

*Public Harbours*

the schedules to the agreement reached between the federal government and that of the province of Ontario, but it must be pointed out that the port of Cornwall, in which, naturally, I am particularly interested, is not included in the schedule annexed to the bill. I think that is most unfortunate, Mr. Speaker. Nevertheless, I still hope the minister will be in a position to give the assurance that the question of the possible inclusion of Cornwall harbour in an amended agreement between the federal government and the province of Ontario will be considered at the first opportunity.

(Text):

As pointed out in the explanatory note to the bill, section 108 of the British North America Act and schedule 3 thereto vested in the federal authority the bed and foreshore of all public harbours in Canada. The explanatory note adds that the B.N.A. Act vested in Canada public harbours "that were actually used as such at the time of confederation". There is no such limitation in the act, nor in the schedule. This limitation, if it exists, was not created by the act, but is the result of jurisprudence, and in particular it comes from the case of the Attorney General for the Dominion of Canada *v.* Ritchie Contracting & Supply Company, 1919 A.C. 999, where Lord Dunedin said as reported at page 1004:

"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.

In this case the relevant year is 1867.

The case of *Holman v. Green*, reported in 6 Canada S.C.R. 707 is authority for the proposition that the public harbours referred to in the B.N.A. Act include not only artificial harbours constructed by the outlay of moneys, but also natural harbours.

On the other hand, the first fisheries case reported in 1898 A.C. 700 sets out that the transfer of public harbours operates on whatever is properly comprised in that term, having regard to the circumstances of each case, and it is not limited merely to those portions on which public works have been executed.

It is my submission that applying any of the tests sanctioned by jurisprudence, there existed a public harbour at Cornwall at the relevant time, that is, 1867, and that from a legal standpoint Cornwall should be included in the schedule to the agreement which is the subject of this bill.

[Mr. Lamoureux.]

There is no question whatever but that Cornwall was an important river front town long before confederation but it was a busy harbour at the time of confederation and it has continued to be an important port since then.

The first settlers came to Cornwall in 1776, nearly 200 years ago, followed by the important immigration of United Empire Loyalists in 1784. It appears obvious that what is now the city of Cornwall was selected as one of the sites for the settlement of the United Empire Loyalists because of its position on the St. Lawrence river, below the Long Sault rapids. In his book entitled *Lunenburgh*, published in 1890, Judge J. F. Pringle quotes Smith's *Gazetteer of Upper Canada* as containing, in 1799, the following words:

In passing from Point au Bodet westward through Lake St. Francis and up the river St. Lawrence, the route is generally made on the north shore.

After mentioning the township of Charlottenburg, the *Gazetteer* writes:

The township of Cornwall adjoins next. In the front is the town of a mile square, lying in a commodious bay of the river. The township of Oznabruck lies above Cornwall... The rapids called the Long Sault lie in front of this township. The boats in going up keep to the north shore in great measure because the south shore is not settled...

Further on in his narration, Smith says:

Edwardsburg is the next township, in the front part of which is Johnstown of a mile square. This with the town of Cornwall has been most judiciously chosen, the one being immediately above, the other below the rapids of the upper St. Lawrence.

In her most interesting book entitled "Lights on the St. Lawrence", Jean L. Gogo at page 236 quotes from the *Reminiscences of Captain T. G. Anderson* as follows:

My father and his children with the men of his company, got their allotment of lands in Cornwall... In those days, the only mode of conveyance from Montreal to Kingston was by bateau... On the 20th October 1795, my longing eyes observed a bateau rounding the point at Gray's Creek... On hailing it, the steersman made for the shore, and a bargain for my passage to Kingston for five shillings being concluded. I embarked with a light heart...

There is ample evidence that in the early nineteenth century the river front at Cornwall was used regularly as a harbour. As early as 1799, a ferry service was established between Cornwall and St. Regis. Around 1820, a horseboat began to run between Cornwall and Coteau du Lac; Judge Pringle, in his book entitled "Lunenburgh" states at page 107:

About 1824-25 a small steamboat was put on the same route. The next steamboat was the *Neptune*, which ran between Cornwall and the Coteau from 1828 or 1829 until 1840, when the *Highlander* which was launched at the Coteau in the summer of 1839 took her place.

A steamboat began to run on Lake St. Louis, between Lachine, Beauharnois and the Cascades... Dickenson's line of stages ran between Montreal and Lachine, the Cascades and Coteau du Lac and