

## **Report on a case of railway injury / by Willoughby Francis Wade.**

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# REPORT

ON A

## CASE OF RAILWAY INJURY.

BY

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PHYSICIAN TO THE GENERAL HOSPITAL, BIRMINGHAM.

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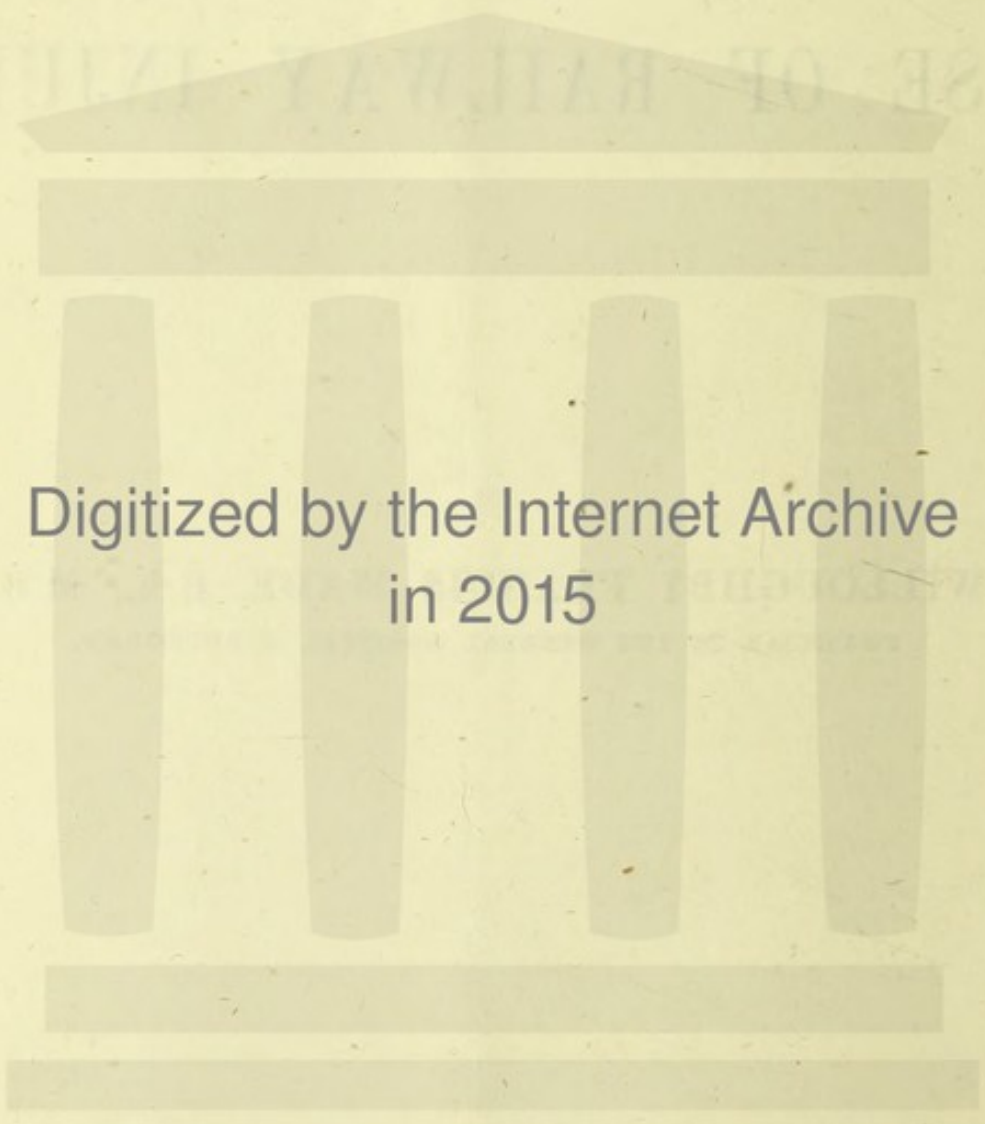
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REPORT  
CASE OF RAILWAY LITIGATION



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WHATEVER changes may be made in that branch of common law in which medical evidence is now available, it is certain that the necessity for skilled witnesses must remain, and that, upon the dicta of these, such cases must turn.

Should any of these changes diminish the number of such witnesses, or refer their opinion to be valued by medical assessors or the like, it will be more than ever important that the experts who remain should enunciate opinions based upon a comprehensive survey of the facts, and tempered by common sense, as well as logically coherent.

It is almost of necessity that the voices of ordinary practitioners, that is, of those who have had no special training or practice in forensic medicine, should still be heard. And it is much to be desired that medical evidence, whether ordinary or expert, should be freed from imperfections, which now often subject the individual to ridicule, and the body to which he belongs to contumelious criticism.

My experience of medico-legal cases has led me to form the opinion, that very many of the difficulties in which the members of our profession find themselves involved in a court of law, may be traced to one single root. I do not say all the difficulties, but my immediate object is, not to produce a handbook for medical witnesses, but to explain in a few words my reasons for publishing the following Report.

This special root, then, is the failure to make themselves masters of the case in all its bearings. It may be that the opinion held is correct, but it is not the less essential if we are to convince others of its correctness, that we should have seized all, and not merely some of the points which tell in our favour. It is also of great importance that we should have arranged these in our minds in their logical order, that we should have discriminated between



those proofs which are more and those which are less cogent; that we should have both the facts and the arguments not hazily adumbrated, but clearly and distinctly in our minds. This I have found medical witnesses often fail to achieve.

But with far greater frequency they omit another duty of equal, perhaps greater, importance; namely, to ascertain and impartially weigh those facts and arguments which tell against their own opinion. These disputed cases are never altogether one-sided. We do not perform our duty to ourselves, and we omit the far higher duty of doing justice, unless before even forming an opinion, we have given due consideration to all the elements of the case. We do not perform our duty to our employers unless after having adopted an opinion we seriously reflect upon the best method of supporting it. This includes the best method of answering objections. Were these principles more constantly recognised, we should avoid a fertile source of opprobrium. I do not admit that there exists, except in rare cases, that kind of partisanship on the part of medical witnesses which is sometimes alleged, and more frequently insinuated. I do admit that in common with all mankind a medical witness having enunciated an opinion is prone to adhere to it. The fact that he does so is, I submit, no proof that he has formed it corruptly or even unadvisedly. The *way* in which he supports it, the style in which he meets hostile criticism is, when these are unseemly, the result, in the vast majority of cases, of what may be indifferently termed comparative ignorance or one-sided knowledge. Satisfied, and it is here assumed justly satisfied, of the correctness of his opinion, he has failed to weigh beforehand facts which may be inconsistent, without being irreconcilable with that opinion.

The following is an illustration of the truth of this theory. I was once engaged to assist the counsel of a prisoner, who was being tried for murder, in the cross-examination of the medical witnesses. These gentlemen had made up their minds that a murder had been committed, and that the prisoner was the murderer. I have never seen opinions adhered to with greater tenacity. In spite of overwhelming authorities quoted against them, they would not admit any anatomical, physiological, or surgical dictum which seemed even remotely against the opinion they had, in perfect good faith, erroneously formed. The jury without hesitation brought in a verdict of "Not guilty." It is unnecessary to enlarge upon this, there is such an obvious absence of the motives sometimes insinuated against us, and, indeed, no motive is reasonably conceivable but the one I have suggested.

Facts have come to my knowledge which show that even those who have been frequently concerned in medico-legal inquiries may fail to appreciate the importance, or rather the necessity of understanding



the case they have to meet as well as that which they are going to support.

The Baconian maxim that writing makes an accurate man, suggests to us the remedy for the shortcomings above pointed out.

The case should be fully taken down in writing. This may seem an easy matter. To the few it is so, to the many it is not. One of the greatest existing blots both of medical education and of medical literature is the lamentable and systematic imperfection of case-taking and case-reporting. Habitually and almost uniformly those features only of a patient's case are taken which are supposed from previous knowledge to be pertinent or important. Those, that is to say, which have an obvious connection with the view we take at an early stage of our notemaking of the nature of the disease. Statements which from our prepossession seem irrelevant are ignored, the poor patient, indeed, being often snubbed for taking the liberty of making them. It would be foreign to my present purpose to point out all the disadvantages of such an imperfect method. It is, however, obviously fatal to anything like discovery of new facts, or new bearings of old ones. This is germane to the question before us. Because these cases we are peculiarly bound to investigate in a discovering spirit. Prudent regard to our own interests, as well as common fairness to the patient and to the other parties interested alike demand this of us.

By writing out in full all the facts, all the inferences, and all the arguments, we shall have a chance of weighing them judicially. We shall see what opinions can and what cannot be maintained in the face of hostile criticism. This is a most important matter because, in the ordinary course of practice, we are so in the habit of stating opinions to those who are both indisposed and incompetent to attack them, that we unquestionably contract a loose habit of stating with confidence opinions which will not stand free examination. In ordinary practice they stand well enough, because they are not challenged. In the witness-box we are placed in totally different conditions, and often appear to much less advantage in consequence.

A full written statement has further advantage. It, either in its entirety or in a condensed form, may be presented as a report to those who have the conduct of the case. This enables them to utilise our conclusions in the most advantageous manner. It will not, then, be our fault if we are asked to support views which we do not entertain.

Such medical reports as I have seen, have been, to my thinking, far too meager and scanty for any useful purpose. The one subjoined, though imperfect enough, may, it is hoped, be of assistance to those whom the preceding remarks may induce to adopt the plan which I have myself found useful. It might easily have been dressed up so as to present a better appearance. I have, however,



after much consideration, thought it better to print it exactly as it was made, omitting only all names, and printing in italics every word which did not appear in the original.

### REPORT.

*Mr. A. B.*, examined on behalf of the ——— Railway Company, March —th, 18—.

Present. *Five medical men* on the part of the Company, and *two* on part of the plaintiff.

It appears that plaintiff was injured in the ——— accident last June. He was taken, totally insensible, to the ——— Infirmary, and remained there for about seven weeks. There is no doubt that he received severe concussion of the brain, and that he did not recover consciousness for nearly a week after; that during this time he had retention of urine, which required the use of the catheter, and that he had irregularity (*inequality*) of the pupils, showing that one side of the brain was more severely shaken than the other; that when consciousness began to return, it was at first only partial and fitful, and that he suffered from wandering of the mind. It is also to be admitted that he retains no recollection whatever of the circumstances of his accident; it may also be admitted (though I am not quite sure that it is true) that he retains no recollection of the incidents of the journey shortly before the accident.

All these facts indicate that the case was one of ordinary severe concussion of the brain, of which they are the usual and common symptoms. On the other hand, they are not in the slightest degree evidence or symptoms of any secondary, subsequent, or progressive disease or disorganization of the brain, nor do they justify any anticipation that softening of the brain will ensue. Nor are they at all inconsistent, in any case, with complete restoration of the brain power.

But although these phenomena are not necessarily indicative of permanent brain injury, it cannot be denied that, in some such cases, softening of the brain, more or less complete, does ensue. The question then arises—are there any independent evidences that any softening has commenced, or is likely to arise, in this case.

To this question I answer, without any hesitation or reserve,

1st. That there is not a tittle of evidence of any kind that the brain has sustained any permanent injury, or that it is at present undergoing softening in any part.

2nd. That there is no evidence which justifies the assumption that any such disease will arise hereafter. With regard to the first point it is necessary to enter into particulars.

I. After severe concussion, there is no doubt that the brain may either be left enfeebled to a certain extent—an enfeeblement which,



though permanent, is not progressive—or that it may undergo a gradual process of weakening, atrophy, or softening, these three conditions being practically, though not technically, identical.

This condition, which may briefly be described as “softening” (or “ramollissement”), is recognised by some alteration in—

*a.* The special senses.

*b.* The power of the mind, as regards attention, reasoning, memory, comprehension, &c.

*c.* The power of the muscles, *i. e.* paralysis.

*a.* He did not allege any defection of the special senses. He admitted to Mr. — that his sight was as good now as it was twenty years ago.

He did not allege any alteration in the sense of touch, either increased sensibility (hyperæsthesia), or diminished sensibility (anæsthesia).

*b.* The power of the mind.

I had the advantage of testing this, not only by my own examination and that of my medical confrères, but also by being present during the whole of his examination before the Commissioner. (*It having been alleged that the man was too ill to bear a journey to the assize where the case was to be tried, the learned Judge sent a barrister, as a commissioner, to take his evidence, the plaintiff being examined by his own Counsel, and cross-examined by one on behalf of the Company; this evidence was afterwards read at the trial.*)

It is important here to note that at the commencement of the medical examination *the plaintiff* persistently abstained from making any attempt whatever to answer questions put to him, replying merely, “that his memory was very bad,” and so on.

He afterwards answered more complicated questions upon the same subjects, without any difficulty of comprehension; and some of the questions were put as tests, to ascertain whether he was determined to make no attempt to answer.

The memory is generally impaired by softening of the brain; and when this is the result of concussion, it may be more impaired with regard to what had happened before the accident, or what has happened after the accident. The latter is by far the more common. It is rarely, if ever, impaired in an equal degree as to the two periods, except when the softening is so far advanced as to be entirely beyond question.

In this case there is no impairment of memory whatsoever, except, as before remarked, with regard to the circumstances immediately antecedent and subsequent to the accident; but this a symptom of concussion, not of softening of the brain. His memory seemed to me to be just as clear about recent and current matters as it did about those of longest date. He made no misstatements, so far as I could judge, except once or twice, when he directly corrected himself. He



remembered his motives for setting out on the journey to —, and the minor incidents and circumstances connected with it; he even remembered the erroneous ideas which occupied his mind when he first began to recover consciousness; he remembered things which had come under his notice while lying in the — Infirmary, such, for example, as that a boy was brought in with a wound in his foot, and of a lady bringing him some raspberries, and when he had taken some, pressing him to take all. Such things occurring since the accident, and when the brain was undoubtedly but half recovered, would have passed away from an impaired memory, even had they been noticed at the time. He remembered his return from — Infirmary, and recognised *one of the surgeons who was present at the examination* as the person who met him at the — station with a vehicle and brought him home. He had no difficulty in recollecting the circumstances of his previous life, and in relating anecdotes of persons whom he had met, &c.

He passed from one subject to another when required with the utmost facility; but he did not exhibit any tendency to ramble or wander from one to another spontaneously or incoherently.

He told us that he frequently lost the thread of his discourse, and forgot what he was going to say on the subject about which he was going to speak. I watched him closely during the whole of the protracted medical and legal examinations (the two lasting about three hours and a half, *one examination immediately following the other*) and on no single occasion did I observe any failing of this kind. When during the legal examination he was requested to pause till the commissioner had taken his notes, he did so, and invariably resumed where he left off, never repeating himself or losing the thread of his observations, or changing the form of his sentence.

Another proof of the clearness of his mind and the accuracy of his memory was that several questions which had been put to him during the medical examination were also put during the legal one and he returned the same answers, though not always in identically the same words each time. At no time did his attention fail.

He complains of not sleeping very well at night, and of his mind then being uncomfortably busy. This cannot be said to amount to a disease or to be any proof of mental disorder or enfeeblement. Most persons who constantly lie in bed sleep ill; and most persons who fail to sleep soundly find that ideas flow through their minds with undue rapidity and some little loss of connection. This is merely a phase or degree of dreaming. Did he get up and take exercise commensurate with his power, there is no reasonable doubt that sound sleep would soon be procured and this dreaminess as soon disappear. Besides, the room in which he sleeps is not conducive to sound rest; it being small and containing two beds, the



air cannot be very pure, though unfortunately I omitted to ascertain how many persons sleep in it.

It seems to me, then, that his present mental condition absolutely negatives the existence of any softening of those parts of the brain which minister to thought, just as the condition of his special senses negatives any softening of those parts with which they are connected.

c. It is possible to have softening of parts of the brain, which are not intimately connected either with the mind or the special senses. Such a condition would produce paralysis, with or without spasm. There is no paralysis, nor have there been spasms. I shall refer to this matter again when speaking of spinal disease; but it may be well to note here that should it be contended that a certain amount of alleged weakness in the legs is of a paralytic nature, and dependent on brain disease, the answer is this. There was evidence (the irregularity—*inequality*—of the pupils) that the original concussion affected the brain more on one side than the other; and did the paralysis depend on such softening, it would be more advanced and perceptible in one leg than the other; but the legs are equal in power, and the contrary has not been alleged.

From these facts, and upon these considerations, then I can come to no other conclusion than that there is no pretence for affirming that his brain is at the present time substantially in a worse condition than it was before the accident, that there is no softening of the brain nor any reason to anticipate it, and that there is not the slightest trace of imbecility. The want of perfect rest at night and dreamless sleep would be at once remedied by his getting up and taking suitable exercise. The same remark applies to a certain degree of headache of which he complains. This he described in the vaguest manner, though strongly pressed to be more precise and definite. I may here remark that he invariably adopted this course when minute inquiries were made regarding any definite symptoms; and his manner during the medical examination strongly contrasted with his manner during the legal one. This *headache*, so far as I could gather, affects the back part of the head, and is, probably, of a congestive character. Mr. — (*his own medical man*), I think, so designated it. This would, unquestionably, be relieved by the erect posture and conversely aggravated. At all events, it is not of sufficient importance to interfere with his ordinary pursuits, and is certainly, *per se*, no evidence at all of softening, or of a tendency thereto.

It is not at all impossible that this pain at the back of the head, and also a pain he vaguely complains of in his shoulder, are of a rheumatic character; the fact that they are worse at night favours this view.<sup>1</sup> Purer air and more exercise would be much more conducive to recovery than the condition in which he was now living.

This view was confirmed by the condition of the urine, which was subsequently examined.



I should add that, during the whole of his protracted examinations, there were no signs of hysteria, which so much excitement would almost certainly have induced in a person with enfeebled mind or softened brain.

II. With regard to any prospect of future softening. It cannot be denied that persons who have had severe concussion of the brain are occasionally liable to softening thereafter, and (as is believed) therefrom, even after a lengthened interval of several months (12-48) of apparently perfect health. In the absence of any present indications of such a process either existing or impending, this, should it be referred to by *his medical advisers*, should be treated as a remote contingency of inappreciable value.

It is most probable that it will be contended on the part of the *plaintiff* that he has sustained "spinal injury and concussion" as well as cerebral. It is not at all improbable that his case may be rested on this chiefly or even exclusively. Should this point not be raised the following considerations may be ignored. It is necessary to consider this question in detail. The term "spinal disease" is often used in a very vague manner, and Mr. — (the *first medical witness to be examined for the plaintiff*) should be pressed to say whether he supposes the disease to affect the muscles, ligaments, or bones of the spinal column, or the membranes of the spinal marrow (cord), or the spinal marrow itself.

a. Membranes of the cord.

It is highly improbable that a fall or concussion without fracture should produce any disease of the membranes alone; there are no symptoms of its existence; there is no pain in the lower extremities when they are moved, and no spasms, cramps, or twitches of them; neither is there any tucking up or contraction of the legs, nor any difficulty in bending them. Pain in the back is not of itself any adequate diagnostic symptom.

b. The cord itself.

An affection of the cord itself under such circumstances would be "softening."

This might be attended with pain at the seat of softening. But it would certainly by this time have produced symptoms of paralysis of the lower extremities, and probably of the bladder; and it would probably have been attended with cramps, pain, or spasm in the legs or thighs. None of these exist, as he himself admits.

c. There is no pain on bending the back, *therefore* no injury to ligaments.

d. There is no pain on pressing the muscles or on forcibly rubbing them, nor on motion, *therefore* no injury to muscles of back.

e. Disease of the spinal column.

He informed us that he had pain in the back, which is a symptom of diseased bones; but it was impossible to get him to be at all precise



as to its seat, or at all to define its character. When disease exists in the bones patients never find any difficulty in doing either of these things.

This indefiniteness is characteristic of muscular and fibrous rheumatism, and this backache, like the headache and shoulder-pains, if these have any existence, are probably of a rheumatic character.

The only definite symptom which I could discern was that he bent himself backward when pressure was made over the last half of the dorsal vertebræ and the upper lumbar. He did this equally whether the finger was passed lightly along the spine, or the pressure was much more considerable, even when he was struck on those parts. He gave vent to no expression of pain, nor did his countenance indicate that he suffered any. There is no irregularity (curvature) or undue prominence of any of these vertebræ.

This single phenomenon is not, and cannot be taken as any adequate proof of any disease of the bones, in the absence of corroboration, for the following reasons :

Disease of the vertebræ very rarely indeed commences, even from injury, after forty years of age ; it is invariably confined at first to one or two—at the most two. The tenderness, irritability, or pain, which pressure or percussion elicit in such a case, is limited to the immediate site of the disease, except, perhaps, when it affects the neck ; it is notably increased by motion, especially by any twisting or bending of the spinal column itself. It is always much more severe upon strong than upon slight percussion. When it extends to several vertebræ, this is only after a very long time, probably years, and is always accompanied by remote symptoms, such as spasm, cramps, twitchings, dragging, or paralysis of one leg or both, or paralysis of the bladder, as well as by curvature of the spine itself. The absence of these has already been mentioned. The following circumstances seem to be absolutely conclusive that there is no disease of the vertebræ.

When I asked him to sit up in bed that I might examine his spine I offered to assist him. Of this offer he took no notice, but raised himself directly without any difficulty or apparent pain (for evidence of which I narrowly scrutinized him), although he was lying flat on his back. No motion could be more difficult or painful to a person with diseased dorsal vertebræ. Before getting out of bed, and when half raised up, and leaning on one elbow in a semi-erect position, his wife proposed to put on his stockings. This she did, not very deftly, and during the process he remained, although there was no necessity for it, in this most constrained position, than which none could have been more painful to a person with disease of the part supposed. He turned first on one side and then on the other, without any apparent difficulty or inconvenience.



Twice during *the legal* examination, becoming somewhat excited by a recital of some old grievances, he assumed a somewhat similar (*semi-erect, leaning on his elbow*) position, and neither time did any expression of pain shade his countenance.

When he got out of bed he walked the length of the room with perfect freedom and alacrity, although *one of his medical advisers* called out to him to be very careful in his movements. He stood by the fire till asked to sit down. He sat till he was told to go back to bed, then rose and walked back to bed with equal ease, and without any appearance of pain or fatigue.

When a man can take a certain amount of exercise without pain, difficulty, or exhaustion, he can do more: there can be no good reason why he should always lie in bed, and make no effort to get about.

I can see no reason why he should not have gone to *the last assize town, a few miles off*, nor much why he should not go to *the next assize town some distance off*.

His muscles are firm and well nourished, wonderfully so for a man who has been so long in bed. His pulse is also good.

On the whole there can be no reason to think that he has any disease of the spine whatever, or that he is in any way permanently injured.

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