

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

Tyrrell v. the Queen was taken up when the exchequer court opened Friday morning. This is a claim of Frank Tyrrell of St. Stephen for damages for the improper seizure of a grey mare, pump and harness in January, 1888. The seizure was made by Officer Bonness on the ground that the rig was being used in smuggling.

Wm. Tyrrell, a brother of the suppliant, corroborated these statements. Wm. Pugsley, Q. C., and J. M. Stevens appear for the suppliant, and A. O. Barle, Q. C., and E. H. MacAlpine for the crown.

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

The suppliant was injured in the Palmer's Pond accident, near Dorchester, on 28th January, 1897. He claims that there was on the train a postal and express car improperly loaded, and that by means of the negligence 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 allegations. It alleges that the injury was caused by a pure accident. The cars were said to have been those of the Canadian Pacific Railway and under the exclusive control of that railway.

Hon. Dr. Borden, the first witness called, was examined by C. N. Skinner, Q. C. He said that he was on the train on 28th January, 1897. He took the train at Halifax and continued on it until the time of the accident. He was in the Pullman, the back 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 shortly before the accident. He found it difficult to read and stopped. He looked out of the window. It was the great speed which drew his attention.

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 freed, 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 the time of the accident. He thought he had time to notice the circumstance, 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.

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 them.

The case of Tyrrell v. the Queen was resumed Saturday morning, and several witnesses examined. Their evidence 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 cross-examination he admitted that he was quite friendly with the Tyrrells and frequently went into their establishment, where 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. Bonness had authority to receive the mementos of estates himself, 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 employ and there was no shortage of funds while there. He never asked Bonness to use his influence to have him (witness) appointed collector.

Howard B. McAllister of St. Stephen, a retired ship master, was next examined. Bonness, he said, had the

reputation of being an unscrupulous and an unprincipled man. He would not believe him under oath.

In cross-examination, the witness stated that he had no objection against Bonness and had been defeated. There was no ill-feeling between them, but Bonness had not spoken to him for some months. Bonness was not on his list of friends. Bonness, he thought, was considered an active official. 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.

Wm. Tyrrell and Frank Tyrrell were briefly examined in reference to the bay mare, which they claimed. Testimony was taken as to the circumstances claimed to have seen her.

This finished the case of the suppliant and Dr. Barle asked for a postponement in order to allow him to get rebuttal evidence regarding the character of Mr. Bonness.

Judge Burbidge interposed and said he had never heard a case in which there were such personalities as were given this morning. He disliked it very much, and besides the court had nothing to do with the characters of the men. It had only to deal with the question whether the horse was used for smuggling purposes.

The case of Colpitts against the Queen was then resumed. Harry B. Peck, mail clerk on the train at the time of the accident, was the only witness examined. His route was between St. John and Halifax. After leaving Sackville for a few miles before the accident. Had passed the top of the hill and train was on a down grade passing the curve. Was running very fast, probably 60 miles an hour. Had been on train thirteen years; used to noting speed. There was a gradual increase of speed on the down grade. Car was swaying very violently and struck the curve very hard. First struck one side of a curve and then on the other, very roughly. Postal car was next the engine. It was a postal and express car, the postal part nearest the engine. Was sitting when accident occurred. All at once there was a crash, his impression was that the car kept right on straight instead of following the curve. Jumped up and went to rear of car and held on to an iron rod. Car went down embankment on her side and then turned over on the roof. Saw the car afterwards. Judge the car went 800 feet from the place it was derailed, where it stopped. Was cut over the eye and bruised; got a general shaking up. Knew nothing of the freight in car. Car did not seem to be controlled by brakes. Would not say they were not on, but it did not appear to be under their control. After the train broke, do not know whether automatic brakes worked or not.

Cross-examined by Dr. Pugsley—About three miles from Sackville, when he sat down by the window. Thought if any of the rear cars left the track he would know it by a jerking motion. This was a swaying motion. Had noticed on previous occasions the trains going very fast and swaying at this place. Thought there was a swaying motion immediately before 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 as inquest; was laid up in bed then. 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. Was interviewed by a reporter on the train. Did not tell him that the speed of the train was 30 miles an hour. The report was not correct in many particulars. No recollection of some things said to him. Did not tell him that the six cars left the rails. Saw the report in the next day's papers. On the Saturday previous had come 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 of speed. Evans' is about over the grade slightly. At the double curve the speed would be nearly as fast as when the train was on the grade. The speed was increasing and at its height

when she went off. There was a violent swaying of the car within a minute of the accident. Would know that brakes were applied by feeling the brakes getting on unless they were on very slightly. They may have been put on slightly when going round the curve, but if so, there was no slackening of speed. Brakes might have been applied often that day when witness was busy working, without his being aware of it. Finished lunch just before accident. Made no claim for injury. Had been nervous ever since.

To Mr. Skinner—Had not made any claim. When interviewed by reporter 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 speed was 30 miles an hour. Felt the oscillating motion right up to the time the car left the rails.

John W. Howard, news agent, was also examined. Was on the train of the accident from Sackville. Met Miss Patrician on the train. Sat down with her and there at time of accident. Train was going at good rate of speed. While talking she was thrown against me and said it was such a train that she could not keep still. Could not keep her seats. Two cars were behind that. Thought speed was 45 or 50 miles an hour. Could not say how close up to accident the oscillation occurred. It was just before the accident. Did not particularly observe the increase of speed on the down grade; it always did increase as a matter of course. Had noticed speed down that grade since accident. The first mile would not be so fast as the second mile. At the third the speed would be applied. The fourth mile would be at Palmer's Pond. Since the accident have not felt the same oscillation as on that day. Would feel brakes if they were put on. Did not remember whether brakes were put on that day; did not feel them going on. Have known train to go a mile a minute on other parts of the track. Did not decide at the time how fast the train was going at the time of the accident. Did not know which car left the track first; thought it was the car ahead. The express and mail car was pretty well marked up. Saw the copper coin lying around the car.

Cross-examined by Dr. Pugsley—Come to that conclusion since. Oscillation was very great. Never felt a train so swaying as a car before. After seeing Sackville read comfortably for some minutes. Then paper shook so that it was impossible to read. Very soon after that the accident happened. The speed and the oscillation continued right up to conclusion. Did not then come to any conclusion as to whether the speed was a safe one. Had travelled a good deal on fast trains.

Cross-examined by Dr. Pugsley—About ten or fifteen minutes from train left Sackville until witness began to read. Noticed oscillation until a minute or two of accident. Never before experienced such oscillation. Did not notice that it became less as train was reading—probably 30 or 35 miles an hour. If it had not been for oscillation probably would have noticed the speed. Dr. Teed of Dorchester attended witness at Dorchester. 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 a 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 then examined him. Did not wear chest protector. Did not wear chest protector. Did not wear chest protector. Did not wear chest protector. Did not wear chest protector.

At the exchequer court on Monday afternoon the Colpitts case was resumed. Horace W. Cole, a commercial traveller, was called for the suppliant. Was on the train the day of the accident in first class passenger car. Slipped out 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 the one witness was in followed. Witness was knocked unconscious when the crash came.

Cross-examined by Dr. Pugsley—He looked through the glass of the window; saw the car leave the rails; 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; felt sure it was 50 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 attended by Dr. Murray MacLaren. Had made a claim but was not pressing it pending this suit.

To Mr. Skinner—The time given was approximate. In every case, not strictly accurate.

Harold H. Colpitts, the suppliant, was the next witness. He was a hotel manager in Boston, California, and New York. Age 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; brought 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 very fast. On some parts of the road had thought it was a slow train. Soon afterwards felt 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 embankment. Was cut on top of the head, a scarp 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

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Cross-examined by Dr. Pugsley—He looked through the glass of the window; saw the car leave the rails; 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; felt sure it was 50 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 attended by Dr. Murray MacLaren. Had made a claim but was not pressing it pending this suit.

To Mr. Skinner—The time given was approximate. In every case, not strictly accurate.

Harold H. Colpitts, the suppliant, was the next witness. He was a hotel manager in Boston, California, and New York. Age 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; brought 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 very fast. On some parts of the road had thought it was a slow train. Soon afterwards felt 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 embankment. Was cut on top of the head, a scarp 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

a little dazed. Saw a lady, a little boy and an elderly gentleman, Dr. Borden. First heard little boy crying and tried to help him; found he was bruised. His mother was out quite badly. Dr. Borden seemed to have a piece cut out of his nose. Made bandages out of a pillow and tied up the lady and gentleman. Soon after some one came and broke rear window and got people out. About the time they were getting Dr. Borden out witness began to feel weak and started back to get his grip. He partly fainted then. Was taken to Windsor hotel, Dorchester, and was helped into the parlor by two men. 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, called Dr. Emsley, 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. Back and side were very painful. Went to Boston after April; consulted physicians there. Did not get any better; worse if anything. Rupture is somewhat better; back still troubles; irritability remains in back; has not been able to attend to business; have done very little since. When witness went to Halifax was negotiating for Queen Hotel in Halifax; put in a tender; might have got it but for accident which prevented him seeing to it. Hotel was leased while witness was in charge of hotel at Manchester, N. H., in winter of 1898. If he could fill position was to get \$40 per week. Stayed there five weeks, was ill and lost three weeks. Then had to give it up and went to Woodstock; did nothing there. Back in New some better. Had a light position bring 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 in New York. 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 a feeling that it was. Never felt a train so swaying as a car before. After seeing Sackville read comfortably for some minutes. Then paper shook so that it was impossible to read. Very soon after that the accident happened. The speed and the oscillation continued right up to conclusion. Did not then come to any conclusion as to whether the speed was a safe one. Had travelled a good deal on fast trains.

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