

IN THE MATTER of the Petition of Right of

DELIA E. RYAN.....SUPPLIANT;

1908

AND

January 7:

HIS MAJESTY THE KING.....RESPONDENT.

*Government railway--Passenger--Injury while alighting from train--
Negligence of conductor and brakeman--Liability of Crown.*

The suppliant was injured while alighting from an Intercolonial Railway train on which she was being carried as a passenger. Owing to the negligence of a brakeman in failing to open the vestibule door of the car next to the station platform, and leaving the opposite door open, the suppliant was compelled to use the latter. While in the act of alighting and before she had reached the ground, the conductor started the train, with the result that the suppliant was thrown down and sustained bodily injury.

Held, that both the conductor and brakeman of the train were guilty of negligence upon the facts shown, and that the Crown was liable in damages.

PETITION OF RIGHT for damages for bodily injury sustained by the suppliant alleged to have arisen from the negligence of certain servants of the Crown employed on the Intercolonial Railway.

The facts are stated in the reasons for judgment.

October 15th and 17th, 1907.

The case was heard at St. John, N.B.

G. W. Fowler, K. C., and *W. B. Jonah*, for the suppliant;

Mr. McKeown, K. C., for the respondent.

Mr. Jonah opened for the suppliant, citing *T. Eaton Co. v. Sangster* (1); *Mayne on Damages* (2); *Osborne v. London and N. W. Railway Co.* (3).

Mr. McKeown, for the respondent, cited *Adams v. Lancashire and Yorkshire Railway Co.* (4); *Gee v. Metropolitan Railway Co.* (5); *Dulieu v. White & Sons* (6).

(1) 24 S. C. R. 708.

(4) L. R. 4 C. P. 739.

(2) (7 ed.) pp. 70, 71, 73 and 77.

(5) L. R. 8 Q. B. 161.

(3) 21 Q. B. D. 220.

(6) [1901] 2 K. B. 669.

1908

RYAN
v.
THE KING.

Reasons for
Judgment.

Mr. *Fowler* replied.

THE JUDGE OF THE EXCHEQUER COURT now (January, 7th, 1908,) delivered judgment.

The suppliant was thrown to the ground and injured while attempting to leave an Intercolonial Railway train at Norton Station, on the night of the 13th of July, 1905. She was accompanied by her husband and daughter, and when the train stopped at the station mentioned they all went to the rear of the carriage, upon which they were travelling, to disembark. Arriving there they found the door of the vestibule next the station closed and the opposite door open. After attempting to open the vestibule door next the station platform and failing they attempted to get off on the opposite side. This the husband did safely, but as the suppliant was on the steps in the act of alighting the train was started and she fell to the ground, receiving serious injuries. By following the moving train the husband got the daughter off safely, and then returned to the relief of his wife. The brakeman whose duty it was to see that the door next to the station platform was open and the opposite door closed, and the conductor states that that was actually the condition of the carriage on arrival at Norton station. But it is absolutely impossible to give credit to their testimony in this respect. The brakeman was no doubt guilty of gross negligence in the matter, and it is not possible to exonerate the conductor from a want of care in starting his train before passengers had time to alight. I think the case presented by the suppliant has been made out, and there will be judgment for the suppliant for eight hundred dollars and costs.

*Judgment accordingly.**

Solicitors for the suppliant : *Fowler, Jonah & Parlee*:

Solicitor for the respondent : *E. L. Newcombe*.

*REPORTER'S NOTE.—Affirmed on appeal to Supreme Court of Canada, 9th March, 1909.