Skinner—Remember talking with Peck at Dorchester.

Matthew Field of Springhill Junction, car repairer, remembered train 25 on the day of accident; inspected the right hand side of the train that day; opposite side to Mr. Fouille; found everything in good running order.

James Forbes, assistant station agent at Sackville, said Sackville was last stopping place before Dorchester. He usually took the time of train passing. Arrived at 11:30 and left at 12 o'clock. (Entry made at the time produced). Get time from head office at Moncton every day at 12 o'clock by wire.

Cross-examined—One minute is usual stopping time. Time would next be taken at Evans' whether train stopped or not.

Martin Power, section foreman on the section where accident happened, said his duties were to go over the section every day. Had been in the position for ten years. The whole section was in good, fair, condition. The approach to the curve was very easy and the road bed was good. Walked over the place of the accident the evening before and went over in lorry first morning. The sleepers were pine and hemlock. The location of the track and the degree of the curve is the same now as then. There is some more elevation on the centre rail now than then. Was at Evans' station when train passed. She was late.

Cross-examined—From the straight line the curvature begins gradually. The train went over beyond the point of greatest curvature. Attended at the coroner's inquest. Said there the rails were good rails, but not as good as some. Curves and grades were more or less dangerous on railroads. After the accident 7 or 8 rails were removed and replaced by new rails. Found sleepers chipped and worn but sound. Found some rail spikes drawn and some with heads broken off; also rails bent; some at the ends, others at the centre. This would be caused by the wheels of the trucks running over them. Saw the place where the train jumped the track.

To the judge—The rail was not broken. Thought the train displaced the rail.

To Mr. Skinner—Rails were thrown right out of their place; would think after the train left the track. Would say it must have been after. Don't think train went off because rails spread. There were 8 rails disturbed. Some of the rails were showed out as far as the end of the two feet cut of place. Could not say whether the wheels of the car followed them out there. The outer rail was heightened an inch the next summer. It was done on that and several other curves to see what effect it would have on the wearing of the rail. The rule for height of the outer rail on 4 degree curves is 3 inches. It was 3 inches at the time of the accident and is 4 inches now.

To the judge—Thought the train could run 70 miles an hour at that place with perfect safety. Satisfied that the road was not out of order. Other parts of the road shifted by frost, but this had a good foundation and never did move.

To Dr. Pugsley—The rails were not so worn as to be dangerous. The change in height of rail was not made for some months after the accident. No accident ever happened in this place before. Saw the equalizing bar lying where it was found. It was not there before the train passed. When the train passed Evans' did not notice anything unusual about the speed.

To Mr. Skinner—The piece of equalizing bar was found two days after the accident, he thought. Was found a little more than half way from where train went off to where she went down the bank.

To the judge—The broken end had wood on it. It had apparently struck a sleeper. Could not say whether there was any saw showing in the iron or not.

To Dr. Pugsley—Appeared to have struck the sleeper with force.

To Mr. Skinner—Just turned it over and looked at it. Did not know of any one tracing up the other end of it.

Wm. J. Lockhart, roadmaster on the I. C. R. for upwards of 11 years and on the road since 1868. His duties took him from Paines to Truro. Had to see that proper material was supplied to the men. Always had sufficient material to keep the roadway in order. The road bed was in good order at the place of the accident. The ties were Princess pine and hemlock, the best materials, better than cedar. The rails were laid in 1891; 70 lb. rails. The rails were in good safe condition at time of accident. Was at the wreck 49 or 50 minutes after accident occurred. The outer rail was out about 4 or 5 feet in places. Judged the train had caused it. The wood of the sleepers was sound. Train could safely run 60 miles an hour at that place.

Cross-examined—Would not be any difference in running round the curve or going straight at not more than 60 miles an hour.

To the judge—If brakes were applied would not sway so much.

To Mr. Skinner—His route was 117 miles long. The first disturbance was about five feet from a point between two rails. Three ties back of that two rails was a sign. The whole thing seemed to have been jumped right out. The train appeared to have been making its way down the track at the first disturbance. It was 1,500 feet from where the train entered the curve to where she went off. For 600 or 700 feet at the start the curve is lighter than further on.

To Dr. Pugsley—It was a very easy curve to approach. The highest curve on his section was four degrees. Ran 700 or 800 feet at two degrees. The appearance of the accident looked as if it had been suddenly done. No mark of a wheel going off. Some rails pushed out 4 or 5 feet. Examined track very carefully for cause of accident, and there was nothing there. There are punched tie plates, spiked through the plates to keep the rail from going out at the curve. If the equalizing bar broke and the end dropped down and acted as a gill-poke that might have produced the accident.

To Mr. Skinner—The upper end of the equalizing bar would have to drop down to allow it to act as a gill-poke. It might drop between an oil box and a sleeper and act as a gill-poke there. That would put the train off.

Peter S. Archibald was about twenty years chief engineer of the I. C. R., including at the time of the accident. Duties were to look after the maintenance of the permanent way. The road bed from Moncton to Sackville was in good condition at the time of the accident. At the place of the accident the rails and ties were good and the road well ballasted. It was fit for running the fast passenger train. Arrived at the scene of the accident about two hours after it occurred. The condition of the rails was shown on the plan in evidence.

The car had gone beyond the point of disturbance and had gone down. Witness corroborated the previous testimony as to construction of track and curves. It would be safe to run passenger trains up to 60 miles an hour at this point. It might not be prudent.

Cross-examined—It would not be prudent to run 60 miles an hour on a straight line. Would say 50 miles would be prudent. Would be more strain on curves than on a straight line. Could not say what car went off first from his observation of the wreck. From marks on rails and sleepers had formed the opinion that the postal car had kept to the rails for some distance and then gone off, breaking the telegraph pole as it did so. Did not find any wheels, trucks or equalizing bars broken. The postal car was most injured. Raising the outer rail of a curve lessened the strain by altering the centre of gravity. Twenty degrees would be a hard curve. There were curves of five and six degrees on the I. C. R. Attention was called to the curve, but not as dangerous. There was an agitation for shortening the distance and avoiding the curves and grades generally. It was safer to be without curves and cost less for maintenance.

After recess George Seaman, trackmaster, took the stand and gave evidence as to the care of tracks and curves. Would say, practically, that there was no more danger on a curve than on a straight track. Would go on an engine on the one as quick as on the other.

George W. Noyes of Gorham, New Hampshire, took the stand and gave evidence as to the care of tracks and curves. Would say, practically, that there was no more danger on a curve than on a straight track. Would go on an engine on the one as quick as on the other.

Cross-examined—On the Grand Trunk about 30 miles an hour was the speed for accommodation trains and about 40 for express trains. Had run as fast round a curve as on a straight line. It was all right if the outer rail was properly elevated.

Josiah Wood of Sackville, remembered the accident; was a passenger on the train from Sackville to Dorchester. In his judgment, on the day of the accident the train was going about 35 miles an hour. First thing he noticed was its bumping on the side rails. Stopped, pretty quickly. Car bumped over slowly. Would not say there was no swaying or oscillation, but it was not unusual.

Cross-examined—Had a habit of looking out of the window on this grade. Used to go down there in coal trains and then there was a great deal of oscillation, much more than he had felt since. Used not to feel afraid but used to consider it as the hardest piece there was on the road. Thought he had formed an opinion as to the speed while still on the train.

To Dr. Pugsley—When the car bumped on the sleepers knew that it was off the track and got hold of

the seat to save himself. Knew it was going over slowly because he had time to think to get down and hold on to bottom of car seat to save himself.

To Mr. Skinner—Could not say which car went off first.

Charles C. Gregory, civil engineer for 40 years, was railroad engineer in 1877 on construction. Thought express trains run in England at 52 or 53 miles, in some parts at 60 miles. Best road in U. S. run about the same, also on the best roads in Canada. Familiar with the I. C. R., which was the finest road in North America in all respects. Had seen the place where accident occurred. Estimated the curve at 3.4 degrees. Looking at the elevation shown on the plan and the curve, would consider that a train might safely run at 52 or 53 miles an hour. Witness then explained the action of the automatic brake. The air was compressed in a main pump on the engine at 90 lbs. and passed through a valve to the hose on train pipe, where the pressure was always 70 lbs. In the cars were auxiliary reservoirs; there was 70 lbs. pressure also. When the brakes were used by the engineer he shut off the pressure from the pumps and allowed the air to partly escape from the train pipe, which permitted the brakes to close on the wheels more or less gently. If the air pipes broke the brakes would go on instantly. If for any reason the brakes did not act on the heavy sleeping car, but did on the others, there would be a force as to throw the car forward several feet and the train would spread apart laterally, just what appeared to have happened. Could not see how brakes would act efficiently on the sleeper after the breaking of the equalizing bar. While if it had been suddenly done. No mark of a wheel going off. Some rails pushed out 4 or 5 feet. Examined track very carefully for cause of accident, and there was nothing there. There are punched tie plates, spiked through the plates to keep the rail from going out at the curve. If the equalizing bar broke and the end dropped down and acted as a gill-poke that might have produced the accident.

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To Dr. Pugsley—When the car bumped on the sleepers knew that it was off the track and got hold of

the train to go by them, and on several days for weeks before the accident. On that day the train did not seem to be going any faster than usual.

John B. Brown, school teacher and student-at-law, was boarding at the Dorchester hotel on and after the accident. The girl he was at the hotel between one and two weeks. On the day of the accident saw Colpitts lying on a lounge. Colpitts showed a little scratch on his head and complained of being shaken up. Thought he was nervous. Colpitts was put to bed and was there for some days. There was always music at the hotel, and when Colpitts would come in with his nurse, she would have her arm about him and they would step around. Sometimes he would step around lively in imitation of a waltz. His action would lead witness to believe that Colpitts was not seriously injured.

Cross-examined—Thought it was two or three days that Colpitts was in bed before he got up. Colpitts used to sing Venus and dance around by himself.

Irvine G. Sheppard, night agent at Dorchester, was at Evans' on the day of the accident. C. P. R. express does not stop there. Atkinson had been night operator there, but was not employed there then. Was witness' duty to keep a record of time of train passing. Entry showed 12:16 as time of passing. Had a clock in station. Received the time at 12 o'clock. Could not say whether he O. K'd the time from watch or clock. Reported the train by clock. Next heard the train on the track. A special, in charge of Conductor Broad, arrived about three hours afterwards with James E. Price on board. Price asked witness what time he reported the train. Saw him and Broad and the brakeman, Wryn, look at their watches. Price then gave witness directions. In consequence made an entry. "Clock was two minutes fast." Could not say whether he changed the clock or not. He detailed the entries as to times of arrival and departure of a train following No. 25.

Witness stood aside for the examination of Matthew McCarron, the Moncton operator, whose duty it was to work the train record sheet. At 12:16 was reported to him from Evans that train 25 had passed. Broad's special was reported from Evans at 15:57, as arriving, and leaving at 16:07. Broad's special was reported at 16:55 as arriving at Evans' back from wreck and leaving west at 20:15.

Irvine G. Sheppard recalled, pointed out that 16:57 arrival at Evans' back from wreck was changed to 18:55 by Atkinson. Witness' entry of 20:15 was the one given at Moncton as 20:15. There was a good deal of excitement owing to the wreck. Could not be the least discrepancy unless he had reported the train first and entered it some time afterwards. Sure he reported 25 by the clock.

Cross-examined by A. W. Macrae—Did not think he put 12:06 on the book at 12:06 by the clock. Did not know that he had compared the clock then. The entry 14:07 would be made after Price left.

To Dr. Pugsley—Practice was to report train from his watch. Also relied on the watch for the passing of trains. This time reported the train from the clock, thinking it was not much out.

Matthew McCarron, cross-examined, said that he left Springhill at 11:15 o'clock and Sackville at 12, then Evans' at 12:16.

Frank T. Atkinson, night operator, was not on duty at the time of the accident; got to Evans' about 4 p. m. on the day of the accident. Sheppard was there then. Price, Broad and Wryn were there. Nothing took place as to time of clock in his presence. Was there when Broad's special left for the wreck, and witness was left in charge of office. Shown the 16:57 entry. These figures were

witnesses'. Also words, "Special W. Broad." Must have got the figures of entry from Station Master Sheppard. Leaving time 16:07 was witness', and was reported by witness to Moncton. The 16:57 entry changed to 16:55 was witness' entry. Could not recall anything about change of figures.

Willard L. Broad, conductor of the special at the time of the accident, said conductors had to carry watches and keep them perfectly correct. Time was checked at 12 o'clock. Took time himself at Springhill Junction that day at 12. Price came on special with witness to wreck. Stopped at Evans' for orders. Were some little time at the wreck and then went back to Evans'. All went into Evans' together on our way to wreck. Saw station agent there. Looked at his watch when asked to do so. Clock was two minutes faster than watch. Witness and Price and brakeman compared watches; they all agreed; clock was two minutes fast by both brakeman's watch and witness' own. The difference was stated in Sheppard's presence. Did not know as to the entries.

Cross-examined—Heard the time going over the road at Springhill. Knew enough of telegraphy to be able to tell. Thought he was at Springhill at 12 o'clock. Was there some time. Reference to the train running sheet showing witness to have been at Athol, it would be there he got the time.

Michael Wryn, brakeman, was on Broad's special. He carried a watch. Got his time from a clock, and by asking agent if clock was right. Got his time that day at Springhill. At Evans' Price asked the time. Broad, witness and Price looked at their watches. Could not say as to Price's watch. Witness' watch was two minutes slower than the clock. Broad's watch same as witness' watch.

Cross-examined—Springhill was the only place where witness had an opportunity of comparing his watch. Comparison at Evans' was brought about because of accident.

Dr. Pugsley asking an adjournment until 2:30 p. m., it was decided that the plaintiff might call Dr. C. H. L. Johnson in railway accident. Examined by Sidener, Q. C., he said he knew H. B. Peck and attended him after the accident until after 31st January, 1897, at his house on Dorchester street. Heard of inquest at the time while Peck was confined to the house.

After recess, Dr. Pugsley stated that a witness who would arrive by the 4 o'clock train would prove that Colpitts was ruptured and wore a truss before the accident. As it would be impossible to get the witness in court before his honor would have to leave, he would ask permission to examine the witness at Ottawa.

Leave was reserved for this purpose.

Wm. B. Quinton, reporter on Daily Sun newspaper for fifteen years, was the next witness. Remembered the 1897 railway accident. Was sent to the scene of the accident, but at Pettitodiac got a despatch to meet the passengers and injured in the incoming train at Sackville, which he did. Knew Peck; asked him about the speed of the train. Produced notebook of original notes. Peck said: "We were running along at the usual rate of speed, about thirty miles an hour."

Cross-examined by Mr. Skinner—Peck was very much excited; his head was tied up and he was injured. Dr. Pugsley here announced that this was the close of the case for the crown, subject to the calling of the witness to be examined at Ottawa.

H. B. Peck was recalled for the suppliant. Was not at the inquest; nor at the Windsor hotel until the next year. Never saw Croke, the reporter, until yesterday. Saw Quinton in the car. A great many people were there, and some confusion. Always thought the rate of speed was high and said so that night at home.

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

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

5 CENTS A CAKE.

To Dr. Pugsley—Whatever the speed was it was very vivid in witness' mind at the time.

This closed the suppliant's case. His lordship then asked what time could be fixed for the argument at Ottawa.

After some discussion the case was set for the 28th of December, at the supreme court building, Ottawa.

This case is the longest before the exchequer court at St. John and is probably the most important New Brunswick case which has been before the court for years. Not only are the damages claimed in the particular case very heavy, but contingent upon its determination are a number of cases of the same class. The importance, therefore, both of the facts and the questions of law involved have been extensively in the public mind. Naturally, attention is attracted to the persons who are engaged in a matter of such importance, and while comment upon the judiciary is somewhat unusual, it must be remembered that his lordship, Mr. Justice Burbridge has contributed in an unusual degree to the case and rapidity of the trial of the case. Always urbane towards counsel, he possesses the happy faculty of preventing all needless disputes among them, while his keen, practical insight into the details of the case enables him to grasp the meaning of a witness and in many instances anticipate him from momentary confusion by a few pertinent questions. Many members of the bar have spoken highly of the conduct of Judge Burbridge and are proud of the fact that his was an elevation from the bar of their own province.

Despite the gravity of the issues involved, the trial has been without its lighter incidents. One of these was particularly good. During the examination of Hon. Josiah Wood by Mr. MacAlpine, the eloquent junior counsel for the crown, apropos of a question, Mr. Skinner, Q. C., remarked that he did not suppose Mr. Wood was stealing a ride on a freight car. "No," said Mr. MacAlpine, "men who are worth half a million do not, in this country, steal their rides upon freight cars. Do they, Senator Wood?"

To the eloquent junior just mentioned his lordship, the counsel and the officers of the court were yesterday morning indebted for beautiful bouquets of carnations, while in the afternoon the reporters vied with the Mystic Shrine in their possession of enormous chrysanthemums from the same generous hand.

The case of Tyrell v. the Queen will be appealed, notice having been given to that effect by the counsel.

Children Cry for CASTORIA.

The residence of John Dawson, Creek Road, Cornhill, was burned last Sunday night, says the Transcript. Mr. and Mrs. Dawson, who are an aged couple, narrowly escaped with their lives.



The Second Quarter Century.

Twenty-five is a distinguished and significant age. Old men say, "When I was twenty-five," and boys say, "When I am twenty-five." It is a desirable age. For we are beginning the second of the three laps, and the most telling of the race. The first quarter century is past—we are on the threshold of the second. We have left off seeking education, directly, and are hunting for wealth and other things. The real battle of life starts at this age. Youth is full of hope, illusions; manhood is full of struggle, disillusionment. On your fitness to withstand that struggle depends the success of your life. Neglect of health will ruin your prospects. Only the healthful win success.

Abbey's Effervescent Salt

will give you health—will keep you healthful. Eminent physicians recommend it to their patients. Prominent persons certify to its efficacy. Its daily use keeps the system in good order. Abbey's Effervescent Salt has proven its efficacy as a cure and preventive in cases of La Grippe, Sleeplessness, Loss of Appetite, Biliousness, Sick Headache, Constipation, Rheumatism, Neuralgia, Spleen Affections, Nervous Depression, Indigestion, Sea Sickness, Flatulency, Gout, Fever, Skin and Kidney Complaints. Its use purifies the blood in a natural manner and clears the complexion.

The Daily Use of Abbey's Effervescent Salt will keep you in good health.

SOLD BY ALL DRUGGISTS AT 60 CENTS A LARGE BOTTLE. TRIAL SIZE, 25 CENTS.

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