IN RE WATER LOTS IN TOWN PLOT OF GRANVILLE.

STATEMENT OF CASE.

A portion of the public lands fronting on Burrard Inlet was set apart as a "*townsite reserve on Coal Harbour, Burrard Inlet.*" Part of this reserve was afterwards surveyed and laid out into lots and streets as the "*Town of Granville,*" as shown on a plan of the town plot on file in the Lands and Works Office, dated 10th March, 1870. This plan embraces part of the land covered with water in front of the town plot, which part is subdivided into lots, called *water lots.* These water lots are wholly covered with water, except that (as I assume) they are so laid out as to include the *foreshore,* or land between high and low water mark. The reserve, survey, and plan were all made in or before *March, 1870,* and, therefore, before British Columbia became part of the Dominion [20th July, 1871]. Burrard Inlet is an arm of the sea in which the tide ebbs and flows, and is in all respects a navigable tidal water.

OPINION.

1. The *soil* or *bed* of these water lots, assuming it had not been previously disposed of, was vested in the Crown; but the *right of navigation,* or right of passage over it, with all the rights incident to right of navigation [right of anchorage would be one] belonged to all the subjects of the realm. This public right of navigation could have been annulled by competent legislative enactment, but not by grant from the Crown.

2. Up to the time the Province came into the Dominion, these *water lots,* I think, could have been granted by Government patent as any other public land, but the grantees would have taken subject to the public right of navigation over them before mentioned.

3. The "*provisions*" of the Order in Council dated 16th May, 1871, made by Her Majesty under section 146 of the "British North America Act, 1867," for the admission of British Columbia into the Dominion, "have effect as if they had been enacted by the Parliament of the United Kingdom." [*See* that section.]

Paragraph 10 of the terms and conditions of Union prescribed or approved by that Order in Council declares "that the provisions of the 'British North America Act, 1867,' shall" [except as in said paragraph mentioned] "be applicable to British Columbia, in the same way "and to the like extent as they apply to the other Provinces of the Dominion, and as if the "Colony of British Columbia had been one of the Provinces originally united by the said Act."

The effect of above *section 146, Order in Council,* and *paragraph 10* is that all the general provisions of the British North America Act apply to British Columbia same as to any other Province, from 20th July, 1871 [date fixed by the Order in Council for its becoming part of the Dominion], unless otherwise specially provided.

4. Under the terms and enactments of the B. N. A. Act, *part* of the assets previously owned by the respective Provinces became vested in the Dominion. As far as the present question is concerned, the apportionment or division of *property* made by the Act was as follows:—

Sec. 109 provided that *all lands,* mines, minerals, and royalties *belonging* to the respective Provinces *should continue to belong* to the several Provinces in which they were situate or arose, &c.

Sec. 110—All assets connected with such portions of the public debt of each Province as were assumed by that Province were to belong to that Province.

Sec. 117—The several Provinces were to retain all their *respective public property not otherwise disposed of* in the Act, subject to the right of the Dominion to assume any lands or public property required for *fortifications* or for the *defence* of the country.

Sec. 108 provided that the *public works* and property of each Province enumerated in the *third* schedule to the Act should be the *property of Canada.*

In this schedule of property vested in the *Dominion* by this 108th section are items numbered 1 to 10, inclusive. Items 2 and 10 are as follows:—

(2.) Public harbours.

(10.) Armouries, &c., *and lands set apart for general public purposes.*

All the other items in the schedule are either *public works* or buildings and lands connected with them (items 1, 3, 5, 8), or personal property, or assets (items 4 and 6), product, as I understand, of the debt assumed by the Dominion; or military roads and ordnance property (7 and 9), all probably received from the Imperial Government. None of the items can have any bearing on the present question except items 2 and 10.

5. In my opinion, these *water lots* would, under the 109th and 117th sections of the Act [mentioned above], continue to be the *property* of British Columbia, unless they are otherwise disposed of by the 108th section, stated above. The *legislative authority*, however, to abolish or *annul* the public *right of navigation* over them belongs, I should say, to the Dominion Parliament, and not to the Local Legislature. [*See* section 91, subdivisions 10 and 9, and perhaps some other subdivisions of that section.]

6. The town-plot of Granville is not, I consider, "land set apart for general public purposes," within the meaning of item 10 of the schedule of property vested in the Dominion by section 108, and the question is reduced to this: Whether these *water lots* form part of a "*public harbour*," within the words of item 2 of the schedule.

7. I understand that there is a *natural harbour* called *Coal Harbour* at or near the entrance to Burrard Inlet, and that these *water lots* are already within the limits of what may be called that harbour, and that such harbour was in *public* use as a harbour previously to and at the time of the admission of British Columbia into the Dominion, and at all times since, but that public money had never been in any way expended in improving it.

8. The Province of Prince Edward Island was admitted into the Dominion in *1873*, and became subject to the provisions of the B. N. A. Act. In *1877*, the Local Government granted, by patent, part of the *foreshore*, or land between high and low water mark, of Summerside Harbour, a natural harbour in that Province not constructed by outlay of money. In the case of Holman *v.* Green, 6 Supreme Court Reports (Canada) 707, the Supreme Court held that all *natural harbours* which the *public* had the right to use were "public harbours" within the meaning of item 2 of the schedule mentioned in section 108, and were by that section vested in the *Dominion*, and the *bed* or *soil* of the harbour and the *foreshore*, or land between high and low water, also belonged to the *Dominion*, as part of the harbour; and they decided that the patent issued by the Local Government, purporting to grant part of the foreshore of Summerside Harbour as above, was of no effect.

9. Assuming the facts to be as stated above in paragraph 7, I am unable to distinguish this case from the Prince Edward Island case, decided as above-mentioned. It was contended in that case that the "public harbours" mentioned in the Schedule were those only that might be classed as *public works* in which the Provinces had acquired an actual property by outlay of money, but this contention was overruled by the Court, and the words were held to include *natural harbours* which the public had the right to use.

10. The result, I think, is that unless the question is to be carried to the Privy Council by appeal it must be held that these water lots in the Granville town-plot became vested in the Dominion as part of the harbour on *20th July, 1871*, and that the Local Government have had no right to them since that date, and could not grant or otherwise dispose of them. Such of the lots as had been granted by patent before that date, I assume, would not be affected by the B. N. A. Act, and would be the property of the grantees or their assigns.

S. RICHARDS.

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