

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. L. 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 swaying of the car indicated great speed and curves. He felt the oscillation was very great. He judged the speed was 40 miles an hour.

He testified as to the details of the accident. He thought all the cars went off at one point on the same 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 wounded, and 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 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 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 Tyrrell 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 was friendly with Tyrrell and his agents, 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.

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. Riding was very rough. 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 on when 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 went off. Thought 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 being applied by feeling the brakes getting an unusual force 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 somewhere between Sackville and Dorchester. Did not see the train 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—Never took particular notice of any of the curves. The S curve may be half a mile from Palmer's Pond. It was at the S curve that Miss Patrician was thrown against witness. There was swaying after that right up to the accident. Noticed that the train was going pretty fast; would not say later would be faster, but had never noticed such jolting as on that day. Always had come down that grade at about 45 miles an hour. Had noticed that. Never experienced such swaying. Had not thought the train was going any faster than usual. It was the speed of the train that caused the oscillating motion. Speed of train may have been faster or slower than before. Had seen C. P. R. train run a mile a minute somewhere between Sackville and Dorchester. From top of grade to place of accident is about four miles. Evans is on the train. Think it is over the place 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 where above a mile a minute was made on the C. P. R. was at the time of the accident. It was the motion of the train that gave me the idea of the speed. The oscillation continued up to the time of the accident.

To Dr. Pugsley—It would not be a minute from the time Miss Patrician was thrown against him until the accident, not more than half a minute.

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. Slight 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 the one witness was in followed. Witness was knocked unconscious when the crash came.

Cross-examined by Dr. Pugsley—His looking 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 to be put on but they were not. 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 the 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 badly hurt. 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 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 which prevented him seeing to it. Hotel was leased while witness was in Boston. Earned \$50 per week at Preston hotel before that. First position witness held after accident 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 New York. Did nothing there. Back in Nova Scotia. 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 thought it was 30 or 40 miles an hour. Came 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 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 worse from first noticing oscillation to accident. Was not more than half a minute. Was not running very fast while witness 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 made an examination. Was not wearing chest protector. Did not wear it because chest was weak; but for protection. Had not gone south because of lung trouble, nor was advised to go to the mountains.

Was at Salem in 1897; not employed. Stayed there a or 9 weeks. Was sick that he did not go to work. 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 1898, had employment for three months. That was a summer position. Before that was cashier in Park Hotel, Boston, at \$100 per month. From September, 1896, to January, 1897, was looking out for a position at a hotel in Bermuda. Would have got \$140 a month 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

\$40 a month from October to June of the next year.

To His Lordship—Would earn an average of \$100 per month, even as a 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 March, 1897; called to see the people 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 ruptured.

A. W. Macrae and C. N. Skinner, Q. C., for the suppliant; E. H. MacAlpine and Wm. Pugsley, Q. C., for the crown.

When the exchequer court resumed its sitting on the 1st instant H. H. Colpitts, the suppliant, was on the stand, and his cross-examination was continued by Dr. Pugsley.

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 asked for an allowance while laid up. 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 everything. 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 care of himself since. Was not in the habit of drinking to excess. Never was drunk in his life. Took a glass of liquor. Was not dissipated. Was not in Sackville in 1896. In 1893, summer, was in New Windsor 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 1897 was not doing anything. Then was in Imperial Gate as manager from latter part of August until June, 1898, 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 capable of managing a hotel as ever; an cashier of manager had to be on his feet the greater part of the time. In March, 1897, was on a visit 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 hall. Did not ride a bicycle at all.

To Mr. Skinner—Naturally a return ticket from St. John to Halifax 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. C. R. station. Mr. Benell was the manager of the hotel at Sackville. All the changes of management in the way of promotion. Never was discharged from a place in his life.

Dr. A. F. Emsley was next called. Attended the suppliant at Dufferin Hotel about February 4th, 1897; made an examination of him; found him lame on the right side, 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; pain in head and back. There was an inguinal hernia on the right side. The railway accident could produce those symptoms. As to the rupture, sudden jar or jump would cause it. Saw him occasionally for several months. Last time witness saw him advised a truss; that was probably in April; lameness had then improved; back was better and changes had closed up a little. If never was a full rupture; the intestines were pushed into the canal but not into the scrotum. The tendency to increase would be great in old age. Saw suppliant a few days ago. The rupture was a great deal better; all the other symptoms had improved but had not fully gone. He was nervous 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.

Cross-examined by Dr. Pugsley—Did not remember whether he prescribed for Colpitts or not. Much of his opinion mainly depended on answers made by Colpitts and would depend upon his honesty and good faith. This would not be altogether so, as doctors could tell to some extent whether answers were true or not. Many people had inguinal hernia, without any 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 caused within a few days or whether it had been more recent, which would rely on 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 hernia was due 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. Postal and express was one car, passenger forward and back of the car in the rear 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 loaded would raise an objection to

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 proper condition or it would not have gone out that morning.

To Mr. Skinner—Could not say what the 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 otherwise 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 according 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 heavily 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 allowed 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 end were more heavily loaded than the other, would not the first end be heavier? To this he, of course, replied that it would. The witness was wrong. Asked if at the coroner's inquest he had not said that a car loaded heavier at one end than the other, would be more likely to jump the track at the lighter end.

To Dr. Pugsley—The car was properly loaded. The coin was loaded in the way 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 perfect condition when it left Halifax.

The time table on which the train was run was admitted in evidence and that F. C. Hamilton was the ticket agent at St. John.

After recess, Conductor James Millican was called and sworn. Was conductor on the train on day of accident and was appointed by government. The same applied to the engine driver and fireman.

Cross-examined by Dr. Pugsley—Had been in charge of C. P. R. express for the last ten years. Never was an accident 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 late leaving Sackville. The cars that were on were the usual number. The cars were first class and heavier than those of the I. C. R. The double curve 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 his train was 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 not unusual. At the time of accident was 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 number not injured. After the accident, looked over track. The upper side of the curve was thrown out. Thought the sleepers were pine. The displacement would be caused by the train leaving the track. The road 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 applied very heavily, but as usual; just enough to steady the train. The day train had gone over that spot, east.

To Mr. Skinner—There being nothing unusual when coming down from Evans's, did not then make any calculation 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 he would not dismiss the petition at this stage.

Dr. Pugsley, Q. C., then opened the case for the crown, claiming that the speed was not more than 35 miles an hour; that if that speed were exceeded, that the road bed was so constructed that a speed of 40, 45 or 50

miles safe; the passing of the car; the agreement; Same; been in possession; Truro; was all section; Albert; of the; o'clock; day; time; Dr; miles; between; running; Engine; she; about; Dorche; applied; cross-examined; to check; and; 1; brakes; straight; or 23; and; though; fore; where; driver; years.

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Hobbs; Richard; pine; of the; Had; and; done; addition; Cross; The; That; o'clock; fore; utted; of tons; w; end; if; To; in; danger; ways; ed; at; would; accident; for; as; run; an; shop; first; c;

Jan; specto; by E.; train; ed; it; wheels; was; in; train; was; of; There; there; car; of; Cross; What; not; in; the; factio; chiner; one; middle; by; the; tenden; To; in; impro;



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