The Tay Bridge disaster and the major personal injury claim

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Rep. B. 4 The collapse of the Tay Railway Bridge on Sunday December 28, 1879 was of global interest because of the loss of the whole train and all crew and passengers, and also because the bridge had been an engineering triumph when it had opened the year before. The associated legal aspects of the disaster have been neglected. Professor David Swinfen put the event in context, at least, when he wrote that it was

”an age when it was not expected that the State would step in and provide for those left destitute by the loss of husband or father, it was expected that private charity would do something to cushion the blow, at least in the ***Rep. B. 5*** short term”(*D.B. Swinfen, The Fall of the Tay Bridge (Edinburgh, 1994) p.53*.).

Immediately following the disaster, a relief fund was established by concerned citizens forming a committee, but the sums dispersed to the relatives of the deceased were generally small and in not intended to provide for long term support. For the latter, relatives were required to look to the North British Railway Company for compensation and the professor opined, “it would appear that the company met its obligations in this respect” (op. cit. pp.54–55).

Prior to considering the major claim, it is as well to remind oneself of the vast discrepancy of the value of money between 1879 and 2015. Some guidance in understanding that void is to be found at http://www.measuringworth.com/ [Accessed January 16, 2015]. The purchasing power calculator of the various options indicates that £500 in 1880 becomes £43,430 in 2014. That calculator has been applied to all sums mentioned in the historic papers and appear in brackets below.

There seems to be no literature with evidence that supports the view of the company doing what ought to have been done and, indeed, the professor adds:

”One is less impressed by the generosity of the North British when it is discovered that having settled most of the claims for compensation, the company proceeded to ask for their £500 contribution [to the relief fund] to be returned, as did the directors [who had themselves paid in £500]. In the end, out of donations totally £6527 [£66,900], less than £2000 [£173,700] was spent on relief, most of the balance being sent back to subscribers”(op. cit. p.55).

A full trawl of all the North British Railway Company papers, such as still exist, might produce further evidence in regard to the decisions of the company. However, it might be asked why might the directors have asked for funds given after a disaster to be returned? In seeking to answer that question cognisance might be taken of a remark in *The Times* on December 30,

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1880, the first anniversary of the Tay Bridge disaster:

”Fortunately for the North British Railway Company no one holding a high position lost his life, and in consequence the compensation claims were small and settled without much difficulty”(op. cit. p.55).

That was unfair to the deceased and, simply put, incorrect.

The law

On the death of Sir Thomas Thornton, solicitor in Dundee to the North British Railway Company, it was reported that no litigation had followed the collapse in 1879 as all claims had been settled privately: (1895–1896) 3 S.L.T. 89. In this context it is relevant to note that the historian of the law of railways has written:

”Passengers generally won and employees generally lost personal injury lawsuits against railway companies because Victorianera judges willed this to be the prevailing pattern of outcomes … The judge-made law of passenger accidents … cost the companies money, and they opposed it with equal passion. By the 1850s railway capitalists were calling on Parliament to create a more internally coherent and consistent law of accidents, one that emphasised that passengers also freely assumed the physical risk associated with steam railway operations. For the entire period 1840–1875, however, the key judicial choices in the field of accident law were not disturbed”(*R.W. Kostal, Law and English Railway Capitalism, 1825–1875 (1994), pp.256–257*).

The North British Railway Company could not avoid any claims on the basis that the collapse of the bridge carrying their line was not the fault of the company. The relationship in law established by a contract of carriage between railway company and a passenger created the obligation to take care of the passenger to the end of the journey contracted for, and the railway company could not be allowed to plead that it had delegated the duty to another: *Horn v North British Railway Company (1878) 5 R. 1055*. An action lay against the North British Railway Company as the accident had happened on their line on their bridge. Moreover, there seems to have been then a judicial weariness with railway cases. Lord Ormidale in one case observed:

”Accidents on railways and consequent actions are unfortunately so frequent— perhaps unavoidably so…”*Adams v Glasgow and South Western Railway Company (1875) 3 R. 215*.

The claim

The relevant files of the North British Railway Company are in the National Records of Scotland: reference BR/NBR/10/21-22; in particular 10/21 (cases 1–28) and 10/22 (cases 30–42). In the Dundee City Archives there are also notes of the claims amongst the papers that had been donated in 1990 by the successor firm ***Rep. B. 6** of that of Sir Thomas Thornton: reference GD/TD 1, file 24, and item 13. It would appear that the papers in the National Records of Scotland are those from the head office in Edinburgh while those in the Dundee City Archives are notes from the solicitors’ office in Dundee.

The North British Railway Company records consist of individual letters and copy letters: the latter are handwritten *copies* of letters sent from the railway office. There are letters for individual claims and nearly all of the 39 cases are annotated in pencil: these suggest that there were two sources of payment, a “fund” and a “scheme”. The claim following the death of David Jobson was described by Thornton writing to GB Nieland, Company Secretary, North British Railway Company, Edinburgh, as “by far the most important” (letter dated May 26, 1880).

David Jobson was aged 41 years and lived at 3 Airlie Place, Dundee. He had been returning home and he was thought to have been sitting in the second class carriage (as the first was known to be empty). His family had connections with Dundee banking and Russian flax merchants. He had been a town councillor in Dundee Town and also police commissioner and a member of the Public Library Committee. He left a wife (who was deaf) aged 36 years and five children from 13 years of age to a recent baby.

As a councillor he had opposed publically a Bill that was proposed to amalgamate railway companies. He opposed the private monopoly that would follow from the amalgamation and suggested in its place nationalisation of the railways, not least on account of how far behind they were in reliability and cheapness than those on the continent: *C. McKean, Battle for the North: The Tay and Forth Bridges and the 19th Century Railway Wars (2007), pp.3, 100, 172*.

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His occupation was given as "oil and colour merchant" and that of his father as "wine merchant". The body of the deceased was recovered six weeks after the disaster, when he was found on February 17, 1880 near Newport pier: *M Nicoll et al, Victims of the Tay Rail Bridge Disaster (Tay Valley Family History Society, 2005), p.32*.

Mrs. Jobson was represented by David Duncan, junior, who first enrolled as a solicitor in 1860 and practised on his own account from 41 Reform Street, Dundee. Thomas Thornton was a partner in Pattullo & Thornton at 1 Bank Street, Dundee: *Scottish Law List and Legal Directory for 1880 (1880), pp.111–112; 167–168.*

The correspondence shows regular meetings between Duncan and Thornton, not surprisingly as their offices were really only yards apart across a street. The initial discussions were not supported, it seems, by evidence of any of the particulars of the deceased. An early letter of July 1, 1880 refers to a claim initially of £20,000 [£1,737,000], although that was reportedly reduced to £14,000 [£1,216,000] and then £10.000 [£868,600]. However, as at the date of the letter the solicitor for the widow and his trustees said that he would recommend acceptance of £8,000 [£694,800]. Thornton advised the Company Secretary that he [Thornton] had a strong impression that he could get Duncan to take somewhat less. The letters asked, "Will you authorise me to settle for any sum not exceeding say £7500 [£651,400] or to what figure would you go?"

Subsequent letters suggest alarm on the part of the Company Secretary at the sums being mentioned. That of July 16, 1880 asked for personal details of the deceased:

"the length of time he has been engaged in [his business], the rental of his business premises, the salary paid to his chief assistant, the rental of his private house and the number of servants he kept there, and also a copy of his Return for the past 6 years to the Income Tax Commissioners".

The information seems to have been provided and in a letter dated August 18, 1880 Nieland said:

"£3500 [£304,000] should suffice, as that sum would produce an annual income in perpetuity of £175 [£15,200] to say nothing of the reversion to the principal; and with an income of £400 [£34,740] which Mr Jobson's Income Tax Return shows him to have been earning."

Correspondence over the next few months shows a series of meetings at which the extremities of the claims were being moved to a central position: Duncan wanted £6,000 [£521,100] and Thornton said the most offered was £4,500 [£390,900], but by October 29, 1880 Thornton could write that he had got Duncan to say that he would take £5,500 [£477,700] payable at or before December 31, 1880. Nieland replied on November 1, 1880 saying that Thornton had to settle the claim for £5000 [£434,300], "which was quite enough". An official letter also on November 1, 1880 to Thornton expressed the wish by the Directors to avoid litigation and thus authorised £5,000.

That sum proved not to be enough and on November 17, 1880 Thornton wrote to say that, ***Rep. B. 7** after two further meetings, Duncan had authority to settle at £5,400 [£469,000], "excluding expenses incurred to Mr Duncan (which however are of small amount)". The correspondence is not complete at this point, but settlement at £5,400 payable by December 31, 1880 with Duncan's costs was the agreed sum with Company concurrence (letter December 9, 1880).

The figure settled on was the result of negotiation, although there seemed to be no real reference to settled legal principles to be applied in reaching that figure. There was no specification of what element of the figure applied to what aspect of the loss and the final figure does not differentiate between widow and children. There is no reference anywhere to any insurer as the solicitor for the widow dealt directly with a solicitor for the railway company.

The claim for the death of David Jobson was clearly the largest and the thought might arise that payment to claimants was merely passed off in accounting terms as a direct cost of business. Alternatively, if there had been an insurance policy of sorts, future premiums would have been increased greatly. Either way, it may be that the directors had to ask for the initial contributions to be returned in order to try to balance the books and keep the company solvent after settling compensation claims and paying for the cost of a new bridge.

Concluding remarks

In mid-nineteenth century Britain, the emergence of the railways offered a challenge not only to existing business practices

but to notions of business morality too. The traditional way of doing business changed, and existing notions and practices of trust were insufficient to contain the organisational complexities and the scale which accompanied the emergence of railway companies, the first modern big businesses in Britain: G. Channon, “The Business Morals of British Railway Companies in the Mid-Nineteenth Century” (1999) 28 Business and Economic History 69.

In that context, the directors of the North British Railway Company almost certainly had in mind public relations and so were anxious to avoid litigation: it would be difficult to offer industry and the paying public a new bridge to cross while challenging claims in the Court of Session for compensation from bereaved families. The literature of the Tay Bridge collapse is laden with the tragedy of the event, but no attempt seems to have been made to investigate the very marked social distinctions inherent in the extent of the individual claims, which may be where the real pathos is to be found.
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