
BETWEEN:

HENRI JALBERT .....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT;

AND

ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC..... } INTERVENANT.

1934
Oct. 16, 17 & 18.
1935
June 12.

Constitutional law—British North America Act—Public domain—"Public Harbour"—Interpretation—Evidence.

Held: That the burden of proving that in 1867 the property in question, now the Port of Chicoutimi, formed part of the public works and domain of the Province of Canada, and was used by the public as a harbour, is upon the respondent.

2. That a public harbour, within the meaning of Article 108 of the B.N.A. Act and schedules thereto, is a harbour which at the date of Confederation formed part of the public works or domain of the province, to which the public had access, and which was in fact used as such by the public. It is not necessary that public moneys should have been spent to improve it to constitute it a "Public Harbour."

3. That the law permits historical works, e.g., Arthur Buies' "Le Saguenay et la Vallée du Lac Saint-Jean," to be referred to as evidence of ancient facts of a public nature.

4. That from the evidence of record the Port of Chicoutimi was a public harbour in 1867 and previous thereto within the meaning of Article 108 of the B.N.A. Act, and the action and intervention were dismissed.

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The suppliant in his Petition of Right alleged that he is the owner, by letters patent from the Province of Quebec, of a certain water lot in the Township of Chicoutimi. That the respondent entered into possession thereof, save for a small strip, for public purposes and he claimed compensation for the land taken and for the damages suffered by such taking, which he fixed at the sum of $43,125. The respondent admitted the erection of a wharf on the property in question for public purposes but alleged that the suppliant was not the owner thereof. That by virtue of Article 108 of the B.N.A. Act it formed part of the public domain of Canada in right of the Dominion, being and having been and forming part of a public harbour of the Port of Chicoutimi in and before 1867. The Province of Quebec intervened to support the letters patent issued by it to the suppliant, claiming that at such time it formed part of the public domain of the province.

THE ACTION was heard before the Honourable Mr. Justice Angers, at Chicoutimi, P.Q.

J. A. Gagne, K.C., for the suppliant.

M. L. Beaulieu, F. Dorion and *A. Talbot* for the respondent.

L. S. St. Laurent, K.C., for the intervenant.

The facts and questions of law raised are stated in the reasons for judgment.

ANGERS J., now (June 12, 1935) delivered the following judgment:—

Il s'agit d'une pétition de droit par laquelle le pétitionnaire Henri Jalbert, industriel, de la ville de Chicoutimi, province de Québec, réclame de Sa Majesté le Roi, au droit de la Puissance du Canada, la somme de $43,125, avec intérêt sur $18,125, depuis le 25 juin 1929 et sur $25,000, depuis la date de la pétition soit depuis le 24 décembre 1932, et les dépens.

[The learned Judge summarized the pleadings and then proceeded.]

Comme nous l'avons vu, l'intimé, soutient que le lot de grève, auquel le pétitionnaire prétend avoir un titre de

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propriété et sur partie duquel les Commissaires du Port de Chicoutimi ont en 1929 et 1930 construit un quai, se trouvait compris dans le port naturel de Chicoutimi tel qu'il existait lors de la confédération et tel qu'il servait effectivement à cette époque, et qu'il est ainsi passé dans le domaine de la Couronne représentée par le Gouvernement du Canada, en vertu des dispositions de l'article 108 de l'Acte de l'Amérique Britannique du Nord, 1867 (30 Vic., cap. 3); cet article est ainsi conçu:

Les travaux et propriétés publics de chaque province, énumérés dans la troisième cédule annexée au présent acte, appartiendront au Canada.

La troisième cédule porte comme titre: "Travaux et propriétés publiques de la province devant appartenir au Canada," et mentionne, entre autres:

2. Havres publics.

Il s'agit de déterminer si le premier juillet 1867, date à laquelle l'Acte de l'Amérique Britannique du Nord est devenu en vigueur, le port de Chicoutimi était un havre public au sens de l'article 108 et de la troisième cédule.

Il me semble à propos de faire ici brièvement une revue des quelques arrêts qui ont eu sinon à définir l'expression "havre public" du moins à en délimiter la portée.

La première cause en date est celle de *Holman et al.* v. *Green* (1), où il a été jugé que la laisse (foreshore) dans le havre de Summerside, Ile du Prince-Edouard, appartient à la Couronne aux droits du Dominion et qu'en conséquence la concession de cette laisse, faite aux appelants au moyen de lettres patentes sous le grand sceau de la province, était nulle et sans effet. La Cour Suprême a rejeté la prétention des appelants que les mots "havres publics" de la troisième cédule ne comprennent point les havres naturels mais seulement ceux aménagés ou améliorés par des travaux payés à même les deniers publics. Je crois opportun de citer les remarques du juge en chef Ritchie et du juge Strong sur le sujet. Le premier, à la page 712, dit ceci:

The words of the B.N.A. Act are, in my opinion, too clear to admit of any doubt. But it was contended that the public harbours referred to in the B.N.A. Act were only such public harbours (if any) as the local governments, as such, had acquired an actual property in, that is to say, artificial harbours constructed by the outlay of moneys and not natural

(1) (1881) 6 S.C.R. 707.

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harbours. But I can find nothing in the Act to justify this restriction being placed on the clear words of the statute, and if we look to the general scope of the Act in relation to matters with which harbours are connected, I think it is apparent that parliament intended the words to be construed in their full plain grammatical sense.

Le juge Strong, de son côté, fait les commentaires suivants (p. 716):

The land in dispute is situate opposite the town of *Summerside* and forms part of the foreshore or the land between ordinary high and low water marks of *Bedeque* or *Summerside* harbour—a harbour of which the public have the common right of user and which in that sense at least is therefore a public harbour. It does not appear that any public works have been erected or any public money expended for the improvement of, or in any way in connection with, this harbour, either by the Dominion government since, or by the Provincial Government before, or since, Confederation. I can, however, conceive no other meaning to be attached to the words: "Public Harbour" standing alone, than that of harbours which the public have the right to use, and consequently if a more restricted construction is to be put on those words it must arise from the context or from some other provision of the Act. I find no other provision of the Act conflicting with what thus appears to be the *prima facie* construction of the terms in question.

La décision de la Cour Suprême du Canada dans la cause de *Holman et al. v. Green* a été suivie par la Cour Suprême de la Nouvelle Ecosse, siégeant en appel, dans au moins deux causes à ma connaissance, savoir: *Fader* v. *Smith* (1), et *Kennelly* v. *Dominion Coal Co.* (2).

La cause suivante est celle de *Attorney-General for the Dominion of Canada and Attorneys-General for the Provinces of Ontario, Quebec and Nova Scotia* (3). Il s'agissait là d'une référence par le Gouverneur-Général en Conseil à la Cour Suprême d'un certain nombre de questions ayant trait à la propriété, aux droits et à la jurisdiction législative du Dominion et des provinces respectivement, concernant les rivières, lacs, havres, pêcheries et autres sujets analogues. De la décision de la Cour Suprême, qui n'était pas unanime, il y a eu trois appels au Conseil Privé: l'un par le Procureur-Général du Canada, le second par le Procureur-Général de la Province d'Ontario et le troisième par les Procureurs-Généraux des Provinces de Québec et de Nouvelle-Ecosse.

La première question soumise à la Cour Suprême, la seule qui nous intéresse dans la présente cause, se lisait en partie, comme suit:

(1) Did the beds of all lakes, rivers, public harbours, and other waters, or any and which of them, situate within the territorial limits of

(1) (1885) 18 N.S., 433. (2) (1904) 36 N.S., 495.
(3) (1898) A.C., 700.

the several provinces, and not granted before confederation, become under the British North America Act the property of the Dominion or the property of the province in which the same respectively are situate. * *

Le Conseil Privé s'est abstenu de formuler une définition complète de l'expression "havre public." Les observations de Lord Herschell sur le sujet n'en sont pas moins intéressantes; à la page 711, il s'exprime ainsi:

With regard to public harbours their Lordships entertain no doubt that whatever is properly comprised in this term became vested in the Dominion of Canada. The words of the enactment in the 3rd schedule are precise. It was contended on behalf of the provinces that only those parts of what might ordinarily fall within the term "harbour" on which public works had been executed became vested in the Dominion, and that no part of the bed of the sea did so. Their Lordships are unable to adopt this view. The Supreme Court, in arriving at the same conclusion, founded their opinion on a previous decision in the same Court in the case of *Holman* v. *Green*, where it was held that the foreshore between high and low water-mark on the margin of the harbour became the property of the Dominion as part of the harbour.

Their Lordships think it extremely inconvenient that a determination should be sought of the abstract question, what falls within the description "public harbour." They must decline to attempt an exhaustive definition of the term applicable to all cases. To do so would, to their judgment, be likely to prove misleading and dangerous. It must depend, to some extent, at all events, upon the circumstances of each particular harbour what forms a part of that harbour. It is only possible to deal with definite issues which have been raised. It appears to have been thought by the Supreme Court in the case of *Holman* v. *Green* that if more than the public works connected with the harbour passed under that word, and if it included any part of the bed of the sea, it followed that the foreshore between the high and low water-mark, being also Crown property, likewise passed to the Dominion.

Their Lordships are of opinion that it does not follow that, because the foreshore on the margin of a harbour is Crown property, it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If, for example, it had actually been used for harbour purposes, such as anchoring ships or landing goods, it would, no doubt, form part of the harbour; but there are other cases in which, in their Lordships' opinion, it would be equally clear that it did not form part of it.

Dans une cause de *Attorney-General for British Columbia* v. *Canadian Pacific Railway Company* (1), où il s'agissait, entre autre, de déterminer si la laisse du port de Vancouver était, lors de l'entrée de la Colombie Britannique dans la confédération en 1871, devenue la propriété du gouvernement fédéral, le Conseil Privé, suivant sa décision dans la cause de *Attorney-General for the Dominion of Canada* v. *Attorneys-General for Ontario, Quebec and Nova*

(1) (1906) A.C., 204.

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Scotia (*ubi supra*), a considéré la question comme une question de fait et, sur la preuve versée au dossier, l'a résolue dans l'affirmative. Sir Arthur Wilson, qui a rendu le jugement du Conseil Privé, s'exprime ainsi (p. 209):

The right of the Dominion Parliament so to legislate with respect to provincial Crown lands situated as these are was based in argument upon two distinct grounds.

The first ground was this: Section 108, with the Third Schedule of the British North America Act, 1867 (Imperial Act 30 & 31 Vict., c. 3), includes public harbours amongst the property in each province which is to be the property of Canada. This certainly empowers the Dominion Parliament to legislate for any land which forms part of a public harbour.

Vient ensuite une référence au jugement du Conseil Privé in re *Attorney-General for the Dominion of Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia,* suivie d'une citation partielle des observations de Lord Herschell, qu'il est inutile de répéter; puis Sir Arthur Wilson continue:

In accordance with that ruling the question whether the foreshore at the place in question formed part of the harbour was in the present case tried as a question of fact, and evidence was given bearing upon it directed to shew that before 1871, when British Columbia joined the Dominion, the foreshore at the point to which the action relates was used for harbour purposes, such the landing of goods and the like. That evidence was somewhat scanty, but it was perhaps as good as could reasonably be expected with respect to a time so far back, and a time when the harbour was in so early a stage of its commercial development. The evidence satisfied the learned trial judge, and the Full Court agreed with him. Their Lordships see no reason to dissent from the conclusion thus arrived at. And on this ground, if there were no other, the power of the Dominion Parliament to legislate for this foreshore would be clearly established.

De cette décision qui a apporté peu ou point de nouveau sur le point particulier qui nous occupe, nous passons à l'arrêt du Conseil Privé dans la cause de *Attorney-General for the Dominion of Canada* v. *Ritchie Contracting & Supply Company* (1). La question qui se présentait était celle de savoir si la baie située à proximité de Burrard Inlet, qui sert d'entrée au port de Vancouver, connue sous le nom de English Bay, était un havre public; le Conseil Privé, confirmant le jugement de la Cour Suprême du Canada, a décidé que non. Sa décision, basée en grande partie sur la preuve, n'en fournit pas moins la première définition un peu complète de l'expression "havre public." Au risque de surcharger indûment ces notes déjà longues, je crois convenable de citer ici quelques-unes des remarques de Lord Dunedin, qui me paraissent s'adapter tout particulièrement

(1) (1919) A.C. 999

au cas présentement sous étude. Après avoir fait quelques commentaires sur les décisions de la Cour Suprême dans la cause de *Holman et al.* v. *Green* (*ubi supra*) et du Conseil Privé dans celle de *Attorney-General for Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia* (*ubi supra*), Lord Dunedin continue ainsi (p. 1003):

They (meaning the members of the Judicial Committee of the Privy Council) had previously stated on the general question that it would be, they thought, extremely inconvenient that a determination should be sought of the abstract question: What falls within the description "public harbour"? They declined to attempt an exhaustive definition of the term applicable to all cases. It must depend, they said, to some extent, at all events, upon the circumstances of each particular harbour what forms a part of that harbour.

Their Lordships are bound to say that the expression, "What falls within the description of public harbour" used in that passage has been liable in some cases to misconstruction. In the case of *Holman* v. *Green,* the Court was dealing with a harbour which was an admitted harbour. Accordingly, the expression, "What falls within the description of public harbour," used as it was in commenting upon the case of *Holman* v. *Green,* means—given the existence of a public harbour—what territory falls within it, and does not mean what class of harbour is meant by the expression "public harbour." None the less, however, the words used as to each case depending on its own circumstances may well, as is pointed out by MacDonald J., be also used in regard to the question of determining what is and what is not a public harbour. The extreme view one way, namely, that a public harbour only meant such a harbour and such portions of it as had been the creation of public money, was rejected, and rightly rejected, in *Holman* v. *Green;* the extreme view the other way, namely, that every indentation of the coast to which the public have right of access, and which by nature is so sheltered as to admit of a ship lying there, is a public harbour, has been argued by the appellants in this case and rightly, as their Lordships think, rejected by all the learned judges in the courts below. Potentiality is not sufficient; the harbour must be, so to speak, a going concern. "Public harbour" means not merely a place suited by its physical characteristics for use as a harbour, but a place to which on the relevant date the public had access as a harbour, and which they had actually used for that purpose. In this connection the actual user of the site both in its character and extent is material. The date at which the test must be applied is the date at which the British North America Act, by becoming applicable, effected a division of the assets between the province and the Dominion.

Le jugement de la Cour de l'Echiquier (Cassels J.) dans la cause de *Maxwell* v. *The King* (1), postérieur à la décision de la Cour Suprême in re *Attorney-General for Canada* v. *Ritchie Contracting and Supply Company,* mais antérieur à celle du Conseil Privé dans la même cause, se borne, sur le point qui nous intéresse, à concourir dans

(1) (1917) 17 Ex. C.R. 97.

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l'opinion exprimée par la Cour Suprême; à la page 100 du rapport, Sir Walter Cassels dit simplement ceci:

> The decision of the Supreme Court, I think, makes two points clear. First, to be a public harbour under the provisions of the *Confederation Act* it must have been a public harbour at the time of the enactment, and second, that a potential harbour, not a harbour at the date of the *Confederation Act*, but subsequently becoming a public harbour, is not covered by the statute.

Dans cette cause le juge Cassels fait allusion à la décision qu'il avait précédemment rendue in re *The King* v. *Bradburn* (1), décision qui aurait été confirmée par la Cour Suprême; le jugement de la Cour Suprême, au dire du juge Cassels, n'aurait pas été rapporté. Après des recherches, j'ai lieu de croire qu'il y a eu là erreur de la part du juge Cassels: il n'y a pas eu d'appel dans la cause de *The King* v. *Bradburn*. L'appel, auquel vraisemblablement songeait le juge Cassels, a été formé dans une cause de *The King* v. *Kelly* (No. 1904), cause semblable à celle de *The King* v. *Bradburn* et jointe à celle-ci et à quelques autres pour fins d'enquête. Le jugement du juge Cassels in re *The King* v. *Kelly* a été confirmé par la Cour Suprême, dont l'arrêt ne me paraît pas avoir été rapporté.

Commentant la décision de la Cour Suprême dans la cause de *Holman et al.* v. *Green*, le juge Cassels s'exprime ainsi (p. 431):

> There is not much to assist in arriving at an exact definition of what is a public harbour within the meaning of the statute. I take it, however, that the language quoted would indicate that in each case it becomes a question of fact. One point is made clear, that to be a public harbour, it is not necessary that public moneys should have been expended. I think what was intended is that whether it was a public harbour or not would depend to a great extent on the question of fact as to whether the particular harbour in question had been actually used for harbour purposes, such as anchoring ships or landing goods, etc.

La cause la plus récente, dans laquelle la question qui nous occupe ait été débattue, est celle de *The King* v. *Attorney-General of Ontario and Forrest* (2). Dans cette cause, Sa Majesté le Roi, au droit du Dominion, réclamait la propriété d'une île, connue sous le nom de Ship Island située dans la havre de Goderich, dans la province d'Ontario. La Cour Suprême, s'appuyant sur le jugement du Conseil Privé dans la cause de *Attorney-General for Canada*

(1) (1913) 14 Ex. C.R., 419. (2) (1934) S.C.R., 133.

v. *Ritchie Contracting & Supply Company* ainsi que sur la preuve mise au dossier, a décidé que la havre de Goderich était, lors de la confédération, un havre public au sens de l'article 108 et de la troisième cédule de l'acte de l'Amérique du Nord. Elle a décidé en outre que la preuve n'établissait point que l'île en question (Ship Island) faisait alors partie du havre de Goderich ou qu'elle constituait une " amélioration " telle que prévue au paragraphe 5 de la même cédule.

Je crois utile de citer un passage des notes du juge Rinfret, dont le jugement est également celui de ses collègues, les juges Lamont, Smith, Cannon, Crocket et Hughes, interprétant le sens et la portée des mots "havre public"; l'on trouve, à la page 143 du rapport, les observations suivantes:

It would be difficult to say that, in 1867, Goderich harbour was not a "public harbour." In the Fisheries case (*Attorney-General for Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia*), the Judicial Committee declined to attempt an exhaustive definition of the term. The view that it meant only "such a harbour and such portions of it as had been the creation of public money" was rejected by this Court (*Holman* v. *Green*), and by the Privy Council (*Attorney-General for Canada* v. *Ritchie Contracting and Supply Co.*). In the latter case, it was explained that "public harbour means not merely a place suited by its physical characteristics for use as a harbour" (an "indentation of the coast to which the public have right of access, and which by nature is so sheltered as to admit of a ship lying there")—"but a place to which on the relevant date the public had access as a harbour, and which they had actually used for that purpose" (p. 1004).

Applying this test, and upon the evidence as to the state of affairs at the relevant date, i.e., at the date at which the B.N.A. Act became applicable, it must be agreed that Goderich Harbour was a public harbour. Even although the work of erection of the harbour and of the subsequent improvements thereof may not have been actually carried out by the province or through the expenditure of public money, the work done by the Canada Company or by the Buffalo Railway Company was part of the consideration—in fact, the main consideration—for the leases or grants from the Crown to these companies.

Le juge Rinfret réfère ensuite aux lettres patentes accordées par la Couronne en 1862 à Buffalo Railway Company, en considération desquelles celle-ci assumait, pour une période de cinq ans, certaines obligations, entre autres, celles-ci:

provide sufficient accommodation in the Inner Harbour of Goderich aforesaid for the largest vessels navigating Lake Huron; establish and maintain * * * a facile and safe entrance or channel into the Inner Harbour aforesaid for such vessels as aforesaid and whether by the erection and maintenance of piers or otherwise with a depth in such channel sufficient for the safe entrance of the vessels aforesaid; well and sufficiently

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repair, uphold, maintain and keep the said wharves and piers, channel and Inner Basin in good, substantial and sufficient repair and fit, proper and accessible for the safe landing of passengers and for the discharge of vessels and steamers and the landing and warehousing of goods and passengers therefrom.

Puis le juge Rinfret continue ainsi:

It may further be added that, under the terms of the lease, all plans or diagrams of improvements had to be submitted to the Commissioner of Crown Lands and the Commissioner of Public Works and they were to be executed to their satisfaction. The companies were to permit and suffer passengers to land at the wharves or piers from any boat, ship or vessel with their personal baggage or luggage without charge and could demand and receive reasonable wharfage dues only for and in respect of goods and merchandise landed at or shipped from the said wharves or piers, the dues being either controlled by statute or submitted to and approved by the Governor General in Council.

Without going into details, it appears by official plans and by departmental reports that a good portion of those works and improvements had been actually carried out and that, at the time of Confederation, Goderich Harbour was not only capable of being used, but that it was actually in use as a harbour in the commercial sense. It may accordingly be held as falling, at the pertinent date, within the "class of harbour meant by the expression public harbour."

Etant arrivé à la conclusion que le havre de Goderich était, en 1867, un havre public au sens de l'article 108 et de la troisième cédule de l'Acte de l'Amérique Britannique du Nord, le juge Rinfret passe à la question de savoir si l'île "Ship" faisait, à cette époque, partie du havre de Goderich; je me bornerai à citer ses remarques (p. 145):

Given a public harbour at Goderich, in 1867, there remains to find out what territory fell within it and, further, whether Ship Island, if within the ambit of the harbour, formed a part of it. (*Attorney-General for Canada* v. *Ritchie Contracting & Supply Co.*). This must depend upon the circumstances of the particular case and, in accordance with the rulings of the Judicial Committee in the Fisheries case (*Attorney-General for Canada* v. *Attorney-General for Ontario, etc.*), and in *Attorney-General for British Columbia* v. *Canadian Pacific Railway* (1), that question must be tried as a question of fact.

We agree with the learned President of the Exchequer Court that, on the evidence, "it is open to serious doubt if Ship Island was, in 1867, situated within the bounds of what was known and used as Goderich Harbour"; and, at all events, we see no reason to dissent from his conclusion that the island was not a part of the harbour.

J'ai cru avantageux de citer assez copieusement les notes du juge Rinfret afin de déterminer de façon claire et précise la portée du jugement de la Cour Suprême.

Avant de clore cette revue de la jurisprudence, je me permettrai d'ajouter à ces citations déjà nombreuses un

(1) (1906) A.C., 204 at 209.

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passage des notes du juge-en-chef, Sir Lyman Duff, relatif à cette question de havre public; il se trouve à la page 136 du rapport et est ainsi conçu:

> Goderich Harbour was, on the 1st of July, 1867, a harbour to which the public had the right to resort and did resort for commercial purposes, and it would appear, therefore, that it satisfied the criteria laid down in *Attorney-General for Canada* v. *Ritchie Contracting & Supply Co.*
>
> But another condition must be present before s. 108 can take effect. That section applies only to public harbours which on that date were part of the "public works" or "public property" of the province. Whether on that date Goderich Harbour as a whole was, and whether the particular parts of it (alleged to be so) in question were, in view of the lease to the railway company, part of the "public property" or "public works" of the province in the sense of s. 108, it is not necessary to consider; and I desire to reserve that point in the most complete sense until it arises for determination.

Il est peut-être bon de noter que le juge-en-chef, au début de ses notes, a déclaré qu'il était d'accord avec son collègue, le juge Rinfret, mais qu'il désirait faire quelques remarques sur un ou deux points soulevés par l'appel.

Je crois qu'il découle de ces arrêts successifs qu'un havre public, au sens de l'article 108 et de la troisième cédule de l'Acte de l'Amérique Britannique du Nord, est un havre qui, au moment de la confédération, faisait partie des travaux ou propriétés publics d'une province, auquel le public avait accès et que, de fait, le public utilisait comme tel; il n'est pas nécessaire, tel que le déclare le Conseil Privé in re *Attorney-General for Canada* v. *Ritchie Contracting & Supply Company* que des deniers publics aient été dépensés pour aménager ou améliorer ce havre, pour en faire un havre public.

Ceci étant établi, la cause se résume maintenant à une question de fait: il s'agit de déterminer si, en 1867, l'endroit particulier de la rivière Saguenay, où se trouve aujourd'hui le port de Chicoutimi, faisait partie des travaux ou des propriétés publics de la Province du Canada et s'il était utilisé comme havre par le public.

La preuve sur ce point est de deux sortes: littérale et orale. Je vais essayer de la résumer aussi brièvement que possible, tout en ayant soin de ne laisser de côté aucun élément qui pourrait avoir une importance quelconque.

Il est bon de noter, dès le début, qu'il incombait à l'intimé d'établir que l'endroit où il a construit son quai faisait partie d'un havre public au moment de la confédération.

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L'article 109 de l'Acte de l'Amérique Britannique du Nord pose, en effet, la règle générale que " toutes les terres . . . . . appartenant aux différentes provinces du Canada . . . . . lors de l'union . . . . . appartiendront aux différentes provinces d'Ontario, Québec . . . . . dans lesquelles ils (ce masculin est commandé par le mot " minéraux " compris dans l'énumération du début de l'article) sont sis et situés, ... restant toujours soumis aux charges dont ils sont grevés, ainsi qu'à tous intérêts autres que ceux que peut y avoir la province."

L'article 108 est, en quelque sorte, une exception à la règle générale posée par l'article 109.

Examinons d'abord la preuve documentaire.

[His Lordship here analysed the documentary and oral evidence, and then continued.]

L'intimé a produit comme pièce D6 un exemplaire de l'ouvrage d'Arthur Buies, intitulé " Le Saguenay et la vallée du Lac Saint-Jean," publié en 1880. Le procureur de l'intervenant s'est objecté à la production de ce volume, alléguant qu'il ne constitue point un document historique. Je crois l'objection mal fondée. Buies a sans doute été surtout un journaliste et un chroniqueur, mais en écrivant " Le Saguenay et la vallée du Lac Saint-Jean " il a fait oeuvre d'historien et de géographe; il y a lieu, à mon avis, de permettre la production de ce volume: Taylor on Evidence, 10ème éd., vol. 2, parag. 1785; Phipson, Law of Evidence, 5ème éd., page 13, paragraphe (3), et page 358, sous le titre " Histories "; Powell, Law of Evidence, 10ème éd., page 298 (in fine); Odgers, Law of Evidence, page 349; Buller, Nisi Prius, 2ème éd., pages 248 et 249; *Read* v. *Bishop of Lincoln* (1892) A.C. 653; *Le Roi et al.* v. *St. Francis Hydro-Electric Co. et al.*, C.B.R. (Qué.), No. 2623, jugement 3 mars 1934, non rapporté.

[The learned Judge here cited extracts from the work of Buies and after further considering the oral and documentary evidence concluded.]

Je crois que, de l'ensemble de la preuve versée au dossier, il y a lieu de conclure qu'avant le premier juillet 1867, date de la confédération, Chicoutimi était un havre public au sens de l'article 108 et de la troisième cédule de l'Acte de l'Amérique Britannique du Nord, et qu'aux termes de cet

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article et de cette cédule le havre de Chicoutimi est devenu, à compter de l'entrée en vigueur de l'Acte de l'Amérique Britannique du Nord, i.e., à compter du premier juillet 1867, la propriété du Canada. Le terrain sur lequel l'intimé a érigé le quai dont il est question en cette cause faisant partie intégrante du havre de Chicoutimi appartient donc à l'intimé depuis la même date.

La pétition de droit du pétitionnaire est en conséqeunce mal fondée et elle est rejetée, avec dépens contre le pétitionnaire.

L'intervention est également, pour les mêmes raisons, mal fondée et elle est rejetée, avec dépens contre l'intervenant.

Judgment accordingly.