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 McLEOD *v.* THE QUEEN.

[E.C.] 1882

*Petition of Right—Personal injuries sustained on Government railway—  
Negligence of Crown's servants—Contract for safe carriage.*

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 April 1.

[S.C.] 1883

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 April 30.

McL., the suppliant, purchased in 1880 a first-class railway passenger ticket to travel from Charlottetown to Souris on the Prince Edward Island Railway, owned by the Dominion of Canada and operated under the management of the Minister of Railways and Canals, and while on said journey sustained serious injuries, the result of an accident to the train. By petition of right the suppliant alleged that the railway was negligently and unskilfully conducted, managed and maintained by Her Majesty ; that Her Majesty, disregarding her duty in that behalf and her promise, did not carry safely and securely suppliant on said railway, and that he was greatly and permanently injured in body and health, and claimed \$50,000. The Attorney-General pleaded that Her Majesty was not bound to carry safely and securely, and was not answerable by petition of right for the negligence of her servants.

*Held:* (per Henry, J.) That the action was not brought to recover damages arising from the mere negligence of management or maintenance of the railway by the servants of the Crown, but it was alleged and proved that for a good consideration a valid contract to carry the suppliant safely and securely was entered into by Her Majesty, and that she failed to perform it ; and that the suppliant was entitled to the sum of \$36,000 for damages for the injuries

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sustained by him. On appeal to the Supreme Court of Canada,—  
*Held:* reversing the judgment of the Exchequer Court, (Fournier and Henry, JJ., dissenting.) That the establishment of Government railways in Canada, of which the Minister of Railways and Canals has the management, direction and control, under statutory provisions, for the benefit and advantage of the public, is a branch of the public police created by statute for purposes of public convenience, and not entered upon or to be treated as a private and mercantile speculation, and that a petition of right does not lie against the Crown for injuries resulting from the non-feasance or mis-feasance, wrongs, negligences, or omissions of duty of the subordinate officers or agents employed in the public service on said railways.

That the Crown is not liable as a common carrier for the safety and security of passengers using said railways. See Can. S. C. R., vol. VIII., p. 1.