

In Bligh's Orders in Council, ch. 80, page 706, an order in council is set out defining the limits of the harbour. It appears that the order in council is dated the 30th October, 1880. It was passed pursuant to 36 Vict. ch. 9, sec. 14, as amended by 37 Vict. ch. 34, sec. 14. The harbour is stated to extend east to Moose Creek. I think although the evidence is not clear that this Moose Creek is shewn on the plan, Exhibit No. 11, further to the east than the location of the wharf marked at point "L" on the plan, Exhibit No. 11. I think it should be held that the place in question formed part of the harbour of Parrsboro and is vested in the Crown for the Dominion under the British North America Act. If it did not form part of the harbour, then at the time of Confederation it would have been vested in the Crown representing the Province of Nova Scotia under the judgment of the Board of the Privy Council in the Fisheries Case. (See (1898) A. C. 700.)

The suppliants claim no title to land covered with water at medium high tide water.

The navigability of the harbour depends on the flow of the tide, which raises to a very great height at the point in question. The wharf in question is about half a mile from the centre of Parrsboro town, a town containing between 3,000 and 4,000 inhabitants and is situate within its limits. The contention of the suppliants is that the place where the wharf is constructed is the only reasonable available spot in the locality for a wharf. An equally available situation for a wharf is about three chains further west, but a wharf built at that point would require to have an additional length of 125 feet to reach deep water. A wharf or wharves could be built further east, but would be exposed to the prevailing westerly and south-westerly winds sweeping in from the Bay of Fundy, and a wharf exposed to these winds would cost a much larger sum of money, as an L would have to be constructed to afford shelter at such a wharf. The wharf at the point in question is protected by the neck of land on the point of which Partridge Island Lighthouse is erected.

The advantage of the wharf at the point in question is claimed to be that there is a period of navigability for about four hours permitting steamboats to reach the wharf, unload or land and depart and return with the same tide.

Possession of the land in question was taken by the Crown on the 30th April, 1902, and the wharf constructed. The plan and description were filed on 9th April, 1907.