

*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.