

and more passengers including the plaintiff's husband were drowned or killed by the falling timbers. The bridge was not built by the municipal corporation but under contract for the Provincial Government in 1885, and was then outside the city limits.

By the extension of the limits the control and management of the bridge passed from the Chief Commissioner of Lands and Works to the civic authorities, who under the Municipal Act, 1891, ss. 89, 106, 113, 119, 120, had power to pass by-laws for purposes of regulating the traffic thereon and in all matters relating thereto. 57 Vict., c. 63, after reciting an agreement with the city of Victoria dated November 20th, 1888, for the running of tramways within the city, the 33rd clause of which agreement stipulated that the parties of the second part (of whom the company were the successors) might construct and operate street railways over any bridge in the city, provided that they should at their own expense furnish and lay a new flooring over any bridge so crossed, and provided also that the location of any such bridge line, and the work done thereon and the material provided therefor should be to the satisfaction of the city surveyor, enacts under s. 12, that in addition to the powers conferred by the agreement, the company might "upon the terms and conditions as fully set forth in the agreement, lay their tracks and operate their railway, upon and along (among other places) the bridges lying in and between Victoria and Esquimalt."

Under these powers then, the city had full authority to dictate the size, character and weight of the cars to be run upon the bridges, and it appears that after the city had taken control, cars of double the weight and capacity of the former cars were permitted to operate there, the cars weighing together with trucks and motor about ten tons. In 1892 an accident happened owing to the breaking of one of the floor beams whilst a street car was passing over it. Several repairs were then made, some by the city and some by the railway company, the whole work being done under the supervision of the city engineer. After the accident one of the old hangers was found to be broken and disconnected at the eye or bend, but still attached to the beam.

At the trial the jury acquitted the company of negligence, and judgment was entered for them. The jury found that the proximate cause of the accident was the breaking of a hanger, and in reply to the question, "Was the corporation blamable for such cause? and how?" they reply: "Yes, because having been made aware of the bad condition of the bridge through the report of the engineer: and otherwise, they attempted repairs, but the work was not done sufficiently well to strengthen the structure. In our opinion it was their duty to first ascertain the carrying capacity of the bridge before allowing such heavy cars to pass over it."

The jury found that although they could have readily acquired that information, the corporation at the time of the repairs in 1892 did not know the plan and design of the bridge, the method of construction and the nature of the material employed, and the capacity of the bridge; and they also find that the corporation, with a view to increased traffic, and the use by the company of large cars, effected alterations in the bridge, but that such alterations were not done properly, having regard to the intended use by the company of large cars,