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December 4, 1924.

Mr. J. E. McMullen,
Solicitor, Canadian Pacific Railway Company,
Vancouver, B. C.

Dear Sir:

Re: William Armstrong, Deceased.

The writer had a conference this morning with Mr. George F. Hannan with reference to the claim of Mrs. Dolly Armstrong on account of the death of her husband. We read to Mr. Hannan a digest of the evidence taken before the coroner's inquest and also portions of the statements taken from witnesses in connection with this matter. We found that Mr. Hannan had quite a complete report of the proceedings at the coroner's inquest. These proceedings were reported in the Nelson Daily News of November 3d and November 4th, 1924, and were much more in detail than the digest of such proceedings attached to your file.

Mr. Hannan takes the position that the happening of this explosion under the doctrine of res ipsa loquitur creates a prima facie case of negligence against the railroad company and that the burden of proof would be upon the railroad company to exonerate itself from liability. It is his theory, of course, that this explosion occurred by reason of the leakage of pintsch gas from the gas tanks into the day coach. This gas is lighter than air and would naturally rise to the top of the car. He admits, of course, that if the explosion was caused by gas, that the presence of gas in the car immediately prior to the explosion would have been very noticeable. We called his attention to the statements of Conductor Turner and Trainman Marquis that within less than a minute prior to



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the explosion they had both passed through the day coach into the baggage car and that they noticed no smell of gas at that time. Mr. Hannan stated very frankly that if this testimony was true, it would disprove his theory, but he feels very strongly that this testimony is not true. On the contrary, he claims to have the statement of two witnesses to the effect that prior to the explosion the presence of gas in the day coach was very noticeable. He is not willing to give us the names of these witnesses at this time but we assume that one of the witnesses referred to is F. W. Shaver, whose statement appears in the file furnished us by you. Mr. Hannan further called our attention to the testimony of Mr. Gaskill that immediately after the explosion, he smelled a strong odor of gas in the car and that while being carried to the hospital at Nelson, he had several hemorrhages on the train caused by the presence of gas in his lungs. This, of course, may have occurred subsequent to the explosion, as it seems to be admitted by all witnesses that after the explosion, there was considerable gas in the car. Mr. Hannan also read us the statements of Drs. Eaton and Bennett who performed the autopsy on the bodies of the passengers who were killed in this explosion. These doctors both gave it as their opinion that the injuries to the deceased passengers could not have been caused by the explosion of an infernal machine, as there was no evidence of shrapnel about the bodies. If you have not a copy of the report or testimony of these two doctors, we think it would probably be worth your while to secure the same.

Mr. Hannan concedes that the finding of the clock and dry-battery in the vicinity of this wreck are strong points in support

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of the company's contention that this explosion was caused by some high explosive placed in the car without the company's knowledge. He contends, however, that this only raises a presumption and feels that in presenting this matter to a jury, they would not exonerate the company upon this evidence alone. In other words, it was Mr. Hannan's contention that the determination as to the cause of this explosion will be a question for a jury to determine and that unless the company is willing to make a settlement of his claim, in justice to his client he will be compelled to commence suit and leave the matter to a jury. He stated that he was in communication with representatives of other deceased passengers on this train and that it was his idea that all of these claims should be pooled for the purpose of bringing suit. He was not very definite in this regard and we doubt very much if any steps have been taken to approach the representatives of other deceased passengers.

Mr. Hannan suggested to us that he would be willing to settle this matter for \$7500. We, of course, told him that the matter had been sent to us for conference in the hope that after examining the company's file in the matter, he would be satisfied that there was no negligence on the part of the company and that, therefore, we had no authority to consider the offer of compromise settlement.

In accordance with your instructions, we are returning your file herewith. We are satisfied that Mr. Hannan, from the evidence which he has in his possession, will proceed to sue on this

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matter. This suit will undoubtedly be brought in Vancouver, as both the claimant, Mrs. Armstrong, and the railroad company are non-residents of this country, being both citizens of Canada. It is our opinion that our courts would not entertain the suit as between these parties. We believe that this is also Mr. Hannan's opinion.

If we can be of any further assistance to you in this matter, kindly call upon us.

Yours very truly,

LB/LH

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Encls.

By

A handwritten signature in blue ink, appearing to read "Lawrence Bogle", written over the printed name "BOGLE & BOGLE".