
[E.C.] 1881

McFARLANE v. THE QUEEN.

May 25.

Non-liability of the Crown for the negligence of its servants—Crown not a common carrier—Payment of statutory dues.

[S.C.] 1882

May 13.

The suppliants, by petition of right, claimed payment of certain losses sustained by them arising from the breaking of a boom, at the

mouth of the Madawaska river, owned by the Dominion Government as a public work and constructed for the purpose of facilitating the transmission of saw logs, &c., down the Ottawa river. Suppliants were carrying on lumber operations on the Madawaska river, and certain timber and logs owned by them passed into the Government boom at the mouth of the Madawaska. They alleged that the boom-master, by reason of the unskilful, negligent and improper manner in which he performed his duty, allowed a larger quantity of timber and logs than the boom was capable of holding to pass into it, in consequence of which the boom broke and the timber and logs of the suppliant floated out. Some of the logs were lost and suppliants were put to expenses in recovering others. Suppliants also allege that the boom was negligently and unskilfully constructed.

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The Crown demurred to the petition of right in effect upon the grounds that no contract between the suppliants and Her Majesty was shown therein, and that in the absence of a contract in respect of which the negligence of the boom-master arose, damages therefor could not be recovered against the Crown.

Held, per Henry, J. (in the Exchequer Court), that there was an implied contract on the part of the Crown for the carriage of the logs by water, and over-ruled the demurrer. On appeal to the Supreme Court of Canada,—

Held, (reversing the judgment of the Exchequer Court): 1st. That a petition of right does not lie to recover compensation from the Crown for damage occasioned by the negligence of its servants to the property of an individual using a public work.

2nd. That an express or implied contract is not created with the Crown because an individual pays tolls imposed by statute for the use of a public work, such as slide dues for passing his logs through government slides.

3rd. That in such a case Her Majesty cannot be held liable as a common carrier. See Can. S. C. R., vol. VII., p. 216.