ROBERT T. HOLMAN *et al* .....APPELLANTS; 1881

AND *May 4.

*Mar. 28.

CHARLES GREEN.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF PRINCE EDWARD ISLAND.

Letters Patent, under Great Seal P. E. I. of foreshore in Summerside Harbor, void—B. N. A. Act, sec. 108—*Public Harbor—* 25 *Vic., ch.* 19., *P. E. I.*

G. (defendant) was in possession of a part of the foreshore of the harbor of *Summerside*, and had erected thereon a wharf or block at which vessels might unload. *H. et al* (plaintiffs) brought an action of ejectment to recover possession of the said foreshore.

H. et al's title consisted of letters patent under the Great Seal of *Prince Edward Island*, dated 30th August, 1877, by which the

* PRESENT—Sir William J. Ritchie, Kt., C.J., and Strong, Fournier, Henry and Gwynne, JJ.

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crown in right of the island, and assuming to act in exercise of authority conferred by a provincial statute, 25 *Vic.*, ch. 19, purported to grant to plaintiff in fee simple the land sought to be recovered in the action.

Held, that under sec. 108 *B. N. A. Act*, the soil and bed of the foreshore in the harbor of *Summerside* belongs to the crown, as representing the Dominion of *Canada*, and therefore the grant under the great seal of *P. E. Island* to *H. et al.* is void and inoperative.

APPEAL from a judgment of the Supreme Court of Judicature of *Prince Edward Island*, making absolute a rule for judgment of non-suit in the cause.

This was an action of ejectment brought by the appellants (plaintiffs below) against the respondent (defendant below) to recover possession of a piece of land, being part of the foreshore, between high and low water mark of the town of *Summerside*, lying outside of and to the westward of *Queen's* wharf.

The writ was issued on the thirty-first day of August, A.D., 1877. The defendant limited his defence to that part of the premises described in the writ, situate on the western side of *Queen's* wharf. The cause was heard before the Chief Justice and a jury in October, 1878.

The appellants (plaintiffs below) claimed title to the *locus* under a grant to them from the crown in fee, under the Great Seal of *Prince Edward Island.*

The local statute 25 *Vic.* c. 19, enabled the Lieut.-Governor in Council to issue grants of certain parts of the seashore of *Prince Edward Island.*

The respondent offered no evidence of any title to the *locus.*

The jury found a verdict for the appellants (plaintiffs below) for all the lands in issue. The respondent afterwards, pursuant to leave reserved by the Chief Justice at the trial, obtained a rule *nisi* for a new trial or non-suit on the following, among other grounds:—

"3. Because said grant is void on the ground that at

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the time it was made the plaintiffs were not in possession of the whole of the land in front of which the *locus* lies, part of the same being a public street, another part being in possession of *I. L. Steeves*, and another part in possession of *Thomas Brehaut* tenants of the plaintiffs.

"4. Because said grant is void on the ground that the *locus* is in front of and abuts the railway, which is vested in the Dominion of *Canada*, and it was admitted that no consent from the Dominion Government had been obtained.

"5. Because said grant is void on the ground that the *locus* abuts on the public wharf under the control of the corporation of *Summerside* and no consent was obtained from such corporation.

"8. Because said grant is void on the ground that by the *British North America Act* all public harbors are vested in *Canada*, and *Summerside* is a public harbor."

This rule *nisi*, after argument, was made absolute for a non-suit on the above 3rd, 4th and 5th grounds, and against this latter rule the appellants appealed to the Supreme Court of *Canada*.

The counsel were heard at length on the several grounds taken in the rule *nisi*, but as the judgment of the Supreme Court proceeded entirely on the ground that the grant was void because by the *British North America Act* all public harbors are vested in *Canada*, and *Summerside* is a public harbor, their arguments on these points are omitted.

Mr *Davies*, Q.C., for appellant:

As to the eighth ground taken for the rule *nisi* that the grant is void because public harbors are vested in the Dominion of *Canada* by the *B. N. A. Act*: the public harbors which became the property of the Dominion by the 108th section of the *B N. A. Act*,

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must clearly be such public harbors (if any) as the local government as such had acquired an actual property in, *e g.*, artificial harbors constructed by the outlay of monies. This section contemplated public works of the province only, and not natural harbors in which the province had no special property. The words must be construed *ejusdem generis* with the class of words in the clause where they are used. This is not an artificial harbor. The only monies expended here were on the wharves by private individuals and provincial government.

Mr. *Peters* for respondent:

The wharf in question was built out of the funds of the government of *Prince Edward Island*, and has always been known as a government wharf. Putting aside the question that *Summerside* is a public harbor, and is vested in the government of *Canada* under sec. 108 *B. N. A. Act*, I contend the wharf in question is a public work and comes within the word "piers" mentioned in the third schedule of the act. It is not an answer to say that a pier should be built of stone. It is built on public property and advances into the harbor. Surely the Dominion parliament alone has control over public works necessary to carry on trade.

It is called the Queen's wharf, and was the largest wharf at *Summerside* until the railway wharf was built. I also contend that the whole soil of the harbor passed to the Dominion, and that the giving of grants is inconsistent with the rights of the Dominion government in the harbor. See *B. N. A. Act*, 1867, sec. 108, schedule 3.

If it is necessay for the purposes of carrying on trade that the Dominion government should have the property of artificial harbors, why should they not also have the control of natural harbors, and it cannot be denied that *Summerside* harbor is one of the natural harbors of the island.

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RITCHIE, C. J.:

One of the points raised, on which I think the case must turn, was that the harbor of *Summerside* is a public harbor and is vested in the government of *Canada* under the *British North America Act*, 1867, sec. 108 and 3rd schedule, and that the making of grants of the foreshore, or land between high and low water, by the Lieutenant-Governor of *Prince Edward Island*, is inconsistent with the rights of the Dominion government in the harbor, and therefore the grant under which plaintiff claims is void.

The *locus in quo* in this case is situate between high and low water mark in the harbor of *Summerside*, *P.E.I*, which is a public harbor and port for ships where customable goods may be laden and unladen. By section 108 of the *B. N. A. Act*, 1867, headed: "Transfer of property in schedule," the provincial public works and property enumerated in the third schedule to be the property of *Canada* are: 1. Canals with lands and water power connected therewith. 2 Public harbors. 3. Lighthouses and piers and *Sable Island;* and other descriptions of properties, among which are military roads, property transferred by the Imperial government and known as ordnance property, lands set apart for general public purposes. The property in public harbors being thus vested in the dominion, the soil ungranted at the time of confederation between high and low water mark, and being within the limits of public harbors, by the express unqualified words of the enactment, became vested in the dominion as part and parcel of the harbors which belonged as property to the provinces, as distinct from the franchise of a port, it being clear from Lord *Hale*:

That the franchise of a port may be in one person and the ownership of the soil within the limits of the port in another.

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Thus Lord *Hatherley* in *Foreman* vs. *Free Fishers and Dredgers of Whitstable* (1):

> However commodious a place may be for vessels, it will not, therefore become a port, the establishment of which must be by the authority of the crown.

And in the same case Lord *Chelmsford* says:

> It appears from Lord *Hale, de portibus maris*, chap. 6, that "though *A.* may have the property of a creek or harbor or navigable river, yet the king may grant there the liberty of a port to *B.*, and so the interest of property and the interest of franchise be several and divided."

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 harbors referred to in the *B. N. A. Act*, were only such public harbors (if any) as the local governments, as such, had acquired an actual property in, that is to say, artificial harbors constructed by the outlay of moneys and not natural harbors. 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 harbors are connected, I think it is apparent that parliament intended the words to be construed in their full plain grammatical sense. In the first place, the exclusive legislative authority over the regulation of trade and commerce, beacons, buoys, lighthouses, and *Sable Island*, navigation and shipping, is vested in the parliament of *Canada*; then, secondly, property in canals, with lands and water power connected therewith, and lighthouses and piers, and *Sable Island*, is specifically transferred to the Dominion. It is but consistent with this that the property in public harbors, so intimately connected with and essential to trade and commerce, and shipping and navigation, lighthouses and piers, should likewise be vested in the Dominion for

(1) L. R. 4 E. & I. App. 281.

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their more efficient management, control and regulation; a matter in which, not only the whole Dominion, but foreign shipping are likewise interested, and which could hardly be effectually managed and regulated if there were to be a divided control. Still less can it be supposed that having vested all matters connected with trade and commerce, and shipping and navigation, and matters pertaining thereto in the Dominion parliament, the property in and control of the public harbors should have been left to provincial authority. Such being the case with reference to the property in harbors in the provinces originally united under the *B. N. A. Act*, 1867, the same is now applicable to the harbors in the province of *Prince Edward Island*, it being one of the terms upon which *Prince Edward Island* was admitted into the union or Dominion of *Canada* "that the provisions in the *British North America Act*, 1867, shall, except those parts thereof which are in terms made or by reasonable intendment may be held to be especially applicable to and only to affect one and not the whole of the provinces now composing the Dominion, and except, so far as the same may be varied by these resolutions, be applicable to *Prince Edward Island* in the same way and to the same extent as they apply to the other provinces of the Dominion, and as if the colony of *Prince Edward Island* had been one of the provinces originally united by the said act."

As, therefore, this clause relating to public harbors is alike applicable to all the provinces, and was in no way varied by the resolutions referred to, the same became applicable to *Prince Edward Island* as if it had been one of the provinces originally united by the *British North America Act*, 1867, and therefore the executive government and legislature ceased to have any property in, or executive or legislative power over, the ungranted lands between high and low water mark

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in such public harbors as that in question, and as a necessary consequence the grant under which plaintiff claimed, issued by the Lieutenant-Governor of *Prince Edward Island* under the Great Seal of that island, was of no force or effect, and therefore plaintiff had no right of action against defendant though a wrongdoer.

STRONG, J.:—

This is an appeal from a judgment of the Supreme Court of *Prince Edward Island* making absolute a rule for a non-suit in an action of ejectment brought to recover possession of a portion of the foreshore of *Summerside* Harbor. The plaintiff's title consisted of letters patent, under the great seal of *Prince Edward Island*, dated the 30th August, 1877, by which the Crown, in right of the island, and assuming to act in exercise of authority conferred by a provincial statute, passed long before the island became a province of the Dominion, purported to grant to the plaintiffs, in fee simple, the land sought to be recovered in the action. The first question which arises is as to the title of the Crown in right of its government of *Prince Edward Island*, it having been contended, on the part of the defendants, that the land in dispute, upon the admission of the island as a province of the confederation, being part of the soil or bed of a public harbor, became vested in the Crown as representing the Dominion of *Canada*. If this contention is correct, it follows that the grant under the great seal of the island, which constitutes the plaintiff's title, was wholly void and inoperative.

There can be no doubt that by the common law of *England* the sea shore between high and low water mark, or as it is sometimes called the foreshore, is vested in the Crown. *Hale*, in the treatise *De Jure Maris* (1) says:—

(1) P. 12.

The shore is that ground that is between high and low water mark. This doth, *primâ facie* and of common right, belong to the king both in the shore of the sea and in the shore of the arms of the sea.

Chitty, on the Prerogatives of the Crown (1), lays it down that

The king is also by his prerogative the *primâ facie* owner of the shores; that is, the land which lies between high and low water mark in ordinary tides of the seas, and arms of the seas, within his dominions.

In the *Mayor of Penhym* v. *Holmes* (2) *Cleaseby*, B., says:

The *primâ facie* title to the foreshore everywhere is in the Crown.

And this general rule of law applies to ports and harbors as well as to the shore of the open sea. In *Coulson* and *Forbes*, Treatise on the law of Waters (3), it is said:

The ownership of the soil of all ports as well as of the sea shore between high and low water mark is vested *primâ facie* in the Crown, and the Crown might formerly have conveyed the soil to a subject by grant or royal charter, either apart from or in conjunction with the franchise.

And the books abound in authorities to the same effect (4).

Therefore at the date of the admission of *Prince Edward Island* "into the Union" pursuant to the provisions of the 146th section of the *British North America Act*, the land in question formed part of the demesne lands of the Crown belonging to that province. Then by the express provision of the 146th section of the *British North America Act*, upon the admission of *Prince Edward Island* all the provisions of that Act became applicable to the province, including the 109th section, which enacted that the public lands should

(1) P. 207.
(2) 2 Ex. Div. 332.
(3) P. 41.
(4) *Gann* v. *The Free Fishers of Whitstable*, 11 H. L. C. 192. (2) *Attorney-General* v. *Chambers*, 4 De G. McN. & G. 206; Hall on Sea Shores, 13.

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belong to the provinces in which they were situated, and the 117th section, which provided that the several provinces should retain their public property not otherwise disposed of by the Act. These lands would therefore have remained the property of the province after confederation, unless by some particular enactment they were distinguished from the ordinary Crown lands and taken out of the operation of the 109th and 117th sections by being expressly vested in the Dominion. The only section which can have this effect is the 108th, which enacts that:

> The public works and property of each province enumerated in the third schedule to this Act shall be the property of *Canada*.

The second enumeration of the schedule referred to is "Public Harbors." The question for our decision is therefore narrowed to this:—Did the 108th section of the *British North America Act* transfer the property in the soil or bed of this harbor to the Crown in right of the Dominion?

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* harbor—a harbor of which the public have the common right of user, and which in that sense at least is therefore a public harbor. 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 harbor, 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 Harbors" standing alone, than that of harbors 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 pro-

vision of the Act conflicting with what thus appears to be the *primâ facie* construction of the terms in question.

It is said, however, on the part of the appellants, that the 108th clause itself, or at least the words of the third schedule, which may be read as incorporated with it, so exclusively refer to property consisting of public works and which has resulted from the expenditure of public money that it must be taken in the enumeration of public harbors to refer to harbors *ejusdem generis*, and is therefore confined to those harbors which at the time of confederation had been artificially constructed or improved at the public expense. I find nothing in the section and schedule combined to warrant such a construction, which, it seems to me, can only be based on conjecture. The words of the section are "public works and property," and in the schedules, though most of the properties enumerated have resulted from the expenditure of public money, this is not so as to all, for we find "*Sable Island*" "property transferred by the Imperial Government, and known as ordnance property," and "lands set apart for general public purposes," none of which descriptions imply, as they do not actually include, properties which had been improved at the general public expense.

This argument seems therefore wholly to fail, and we must conclude that there is nothing in the context which would warrant us in restricting the wide general description of "public harbors" to a meaning different from that which the words bear in their ordinary and primary signification.

Next arise the questions—Does the description "Public Harbors" include the bed or soil of the harbor? and if so, is the foreshore also comprised in it? I am of opinion that there is even less doubt on this head than on the first point. By the attri-

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bution of the harbors to the Dominion it never could have been meant to transfer a mere franchise to the Dominion Government—that is, to the Crown in right of the Dominion—leaving the property in the soil vested in the Crown in the right of the province. Such a construction would be so arbitrary, unnatural and improbable as to be totally inadmissible. Who ever heard of such an anomaly as the Crown, as a body politic representing one Government, having a franchise in the property of the Crown itself as a body politic representing a distinct Government? Then the object of vesting the harbours in the Dominion was doubtless with the object of enabling that Government to carry out with more facility such measures as it might, under the power granted to it to legislate on the subject of navigation and shipping, from time to time think fit to enact. And for this purpose it was material that the right of property in the soil of harbors should be under the control of the Dominion, a result which would not be attained by conferring a mere franchise or the police power of regulating harbors and taking tolls in them. Further, the taking of tolls or harbor dues would have implied the duty of conservancy, which could not have been properly performed if the bed of the harbor had been vested in a different proprietor. Then there would have been no necessity for this special provision of the 108th section vesting harbors in the Dominion, unless it was intended to vest the property in the beds of harbors, for under the grant of legislative power relating to navigation and shipping, Parliament might have assumed all such powers as would have been comprised in the 108th section, if it were to be construed as a mere grant of a franchise, or police, or conservancy power, or of all these together. The fair inference is therefore that it was intended to transfer the harbors in the widest sense

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of the word, including all proprietary as well as prerogative rights, to the Crown as representing the Dominion. And this construction is in accord with the presumption of law as laid down by Lord C. J. *Hale*, *De Jure Maris* (1), who says:

> That a subject having a port of the sea may have, and, indeed, in common experience and presumption hath, the very soil covered with water, for though it is true the franchise of a port is a different thing from the propriety of the soil of a port, and so the franchise of a port may be in a subject, and the propriety of the soil may be in the king or in some other, yet in ordinary usage and presumption they go together.

That the foreshore is comprised in and forms part of the harbor, and passed to the Dominion under that denomination, is too plain to need demonstration, for it is held by the crown by the same title and is part of the soil of the harbor, the harbor or port being held to include all below high water mark. The passage from the text writers already quoted (2) is also to this effect.

The conclusion is that nothing passed to the plaintiffs under the letters patent of 30th August, 1877, and this appeal must consequently be dismissed with costs.

FOURNIER, J.:

L'Intimé a été poursuivi en cette cause pour une voie de fait (*trespass*) consistant dans l'érection d'un quai dans la baie de *Summerside*, sur la devanture de la propriété des appelants, demandeurs en cour inférieure. Le procès a eu lieu devant un jury qui a rapporté un verdict en faveur des appelants. L'intimé, ayant fait motion pour *non suit* ou nouveau procès, la cour inférieure a admis le *non suit*. C'est de ce jugement qu'il y a appel.

Une loi de l'*Ile du Prince-Edouard* 25 *Vict.*. ch. 19, autorise le lieutenant-gouverneur en conseil à accorder, à certaines conditions, des lettres patentes sur les grèves

(1) P. 33. (2) Coulson & Forbes, 43.

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publiques. En vertu de cette loi, des lettres patentes ont été émises le 30 août 1877, sous le grand sceau de la province, accordant aux appelants l'étendue de terrain décrite dans les dites lettres patentes Ce terrain est en outre spécialement désigné comme faisant partie du rivage situé en front de la terre appartenant aux appelants (" being part of the shore situated in front of land owned by the said *Robert McCaul* and *Robert Tenson Holman.*") La validité de ces lettres patentes a été attaquée par les intimés sur le principe que la commission du lieutenant-gouverneur ne lui conférait pas expressément le pouvoir de faire une telle concession, et aussi comme n'étant pas faite en conformité des dispositions du statut ci-dessus cité, lequel par la sec. 3, exige pour la validité des lettres patentes le consentement de tous les propriétaires sur la devanture de la propriété desquels se trouve situé un lot de grève publique. Le chemin de fer de l'*Ile du Prince-Edouard*, maintenant la propriété du gouvernement du *Canada*, et un quai, appelé le quai de la Reine, construit par la province comme ouvrage public avant son annexion à la Puissance, séparent la terre des appelants de l'endroit où est construit le quai en question L'intimé prétend que d'après le statut le consentement du gouvernement du *Canada*, comme propriétaire du dit chemin de fer, était nécessaire pour la validité des lettres patentes. Il soutient aussi que le consentement de la corporation de *Summerside*, qui, en vertu de son acte d'incorporation, 40 *Vict.*, ch. 15, a le pouvoir de faire des règlements pour l'administration de quais, était aussi nécessaire pour la validité des dites lettres patentes. Il y a encore plusieurs autres objections invoquées à l'appui de la demande d'un *non suit* ou d'un nouveau procès, mais je ne crois pas qu'il soit nécessaire de s'en occuper pour arriver à la décision de cette cause, si la 8e objection est fondée. Cette objection est formulée comme suit : " Because said

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" grant is void on the ground that by the *British North* " *America* Act all public harbors are vested in *Canada*, " and *Summerside* is a public harbor."

Il est admis que la preuve constate que les lignes latérales de la propriété des appelants prolongées dans la baie jusqu'au delà du quai, comprendraient dans leurs limites le terrain cédé par les lettres patentes et particulièrement l'endroit sur lequel est construit le quai dont il s'agit ; que *Summerside* est un havre formé par la nature, employé comme *Charlottetown*, *Pictou*, *Halifax* ou *St. John*, aux usages de la navigation. L'admission est en ces termes :

That Summerside harbour is a natural harbour, largely used for shipping purposes like *Charlottetown*, *Pictou*, *Halifax* or *St. John*.

Que le quai de la Reine, est un quai public, construit par le gouvernement local avec des deniers publics votés à mesure qu'il en était besoin, de la même manière que pour la plupart des autres quais de l'Ile. Ce quai fut construit vers l'année 1840, et a toujours été employé depuis comme quai public à l'usage des nombreux vaisseaux qui fréquentent le hâvre de *Summerside*.

Ces admissions constatent d'une manière certaine que le hâvre de *Summerside* est un hâvre public. En vertu de la sec. 108 de l'acte de l'*Amérique Britannique du Nord*, déclarant que les travaux et propriétés publics de chaque province, énumérés dans la troisième cédule annexée au dit acte, appartiendront au *Canada*, les hâvres publics étant compris dans l'énumération faite dans la dite cédule, la propriété du hâvre de *Summerside* appartient au gouvernement du *Canada*, depuis que l'*Ile du Prince-Edouard* en fait partie. A dater de cette époque le hâvre en question a été sous la juridiction du gouvernement du *Canada* qui y a nommé un maître du hâvre chargé de la police de ce hâvre etc., etc.

Du moment que la propriété du hâvre est devenue

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celle du gouvernement fédéral, le gouvernement de l'Ile a cessé d'y avoir aucun droit. En conséquence lors de l'émission des lettres patentes en question, le 30 août 1877, le gouvernement de l'*Ile du Prince-Edouard* n'avait plus dans les limites du hâvre en question aucun droit de propriété dans le sol formant ce hâvre. En conséquence ces lettres patentes sont nulles en autant qu'elles cèdent aux appelants une partie de ce hâvre qui était alors la propriété du gouvernement fédéral.

Je suis en conséquence d'avis que l'appel devrait être renvoyé avec dépens.

HENRY, J.:—

There is another difficulty, too, which presents itself to my mind, in addition to those mentioned by my learned colleagues, and that is that since confederation, even if the local legislature had the soil of the harbor, the public had an easement—that is, the whole public (not the public of *Prince Edward Island*, but the public everywhere) had a right to an easement of the wharves, and if the legislature of *Prince Edward Island* assumed the right of granting the land between low water mark and high water mark, they might carry that still further, and grant the soil so as to be injurious to the whole shipping interest. I think, therefore, that ever since confederation, even if the soil did belong to *Prince Edward Island*, and its legislature had the right to dispose of the soil, which I think it had not, there was an easement that the public had in it that the Local Government had no right to obstruct by granting the sole right to other parties to occupy the waters of the harbor by putting up buildings, erections, or in any other way impeding the passage of it. I concur in the views expressed by the learned Chief Justice and those who have preceded me.

GWYNNE, J.:—

To the real question which is involved in this suit,

the only answer which can be given is in the negative; that question is—is a deed executed by a lieutenant-governor of one of the provinces of this Dominion with the public seal of that province thereto annexed, competent and effectual to transfer to a person named in such deed as vendee, the legal estate in property which, by force of the provisions of the *B. N. A. Act*, is vested in Her Majesty for the public purposes of the Dominion, and is for that reason expressly placed under the exclusive control of the Dominion parliament.

Upon *Prince Edward Island* being admitted into the Dominion, an event which took place upon and from the 1st July, 1873, the legislative authority of the parliament of *Canada* (by force of sec. 91, item 1, and of sec 108 and item 2 of the schedule therein referred to of the *B. N. A. Act*) became absolute and exclusive over all public harbors situate in the island. Her Majesty remained seized of those harbors and of the land covered with the waters thereof, *jure regio*, for the public purposes of the Dominion and subject to the exclusive control of the parliament of *Canada*.

Under the provisions of the Dominion statute, 37 *Vic.*, c. 34, and the orders in council made in pursuance thereof, the Dominion government has assumed control over the piece of land situate in the harbor of *Summerside*, and which the plaintiffs claim to be their property under and in virtue of a deed dated the 30th August, 1877, purporting to be executed by *R. Hodgson*, Lieutenant-Governor, with the Great Seal of the province of *Prince Edward Island* attached. It is contended that this deed is valid and effectual to transfer to the vendee named therein the land therein described, by force of two statutes of the province passed before the passing of the *B. N. A. Act, viz.*, 15 *Vic.*, c. 7, and 25 *Vic.*, c. 19, but it is obvious that upon the province being admitted into the Dominion under the provisions

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of the *B. N. A. Act*, the executive authorities of the province under its new constitution could have no power, statutory or otherwise, to sell property placed for Dominion purposes under the supreme control of the Dominion parliament, and that the property in question is such property cannot admit of a doubt. The deed, therefore, under which the plaintiff claims is inoperative and void, and the non-suit was, therefore, right, and the appeal must be dismissed with costs It is a matter of no importance that the defendant has no right either to the land in question, or that his acts at the place in question are punishable under the provisions of the Dominion statute 37 *Vic.*, c. 34 and the orders in council issued thereunder. For the purpose of the present action it is sufficient to say that the plaintiff has no title to the land in question.

Appeal dismissed with costs.

Attorneys for appellants: *Davies & Sutherland.*

Attorneys for respondent: *Peters & Peter*