

therefore to such questions as those adverted to would not assist in determining whether in any particular case the property is vested in the Dominion or in the province. It must also be borne in mind that there is a broad distinction between proprietary rights and legislative jurisdiction. The fact that such jurisdiction in respect of a particular subject matter is conferred on the Dominion legislature, for example affords no evidence that any proprietary rights with respect to it were transferred to the Dominion. There is no presumption that because legislative jurisdiction was vested in the Dominion Parliament proprietary rights were transferred to it. The Dominion of Canada was called into existence by the British North America Act, 1867. Whatever proprietary rights were at the time of the passing of that Act possessed by the Provinces remain vested in them, except such as are by any of its express enactments transferred to the Dominion of Canada. With these preliminary observations their Lordships proceed to consider the questions submitted to them.

The first of these is whether the beds of all lakes, rivers, public harbours and other waters, or any, and which of them, situate within the territorial limits of the several provinces, and not granted before confederation, became under the British North American Act the property of the Dominion.

It is necessary to deal with the several subject matters referred to, separately, though the answer as to each of them depends mainly on the construction of the third schedule to the British North America Act. By the 108th section of that Act it is provided that the public works and property of each province enumerated in the schedule shall be the property of Canada. That schedule is headed "Provincial Public Works and Property to be the Property of Canada," and contains an enumeration of various subjects numbered 1 to 10. The 5th of these is "Rivers and Lake Improvements." The word "Rivers" obviously applies to nothing which was not vested in the province. It is contended on behalf of the Dominion that under the words quoted, the whole of the rivers so vested were transferred from the province to the Dominion. It is contended on the other hand that nothing more was transferred than the improvements of the provincial rivers, that is to say only public works which had been effected and not the entire beds of the rivers. If the words used had been "river and lake improvements," or if the word "lake" had been in the plural "lakes," there could have been no doubt that the improvements only were transferred. Cogent arguments were adduced in support of each of the rival constructions; upon the whole their Lordships after careful consideration have arrived at the conclusion that the Court below was right and that the improvements only were transferred to the Dominion. There can be no doubt that the subjects comprised in the schedule are for the most part works or constructions which have resulted from the expenditure of public money, though there are exceptions. It is to be observed that rivers and lake improvements are coupled together as one item. If the intention had been to transfer the entire bed of the rivers and only artificial works on lakes, one would not have expected to find them thus coupled together. Lake improvements might in that case more naturally have been found as a separate item or been coupled with canals. Moreover it is impossible not to be impressed by the inconvenience which would arise if the entire rivers were