

LEGAL VIEWS OF RIGHT OR WAY

IRISH CASE OF MUCH INTEREST IS CITED For Both Sides Strong Precedents Are Invoked by Counsel.

Legal arguments were heard yesterday afternoon by Mr. Justice Martin against the proposition that there was no case to go to the jury in Cross vs. E. & N. railway, the point at issue to the general public being whether or not the track is a public right of way between the city and Esquimalt.

Matthew Fagan, the engineer who was in charge of the engine which ran over Mr. Cross, was the first witness for the defence. He said he was engaged in making up the passenger train and was pulling a coach of the turntable. After getting the signal he started looking back towards the turntable until the coach cleared it. This he always did and the reason was that there is only a common latch to hold the table in place. He then rode on the right side of the engine for some time, when he stopped into the centre of the cab, the usual place for operating. Almost instantly he saw a man take what appeared to be a false step toward the siding, on which the train was running, and at the same moment the man was struck. The bell was rung just before the train started, this being the rule.

Cross-examined by W. C. Moreby, the witness said he was fourteen years in the employ of the company. The first engine he was driving was No. 8, it came from Wellington, where, he believed, it was used on the colliery tracks.

Would you say it was in first class condition? Yes, for the work it has to perform. How long after this accident was the engine worked? Five or six months.

Why is it not used now? As far as I can make out the work was too great for its capacity. How old is it? It is thirty years old, according to the name-plate.

Witness was not able to recollect whether on examination for discovery a couple of days ago he had said the engine was only worked for a month after the accident. It was all a matter of approximation. He had seen what was known as a one-man engine, and could be operated from the centre of the cab, so that a view of both sides of the road could be obtained. He had run the engine with another man on it; out on the road there would always be two men on it. This engine weighed sixteen tons, while the one now in use weighs between thirty and forty tons.

Did you ring the bell or blow the whistle before the accident happened? I gave the bell one pull as the train started, but the bell rang more than once. I looked out ahead and saw the whole siding was clear.

You had had a man with you in the cab? He would have been on the look-out on the left side.

Probably he would. Number eight, Fagan considered, was an engine which could be stopped easily. He saw many people using the tracks every day. When the train used to run to Lamson street a notice was put up on the roundhouse warning people not to use the tracks. He never knew people ordered off the tracks, but within the last few months there had been people ordered off the trestle by the bridge-tender, Carroll.

That would be when engines were switching? Yes. In reply to J. E. McMullen, Fagan said a man could walk along the track in safety with a little care, except on the trestle or where the tracks had crossed.

E. P. Davis, K.C., in making a motion to dismiss the case on the ground that no cause of action had been proved, went into the legal points involved. Before he did so the jury were given their option to leave for the rest of the afternoon, but decided that they would remain. Mr. Davis argued that there could be no cause of action, as plaintiff was a trespasser or, at best, a bare licensee. It could not be held that the defendants were liable because they had permitted the state of things to continue which existed here, without prosecuting the people under section 408 of the Railway Act, in an almost similar case in England the lords of appeal held that there was no liability cast upon the defendant company because it had permitted people to cross the track. In the case of Eccleston vs. C. & E., where a band of horses had been killed.

The defendant company was held liable for the injury to the horse because it had permitted the state of things to continue which existed here, without prosecuting the people under section 408 of the Railway Act, in an almost similar case in England the lords of appeal held that there was no liability cast upon the defendant company because it had permitted people to cross the track. In the case of Eccleston vs. C. & E., where a band of horses had been killed.

Further argument was heard by Mr. Justice Martin this forenoon in the case of Cross vs. E. & N. railway, on the point by the defence to dismiss the case without its going to the jury, and the plaintiff's reply. It was argued that the company had not summoned any of the children who used to play around the turn-table as a warning to trespassers and as a proof that they were not putting an end to the trespass, nor had it kept the turn-table locked so that it could not be played with. If a company allowed its property to be open to all comers it made itself responsible to those who were there by its tacit permission. Lord Atkinson and Collins agreed with his view of the law and held that there was a case of negligence to go to a jury. Lord Collins said that the facts showed there was merely license to use the company's property, but an invitation to do so.

To go on the case of Harrison vs. Northeastern Railway, cited by E. P. Davis, K. C. In which the company was held liable for the injury to the horse because it had permitted the state of things to continue which existed here, without prosecuting the people under section 408 of the Railway Act, in an almost similar case in England the lords of appeal held that there was no liability cast upon the defendant company because it had permitted people to cross the track. In the case of Eccleston vs. C. & E., where a band of horses had been killed.

The doctor's advice, unless as a matter of fact, is that the man's power will soon be all right. Steadman's Soothing Powders. CONTAIN NO POISON.

SUNLIGHT SOAP

The finest fabric is not too delicate to be safely washed with Sunlight Soap. When other soaps have injured your linens and faded the coloured things, remember the Sunlight.



At Monday's council meeting the report of the streets, bridges and sewers committee was adopted as follows: "I. Re communication from the public works engineer, with reference to the removal of electric wires and poles and the construction of a sewer on Belleville street. Recommended that inasmuch as the city is doing the work and not the E. C. Telephone Company, the government be asked to pay the amount of their contribution to the work, \$500, to the city and not to the telephone company."

"2. Recommended that the terms set forth in the drainage agreement, attached hereto, between the corporation of the city of Victoria and the municipality of Oak Bay, respecting the proposed sewer connection on Oak Bay avenue be accepted and that duplicate copies be prepared of same and executed by his worship the mayor on behalf of the corporation."

"3. Recommended that the sewer and water main under avenue B, extending from Richardson street to Dallas road, be appropriated for the purpose of carrying out certain improvements contemplated there, as petitioned for by owners of property residing in this district."

"4. Recommended that the city engineer be authorized to purchase a gasoline engine of sufficient power to operate one of the corporation's cement mixers."

"5. Recommended that an incinerator plant, as per plan submitted by the city engineer, be erected on the garbage wharf, at an estimated cost of \$2,311."

"6. Recommended that sub-divisional plan of sections 29, 30, 31, 40, 41, 42 and 43, Spring Ridge, Victoria City, be approved and that the city engineer be authorized to issue a license to the applicant, commencing at a post placed four miles north and in a westerly direction from the southeast corner of the intersection of the N. shore line of Call Creek, thence north 80 chains, thence east 80 chains to point of commencement."

"7. Recommended that the city engineer be authorized to purchase a gasoline engine of sufficient power to operate one of the corporation's cement mixers."

"8. Recommended that an incinerator plant, as per plan submitted by the city engineer, be erected on the garbage wharf, at an estimated cost of \$2,311."

"9. Recommended that sub-divisional plan of sections 29, 30, 31, 40, 41, 42 and 43, Spring Ridge, Victoria City, be approved and that the city engineer be authorized to issue a license to the applicant, commencing at a post placed four miles north and in a westerly direction from the southeast corner of the intersection of the N. shore line of Call Creek, thence north 80 chains, thence east 80 chains to point of commencement."

"10. Recommended that the city engineer be authorized to purchase a gasoline engine of sufficient power to operate one of the corporation's cement mixers."

"11. Recommended that an incinerator plant, as per plan submitted by the city engineer, be erected on the garbage wharf, at an estimated cost of \$2,311."

the law laid down being that while he was unlawfully on the train he must not be put in such a way as to endanger life or limb.

Mr. Davis argued that a right and a permission were very different things, and that the obligations under each were different.

Hutchinson, of Spokane, who deserted the administration at the critical moment, is now said to be willing to come back into camp, provided a new investigation be appointed, and which will probe every state office.

Still others are said to be working on a plan whereby the senate will receive impeachment charges and adjourn until next October, in order to give Schively an opportunity to prepare his defence.

The session of the senate this afternoon promises to be the scene of a lively fray, over the introduction of a number of new bills.

WORK OF INCENDIARY. (Special to the Times.) Queen's Forks, B. C., June 25.—Fire broke out in the store room at Bullton at one o'clock on Sunday, completely demolishing the building and its contents. The loss, which is covered by \$20,000 and \$30,000, is fully covered by insurance. The fire is supposed to have been of incendiary origin.

—Oak Bay will begin to take water from the city in bulk at 18c a thousand gallons on July 1st, the new 12-inch main which replaces the old one having been laid and the connection made.

LAND ACT. FORM OF NOTICE. Victoria Land District, Coast District, Range One. Take notice that Gilbert Oswald Smith, of North York street, Victoria, British Columbia, intending to apply for permission to lease the following described land, commencing at a post placed about three miles distant and in a westerly direction from the southeast corner of the intersection of the N. shore line of Call Creek, thence north 80 chains, thence east 80 chains to point of commencement.

LAND ACT. FORM OF NOTICE. Victoria Land District, Coast District, Range One. Take notice that Alexander Clarke Potts, of Minster Island, B. C., occupation, intending to apply for permission to lease the following described land, commencing at a post placed four miles north and in a westerly direction from the southeast corner of the intersection of the N. shore line of Call Creek, thence north 80 chains, thence east 80 chains to point of commencement.

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Located this 5th day of June, A. D. 1909. M. A. McLEAN, Locator. By her agent, M. KING.

No. 9. Notice is hereby given that 30 days after date, I intend to apply to the Hon. Chief Commissioner of Lands for a license to prospect for coal and petroleum upon the following described lands, situate under the foreshore and under the water and on the lands in and opposite the Nooka District of Vancouver Island, British Columbia: Commencing at a post placed at the southwest corner of M. A. McLean's location No. 11 and marked W. H. Berridge's northeast corner, thence south 80 chains, thence west 80 chains, thence north 80 chains to point of commencement, containing 640 acres or less.

Located this 5th day of June, A. D. 1909. W. H. BERRIDGE, Locator. By his agent, M. KING.

No. 10. Notice is hereby given that 30 days after date, I intend to apply to the Hon. Chief Commissioner of Lands for a license to prospect for coal and petroleum upon the following described lands, situate under the foreshore and under the water and on the lands in and opposite the Nooka District of Vancouver Island, British Columbia: Commencing at a post placed at the northeast corner of B. Goodwin's location No. 9 and marked P. C. Berridge's northwest corner, thence south 80 chains, thence west 80 chains to point of commencement, containing 640 acres or less.

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Located this 27th day of May, A. D. 1909. M. G. KEYS, Locator. By his agent, M. KING.

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Located this 27th day of May, A. D. 1909. H. MULCAHY, Locator. By his agent, M. KING.

No. 58. Notice is hereby given that 30 days after date, I intend to apply to the Hon. Chief Commissioner of Lands for a license to prospect for coal and petroleum upon the following described lands, situate in Nooka District of Vancouver Island, British Columbia: Commencing at a post placed at the northwest corner of J. Forbes' location No. 49 and marked H. Mulcahy's southeast corner, thence north 80 chains, thence east 80 chains, thence south 80 chains, thence west 80 chains to point of commencement, containing 640 acres or less.

VOLUME FIRST EX BY-LAW Aid, Turner mat (From As a preliminary to the Esquimalt company of \$50,000, there will be a meeting of the directors to expound the legislation. The first of the making of a company has to be done. If it is not enough—and it is refused—ings will follow. In the act of the by-law is formal offer. The other wanted to know if the city would consent to the city's Esquimalt w. E. P. Davis, solicitor, said to the Mayor told him he would put the notice on the board. This is not a putting notice on the board. "I did the city bar power to ex Esquimalt. E. P. Davis, authorize E. P. Davis. "Does consult the legal matter responsibility. It may be by-law was approved. corporation. The required. H. E. Mason, getting adv prating the council, acti legal matter gentlemen may pay for any of a lawyer. If his ch Mayor of which he consider the wide Oak Island, between Rockland to INVE OF San Fran Cor (TU San Fran Leland anno last week, it line Branch by James dispute over a pay che nesses ever fair. He said t call Lelan's ing firm w and try to which led to half-crazed property. LITTLE C San Fran holds an in a survivor that "shate and Regg city to dis knowledge from far- yestlandro will make call Lelan's a surpris made a ho liner, and on her sh be placed, gers man BERLIN, Hamman dant of arraigned on a cha was prefe sculptor, M.