

an application for these rights (to erect a wharf) by the appellants or by any purchaser from them."

In effect that any such structure if built would be likely to constitute a nuisance, and therefore that the sum of \$10,000 tendered by the Crown for the water lot of Cunard was sufficient compensation.

It will be unfortunate if the effect of that judgment will prevent the Crown from building into the harbour structures the building of which must have been contemplated when the water lot was expropriated, and which alone would justify its expropriation. Because the right of public navigation is superior even to the Crown's right to erect structures. But after all, it was a question of fact.

I have no hesitation in finding that this extension of the market wharf was not a public nuisance, that it did not materially interfere with the public right of navigation. In fact it was a great convenience to the public coming by the sea from other ports with produce and goods for the Halifax market.

In *Booth v. Ratte*, 15 App. Cas. 188, a case of grant of a water lot on the Ottawa river, near the city of Ottawa, where the grantee had constructed a wharf and boat house 140 feet in length by 40 feet in width, drawing four or four and a half feet of water at one point, the Judicial Committee say, page 192:

"No question arises in this case as to the wharf and boathouse being an obstruction to navigation, but it may be noticed that the Chancellor (of Ontario) in his judgment in the Divisional Court says, 'Here all the tendency of the evidence as to the position of the plaintiff's bank, the bay there formed at a distance of 700 feet from the main channel, the great width of the Ottawa, its ample facilities for shipping, apart from the comparatively narrow strip where the plaintiff's wharf is moored, the fact that the plaintiff has thus occupied the property in question for over twenty years, all strongly suggest that he had done nothing detrimental to river and navigation, but that on the contrary his wharf has been a benefit to the boating public; so far from being an obstruction to navigation, the maintenance of a floating wharf of that kind is in the circumstances stated by the learned Chancellor a positive convenience to those members of the public who navigate the river with small craft. As a riparian owner, the plaintiff would be at liberty to construct