

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct

Held, per FOURNIER, HENRY and TASCHEREAU, J. J., That by the law of the Province of Quebec an action will lie at the suit of an advocate or counsel against his client for professional services rendered by the former to the latter, under a contract in that behalf; and when such a contract is entered into between a counsel of the Province of Quebec and the Crown, as in this case, that a petition of right will lie to recover upon said contract, and as the suppliant had proved that there was an agreement to pay a reasonable amount, to be determined at the conclusion of the business, in addition to the amount paid, that the amount of \$8,000 which had been awarded to suppliant by the Judge at the trial, was a reasonable and just *quantum meruit* and supported by the evidence in the case.

Per SIR WM. RITCHIE, C. J.—1st. That the agreement between the suppliant and the Minister of Marine and Fisheries took place at Ottawa in reference to the services to be performed by Mr. Doure in Nova Scotia, and therefore is not to be governed by the law of Quebec. 2nd. That the right of a barrister to maintain an action for counsel fees is the same in the Province of Ontario as in Nova Scotia; that in neither Province could a counsel maintain an action for counsel fees, and therefore suppliant could not recover.

Per STRONG, J.—That there was no evidence of a contract to pay an additional amount of fees to suppliant, but there was evidence that the Crown had contracted to pay suppliant's expenses in addition to the fees paid, and for such expenses the suppliant was entitled to recover.

Per GWYNNE, J.—That as in England a counsel could not enforce a claim by Petition of Right for counsel fees upon an express contract, or or upon a *quantum meruit*, and that by the Petition of Right Act, sec. 19, clause 3, the subject is denied 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 Imperial Statute 23 and 24 Vict. c. 34, a Canadian counsel in the case of a contract with the Crown for his advocacy, cannot enforce such contract by Petition of Right, and therefore the appeal should be allowed.

Per FOURNIER and HENRY, J. J.—That coun-

sel in the Dominion of Canada are entitled to sue for counsel fees.

Lash, Q.C., for appellant.

Laflamme, Q.C., for respondent.

THE QUEEN V. MCFARLANE ET AL.

Petition of Right—Government officer receiving tolls—Implied contract—31 Vict., ch. 12 (D.)—Con. Stats. Can. ch. 28—Negligent conduct of Government officer—Demurrer.

The respondents filed their petition of right in this case to recover from Her Majesty the value of certain logs, which became lost to them through the breaking of the boom in the Ottawa River, below the timber slide on the Madawasca, near Arnprior, and other damages and losses sustained by them, all, as alleged, through the improper and negligent conduct of the slide Master at that place, duly appointed by the Government under the provisions of ch. 28, Con. Stats. Can. and of 31 Vict. ch. 12.

The Attorney-General, on behalf of Her Majesty, demurred to the petition on the following grounds: 1. That Her Majesty is not liable for the losses sustained through the negligence of the slide master under the circumstances alleged in the petition; 2. That no contract between the suppliant and Her Majesty is shown in the petition; 3. That no liability exists on the part of Her Majesty by reason of the insufficiency of the boom referred to in the petition; 4. That Her Majesty is not liable by reason of any want of care in the selection or employment of the slide master referred to in the petition; 5. Because the public works referred to in the petition, being placed under the control and management of the Minister of Public Works, Her Majesty is not liable for the negligence of the persons having charge of said works under him.

The demurrer was argued in the Exchequer Court, before HENRY, J., who overruled it, and held there was an implied contract on the part of Her Majesty, through her agent, to carry safely the logs, and that a petition of right would lie for the breach of that contract by the improper and negligent conduct of the slide master, and for any negligence in keeping in use imperfect and insufficient booms and other appliances.

On appeal to the Supreme Court of Canada—

Held (reversing the judgment of the Court *a quo*) 1. That the public works referred to in