

That is one of the cases the Supreme Court of Canada relied upon.

—the Provinces will have to prove that some form of grant or delegation of these lands had been made prior to the colony. Without a claim to a proprietary interest in those lands, or in the absence of a claim to jurisdiction derived from the Provinces' former sovereign status, the British Columbia opinion indicates that jurisdiction over these resources will fall to the Federal government—

But I have just shown clearly, I think, beyond any real possibility of contradiction, that Nova Scotia had received delegation to legislate, and to legislate over waters far exceeding the limits of the territorial waters. Not only was there a delegation, but the Governors were ordered to establish a legislature, and to make laws by and with the advice and consent of that legislature, and that legislature, so acting with the Governor and the Council, did make many laws clearly extending beyond the limits of the territorial sea.

Now let me turn to Sable Island. The ownership of Sable Island is one of the fundamental constitutional questions involved in the whole matter of offshore mineral rights, especially as it affects Nova Scotia. There can be no doubt that previous to Confederation, Sable Island was considered to be a part of the colony of Nova Scotia. That is clear from some of the documents I mentioned, and from which I read extracts. This is specifically set out in the Royal Charter of 1621, the Treaty of Paris and in Governor Wilmot's commission which is dated November 21, 1763.

The government of the colony of Nova Scotia exercised its jurisdiction over Sable Island prior to Confederation without any interruption of any kind; that is, for well over 100 years. I have forgotten the exact date now, but I think it ran from 1713 to Confederation. It would be well over 100 years.

Section 108 of the B.N.A. Act and the third schedule to that act, however, do make a reference to Sable Island, and we have to take this into consideration in dealing with the ownership of that island.

An examination of the third schedule shows that it is concerned with transferring property of a kind which is of a public nature serving some general public purpose. It is concerned with canals, public harbours, steamboats, dredges and public vessels, rivers and lake improvements, railways, military roads, custom houses, post offices, other public buildings, ordnance property, armouries, drill sheds, lands set apart for public purposes and "lighthouses and piers, and Sable Island."

● (1610)

Honourable senators, it is not easy to believe that the draftsman of this schedule of the B.N.A. Act, or the representatives of those Nova Scotians who must have approved it, intended to transfer a whole island from provincial to federal ownership simply by including the name of it with the words "lighthouses and piers" in a schedule to the act. It is surely more likely, as is maintained by Nova Scotia, that the inclusion of the words "Sable Island" in this particular, with the words "lighthouses and piers", was simply a convenient way of

[Senator Smith.]

describing the various humane establishments maintained by Nova Scotia on the island. Those establishments were all of the life-saving and ship-guidance sort, and clearly of a kind which were being enumerated in the rest of the schedule. If the draftsman had wanted to include those humane establishments, item by item, he would have had a very long list. It seems to me, at any rate, and I think to most Nova Scotians, quite clear from the whole text of the schedule and the kinds of things enumerated there, that what the draftsman had in mind, and what the representatives of Nova Scotia thought they were doing, was giving to the federal government, upon Confederation, the humane establishments and the responsibility for maintaining them, and a substantial number were enumerated.

Senator Thompson: Would it have been easier if they had said "lighthouses and piers of Sable Island", rather than "and Sable Island"?

Senator Smith: Yes, I agree, that would make it clear and probably beyond any dispute whatsoever that what they were dealing with were the humane establishments including apparatus to guide and direct ships and to save lives, such as lifeboats and means of taking care of shipwrecked people.

Senator Frith: Then we would not have been able to enjoy this inquiry.

Senator Smith: That may be a doubtful asset to balance off the loss of the island.

Senator Donahoe: They were transferring more lighthouses than the ones on Sable Island. It was all lighthouses, and Sable Island was only included.

Senator Thompson: Your definition of property under section 108 included lands.

Senator Smith: It included certain lands of public buildings such as post offices and armouries.

Senator Thompson: I thought you said "lands" per se.

Senator Smith: Yes, public lands used for certain public purposes on the mainland.

It is easy to visualize the draftsman using the words "Sable Island" in the third schedule simply to refer to the rather substantial humane establishments maintained on Sable Island. Surely, if it had been intended to convey a whole island from Nova Scotia to the federal government, it would have been reasonable to have given it at least a separate heading to itself and not to include it simply *ejusdem generis* with piers and lighthouses.

No doubt the federal argument rests not only upon the inclusion of the two words "Sable Island" in the third schedule, but also upon the fact that after Confederation and until recent years the Province of Nova Scotia did not exercise any particular jurisdiction over the island. That fact must be taken into consideration when dealing with the matter. The federal government did, at least in respect of aids to navigation for administering relief to shipwrecked persons and for pre-