

year 1889. The falling of the rock was caused or hastened by the discharge into a crevice of the rock of water from a defective drain which was constructed and allowed to become choked up while the citadel and works of defence were under the control of the Imperial authorities, and before they became the property of the Government of Canada. The existence of this drain and of the defect was not known to any officer of the latter Government, and was not discovered until after the accident, when a careful inquiry was made. In the year 1880 an examination of the premises had been made by careful and capable men, one of whom was the city engineer of Quebec, without their discovering its existence or suspecting that there was any discharge of water from it. The surface indications, moreover, were not such as to suggest the existence of a defective drain. The water that came out lost itself in the earth within a distance of four or five feet, and might reasonably have been supposed to be a natural discharge from the cleavages or cracks in the cliff itself.

*Held*, that there was no negligence on the part of any officer of the Crown in being and remaining ignorant of the existence of this drain and the defect in it.

*Quere*: Whether the place where the accident happened was part of the public work?

*Semle*: The Crown may be liable although the injury complained of does not actually occur on, *i.e.*, within the limits of, a public work.

*Casgrain, Q.C., Pelletier, Q.C., and Flynn, Q.C.*, for suppliants.

*Cook, Q.C., Angers, Q.C., and Hogg, Q.C.*, for Crown.

[Nov. 11.

#### DURE v. THE QUEEN.

*Petition of right--Damages sustained by an accident on a government railway--*

*Burden of proof - Latent defect in the axle of car--Undue speed in passing sharp curve.*

On the trial of a petition for damages for injuries sustained in an accident upon a Government railway, alleged to have resulted from the negligence of the persons in charge of the train, the burden of truth is upon the suppliant. He must show affirmatively that there was negligence. The fact of the accident is not sufficient to establish a *prima facie* case of negligence.

The immediate cause of the accident was the breaking of an axle that was defective. It was shown, however, that great care had been taken in its selection, and that the defect was latent and not capable of detection by any ordinary means of examination open to the railway officials. The train had, immediately before the accident, passed a curve which, at its greatest degree of curvature, was one of 6' 52'. It was alleged that the persons in charge of the train were guilty of negligence in passing this curve and a switch near it at too fast a rate of speed. On that point the evidence was contradictory, and, having regard to the rule as to the burden of proof stated above, it was

*Held*, that a case of negligence was not made out.

*Flynn, Q.C., and Choquette* for suppliant.

*Osler, Q.C.*, for Crown.