

## **The Accident on the Oystermouth Railway.**

It is with much regret that we have to report the accident which occurred on this railway on the 27<sup>th</sup> of August 27 last, terminated fatally, the poor little fellow, Septimus McNamara, dying at the infirmary about 2 o'clock on the morning of Friday last. The coroner Edward Strick, Esq, opened the inquest on the body at the Infirmary the same day. Charles McNamara, sailmaker, deposed that his son was four years and eight months old. On the 27<sup>th</sup> of August last, from information he received, he went to the Infirmary and saw the deceased with his left leg much crushed. He was under the care of Mr. Mowat, the house surgeon, and Mr. Hall. He subsequently had his leg amputated by Mr. Hall. He saw him daily and his mother was in constant attendance up to his death. He attended the parochial schools, accompanied by his brother about two years older.

Sarah Jane Winchcombe, daughter of Celia Maria Winchcombe, of Fleet Street, said:- I am eleven years of age. I knew the deceased. I was in the habit of meeting him at the National School in the Oystermouth Road. Yesterday fortnight, from half past four to a quarter to five o'clock, we had come out of the school building. Between the railway and the school building is a long narrow open passage the length of the frontage of the building. [The railing is about four and one half feet high] a train was coming up from the direction of the Mumbles. I was standing in the passage looking through the rails at the train. I was near the end next the Mumbles; the deceased was at the other end of the passage. No one else was there. He was standing about twelve inches from the end of the railing. I am sure he was inside there is no other gate leading into the passage from the adjoining road. The railway carriage was drawn by two horses. When the carriage passed me I looked after it and when near where the deceased was standing I saw the driver slash twice with his whip. The carriage was going on at the time. The second time he slashed the whip caught the deceased. It twisted around the deceased's neck and arm and dragged him under the wheel of the carriage. I ran along the passage to wards the deceased, and I saw the wheel pass over him. The driver slashed twice very quickly. The thong was loose. I did not see the deceased move from where I first saw him standing til the whip caught him. He was not running. There were no children on the road at the end of the main or passage at the time. The deceased was not shouting to the driver. The last wheel ran over the deceased I did not hear the driver call out to him.

George Williams of 25, Wellington Street deposed:-I am a Mason. Yesterday fortnight, the 27<sup>th</sup> of August, about half past four in the afternoon, I was standing next to door but one to the Inn it is near to the national school and saw the deceased standing at the end of the railing, in front of the school; his side was towards the railway carriage and he was looking in the direction where I was standing nearer the town. He had his left hand on the end of the railway, he was standing still. I saw him in that position before the carriage came out. When the carriage reached the deceased the driver slashed with his whip twice-at the deceased. He used some force. When the driver slashed the second time I saw the deceased fall on to the railway. I next saw him being dragged along between the hind wheel of the carriage and the "guard" in the rear of that wheel. He was dragged about 6yds and then got free, and I saw him picked up immediately by the guard of the railway. I was about 40yds. From the place of the accident I saw a little girl inside the railings. There were no little boys at the end of Parliament Street at the time spoken of. It was a high carriage. I was standing on the pavement behind the railway, and the front of the houses. The guard who picked up the deceased came from the road side of the carriage.

Mr. George Mowat, house-surgeon of the Infirmary, deposed that when he came in from his rounds after visiting the out-patients, he found the deceased in the house. Mr. James Hole, who was the visiting surgeon of the week, was there in attendance. Examined the deceased and found he had a compound, comminuted fracture of the left leg extending to the knee joint the soft parts were very much a lacerated. The father came down and we informed him of the necessity for amputation. He expressed a wish that Doctor Padley should see him, and that gentleman called and was present at the amputation. The deceased appeared to be progressing favourably for a week after the accident, diarrhoea then supervened, the healing of the stump was arrested, and the child gradually sank and died from pyoemia. The cause of death was no doubt attributable to the injuries sustained. There was much loss of blood after the accident and before the operation. The Inquest was then adjourned.

### **Wednesday**

The adjourned inquest upon the body of Septimus McNamara was held at the Police Court on Wednesday before Edward Strick Esq, coroner. Mr. Clifton: on the behalf of the father of the child, and Mr. Gaskoin: on behalf all the Railway Company. Mr. Gaskoin produced a plan shewing the position of the parochial schools with respect to the Railroad, and said he now proposed to call: the persons who were travelling on the train at the time. It so happened that there were only two persons on the train at the time of the accident, and he now proposed to call those disinterested parties.

Miss. Lucy Ann Read, No 1, Colonnade, Saint George Street, Bristol, sworn, said: I remember the occurrence on the Railway on Thursday the 27<sup>th</sup> of August. I was travelling up from the by the railway to Swansea. The carriage left the Mumbles at 4 o'clock. It was a high carriage. I was seated on the top, with my face towards the bay, and therefore, towards the accident. I know the Parochial Schools, I remembered the carriage passing them. When passing that building the number of children coming out from the school attracted my attention. It was then about half past four or 25 minutes to five. I saw the children coming from the gate way, crowd down the passage, and into the street; some were already into the street. From the position I was in on the carriage I had a good opportunity of seeing them. Two children were running in the road towards the carriage; whether they had come out of the passage or not I cannot say, I mean the road at the end of the passage called Parliament Street. The driver of the carriage struck his whip back, slashed his whip behind him. The child nearest the driver ran back, but the child furthest from him [the driver] continued running, the driver meanwhile was driving on. Then I knew nothing more until I saw the child lying on the road, for I was seated over the wheel that ran over the child. The child was running towards the carriage when I saw him, and then he ran underneath me, as it were, and I then lost sight of him. I concluded it was the same child who was running towards the carriage which the wheel had passed over. The child when I saw him running was a very short distance from the carriage. The driver might have slashed twice, but the whip came back again. The whip was always in my sight. The thong of the whip was loose as far as I can say. It did not appear to me to have had a noose made. As soon as the driver slashed the whip it returned to the driver. It certainly did not catch in anything. I did not see the child go under the wheel, and with the exception of seeing him running towards the carriage, I cannot say how he got under the wheel. The driver drew up immediately after the accident. I do not know whether anybody called out to the children. The driver could not see the child because he was in front and it was the hind wheel which went over the child. The guard got down and took the child most carefully to the Infirmary. I did not know the child, I was only a visitor at the Mumbles.

By Mr. Gaskoin: the driver was going quite quietly, I heard no whistle or should certainly say the whip did not strike the child, I saw the lash and saw it return again to the driver

By Mr. Clifton: I see the whip now produced in court, I cannot undertake to say that the whole of the long lash of the whip was loose. It was on the school's side of the tramway the child fell, in the open Parliament Street. The driver slashed back, he did not slash the horses. If the whip had gone across my eyes, I must have seen it. I could see the railings of the school from where I was seated. If the other person's have deposed that there were no other children about the schools they must certainly have been mistaken. I should think there were 40 or 50 children there. I cannot speak as to numbers but I should say at least 30 children. My impression was that the child ran in to the train and not the train into the child. I saw both children running towards the passing train. I did not hear the driver call out. I was so frightened of a number of children running up. My fright would quicken my idea of danger. My idea was that the driver was slashing his whip at the children to prevent from running after the train. One of the children ran back after the driver had slashed his whip, I should think the slash of the whip was down more than a second or so we had gone perhaps half a dozen yards after the whip was slashed before the accident. The driver pulled up as quickly as possible. There was only one young girl on the train besides myself. If the master and mistress of the school say that there were no other children there they must have been mistaken.

By the jury: the large number of children were inside the rail and in the street.

Jane Morgan deposed: I live at Mrs. Jones's Queen Street Neath. On the 27<sup>th</sup> of August I was living at Mr. Davies's the minister, and I was going up from the Mumbles to Swansea, by the train which leaves the Mumbles at four o'clock. It was a high carriage. I remember the lady travelling in the same carriage. I was outside the carriage, sitting near the lady, on the same side, I know the schools on the Oystermouth Road and when passing them the driver cut the whip, and a little boy ran up the passage and another ran towards the train. There were a number of little boys there, some standing inside the railings, next the building, and some inside, next the road. Two little boys in particular, run after the carriage. All the boys were standing together before these boys began to run. It was then the driver smacked his whip once, then I heard the cry, and saw the little boy lying on his side on the rails and he was crying. The driver then pulled up. A woman then came up to the child, and the guard came and picked him up. A great number of people came around the carriage, on the guard then took the child in the direction of the Infirmary. The driver asked if the boy was hurted much, and somebody said "yes ". I did not see the wheel pass over the boy. I fancied he must have been running, and then fell down.

By Mr. Gaskoin: I did not see the whip strike the boy. From the distance the boy was off I do not think the whip could have struck him.

By Mr. Clifton: I was next the driver. The driver did not slash more than once. Mr. Steele, the railway official, came over to me on Saturday night, and asked me what I had to say about the accident, and I told him the same as I say now. I cannot say whether the driver held the whip loose or the part of the slash in his hand.

The little boy was lying between the carriage and the railing. When the driver slashed the whip it must have been about the front of schools. The boy was on the narrow piece of road between the school railings and the tramway. I and Miss Read were the only passengers. I did not see a Mason of work near the spot. I did not see anybody standing near besides the boys of the school. I saw the little children before we came

upon them. The driver did not call out; he allowed the train to come up to me if the school railings, and then he smacked the whip.

By the Jury: there were not two solitary children standing near the schools; there were a lot of children there.

Emily Davis sworn: I reside at Saint Helens Schoolhouse. I am mistress of the Parochial Schools Oystermouth Road. I dismissed the school, on the day in question, at twenty five minutes past four; that is my regular time to do so. I sent the teachers out to send the children home. I was not outside with the children myself; I remained in the school. Miss Winchcombe, the young girl first examined, was one of the monitors. I always send the children home rather before the stated time, so as to avoid the train. A proper time is half past four for the children to be dismissed.

Elisa Hulland, daughter of Henry Hulland, engraver of Bond Street examined: I am fifteen years of age and am teacher at the Parochial Schools. I remember that day in question, and the children coming out of school. When the first train came up several of the children had gone away. There were three trains that day. And it was the third train which ran over the little boy. When I went into school, just as the second carriage was passing the gate, the little boy was standing inside the railings. I saw the horses of the third carriage down by the Infirmary I did not see the accident. The little boy's brother was inside the yard, and there were one or two of the children there, not more

By Mr. Gaskoin: I'm quite sure I saw three carriages come up that afternoon.

By the Jury: I saw two ladies only on the last carriage. Before the last carriage came up a few of the children were in Parliament Street, playing under the archway, and the others had gone home. It was my duty to see the whole of the children, including the deceased go home. The deceased's brother was in the playground, and that is the reason why I had not sent them home.

Mr. Gaskoin said he thought it right to say there were only two trains, and not three, on the afternoon in question, as deposed by the last witness. To prove this he called.

John Davies, of 4, for Rutland Street, guard of the railway, who deposed: I remember the 27<sup>th</sup> of August. I was in charge of the 4 o'clock train from the Mumbles. There were two carriages started: I was in charge of the last one. The first was a low carriage, the last a high one I remember when coming up by the Parochial Schools. We were about 150 yards behind the first carriage. When within 30 or 40yds. From the Parochial Schools. I saw three or four little boys in the stooping attitude, by the side of the line, in front of Parliament Street. The first carriage had then passed. I blew my whistle, and the children ran off to the dock side of the line, up Parliament Street. When we got opposite Parliament Street, I felt a sudden jerk on the hind wheell. I was riding on this step, on the road side. On feeling the jerk I looked around to see what was the matter, and then saw a little boy's leg on the line. I immediately pulled up and picked up the child. I know nothing about the driver slashing with his whip. Did not see him nor anything else, besides what I have stated.

By Mr. Gaskoin: when I pulled up there were a number of little children there. Pulled up the carriage in about nine or 10 feet. after I felt the accident.

By Mr. Clifton: could not see what took place because I was on the opposite side. The driver could see the boys even better than I could. This being the whole of the evidence,

The Coroner proceeded to sum up case to the jury, remarking that the whole of the evidence was now before them; and; from that evidence, the facts of the case lay in a nutshell. Of course they all sympathized acutely and deeply with the parents of the child in this unfortunate event, for it was a most unfortunate affair; but still they must

not allow their feelings of sympathy to lead them away from their duty as jury men, which was to enquire when, how, and by what means this child came by his death. With this view they now had before them the whole of the evidence which can be obtained, and there was no material contradiction in the facts of the case as laid before them in that evidence, except with respect to the number of children who were standing and playing about at the schools at the time the carriages passed; but whether there was a number of children or not it was immaterial. He would first bring to their notice, simply and briefly, the facts of the case, leaving the jury to draw their own conclusions therefrom and then he would lay down the law bearing upon the case, and you must ask them upon that point, to take the law from him as he should lay it down. The first evidence which had been adduced was that of the father of the child, who, however, had merely identified the body as shewn the jury as that of his son. After the evidence of the father, came that of Mr. Mowat, the medical officer of the infirmary, who deposed that the child had died from the effects of the injuries he had received from the accident, and of that there can be no doubt whatever. And the jury would have to say by their verdict whether that accident had arisen by reason of the negligence or carelessness of anyone; and when he said by carelessness or negligence he meant to such culpable negligence on the part of anyone as would justify the jury in sending such person for trial for manslaughter; or whether on the other hand the death of the child resulted from an accident, or what was termed misadventure. The first witness called who could give any account of the affair was Sarah Jane Winchcombe, and she had given her evidence very clearly; though she was but a child being only eleven years of age, she had shewn a great deal of intelligence. She had stated that she and a little boy were the only two who were standing in the passage at the time the train was passing, and that the other children who had not left, amongst whom was the deceased's elder brother, were in the playground; if such was the case the deceased would appear to have been in a place of safety. She stated that the driver of the carriage slashed his whip twice, and that the slash of the whip caught the child round the neck and arms, and dragged him under the wheel of the carriage. George Williams stated that the driver slashed his whip, the deceased child had his hand on the end of the railing, and was therefore at the extreme end of the railing, and if that was the case he was not in the place spoken of by the previous witness. Williams stated that the driver slashed his whip twice, and that when he slashed the second time, the child fell under the railway carriage, and was dragged a distance of about 6yds. Before he could get free. That was a point for the jury to consider, having regard to the other evidence. The next witness called was Miss Read, who had given a very clear account of what had happened, and her evidence to some extent had been confirmed by that of the little girl Hullah, who was called subsequently. Miss Read stated that most distinctly that when the carriage passed the schools she saw several children in the passage, and in that respect her evidence differed from that which had been given by the previous witnesses. Miss Read had stated that she saw several children playing in Parliament Street and two little boys ran down Parliament Street towards the carriage as it was passing. The driver did use or slash his whip, as she supposed, to prevent the children coming to the carriage, and one of them got under the wheel of the carriage, but she could not tell how. Now Miss Holland in her evidence, stated that when she left there were children playing in Parliament Street, and before the last carriage came up, and it was therefore quite natural that the children should run towards the carriages, seeing them coming up. The guard of the second carriage had deposed that there was a distance of about 150yds. Between the first and second carriages, so that the children are running would reach the spot just as

in the second carriage was passing. There was there for no reason to doubt the evidence of Miss Read. She had been closely cross examined by Mr. Clifton, but she had persisted in her first statement. She saw the driver slash his whip but she says it was to prevent the children running into danger. There was one rather strange thing with respect to the evidence of the first witness as compared with that which had been given by Miss Read. The first witness had stated that when the train passed she saw the deceased child standing within the railings, and if such being the case then it was evident that the child who had run away when the driver slashed his whip was not the deceased. But that was not very material that child had got under the train, and it appeared to him that the jury could not come to any other conclusion than that Miss Read had come forward to speak the truth not to screen anybody but to give a clear history of the whole transaction so far as she knew. The evidence of Miss Davies, the school mistress, was not important she had merely spoken to having dismissed the school about 25 minutes past four o'clock; but he thought it would be as well for the jury to suggest that some steps should be taken to alter the time for the dismissal of the children so that they should not come into contact with the danger of the passing trains. If, for instance, instead of the children being dismissed at 25 minutes past four they were dismissed at a quarter past four, and were sent home, they would not be in danger of meeting of the trains. If, too, when the schools had been erected the means of exit for the children had opened into the wide street, instead of just at the neck of the narrow passage, probably the accident would not have happened, although it was only a right to add in this instance the evidence went to shew that the children, the deceased and the other who turned back, ran from the open street. Having now glanced at the evidence which had been laid before them, he would take the case as stated against the driver of the train. One or two of the witnesses would seem to find some fault with the driver of the train; but it was not sufficient simply to find fault in order to make the driver answerable for the death of the child, he must have been engaged in some unlawful act and performed it in an incautious and improper manner. It had been held in law for where a man doing that, without any intention to inflict injury, unfortunately kills another, where the act is lawful and is performed with the due caution, and in a proper manner and without any intention of bodily harm the effect is merely accidental. He need hardly tell them there were various degrees of manslaughter, the circumstances connected with some cases reduced it to a very trivial offence, punishable with a very slight term of imprisonment or even a small fine, whereas there were other cases which bordered very closely up on murder. Suppose the driver did slash his whip as he saw the boys running towards the train, was it not natural that he should do so in order to prevent them, if possible, from running into danger; and even supposing that the thong of the whip ( as alleged by one or two of the witnesses, but of which there was a very considerable doubt) caught round the neck and arms of the deceased, even then, as it appeared to him ( the coroner) it was a pure accident. The driver was in the exercise of his usual lawful application in driving the carriage, and he had not used any unlawful weapon. Unless, therefore, it had been shewn to what the driver had done was an act of gross carelessness, or that he had done it out of mischief, he ( the Coroner) did not see how they could come to any other conclusion than now that he had slashed the whip as a matter of precaution; and even if thereby the boy had been dragged under the wheel, it was without any intention to inflict any injury, and, therefore, was accidental, or a misadventure, and for which he was not liable. The law held that if, in the pursuit of common or ordinary occupations, death unfortunately ensued from an act done with due caution and regards to the safety of others, the killing will be misadventure only;

as where a man is at work with a hatchet, the head of which flies off and kills a bystander the act is lawful, and the effect is merely accidental. So if workmen throw stones or rubbish in their ordinary occupation over a wall, or from a house in a retired situation, or where persons are *occasionally passing*, if it be not in a populous town or place much frequented, and timely notice be given, then the killing will be excusable and be misadventure only. In this case, as he had before remarked, no dangerous weapon had been used requiring the driver to be more than ordinarily careful. If a man who carelessly used a gun, for instance, that being a dangerous weapon, and death ensued, he was liable to manslaughter; but such was not so in the present case. In driving a carriage on the road, it was not at all an uncommon thing for drivers to use the whip to prevent children running after the carriage and thus run into danger. In this case, what the driver did was no more than use ordinary precaution to prevent the children running after the carriage, and even if the thong – of the whip did reach the child (of which as he had said before, there was very considerable doubt), even then that would not justify them in coming to a conclusion that the driver of the train had been guilty of manslaughter. He had now gone through the whole case, and had given them in his opinion as to the facts and had also told them the law as bearing thereon. It was for the Jury to judge of the facts of the case; but, as he had remarked, he must ask them to take the law from him, and be guided thereby.

The room was then cleared for the consultation of the jury, and after upwards of two hours deliberation, they returned the following verdict:-

“ That the deceased was accidentally run over by a railway carriage on the Oystermouth Horse Railway, and received such injuries that he died therefrom; and it is the opinion of nine of the said Jury ( there were fifteen jury men) that the driver of the carriage be more careful in passing the Parochial Schools in future.”