

transferred and only the improvements of lakes. How would it be possible in that case to define the limits of the Dominion and the provincial rights respectively. Rivers flow into and out of lakes; it would often be difficult to determine where the river ended and the lake began. Reasons were adduced why the rivers should have been vested in the Dominion, but every one of these reasons seems equally applicable to lakes. The construction of the words as applicable to the improvements of rivers only is not an impossible one. It does no violence to the language employed. Their Lordships feel justified therefore in putting upon the language used the construction which seems to them to be more probably in accordance with the intention of the legislature.

With regard to public harbours their Lordships entertain no doubt that whatever is properly comprised in this term became vested in the Dominion of Canada. The words of the enactment in the third schedule are precise. It was contended on behalf of the provinces that only those parts of what might ordinarily fall within the term "harbour," on which public works had been executed, became vested in the Dominion, and that no part of the bed of the sea did so. Their Lordships are unable to adopt this view. The Supreme Court in arriving at the same conclusion founded their opinion on a previous decision in the same Court in the case of *Holman v. Green*, 6 S.C.R. 707, where it was held that the foreshore between high and low watermark on the margin of the harbour became the property of the Dominion as part of the harbour.

Their Lordships think it extremely inconvenient that a determination should be sought of the abstract question, what falls within the description "Public Harbour." They must decline to attempt an exhaustive definition of the term applicable to all cases. To do so would in their judgment be likely to prove misleading and dangerous. It must depend, to some extent at all events, upon the circumstances of each particular harbour, what forms a part of that harbour. It is only possible to deal with definite issues which have been raised. It appears to have been thought by the Supreme Court in the case of *Holman v. Green*, 6 S.C.R. 707 that if more than the public works connected with the harbour passed under that word, and if it included any part of the bed of the sea, it followed that the foreshore between the high and low water mark being also Crown property, likewise passed to the Dominion.

Their Lordships are of opinion that it does not follow that because the foreshore on the margin of a harbour is Crown property it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If for example it had actually been used for harbour purposes, such as anchoring ships or landing goods, it would no doubt form part of the harbour, but there are other cases in which, in their Lordships' opinion it would be equally clear that it did not form part of it.

Their Lordships pass now to the questions relating to fisheries and fishing rights. Their Lordships are of opinion that the ninety-first section of the British North America Act did not convey to the Dominion of Canada any proprietary rights in relation to fisheries. Their Lordships have already noticed the distinction which must be borne in mind between rights of property and legislative jurisdiction. It was the latter only which was conferred under the