SEMI-WEEKLY SUN, ST. JOHN, N. B., NOVEMBER 5, 1898.

## EXCHEQUER COURT. Judge Burbidge Finds Against Crown in Tyrrell Case.

**Claims Fifty Thousand Dollars** Damages from the Government.

## A Case Arising Out of the Accident on the I. C. R. at Palmer's Pond in January, 1897.

Evidence of the Hon. Dr. Borden, Minister of Militia, Who Called by the Suppliant

Tyrell v. the Queen was taken up when the exchaquer court opened Friday morning. This is a claim of Frank Tyrell of St. Stephen for dam-Frank Tyrell of St. Stephen for dam-ages for the improper seizure of a grey mare, pung and harness in Janu-ary, 1893. The seizure was made by Officer Bonness on the ground that the 'rig was being used in smuggling. This the petitioner denies. Testi-mony was taken 'as to the circumof the seizure and the value of the rig, which altogether \$289.50, and was bought in by Tyrell for \$225. He was deprived of his pro-perty for three weeks. He denied that he was smuggling on this occa-

Wm. Tyrell, a brother of the sup rliant. corroborated these state

Win. Pugsley, Q. C., and J. M. Stevens appear for the suppliant, and A. O. Earle, Q. C., and E. H. McAlpine for the crown

The case of H. H. Colpitts, hotel manager of Eigin, against the Queen was next taken up, C. N. Skinner, Q. C., and A. W. Macrae appearing suppliant, and Wm. Pugsley, for the Q: C., for the crown.

The suppliant was injured in the Palmer's Pond accident, near Dorchester, on 26th January, 1897. He claims that there was on the train a postal and express car improperly loaded, and that by means of the ne-gligence in the loading of the car, the defective construction of the car, and the running of the train at a high rate of speed inconsistent with the safety of the train when so loaded, the train was derailed and the suppliant injured. He claims \$50,000. The crown denies generally all of

the suppliant's .. llegations. It alleges that the injury was caused by a pure accident. The cars are said to have been those of the Canadian Pa-cific Railway and under the exclusive control of that railway.

n. Dr. Borden, the first witness I, was examined by C. N. Skinfolle ner, Q. C. He said that he was on the train on 26th January, 1897. He took the train at Halifax and contindent. He was in the Pullman, the last car on the train. There was a sharp grade towards Dorchester and Sackville. At the time of the accident the train was on a down grade. He was lying down in the centre of the car. He was reading until short-ly before the accident. He found it difficult to read and stopped. He look-ed out of the window. It was the great speed which drew his attention. ying of the car indicated gre speed and curves. He felt the os tion was very great. He judged the speed was 40 miles an hour. He testified as to the details of the

reputation of being an unscrupture and an unprincipled man. He would not believe him under oath. In cross-examination, the witness interim an election against ent swaying of the car within a min-ute of the acident. Would know that brakes were being applied by feeling the brakes going on unless they were stated he had run an election against Benness and had been defeated. There was no ill-feeling between them, but very elightly. They may have been shily when going round the but not on Bonness had not spoken to him for-some months. Bonness was not on his list of friends. Bonness, he urve, but, if so. ening of speed. Brakes might have been applied often that day when Brakes might have thought, was considered an active of-ficial. When pressed witness was busy working, without his being aware of it. Fnished lunch just before accident. Made no claim ficial. When pressed to give the names of persons who had spoken of Bonness being an unscrupulous man, the witness could only remember one, Seth Webster. for injury. Had been nervous ever

To Mr. Skinner-Had not made any Wm. Tyrrell and Frank Tyrrell were When interviewed by reportbriefly examined in reference to the bay mare, which they claimed was not on the bridge on the night Boner was on No. 1 mail train, the same night. When witness saw the report the next day recognized that it was inaccurate. Never said the rate of This finished the case of the sup-pliant and Dr. Earle asked for a postspeed was 30 miles an hour. Felt the cilating motion right up to the time ponement in order to allow him to get the car left the rails. rebuttal evidence regarding the char-

John W. Howard, news agent, wa also exabined. Was on the train of Judge Burbldge here interposed and the accident from Sackville. Met Miss said he had never heard a case in Patriquin on the train. Sat down with and was there at time of acciwere given this morning. He disliked dent. Train was going at good rate of speed. While talking she was very much, and besides the court had nothing to do with the characters thrown against me and said it of the men. It had only to deal with such a train that she could not keep Could not keep our seats. This was fourth car from the engine. Two cars were behind that. Thought speed The case of Colplits against the usen was then resumed. vas 45 or 50 miles an ho say how close up to accident the oscil-Harry B. Peck, mail cierk on the ation occurred. It was just before the train at the time of the accident, was accident. Did not particularly ob-serve the increase of speed on the the only witness examined. His route was between St. John and Halifax. down grade; it always did increase as After leaving Sackville for a few miles a matter of course. Had noticed was busy with mail received there speed down that grade since accident. After that was sitting at window of The first mile would not be so fast as the second or third. At the third the postal car, for perhaps five minutes before the accident. Had passed the brakes would be applied. The fourth op of the hill and train was on the would be at Palmer's Pond. Was mile running very fast, probably 50 miles Since the accident have not felt the same oscillation as on that day. Would an hour. Had been on train thirteen feel brakes if they were put on. Did years; usel to noticing speed. There was a gradual increase of speed on the down grade. Car was swaying not remember whether brakes wert put on that day; did not feel them very violently and struck the curve going on. Have known train to go mile a minute on other parts of the very hard. The riding was very rough road. Did not decide at the time how First struck one side of a curve and fast the train was going at the time then on the other, very roughly. Posof the accident. Did not know which tal car was next the engine. It was a rostal and express ar, the postal part nearest the engine. Was sitting when car left the track first; thought it was the car ahead. The express and mail accident occurred. All at once there was a crash, his impression was that the car kept right on straight instead car was pretty well marked up. Saw the copper coin lying around there. Cross-examined by Dr. Pugsley-Never took particular notice of any of of following the curve. Jumped up and went to rear of car and held on the curves. The S curve may be half to an iron rod. Car went down em-bankment on her side and then turna mile from Palmer's Pond. It was at the S curve that Miss Patriquin ed over on the roof. Saw the car afwas thrown against witness There was swaying after that right up to the accident. Noticed that the train to where it stopped. Was cut over the eye and bruised; got a general shak-ing up. Knew nothing of the freight was going pretty dast; would not say faster (than usual, but had never noticed such joiting as on that day, in car. Car did not seem to be con-trolled by brakes. Would not say they Always had come down that grade at about 45 miles an hour. Had noticed were not on, but it did not appear to be under their control. After the train that. Never experienced such sway-ing. Had not thought the train was whethe going any faster than usual. It was the speed of the train that caused the Cross-examined by Dr. Pugsley. swaying motion. Don't know what else would cause it. Speed of frain may have been faster or slower than About three miles from Sackville, when he sat down by the window Thought if any of the rear cars left before. Had seen C. P. R. train run the track he would know it by a jerk-

dazed. Saw a lady, a boy and an elderly gentleman. Bordon. First beard little boy or and tried to help him; found he was not bruised. His mother was cut quite adly. Dr. Borden seemed to have plece cut out of his nose. es out of a pillow and thed up the nan. Soon after s ady and gentle came .nd broke rear window and got people out. About the time they vere getting Dr. Borden out witness beran to feel weak and started back to get his grip. He partly fainted then. Was taken to Windsor hotel. ster, and was helped into the Dorch arlor by two nen. Was nine days in Dorchester; five days in bed and then a couple of days after that. Had had pain in head, back and right side. At St. John, ten days after accident, consuited Dr. Emery, who made a thorough examination. Left St. John the last of April, 1897. Up to that time

was not able to do anything. There was a rupture on right thigh. and side were very painful. Went to Boston after April; consulted physicians there. Did not get any better; vorse if anything. Rupture is somewhat better; back still troubles; gritty sensation in back; has not been able to attend to business; have done very little since. When witness went to Halifax was negotilating for Queen tel in Haltfax; put in a tende night have got it but for accident Hotel was leased while witness Barned \$50 per week at bla UD. Preston hotel before that. First posttion witness held after accident WAS in charge of hotel at Manchester, N. H., in winter of 1898. If he could fill was to get \$40. per week. sition Stayed there five weeks, was ill and lost three weeks. Then had to give it up and came to New Brunswick. Went to Woodstock; did nothing there. Back is now some better. Had a light position hiring help for a hotel in Maine this year. Was a small position. \$75 a month for two months. Had worked up in the hotel business so that could take charge of a hotel and was worth \$59 per week in that of business. In consequence of the accident was unable to take charge of such business. He estimated speed of the train at time of accident was 45 or 50 miles an hour. Did not then think that the speed was that, but had some to that conclusion since. Oscillation was very great. Never felt such swaying of a car before. After leaving Sackville read comfortably for some minutes. Then paper shock so that it was impossible to read. Very soon after that the accident happen-The speed and the oscillation eđ. continued right up to accident. Did not then come to any conclusion as to whether the speed was a safe one. Had travelled a good deal on fast

Cross-examined by Dr. Pugsleyabout ten or fifteen minutes from train left Sackville until witness gan to read. Noticed oscillation until minute or two of accident. Never before experienced such oscillation. Did not notice that it became less; it became worse right up to the accident. From first noticing oscillation to accia mile a minute somewhere between Cork and Harvey. From top of grade dent was not more than half a min-

\$40 a month from October to June of the next year. To His Lordship-Would earn an average of \$100 per month even as cashier. Would get \$50 a week as manager. Last three years before accident would earn \$40 per week right through

To Dr. Pugsley-Was at Dorchester on 17th Marsh, 1897; called to see the ceople at hotel when on way to Boston. Positively knew that he did not dance on that day. Thought Miss Gallagher played the piano. Sure would not forget if he had been dancing After coming to St. John wrote Mr. Pottinger. Had no copy of the letter On 8th January, when witness wrote him, did know that he was ruptured. Did not state then in that letter that he was runtured. A. W. Macrae and C. N. Skinner, Q C., for the suppliant; E. H. MacAl-pine and Wm. Pugsley, Q. C., for the

When the exchaquer court resumed ts sitting on the 1st instant H. H. Colpits, the suppliant, was on the stand, and his cross-examination was continued by Dr. Puggley.

crown.

Knew he was ruptured before going to Boston. Original letter sent to Mr. Pottinger read and identified by witness, who admitted that he then complained of his back only and askd for an allowance while When witness wrote letter did not think he was nearly recovered. Could give no explanation why he wrote to Pottinger that he had nearly recovered. Could not explain why he did not mention the rupture; might have thought that his back included every thing. Pain of rupture was not as great now as on 8th February, when witness arrived at St. John from Dorchester. Wears truss now. Had taken good sare of hin self since. Was not in the hadbt of drinking to excess. Never was drunk in his life. Took a glass of liquor. Was not dissipated Was not in Sorento in 1896. In 1893. summer, was in New Winthrop Hotel Winthrop Beach, as manager, at a salary of \$40 per week ; was in position about three months: then was in Clark's hotel during winter, from October to June at \$100 per month. Then came to N. B.; was run down working hard as cashier at the hotel: during summer of 1884 was not doing any tling. Then was in Imperial Cafe as manager from latter part of August until June, 1896, at \$40 per week. Then went to Preston Hotel, Beach Bluff, where he remained until he came down to N. B. about time of accident. His brain was as clear as ever: was as capable of managing a hotel as ever: as cashier or manager had to be on his feet the greater part of time. In March, 1897, was on a to Dorchester. Injuries are better now than then. Thought it was the sixth day after accident before he got down stairs to his meals. Was not riding a bicycle about the upper ball. Did not ride a bicycle at all

To Mr. Skinner-Had a return ticket from St. John to Halifax and was coming back on the return. Did not know as to the brakes at time of accident. Speed of the train was not lessened. Bought the ticket at the I.



Snowy whiteness of sheets, shirts and skirt's come from the use of Surprise Soap on the wash-never yellow or streaked, always clean and white. Surprise Soap has peculiar qualities for Laundry purposes good for all uses. SURPRISE is the name of the Soap.

ammmmmmmmmmm

their going out. This would be with reference to C. P. R. cars. Inspected the postal car that day as usual. There was a considerable quantity of coin in the express end. Did not know the weight of fittings at postal end, nor the weight of mail matter, therefore could not say whether it was lightly or heavily loaded in that end.

To the judge—Was satisfied from his own observation the car was in pro-per condition or it would not have gone out on that morning. To Mr. Skinner-Could not say what

weight of the coin was. To Mr. Macrae-Knew there Was

more than one ton and less than twenty tons. Boxes were placed well over the floor of the car; some within 18 inches of the partition. They were piled one on top of another, one tier high. They were well scattered over the floor.

Cross-examined by E. H. MacAlpine -Was employed in Windsor street station formerly. Had considerable experience. Inspected all the cars that morning. Every car in good order therwise would not have allowed it to leave the station. Closed the door of the postal car that morning.

To Mr. Skinner-Naturally a man would spread the stuff all over the car in which he had to load it. The weight should be merely distributed over the space provided for the purpose. The car would be loaded ording to the capacity of the car and

the speed of the train. To the judge—In his opinion the car was safely and properly loaded when it left Halifax. If a car is very heav-ily loaded behind and lightly in front, do not think that there is any danger

of the car jumping the track. To Mr. Skinner, who was then owed to cross-examine the witness Referring to Juror Hicks' question as to car being loaded very heavily at one end, witness said that the question really put to him was if one en were more heavily loaded than the other, would not the first end be heavter? To this he, of course, replied that it would be. The record was

wrong. Asked if at the coroner's in-quest he had not said that a car loaded heavier at one end than the other. would be more likely to jump the track

ha.bit

every

Were

alcted

the ba

Jam

R., wa

to exa

uary e No. 25

in goo Cross Did no

than a

any fr

baggag examin

in the

His du not rig coin th would

ten to To t

on th

То rany their o

around spring right.

Hebe Richm called.

pine.

the n

Had to

and al done a

dition.

Cro

That

o'clock

fore.

uted

tons

end if

To

bleow

danger

Mays

ed at.

would

would accide

for all run a

shop

Jam

specto by E.

train ed it wheel was i

train

was c There there car or Cros What what not in in the tention chiner one en middle by its tenden To

first

The

safe; the paing of the ca

coident. He thought all the cars

went off at one point. The suppliant Colpitts was near him at the time of the accident. At first Colpitts did not appear to be much hurt. He assisted witness to get out of the wreck, procured cloth and bound up head of witness. Afterward Colpitts was missed, and it proved that he had fainted. Witness saw copper coin lying about and noticed the broken boxes which had contained it

Cross-examined by Dr. Pugsley Could not tell how long it was from time he noticed rapid speed until car went off. It was not same instant, as he had time to notice the circum-stance, stop reading and look out of window. With the help of diagrams before court Dr. Borden explained the position of the cars after the accident and his reasons for supposing that the cars all went off at the same point. He always knew whether brakes were applied or not if he were looking to ascertain that fact. Could not remember when brakes were last applied. His attention was not called at any other places to the application of the brakes.

To Mr. Skinner-The speed attracted his attention so that he expected brakes to be put on. Would have heard them if they had been put on. Did not hear the

The case of Tyrrell v. the Queen was resumed Saturday morning and sev-eral witnesses examined. Their evi-dence was chiefly relative to the character of J. D. Bonness of St. Stephen. Henry Graham, collector of customs at St. Stephen, said he would not believe Bonness under oath. In crossination he admitted that he was quite friendly with the Tyrrells and frequently went into their establishere he had taken drinks. He never held out to Frank Tyrrell to use his influence to have his goods returned to him if he (Tyrrell) would vote for the conservative ticket. Bon-ness had authority to make settlements of seizures himself, providing memits of selzures nimetic, providing the goods taken were not delivered to him. If they were the collector made the settlements. As far as Bonness was concerned, witness would not believe him under oath if he was interested in the case. Before he received his appointment as collector, he was engaged in mercantile business with the Murchies in Calais. He was not dismissed from their amploy and there vas no shortage of funds while there. He never asked Bonness to use his in-

ing motion. This was a swaying mo-tion. Had noticel on previous occasions the trains going very fast and swaying at this place. Thought there was a swaying motion immediately be-fore the accident, certainly within a minute or two before the accident, or perhaps half a minute. Estimated speed of train from his experience. Did not give evidence at inquest; was laid up in bed than. This was a C. P. R. train; all the cars belonged to that train. Had run from St. John to Sackville for the past ten years, mostly. After accident did not remember making any statement as to rate of speed ntervewed by a reporter on train. Did not tell him that the

ness claimed to have seen her.

which there were such person

the question whether the horse

sed for smuggling purposes.

down grade passing the curves.

terwards. Judge the car went

feet from the place it went off

automatic brakes worked or not.

broke, do not know

acter of Mr. Bonnes

of the train was 30 miles an hour. The report was not correct in many No recollection of some particulars. ings said to him. Did not tell 1 that the six cars left the rails. the report in the next day's papers. On the Saturday previous had came over same place. Came pretty fast; generally came pretty fast there. Came faster the day of the accident than usual. Judged this both from roughness of car and observation ed Evans' is about over the grade slightly. At the double curve the speed would be nearly as fast as when she went off. Thought the speed



out the light of good judgment, and looks bigger than life or death, or wife or child. The facts are that ill-health very soon puts a stop to a man's money-making powers and turns them into money-losing dis-

When a man's digestion is out of order and his liver sluggish, his brain gets dull, his muscles sluggish, his blood impure and every organ in the body-brain, lungs, heart strengch liver or the body-brain, lungs, every organ in the body-brain, lun heart, stomach, liver and kidneys-becon crippled. A man with a crippled lu liver, heart, brain or kidney, is a wo cripple ten times over, than a man who minus a leg or an arm. The man who crippled ontside may live a long life but man who is crippled inside is taking a sh cut to the grave. Dr. Pierce's Golden M ical Discovery cures indigestion, makes al Discovery cures indigestion, mak opetite keen, the liver active, the ire, and every organ healthy and vigo makes blood and builds fiesh up ealthy standard. Honest dealers althy standard. Hon commend substitutes.

recommend substitutes. "I wish to say to those who suffer from kid and bladder trouble-*take Dr. R. V. Plet Golden Medical Discovery.*" writes Dr. Ander of Carthage, Jasper Co., Mo. "A patient of r says it is warth \$50 per bottle to any one wi afflicted as he was. Three bottles cured him time. Perfectly winerable he was, before ta rely. Perfectly miserable he was, before take he 'Discovery' and now is one of the happi aen in this County. Prof. Chreine would gis ign this if he were in lown. He requested o write a testimonial and make it as strong the English language could make it."

using the state of funds while there. He never asked Bonness to use his in-fluence to have him (witness) appoint-ed collector. Howard B. McAllister of St. Ste-phen, a netired ship master, was next examined. Bonness, he said, had the

ciles. Evars' is on the down grade towards Dorchester. Think it is over three miles from there to the place of the accident. There is a mile post near the head of the grade. Three or four after that to Dorchester. Counted them last about a month ago.

To Mr. Skinner-The place above a mile a minute was made on the C. P. R. was on a level. At the time of the accident it was the motion of the train that gave me the idea of the speel. The oscillation continued up to the time of the accident.

To Dr. Pugsley-It would not be a minute from the time Miss Patriquin was thrown .igniast him until the aceldent, not much more than half a minute.

At the exchequer court on Monday afternoon the Colpitts case was re-

Horace W. Cole, a commercial trav-eller, was called for the suppliant. Wes on the truin the day of the acci-dent in first class passenger car. High rate of speed on striking first curve attracted his attention. Thought speed was more than 50 miles an hour; thought it was dangerous. The car ahead left the track at the curve and was increasing and at its height the one witness was in followed. Wit-ness was knocked unconscious when the crash came.

Cross-examined by Dr. Pugsley-Ha looked through the glass of the win-dow; saw the car leave the rall: the car he was in left the rail almost at the same time. Could not see the locomotive ahead. Was sitting quite close to the door, on the outside of the seat, next to the aisle. Noticed the speed of the train before it struck the curves; feit sure it was 60 miles an hour; expected brakes but did not hear them applied. Was injured in the accident; laid up for weeks in St.

John and was atterded by Dr. Murray MacLaren. Had made a claim bu was not pressing it pending this suit. About 12 minutes before train struck

began to motice the speed of the train. Was totally disabled for four weeks and partially disabled for three or four weeks after that.

To Mr. Skinner-The time given we pproximate, in every case, not strictaccurate.

Harold H. Colpitts, the supplia was the next witness. He was a hotel manager in Boston, California and New York. Age is 31 years. On the day of the accident was coming through from Halifax to St. John. After leaving Sackville went into toilet apartment to get ready for dinner. The news boy came through when he returned to the car; bought a couple returned to the car; bought a couple of papers from him. Car commenced to oscillate so violently that he could not read. Looked out of the window and noticed that the train was going wery fast. On some parts of the road had thought it was a slow train. Soon afterwards feit that the car had left the rails. Started to get up and struck against the end of the car. Next found himself in the roof of the car at the foot of the mbankment. Was cut on top of the head, a scalp

Was cut on top of the head, a scalp wound about two inches long; was hit on the shoulder. After fetching up first noticed Mr. Millican, who had been a seat in front of witness. Was

was not r witness was reading-probably 30 or 55 miles an hour, If it had not been for oscillation probably would not have noticed the speed. Dr. Teed of Dor-chester attended witness at Dorches-ter. Was not under any expense while there. Nurse got some champagne for him and a lady brought some whiskey. Ice was applied to his back. Swore positively never was dancing about the room with the nurse. Did not know until he came to St. John that he had been ruptured. Felt pain around body over ribs to backbone. First noticed the pain in groin at night. Dr. Teed did not speak of any rupture. Drs. Gaudet and Chandler made an examination. Was not weak in chest before accident. Did not wear chest protector. Might, perhaps, be called a chest protector. Did not wear

it because chest was weak, but for protection. Had not gone south because of lung trouble, nor was ad-vised to go to the mountains. Was at Salem in 1897, not employed. Stayed there 8 or 9 weeks. Was slok. Only did enough to earn board. Did not earn salary. Got \$75 per month

and board. Was there from 18th June to 1st September. When at hotel at Beach Bluff in 1896, had employment for three months. That was a summer hotel. Was there for the season at \$50 per month. Before that was cashier in Park Hotel, Bostcn, at \$100 per month. From September, 1896, to January, 1897, was lookng out for a position at a hotel in Bermuda. Would have got \$140 a not remember whether he prescribed for Colpitts or not. Much of his opinmonth until April there. Was really

doing nothing from September, 1896, to April, 1897. Part of 1895 was in Park Hotel. While manager of a cafe got CATARRH BECOMES CONSUMPTION

Dr. Chase Cures Catarrh.

Not one case in a thousand of con sumption is ever cured. Death can only be delayed. Consumption is a natural development from catarrh. Catarrh can be cured, and is being cured every day by Dr. Chase's Catarrh Cure. This treatment is most effective and contains none of the dangerous poisons so frequently found in catarrh medicines. Most remedies only relieve, but Dr. Chase's Catarth Cure cures permanently. It is healing and soothing, clears the head, makes breathing easy and the breath sweet. Prevent consumption by using Dr. Chase's Catarrin Cure, Only 25 cents

a box: blower free. Dr. Chase's New Receipt Book, cloth bound, 500 pages, regular price \$1.00, sent to any address in Canada on re-ceipt of 50 cents and this coupon. Edmanson, Bates & Co., Toronto. 36

The schooner Utah and Eunice ar-rived at Portland on Monday from Frieport, N. S., with 675 quintal cod and 16 bags of dried hake sou als of

manager of the hotel at Sorento, All the changes of hotels was in the way of promotion. Never was discharged from a place in his life.

Dr. A. F. Emery was next called. Attended the suppliant at Dufferin Hotel about February 4th, 1897; made an examination of him; found him lame on the right sile, a tendon on the right lumbar region was sore; there was a partial dislocation of the joint at the pelvis and tenderness along the course of the spine; rain in head and back. There was an inguinal he on the right side. The railway acci dent could produce those symptoms As to the rupture, sudden jar or jump would cause it. Saw him occasianally for several months. Last time wit ness saw him advised a truss; was probably in April; lameness had then improved; back was better and ruture had closed up a little. It never was a full rupture; the intestines were pushed into the canal but not into the scrotum. The tendemon to increase would be great in cld age. Saw suppliant a few days ago. The rupture was a great deal better: all the other symptoms had improve but had not fully gone. He was a vous at the time of the accident caused by the shock to the nervous system. Could not say what would be the outcome of the shock. That had improved, but the hernia had not improved so much.

ion mainly depended on answ made by Colpitts and would depe upon his honesty and good faith. This would not be altogether so, as doctors could tell to some extent whedoctors could tell to some extent whe-ther answers were true or not. Many people had inguinal hernia without great inconvenience. They were in danger if they did not wear a truss, yet many did not. About one person in thirteen was afflicted with inguinal hernia. He had thought this was a recent hernia when he examined it. Could not say whether it had been cound within a form days or whether caused within a few days or whe it had been a more recent which had been increased. which had been increased. Had to rely on his present statement as to the state of his back a good deal. Noticed tremors in the fingers. This might be induced by sitting up late at night or by drinking to excess. To Mr. Skinner-Supposed at the time that suppliant's hermia was due to the accident. Thought this from to the accident. Thought this from observation of the hernia being there and the statements of Colpitts.

Edward J. Hudd was examined by A. W. Macrae. Lived in Halifax. Was acting as car inspector in January, 1897; made usual inspection of the train on the morning of the accident. train on the morning of the accident. Postal and express was one car, postal forward and express in rear; the lat-ter about one-third of the car in length. Boxes of coin and fish were loaded in the express at Halifax. Did not know what weight of coin was there. Saw the last two or three truck loads of coin put on board. Duty was to see that the cars were in proper condition. If cars were improperly oaded would raise an objection to

To Dr. Pugsley-The car was prop-erly loaded. The coin was loaded so that it would have an even bearing on the whole car. To the best of his recollection there was no case of a tier of three boxes. The space would be about 19 feet long. All the cars were strong and well built, in first class condition. The running gear was in cerfect condition when it left Halifax. The time table on which the train was run was admitted in evidence and that F. C. Hanington was the ticket gent at St. John.

After recess, Conductor James Mil-lican was called and sworn. Was con-ductor on the train on day of accident and was appointed by govern The same applied to the engine of and fireman

Cross-examined by Dr. Pugsley-Had een in charge of C. P. R. express for the last ten years. Never was an ac-cident at Palmer's Pond before or any difficulty. From Sackville to a short distance before Evans was an up grade. The schedule was kept by making faster time on the down grade. Were about ten minutes hate leav-ing Sackvile. The cars that were on were the usual number. The cars were inst class and heavier than those of the I. C. R. The double surve was about half a mile to the eastward of the place where the accident occurred. The engine driver was a careful man. The only fault he had was that he vas rather too slow, if anything. Did not know the rate of speed at which the train was running. Did not think it was over 35 miles an hour. It was Cross-examined by Dr. Pugsley-Did not unusual. At the time of accident vas in rear car of train. Got in there when about at Evans's. Had just sat down when accident happened. Did not feel violent oscillation of the car before accident. It was when car left the track that it occurred. Think he would have noticed it if it had been and did not notice any of this oscillation. The accident began by the violent motion and witness was upset. There were 30 or 40 passengers on the train that day. There were a num-ber not injured. After the accident, looked over track. The apper side of the curve was thrown out. Thought the sleepers were pine. The displace-ment would be caused by the train leaving the track. The read bed was first class. Rails would be 70 lb., which are regarded as heavy rails. Brakes were applied at the S curve. Could feel them. They were not ap-plied very heavily, but as usual; just enough to steady the train. The day train had gone over that spot, east, about half an hour before. To Mr. Skinner-There being noth

ng unusual when coming down from Evans's, did not then make any calulation as to the rate of speed. To the judge- The rail was pitched over and out beyond the edge of the sleepers. It was the north rail.

This closed the testimony for the suppliant and his lordship stated that would not dismiss the petition at

Dr. Pugsley, Q. C., then opened the orse for the crown, claiming that the speed was not more than 35 miles an bour; that if that speed were ex-ceeded, that the road bed was so con-structed dhat a speed of 40, 45 or 50