

1909.
NEW ZEALAND.

PUBLIC PETITIONS A TO L COMMITTEE:

REPORT ON THE PETITION OF FRANK BARTON, OF WELLINGTON (No. 582); TOGETHER
WITH MINUTES OF EVIDENCE.

MR. DAVEY, CHAIRMAN.

Report brought up on the 28th December, 1909, and ordered to be printed.

ORDER OF REFERENCE.

Extract from the Journals of the House of Representatives.

FRIDAY, THE 8TH DAY OF OCTOBER, 1909.

Ordered, "That a Committee be appointed, consisting of ten members, to consider all petitions from A to L that may be referred to it by the Petitions Classification Committee, to classify and prepare abstracts of such petitions in such form and manner as shall appear to it best suited to convey to this House all requisite information respecting their contents, and to report the same from time to time to this House, and to have power to report its opinions and observations thereon to this House; also to have power to call for persons and papers; three to be a quorum: the Committee to consist of Mr. Davey, Mr. Dillon, Hon. Mr. T. Y. Duncan, Mr. Fisher, Mr. Hine, Mr. Macdonald, Mr. Newman, Mr. Smith, Mr. E. H. Taylor, and the mover."—(Hon. Mr. R. MCKENZIE.)

REPORT.

No. 582.—Petition of FRANK BARTON, of Wellington.

PETITIONER prays for compassionate allowance on account of injuries received through alleged negligence of a State Coal-mine wagon-driver.

I am directed to report that this Committee recommends that a compassionate allowance of £350 should be paid by the Government to the Public Trustee, in trust, to invest the same for the benefit of the petitioner, and, in the event of the agreement between the petitioner and the South British Insurance Company being handed to the Minister of Finance, that the said sum of £350, or the investments representing the same, be paid over to the petitioner.

28th December, 1909.

T. H. DAVEY, Chairman.

MINUTES OF EVIDENCE.

TUESDAY, 21ST DECEMBER, 1909.

Mr. WRIGHT, M.P., examined. (No. 1.)

Witness: I wish to say, Mr. Chairman and gentlemen, that Barton is here, and will be prepared to give evidence with regard to his petition. With reference to the departmental reply read by the Secretary of this Committee, I want to point out that, because the car struck the lorry at the back part of it, as suggested there, it does not follow that the driver of the lorry was not to blame. The rule of the road in Wellington is that, when a tram is coming and the motorman rings the gong to warn the drivers of vehicles, the driver is supposed to wait to let the car go by. What took place was that the steam lorry was coming from Tory Street and the tram from Island Bay. The motorman rang his gong, and the lorry evidently came across the line. The driver of the latter did not ease his pace, and had very nearly crossed. If he had got across he would have cleared the tram. Now, the tram-driver saw there was likely to be an accident. He shut off his power, and did all he could to stop the car. When he struck the lorry the car was almost at a standstill. These are the facts, and if they can be proved, the driver of the lorry was to blame, because he should have waited and allowed the tram to pass in the usual way. The city by-laws make it clear that no vehicle of any kind must attempt to block the line. The tram has the right of the road, and no driver must interfere with it.

The Chairman: A mutual obligation arose?

Witness: Yes, but I think evidence can be brought to show that a carrier of any kind has no right to block a tram.

Mr. Fisher: The tram is on a fixed line?

Witness: Yes. The City Council has control of the roads and trams. However, I presume the crux of the matter will hinge on that. Barton met with a serious accident. I believe his pelvis was broken, and I presume he will never be as he was before. He will state the reason why he was advised to take action against the Government in the first instance. I believe the position is this: that he thought his injuries were so grave that compensation, under the Workers' Compensation Act would be insufficient to compensate him for the damage done, seeing that he was practically injured for life; and therefore, I understand, he wished to proceed against the Government under common law so as to obtain a higher sum. When he went to the Court the latter held that he was barred because the lorry was not a public work, and by this time the period had gone by when he could proceed against the City Council. Consequently he fell between the two stools. I will ask Barton to state his case from his own point of view.

FRANK BARTON examined. (No. 2.)

The Chairman: Just tell your story as shortly as you can, giving us the bare facts.

Witness: Yes. This accident was not, as far as I can see, caused through my own carelessness. I contend it was due to the driver of the steam lorry. I gave him every warning as soon as I saw him, and it was only a matter of a moment after I saw him that I saw he intended crossing the line in front of me. I had only a few yards in which to pull up the car, and I saw it would take me all my time to do it. I therefore applied my brakes and used my sand. There is a sand-box in every car which can be manipulated by the right foot. I used the sand-punch; and the front of the lorry just got past the car and the back wheel was just past the line when the lorry struck me. The result was that the front of the car was smashed, and I was jammed in between the car and the hand-brake wheel—the front of the car—and as a result I was taken to the hospital.

Mr. Fisher: The apron was broken?

Witness: Yes, the front was smashed. From the first I contended that the driver of the vehicle was responsible for my injury through his carelessness, and I decided that as soon as I came out of the hospital I would bring a case against the Crown for compensation, as I considered the £300 which I should get under the Workers' Compensation Act from my employers would not compensate me for the injury and suffering I had gone through. Of course, I took legal advice on the matter before I decided I should take the case against the Crown, and I was strongly advised, in face of the evidence I had in my possession, to go on with the case. My solicitor told me that there was only one doubtful point about the whole affair, and that was a technicality in connection with the Crown Suits Act, under which I had to bring the case against the Crown. When the case came on for hearing it was decided that this point of law should be argued before my case was gone on with, and the result was that this technicality was decided against me, and I could not go any further with the case. It was not on my own idea that I went against the Crown in this case, because I was strongly advised by two different firms of solicitors in this town that I had a very good case, and that I should be very foolish if I did not go on with it at common law. Therefore I considered that I should be very foolish to take the small sum of £300 when I had a chance of getting something far more substantial which would help to see me through life. That, gentlemen, is practically the rough outline of the circumstances, and I am here now to answer any questions which may be asked of me.

1. *Mr. Wright.*] What does your doctor say about your case? Did he see any prospects of your ever being as well as you were before the accident?—I had a letter from Dr. Ewart some time ago in which he said I should never be able to take up such work again.

2. What are the instructions of the Tramway Committee or Mr. Richardson with regard to running trams when carts are in the way?—We are expected to use every care, and to do everything possible to avoid accidents of any description.

3. Is it not a breach of the by-laws for a cart to cross the tram-line when a tram is near?—Yes, it is.

4. And drivers can be punished for that?—Yes.

5. Have you known of any case where any one has been summoned for crossing the line?—I cannot mention any particular case, but I believe several drivers have been warned. I think I could get an instance where one has been prosecuted, but cannot bring any particular case to my mind.

6. What distance must a car be away before the driver of the vehicle can cross—is it 200 or 100 yards?—It is less than 100 yards.

7. But there is a certain specified distance?—Yes.

8. When you saw the coal-wagon coming on, do you think he failed to hear your gong—or why did he attempt to cross?—That I cannot account for. There were three of them on the vehicle, and they ought to have heard me.

9. Were they looking in your direction?—I cannot say whether they really saw me or not. After a moment I saw they were going to cross, and I tried to stop to let them get by in case they did cross me.

10. A steam wagon makes considerable noise?—Yes.

11. Would it be possible that owing to the noise of the steam wagon they did not hear the gong?—I do not think so. The gong is very loud, and I was very particular about making a lot of noise.

12. When you saw there was a possibility of a collision you did everything in the matter of putting on brakes?—Everything possible—because I saw it was a matter of my own life.

13. And you say, then, that you almost brought your car to a standstill?—Yes.

14. *Mr. Newman.*] You say you gave warning: I suppose you rang your bell?—Yes.

15. *Mr. Macdonald.*] The Corporation offered to pay you £300, I understand?—Of course, it would have been a matter of putting in a claim in a different way for the sum. It would have gone before the Arbitration Court, and that Court would have decided what I was entitled to; but £300 was the limit under the Workers' Compensation Act.

16. *Mr. E. H. Taylor.*] And you conclude that at the present time you have exhausted all your legal remedies?—Yes.

17. *Mr. Fisher.*] At the place where this accident occurred—Courtenay Place—it is twice as wide as Tory Street: you know that?—Yes.

18. The point I want the Committee to realise is this: that the motor-wagon came to this broad street out of a narrow street, and the car was evidently coming down at a fairly rapid pace. The width of Tory Street is about 40 ft. Could the lorry have pulled up had the driver seen the car, at the speed it was travelling?—I think he could easily have pulled up.

19. Did you see the lorry when you rang the gong, or did you take the usual course of ringing at the corner?—I took the usual course of ringing before I saw the lorry.

20. You had not time to realise what speed it was travelling at?—I should think about eight miles. I should think he was within the limit, but could not form a definite idea of what speed he was travelling at.

21. What would have happened if you had not put on the emergency brake?—The lorry would have struck the car about midships, or the middle of the car; there was nothing else for it.

22. It was only the application of the emergency brake that made the accident so slight as it was?—Yes.

23. Were you so badly injured that you did not know that the motor-lorry, when it was released from the entanglement, had the steam still on, and it ran over some one else—it ran over Mr. T. W. Young, and injured him?—I do not know that of my own knowledge.

24. How long were you in the hospital?—Just on three months.

25. What expenses were you put to in connection with the whole matter, including medical expenses?—Altogether it has cost me over £100.

26. What was the £150 you got from the Corporation for?—When we decided to take this action I went along to the insurance company and made a claim by which they were to allow me £150 in case this action failed. That was to pay me the whole of my expenses.

27. I suppose you are quite satisfied that the brakes on the car were in good order—they acted all right?—Yes.

28. *The Chairman.*] Following up the question Mr. Fisher put to you, who advised you to accept £150 from the insurance company in lieu of the £300 to which you were entitled under the Workers' Compensation Act?—My solicitor.

29. On what grounds?—That I had a very good case against the State Coal-mines Department.

30. That might mean that if you failed in your case against the Crown you would lose £150 you were entitled to under the Workers' Compensation Act?—Yes, but I considered I had no chance of failing.

31. Was it your own solicitor who advised you?—Yes.

32. Did that solicitor represent either the City Council or the Crown in any way?—No.

33. Neither of the solicitors?—No.

34. How far would you say it was from the junction of Tory Street where the tram and lorry met—approximately? What space was there where the driver of the lorry could see the car?—I think it would be more than 30 ft.

35. Do you think there was plenty of room—instead of going straight across the line would there have been plenty of room for him to have turned?—Yes.

36. Even at the pace of eight miles an hour?—Yes.

37. Was he going direct across the street from Tory Street?—Yes.

38. You say that you pulled up as quickly as you could, and that the back wheel of the lorry was struck by the car?—Yes.

39. It was not incorrect, then, to say that the lorry almost cleared the car. Did the centre of the car-apron strike the back wheel of the lorry, or did he almost get clear?—He was a long way off being clear.

40. Can you remember whether the lorry-driver hesitated at all, or did he try to pull up in any way?—That I cannot say.

41. What amount of money have you received altogether from the City Council, outside of compensation?—I have been working a few months now. I have not reckoned it up. I have been earning £2 10s. a week in temporary light employment.

42. Did the City Council pay you anything while you were ill?—No.

43. Nothing?—No.

44. Did you apply to the City Council for any compensation, or for a compassionate allowance, or a lump sum?—No, I did not consider I had any claim on them. It was my intention perhaps to do so later, when I saw how I got on.

45. When you accepted the £150 from the insurance company did you sign a clean receipt?—I signed a clean receipt, and in the event of the Government paying me any compensation they were to be refunded the £150.

46. *Mr. Newman.*] What insurance company was it?—The South British.

The Chairman (to Mr. Radcliffe, departmental officer): Do you care to ask Mr. Barton any questions?

47. *Mr. Radcliffe.*] Yes, several questions. Barton said that when the car struck the lorry, the lorry must have been going about eight miles an hour. If that were so, evidently it was a heavy

car, because the lorry had 6 tons of coal on it. (To witness): If the motor was loaded as it was when the tram-car struck it, would it not have pulled the tram-car clean off the rails?—I understand it tended to do so. It did pull the car off the rails.

48. *The Chairman.*] Do you know that of your own personal knowledge?—No, only from the evidence I have seen.

49. *Mr. Radcliffe.*] When you sued in the Supreme Court you claimed £1,500?—Yes.

50. Do you remember what firm of lawyers it was that put in the claim for you?—Mr. Wilford.

51. Do you remember that another firm of solicitors put in on your behalf a letter stating that you were willing to accept £150 in full—for medical expenses and loss of wages, £37 16s., making a total of £200—and that a letter was put into the Mines Department, agreeing to accept £200 in full satisfaction?—No.

52. *The Chairman.*] Have you that letter on your file, Mr. Radcliffe?—Yes. [Letter produced and read]: “Wellington, June 22, 1908.—The Hon. the Attorney-General, Wellington.—(Without prejudice.)—Barton v. The Crown.—SIR,—We understand that notice under ‘The Crown Suits Act, 1881,’ of his intention to bring an action for damages against the King in respect of an accident that occurred on the 28th March last, at Courtenay Place, Wellington, whereby he was injured very seriously, has been given to you by Mr. Frank Barton, of Wellington, motorman. Before filing his petition herein and taking further proceedings, Mr. Barton, for whom we are now acting, wishes us to intimate to you *without prejudice* that he is prepared to accept the sum of £150 as general damages, together with the sum of £12 12s. medical expenses, and the loss of wages for the period during which he has been totally incapacitated, amounting to about £37 16s., making in all a total of £200.—Yours faithfully, SKERRETT AND WYLIE.” Did you give these instructions?—I never understood that that letter went through to the Department. I remember going through the matter with Mr. Lynch, of the firm of Skerrett and Wylie, and I understood we were bringing that about in connection with the Workers’ Compensation Act, where I was putting through the claim just to protect myself in the meantime, while we decided what we should do with the insurance company, so as to see what arrangement could be come to with them.

53. We understand that this letter was sent prior to the agreement with the insurance company?—I do not know when it was sent.

54. *Mr. Fisher.*] Were you in the hospital then?—No.

55. *The Chairman.*] The accident occurred in March. You could not have been in the hospital?—No, I had just come out.

56. The accident occurred on the 28th March?—Yes.

57. And that letter was written on the 22nd June, and you were out of the hospital then?—Yes.

58. *Mr. Radcliffe.*] Before you saw the motor-wagon, do you remember if a tram-car passed you going in a different direction?—One had done so.

59. Would not that obstruct your view of the lorry coming up Tory Street—you would strike your gong?—I cannot remember that point. I cannot give you any definite answer, because the whole affair happened very suddenly.

60. Is there a double set of rails there?—Yes.

61. On what side was your car coming?—On the off side, with the motor between.

62. So that our wagon had crossed one set of rails and had almost got across the other set before the accident happened?—Yes.

63. So that you had a good deal of time in which to see him coming. Was the street perfectly clear?—I had passed a trap just before I saw him.

64. On which side was that?—On the left hand side.

65. Would that have obstructed your view?—It was a bit near the rail, and I just sounded my gong. [Plan explained by witness to Mr. Duncan.]

66. *Mr. Radcliffe.*] Were your brakes in proper working-order?—Yes.

67. You had no difficulty with your brakes on that car?—No.

68. Had you been driving that car all that week?—No, all that day.

69. When did you take her on?—At 7 in the morning.

70. Had you any difficulties with your brakes?—None at all.

71. Did you use just the ordinary hand-brake or the magnetic brake?—The hand-brake and the emergency.

72. How many brakes are there on that car?—Just three.

73. Can you tell the Committee how they act?—There are four brakes with the hand-brake—three magnetic brakes. The first is the emergency, which you apply at a critical moment; then there is the second emergency, which you use when the car is travelling at a slow rate of speed; and then there is the third emergency, which is used as a last resource, if everything else was to fail.

74. *Mr. Duncan.*] Any one of them is sufficient to deal with the car if in working order?—Yes.

75. *Mr. Radcliffe.*] How far would your car travel if you were pulling her up with the first emergency?—The first emergency, if in good condition, and you were travelling at a good rate of speed, would pull her up in two car-lengths comfortably.

76. Were you not approaching the stopping-place at the time?—Yes.

77. Naturally you would be riding on your brake ready to pull the car up at a second’s notice?—Not necessarily, if there was no occasion for it; unless you had occasion to stop the car for a would-be passenger.

78. Would you know if a passenger was wanting to stop?—If they did not ring a little time before to stop, you would carry them on to the next stopping-place.

79. But you would naturally expect to stop there?—No; it is not a stopping-place except by request, and most of the people at that time of day are going into the city. If they wanted to get out they would get out at the previous stopping-place, and walk this short distance. That has been my invariable experience—unless they are very tired.

80. *The Chairman.*] Did you receive a copy of the city by-laws? Were you aware of the existence of this by-law of the Wellington City Council: "784. No motor-wagon or delivery-van shall in any part of the city proceed at a speed of more than eight miles an hour, and in Cuba Street, Manners Street, that part of Willis Street between Manners Street and Customhouse Quay, and in Lambton Quay, no motor-wagon shall proceed at a speed of more than six miles an hour. At any crossing or corner of a street throughout the city, and within fifty feet of same, speed shall be reduced to three miles an hour"—I did know there was such a by-law, but did not know exactly the wording of it.

81. Is the existence of such a by-law pointed out to you by the authorities of the tramways of the City Council?—We all understand there is such a one.

MATTHEW CABLE examined. (No. 3.)

1. *The Chairman.*] What are you?—Assistant Electrical Engineer to the Wellington City Council.

2. Will you be good enough to tell us what you know of this case?—All I know of the case is merely from the evidence of other witnesses.

3. Is the plan produced properly drawn?—It is a correct plan of the position, with the actual marks of the wheels on the wood blocking, drawn by our draughtsman, who is at present in Sydney. I was present when he was taking the measurements.

4. *Mr. Fisher.*] Do you know the width of the street?—It is about 60 ft.

5. Were you at the scene of the accident at the time?—No.

6. You know that the plan is correct?—Yes.

7. *Mr. E. H. Taylor.*] You are quite certain that the car was off the line, and you actually saw the marks yourself.—Yes.

8. *The Chairman.*] Was there any damage done to the wheels of the car?—None whatever. The forewheels of the first bogie were off the rails, but no harm whatever happened to them.

9. According to the plan, Barton would see the wagon a greater distance away than those in the wagon could see him?—Yes.

10. *Mr. Wright.*] What is the position with regard to the by-law? When a vehicle is coming full butt, are you supposed to stop your tram?—There is nothing in the Tramway by-law about such a case.

11. Generally speaking, is there not something to this effect: the driver of a vehicle must not cross the tram-line within a certain distance?—There is a regulation with regard to speed at corners and obstruction of cars.

12. *Mr. Newman.*] Is it not a general understanding that other traffic should clear out of the way of the trams?—It is a recognised rule all over the world that vehicular traffic must give way to tram-cars.

13. *Mr. Fisher.*] What is the width of Tory Street?—It is 35 ft., I should say.

14. *The Chairman.*] And you say that Courtenay Place is about a chain wide?—Yes.

15. *Mr. Newman.*] There was another car which passed this car a little before the accident?—That is so.

16. It is a crossing where they pass?—Yes; there is a double line, and the cars pass frequently at that time of the morning between Courtenay Place and Winder's corner. They pass anywhere about that place.

17. *Mr. Fisher.*] How long after the accident was it when you were on the scene?—Not until some time after.

18. You were not there when they released the steam wagon?—No.

19. As an expert, would you say the car hit the lorry or the lorry hit the car?—By the indications I would say that the lorry struck the car.

20. *The Chairman.*] How could that be? Obviously, as the front was bent back on the motor-man, the car must have struck the lorry.

21. *Mr. Fisher.*] It was really more of a graze—it was not a fair hit?—That is so.

22. Then it was a glance?—It was a sort of glance.

23. If the car had pulled up about 2 ft. short of where it stopped, there probably would have been no accident?—I cannot say that with any certainty.

24. Have you had any trouble with these steam lorries in the street?—We did have a little trouble, but I forget the particulars. The motormen complained about the men in charge of these wagons. I could look up the particulars.

25. *Mr. Macdonald.*] If the lorry were travelling eight miles an hour, would it not have shifted the car more off the line—more particularly if it were stopping at the time?—The way was off the tram-car undoubtedly.

26. In your opinion, if this lorry with 6 tons was travelling at the rate of eight miles, and the car was pulling up at the time, do you consider it would not have shifted the car further off the rails than is shown on that plan?—It would have sent it a bit further over if it were travelling eight miles an hour.

27. *Mr. Smith.*] Would the lorry have a heavy load on at that time?—It would appear so. The wagon hung there until it was released, when the wagon ran forward and smashed the box down.

28. *Mr. Duncan.*] How long was it before the wagon was released?—I do not know. When freed it ran forward and broke the pillar here [plan explained].

29. *Mr. Fisher.*] If the lorry had struck a substantial portion of the framework of the car it would have lifted it further off the rails?—Yes.

I desire the following statement to be placed on record: On the morning on which the inquiry commenced I received instructions from the Town Clerk to proceed to the House of Parliament with a plan showing the scene of Motorman Barton's collision, and, if necessary, I was to certify

to the correctness of the plan. Owing to a misapprehension on the part of a member, I was called upon to give evidence before the Committee about the case, the details of which were not familiar to me, as I had not looked at the evidence for a period of over twenty months.—W. CABLE. 25/1/10.

WILLIAM CRAIG examined. (No. 4.)

1. *The Chairman.*] You are the driver of the State's steam lorry concerned in this case?—Yes.

2. Will you tell the Committee just what occurred as to what led up to the accident, from your own point of view?—We had been short of fuel that morning, and I went down to the gasworks depot to get it. I had 3 tons on the motor, and she was not fully loaded. As I was coming from the gasworks there was a down car going to Newtown. I had to slow up to allow her to pass me. I had almost to stop, but I just kept moving, and as the car passed I saw another car coming up from the Courtenay Place terminus. It was a good distance off, and I was going very slow. The maker's slowest speed for the wagon is two and a half miles. As I saw the car coming up I had plenty of room to get across. The motorman, I think, thought I should be able to get across. With the slow speed I had he slowed up, and we went into each other. The car seemed to lock the wheels, and skidded right in and struck me on the back wheel. The wagon is 20 ft. 6 in. long, and the front wheel to the back wheel is 14 ft. 8 in. If I had been 5 ft. further on I should have been across the rails.

3. Is there anything else you can tell us?—I could not do anything else. I stopped the engine and got off. We tried to separate the lorry and car with a screw-jack—the ordinary bottle jack. Then another car pulled the car away. I am not very sure, but, as the car went off, the motor went away—the framework of the front of the car was in the cab of the motor, and then when drawing the car away from the lorry a broken part had the effect of turning a small spigot to the steam lorry, and the wagon went on, and I jumped into it to stop it. The wagon had got to the footpath by the time I got on the footplate. There was a good crowd, and I could not get through very quickly.

4. *Mr. Radcliffe.*] There was a good deal of space before you started to cross the line: how far do you consider the tram was away from you?—It was fully 2 chains away from me.

5. And the speed you were going at when you started to cross the line was two and a half miles, as guaranteed by the makers of the wagon?—That is the guaranteed speed, but I question whether she would go so fast as that when slowed down.

6. What is the maximum speed?—Six miles. That is the utmost speed you can get out of her. I question whether you can get that much out of her.

7. Were you driving at full speed when you came into Courtenay Place?—No. I could not get the speed. We had to get fuel—coke.

8. Had you been to the gasworks?—Yes, I had to go there. I had no steam. I had only 90 lb. of steam.

9. What is your maximum steam?—Two hundred pounds. To change the speed I have to stop, and I have to get underneath the wagon to get at the cog-wheels.

10. What was the utmost speed you were going at?—Scarcely two miles an hour. I could not go any more. It is impossible to get two and a quarter miles without 200 lb. of steam-power.

11. Were you on the right side of the road when you came up Tory Street?—Yes.

12. How far from Courtenay Place was the entrance you came out of at the gasworks with your load of coke? The maximum, you say, is six miles an hour?—No; I should have to stop the engine and get to the cog-wheels. I should have to run three or four chains before I could get her going at top. It would be about three or four chains.

13. Do you know the City Council by-laws relating to traffic?—Yes.

14. Were you within your rights in crossing then?—Yes.

15. Is it necessary under the by-laws that you should stop and let a car go past you?—No, not if the car is 40 ft. or more away.

16. *The Chairman.*] Is that a by-law of the City Council?—Yes, that is the last by-law we have.

17. *Mr. Radcliffe.*] There is no by-law stating that you should absolutely stop and wait until a car has gone past you?—No.

18. Have you ever had trouble with the City Council officials in connection with your driving?—Never.

19. Have you ever been disrated or cautioned with regard to driving?—No. Drivers have been cautioned about going up Manners Street from half past 11 in the morning till 6 o'clock at night. That is the only complaint we have had from the City Council that I know of.

20. *Mr. Macdonald.*] Did you notice the car coming into you?—Yes, I saw the car two or three chains away. I honestly think the motorman thought I had ample time to get across. I have been using that crossing regularly eight times a month. The car hesitated, and then came on and slightly slowed up, and then went on again. Then he put his brakes on and came right into me.

21. Are you sure you stopped the wagon when the collision came?—The wheel has to be touched a quarter of an inch, and she stops.

22. *Mr. Duncan.*] Have you brakes on the wagon?—Yes, a steam brake and a screw-brake, and with the steam-brake I can pull the wagon up in 6 ft. with a full pressure of steam on. With 90 lb. of steam I can pull her up in 3 ft.

23. When you saw the tram-car coming, about how far away was it?—When I noticed the car at first it was about 3 chains away. I saw it coming at the same time as I saw the down car coming.

24. How far would you be across the road?—About 10 ft. off the footpath down Tory Street [plan referred to]. Two miles an hour was the utmost speed I could go at the time of the collision.

25. If any one stated that you were going six miles an hour, would that be correct?—It would not. It would be an impossibility. I must have a high-speed gear to do that. I did not attempt to change my speed after the accident, and there were hundreds of people to see the speed, and the makers guarantee a $2\frac{1}{2}$ -mile speed.

26. Did you see anything of the tramway guard when the collision occurred?—I did not see the guard at all.

27. He would turn up when the stoppage occurred?—No doubt it was his place to be there when the collision occurred.

28. You say that according to the by-laws your impression is that you could cross if the tram was 40 ft. away?—Yes, 40 ft. or over.

29. You are quite certain of that?—Yes, we are supposed to cross on an angle, but I could not do that there without breaking the angle.

30. How far were you from the crossing when you got the coke?—I should say $2\frac{1}{2}$ chains.

31. At that time, with the steam you had, your machine would not go faster than two miles an hour?—I do not think she would go that.

32. She would not go full speed when you were starting?—No, she would have to travel a few chains before you can go at a high speed.

33. It was not in the centre where the collision took place—it was more to the side?—Yes, slightly to the side. There was an express standing at the corner of Tory Street and Courtenay Place.

34. And there was another car going the other way?—Yes.

35. What distance was there between the two at the crossing at Tory Street and Courtenay Place?—I should say about 4 chains. I noticed the down car first, and as it went by I saw the other car coming up very fast.

36. You said you slacked up a bit?—When I saw the car slacking I went on. I was on the line, and if I had stopped there would have been a collision in any case.

37. You were too far on the line to get back?—Yes, I did not know but that the car was slowing up.

38. *Mr. Fisher.*] You would naturally be travelling up Tory Street on the left-hand side?—Yes.

39. Did you try and swerve round?—No. The tram-car lifted me up about 6 ft. It swung my motor right round. I was on an angle of 35 or 40 degrees before the car stopped. It took the car off the rails 18 in., I should say.

40. Where were you when you sighted the car coming?—I would be about level with the two corners.

41. If you were travelling at two miles an hour, why did you not pull up?—If I had pulled up I should have had to slow right up and back away to let the foot-passengers pass.

42. But you were blocking the foot-passengers?—The tram-car ran into me, not I into the tram-car.

43. Did the idea come into your head that you could clear the car?—Certainly; I thought I had ample time to get across. This is a "stop on request" place. The cars as a rule slow down there, and I never thought this car was going to keep on at the speed it was travelling.

44. You relied on the car slowing down?—Yes. I had ample time to get across if he had slowed down, but not at the speed he was coming. The car was coming very fast, and I was going very slow.

45. And you say it is impossible to get more than two miles an hour out of the wagon?—Yes, it is impossible to get more than two and a quarter miles an hour at the utmost, and you must have your steam at high pressure to do that. The makers claim that she will go two and a half miles, but I do not believe it at all.

46. Did the force of the impact throw you off the line?—Yes.

47. You had not time to shut the steam off?—Certain I had, or she would have pulled the car over. There are four wheels sticking up: there are spigots there to fit into two things. As they backed the car off they pulled the spigot and let the steam off. My steam had in the meantime risen to 120 lb. or 130 lb. pressure. Before we attempted to work the motor-wagon Mr. Cable tried it, and said it was a lucky thing the car struck my back wheel; otherwise it would have cut the motorman in two. They came and took the marks.

48. *The Chairman.*] Is Mr. Cable the electrician?—He is the Assistant Engineer.

49. *Mr. Fisher.*] What would have happened if you had pulled up in a line between the two corners when you first sighted the car? You were going two miles an hour and were at the two corners of the street when you saw the car coming?—I should have backed up. If I had attempted to stop at the footpath I should have had Mr. Doyle after me. We are not allowed to stop in the crossings. If I had stopped for a second I should have got a letter asking me to explain why I had done so.

50. *Mr. Dive.*] You said you almost stopped to let the first tram pass?—Yes.

51. After that you were going on and saw the other car?—I did not see the other car I collided with until I let the first car go by. I did not see the two cars at once.

52. I understood you to say there were 4 chains between the two cars?—Yes, but I did not see the two cars at first. I almost stopped, but kept the engine moving. I went to go across, and then saw the other car. I was just approaching the footpath when I stopped.

53. You were out of Tory Street when the first car came?—No, I was not out. I would have stopped, but as the car went by I kept dodging on.

54. You do not know what distance there was between the two cars?—I should say there would be about 4 chains. The down car was not going very fast—it was much slower than the other car.

55. *Mr. Newman.*] What was the weight of your car with the load on?—About 9 tons 3 cwt.

56. You say that the electric car which came up lifted the motor round?—Yes, it lifted the back part.

57. And, having lifted it, did it not strike you as a very small injury to the car considering the lifting?—No, considering the broad surface she struck.

58. How fast was the car travelling when she struck you?—I should think she was going twelve miles an hour.

59. *The Chairman.*] In reply to one question you said you had shut off steam when the collision occurred?—Yes.

60. Supposing there had been a full head of steam on, what would have been the result, in your opinion?—It would have dragged the car right round. She would have pulled herself clear.

61. Have you any idea of what weight the tram-car is?—Twenty-six tons, I should think.

62. You think that with the steam-pressure you had on your wagon it would have been strong enough to pull the car over?—Considering the car was off the rails, she would have turned round. I have pulled 13 tons myself with the motor-wagon. She would twist 30 tons right round.

63. *Mr. Wright.*] Do you recollect saying that when you were at this point in Tory Street, after you had started from getting your charcoal, you saw the car?—I did not see the car until I got to the corner.

64. Where did you first sight the car that ran into you?—When I was going into the first line of rails.

65. When you sighted the car from Island Bay where was the other car which was coming from town?—It had gone. It would be down towards the terminus. I did not attempt to cross until it went by.

66. Let me suggest this to you: You evidently thought the car that collided with you was sufficiently far away to allow you to clear it?—It was far enough away, but it was coming exceptionally fast.

67. Your theory is that this car was driven at too great a speed?—My theory is that the motorman really thought I should be across. He did not attempt to slow up until it was too late. Had he slowed up ever so little before, I should have got across. The car must have been considerably over 40 ft. away.

68. Did you not say you had partially relied on the car stopping at the request stopping-place?—No. I expected him to slow down. It was not very safe to come at that speed without slowing down. I have not seen any other motormen doing it. The fact of the matter was that the motorman thought I should be able to get across. I should not have attempted to get across if I had known he was going to continue at the speed he was coming at. He jammed on the brakes too late, and instead of braking the car she skidded right into me.

69. When you saw him coming you relied on his slowing down in the usual way; otherwise, if you had thought he was going to maintain that speed you would have stopped?—When he saw me on the tram-line I naturally thought he would slow down.

70. What do you understand the position to be with regard to tram-lines when crossing: do you contend that a tram should stop for you?—Not for a moment. If I have room to get across, I go; if not, I stop and let them go.

71. Do you count on them slowing down for you?—No, I do not.

ALFRED HENDLE examined. (No. 5.)

1. *The Chairman.*] What are you?—Firing the engine carrying coal.

2. Will you be good enough to tell us as shortly as you can your impressions regarding this accident?—From the time we left the gasworks, where we took in coke, we headed for Mount Cook Gaol, and just as we got to Courtenay Place there was a car coming from the direction of the Duke of Edinburgh Hotel. The driver let that pass. Just as we cleared that one, and before she went past, there was another car coming from Courtenay Place terminus at the ordinary Courtenay Place rate. I saw him coming, and the driver of the tram-car tried, it seemed to me, to pull up and get the car under control, and then she seemed to pull as if she carried away something and got up speed again, and by that time the steam wagon was half-way across the line. The consequence was that a collision occurred.

3. Will you tell us how far you think the car was away when you first caught sight of her—the car that collided with you?—She was just near Williamson's blacksmith's shop. About 2 chains or 2½ chains.

4. You say that at the time you caught sight of the car that collided with you, you were practically on the other line of the rails?—Yes. She was just standing to let the other car go by, to cross when she made room for us.

5. Do you know whether the driver shut off the steam of your engine?—No, I had nothing to do with the driving at all. It was my work to look after the fire.

6. *Mr. Radcliffe.*] Did you notice whether the motorman of the tram-car appeared to be working the brakes?—He appeared to be working his hand-brake.

7. When the collision occurred did you suffer any damage?—No, not beyond a small cut on the arm from the broken glass of the front of the car.

8. Were you thrown off at all?—No. The driver is on the right-hand side of the engine, and I am on the left.

9. Is the driver on the near side?—On the right-hand side. I was nearest the collision side.

10. *Mr. Newman.*] Can you express an opinion as to the pace the car was going at?—It was the ordinary Courtenay Place pace. I could not say what speed that would be.

11. Was it five, six, eight, ten, or twelve miles an hour?—I really cannot say. I think about six.

12. Do you think the car was coming at ten or twelve miles an hour?—I hardly think the motorman could get up to twelve miles an hour between those stopping-places.

13. Did you hear the gong ringing?—Yes.

14. Did you see the motorman putting on the brakes?—He looked to be putting on the brakes.

15. Another car had just passed previously to that?—Yes.

16. And your engine was slipping across when the other one was coming up?—Yes.

17. The electric car struck you in the rear portion?—Yes.

18. *Mr. Fisher.*] Did you remark anything to the driver about the excessive rate of the tram-car?—I do not remember.

19. The motorman must have been putting on the brakes if, as you say, she seemed to stop and then come forward?—She seemed to stop and then jump. That was my idea.

20. When the first car was going up Courtenay Place did you stop to let her pass?—Just eased up, but did not actually stop. We were just moving, and that was all.

21. Did you see the two cars at the same time—one on the right and the other on the left?—No, I did not see the car from Courtenay Place until the other had passed.

22. Do you think the car you allowed to pass got between you and the other car?—I do not think so. She was past in a very short time, and left the way clear then.

23. Did the impact of the car shift the motor very much?—It gave her a bump in the stern part. It struck the motor on the hind wheel, which jarred her round.

24. You did not sight the car you had the collision with when you were in Tory Street?—We were practically in Tory Street all the time.

25. You were in Courtenay Place when the accident occurred?—Just on the corner.

26. Before you had gone over the footpath at Tory Street had you sighted the car with which you eventually collided?—I could just see her then. You could not see her until you get to the corner. When we sighted her the other one would be about here [place pointed out on the plan]. When we came out we could see both cars.

27. Was there not ample time for you to stop and let the other go by?—This steam wagon is a very slow-travelling affair. At the rate she was going, if the car had not been coming quite so fast, we should have got across.

28. What rate do you reckon you were going?—About two and a half miles an hour.

29. You did wait until one car passed?—Yes, the one going to Island Bay.

30. I suppose, as a matter of fact, at the time, you were travelling about as slow as she can travel?—Yes.

31. In how many yards could that steam lorry have stopped at the rate you were travelling? She could have stopped dead.

32. *Mr. Wright.*] When you saw this car that ran into you coming down, did you reckon there was going to be a collision?—I reckoned there was time to get across. If our driver had stopped dead where he was, there would have been an accident the same as if he had gone across. When the State driver saw there was going to be a collision he had not time to back down clear.

33. *Mr. Fisher.*] His only chance was to keep going?—Yes.

FRANK BARTON re-examined. (No. 6.)

1. *The Chairman.*] Have you been advised that if you should happen to receive compensation from the Crown, a portion of that money will have to be paid back to the insurance company which paid you £150?—They hold a document from me to the effect that they are to be refunded the £150 which they paid me for the purpose of paying my expenses in case I went to law.

2. Supposing, as the result of your petition to the House, you are granted a sum of money by the Crown, will any portion of that money be paid to the insurance company as against the £150 paid to you?—A hundred and fifty pounds will.

3. Supposing you got £200 from the Crown as a result of your petition, will you pay £150 of that to the insurance company?—I am legally bound to pay it.

4. You are bound to that effect?—Yes.

5. You told us the name of the solicitor who advised you to accept those terms?—Yes.

6. Will you name the solicitor?—Mr. Wilford was my solicitor, but this document came to me at the very last moment, when things were very bad for me, and I had got the decision from the Court. They told me the following day they would pay £150, and sent in their document stating that I should have to pay back the £150 if the Government granted me compensation.

7. That was from the insurance company?—Yes.

8. And you say Mr. Wilford advised you?—No, Mr. Levi advised me.

9. That is Mr. Wilford's partner?—Yes.

10. Was it after the Court had decided that you had no case?—Yes.

11. Then the only money you might get back would be what you might obtain through this petition?—Yes.

12. And you agreed to pay the £150 back?—They hold a document to that effect.

13. *Mr. Newman.*] Were those solicitors acting for the South British Insurance Company?—They were acting for me.

14. *The Chairman.*] Did any one come to you on behalf of the insurance company—any individuals—or was the document brought along to the solicitor?—They brought the document to the solicitor with the cheque.

15. Did you object in any way, or did you accept the advice of your solicitor and sign the document?—Mr. Levi said, "You might just as well sign it."

16. Did you not know at that time that the insurance company was indebted to you in the sum of £300?—I was in such a position at the time that I did not give it much thought. I was practically driven to extremities. I had waited a long time for the decision of the Court. I had to pay up, and I wanted the money.

17. If you do succeed in your petition, at least £150 will have to be paid back to the insurance company?—Yes.

18. And that means that they would escape altogether?—Yes. The insurance company's representatives were there by appointment at Mr. Levi's office.

19. They had a representative there, in addition to your solicitor?—Yes.

20. Do you remember the name of the gentleman representing the company there?—No, I do not.

21. Was anything said to you at all? What argument did they adduce to persuade you to sign the document?—Practically no argument.

22. *Mr. Newman.*] You were pressed for money at the time?—I may say that I had borrowed money at the time.

23. *Mr. Fisher.*] What is the highest speed that a tram-car can attain?—Up to about eighteen miles.

24. *The Chairman.*] Can you tell us what, in your opinion, was the rate the car was travelling at before you put on the brakes to avoid the collision?—About eight or ten miles.

25. *Hon. Mr. T. Y. Duncan.*] Do you think the cause of the collision after you put the brakes on was the skidding of the car?—I do not hold that it skidded. I had taken the hand-brake and reduced the greater part of the speed. I did not realise at the time that the driver of the wagon was going to cross. It was only a matter of an instant, and I practically stopped.

26. *The Chairman.*] Is it possible, when you had the brake-power on, that the car was skidding faster? Supposing you had put on the full brake-power, would she not have been going slower than when she skidded forward?—Yes.

27. Were the rails dry that day?—Yes.

28. *Mr. Newman.*] Did you part with your legal rights when you accepted the £150?—Yes; I had to do it. My claim had to be in within three months, and then it had to be put in in time for the Arbitration Court—within six months of the accident. What I had to do was to fill in the claim to protect myself against the insurance company and to allow me to pay the expenses in order to go against the Crown, and once they came to terms they finally agreed to give £150. Once they came to terms my claim was withdrawn, because under the Act one is not entitled to take compensation from two different parties.

29. That was the advice you got?—Yes.

30. *Hon. Mr. T. Y. Duncan.*] Has the insurance company taken any part in this petition of yours?—Not to my knowledge. I have seen nothing of them since I got the cheque.

31. Who prepared your petition?—A personal friend.

32. *Mr. Newman.*] When you accepted the £150 you thought you had lost your right to the £300?—Yes.

33. *Mr. Fisher.*] Are you married?—No, but I have a mother who is a confirmed invalid.

ERNEST EDWARD HAMMOND, Representative of the South British Insurance Company, Wellington, examined. (No. 7.)

The Chairman.] Before we ask you to reply to any questions, I will get the shorthand-writer to read his notes of Mr. Barton's evidence. [Evidence read.] The Committee thought it would be unfair to arrive at a decision for submission to the House until you had heard what Mr. Barton had stated. I should be glad if you would make any statement you have to make.

Witness: With regard to time, I cannot narrate the whole history. The facts are these: Subsequent to the accident Mr. Barton intimated that he did not intend to make a claim under the Workers' Compensation Act. He had an uncle in Christchurch—a lawyer—who had advised him not to do so, as an action under the common law would be more beneficial to him. That position he maintained until the three months was up, and no claim in any shape or form had been made. The whole of the matter was put before our directors, and they agreed to an application by Mr. Barton, as he had no cash to pay the expenses to go to the Court. The solicitors refused to take his claim before the Court without getting the cash. It was agreed that we should give him £150 on behalf of the City Council, which was a very valuable connection to us, and worth some £4,000 or £5,000 a year. I held this information over for a week or two until I saw that Barton could not make any headway against the Government. At that time every one thought he had a claim, and then I informed the head office of the decision in the matter, telling Barton quite plainly that it was purely *ex gratia*. He realised the position, and ultimately jumped at it. Then the case went to Court, with the result you know. The original sum of £150 we advanced was again brought up in this form. In paying the money its *ex gratia* character was admitted, and it was agreed that if he got a large sum it was only fair that we should take a refund. The most we asked was £150, but it might have been only £10. It was Mr. Levi's suggestion, and no member of our office saw Barton again. We sent a message-boy with the document to him. That was the only representative he saw after that—he saw no one else in our service. If we had refused to pay him he would have got nothing whatever. It was through the Auckland head office's generosity that he got the £150; but that generosity was from a business point of view—we naturally looked upon it as coming back to us in another form. We thought at the time Barton would get his reward from the Court, and we were supplying him with funds with which to go to the Court.

1. *Mr. Fisher.*] But there was a liability to him of £300?—I do not think the Court would have awarded him £150 at most.

2. What was the limit?—It was not a case of total disablement. For partial disablement the Court always fixes the amount. I should say the Court would have awarded him £120 or £150 as the whole amount. Under the old Act it is at the Judge's discretion, and under the new Act it is a fixed amount.

3. *The Chairman.*] You say that this amount was paid to Barton prior to the matter going to the Court?—No, we gave a bond that we should guarantee the costs. Whether it was after the decision of the Court I forget. The promise given was before he went to Court. It was when he had fought and struggled for some time, and when he had reached the position that he had to put the money down.

4. Mr. Barton states distinctly that the agreement he signed was to the effect that he would have to pay you back £150 if he secured a compassionate amount from the Crown?—That is so.

5. Also he is very distinct that he would have to do so if paid by the Arbitration Court?—The Arbitration Court could not give him anything, because he was too late to go to arbitration.

6. Your two statements clash: you say the bond was entered into to enable him to go to Court to prosecute his claim?—That is so.

7. He says it was only after that?—I think my statement is that it was our money that was put up for him to go on with the case.

8. *Mr. Fisher.*] What is the limit of time in which a claim can be put in?—Three months, I think; and that was exceeded. No question of claim ever arose until it was a question of money to pay the lawyer to take the case up.

9. *The Chairman.*] He admits that it was after the time, but you stated that the £150 was paid to him because you wanted to retain the business of the City Council?—Yes; we did not care a rap about the solicitors.

10. Supposing you had lost the £150, what then?—We should have been better off by paying the £150 than by losing the connection.

11. The point is this: that you were not liable to pay him anything at all, and yet you paid him £150?—Just so. It was an *ex gratia* payment really, to retain the City Council's business—not Barton's interest at all. These *ex gratia* payments are very often made under certain circumstances, and after chatting the matter over I had no hesitation in recommending it to Auckland. It was not pure sentiment.

12. It was not with the intention of escaping another £150?—No, because all rights had been lost.

13. And you were prepared, in the event of not getting anything from the Crown, to lose the £150?—Exactly.

14. Is such philanthropy usual?—It is not philanthropy at all. We could not afford to quarrel with the City Council.

15. *Mr. Hine.*] Would not the Corporation be liable for its servants, not you?—They have no liability.

16. Supposing the Corporation did not cover its servants, is it not liable for accidents?—It was to save that position, and not to save Barton, that we paid the £150.

17. There was no liability falling on the Corporation at this time?—No, only a small liability. At that time there was no liability absolutely. The matter was thoroughly fought out at the time.

18. *The Chairman.*] There was no pressure brought to bear on the company by the City Council to make it pay?—Not that I know of.

19. *Mr. Wright.*] Why, seeing that the City Council was outside the Court and you were outside the Court, should you bother to conserve the Council's friendship by paying this £150?—Because they voluntarily would have paid. It has been done before.

20. *Hon. Mr. T. Y. Duncan.*] In a case like that, supposing the time did elapse, would you shut down as an outsider?—We looked upon it as a valuable connection. It is pure business.

21. *Mr. Newman.*] It was to save the face of the Municipal Council in their treatment of their servants that you really did this?—I do not think we put that much sentiment into it, even. They were particularly anxious to pay, and our policy with the Council is a little broader than usual. We paid £16 16s. to send a man away to Sydney who had no claim because two years had elapsed.

22. How did this man come to lose three months? He told us that his compensation would be £300?—It could not possibly exceed £150.

23. How did the three months come to elapse?—His uncle in Christchurch is a solicitor, and he advised him to go to common law, because common law grants a great deal more than the Arbitration law does.

24. And the time elapsed, and he lost his right to make a claim?—The only connection the £150 has is this: As the payment was purely *ex gratia*—as his solicitor and everybody else admits—therefore, if there were any more *ex gratias* done on the other side, the amount would have to be refunded. It was a business clause put in the document in drawing up the clearances.

25. You were to have it returned if he were successful in this petition?—Not in this petition particularly—it was for winning his case in anything. If he got the amount, then this amount could be estreated.

26. Can we get a copy of that agreement?—I dare say I can get it. It is part of the Auckland vouchers.

27. *Hon. Mr. T. Y. Duncan.*] Supposing Barton succeeded, and there was a grant recommended of £200, or even less, would the insurance company expect to get the £150 back?—Certainly not. Legally he can be compelled to pay it, but he knows that we are not going to come down on him in that usurious way. The bond was for a certain amount, but in fact it was stated to the Town Clerk at the time that, although it was for £150, it was very doubtful whether it meant anything more than costs.

28. *The Chairman.*] Still, you admit that you have a legal claim: you could sue Barton for the amount if there was sufficient money paid to him by the Crown?—Yes.

29. *Mr. Hine.*] Was Mr. Barton in treaty with the insurance company?—No. Barton's connection with us was an exceedingly friendly one, and when we saw him inquiries were passed as to his health.

30. I mean, with regard to giving him assistance to fight the Crown?—No, only with regard to expenses in connection with his appeal to the Court. He wanted to go to Court in order to fight for his rights, and the South British Insurance Company handed him the money to do so. The thing was promised before we had time to consider what should be put in the agreement.

31. *The Chairman.*] At whose solicitation was this promised?—I think it was a collective thing between the Town Clerk, myself, Barton, and all those who took an interest in Barton's case.

32. *Mr. Newman.*] So the company thought he had a claim for £150, even though he had not made his claim within three months, especially as he was a worker for one of your best clients?—Yes, you can put it in that way.

33. It is suggested that you could, although it is a small claim, get the £150 back?—In drawing the clearances I put in all the usual stipulations and conditions, the same as in many other cases.

34. *Mr. Hine.*] Was notice given to your company by the Corporation directly the accident happened?—Yes, I suppose it would be by the Corporation.

35. Within the twelve or fourteen days?—Yes.

36. They intended to hold you liable?—That is a formality.

37. If a man lets a week elapse before he makes his claim he loses his opportunity, and in ninety-nine cases out of a hundred the insurance companies shelter themselves under that?—I have never heard of that.

38. That is the legal position?—Yes, I suppose it is, but I have never known it to arise.

39. Still, the Corporation would notify your company?—Yes.

40. What would the next step be?—I suppose the expenses for the Court. They could only claim under the Workers' Compensation Act. Barton had no intention of claiming under that; therefore everything died.

41. It is not necessary to go to the Arbitration Court, is it?—No.

42. You can agree by a friendly settlement?—Yes.

43. The mere fact of Barton bringing a case against the Crown would not exempt your company?—No.

44. Therefore, why were proceedings stayed against your company?—I do not follow the question. The accident happened, and he had a claim under the Workers' Compensation Act, the time for which elapsed—

45. Why?—Barton did not sue; he hoped to get his case under the common law. He took his option. He could not go for both under the old law. He could only exercise his option either at common law or under the Workers' Compensation Act. He was suing the Crown, and therefore dropped his claim under the Workers' Compensation Act.

46. By Barton suing the Crown you said it did not affect his position?—I did not understand the question. He technically, what we call, exercised his option.

47. *Hon. Mr. T. Y. Duncan.*] Was any instruction given to you by the Corporation, or to the Corporation by you, advising Barton to take this course?—No; I do not think Barton's name cropped up, except in relation to inquiries as to his health, for a few months. The Corporation concluded that he was going to take his case under the common law.

48. I wanted to know, if it is possible, how the three months were allowed to elapse by the Corporation, and how Mr. Barton was permitted to allow his claim against the insurance company to lapse?—The history of the case would be the best reply. After Barton's accident his brother took up the running and informed us that his uncle was going to take the case to the Supreme Court under the common law, and then all rights under the Compensation Act ceased. You cannot sue under both. He took his option. (To Mr. Barton): Is that so.

Mr. Barton: That is so.

Mr. Hammond: I trust I have made the matter quite clear. I did not at first see the point. And if there is any idea that we intend to pinch anybody hereafter, I may say that that never entered our minds.

49. *Hon. Mr. T. Y. Duncan.*] But under the common law he might have got more money?—Yes, that is so.

50. That being so, the Corporation paid him his wages and kept him quiet. But what I thought was that they expected to get out of their liability. I did not know that it was his brother who advised him?—I never saw Barton until months afterwards, and I did not see the Town Clerk. Our whole attitude, I am quite convinced, is that if Barton offered any payment under the bond, a couple of guineas would cover the whole thing. It is an amateur-drawn deed, and I do not think it amounts to anything.

51. You admitted that he was legally bound?—Yes, but it was an amateur bond. So little value did I put on it that I did not get a lawyer to draw it.

52. *The Chairman.*] If he has legally signed it, he has promised to pay you £150?—Yes, that is clear.

53. And you sent a representative with the document and the cheque to the solicitor's office?—It was only one of the juniors who took the document over.

54. If Barton had not signed the document, would the cheque have been left for him?—Certainly.

55. Barton stated that he had to sign the document before he got the cheque?—If he had not signed that bond I do not think we could have retained the cheque, although Barton might have thought he had to sign it.

Mr. Barton: I was practically advised to do so—I was not told so in so many words.

The Chairman: You were not given to understand that if you did not sign the document you would not get the cheque. You said you were under that impression.

Mr. Barton: Yes, but I was not told that.

The Chairman: The clerk brought the document and the cheque, and the cheque was handed over after you signed the document?

Mr. Barton: Yes.

The Chairman: Mr. Barton suggests that at the time the cheque was paid he had lost all claim to legal redress, and he had to pay the amount back if he got any compensation from the Crown. You, Mr. Hammond, say the cheque was only to pay his expenses?

Mr. Hammond: That was one of the main reasons.

Mr. Barton: I think if you had been in my position you would have been under the same impression. Why did you at the last moment send that document along for me to sign? You must have known the position I was in, and it looked like taking a mean advantage of me.

Mr. Hammond: I am sorry you put that interpretation on it. Your solicitor did not put that interpretation on it, and that was not the intention. We gave him the money to defend the case at common law.

The Chairman: There was nothing whatever to defend. All he proposed to do subsequent to receiving that cheque was to come to the Crown?

Mr. Hammond: I think in my own mind that at the time the document was drawn we thought the Court would open in some way the case the same as in the case of the Farmers' Distributing Company. I thought the whole case would be opened again.

Mr. Newman: How did you, Mr. Barton, come to be so certain that £300 was to come to you? This gentleman says it is only about £120.

Mr. Barton: The amount I was entitled to under the Workers' Compensation Act is £300.

Mr. Hammond: That is the maximum amount you could claim. It is for total disablement the amount would be £300, but the Court uses its own discretion as to what it gives for partial disablement.

The Chairman: It would be a matter for the Court. He could sue for £300?

Mr. Hammond: Yes.

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