

very improbable that the water of the river Niagara could be reached now, in any manner, by means of this supposed public way, without crossing some part of the artificially constructed harbour. There can be no doubt that the public would have no right to make use of the harbour in any way, against the will of the owners, even if the way extended to the water's edge; but it does not. The embankment is part of the work authorized by, and done under the Act of Parliament, and so has become the private property of the shipyard and harbour owners. It is necessary for their reasonable and proper use in repairing and maintaining, and carrying on business in, the harbour; and it so encroaches upon the place in question that it would be idle to say that its usefulness as a road, its existence as a place for a highway, is not gone, having been rightly acquired under the Act of Parliament, which, it ought not to be needful to say, is something more than a grant from the Crown.

Admittedly, if any part of the place in question remain a highway, it would be the duty of the defendants to safeguard the public, lawfully using it, from the danger which the harbour would cause: *Toronto v. Canadian, &c.* (1908), A. C. 54; and, admittedly also, it is the right of the plaintiffs to make any reasonable use of the harbour embankment, which covers so much of the place in question, and to enclose it, things quite inconsistent with any use of the place in question as a highway.

I have dealt with the case from the defendants' standpoint, and, thus dealt with, it fails; and so it becomes unnecessary to consider the plaintiffs' claim of ownership of the land extending from the waters of the harbour a considerable distance beyond the place in question.

It is satisfactory to know that the loss of the place in question as a road—if it ever were an allowance for road—is not a very serious loss; there are several other roads to the river, not far off, and, if another nearer be desired it could be had at no great cost; it would be a much more difficult thing to move any part of the harbour to make room for a road in the place in question.

There will be judgment for the plaintiffs and \$25 damages, for the trespasses complained of, with costs of action on the High Court scale, without set-off.

No injunction, or other relief, is needed.