

1886

June 14.

Coram SIR W. J. RITCHIE, C. J.

HENRY JOSEPH CLARKE.....SUPPLIANT ;

AND

HER MAJESTY THE QUEEN.....DEFENDANT.

*Dominion Lands—33 Vic. c. 3, s. 32—38 Vic. c. 52—Mandatory
remedy sought by petition of right.*A petition of right will not lie to compel the Crown to grant a patent
of lands.

PETITION OF RIGHT for an order to compel the Crown to issue to the suppliant letters-patent to certain Dominion lands in the Red River Settlement in the Province of Manitoba.

In his petition of right, the suppliant, after alleging his right to obtain an estate of freehold in the said lands under the provisions of 33 Vic. c. 3, and 38 Vic. c. 52, concluded such petition with the following prayer :—

“1. That it may be declared that the Government of Canada is bound to fulfil the obligations, and to carry out the trusts, on which the said land was transferred to the said Government by the said statutes.

“2. That it may be declared that your suppliant is entitled under the circumstances aforesaid, and by force of the said statutes, to have his title of occupancy to the said lot of land converted into an estate of freehold by grant from the Crown ; and that he is entitled to letters-patent granting to him the said lot of land absolutely in fee simple, and that the Government of Canada be ordered to issue such letters-patent, or grant from the Crown, to your suppliant.”

The Crown demurred to the petition.

The case on demurrer was heard by Sir W. J. Ritchie, C.J., on the 14th June, 1886.

Burbidge, Q.C. in support of demurrer;

McDougall, Q.C., *contra*.

Per curiam: A petition of right will not lie to compel the Crown to make a grant of lands; and the demurrer must, therefore, be allowed.

Demurrer allowed with costs.

Solicitor for suppliant: *Frank McDougall*.

Solicitors for defendant: *O'Connor & Hogg*.

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CLARKE

v.

THE QUEEN.

Reasons
for
Judgment.
