

If obliged to determine this question in this action, my ruling would be that the onus of proof is on the defendants, and that they have not satisfied it.

But on the other ground my ruling must also be in favour of the plaintiffs; and upon this question there are not so many difficulties arising from lack of evidence, though little was adduced directly respecting it.

The great importance of a dock, and a shipyard, at the head of the great Lake Ontario, at the river, is made very evident by the fact that an Act of Parliament was passed, conferring large rights in, and powers over, the locality in question, upon individuals undertaking the work.

Assuming that the place in question had been laid out as, or had, in any manner, become, a road allowance, in which the public had acquired a right, then, under the enactment before-mentioned, there was power to appropriate it for harbour and shipyard purposes; and it was, as I find, so appropriated, and title to it was acquired under the Act.

It is true that the harbour basin does not include all of it; but it is equally true that a large part of it is actually covered by the waters of the dredged and wholly artificially made harbour; so much so that, judging by the maps alone, in the absence of any other evidence on the subject, it seems 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 authorised 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: *City of Toronto v. Canadian Pacific R.W. Co.*,