

By that Act the subject in Canada was put in the same position as the subject in England under "Bovill's Act," 23 and 24 Vict. (U.K.) ch. 34. His petition, after a fiat was obtained thereon, was cognizable in the Exchequer Court of Canada. The question of the liability of the Crown in damages for breach of contract, was pursued with great historical research and acumen by the Court of Queen's Bench in the case of *Thomas v. The Queen* (1874), L.R. 10 Q.B. 31, and it was held on the authority of the *Banker's* case (14 How. St. Tr. 1), that the Crown had always been liable to the subject in matters of contract. Parliament, in enacting the Dominion Petition of Right Act of 1876, made it clear that there was no intention of giving to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy in England, under similar circumstances, by the laws in force there prior to the passing of the English statute above mentioned. That Act distinctly negatived any intention of giving to the subject any remedy which he would not have been theretofore entitled to. In other words, the English Petition of Right Act is to be regarded as nothing more than a statute of procedure. (See Clode on Pet. Right, p. 176.) Furthermore, by the sec. 58, of the Supreme and Exchequer Courts Act, then in force, it was provided that the Exchequer Court should have "exclusive jurisdiction in all cases in which the demand shall be made or relief sought in respect to any matter which might in England be the subject of a suit or action in the Court of Exchequer on its revenue side against the Crown." By all of which it appears that when the *McFarlane* case and the *McLeod* case were decided the subject in Canada has as full a remedy in the Exchequer Court against the Crown for breach of contract as the subject in England had at that time. Bearing this in mind let us proceed to examine the decisions of the Supreme Court of Canada in the cases mentioned.

Dealing first with the *McFarlane* case, the petition of right set out that a quantity of timber and logs belonging to the suppliants while in transit through certain slides and booms belonging to the Dominion Government on the Ottawa River were lost "by reason of the unskillful, negligent and improper conduct" of the slide-master. The claim sounded in tort, and the Crown pleaded that there was no liability, on its part, for the negligent acts complained of, and that no contract with the suppliants was shown for breach of which a petition would lie. So that as the action was shaped and presented to the Court, there was no jurisdiction under the statutes mentioned to entertain it. Beyond this, it is submitted, that the expressions of the Judges are *obiter*. Ritchie, C.J., while negativing any analogy between the case and that of a common carrier (p. 236) thought that even if a contract of carriage could have been made out upon the facts as between subject and subject, in any event the Crown would not have been liable as a common carrier on grounds of public policy, relying therefor upon *Whitfield v. Lord DeSpencer*, 2 Cowp. 764. Taschereau, J., concurred with the Chief Justice. Strong, J. (at pp. 242, 243) said:—"Without enquiring whether this analogy between the liability of the Crown and a private person for a breach of contract arising from the laches and negligence of an agent is correctly assumed, it appears very clear that there is no room for applying it in the present case, for the petition of right does not show any contract on the part of the Crown to pass the timber