# Canada Law Journal.

VOL. LIII. TORONTO, AUGUST-SEPTEMBER, 1917. Nos. 8 & 9

## *THE LAW OF COMMON CARRIERS.*

### *THE RESPONSIBILITY OF THE CROWN WHEN ACTING AS A COMMON CARRIER.*

By Charles Morse, K.C., D.C.L.

It has for a long time been accepted as a principle of law that the Crown, in respect of the conveyance of goods over Canadian Government railways, is not in the position of a common carrier. In the case of *Lavoie* v. *The Queen*, 3 Can. Ex. 96, the learned trial Judge made the following observation:—

"In *The Queen* v. *McLeod* (8 Can. S.C.R. 1), the majority of the Court, following *The Queen* v. *McFarlane*, 7 Can. S.C.R. 216, held that the Crown, in respect of government railways, is not a common carrier."

In view of its importance the soundness of this doctrine is well worth a careful enquiry.

Before discussing the opinions of the Judges in the two Supreme Court cases above mentioned, it would be well to examine some pertinent provisions of the Exchequer Court Act and the Government Railways Act, and then review the principles upon which the legal liability of a common carrier are based.

In the first place, by sec. 19 of the Exchequer Court Act, R.S.C. 1906, ch. 140, it is provided that "The Exchequer Court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might, in England, be the subject of a suit or action against the Crown, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it shall have exclusive original jurisdiction in all cases in which the land, goods or money of the subject are in the possession of the Crown, or in which the claim arises out of a contract entered into by or on behalf of the Crown."

Then turning to the Government Railways Act, R.S.C. 1906, ch. 36, it is abundantly clear that parliament, in enacting certain of its provisions, contemplated that the government railways would carry on the business of common carriers. For instance, by sec. 46 of the said Act the Governor-in-Council may impose and authorize the collection of tolls and dues upon any