

---

---

**The Salt Men of Goderich in Ontario's Court of Chancery:  
*Ontario Salt Co. v. Merchants Salt Co.* and the Judicial  
Enforcement of Combinations**

**W.E. Brett Code\***

In the 1871 case of *Ontario Salt Co. v. Merchants Salt Co.*, the Ontario Court of Chancery upheld a cartel formed by salt producers in the town of Goderich. Feeling the case has been unjustly neglected and judged only from the perspective of legal and economic theory, the author embarks on an analysis of the historical setting of the case in an attempt to shed new light on why the court reached the decision that it did. He weaves together the story of a short-lived salt boom in a quaint Ontario town, and reveals political, economic, ideological and human dimensions in the case which go beyond the intellectual history of restraint of trade doctrine.

En 1871, dans l'affaire *Ontario Salt Co. c. Merchants Salt Co.*, la Court of Chancery de l'Ontario déclara valide un cartel formé par des producteurs de sel à Goderich. Étant d'avis que cette décision a été négligée injustement et qu'on l'a jugée seulement du point de vue de la théorie juridique et économique, l'auteur entreprend une analyse du contexte historique de la décision dans le but d'y apporter un nouvel éclairage. Il raconte la période de prospérité que le sel a apportée dans cette charmante petite ville ontarienne et évoque les aspects politiques, économiques, idéologiques et humains de ce jugement, qui l'expliquent peut-être mieux qu'une analyse de la doctrine juridique sur les pratiques restrictives du commerce.

---

\*LL.B., Faculty of Law, McGill University. The author wishes to thank Blaine Baker and Richard Janda, without whose enthusiastic support and perceptive criticism this project would not have been possible. He would also like to thank Nicholas Kasirer and Jeremy Webber for their helpful comments on a previous draft. The permission granted by Malcolm E. Campbell to reproduce photographs from the book *Memories of Goderich*, and that granted by University of Toronto Press to reproduce a map from the book *Ontario's History in Maps* is gratefully acknowledged. This paper was awarded the Max Crestohl Prize.

© McGill Law Journal 1993

Revue de droit de McGill

To be cited as: (1993) 38 McGill L.J. 517

Mode de référence: (1993) 38 R.D. McGill 517

### *Synopsis*

#### Introduction

- I. Goderich Salt and Its Makers
- II. The Salt Boom: 1866-1870
- III. The Salt Men of Goderich: Inventive, Creative and Highly Competitive
- IV. The American Competitor: The Vultures of Ououadaga
- V. The Response of the Dominion: Reciprocity First
- VI. The Response of the Locality: Cooperative Combination
- VII. The Response of the Judiciary: The Courts Help Those Who Help Themselves

#### Conclusion

#### Appendix

\* \* \*

#### Introduction

*Ontario Salt Co. v. Merchants Salt Co.* is probably Canada's leading case on the common law of restraint of trade.<sup>1</sup> But it generally is cited as a footnote to the modern history of that law. And because *Ontario Salt* is a Canadian case, most Anglo-American treatises on the subject do not include it at all.<sup>2</sup> *Ontario Salt* is included in Canadian texts which specifically treat restraint of trade law, but only briefly, as though the authors and editors of those texts were trying to meet a minimum Canadian content requirement.<sup>3</sup> Little is known about the con-

---

<sup>1</sup>(1871), 18 Gr. 540 (Ch. C.) [hereinafter *Ontario Salt*].

<sup>2</sup>See e.g. J. D. Heydon, *The Restraint of Trade Doctrine* (London: Butterworths, 1971); W. Letwin, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act* (Chicago: University of Chicago Press, 1965); W. A. Sanderson, *Restraint of Trade in English Law* (London: Sweet & Maxwell, 1926).

<sup>3</sup>Compare M. J. Trebilcock, *The Common Law of Restraint of Trade* (Toronto: Carswell, 1986); B. Dunlop, D. McQueen & M.J. Trebilcock, *Canadian Competition Policy: A Legal and Economic Analysis* (Toronto: Canada Law Book, 1987) at 31. R. J. Roberts, *Anticombiners and Anti-Trust: The Competition Law of Canada and the Anti-Trust Law of the United States* (Toronto: Butterworths, 1980) dealt only with legislation and did not treat *Ontario Salt*.

*Ontario Salt* is briefly discussed by Mark Chartrand in "The First Canadian Trade Union Legislation: An Historical Perspective" (1984) 16 *Ottawa L. Rev.* 267.

Jamie Benedickson critically analyzed *Ontario Salt* in a forthcoming article, entitled "The Com-

text and circumstances of the case, largely because interest in it has rarely gone beyond the purely doctrinal history that dominates law libraries.

In the text that follows, I take a different approach. I seek to examine the case in its context.<sup>4</sup> Placed in its context and presented with a fuller host of forces that influenced it and its intended ends, the decision in *Ontario Salt* may well rise from the footnotes to take a more important place in the history of Canadian restraint of trade. At least, such is my hope.

In my opinion, the prime interest of the leading case in context lies in the story itself,<sup>5</sup> a story that enables us to compare and contrast the present day with the Victorian Age. History is emphatically not past politics or past jurisprudence written with an eye to present purposes or currently popular causes. History, including legal history, is the telling of a story of change and of the conservative forces that condition change. It is the "life of yesterday in the present."<sup>6</sup> Each story therefore has value in itself and should be enjoyably told.

---

bines Problem in Canadian Legal Thought, 1867-1920," a not-yet-completely revised version of his LL.M. thesis. I am most grateful to him for granting me access to his thesis and for permission to cite it.

<sup>4</sup>As a detailed examination of a single case in its historical context, this paper belongs to a new genre in legal history writing that has developed over the last twenty years. The corpus of that genre consists of: R. Danzig, "Hadley v. Baxendale: A Study in the Industrialization of the Law" (1975) 4 J. Legal Studies 249; A.W.B. Simpson, "Regina v. Archer and Muller (1875): The Leading Case that Never Was" (1982) 2 Oxford J. of Legal Studies 181; A.W.B. Simpson, *Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which it Gave Rise* (Chicago: University of Chicago Press, 1984); A.W.B. Simpson, "Legal Liability for Bursting Reservoirs: The Historical Context of *Rylands v. Fletcher*" (1984) 13 J. Legal Studies 209; A.W.B. Simpson, "Quackery and Contract Law: The Case of the Carbolic Smoke Ball" (1985) 14 J. Legal Studies 345; A.W.B. Simpson, "Contracts for Cotton to Arrive: The Case of the Two Ships *Peerless*" (1989) 11 Cardozo L.R. 287; M.L. Friedland, *The Case of Valentine Shortis: A True Story of Crime and Politics in Canada* (Toronto: University of Toronto Press, 1986); R.W. Kostal, "Legal Justice, Social Justice: An IncurSION into the Social History of Work-Related Accident Law in Ontario, 1860-86" (1988) 6 L. & Hist. Rev. 1.

<sup>5</sup>Compare the approaches of the authors cited *ibid.* For example, in "Legal Justice, Social Justice," Rande Kostal sought to explore the interplay of legal and social forces, to apply Douglas Hay's notions of law from above (legal justice) and law from below (social justice), and to explore the hegemonic control of a legal culture that imbricates itself in social life (compare D. Hay *et al.*, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (London: Allen Lane, 1975)). He purposely chose a case (*Mathews v. Hamilton Powder Company* (1885), 12 O.R. 58 (Q.B.), rev'd (1887), 14 O.R. 261 (C.A.)) that put the two in conflict, and which could be used to prove the kinds of radical hypotheses that Robert Gordon discussed in "Critical Legal Histories" ((1984) 36 Stanford L. Rev. 57).

Brian Simpson and Richard Danzig began with a desire to understand the idea of leading cases. Their scholarship attempted to explain the difference between what the "great" cases had come to mean after having been processed by doctrinaire legal scholars and used by generations of barristers to score rhetorical points at trial, and what those cases meant to the parties involved in them. By scrutinizing *Rylands v. Fletcher*, Simpson sought to explain the co-existence of antithetical notions of liability (fault-based and strict) in mid-Victorian tort law. Although he was successful in doing so, Simpson discovered several other things along the way. Not least of those other discoveries was the essential marginality of the common law as a regulator of mid-nineteenth-century economic activity, what the *Times* of London called "the impotence of the law."

<sup>6</sup>This phrase was taken from W.A. Mackintosh, "Economic Factors in Canadian History" in W.T. Easterbrook & M.H. Watkins, eds., *Approaches to Canadian Economic History: A Selection of Essays* (Ottawa: Carleton University Press, 1967) 1 at 2.



It is in that spirit that the following account has been approached. It is the story of a small town in a young nation, and of a new, rapidly successful industry to which the people of that town looked as a source of great prosperity. The primary source for the story was a local newspaper whose editorial columns and leaders were full of a life, hope, and energy that readers of modern newspapers no longer know. Much of that story will be told in the words and voices of the actors themselves.

Beyond that, the story of the late-nineteenth-century salt industry in Goderich, Ontario, is a compelling example of economic ordering by a new nation, and of the compromising and deal-making that are the stuff of nation-building. For the people of Goderich, salt was all there was, and their fortunes were made or broken on the success of the town's only industry. For the people of Canada in the years immediately following Confederation, both salt and the people of Goderich were bit players in a much larger drama, items of barter to be used in establishing a national trade and tariff policy that was supposed to benefit all Canadians, all regions, and all industries.

In the midst of that growth, hope and excitement was a legal dispute, *Ontario Salt*. The Canadian Salt Association ("CSA") was formed by several salt manufacturers all of which agreed to combine in an attempt to stabilize the price of salt and to unite against an American competitor that benefitted from a protective U.S. tariff on imported Canadian salt. When several parties to that agreement attempted to withdraw from the combination, the CSA sued in Ontario's Court of Chancery for an injunction which would restrain the defendants, Merchants Salt Co. *et al.*, from selling salt other than through CSA trustees. Vice-Chancellor Samuel Henry Strong found for the plaintiffs for reasons that are discussed in detail below. *Ontario Salt* became Canada's leading case on restraint of trade. Had *Ontario Salt*'s occupancy of the pinnacle of Canadian restraint of trade doctrine not been pre-empted by statutory regulation of the problems posed by cartelization, it may have gained in notoriety.<sup>7</sup> As things turned out, it was cited in only three reported Canadian cases, all of which applied it.<sup>8</sup>

*Ontario Salt* could never really have become a leading Anglo-American case for two reasons. First, it was a Canadian case in a time and place that

---

<sup>7</sup>One argument in favour of granting "leading case" status to *Ontario Salt* is the wording used by Strong in affirming that the real object of the CSA was not "unduly to enhance the price, but as it is expressly alleged in the bill, to enable the parties by concerted action to combat an attempt on the part of foreign producers and manufacturers unduly to depreciate it" (*Ontario Salt*, *supra* note 1 at 543). His use of the term "unduly" was similar to that which was ultimately codified in *An Act for the Prevention and Suppression of Combinations Formed in Restraint of Trade*, S.C. 1889, c. 41, which prohibited all combination "to unduly limit..." or "to unduly prevent ..." Note that Strong was not responsible for the split infinitives in the Act.

<sup>8</sup>*Schrader v. Lillis* (1886), 10 O.R. 358 (Ch. C.); *McCausland v. Hill* (1896), 23 O.A.R. 739; *R. v. Beckett* (1910), 20 O.L.R. 401 (K.B.). Ironically, *Ontario Salt* did take on more doctrinal importance in the United States. In A.J. Eddy, *The Law of Combinations: Embracing Monopolies, Trusts, and Combinations of Labor and Capital, Conspiracy, and Contracts in Restraint of Trade* (Chicago: Callaghan & Co., 1901), *Ontario Salt* was cited repeatedly in support of developing American legal dogma on restraint of trade law, notably in *Skrainka v. Scharringhausen*, 8 Mo. App. 522 (1880); *Nester v. Continental Brewing Co.*, 2 Dist. R. 177, on appeal 29 A. 102 (Pa. S.C. 1894); *U.S. v. Trans-Missouri Freight Ass'n*, which is discussed further *infra*, note 121.

looked to England for its legal authority.<sup>9</sup> Second, the judge in *Ontario Salt*, Sir Samuel Henry Strong, Vice-Chancellor, broke the rules required to make a case a leading case. Rather than assist in the careful exposition of the finite set of legal principles that constituted the deep and rational structure for the law, Strong Canadianized the law by writing a contradictory judgment.<sup>10</sup> One part of his judgment was an apparently dogmatic exposition of English doctrine; the other was an appeal to public and scientific opinion in an adaptation of the law to the needs of the litigants as participants in an experiment in nation-building.

## I. Goderich Salt and Its Makers

Goderich, Ontario, was founded in 1827 by two intrepid Scotsmen, John Galt and William Dunlop.<sup>11</sup> In 1867, Goderich, population 3,500, was both the centre of a remote agricultural community and a desirable summer resort, the latter due to the "salubrious atmosphere" of its Lake Huron shoreline.<sup>12</sup> It was perfectly suited to prosperous trade. The Buffalo and Lake Huron Branch of the Grand Trunk Railroad from Fort Erie to Goderich (161 miles in length, completed in 1858) terminated at the harbour of Goderich and intersected with the main line at Stratford, communicating with the major railroad systems of Canada and the United States. The harbour accommodations for shipping freight by water to the principal points on the Great Lakes were "all that [could] be desired."<sup>13</sup> Grain from Chicago was trans-shipped through Goderich to the rest of Canada. Prior to the salt boom that turned it into a thriving industrial town, however, "Goderich presented but little interest beyond the mere fact of being a healthy and pleasant Lake shore town ... [which] served as a convenient place of transit from Canada to the Michigan and Upper Lake Ports."<sup>14</sup>

From a contemporary observer's perspective, Goderich may have been pleasant, but living conditions there were far from utopic. The editors of *Memories of Goderich* described it as follows:

There were no sewers. The streets were rough. After a rain some were nearly impassable while in dry weather the dust was so thick that one could scarcely see across the Square or West Street where the traffic was heavy. Water was got from surface wells or springs. Some people had to carry their water a half mile. Back yards were filthy. Typhoid was still common. A bell ringer proclaimed the time, sometimes not altogether accurately. Street lights were oil lamps which had to be lit each night. There were no sidewalks ... Successive editors waged war on the cows, pigs, geese and horses that roamed the streets and at night, in the poor light, presented a real hazard. They did not approve of Courthouse Park as a cow pas-

---

<sup>9</sup>See generally G.B. Baker, "The Reconstitution of Upper Canadian Legal Thought in the Late-Victorian Empire" (1985) 3 L. & Hist. Rev. 219.

<sup>10</sup>Compare C.C. Langdell, *A Selection of Cases on the Law of Contracts* (Boston: Little, Brown, 1871), or C.C. Langdell, *A Summary of the Law of Contracts* (Boston: Little, Brown, 1880).

<sup>11</sup>See generally D. Wallace, *Memories of Goderich: The Romance of the Prettiest Town in Canada*, 2d ed. (Goderich: n.p., 1979) at 5 [hereinafter *Memories of Goderich*].

<sup>12</sup>C.A. Goessman, *Report on the Salt Resources of Goderich, Province of Ontario [Canada West]* (Syracuse, N.Y.: Onondaga Salt Co., 1868) at 3.

<sup>13</sup>J.H. Harden, "Rock-Salt Deposits of Huron and Bruce Counties, Ontario, Canada" (1879) 1:3 *Proceedings of the Engineers' Club of Philadelphia* 1 at 1.

<sup>14</sup>Goessman, *supra* note 12 at 4.

ture, either. The streets were only clean, they said, on the rare occasions when the cows were in the pound.<sup>15</sup>

Yet Goderich of the 1870s had come a long way since its founding a mere forty years earlier. In 1879, the *Historical Atlas of Huron County, Ontario* depicted the history of Goderich and its surrounding area in the following slightly florid manner:

It is still within the memory of men of but middle age, when nought but nature's solitudes echoed back the scream of the eagle and the yelping of the wolf ... How many can remember when, for miles on all sides of the county town, then the *chef lieu* of the whole "Huron Tract," scarce a human habitation existed, nor had a white man taken up his abode in what was then the undisputed hunting grounds of the aborigines ... Many bear living witness to changes which have occurred under their own eyes within a generation — changes so vast as to rival fiction in their wonderful reality; who have seen large towns arise from the forest and a wide expanse of trackless wilds give place to wealthy and populous communities ... who have seen the miseries and sufferings incident to the early settlement of a wilderness replaced by comfort, plenty and affluence, and the embryo settlements grow broader and more broad under the blow of the woodman's axe, till now in many parts but an occasional grove of native forest dots here and there a landscape embracing far-stretching areas of waving corn and luxuriant meadow, instead of an almost unbroken wilderness, interspersed at no oft-recurring intervals with small patches of stump-covered clearing surrounding primitive log huts.<sup>16</sup>

The source of Goderich's substantial progress was the salt boom. In 1866, when oil excitement was at its height in Canada West, a company was formed at Goderich with the goal of "striking ile." In May of that year, Samuel Platt — a "wonder of go-aheadiveness" and a man of "invincible character" — was drilling for oil. He had persuaded some Goderich businessmen to invest \$10,000 in the Goderich Petroleum Company. Platt hired Peter MacEwan, who had successfully drilled several oil wells in nearby Lambton County, as chief driller. At 686 feet, Platt's company was out of money, and his investors abandoned the project.<sup>17</sup> Fortunately for Platt, oil fever had spread to the local municipal councils, which offered up to \$1,500 to anyone who drilled to 1000 feet. He continued drilling and was successful.<sup>18</sup> Instead of finding black gold, Platt lucked into one of the world's richest deposits of white gold: its purest salt. Within a few months, the Goderich Salt and Petroleum Company became the Goderich Salt Company, achieving immediate success in the manufacture of boiled salt.<sup>19</sup>

---

<sup>15</sup>*Memories of Goderich*, *supra* note 11 at 74.

<sup>16</sup>H. Belden & Co., *Illustrated Historical Atlas of Huron County, Ontario* (Owen Sound, Ont.: Richardson, Bond & Wright, 1972) at 7 [hereinafter *Historical Atlas*].

<sup>17</sup>*Memories of Goderich*, *supra* note 11 at 50.

<sup>18</sup>At 964 feet, Platt "encountered a solid bed of rock salt into which he bored for a distance of 60 feet, thus completing 1,000 feet, and securing" the bonuses. See L.H. Cole, *The Salt Industry of Canada* (Ottawa: Dept. of Mines, 1930) at 32.

<sup>19</sup>The capital of the newly incorporated Goderich Petroleum Company (later called the Goderich Salt Company), which began producing salt in September of 1866, was increased to \$14,000. It paid a one-half year dividend of 25-35% in its first year of operation: ("Dividend" *Signal* (14 January 1868) 2). Goessman said:

Six months after the works commenced operations, a dividend of 15 per cent was paid to the stockholders; and at the end of the year a further dividend was declared of 36 per cent, making a clear profit of 50 per cent for the first year in spite of many inci-

Platt's company was so successful that American salt manufacturers, who had previously controlled the Canada West market, soon arrived to investigate the competitive threat posed by Goderich salt. The Onondaga Salt Company, which enjoyed a monopoly on the production, sale, and distribution of salt in New York State, sent C.A. Goessman, a chemist and geologist, to Goderich as the first stage in formulating a plan to maintain its competitive edge in the salt industry. Regarding the salt deposits, Goessman concluded:

Firstly, the present brine of Goderich is not only one of the most concentrated known, but also one of the purest, if not *the* purest, at present turned to practical use for the manufacture of Salt.

Secondly. That the salt bearing region apparently extends for more than *twelve* miles S.E. of Goderich and thus covers a much larger area than at present has been established.<sup>20</sup>

Thirdly. That Goderich possesses, in a high degree, all necessary additional resources and facilities for the manufacture of salt, and its transportation to all the important commercial points on the Western Lakes, and is therefore *the most formidable competitor* the Salt works of the State of New York have ever yet had to contend with. [emphasis added]<sup>21</sup>

Goessman's analysis, verified on three later occasions,<sup>22</sup> showed that Goderich salt was fifty per cent more concentrated than New York salt and contained only one-fifth the impurities.<sup>23</sup> The superior purity and strength, and consequent commercial value, of Goderich salt bestowed on the region a huge competitive advantage. Based on that advantage, Goderich quickly became the salt capital of the new Dominion of Canada.

Factual, rational and informative, Goessman's reports explained what was at stake economically, but they did not even hint at what was really at stake for the people of Goderich, of Ontario, and of the newly-created Dominion. The local newspaper, the *Signal*, was full of the "eureka" flavour of salt:<sup>24</sup>

---

dental expenses arising from a first attempt at starting an entirely new business (*supra* note 12 at 11).

<sup>20</sup>In 1930, L.H. Cole, *supra* note 18 at 26, estimated the area of the salt basin to be approximately 3,000 square miles. He remarked that a bed one foot in thickness over such an area could produce 6,000,000,000 tons of pure salt. Ontario's salt beds vary in thickness from 100 to 200 feet. "It can thus be seen that there is little danger of the supply of salt in Ontario being exhausted."

<sup>21</sup>Goessman, *supra* note 12 at 5-6.

<sup>22</sup>Compare T.S. Hunt, "Report on the Goderich Salt Region" in *General Report of the Geological Survey of Canada for 1867-69* (Montreal: Dawson Bros., 1870) 26. Professor John Gibson, of the Ottawa Normal School, reconfirmed both Goessman's and Hunt's results in a study undertaken in 1876. His results were published as part of the "Report of the Select Committee Appointed to Enquire into the Salt Interests" *Journals of the House of Commons*, 1876, Vol. 10, Appendix (No. 2) at 6 [hereinafter "Select Committee"].

<sup>23</sup>Goessman, *supra* note 12 at 7.

<sup>24</sup>The *Huron Signal*, also known as the *Goderich Signal*, was published in two versions. There was a weekly and a semi-weekly edition. It is available from 1867 to 1873 on micro-film. Because many of the papers were missing, torn or burned, the editors of the micro-film used the best available copies of either the weekly or the semi-weekly in a valiant attempt to cobble together something approaching a chronological history of Goderich and the surrounding counties. The McLennan Library at McGill University has the paper from 1867 to 1873. Most of the issues in 1867 and 1868 appear to be preserved. The worst year is 1869. For that year, no issues are available from 31 December 1868 to 25 May 1869. May 25 is preserved, but then there is nothing until 25 June. A few issues from the summer of 1869 are preserved, but nothing after 2 September is available.

## GODERICH SALT FEVER

It appears that the fame of our Goderich Salt has spread to the far-off shores of the Pacific. Under the above heading, the *British Columbian* gives an article which is copied below. What a wonderful engine is the Press for the widespread dissemination of news. The tidings of our great discovery of salt, published in the *Signal*, have been read in nearly every county of the British Isles, amongst the glaciers of Switzerland, in plodding Bavaria, distant India, Australia, California, British Columbia, &c., as well as in all parts of Canada. There is a moral in this which advertisers should study — not that they will obtain customers from distant parts — but that the newspaper is the key to popularity at home. The *British Columbian* says: —

It would appear that salt, no less than gold, produces fever. We find from our Canadian exchanges that the salt fever was raging at Goderich. It is already known that several salt wells have been in successful operation at that town for more than a year, producing salt of a very good quality, so good, indeed, as to have carried the prize against the world at the late Paris Exposition. A well had recently been sunk in the

---

The film begins again on 6 January 1870. Most of the issues from 1870 and 1871 are preserved. The first 5 months of 1872 are well preserved, but all the issues from June to December, 1872, are missing. There are no major missing periods in 1873.

It will be referred to here as the *Signal*. Its editor was one Cox, about whom I have been able to discover very little. Both he and his newspaper were decidedly Liberal and free trade in their outlook, but the *Signal* could not fairly be considered a party organ. Though rarely impartial, Cox's editorials were balanced. He did not follow the party line in a knee-jerk, unreflective manner.

On the use of local newspapers as sources, see generally P. Rutherford, *A Victorian Authority: The Daily Press in Late Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1982).

Local dailies, semi-weeklies, and weeklies of the nineteenth century did not pursue any ideal of objectivity. Rather, the late-nineteenth-century newspaper was a mechanism of bourgeois liberty. The *Signal*, with its utilitarian motto ("The Greatest Possible Good to the Greatest Possible Number"), was no different. Its bias was not ideological so much as it was practical and necessary. For what was occurring in post-Confederation Canada went beyond theory and ideology. It was nation-building.

The *Signal*, like other local papers of its time, had an important role to play in that process. A popular press that could supply information and fashion myths for a mass audience was essential to the integration of a transcontinental community. Beyond that general mission, however, the popular press was far from monolithic. Idiosyncrasy was the rule; editors tried to stamp their papers with a feel and flavour that would sustain readership and retain advertisers. To satisfy advertisers, newspapers served their ends. To succeed in that project, a paper had to sway public opinion (Rutherford, *ibid* at 118, 130). In practice, the dailies often became social authorities working on behalf of harmony and consensus. In its desire to promote the industrialization of Goderich and the success of the salt men, for example, the *Signal* sought to persuade farmers that higher prices for salt were in their best interests.

It is important to remember that local papers were not voices of truth, nor did they merely express the needs and desires of their readers. They were as much agents of social change and moulders of opinion as voices of it. In the early years of Confederation, editorials

elaborated a series of mythologies of nationhood which sometimes challenged but usually justified the existing or emerging patterns of dominance in the country at large. ... [R]ough-hewn and incorporating unresolved tensions and outright contradictions, ... [the mythmakers pursued] three apparent certitudes, the ideas of progress, nationality, and democracy (Rutherford, *ibid* at 156-57).

Progress and nationality were the basis for almost everything said in the *Signal* regarding the Canadian Salt Association. That being the case, there is no way to know what was real public perception and what was the editor pursuing dreams and spinning tales of national dreams. From the *Signal*, then, comes context, but context of a particular variety, subject to scepticism.

neighborhood of the railway station, near Monroe's tavern, the chief object of which was to test th [sic] breadth of the saline deposit. The experiment has been most successful. Thirty-three feet of salt had been pierced, ten feet of which was one solid mass of pure salt, of the very best quality! The *Huron Signal*, the leading Goderich paper, concludes that the entire townsite and far beyond it, forms one enormous basin filled with salt, which generations will not exhaust, and estimates the deposit to be of more importance to that place than either silver or gold mines. We heartily congratulate Goderich upon its good fortune. It has long been the prettiest town in Canada, at least so far as natural attractions are concerned; and it now bids fair to be the wealthiest. Verily, Canada would appear to have a bright destiny before it. Scarcely a year passes without making the discovery of some new source of untold wealth. First copper, then coal-oil, silver, gold followed in quick succession, and now salt is added to the list.<sup>25</sup>

## II. The Salt Boom: 1866-1870

For ten or fifteen years following Confederation, the prosperity of Goderich was inextricably linked to the production of salt. The competitiveness of Goderich salt depended on the method of production used and on its adaptation to the conditions of production in that town. The immediate success of the first wells in Goderich led people to put great faith in the salt men, whose works benefitted the community not only with inexpensive salt of high quality, but also with hopes of endless competitive production and enormous long-term success.

By the time *Ontario Salt* was heard in 1871, there were nine salt manufactories in Goderich and probably a dozen more in the region.<sup>26</sup> Because no one undertook a full study of the overall effect of that industry on Goderich, the benefits of the salt industry are difficult to measure. Viewers have only an impressionistic picture of those advantages which can be gleaned from the pages of the *Signal*. Yet with the prosperity of the salt boom there came undeniable local benefits, particularly in public infrastructure. Roads were graded and gravelled, sidewalks and boardwalks were constructed, and more permanent lighting was installed. Culverts were installed so that waste water could be easily discharged

---

<sup>25</sup>*Signal* (19 March 1868) 2.

<sup>26</sup>Salt was manufactured by an evaporation technique. Each well was between 900 and 1200 feet deep. Pumps moved 500 barrels of brine per day into large vats connected to blocks of salt kettles. The original works of the Goderich Salt Company comprised 104 kettles, each of 140 gallons' capacity and 4½ feet wide, lined up in four rows. Built of brick, the salt block for the kettles was 120 feet long and 64 feet wide. Under each row ran one long furnace that burned 4 cords of wood per day. With the furnaces at full blast, the evaporation process took about four hours — the faster it boiled the finer was the salt produced (Goessman, *supra* note 12; Hunt, *supra* note 22; M.S. Beecroft, *Windings: A History of the Lower Maitland River* (Goderich: Maitland Valley Conservation Authority, 1984) at 68). As salt was deposited, it was put in bins to dry, then barrelled for market. The original Goderich works produced between 90 and 100 barrels per day, and each barrel contained 300 pounds of salt. The capital investment required for the establishment of a salt manufactory ranged from \$10,000 to \$20,000 (see "The Salt Wells of Goderich" *Signal* (29 October 1868) 2).

There was a variety of grades of salt. Some was kept for table use, some was prepared for butter and dairy use. Chemicals were added to keep it free-running. This better-quality salt was sold in cotton bags, in 2, 3, 5, 8 and 19 pound lots. The bags were filled by girls and put into barrels for shipment (Beecroft, *ibid.* at 69).

into the river and drinking water was kept clean. In the centre of town an old cemetery was converted into a large park and commons, where fairs and community celebrations were held. The salt boom had a real and positive effect on the quality of life in Goderich, which in turn created ample public support for the industry. That a few traces of pre-boom Goderich persisted could be seen in the cattle that continued to roam its streets. Thanks to the sidewalks, it could at least be claimed that the people of Goderich no longer had to step in the hazards created by those cattle.<sup>27</sup>

That there was a good deal of local public support for what the salt men were doing in Goderich is also shown by the existence of certain risk-reducing incentives created by the elected local councils. In 1868, the Huron County Council offered a bonus of \$2,000 to companies or individuals who drilled wells reaching depths of 1,000 feet.<sup>28</sup> The Goderich Town Council exempted all salt wells from municipal and property taxes for five years.<sup>29</sup> The development of the industry was not, therefore, an entirely private affair, but a mixed enterprise involving the entire community. Everyone invested in it, directly through the local councils, and indirectly by paying a higher price than might have been fair under pure market conditions. "Buy Canadian, Buy Goderich!" was a call often read in the columns of the *Signal*. There were dissenters, of course, who refused to share in the industry. Their views did not often appear in the pages of the *Signal*, but when they did, they were revealing.

The following editorial demonstrates better than most just how much Goderich benefitted from the development of the salt industry. The Canadian Salt Association, the cartel vindicated in the *Ontario Salt* case, was formed on 29 June 1871. It immediately raised the price of salt by twenty-five per cent.<sup>30</sup> Inevitably, some local farmers grumbled. The *Signal* responded to their complaints with the following editorial:

#### A WORD ABOUT THE SALT AMALGAMATION<sup>31</sup>

Supposing they [the farmers] have to pay \$1.60 per barrel for salt, the difference on the largest quantity used by any farmer in a year will not be appreciable. On the other hand, if the old price had continued and this amalgamation had not been accomplished, how would it have affected the entire community if (as would have been inevitable) the majority of the wells should have been shut up? Where would have been the extensive market for cordwood, which has been the mainstay of our agricultural neighbours during several years of poor crops?<sup>32</sup> Where would have

---

<sup>27</sup>See *Memories of Goderich*, *supra* note 11 at 74.

<sup>28</sup>See *Signal* (4 June 1868).

<sup>29</sup>Apparently, the nearby Village of Seaforth decided not to do so. On discovering this failure, the *Signal* exhorted people to drill nonetheless: "This should not deter parties intending to bore, for, no doubt, if at the end of the year a well should be found paying no dividend, the Council would follow the example of Goderich and omit the taxes" ("Sale at Seaforth" *Signal* (21 July 1870) 2).

<sup>30</sup>On the Toronto market, the price changed from \$1.20-\$1.25 per carload on 29 June 1871 to \$1.50-\$1.60 per barrel on 6 July 1871 ("Weekly Review of Toronto Markets" *The [Toronto] Daily Globe* (29 June 1871) 4, (6 July 1871) 4). Changes in the price of salt are documented in the Appendix.

<sup>31</sup>*Signal* (7 July 1871) 2.

<sup>32</sup>To grow agricultural crops, farmers had to remove the extensive Ontario forest. In other regions, trees were either dangerously burned or cut and left to rot. Around Goderich, the farmers

been the market for stave timber, hoops, &c., out of which not a little ready money was turned, when that agreeable medium exchange could not otherwise have been procured?<sup>33</sup> Where would have been the occupation<sup>34</sup> of the host of coopers,<sup>35</sup> teamsters, laborers and others whose families' wants created such excellent markets for farm products, that otherwise would have gone away from home at lower prices? We are sure that every reasonable man will acknowledge that the principal source of our prosperity and advancement<sup>36</sup> in this sector would have dried up with the decay of the salt manufacture. We should therefore be only too glad to assist the salt manufacturers, in carrying out an arrangement, which, on its present reasonable basis, will yield them a fair profit and guarantee to the community a continued and increasing flow of business, population and improvements.<sup>37</sup> [references and notes supplied]

The effect of such editorial promotion cannot be measured, but such reasoning must have been persuasive in a time of rapid growth. The inhabitants of Goderich obviously appreciated how quickly the quality of their daily lives had been improving, and the *Signal* was probably effective in convincing them that a

---

could sell the wood they cut for \$2-\$2.50 per cord. Thus, they earned extra cash, had larger farms and employed their horses during the off season. In June, 1868, 26,189 (50%) of Goderich Township's 52,378 acres were cleared ("Report of the Equalization Committee" *Signal* (11 June 1868) 1). In June, 1870, 53% (27,454/51,800 acres) were cleared (*Signal* (16 June 1870)). One year later, the amount of cleared land increased to 54% (27,972/51,800 acres) (*Signal* (15 June 1871)). Exactly what these statistics represent is not clear; they are presented as a possible indication of what occurred.

<sup>33</sup>Goderich salt was packed in barrels. In the industry's first years, those barrels were imported from London, Ontario. On 10 November 1870, the *Signal* reported the establishment of a spin-off enterprise: Standby & Co.'s sawmill hoop, stave, and heading factory. There was only one other mill like it elsewhere in the Dominion. It employed 60 to 100 workers, depending on the season, paying the men \$1.10-\$1.20 per day and the boys 50-60 cents per day. It purchased timber worth \$10,000 in 1870 and estimated that it would purchase twice that amount in 1871. On a daily basis, it consumed over 20,000 feet of lumber, while producing 16,000-20,000 staves, 15,000-20,000 hoops, and 2000 barrel headings ("Extensive Enterprise" *Signal* (10 November 1870) 2).

<sup>34</sup>Each manufactory employed between 14 and 20 men who were paid between 75 cents and \$1.50 per day (*Signal* (29 October 1869)).

<sup>35</sup>Coopers made barrels. The only sign of labour strife during the period in issue involved coopers. One day, 30 of them marched down West Street — "The Fenians come at last!" exclaimed our reporter. They wanted, and received the next day, an advance of 1 cent on each square headed barrel and two cents on roundheads. The *Signal* did not approve, being "entirely opposed [to] strikes" ("Coopers' Strike" *Signal* (30 June 1870) 2).

<sup>36</sup>The average selling price throughout the period 1868 to 1872 in Goderich harbour was \$1.20 per barrel (the prices shown in the Appendix were in the Toronto market and include transportation costs from Goderich to Toronto), while the average cost of production was about \$1. In 1869, 60,566 barrels were shipped from Goderich alone, bringing some \$72,000 into the town. The amount of salt sold increased steadily. From September 1872 to September 1873, 130,000 barrels of salt were shipped, by water, to the U.S. alone ("Local News" *Signal* (19 November 1873) 2). This figure does not include the amount shipped either by rail to U.S. or Canadian destinations, or by water to Canadian destinations. Assuming that the ratio of shipments by rail to shipments by water remained the same, a possible indication of the total sales for 1873 can be derived using the 1869 figures. Of the 60,566 barrels shipped in that year, only 14,856 (24%) were shipped by water. Were this still the case in 1873, it would mean that about 542,000 barrels of salt were sold by Goderich alone. If in any way accurate, this would represent an increase of over 850% in 5 years.

<sup>37</sup>The population of Huron County was 685 in 1833. By 1871, it had increased to 66,165. According to the 1871 census, the population of Goderich was 3,954. Clinton had 2,016, and Seaforth had 1,386. The *Signal* reported that the population of Goderich increased by over 400 people in the 5 years following the discovery of salt (*Signal* (15 June 1871)).

slightly greater contribution on their part would further enhance that quality of life. So tremendous had the increase in the number of salt works in Goderich been since the discovery of salt that the town's inhabitants could not have mistaken the centrality of the salt industry as a cause of the improvement in their lives. Perhaps the *Signal* was successful in persuading its readers that the farmers' grumbling was unwarranted.

In 1867, there was only one producing salt well in the region of Goderich, that of Samuel Platt. By 1872, the year following the *Ontario Salt* case, there were twelve in Goderich alone.<sup>38</sup> Platt himself drilled another well in 1868. A year later, Peter MacEwan, Platt's former driller, set up his own company, the International Salt Works. The International became the largest producing well in Goderich and continued in operation longer than the others. MacEwan also ran the salt operation set up by Ogilvie and Hutchinson at the Big Mill, a flour mill near Goderich Harbour.<sup>39</sup> In that same four-year period, salt had also been discovered in the nearby towns of Clinton, Kincardine, and Seaforth.<sup>40</sup> The total number of salt-producing wells in the entire region is uncertain, but there were at least eighteen and perhaps as many as twenty-four. All but two of those wells, the Clinton Works and a Goderich well, were financed with local capital. Only two of the owners were not locals.

### III. The Salt Men of Goderich: Inventive, Creative and Highly Competitive

In 1868, C. A. Goessman concluded that Goderich, possessing abundant salt of the highest purity, was the most formidable competitor with whom the salt producers of New York had yet had to contend.<sup>41</sup> It appears odd that the makers of an inherently competitive product required, or thought they required, a cartel to survive. The explanation for their belief is three-fold. First, Goderich

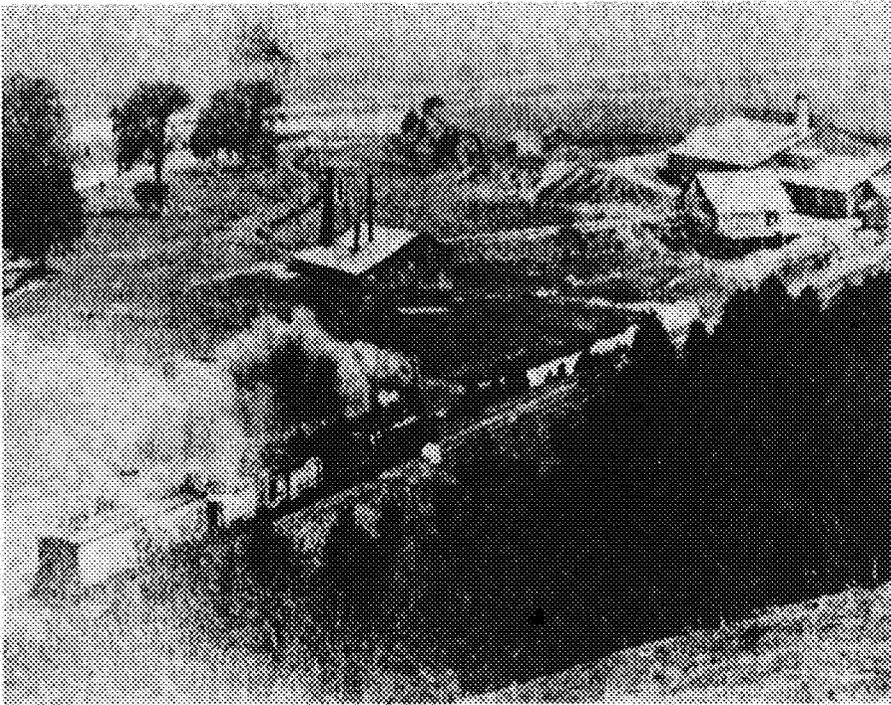
---

<sup>38</sup>In 1872, the following salt works existed (the number in parentheses indicates the well's capacity): "The Goderich" (200 bbl/day, 30 tons), "Maitland" (100 bbl/day, 15 tons), "Prince" (100 bbl/day, 15 tons), "Victoria" (150 bbl/day, 22.5 tons), "Huron" (100 bbl/day, 15 tons), "Dominion" (200 bbl/day, 30 tons), "Tecumseh" (100 bbl/day, 15 tons), "Hawley's" (200 bbl/day, 30 tons), "Inniskillen" (200 bbl/day, 30 tons), MacEwan's "International" (600 bbl/day, 90 tons), "Platt's" (150 bbl/day, 22.5 tons) — the pioneer's third well, drilled after he severed his connection with the Goderich Petroleum Company in 1872, and the "Ontario" (150 bbl/day, 22.5 tons), which was owned and operated by the Ontario Salt Company. Though full production would have been extraordinarily rare in 1872, Goderich had the capacity to produce 2,250 barrels (337.5 tons) of salt per day. See Cole, *supra* note 18 at 33.

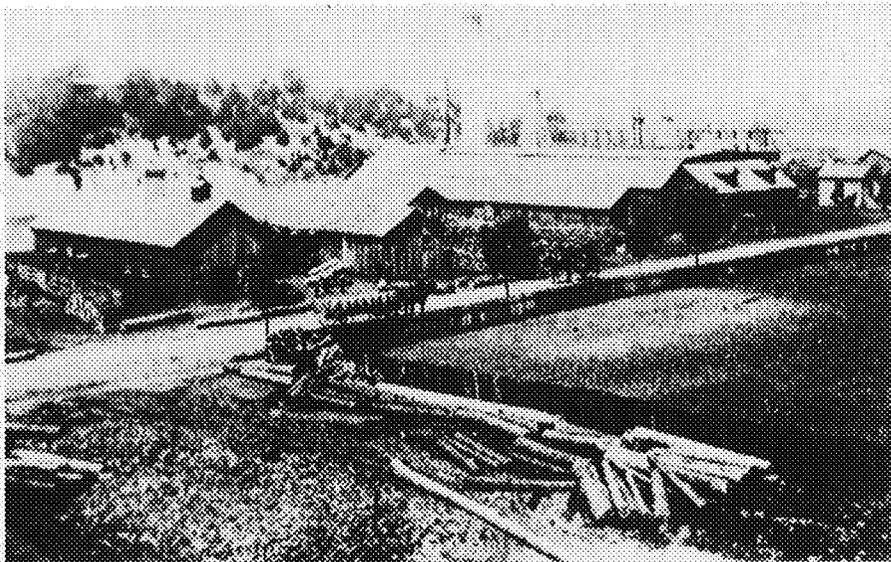
<sup>39</sup>MacEwan operated the International until his death in 1904. See A. Lobb, ed., *The Township of Goderich History* (Goderich: The Corporation of the Township of Goderich, 1984) at 197-98.

<sup>40</sup>In late 1870, the defendant in *Ontario Salt*, the Merchants Salt Co., began its operations in Seaforth with a capacity of 250 barrels per day. Merchants shut down its works in the 1880s, making it the shortest lived of Ontario's major salt companies. Merchants was preceded in 1870 by the Seaforth Salt Works which, in 1873 and 1876, was expanded to a capacity of 500 barrels per day. It was followed by the Eclipse salt works after the demise of the CSA with a capacity of 300 barrels a day. Several smaller blocks were established in Seaforth during that period, but the brine for those blocks was supplied by Eclipse or Merchants. The main Clinton works were founded in 1867 by the enterprising Englishman, Henry Ransford. The Kincardine works were not complete until 1871, and its owners were not part of the *Ontario Salt* litigation.

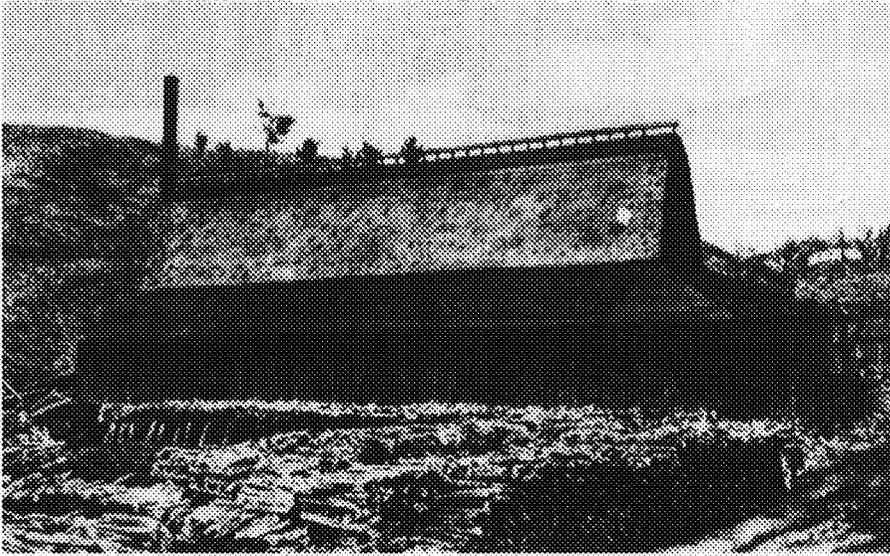
<sup>41</sup>See *supra* note 12 at 7.



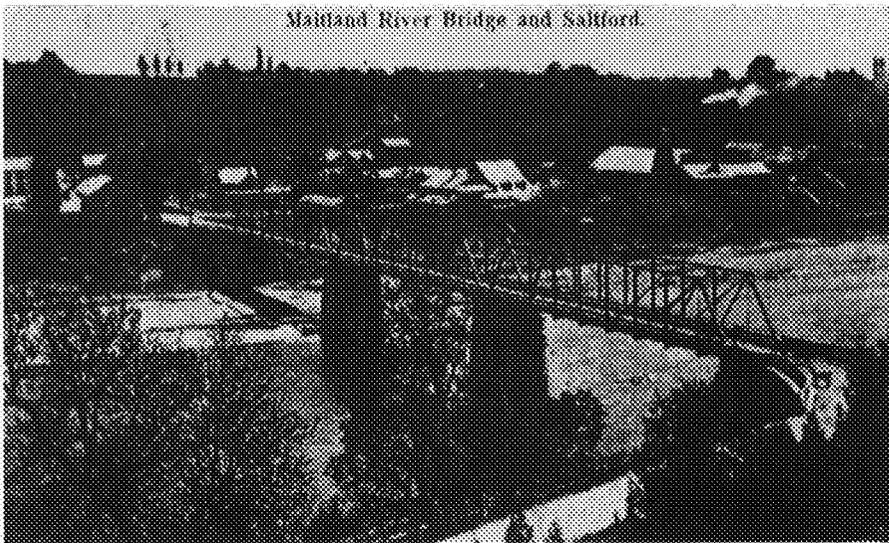
Platt's second salt well, one of ten in operation in the Maitland valley which produced a total of 1,300 barrels a day during the peak year in 1872.



Picture above shows salt works just east of the former Maitland Bridge bought by Peter MacEwan from Samuel Platt's Goderich Petroleum Company and operated by him until his death in 1904. The flag is flying above the original well. The buildings to the left are the cooperage.



The Salt Block at the foot of harbour hill, owned by Ogilvie & Hutchison of the Big Mill and operated by Peter MacEwan. Picture suggests the enormous quantity of wood needed to heat the evaporating pans. The high price of fuel forced the closing of several mills.



Wooden Bridge over Maitland was replaced in 1880 by this iron one which remained until 1962. Note cattle coming off the bridge, the MacEwan Salt Works and, to the left, the Maitland Hotel.

salt was *too* pure. Second, American salt was produced by a monopoly that maintained its market share thanks, in large part, to a substantial protective tariff. Third, late-nineteenth-century Canadian businessmen were developing a world view that permitted them to live what, to a purist, would be a contradiction: they honestly believed and faithfully propounded a wholly liberal ideology that could be derogated from, exceptionally, in the interests of the nation's development.

Goderich salt may have been purer than American salt, but it could not be produced at competitive prices without specially-adapted technology. During the Canadian industry's early stages, the only available evaporation technology was one developed by Americans. In adopting the American kettle system, Canadians unknowingly embraced a method of production that turned the purity of their salt into a disadvantage. Because Goderich salt was fifty per cent purer than Syracuse salt, that region's salt works ought to have produced fifty percent more salt per cord of wood consumed. Instead, the Goderich Salt Company produced less salt per cord than did the Onondaga Salt Company.<sup>42</sup> The problem was simple. The system of evaporation used in Syracuse was ill-suited for the strong brines of the Goderich region. Being extremely concentrated, Goderich salt separated into very fine grains which formed a hard encrustation on the kettles, several inches thick.<sup>43</sup> Not only did this waste salt, since the encrusted version was not marketable except as manure (sold at \$2 per ton), but it also resulted in uneconomical fuel use (slower evaporation) and inefficient operation (removal of the crust kept one row of kettles out of operation).<sup>44</sup>

Though such a technological problem might have been a reason to form a cartel for unenterprising capitalists, it appears that the Canadian Salt Association was not formed to circumvent productive deficiencies. According to the *Signal*, before the formation of the association, the Goderich salt men responded to the challenge posed by this technological disadvantage with the same alacrity that animated the drilling of salt wells. They put on their inventor's caps and changed the world of salt-making.

The man who discovered Goderich salt, Samuel Platt, was also the first to improve its production.

#### PLATT'S EVAPORATER. A GREAT SUCCESS!!

Having this morning inspected Platt's New Evaporater ... we have no hesitation in expressing our firm belief that it will prove a grand success — will, in fact completely revolutionize the manufacture of salt in this town, to the advantage of our local capitalists and the destruction of the interests of the Syracuse monopoly in Ontario, if not in the Western States.

---

<sup>42</sup>In 1868, the Goderich Salt Co. produced a mere 36 bushels of salt for every cord of wood consumed, while the Onondaga Salt Co. produced 37 to 38 bushels per cord. Hunt believed that Platt's works should have been able to produce 52 bushels per cord. See Hunt, *supra* note 22 at 16.

<sup>43</sup>The Goderich wells pumped a brine of extremely high gravity, averaging from 81 to 105 degrees in strength, as measured by the salometer. A gravity of 100 degrees is optimal; above that level, the salt does not dissolve, but precipitates. The Goderich brines attained this level only if the pumps had been inactive before testing (Hunt, *ibid.* at 13-14; see further Gibson, *supra* note 22 at 6-8).

<sup>44</sup>Goessman, *supra* note 12 at 10-12.

The principle of the new machine is simply that the evaporation is carried on in a large shallow pan by the action of super-heated steam.<sup>45</sup> By this means the heat evolved in the furnace is all saved; so that one cord of wood will do two and a half times the amount of work, as compared with the kettle system. Again, the necessary labor required in producing salt is reduced by more than one half. Hence, it is obvious that by this new system salt can and will be manufactured at the rate of, say, 55 cts per bbl. "f.o.b" whereas by the kettle system from 90c. to \$1.00 is the very lowest ratio. The new plan [pan?], we have not the least doubt, will be adopted by all our manufacturers. It will enable them now to compete with the Onondaga people in all parts of Canada, West of Kingston, and even to pay 70 cts duty in gold in order to introduce it into the Chicago market. Of course, Syracuse influence may be sufficiently strong to induce the federal authorities to place a still higher duty on Canadian salt, but in that case we doubt not our government would do a little at the game of tit for tat which would set matters all right.

Our salt stands, at present, first in the markets of Ontario, our wells are tested to the utmost to supply the demand, and, as we have always believed, there is for Goderich, after the present hard times shall have blown over, a future replete with material prosperity.<sup>46</sup>

Platt's evaporator proved a great success and was adopted at many of the local salt works. Professor Hunt visited Goderich to inspect the new evaporation system and was tremendously impressed.<sup>47</sup> He spoke of a new fear at the Onondaga Salt Company that the evaporator would permit Goderich to steal its markets, despite the tariff. He encouraged the entire town to rally around the salt makers and suggested that the railway give up land beside its tracks so that the long evaporators could be installed.<sup>48</sup> By September, a man named Runciman<sup>49</sup> had built a local foundry in which the new pans were fabricated, further enhancing the prosperity of the town by reducing its dependence on imported capital equipment. Seven of the new pans were built and installed during the autumn of 1870.

The *Signal* attested to a flurry of inventive activity during 1869, and often reported on new ideas.<sup>50</sup> In January of 1870, Gilbert McMicken, one of Platt's competitors, patented a new method for speedy crystallization or precipitation

---

<sup>45</sup>The original double-bottomed pans were 8 feet long and 20 feet wide. Later, the salt works utilized pans that were 100 feet long and 22 feet wide. These pans had sloping sides, and long rakes were used to draw the salt up to drying platforms. Four furnaces, which operated 24 hours per day, were mounted at the front of each pan. One cord of wood was consumed every hour. See Beecroft, *supra* note 26 at 68-69.

<sup>46</sup>*Signal* (20 July 1869) 2.

<sup>47</sup>Hunt wrote his report as a member of the Geological Survey of Canada. In January, 1872, on learning that Hunt was leaving Canada to teach at the Massachusetts Institute of Technology, the *Signal* opined the loss of Canada's great minds: "The unfathomed riches concealed in [the Dominion's] rocks will far more than repay any efforts made to retain in our midst those whose learning and skill are necessary to their economic discovery and use" (9 January 1872).

<sup>48</sup>*Signal* (19 November 1869).

<sup>49</sup>Runciman's company was responsible for the erection of the buildings belonging to the Ontario Salt Company. Runciman himself was a member of the Board of the Goderich Salt Company and was one of the original investors in that company.

<sup>50</sup>"The necessity for a cheap practical system of making salt here has called forth the full inventive genius of our best mechanics. Several are now being tested and others are to be tried, but we are not in a position yet to give the results" ("Inventions" *Signal* (2 September 1869)). All but 10 of the 1869 issues of the paper are missing during this crucial period of development, so a full appreciation of what was accomplished cannot be had.

of salt.<sup>51</sup> On January 27, 1870, the *Signal* printed the following, somewhat cryptic report:

We understand that Mr. B. Seymour, has sent to Ottawa application for a Patent, for a new apparatus for the manufacture of Salt *in vacuo*; one of the principles being that the withdrawal of the atmosphere causes the brine to boil at 120 degrees, instead of at 226 degrees as in the ordinary kettle system, and nearly all the caloric is saved by the vapor as it rises repassing through the condensing tubes, and giving out its heat regeneratively. This plan is the discovery of Mr. Joseph Killely, the talented Engineer of the *Prince Alfred*. All the scientific men who have examined the drawings and had the working explained to them, express the highest confidence in its success.

A few months later, Dr. McLean, who became a trustee of the cartel, patented a new method for steam removal, a change that improved worker comfort and productivity.<sup>52</sup>

In the spring of 1871, Messrs. Le Touzel and Nicholls, who owned and operated the new Caesarea Salt Works, invented an innovative evaporator.<sup>53</sup> Its superiority over the Platt Evaporator may have played a role in both the emergence and the eventual collapse of the salt cartel. It could make more salt with a given quantity of fuel than any other pan of its size in Goderich. The Caesarea Evaporator may, therefore, have been partially responsible for the continued drop in the price of salt, which spurred the formation of the Canadian Salt Association. Because the Caesarea Salt Works did not join the cartel, the salt combination probably faced competitive difficulties from the beginning. Several companies that did join the cartel adopted this new method, however, mitigating the short-term competitive damage done by Caesarea.<sup>54</sup> Not to be outdone, Benjamin Buchart, of the Ontario Salt Company, patented a new adaptation of Platt's Evaporator that saved heat, reduced smoke, and reduced the amount of labour required.<sup>55</sup> Changes of that type and scope occurred in rapid succession throughout the period in issue.

Thus it appears that the Canadian salt men were enterprising and innovative. They rose to the challenge posed by ill-suited technology with a flurry of inventive activity and, in the process, created an industry that was, potentially, very profitable. Although appropriate technology is essential to a successful undertaking, that factor alone does not ensure profitability. Successful industrial development is at least as dependent on extrinsic, contextual factors, such as government subsidization and tariffication policies, as it is on purely internal, technological ones. In this case, the Goderich salt-makers competed not only against one another in the search for the best evaporation technology but also against a powerful, stable monopoly whose interests were preserved and pro-

---

<sup>51</sup>"Salt Patent" *Signal* (20 January 1870) 2.

<sup>52</sup>"Dr. McLean's Salt Patent" *Signal* (7 April 1870) 2.

<sup>53</sup>It used the "return flue principle." Heat travelled 120 feet up the pans before reaching the stack. It produced even heat, which improved the quality of the salt, and was more fuel efficient, which made salt production even cheaper ("Town Talk" *Signal* (4 May 1871) 3).

<sup>54</sup>The Empire Salt Works and the Victoria Salt Well both used this model (*Signal* (15 June 1871)).

<sup>55</sup>See "Town Talk" *Signal* (22 June 1871) 3.

tected by the United States government. For its part, the Canadian government refused to do as the *Signal* had predicted, namely, to “do a little at the game of tit for tat which would set matters all right.”<sup>56</sup>

#### IV. The American Competitor: The Vultures of Onondaga

This story is familiar. A nascent Canadian industry, based on almost infinite natural resources and endowed with natural competitive advantages, attracted, too quickly, too many creative participants to serve a too-small home market. The industry could not overcome a tariff barrier that protected U.S. markets.<sup>57</sup> Canada could not raise a tariff of its own, partly because it was philosophically opposed to restrictions on free trade, and partly because such a tariff would have had to be applied against imports from Mother England, something that would have broken one of the last links between the metropolis and its former colony.<sup>58</sup> The U.S. monopoly, permitted to earn excess profits by a protective tariff and by its own market dominance, was able to “dump” surplus salt on the Canadian market in an attempt to swamp its upstart competitors.<sup>59</sup> The Canadian competitor was left swimming upstream, waiting either for the Canadian government to check the flood that overflowed the protective barrier

---

<sup>56</sup>*Signal*, *supra* note 46.

<sup>57</sup>In 1866, the Reciprocity Treaty that had governed trade between the U.S. and Canada was terminated by the Americans, whose free trade convictions were tempered by the need to recover from the Civil War. A series of tariffs were placed on imported goods. The tariff on salt was 70 cents per barrel, 58% of the average price at Goderich.

Everyone, from Goessman and Hunt to the *Signal* and the *London Free Press* to the *Chicago Tribune* and the [*Toronto*] *Monetary and Commercial Times* — *Insurance Chronicle* [hereinafter *Monetary Times*] agreed that, but for the tariff, Onondaga would have lost its markets in both Canada and the Western States (see *Monetary Times* (23 June 1871) 884), though it might have been able to maintain them in New York State. Thanks to Goessman’s report, Onondaga also recognized that risk and spared no expense in lobbying Congress to maintain the tariff. The company’s arguments in favour of tariff protection mirrored those of the Goderich salt men in their pleas for reciprocal action by the Government of Canada. G.A. FinkeInburg, a member of the Ways and Means Committee of the U.S. House of Representatives, which was conducting hearings concerning a reduction in tariffs, wrote as follows to Richard Hawley: “As to the particular subject of salt, we heard at length the Syracuse and Saginaw salt manufacturers by themselves and their attorneys. The burden of their argument was the *competition to be dreaded from Goderich* in case of any reduction of the present duty” [emphasis added] (“Mr. Hawley and the Duty on Salt” *Signal* (24 April 1872) 2). In 1869, the company lobbied for a further increase in the tariff of 3 cents (see “What We Pay for Salt” *The [Chicago] Tribune* (11 May 1868), reprinted in “What the Americans Pay for Salt” *Signal* (25 May 1869) 2). Onondaga was successful in retaining the protective American tariff, although the Government of the United States did reduce it by 50% in 1870.

<sup>58</sup>This point was argued by the editor of the *Signal* (“The Reason Why” *Signal* (8 December 1871) 2). To his way of thinking, only a U.S. annexationist could suggest tariffs against English imports. Canadian tariff policy is discussed further below at text accompanying note 77ff.

<sup>59</sup>Canadians of the day would have added a third factor to the list, namely, inherent unscrupulousness. In *A-Conjunction of Interests: Business, Politics and Tariffs 1825-1879* (Toronto: University of Toronto Press, 1986) at 117, Ben Forster observed that:

it was easy to inflate American competitive unfairness to mythical proportions. To the Americans was ascribed behaviour of the utmost ruthlessness — behaviour in which no self-respecting Canadian would indulge. The hidden assumption was that rivalry among Canadians was gentlemanly: only Americans sold goods below cost; only Americans hired unscrupulous agents; only Americans (and some Englishmen) produced mediocre goods and tried to palm them off as products of highest quality.

or for the U.S. government to remove the barrier, permitting a reversal of the flood.

The Salt Company of Onondaga was formed by the amalgamation, in 1860, of various salt makers in four districts around Syracuse, New York. During the 1860s and 1870s, the Onondaga monopoly did not realize any real productive efficiencies or economies of scale,<sup>60</sup> achievements which, according to Trebilcock, though never apparent with cartels, can sometimes constitute the one saving grace of monopolies.<sup>61</sup> Onondaga continued to use the kettle method of evaporation during the early 1870s, adopting the pan method only after minor changes in national tariffs caused concern that it might have to compete with Canadian salt producers. It did, however, develop advantages typical of a well-organized, stable cartel, such as the appointment of sales agents in key markets, the establishment of general guidelines ensuring uniformity in the quality of the salt and the mode of preparing it for market, and the employment of a highly-paid, expert chemist (Goessinan) to direct production.<sup>62</sup> Onondaga also managed to achieve what most monopolists seek: enormous profits.<sup>63</sup>

The *Signal* was as passionate in its venomous attacks on the Onondaga monopolists and their inalicious predatory pricing as it was in its promotion of the local salt industry and of the welfare of Goderich in general. A positive comment on Onondaga never appeared in the *Signal*:

#### A GREEDY COMPANY

That the Onondaga Salt Company is very enterprising there can be no question. No effort is spared by its officers or agents to push their salt into every city, town and village in the country — nothing is overlooked which can advance its interests and injure or destroy its rivals. But it is pre-eminently a greedy institution, the sole idea of its managers being to make money by any means, however unfair.<sup>64</sup> That we<sup>65</sup> are not vilifying a Company which is the strongest rival Goderich can have, we may state that its Canadian agent at Toronto has flooded the country with circulars stating the prices at which Onondaga salt will be sold at the various stations along the Grand Trunk from Toronto to Goderich. One would naturally think that

---

<sup>60</sup>See Harden, *supra* note 13.

<sup>61</sup>Compare Trebilcock, *supra* note 3 at 295.

<sup>62</sup>See Hunt, *supra* note 22 at 20.

<sup>63</sup>Based on an original investment of \$200,000, Onondaga was able, in 9 years, to purchase property worth \$1,500,000 and to distribute cash dividends of \$2,500,000. It was owned by fewer than 50 people. See "What We Pay for Salt," *supra* note 57.

<sup>64</sup>Michael Bliss, *A Living Profit: Studies in the Social History of Canadian Business, 1883-1911* (Toronto: McClelland & Stewart, 1974) at 28 [hereinafter *A Living Profit*], made the point that the pursuit of profit for its own sake was never advocated by the Canadian press as an aim of Canadian businessmen. From their perspective, that approach to profit could be employed only by foreigners.

<sup>65</sup>The *Signal* frequently attempted to show that it was not simply biased in favour of the Goderich salt interest by publishing speeches and letters by Americans, whether in or out of Congress, who were gouged, or whose constituents were gouged, by the protected Onondaga Company. The following letter to the editor was signed "ANTI-MONOPOLIST":

Perhaps within the memory of few, has there been such a determined attempt of a small clique, to bolster up a monopoly as at present shows itself in the article of salt, and never, since the days of the Stuarts, even in that old worn out and despised country England, have the interests of the public generally been so persistently disregarded ("The Salt Monopoly" *Signal* (30 July 1868) 2).

the farther the salt was sent by rail, the higher would be the price demanded, but such is not the case. The price gradually falls as Goderich is approached, until, at last, the climax is capped by making the price asked in this town the lowest on the whole list. At Toronto, it is about \$1.60, whereas at Goderich, after having been carried over a day's journey by rail it is sold at \$1.32.<sup>66</sup> Of course the reason is obvious. It is that, if possible, an enterprise which is of vital importance to Canada, in a national point of view, may be crushed. Such action on the part of the Onondaga Company will open the eyes of our salt manufacturers. They have wily and unscrupulous opponents,<sup>67</sup> and they must enter into a battle at once. [notes added]<sup>68</sup>

The editor of the *Signal*, evidently aware that it is easier to criticize than to create, was ready with advice as to how this battle should be fought. It is worth noting that his own interests, in the form of advertising revenues, were inextricably linked to those of the salt men.

Agents should be appointed for the sale of Goderich salt at once in all parts of Canada, and by every legitimate means, including a liberal use of printer's ink, public attention should be aroused to the patriotism and profit of using it in preference to any other. It is right, moreover, that our people should impress on the Government the necessity of clapping a good round duty on American salt without delay.<sup>69</sup>

The *Signal* also offered advice to any Americans reading its pages:

It is well that our American cousins are beginning, even at this late hour, to discover that they are the victims of an unscrupulous monopoly. ... [Over six million dollars have] been extorted from the consumers of this necessary of life by a worse, because less resistible system than that of highway robbery. American citizens need not look to Syracuse for justice. Let them compel their legislators to enact, that brine salt shall be admitted into their territory free of duty<sup>70</sup> and we

---

<sup>66</sup>A few months later, the London *Free Press*, a paper that was at least somewhat less partial than the *Signal*, carried an article that confirmed the story about the circulars and supported the idea that Onondaga was dumping overflow salt on the Canadian market. While (unpatriotic) Goderich farmers could buy Onondaga salt for \$1.30 per barrel, farmers near Detroit had to pay \$2.45 per barrel (*Free Press*, (27 October 1868)).

<sup>67</sup>The *Free Press* explained how it was that the Americans could "compete": "It must be remembered that it is only the *surplus* that is shipped here at these rates by the Americans, and that, in order to arrest the development of the new Canadian industry and retain the market themselves. Should they succeed in so doing, they would as soon as possible raise the rates again" (*Free Press* (27 October 1868)).

That U.S. exports consisted only of surplus salt was also a conclusion of the 1870 report of a House of Commons Committee (see *infra* note 86ff.) In 1876, when asked by the Chairman of the House Committee on the Salt Interest to explain how Americans could compete successfully with Canadian manufacturers, even though Canadian salt was produced less expensively than American salt, Samuel Platt said: "The Americans cannot compete successfully with the Canadians in the article of salt. It is only their *surplus* salt they send to Canada, and which they sell at a loss" ("Select Committee," *supra* note 22 at 5). Although the notion of "surplus" was attacked with great scepticism by free traders, the story of the Goderich salt makers and their spokesmen remained unchanged throughout the period in issue.

<sup>68</sup>*Signal* (11 June 1868).

<sup>69</sup>*Ibid.*

<sup>70</sup>Tariffs were an easy scapegoat for Canadian businessmen. They were often blamed for Canada's economic woes. In the case of salt, those accusations may have been true. Some evidence of that truth can be gleaned from the economic boon that occurred late in 1872. The salt tariff had been reduced in August of that year. In its New Year's editorial, the *Signal* reported that the reduction brought to an end the "state of depression" that had struck Goderich early in 1872 and "gave

guarantee that the manufacturers of Huron will speedily remedy the evil by selling in the United States, a better quality of salt at an equitable advance on the cost of production. We are astonished our shrewd neighbors allow themselves to be preyed upon by the vultures of Onondaga. [note added]<sup>71</sup>

More than a mere promoter of the industry, the *Signal* thus appointed itself guarantor of the good faith and ability of the Goderich salt men. Bad faith was epi-

things a more cheery aspect." For the remainder of the season, all wells "were worked to their utmost capacity, and vessels could not be obtained to convey the manufactured article away fast enough to supply the demand which existed in the American market" ("1872" *Signal* (8 January 1873)).

The Toronto *Telegraph* also recognized that the salt industry faced exceptionally unfair circumstances:

It does not appear reasonable that we should be undersold by the Americans in such an article as salt, when we have it in such superabundance at Home; and especially unreasonable is it, that the Americans should have the opportunity not only of underselling our home producers, but of absolutely destroying the home market altogether. That, it is true, is an exceptional case; but the more reason there must be of treating it in an exceptional way, by such a custom's levy as shall give the home producer at least a fair chance (*Telegraph* (23 March 1870)).

<sup>71</sup>"An Oswego Journal on Salt" *Signal* (27 January 1870) 2. The introduction of a bill to reduce the U.S. tariff on salt occasioned joy and passion for the *Signal*, as though its editor was celebrating a personal victory. The following editorial amply displays that economic injustice was not viewed dispassionately. The inclusion of an editorial from the Buffalo *Express* gives further proof that the *Signal* was not alone in its pursuit of fair trade:

#### CONGRESS ON THE SALT TARIFF

A change is coming over the spirit of our cousins' dream and they have made up their minds to destroy the gigantic Onondaga combination which has waxed fat by a system of extortion. Our American neighbours feel rather inclined to accuse Providence for providing them with a native supply of salt which has caused them to pay twice or thrice more for the article than if they imported it from Ontario. They have at last discovered, both legislators and electors, that they have been, as for years we have endeavored to show them, the victims of the "leech that hath two daughters," Syracuse and Saginaw, which were always crying "give, give" and which could never be satisfied. We congratulate the Buffalo *Express* on having reached the light. That organ is now making a manful stand in the interests of the people, and from it we copy the following pithy statement of

#### THE SALT SWINDLE

The tariff on salt, which the House, by its splendid vote day before yesterday resolved to have reduced one half, is 18 cts per 100 pounds in bags. The infamous enormity of this tax is [no more] ... The House yesterday did the very best thing of the season — the best thing, that is, as a demonstration of sound sense and honest fidelity to popular rights and public interests. We refer to the overwhelming vote by which it commanded the Committee on Ways and Means to bring in a bill reducing [the] tariff on salt fifty percent. The salt monopoly, which has its headquarters at Syracuse, is by all odds the most flagrant, outrageous and odious that this country has ever known. By State legislation and National legislation, the greedy combination had succeeded in making itself absolute master in the United States of the market of a commodity which enters into the daily subsistence of every man, woman and child. Either at Albany or at Washington it has seemed of late years to be utterly vain to contend against the power of the influence with which it stood fortified in its unrighteous domination. The news of this sudden, staggering blow that has been dealt fairly in its teeth at last by the Representative House of Congress is news worth welcoming by a salute of guns.

This bill, which still had to go through the Senate, did not become law until two years later, on 1 August 1872.

tomized by the monopolists themselves, who, not content with making unjust and excessive profits, were busy stealing the patents of Goderich's great inventors.<sup>72</sup>

Though the *Signal* did not get much support from the leading Toronto papers in its attacks on the vultures of Onondaga, the Goderich newspaper was not alone.<sup>73</sup> In a speech to a group of Toronto businessmen in March of 1870, C. T. Hurrell told another story of Onondaga's unscrupulousness.<sup>74</sup> Hurrell charged that, just before the close of Great Lakes navigation in the late autumn of 1869, the Onondaga company "slaughtered"<sup>75</sup> the Canadian market, flooding it with salt sold at giveaway prices. The result was that for the entire winter, the 400 people directly employed by the Goderich salt industry were "thrown out of work and were on the verge of starvation."<sup>76</sup>

## V. The Response of the Dominion: Reciprocity First

During the first quarter of 1870, diverse voices — some in search of equity, others, of revenge — called for the raising of a Canadian tariff. It seemed like the obvious thing to do. As Ben Forster has pointed out, however, tariffs were established and imposed not by newspapers or interest groups such as the Goderich salt manufacturers, but by governments, and always in a broad political and economic context.<sup>77</sup> If a Canadian tariff was not imposed upon American salt

<sup>72</sup>See "The 'Leader' on Salt" *Signal* (20 August 1869) 2.

<sup>73</sup>Both the *Leader* and the *Globe* were frequently cited, contemptuously, by the editor of the *Signal* for indirectly encouraging, through their dogmatic insistence on free trade, the destruction of an infant Canadian industry.

<sup>74</sup>Hurrell later became the Toronto agent of the Canadian Salt Association. At the time of this speech, his relationship with the salt producers is not clear. He advocated their interests in Toronto, but whether he was paid to do so is unknown. Perhaps the salt men were organized unofficially and worked together to appoint agents and spokesmen long before the formation of the cartel.

<sup>75</sup>See generally Bliss, *supra* note 64. See also Forster, *supra* note 59 at 117, where he described the oft-repeated story that Americans were deliberately underpricing their goods to flood the market, destroy competition, and crush infant industries. That practice was known as "slaughtering" to contemporaries. Forster concluded:

While such intent undoubtedly existed in some cases, Canadian protectionists perceived it as a pervasive conspiracy. At some meetings of the Ontario Manufacturers' Association, speaker after speaker would rise to bring forth some variation on archetypal tales of woe concerning imports from the United States, steadily reinforcing commonly held perceptions. The erection of a high tariff wall was seen as of the utmost necessity.

So pervasive was this perception of conspiracy that the meetings of the Ontario Manufacturers' Association were often subject to sarcastic caricature. For a particularly entertaining example of such caricature, see A. Skaife, *The Comedy of Trade; or, Every Man for Himself: As Recently Performed at Ottawa, by a Distinguished Company of Amateur Legislators* (Montreal: Dawson Bros., 1876) [hereinafter *Comedy of Trade*].

<sup>76</sup>"Great Protection Meeting in Toronto" *Signal* (24 March 1870) 2. No reference to such unemployment and starvation was found in the *Signal* itself during the period in question. The relevant issues of the newspaper may have been damaged or gone missing. It seems more likely, however, that Mr. Hurrell was engaging in hyperbole.

<sup>77</sup>Forster, *supra* note 59 at 4. The following discussion on Canadian tariff policy is based almost entirely on Forster's comprehensive work. Any original contribution on my part is related solely to the question of salt, which is mentioned by Forster on several occasions, but only in passing.

imports, the reason is found not in an analysis of relations between Goderich and Onondaga but in an analysis of relations between Ottawa and Washington.

The years immediately following Confederation were dominated by a desire to return to "Reciprocity."<sup>78</sup> In the same year that salt was discovered in Goderich, the U.S. abrogated the Reciprocity Treaty. That free trade relationship had been much-favoured by businessmen and farmers and was highly popular in the daily press, for it "expedited trade and enlarged the possibilities for individual profit." Coming as it did at the end of the American Civil War, the abrogation of the Treaty was virtually inevitable for structural and economic reasons. But that was not understood in Canada, where abandonment of the Treaty was blamed on lobbyists and policy-makers: it was seen as a political failure. Among Canadians, therefore, strong hope remained that the Americans would reconsider. The dominant mood, according to Forster, was one of "hope beyond hope," a vain expectation that, with time and the continuing independent existence of Canada, Americans would temper their annexationism and their hostility to Great Britain, permitting them to implement a fairer commercial policy. "Antagonizing the United States was, therefore, unwise: this idea dominated Canadian policy decisions on tariff and other matters from before Confederation at least until 1870." It was in this context, then, that the Canadian salt industry had to develop. Raising the tariff clamoured for by the *Signal* was clearly considered an antagonizing act to be avoided. The *Signal* exhibited the spirit of the times in a somewhat contradictory fashion — always promoting the return to Reciprocity, but permitting an exception for its pet industry. High-minded moderation and calculated inactivity defined the response of Sir John A. MacDonal's federal government. It was not until 1870 that the government realized that its "policy of moderation was endlessly one of hope, not of realization." A conjunction of conditions in 1869 led to a shift away from conciliation — an economic slump, a large government deficit, and "competitive congestion" in several industries, which had now developed sufficiently that they could comfortably supply the domestic markets.<sup>79</sup>

Industrial development up to this time created the possibility of establishing a broad-ranging protectionist coalition. The first major manifestation of that coalition occurred in March, 1870, with a meeting of approximately eighty Ontario merchants and manufacturers in Toronto. C.T. Hurrell, the salt agent who spoke of the odious slaughtering undertaken by the Onondaga Company, received unanimous approval from that group for his motion on the government's "bounden duty" to protect Canadian manufactures and to encourage industry and enterprise in the country.<sup>80</sup> It was in reporting the events of that meeting that the Toronto *Telegraph* supported a policy of tariffs for salt.<sup>81</sup> At approximately the same time, Charles Tupper united a group of Members of Parliament and met with Cabinet officials to discuss a change of policy, from

---

<sup>78</sup>Forster considered "the crowning achievement of the BNA colonies' attempt to liberalize trade [to be] the Reciprocity Treaty of 1854, which made a wide variety of natural products mutually free between the colonies and the United States" (*ibid.* at 6).

<sup>79</sup>*Ibid.* at 52, 68, 71.

<sup>80</sup>"Great Protection Meeting in Toronto," *supra* note 76.

<sup>81</sup>*Telegraph* (23 March 1870).

the “tentative and conciliatory” policy being pursued at the time to a “purely national policy” that “would tend to promote our internal commerce, and cement the union among the several parts of the Dominion.”<sup>82</sup>

During the early 1870s, a glut of petitions, displaying strong alliances between farmers and manufacturers from across the Dominion, were received by both the Senate and the House of Commons. Petitions from the salt makers were delivered to the Senate by the County of Huron and the Township of Hullet.<sup>83</sup> Their position at this time was best summarized by the Bruce *Telescope*:

American salt is nearly a dollar a barrel cheaper in Canada than it is in the United States. This is undoubtedly below actual cost — the price is the result of an effort to undersell and crush out the Canadian manufacturer of a superior article. There is no question that on the whole the Canadian public are gainers for the present; but is it wise to allow monopolists, who are, themselves protected by a heavy duty, to crush out a branch of Canadian industry in its infancy? Would not the Canadian public submit to paying a slightly higher figure for their salt in order to prevent the monopolist from succeeding in his effort. If the manufacturers of both countries were on equal terms, we would say let them fight it out, and let, as we said before, the best producer get the patronage of the community. But as the parties stand, the imposition of a duty on American salt, it would appear to us, is not so much a protection against competition as a protection against a wealthy corporation enriched on unjust gains, using its influence to destroy a formidable rival whose prosperity would be a great public gain.<sup>84</sup>

That editorial is a fine example of the rhetoric that became increasingly common during the remaining years of the nineteenth century to the effect that Canadians were free traders first but forced to make exceptions in particular circumstances. Also noteworthy in that passage is the patriotic, mercantilist reasoning so often used by both the *Signal* and the London *Free Press* to convince their readers of that which is at best counterintuitive from the consumer’s perspective, namely that consumption of apparently inexpensive imports was contrary to their long-term interests and that it was better to invest in local industry by paying higher prices. Being a Canadian, exhorted the *Signal*, meant not only

<sup>82</sup>Halifax *Citizen* (14 March 1870), cited in Forster, *supra* note 59 at 75.

<sup>83</sup>House of Commons *Journals*, 1870 at 17, 26, 36, 51, 66, 97, 129, 166, 286.

The petition from Huron County was published in the Senate *Journals*, 1870 at 27 (28 February 1870), “praying that a just and reasonable tariff of duties be imposed on wheat, flour, corn, oats, hops, coal, salt and fruit trees imported from the United States into Canada.”

Petitioning was done cooperatively, with one county praying for its own interests as well as for those of its neighbours. Thus, Huron County prayed for a duty on fruit trees, which were a product of Oxford County, and Oxford County prayed for a duty on salt, which was not produced in that region. The Oxford County petition read as follows:

That while your petitioners are favorable to the principles of free trade, they do feel that under the present trade relations between the Dominion of Canada and the United States, it is desirable and necessary, in order to promote the growth of the agricultural, commercial, manufacturing and all the industrial interests of the Dominion, to impose an import duty on wheat, flour, corn, salt and coal (5 March 1870, cited in Forster, *supra* note 59 at 74).

The petition from the Township of Hullet was also published in the Senate *Journals*, 1870, at 65 (21 March 1870), praying for the adoption of a tariff “as will at least secure to Ontario the home markets of the Dominion for her natural products.” The *Signal* reported on the circulation of that petition and encouraged readers to sign it (“Home Manufacturers” *Signal* (24 February 1870) 2).

<sup>84</sup>Reprinted in “The Salt Duty” *Signal* (10 March 1870) 2. Seaforth is located in Bruce County.

paying higher prices, but wanting to do so. Thus, notionally private decisions — what to buy and at what price — were portrayed in moralistic tones as public choices, based on that which was right. People were made to understand that higher prices, which would naturally engender prosperity and long-term public gain, were both wise and just. The market price was not only too low but was destructive of the national interest.<sup>85</sup>

The House of Commons responded to the appeal for protection with the creation, on 28 February 1870, of a Select Committee “to enquire into and report on the extent and condition of the Hop growing and Salt interests in *Canada*.”<sup>86</sup> That Committee submitted its report to the House on 17 March 1870. No reader of the *Signal* would have disagreed with its conclusions:

1st. That the supply of salt in that section of the Dominion is practically unlimited ...

2nd. That the number of wells now sunk is capable of supplying brine enough to make 3,000 barrels per day.

3rd. That during a greater portion of last year, the *Goderich* salt wells have been closed up, and the large capital invested in this important branch of Canadian industry, has been during that time wholly unremunerative, and that, unless some change takes place in our trade relations with the United States, this state of things is likely to continue.

4th. Your Committee further find that the Canadian is unable to compete with the American manufacturer, even in the Canadian market, for the following reasons:—

1st. The American manufacturers have their home market exclusively to themselves; the duty on salt admitted into the *United States* being a practical prohibition.

2nd. After supplying the home market thus secured to the American manufacturer, by their own Government, and supplying that market at prices more than fairly remunerative, their surplus production is exported to *Canada*, and there sold at prices which render it impossible for the Canadian manufacturer to retain the Canadian market.

3rd. That the State Government supplies the Salt Companies of the State of *New York*, with capital estimated at \$10,000,000, for the nominal sum of 3/4 per cent., and thus secures to said Companies important advantages over Companies dependent on private capital alone.

4th. The American manufacturers have an advantage in return freight, which is an important item in the conveyance of so bulky an article as salt, to market.<sup>87</sup>

---

<sup>85</sup>“Buy Canadian!” was a call often reported in the pages of both the *Signal* and the *London Free Press*:

If the public wish to help the salt works of Ontario, let every one who is a consumer “ask for *Goderich* salt,” and accept no other. Directly a healthy and persistent demand springs up for the product, storekeepers will provide themselves with it, and the American article, imported at an annual cost of about \$130,000 will be excluded, and the money annually paid out for its purchase will be spent at home, and give employment to thousands of willing workers. We hope the patriotic citizens of Ontario will sustain “home manufactures,” without which we should be a poor miserable country indeed! (*Free Press* (27 October 1868))

There was a very real sense in which the consumer was an active participant in the agricultural, commercial and industrial development of the nation. If a distinction existed between the private and public realms, it appeared to be greatly blurred.

<sup>86</sup>House of Commons *Journals*, 1870, at 28. M. C. Cameron, the member for Huron and later trustee of the Canadian Salt Association, was appointed to that committee.

<sup>87</sup>The Onondaga Salt Company was closer to the Lake Ontario ports. In addition, Canadian ves-

Your Committee therefore respectfully recommend that the House speedily adopt such measures as shall tend to relieve this important industry from the depressing influences to which your Committee have referred.<sup>88</sup>

Identifying the problem and its supposed causes was simple. The difficulty was in proposing solutions that would be acceptable to those politicians who did not count the salt industry among the legitimate exceptions to free trade dogma. Subsidization in the form of low-interest loans of the type offered by the State of New York to its producers never seems to have been considered.<sup>89</sup> Canadian policy-makers showed themselves to be less than creative in following the protectionist examples of the United States and Britain. Debate in the House of Commons focused solely on tariffs — whether a tariff ought to have been imposed and, if so, how significant it should have been.<sup>90</sup>

The first motion regarding an import duty on salt was introduced on 7 March 1870, ten days before the submission of the Committee's report.<sup>91</sup> It was withdrawn the same day, without explanation. On 29 April 1870, the Committee of Ways and Means, which was responsible for the preliminary development of tariff policy during this period, introduced a resolution to amend the *Duties of Customs Act*.<sup>92</sup> On salt, it proposed the imposition of a duty of five cents per fifty-six pound bushel.<sup>93</sup> The U.S. duty on salt, which was twice as high, was considered unfair by Canadians; the Canadian duty was thought to be entirely legitimate. As early as 1868, the London *Free Press* had maintained that it was "a question whether an incidental protection of say 30 cents per barrel against foreign salt would not be *judicious*, thus enabling the salt makers of Goderich to make a *fair living profit*."<sup>94</sup> In order that the link with the Motherland not be breached, the resolution exempted from duty all "Salt imported from the United Kingdom or any British Possessions." After several attempted amendments, all

---

sels, which carried barley, lumber and grain across the lake, returned with salt as ballast at a very low freight rate. Onondaga could deliver its salt to Toronto for 10 cents per barrel, whereas the cost of delivery from Goderich was 40 cents ("Select Committee," *supra* note 22 at 4).

<sup>88</sup>House of Commons *Journals*, 1870 at 83.

<sup>89</sup>Such subsidization was not proposed for any industry. With respect to salt, it has already been seen that a well could be sunk and works erected for less than \$30,000. It is therefore unclear why the New York state salt makers would require \$10,000,000.

<sup>90</sup>In *The Protective Tariff in Canada's Development: Eight Essays on Trade and Tariffs when Factors Move, with Special Reference to Canadian Protectionism 1870-1955* (Toronto: University of Toronto Press, 1966) at 6, J. H. Dales convincingly described the manner in which Canadian leaders parroted what they thought to be the American recipe for commercial and industrial success. He observed that the most persuasive argument in favour of Canadian protectionism was the very success of American protectionism, which had been transformed in the minds of Canadians from one of the reasons for American success to *the* reason for it. Dales argued that the contrary was in fact true.

<sup>91</sup>Moved by one Oliver, Member for Oxford County, and seconded by M.C. Cameron, the motion recommended import duties of an undetermined quantity on "Wheat, Flour, Indian Corn, Hops, Salt and Bituminous Coal" (House of Commons *Journals*, 1870 at 41).

<sup>92</sup>S.C. 1868, c. 44.

<sup>93</sup>At approximately 30 cents per barrel, this was the amount by which the Canadian Salt Association raised the price of salt during its first week of operations.

<sup>94</sup>London *Free Press* (27 October 1868). As the *Signal* had stated previously, such a cost was so incidental — one cent on every nine pounds of salt consumed — and of such enormous benefit that all should rally behind its imposition.

of which failed, the resolution passed on 30 April 1870.<sup>95</sup> A further resolution provided that salt, as well as the other items to which tariffs now applied, could be imported free of duty once the Governor in Council had determined that the United States permitted Canadian salt to be imported free of duty. Thus, the House maintained its dedication to free trade.

Unfortunately for the salt men of Goderich, the House remained full of such dedicated members. Far from being defined by protectionist pressures, Forster has remarked, the 1870 tariff was a reaction to the persistent refusal by the United States to renegotiate Reciprocity. There had indeed been a shift in Canadian policy, but it had not yet evolved to the point where Canadians were willing to abandon strongly held ideological ideas, which had served their colonies well during the economic boom of the 1850s. The shift was a slight one, from pure conciliation to a moderate form of retaliation, designed to convince the United States that trade relations, as developed in that prior period, were still desirable. A more important shift, which later developed with the National Policy, was in the promotion of internal rather than external markets, in support of the economic function of Confederation as a free trade zone between provinces. Being political and strategic rather than truly economic, the 1870 tariff provoked a political reaction by free traders that led to its virtual abandonment little more than a year later.<sup>96</sup> On 4 April 1871, the Bill to amend the Act relating to duties of customs passed its third reading in the House of Commons, absent the majority of the customs duties, including the one on salt, that had been temporarily in force.<sup>97</sup>

## VI. The Response of the Locality: Cooperative Combination

Salt, coal, fish, and flour were all bargaining chips used by the government to negotiate a broad national policy. But the National Policy, still embryonic in 1871, was not fully developed until 1879. The early 1870s witnessed some consolidation of the protectionist perspective, but the demand for low tariffs and reciprocity dominated Canadian policy until at least 1872, when Protection became an issue in the national election. Thereafter it was central to Canadian

---

<sup>95</sup>House of Commons *Journals*, 1870, at 267-77.

<sup>96</sup>See generally Forster, *supra* note 59 at 75-76, 79-84. The government did not defend the tariff for its intrinsic worth but only on its presumed importance in negotiations that were occurring in Washington. In the meantime, opposition in the House of Commons grew. Disappointed as they were with the magnitude of the 1870 tariff, protectionists did not unite in its defence. Because the creation of the 1870 tariff had depended so much on what Forster called "a desperate appeal to personal and party loyalties," the defeat of its central provisions in 1871 was practically inevitable (*ibid.* at 84).

<sup>97</sup>It was in response to a petition from the Montreal Board of Trade, which prayed for "the repeal of the duty imposed upon flour, wheat and other grain; and also on coal and salt," that the Commons first removed the salt duty. The petition was received on 6 March 1871; the amendment removing salt was passed on 7 March (House of Commons *Journals*, 1871 at 48).

Three weeks later, various salt companies, including the Ontario Salt Company, the Victoria Salt Works' Company, the Dominion Salt Company, the Huron Salt Company and the McLean's Salt Works' Company, delivered petitions to the House of Commons "praying that the protective duty on Salt be re-imposed and continued, until a change is made in the *American Tariff*" (House of Commons *Journals*, 1871 at 174). Their petition was read on 3 April 1871; the amendments in their

politics. But that was too late for the salt men of Goderich, whose industry matured faster than the national protectionist policy.

The *Signal* responded with resignation:

#### AN UNEXPECTED CLOUD

All that remains for salt manufacturers now is to manfully face the music ... [O]ur producers will have to be temporarily content with a smaller profit than they are fairly entitled to ... We should like to see all our salt men pulling together, until better times, and think it would not be impolitic to enter into an amalgamation, so that the temporary obstruction to our enterprise might be more bearable, being equally divided. Though we are heartily sorry to find this cloud looming up when our sky seemed so full of bright promise, we are still of the opinion that we have, in this locality, overcome much more serious difficulties; and that, if we all pull together, this obstruction, instead of injuring us, will act as a whetstone to our energies.<sup>98</sup>

During the Commons' debates preceding the abandonment of the salt duty, M.C. Cameron had argued powerfully for exceptional protection. He pointed out that the press, with the sole exception of the *Globe*, was in support of the resolution, and that thousands of people had signed petitions in its favour. It was time to act in a self-interested manner so that the Dominion would no longer be kept in "the humiliating position of waiting patiently on another nation to legislate for the benefit of Canada." There was a need for a Canadian commercial policy, formed with a view solely to the interests of Canada. Free trade was sound in theory, but under the prevailing conditions of trade with the U.S., trade was not free.<sup>99</sup>

The salt men heard Cameron's message, and took it upon themselves to act in their best interests. Strengthened by the knowledge, as expressed by the *Signal*, that they were also acting in the best interests of the community, they formed a cartel. On 29 June 1871, an indenture creating the Canadian Salt Association was signed.<sup>100</sup> Obviously, the *Signal* favoured that move. So did the London *Free Press*.

---

favour were introduced on 4 April. On that day, M.C. Cameron managed to get the Commons to vote on 5 different amendments that would have included salt. All failed. In support of these amendments, one Howell said the following: "That in view of negotiations [*sic*] now pending at Washington between representatives on the part of the British Empire and the United States, touching questions which may lead to a renewal of the Reciprocity Treaty, it is in the opinion of this House, inexpedient to repeal the duties now imposed upon certain articles ..." (House of Commons Journals, 1871 at 213-16).

<sup>98</sup>*Signal* (30 March 1871) 2.

<sup>99</sup>*Ibid.*

<sup>100</sup>I was unable to find records of exactly which salt companies joined the CSA, though it seems reasonable to assume that they included the five which jointly submitted a petition to the House of Commons on 6 March 1871 (*supra* note 97), as well as the Seaforth and Merchants salt companies. It is also known that the Caesarea Company did not join. As to the membership of the many other then extant salt companies, there is no available record. The association itself was managed by:

Thomas Short, President: Shareholder in the original Goderich Salt Company, President of Standby & Co., the barrel manufacturer;

Richard Ransford, V.P.: Son of Henry Ransford, manager of the Clinton works;

M.P. Hays, V.P.: Founder of the Seaforth Salt Co. and member of the Huron County Council;

S. Detlor, Secretary: Shareholder in the original Goderich Salt Company, member of the Huron

The surprise came from the editors of the *Monetary Times*, normally purist free traders, who said: "We don't like the principle of the thing, but it can easily be endured for a time if it shall be the means of putting the salt men a little better on their feet."<sup>101</sup> All salt was to be bought and sold through trustees appointed by the CSA.

The Canadian Salt Association was far from unique in late-nineteenth-century Canada. Michael Bliss has portrayed "The Flight From Competition" as the dominant Canadian business ethos of the late nineteenth century. He has demonstrated that an endless parade of trusts, cartels and combinations formed, broke down, and re-formed under the same or different names. Bliss called the restrictionist movement in Canadian business a practical response to the insecurities of open competition, the fear of failure that the Montreal *Commercial* called "dyspepsia of the mind." Bliss maintained a healthy scepticism regarding the motives of businessmen who combined. He spoke of justifications for cartelization and often found reason, in primary sources, to describe late-nineteenth-century businessmen as dissemblers, who paid mere lip service to the theoretical orthodoxy of the day, economic liberalism and free trade.<sup>102</sup>

It could be argued that the salt men of Goderich combined in the same dissembling spirit and that their true intent was both to raise the price of salt, so as to gouge the Canadian consumer, and to contain innovation, so as to reduce

County Council and former mayor of Goderich.

The Association's Trustees were:

M.C. Cameron: Member of Parliament for Huron;

A.M. Ross: Manager of the local Bank of Commerce and Treasurer of the Goderich Town Council;

Samuel Platt: Discoverer of salt in Goderich and inventor of the pan evaporation system;

Dr. McLean: Owner of the McLean Salt Works, co-owner of the Dominion Company, driller of the original salt well in 1866 and inventor of a steam removal system.

Five other men representing five other wells were also members (*Monetary Times* (7 July 1871) 4).

<sup>101</sup>*Monetary Times* (28 July 1871) 64.

<sup>102</sup>A *Living Profit*, *supra* note 64. Bliss further develops this theme in *Northern Enterprise: Five Centuries of Canadian Business* (Toronto: McClelland & Stewart, 1987). Bliss concluded:

Businessmen formed guilds, associations, pools, trusts, and mergers with the aim of restricting the free market in every form of enterprise — transportation, manufacturing, finance, and distribution. They used a wide variety of methods to attain this end, including written agreements, sworn oaths, bonds, fines, expulsions, boycotts, legally enforced contracts, dumping on foreign markets, "friendly" persuasion, mobilizing public opinion, and bringing in the power of the state. They denied the maxim that competition was the life of trade, and justified their combinations as being in the public interest and in the reasonable interest of honest businessmen who only desired to obtain a "living profit" (*A Living Profit*, *ibid.* at 34-35).

Bliss cited the *Commercial* (31 July 1883) as authority for the following conclusion:

Restrictionist ideas, which came to dominate business discussions of competition, were the not always thought-out conclusions and arguments that emerged from everyday life in the marketplace. Competition was the life of trade, but it was even more important to get a "living profit." Being human, most businessmen were no more willing than farmers or workers to engage in a wide-open competitive struggle for economic survival, to be puppets dancing on strings held by the invisible hand (*A Living Profit*, *ibid.* at 140).

the need for capital expenditure. It bears repetition that the Canadian salt industry could never have been successful without technological innovation and that, once it began to develop, salt production technology evolved with tremendous speed. For the salt maker, the rapidity of those changes was punishing — each change required new capital investment, long before prior investment had been profitably employed. Schumpeter described such circumstances as “creative destruction,” and has suggested that excessive competition can justify restrictions on free trade and competition for the purpose of stability.<sup>103</sup> In the late nineteenth century, central-Canadian businessmen did not speak of creative destruction but of the demoralization of trade. Their concern was that “[i]n a purely competitive marketplace a businessman had no security, no certainty, no sense of control over his own fate. He could be hard-working, honest, and thrifty, but still find his business and his livelihood destroyed by competitors who were wealthier, more efficient, or less scrupulous.”<sup>104</sup> Rather than as a means of cooperatively enduring the temporary setback that was Parliament’s decision to abandon the salt duty, therefore, the salt cartel may have been a means of reducing the dangers and harmful effects of excess competition. In modern terms, the salt combination was a straightforward example of anti-innovation cartelization. And proof that its purpose was to inhibit innovation could be found in the Caesarea Company, a superior competitor that refused to join the cartel and that possessed innovative technology which, but for the artificiality of the cartel, would have permitted it to dominate the other Goderich salt manufacturers. From the perspective of the modern economist, who regards such artificial restraints on innovation and competition as inefficient, the cartel was villainous, and Caesarea was an innocent, injured party.

An inhabitant of 1870s Goderich might, however, have had a different perception. The salt men shared their technological innovations with their local confrères — every salt maker was able to acquire Platt’s evaporator from Runciman’s Foundry. Their new technology was patented only to thwart American competitors. Both Sterry Hunt and the *Signal* encouraged them to share their technology, even though such sharing would not be considered efficient or rational by *homo economicus*. It appears from a reading of the available evidence that the better view is that local development of the salt industry was not viewed competitively, but cooperatively. Certainly the *Signal*, which commonly portrayed development of the community’s resource as a community affair to be accomplished cooperatively, held that view. For that newspaper’s editor, all members of the local region were allies in a battle, begun by an unscrupulous foreign competitor, that could only be won if the entire community, farmers, workers, businessmen, and consumers were united. From that perspective, the villain was not the cartel, but Caesarea, which, by pushing technology beyond what was required to defeat the foreigner and creating internal competition that harmed members of the community, was guilty of unscrupulously destroying the harmony of interests that the *Signal* had been so conscientious in promoting.

---

<sup>103</sup>J. Schumpeter, *Capitalism, Socialism and Democracy*, 3d ed. (New York: Harper & Row, 1950) especially at 84-85.

<sup>104</sup>A *Living Profit*, *supra* note 64 at 53-54.

The universality of Canadian cartelization and combination during the late nineteenth century is not explicable solely in terms of greed, fear of bankruptcy, nor the economics of efficiency. Equally important was the pursuit of social harmony, the dominant theme in Canadian social history of the late nineteenth century. That harmony was pursued not only by exhortation from the local press but through conscious efforts to organize and institutionalize conflict. Protectionist ideology, founded as it was on a romantic, falsely nostalgic vision of pre-industrial societies in which there was comfortable integration of town and country, was easily adapted to the pursuit of social harmony through local organization. Municipal and county government, which fostered harmonious development by investing in local enterprise and by using subsequent profits to improve the citizen's quality of life, was one type of local organization. Another was the combination of local manufacturers. Such organizations were not created to avoid competition (although one effect of their creation may have been a reduction in competition), but to ensure that the economic interests of a region were properly presented to national or provincial governments. Communities were represented not only by their elected leaders, but by all their leaders, including businessmen.<sup>105</sup>

Refusing a salt tariff which would have directly benefitted only the Goderich region at the expense of all Canadian consumers may have been justifiable from a national viewpoint. The people of Goderich disagreed. They had placed great hope and faith in the Dominion government. In discovering and developing a new resource, Goderich had bestowed a significant benefit on the young Dominion. It was only fair that the Dominion recognize Goderich's right to prosper from Confederation, one of the purposes of which was mutual support in commercial and industrial development. Although such mutual support was their hope, the inhabitants of Goderich were not dependent on the Dominion for their prosperity. For that, they had always relied on themselves. When Parliament denied its support, the locality effectively regained a sort of independence, which it pursued by the creation of a combination that would act in the community's interests. The Canadian Salt Association institutionalized the informal form of cooperative local development that had preceded it. It is worth remembering that the *Signal* recommended the amalgamation of the salt companies not for the purpose of gouging the consumer, but so that local manufacturers could share the burden imposed upon them by the Dominion government. The formation of the cartel was a community-based scheme that would enable it, once again, to rise to a challenge to which it had risen on previous occasions.<sup>106</sup>

To the modern economist, the proper solution would have been to let the lame ducks go to the wall. The salt market was over-supplied. Cutthroat competition should have continued, forcing the weakest producers to leave the industry and permitting the redeployment of resources to other more highly valued economic activities. Cartelization only retarded efficient adjustment processes.<sup>107</sup> Such a response would have been particularly unlikely from people

---

<sup>105</sup>See Forster, *supra* note 59 at 202; Rutherford, *supra* note 24 at 176-81.

<sup>106</sup>See *supra* note 98: "An Unexpected Cloud."

<sup>107</sup>Compare Trebilcock, *supra* note 3 at 298-99.

whose "patience and perseverance" and "unremitting toil" in taming the wilderness of the eagles and the aborigines had only just begun "to bear fruit in the shape of substantial comforts."<sup>108</sup> Efficiency in those circumstances would have meant going backwards in time, to something unthinkable. Cartelization was the only option left. The community of Goderich acted for its own benefit, in a pioneering spirit.

Consistent with the pursuit of harmony, almost everyone believed, or said they believed, that strong justifications could be found for the formation of a Canadian salt cartel. Forster has warned that "the protectionists' nationalism and advocacy of the ideal of harmony are quite properly open to profound scepticism."<sup>109</sup> In the case of the salt combination, there were economic considerations that give rise to scepticism. At its core, that cartel, like all cartels, was about price. The producers were not happy with the price they were getting, and they sought to increase it. When the market hit what they considered to be the bottom, they acted. Just before the amalgamation, the *Monetary Times* reported that "[t]he competition between manufacturers of Canadian salt has completely broken down the market, and sales were made as low as \$1.10 for car-loads."<sup>110</sup>

The cartel immediately raised the price of salt twenty-five per cent (thirty cents a barrel). But, despite the cartel, the price corrected itself within several months. This cartel was no less susceptible to breakdown than are theoretical cartels.<sup>111</sup> Bliss has shown that Canadian amalgamations and cartels of the late nineteenth century suffered from an extremely high failure rate, because there were plenty of enterprising individuals whose activities made it difficult to build barriers around a free market. The situation faced by the Canadian Salt Association was no different.<sup>112</sup> Despite its intention to act for the benefit of the community, self-interest often prevailed; it would be naïve to think otherwise. The salt combination had many members, each of whom faced different cost structures. That situation rendered agreements as to a mutually advantageous common price difficult. Kincardine had cheaper wood, but did not yet have a railway line. Seaforth and Clinton had the least expensive fuel and were closer to Toronto by rail. Goderich had the cheapest labour, but did not have the fuel supply of the other three towns. Goderich had a better harbour, and its salt bed was twice as thick.<sup>113</sup> Cartel-induced higher prices create two further problems: each member of the cartel has strong incentive to cheat; and, the prospect of excess profits motivates new entry into the industry. Because all Goderich salt sales

---

<sup>108</sup>*Historical Atlas*, *supra* note 16 at 8.

<sup>109</sup>Forster, *supra* note 59 at 203.

<sup>110</sup>*Monetary Times* (23 June 1871) 892.

<sup>111</sup>See generally Trebilcock, *supra* note 3 at 295-96.

<sup>112</sup>The salt cartel, which was vindicated by the Court in 1871 and which broke down and re-formed in 1874 only to break down again in 1877, was renewed on 1 March 1889, just as the new anti-combines legislation was being discussed in the House of Commons. The cartel raised the price of salt, in one day, by 90%, from 55 cents (note that the price must have continued to drop after 1872) to \$1.05 per barrel (*A Living Profit*, *supra* note 64 at 36). See also D. Robinson, *Seaforth Beginnings* (Erin, Ont.: Boston Mills Press, 1987) at 42.

<sup>113</sup>See "The Kincardine Salt" *Signal* (17 September 1868) 2; *Historical Atlas*, *supra* note 16 at 8, 9, 10.

were made through the Association's trustees, there was little opportunity to cheat. There was, however, new entry. The *Signal* reported the successful completion of at least two new wells during the four months that the Association existed.<sup>114</sup> In addition, not all manufacturers joined the Association. The most notable exception, as stated above, was Caesarea, the company that had invented the most efficient evaporation method.<sup>115</sup>

Having successfully combined, the salt makers of Goderich were able to restore the price of salt to a level that ensured them a "living profit." But having decided to control only the price and to permit production to continue unabated, the collapse of their pricing structure was inevitable. It did not require a crystal ball to foresee that, given the rate at which new wells were being sunk (more than four per year) and the incentive to produce to capacity created by artificially elevated prices, the markets for Goderich salt, circumscribed as they were by the American tariff, would soon be over-supplied. On 23 June 1871, one week before the formation of the Canadian Salt Association, the *Monetary Times* concluded that "the difficulty with the Canadian salt interest is over-production for the limits of the market ... [T]hose who are sinking wells are not acting wisely."

No one in Goderich was surprised that this had occurred; it had been spoken of often. Throughout the period, the *Signal* repeated two ideas. The first was promotional — "drill more wells!"<sup>116</sup> The second was prophecy, disguised as promotion:

No doubt there are those in the various sections where salt has been found who would have gladly seen it limited to their particular section, but such cannot be, and it will be for those interested to consider at once where a market is to be had for the manufactured article. The field is small in Canada compared with what

---

<sup>114</sup>Salt was found at Kincardine (*Signal* (15 September 1871)) and at Enniskillen, where there was an "inexhaustible [well] for all time to come" ("Town Talk" *Signal* (22 September 1871) 3).

<sup>115</sup>An interesting anecdote in support of Caesarea's unscrupulous, anti-community methods of competition appeared in an angry letter to the editor of the *Signal* by "FAIR-PLAY." After supporting the aims of the cartel, the writer said:

Now, such an arrangement if properly carried out would be very desirable and necessary, to protect the great salt interest of Canada, as well as the interests of those who patronize the trade. But I should like to know how it is that you allow barrels of salt marked Caesarea to be sold containing only 200 lbs., barrel and all. Now 200 lbs. is just two-thirds of a whole barrel; and at \$1.20 for a whole barrel, two-thirds would just be worth 80 cents; so if two-thirds brings \$1.20, a full barrel would cost \$1.80. How is this, Gentlemen of the Canada Salt Association ("The Salt Question" *Signal* (10 November 1871) 2).

A CSA inspector, M. Malcolm, replied on November 14th, explaining that the joke was on Fair-play himself, as Caesarea was not a member of the CSA, which, in contradistinction to Caesarea, guaranteed both weight and quality. Malcolm suggested that, in future, Fair-play ought to deal with the only faithful organization in town — the Canadian Salt Association.

<sup>116</sup>"If we had 20 wells paying as well wouldn't someone inake money pretty fast?" ("Dividend," *supra* note 19);

"The Goderich Salt Co. has piled up 2008 cords [of wood] in its back yard. ... How much would 20 such establishments consume?" ("A Nice Wood-Pile" *Signal* (13 February 1868) 2);

"If five wells have done so much towards increasing the population of Goderich, what, we ask, would not from 50 to 100 wells between Goderich and Seaforth do towards creating a *home* demand for the produce of the soil?" ("No Monopoly" *Signal* (12 November 1868) 2).

might be produced, even by the employment of local capital alone, and hence, it will be necessary to use every legitimate means to secure free trade with the United States. Our good town has gone into the manufacture very energetically. We feel ... that our salt men will do all in *their* power to secure the very widest possible market for the saline wealth of Huron and Bruce.<sup>117</sup>

In 1868, Goderich had been swept by salt fever. By 1871, one thing was clear: salt was not gold. It simply was not rare. As the *Signal* pointed out, for the prosperity of the region to continue, the extension of Goderich's markets was imperative. It was the *only* acceptable solution. The salt makers tried to win markets by improving their production process and reducing costs. While guaranteeing Goderich salt a large stake in the home market, such improvements did not permit entry into the protected American market. There were also attempts by the salt manufacturers to market their product worldwide.<sup>118</sup> New uses for salt were found. Advertisements in the *Signal* and the *Globe* encouraged its use as a manure. Beginning late in 1870, a Bruce County copper mine successfully replaced smelting with a new process that used refuse salt and sulphuric acid to extract copper from its ore.<sup>119</sup> And the local newspapers did their part by encouraging patriotic readers to buy Goderich salt. A Canadian salt duty would also have permitted the expansion of the market in which Goderich salt could effectively compete with American salt. Finally, combination permitted the expansion, not of markets, but of production — at the expense of consumers. Another option did exist: the Goderich salt men could have followed the example of the vultures of Onondaga and merged into a giant Canadian monopoly. It would be interesting to know why they did not do so. One hypothesis may be formed based on a story that appeared in the *Monetary Times* one month after the formation of the Canadian Salt Association:

Our Salt manufacturers have learned a lesson upon combinations and coruers in so far as they affect the salt market. They have not only stopped all competition amongst home producers but they have concluded a treaty of peace — so we are informed — with the Americans whereby each, Canadians and Americans, shall have control of their own markets. We don't like the principle of the thing, but it can easily be endured for a time if it shall be the means of putting the salt men a little better on their feet.<sup>120</sup>

This statement is alone in the available historical record. What it means is unclear, but it may be that the plan of Onondaga all along had been one of containment, with the aim of not losing too much to the superior quality of Goderich salt. The New Yorkers may not have been trying to crush the infant Canadian industry after all, but merely trying to show that they meant to maintain their American markets. It is possible that Onondaga would have been happy

---

<sup>117</sup>"Our Salt Region" *Signal* (17 September 1868) 2.

<sup>118</sup>Goderich salt was shown at the Paris Exhibition even though it could never have been sold profitably in a town as near as Kingston, Ontario ("The Salt Wells of Goderich," *supra* note 26). The owners of several Goderich salt works went on regular promotional tours to Chicago and Detroit.

<sup>119</sup>The *Signal* reported at least three large shipments of such salt, saying that the trade was "likely to become important" ("Town Talk" *Signal* (15 September 1870) 2; "Town Talk" *Signal* (19 September 1871) 3).

<sup>120</sup>*Supra* note 101.

with a market sharing agreement of the type described in the *Monetary Times*.<sup>121</sup> Its predatory pricing could have been merely an attempt to show the Canadians how serious it was about keeping them out of the U.S. market. If a market-sharing agreement had been planned and negotiated, the formation of the cartel would not have been a last-ditch effort to fight for a fair, living profit, but a prerequisite to the formation of an effective division of the market. Market sharing could not have been accomplished with eighteen different companies acting in their own interests. If true, this would also mean that Vice-Chancellor Strong was not a valiant nation-builder holding out an opportunity to Canadian producers but a hard-headed realist, cynically granting businessmen exactly what they needed to corner the Canadian market.

There was, however, no record of any of this in the *Signal* or the *Globe*. The reason for that absence is probably that such a market sharing arrangement was not made — it simply would not have made sense. It bears repetition that continued success for the Goderich salt men required the expansion of markets, not their voluntary contraction. They could not have been satisfied with the Canadian market alone — it was too small for an unlimited salt basin. Much more likely is that the statement in the *Monetary Times* was a fabrication, concocted by a journalist or editor interested in ensuring that the salt interest did not gain any more support in the Dominion Parliament. It is worth remembering that the Montreal Board of Trade had petitioned the House of Commons to remove the duty that had been placed on salt by the 1870 tariff.<sup>122</sup> That Board surely had various allies among the nation's leading newspapers.

A better explanation for the refusal of the salt men to merge is that a merger, like a market sharing arrangement, would not have helped conquer new markets. For greedy and self-interested capitalists whose sole interest was earn-

---

<sup>121</sup>In *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Harvard University Press, 1977) at 133ff, Alfred D. Chandler, Jr. documented a similar market-sharing agreement among railroad companies, the object of which was to ensure mutual profitability by restricting the activities of each company to its "natural" market. Such a theory would probably have been known to the Onondaga company. Interestingly, it was with regard to railway market-sharing that *Ontario Salt* had its greatest success as a precedent. In his discussion of the *Trans-Missouri Freight Association* case, Eddy, *supra* note 8 at 946-63, noted that *Ontario Salt* was cited as authority for the maintenance of a voluntary association among a number of western railroads by both the District Court (*U.S. v. Trans-Missouri Freight Ass'n*, 53 F. 440 (D. Kan. 1892)) and the Circuit Court of Appeals (*U.S. v. Trans-Missouri Freight Ass'n*, 58 F. 58 (8th Cir. 1893) [hereinafter *Trans-Missouri*]). Like that of the Canadian Salt Association, the object was to control all competitive traffic between or among its members so as to maintain just and reasonable rates. As in *Ontario Salt*, the moral intent of the parties was determinative (see the discussion *infra* note 143ff) — the courts decided that it could not be said that the public was injuriously affected by the Association. In *Trans-Missouri*, the parties honestly intended only to "prevent unhealthy competition and yet at the same time furnish the public with adequate facilities at fixed and reasonable prices." Their contract was designed to avert ruin, not to prevent "healthy competition," which is detrimental to the public. In *Trans-Missouri* just as in *Ontario Salt*, the public was not entitled to free and unrestricted competition, but only to fair and healthy competition. Based upon pure statutory interpretation, which purported to exclude the question of moral intent, the U. S. Supreme Court reversed both judgments (*U.S. v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 17 Sup. Ct. 540 (1896)).

<sup>122</sup>*Supra* note 97.

ing profits, merging would have been the appropriate solution. The advantage of a merger is that, once it is large enough, the new organization acquires monopoly powers and can control both price *and* production, enabling the larger firm to ensure profitability, something that the Canadian Salt Association failed to do. Profitability was probably not the sole objective of the Goderich salt men. Had it been, they would likely have merged or at least attempted to do so. That they did not is evidence that their objectives may have been more community-oriented than the modern reader, typically trained to distrust the motives of businessmen, would permit him or herself to think. It is entirely possible that the Goderich salt men, who viewed themselves as members of their community with a long-term interest in remaining members in good standing, were just as interested in the successful development and continued growth of that community's resource as in lining their own pockets in the shorter term.

If their interest was the more community-oriented one, the salt men's only real option was the formation of a cartel. Unfortunately, that cartel was unstable, and it fell apart. In October of 1871, the salt men sought a solution in Ontario's Court of Chancery.

#### VII. The Response of the Judiciary: The Courts Help Those Who Help Themselves

In October of 1871, a mere four months after the cartel's formation, the Merchants Salt Co. attempted to withdraw from the Association. The Association brought a Chancery suit, now known as the *Ontario Salt* case.<sup>123</sup> The bill in that case was filed by the Ontario Salt Company, five other incorporated companies, and several individuals against the Merchants Salt Company, also a corporation. The bill sought to have the defendant restrained from acting in contravention of covenants in an agreement made between the plaintiffs and itself

to combine and amalgamate and unite under the name of the Canadian Salt Association for ... mutual protection in the general management of salt operations, for the purpose of selling on such terms as to secure as far as possible a fair share for their capital invested in such operations, and generally for the purposes of combined action and mutual protection in all matters relating to the manufacture and sale of salt in Canada and elsewhere.<sup>124</sup>

The bill was demurred to for want of equity. Vice-Chancellor Strong rejected the demurrer, disagreeing with Merchants' two main arguments: that the agreement was against public policy as tending to monopoly; and, that it was void as an undue restraint on trade. On the first head, Strong stated that there

---

<sup>123</sup>*Supra* note 1. I have not been able to find much about the case itself. The *Monetary Times* reported that the suit was brought (3 November 1871) but did not follow up on it. The *Globe* reported on the arguments that were raised by counsel for each side, but followed it up with only brief statements. The *Signal* merely reprinted the *Globe's* report. No record of the case could be found in the Public Archives of Ontario, and the law firm of Blake, Cassels and Graydon of Toronto (whose early partner, Edward Blake, argued the case) was able to find nothing in its private archives.

<sup>124</sup>*Ontario Salt*, *ibid.* at 541.

was no question of monopoly in these circumstances because the member companies were not the only persons engaged in salt making in Ontario, and much salt was imported.<sup>125</sup> Because, according to Strong, the trade in salt would "remain unaffected by the agreement, except in so far as prices may possibly be influenced by it," the essence of the defendant's objection concerned not monopoly, but engrossing.<sup>126</sup> Strong proceeded to discuss that common law offence<sup>127</sup> and noted that it had been abolished by statute in England.<sup>128</sup> Although he could find no similar legislation in Canada, he was sure that the common law of engrossing did not apply, for it did not suit existing conditions of trade and commerce:

I cannot suppose that a law which would strike at a vast number of transactions which, with manifest benefit and profit to the community, are daily being entered into without the least suspicion on the part of those engaged in them that they are doing wrong, would now be applied as part of our common law.<sup>129</sup>

Thus, the Vice-Chancellor took judicial notice of exactly the state of affairs documented a century later by modern business historians like Michael Bliss and Ben Forster, and thus altered the common law to accommodate that state of affairs.

Strong defied legal formalism in not blindly or passively imposing established common law precedents. Instead he found persuasive authority in doctrine from the United States and agreed with the idea that engrossing and the kindred "offences" of forestalling and regrating were not only practised every day, but were the very life of trade.<sup>130</sup> He concluded that "long usage" had brought about a change in the common law and that, even if it could be said that the object of the Canadian salt men was to raise the price of salt, their contract would be neither illegal nor against public policy: "Were I to hold this agreement void on any such ground, I should be laying down a rule which, if applied, would cause great inconvenience in trade, and one, the necessity for which

---

<sup>125</sup>In response to an editorial by the Toronto *Leader* that the salt manufacturers were seeking to establish their own monopoly, the *Signal* wrote:

It may be argued by our opponents that by urging for a duty on American salt coming to Canada, we seek for the establishment of [an Onondaga-like] monopoly on a smaller scale. The thing is simply impossible from the highly important fact that we have a salt territory that is known to extend from Kincardine to Seaforth — nearly sixty miles, with a width corresponding, all in private hands. Is it reasonable to think a Canadian monopoly possible, when a new well may be sunk at almost any place along the line we have indicated, and works established over a bed of solid salt 40 feet in thickness, for \$10,000? Why does not not [*sic*] [the] same argument apply to the Syracuse companies? Why, simply because *they have neither the territory nor the quality of salt!* These simple truths set at rest forever the question of monopoly (*Signal* (25 May 1869)).

<sup>126</sup>*Ontario Salt*, *supra* note 1 at 542.

<sup>127</sup>He mentioned only *R. v. Waddington*, 1 East. 143, and, in stating that the common law was "severely applied" in that case, showed that he was not ideologically bound by English precedents.

<sup>128</sup>7 & 8 Vict., c. 24. See generally, J.E. Côté "The Reception of English Law" (1977) 15 *Alta. L. Rev.* 29.

<sup>129</sup>*Ontario Salt*, *supra* note 1 at 543.

<sup>130</sup>Particular reliance was placed by the Court upon W. Story, *A Treatise on the Law of Sales of Personal Property* (Boston: C.C. Little & J. Brown, 1847) at 647.

would at this day be discountenanced by all public and scientific opinion."<sup>131</sup> The Merchants Salt Company's first defence therefore failed.<sup>132</sup>

Based as much on intuition and conjecture as it is on law, *Ontario Salt* is a marvellous judgment, though it may be subject to criticism from the point of view of a modern lawyer-economist.<sup>133</sup> Strong assumed, without apparent proof or investigation, that the cartel in issue and others like it had the support of "all public and scientific opinion." And his statement that the agreement offered "manifest benefit and profit to the community" also appeared to be presumed rather than proved. As Jamie Benedickson has pointed out, Strong also confidently and unquestioningly accepted "that business attitudes, as reflected in the frequency and presumed innocence of similar arrangements, were grounds for deciding the very question in dispute."<sup>134</sup>

Another historian might view *Ontario Salt* in a different light, and what follows is an attempt to describe one form of that view. It will first be necessary to say a word about *how* Strong knew, intuitively and without investigation, what was in the public interest. Following that brief discussion is a depiction of *what* Vice-Chancellor Strong, as a man of his time, may have known and of the kind of ideas that may have guided his decision.

The answer to the first question is, at once, pedestrian and unknowable.<sup>135</sup> Given the importance of the salt industry and the extent of its success in such

<sup>131</sup>*Ontario Salt*, *supra* note 1 at 543.

<sup>132</sup>Merchants' second argument was that the covenant in issue was an unreasonable restraint of trade. Strong began with a classic statement of the law, well-established by that time: "*Primâ facie* every contract in restraint of trade is void; but if an agreement appears to be for a partial restraint only, for valuable consideration and reasonable, the law sanctions it." Strong found that the restraint in *Ontario Salt* was only partial, and the mutual obligations constituted sufficient consideration. As for reasonableness, Strong used the test from *Horner v. Graves*, 7 Bing. at 743 (Tindal C.J.). As in that case, the issue in *Ontario Salt* was whether the agreement harmed the public interest. Since he had already decided that public and scientific opinion favoured the Canadian salt cartel, any further discussion of public policy would have served no legitimate legal purpose (*Ontario Salt*, *ibid.* at 546-47). Here, there was no submission to the will of a majority; all covenantees were equal. Neither production nor sales of salt was restricted. All salt was to be sold through trustees whose duty was to sell it in the interests of all, equally. Finally, Strong cited English authority, *Hearne v. Griffin*, 2 Chitty's Repts. 407 (Ellenborough L.J.), for the rule that a contract to charge the same prices was not an improper restraint of trade. As in that case, the parties were left to charge what they liked, though not less than each other — "merely a convenient mode of arranging two concerns which might otherwise ruin each other."

<sup>133</sup>Compare Trebilcock and Benedickson, both *supra* note 3.

<sup>134</sup>Benedickson, *ibid.* at 12. Rather sceptically, Benedickson concluded that:

The Ontario Salt decision appears to rest on judicial confidence in the existence of a shared community opinion that the public interest is essentially synonymous with the interests and operations of private business. Accordingly, it demonstrated a great reluctance to interfere in the realm of private business conduct, although it was ultimately judicial confirmation that legitimized that conduct. However, not all judges of this era viewed the formation of business associations with the same degree of equanimity, nor with the same degree of reluctance to overturn private agreements.

<sup>135</sup>It is unknowable because the only available record of counsel's arguments was reported in the *Globe* (26 October 1871). That report, which was reprinted in the *Signal* the next day, is summarized below. The sketch in the *Globe* was extremely brief. Presumably, Blake's arguments were full of the kind of detail supplied by the *Signal*.

a short period, it is unlikely that Strong would not have been aware of the difficulties created by the U.S. tariff and the waffling of the Canadian government with regard to the imposition of a duty on salt. Even if he was not aware, or if he read only the *Globe* and its anti-tariff columns, he was made aware of the equities of the case by counsel for the plaintiff, Edward Blake, Q.C. Blake pointed out that the object and effect of the association were not to restrain trade, but "to meet the attempt of American manufacturers to crush Canadian salt companies." He argued that any injury inflicted on trade by the Association had to be distinctly shown, but that this had not and could not be done. Blake showed that the effect of the Canadian Salt Association could not be to create a monopoly, for salt could be obtained over a square of forty miles, and a comparatively small portion of that deposit had been exploited. In addition, not all Canadian salt companies had joined the CSA. U.S. salt entered Canada free of duty, and a large quantity of salt was imported to Canada from England. Finally, it was shown that the cartel agreement benefitted the public, because the CSA appointed an inspector to guarantee the quality of its product, and because the amalgamation lessened the cost of production.

That Strong did not rehearse those or other available arguments in his judgment should come as no surprise. They were, after all, common knowledge. Strong did not rely on intuition alone; that would not have been his style. At the time of *Ontario Salt*, Strong was beginning what would ultimately be a long and distinguished career in the Canadian judiciary.<sup>136</sup> Upon his appointment, the *Canada Law Journal* stated that: "The new Vice-Chancellor has established a reputation second to none as an equity counsel; and the Equity Bench, as well as the Court of Appeal, will be greatly strengthened by the learning and talent

---

<sup>136</sup>There is no comprehensive biography of Sir Samuel Henry Strong. Because he did not die until 1907, the *Dictionary of Canadian Biography* has not yet published its biographical sketch of him. The *Canadian Law Times* and the *Canada Law Journal* wrote brief descriptions of him at various significant dates, namely at the time of his appointment to higher courts. The *Canadian Green Bag: An Entertaining Magazine for Lawyers*, F.L. Snow, ed., Vol.1, No.1 (1895) at 1 (John Lovell & Son, Montreal), wrote a one-page summary of his career in its first volume. He is also mentioned in: H.J. Morgan, ed., *The Canadian Legal Directory: A Guide to the Bench and Bar of the Dominion of Canada* (Toronto: Carswell, 1878) at 259; J.G. Snell & F. Vaughan, *The Supreme Court of Canada: History of the Institution* (Toronto: The Osgoode Society, 1985). M. Bade & E. Burstein, "The Supreme Court of Canada 1892-1902: A Study of the Men and Their Times" (1970) 8 Osgoode Hall L. J. 503. It is on a combination of those sources that the following brief description of Strong is based.

Strong was born in Dorsetshire, England, in 1825, the son of Rev. S.S. Strong, a former Rector of Bytown. Educated in Canada, he was called to the Bar of Upper Canada in 1849. He was made a Q.C. in 1863 and elected a Bencher of the Law Society of Upper Canada in 1860. He was a Commissioner for consolidating the Public General Statutes of Upper Canada and Canada, respectively from 1856 to 1859 and a member of the Law Reform Commission of Ontario in 1871. He also assisted Sir John A. MacDonald in the formation of the original Supreme Court, having written the original draft of the *Supreme Court Act*. He was appointed Vice-Chancellor of the Ontario Court of Chancery on 27 December 1869, where he remained until 27 May 1874, when he was promoted to the Court of Error and Appeal for that Province. He was appointed a Puisne Judge of the Supreme Court of Canada, on the organization of that court on October 8, 1875 (Morgan, ed., *ibid.* at 259.). Strong was appointed Chief Justice of the Supreme Court of Canada in 1892, a position he retained until his retirement in 1902. In 1896, upon his appointment as a member of the Judicial Committee of the Privy Council, he became the Right Honourable Sir Samuel Henry Strong (Snell & Vaughan, *ibid.*).

that he will add to them.” During Strong’s appointment ceremony at Osgoode Hall, John Hillyard Cameron, the “talented and eloquent leader of the Bar of Ontario,”<sup>137</sup> noted approvingly that the new Vice-Chancellor “was fresh from the legal arena and its contests,” near to the profession, and aware of recent occurrences.<sup>138</sup> In 1871, therefore, Strong would still have been fully cognizant of what had been happening in legal circles. The *Green Bag* described him as follows:

[He is] a man of great talent and learning, and a scientific lawyer, he is undoubtedly one of the best civil law jurists in Canada, and thoroughly familiar with the French language... “as a lawyer pure and simple and in intellectual capacity he has no superior on the bench.” ... [His] judgments are models of judicial style: clear, logical, and expressed in the purest and most correct English, they are deserving of the closest study for their beauty of diction, their close reasoning, and profound legal research.<sup>139</sup>

More importantly, the limited information available about Strong suggests that he was not one to approach a question dogmatically or to let presuppositions as to the primacy of such doctrines as freedom of contract determine in advance the outcome of the cases over which he presided.<sup>140</sup>

In *Ontario Salt*, Strong declared that the agreement in issue would not have been illegal or against public policy even if its object had been solely to augment prices, a purpose that he denied. He subsequently affirmed that the real object of the Association was not “unduly to enhance the price, but as it is expressly alleged in the bill, to enable the parties by concerted action to combat an attempt on the part of foreign producers and manufacturers unduly to depreciate it.”<sup>141</sup> From Benedickson’s point of view, that was a tenuous assertion offered by Strong because he was “not content” with his previously stated “defences of the arrangements to increase salt prices.”<sup>142</sup> From Strong’s point of view, however, the object of the Canadian Salt Association may have been common knowledge — it certainly was so in Goderich. Since the problem with the American monopoly had been the subject of major gatherings by manufacturers and had resulted in the imposition of at least a temporary tariff that had, at the time of the litigation, only recently been removed, it is entirely reasonable to assume that the Vice-Chancellor had a strong foundation on which to base his assertion about the object of the Canadian Salt Association.

Benedickson described Strong’s judgment as a “defence” of the combination and assumed, as a result, that it was indeed an arrangement to “increase salt prices.” Implicit in that description is a kind of modernist condemnation of the artificiality and injustice of the price rise. Yet, a common argument of the day

<sup>137</sup>(1875) 11 Can. L.J. 265.

<sup>138</sup>(1870) 6 Can. L.J. 4.

<sup>139</sup>*Canadian Green Bag*, *supra* note 136 at 1.

<sup>140</sup>That Strong was sensitive to the wants and habits of a new country and that that sensitivity was likely to find its way into many or most of his judgments, including *Ontario Salt*, must remain hypotheses. Much more research would be required to determine whether an ideological thread can be found running through his judgments. For present purposes, I have merely assumed that the most positive hypotheses are true.

<sup>141</sup>*Ontario Salt*, *supra* note 1 at 543-44.

<sup>142</sup>Benedickson, *supra* note 3 at 12.

would have permitted the object and effect of the Canadian Salt Association to be viewed from a more positive perspective. Derived as it was from the late-nineteenth-century version of protectionism, an ideology with which Strong would certainly have been familiar, if not sympathetic, the determination of the fair price was often viewed as a moral issue rather than an economic one.<sup>143</sup> The plaintiffs conceded two points: that the price was being raised; and, that the price rise was artificial. The more important question was whether the price increase was right or wrong, from a public perspective. That perspective has been seen previously in this paper and was extremely common in 1870s Ontario. It was expressed in the pages of the London *Free Press*, which called for the judicious restoration of a fair price,<sup>144</sup> and in the *Signal's* response to Goderich's grumbling farmers. Its theme was the question of moral intent.<sup>145</sup> Popular notions like those were also translated into the judicial context, according to Benedickson, who concluded that, prior to 1900, "emphasis on the parties' purposes — their moral intent — had ... deflected attention from the substantive impact of combination on consumers and trade competitors."<sup>146</sup>

Protectionists used a parallel argument in their pursuit of a broad national tariff policy: "It is a common allegation with free-traders that protection makes higher prices. But this is not correct, for the effect of that policy is simply to prevent prices going *lower* than they should be."<sup>147</sup>

Because the price of salt did increase, so drastically and so immediately, it is easy to condemn the participants in the combination as dissemblers who

---

<sup>143</sup>One is reminded here of the morality that underlay the crimes of engrossing, forestalling and regrating, all of which were justified by notions of a fair price, where "fair" meant just, not efficient. Douglas Hay has discussed a similar theme in his contextualization of *R. v. Waddington*, *supra* note 127. In "The Criminal Prosecution in England and its Historians" (1984) 47 *Mod. L. Rev.* 1, Hay responded to a doctrinal criticism of *Waddington* (and of a companion case, *R. v. Rusby* (1800-1801), Peake Add. Cas. 189, 170 E.R. 241) by P.S. Atiyah (*The Rise and Fall of Freedom of Contract* (Oxford: Clarendon Press, 1979) at 363-66). Atiyah's commentary on those two cases paralleled Trebilcock's criticism of the cartel cases. For Hay, those cases illustrate the "value-breeding, ideological functions of judges, and their sense of the policy requirements of the criminal law." Lord Kenyon described *Waddington's* offence, engrossing large quantities of hops with the hope of selling at an exorbitant profit, as a most heinous offence against religion and morality. In *Rusby*, he wished "Dr. Adam Smith had lived to hear the evidence of today, and then he would have seen whether such an offence exists, and whether it is to be dreaded." In the context of widespread food riots, the courts exploited the engrossing laws as almost the only effective response to massive riot. *Waddington* had "pressed on the court the wisdom of Adam Smith," but the judges preferred the "wisdom of the common law, and in their judgments used the rhetoric of Christianity and humanity, rather than that of the market." Hay insisted that the perspective of the judges was a personal one, imposed on their consciousness by events and circumstances that forced them to look "beyond doctrine and beyond general currents of economic theory." The same may be said of *Ontario Salt*. In *Waddington* and *Rusby*, Hay stated, policy considerations based on a recognition that, in late-eighteenth-century England, the labouring poor held a radically different view of what was just and of the role of law than did Adam Smith. In Goderich of the 1870s, what was just and equitable could not be determined solely by either (English) political economy or (English) jurisprudence; it had to be determined by prevailing realities, social, political, and economic.

<sup>144</sup>*Supra* note 94.

<sup>145</sup>See text accompanying *supra* note 31.

<sup>146</sup>Benedickson, *supra* note 3 at 45.

<sup>147</sup>*Comedy of Trade*, *supra* note 75 at 8-9.

were all too prepared to disguise greed as love of country in a felonious attempt to strip consumers of their surplus, or to accuse their supporters of being caught in a contradiction or of bastardizing Adam Smith.<sup>148</sup> The world view that gave rise to such apparent inconsistency can make sense. Ideology should not merely be identified with formal philosophical systems. It reflects the tendency of people to justify their actions in terms of a vision, however unarticulated, of how the whole makes sense. Ideology is the over-arching structure within which particular arguments as to right and entitlement are rationalized, propounded, and defended. In late-nineteenth-century Canada, it is arguable, based on the kinds of statements made in the newspapers and in Parliament, an alternative hierarchy of values dominated the prevailing world view. In that hierarchy, property came first, followed by liberty, and only then by equality. The ideal was progress, defined as the expansion of private property, and not market efficiency, *per se*.<sup>149</sup> Seen in that light, the salt makers of Goderich were not merely rational men acting practically, but members of a society in which they were leaders, entitled to certain rights. They knew what was valuable and what needed fostering to ensure a healthy community. The primary necessity in a nation that wanted to progress was a healthy manufacturing sector. As Bliss has shown, members of cartels were genuinely puzzled by claims that they were acting unreasonably, for they regarded themselves as serving the public interest. Since the alternative to a living profit was insolvency, consumers "must not expect the trade of the Dominion to work for them for nothing." "[P]rofits in business were nothing more than the wages of businessmen," a reward "justly" due to those who provided the community with the services it required. Because competition, especially "unhealthy" competition could potentially prevent a businessman from earning a living profit, and because such a result would deprive the public of an obvious benefit, combination was "a necessary corollary" of individualism. Businessmen had the *right* to ensure that "individual effort received a decent reward."<sup>150</sup>

<sup>148</sup>Compare Trebilcock, *supra* note 3 at 15-17.

<sup>149</sup>See generally: F. Roy, *Progrès, Humanité, Liberté: le libéralisme de milieux d'affaires francophones de Montréal au tournant du siècle* (Montreal: Boréal, 1988); L.S. Fallis, Jr., "The Idea of Progress in the Province of Canada: A Study in the History of Ideas" in W.L. Morton, ed., *The Shield of Achilles: Aspects of Canada in the Victorian Age* (Toronto: McClelland & Stewart, 1968) 176.

<sup>150</sup>*A Living Profit*, *supra* note 64 at 45-46, 140-41, citing the *Retail Merchants' Journal of Canada* (20 October 1903), *Le Prix Courant* (8 May 1894). Bliss is to be commended for having portrayed the world view of, "the cast of mind common among," late-nineteenth-century businessmen in its most positive light. He has reminded us of a basic distrust that modern readers have for the motives of businessmen and instructed us to beware of the "assumption that a whole occupational group in society is or was characterized by individuals guilty of sins ranging from hypocrisy to immoral and illegal behaviour." Believing that businessmen, like most people, meant what they said, he recommended a "mixed and complex picture of the relationship of business ideology and practice." Part of that ideology was the deeply entrenched belief that "business enterprise really was fundamental to Canadian national development" and a belief "in fact in the myth of the businessman as social benefactor" (*ibid.* at 135-43). Forster, Dales, Roy and Rutherford all appear to concur in Bliss's conclusion. Without access to the letters of the Goderich salt men, I cannot be sure where they stood in relation to that common cast of mind. Once again, I assume the most positive, because, in the pages of the *Signal*, which often reads like a long, complicated morality play, there appeared no reason to think otherwise, except with regard to Caesarea and the Vultures of Onondaga.

Strong's judgment in *Ontario Salt* was founded on a recognition of the legitimacy of protectionist reasoning. The Vultures of Onondaga had acted unduly to depreciate the price of salt, and Strong could see no reason that his Court should deny Canadian salt makers the opportunity of battling such contemptible behaviour through the contractual formation of a cartel. As Benedickson has astutely pointed out, "Strong's decision effectively amount[ed] to a judicial tariff, a few years ahead of the National Policy."<sup>151</sup>

The National Policy was the expression of a protectionist world view.<sup>152</sup> And while Strong may have been a judge who was supposed to be in touch with his common law roots, he was also a man of his time. "Since the organization, deployment and dominant ideology of a legal profession typically develop in lock-step and mingle inseparably with other local or intellectual trends,"<sup>153</sup> it should not be surprising that Strong's judgment in *Ontario Salt* was an expression of those trends. With the National Policy, Canada developed an independence from the Motherland that was soon paralleled in its commercial courts. Elizabeth Brown has documented a shift, in Ontario's Court of Chancery, from an old practice of slavishly following English precedent to one that attempted to adapt the law to the needs of the province.<sup>154</sup> The original force behind that change in thrust had been Chancellor William Huine Blake,<sup>155</sup> who stated:

---

<sup>151</sup>Benedickson, *supra* note 3 at 12.

<sup>152</sup>See generally Forster, *supra* note 59; Dales, *supra* note 90. Forster noted that the wise reader would maintain a healthy scepticism of this world view. Dales concluded that the National Policy had actually harmed the Canadian economy, that its basic premises were simply wrong. Dales condemned the wilful blindness of historians and economists, himself included, who, for generations, have defended the dream of Sir John A. MacDonald — whom Dales called "the first great Canadian non-economist," who gave us "our first lessons in the irrelevance of economics" (*ibid.* at 144). What is interesting is that Dales criticized the historians and the economists, not the creators of the National Policy (*ibid.* at 144-50). While concluding that they were wrong (*ibid.* at 154), he did not condemn them, for the national policies they developed were consistent with their world view. The protectionist ideology was an expression of how and what Canadian leaders thought in the 1870s. There may have been some dissembling — *The Comedy of Trade* proved that — although if they were guilty of anything, it would probably be more of profound irony — simple ignorance about how the nations they attempted to emulate had developed (see *supra* note 75) — than of intentional dissembling.

Dales's discussion was important, for it showed that it is wrong to imply bad faith or stupidity where, in reality, there may have been neither, simply because, in hindsight, one finds that they were wrong, or one's current ideology determines that they must have been wrong. Canadian leaders of the 1870s may have been wrong, and, as Dales said, it may have been stupid, or at least logically inconsistent, to attempt "to build a wealthy nation by lowering the standard of living of its population" (*ibid.* at 148; see also, *Comedy of Trade, ibid.* at 12), but the real irony is that that belief is still exceedingly popular. Canadians still believe, as part of their inferiority-determined world view, that protection is necessary to the survival of their nation (Dales, *ibid.* at 143, 154). The point is that, though there may be a right and a wrong, it is more likely that what is right in the short term is wrong in the long term, and *vice versa*. It is, therefore, better not to judge, but to give a fair hearing, at least to sympathize, if one is unable to empathize.

<sup>153</sup>Baker, *supra* note 9 at 227-29.

<sup>154</sup>See E. Brown, "Equitable Jurisdiction and the Court of Chancery in Upper Canada" (1983) 21 *Osgoode Hall L. J.* 275 at 299.

<sup>155</sup>Blake died just prior to Strong's appointment to the Court. Indeed, Strong was appointed to fill the vacancy created by his death. Blake's Vice-Chancellor, John Godfrey Spragge, succeeded Blake to the Chancellorship on the same day. Strong would often have pleaded in front of Blake and would have appreciated what it was the latter was trying to accomplish (see *supra* note 138).

But were we to apply the rule to be deduced from some of the English cases which were cited, especially some of the latter cases, upon the subject of delay, without reference to the totally different social condition of this country, we should not only produce great practical evil and injustice, but also, in my opinion, very much misapply a doctrine which in England would never had been laid down under the circumstances in which we are placed.<sup>156</sup>

Brown concluded that the Chancery judges "were even prepared to follow American precedent if it reflected the needs of Upper Canada more accurately than English precedent," refusing to adopt English decisions if they seemed inappropriate.<sup>157</sup> Arguably, that is what Strong did in *Ontario Salt*.<sup>158</sup> He used American authority to overturn ancient English precedent. *Ontario Salt* was among the first in a long line of restraint of trade cases that recognized important differences between English and Canadian commercial policy. In discussing post-1889 statutory combines cases, Benedickson noted a tendency to

distance the statutory scheme from English common law restraint of trade principles. Repeated references to international trade suggest however that many judges believed that Canada's protective tariff policy sharply differentiated this country's domestic economic environment from that of England and that this difference provided the foundation for an independent Canadian position on the legal issues.<sup>159</sup>

In *Weidman v. Shragge*, the Supreme Court of Canada said, with regard to the law based on England's leading restraint of trade case, *Mogul Steamship*: that doctrine "may well be warranted in a country enjoying free trade. But we have chosen an entirely different commercial system and must have regard thereto."<sup>160</sup> Vice-Chancellor Strong, in effectively establishing a judicial tariff in *Ontario Salt*, founded his judgment on the same type of consideration, in the context of a recent movement toward the development of a national trade and tariff policy.

One other aspect of Benedickson's analysis of *Ontario Salt* facilitates the contextualization of that case. Benedickson emphasized Strong's reluctance to interfere in the realm of *private* business conduct, and concluded that it was his judgment that legitimized that conduct, that gave *public* sanction to a *private*

<sup>156</sup>*O'Keefe v. Taylor* (1851), 2 Gr. 95 at 99.

<sup>157</sup>Brown, *supra* note 154 at 299.

<sup>158</sup>It is admittedly difficult to prove conclusively that a young and relatively inexperienced Chancery judge would be guided by a spirit that held sway twenty years before. Since Strong was a member of the tightly-knit Equity Bar of Upper Canada through the entire period that Blake dominated the Chancery Court, it is not impossible that Strong would desire to emulate his most-respected predecessor. Strong would also, of course, have been subject to contrary influences. As Baker, *supra* note 9, has shown, the Ontario Bar was, beginning in this period, shifting toward a more colonial jurisprudential perspective which permitted only the application of English precedent. In the second part of *Ontario Salt*, Strong's almost dogmatic reliance on English authority permits one to hypothesize that Strong may have been on the cusp from the old approach to the new. I assume that in *Ontario Salt* he was more the former than the latter, because he used the English precedent to kill any further argument regarding public policy, to ensure that his sensitive, community-based judgment would not be overturned by judgments from the Motherland.

<sup>159</sup>Benedickson, *supra* note 3 at 57-58.

<sup>160</sup>(1912), 46 S.C.R. 1, 2 D.L.R. 734 at 751; *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q.B.D. 598 (C.A.), *aff'd* [1892] A.C. 25, 61 L.J.Q.B. 295 (H.L.).

agreement.<sup>161</sup> Benedickson further implied that Strong viewed the formation of business associations with equanimity.

Once again, Strong's decision may be viewed from a different perspective. Benedickson drew a sharp distinction between public and private spheres of activity and presented them as being in conflict, not only in the case law, but in reality. Benedickson seems troubled by Strong's apparently unfounded assumption that some "self-evident community consensus" could be "invoked to legitimize" a patently private agreement designed to profit a few businessmen.<sup>162</sup> That a clear distinction did not yet exist in the mid-Victorian mind is a state of affairs that has been oft-discussed.<sup>163</sup> There is no reason to believe that Vice-Chancellor Strong perceived the world much differently.

A shared community opinion that the public interest was well-served by the success of the salt industry clearly did exist in late-nineteenth-century Ontario. The two were perhaps not synonymous, but they were undoubtedly intertwined. It is important to remember, as Benedickson did, that the historical relationship between Canadian governments and business had been understood as cooperative rather than adversarial and that "public institutions were committed to the success of Canadian private enterprise."<sup>164</sup> In April of 1871, the Dominion Parliament abandoned its duty on salt, thus decreeing that the *national* public interest was not served by an incidental protective tariff that benefitted only the relatively insignificant region of Goderich. But that abandonment should not be interpreted as a proclamation that the region should also give up its attempts at development. Strong's decision can be understood as a further example of a public institution lending as much support as it could to Canadian enterprise: by standing back and letting the community fight its battle with the Americans in any way it could.

It has been argued that letting a group of businessmen determine the public interest is undemocratic.<sup>165</sup> That argument amounts to an imposition of modern notions of the relationship of governments and businessmen upon late-

<sup>161</sup>Benedickson, *supra* note 3 at 13.

<sup>162</sup>*Ibid.* at 12, 47.

<sup>163</sup>See G.B. Baker, "Law Practice and Statecraft in Mid-Nineteenth-Century Montreal: The Torrance-Morris Firm" in B. Wilton, ed., *Beyond the Law: Lawyers and Businessmen in Canada, 1830-1930* (Toronto: Osgoode Society, 1990) 45; M.J. Horwitz, "The History of the Public-Private Distinction" (1982) 130 U. Pa. L. R. 1423; J.H. Merryman, "The Public Law-Private Law Distinction in European and American Law" (1968) 17 J. Pub. L. 3.

<sup>164</sup>Benedickson, *supra* note 3 at 74-75. See generally H.G.J. Aitken, "Defensive Expansion: The State and Economic Growth in Canada" in Easterbrook & Watkins, eds., *supra* note 6, 183; C. Armstrong & H.V. Nelles, "Private Property in Peril: Ontario Businessmen and the Federal System, 1898-1911" in G. Porter & R.D. Cuff, eds., *Enterprise and National Development: Essays in Canadian Business and Economic History* (Toronto: A.M. Hakkert, 1973) 20.

<sup>165</sup>See Dunlop, McQueen & Trebilcock, *supra* note 3 at 116-17:

However, even if national security considerations may sometimes have salience, it seems highly problematic to delegate this judgment to self-interested members of an industry and allow them to implement a cartel with this as the ostensible justification. Democratically elected governments are, one would have supposed, the appropriate institutions to make this judgment and to decide whether trade protection, subsidies or state-sanctioned cartelization are the appropriate vehicle for securing this goal.

nineteenth-century enterprise. In the Huron County of 1871, businessmen and elected leaders were often the same people. Perhaps it is due to limitations on the electoral franchise, but those who employed both capital and labour tended also to be the elected few. It was probably no coincidence that M.C. Cameron was selected as a trustee of the Canadian Salt Association. Not only did he fully support the salt industry, but he had contacts across the nation and could therefore spread the news. Samuel H. Detlor, M.P. Hays, and A.M. Ross, who were either members or trustees of the Canadian Salt Association, may have been businessmen and may have profited from the activities of the combination, but they had also served as leaders of the Huron Rifles, the local military company, in Goderich's first battle against Americans: an 1866 invasion of the Fenians. Why would anyone suspect that they would be any less diligent in their battle with the vultures of Onondaga?<sup>166</sup>

It is noteworthy that later cases followed *Ontario Salt* in their concern about the public consequences of apparently private agreements. Benedickson observed that in both *R. v. Gage* and *R. v. Beckett*, a case which applied *Ontario Salt*, courts spoke confidently of the positive symbiosis between private and public realms and recognized that "contractual and anti-competitive protection of established business interests appear[ed] as sources of stability and order which [were] of value to the public in an otherwise disruptive and uncertain environment."<sup>167</sup> Benedickson concluded:

The decision is in effect an attempt to reunify — at least in cases of this kind — the realm of public and private interest. These had apparently been separated by interpretation of the *Criminal Code* in which the public interest was associated with the consumer benefits of competition and efforts were made to identify an independent or objective standard of reasonableness related to consequences or substantive results. Private regulation of the market by a trade association like the guild was presented as accomplishing the same ends that public regulation would have sought.<sup>168</sup>

*Ontario Salt* had exactly the same effect, although there could have been no reunification of two concepts that had not yet been split.

---

<sup>166</sup>*Memories of Goderich*, *supra* note 11 at 51, described the battle with the Fenians as follows:

On March 6th, 1866, the call came from the Cabinet in Ottawa for 10,000 volunteers. The Huron Rifles were out in a trice, ready to take the train to Stratford. Lieutenant Hays closed his office at once although the editor [of the *Signal*, Mr. Cox] still insisted there was no cause for alarm. Hundreds of citizens saw the soldiers off at the station with Major A.M. Ross in command. At a special meeting in the town hall it was decided to give 50 cents a day from the public purse to the volunteers who were heads of families ... Mayor Detlor handed out ammunition ... The so-called General of the Fenians was arrested and on June 12th Mr. Cox was able to declare that the farce was almost over. He had very high praise for the "spirit of Huron and the general uprising of loyal men which was instantaneous when danger threatened."

Goderich was a tight-knit community, whose leaders were natural ones — always the same people, whether the problem was political, economic or military. In the *Signal*, the same names are repeated issue after issue. Note 100, *supra*, outlines the positions of each of these men within the CSA and in the community.

<sup>167</sup>*R. v. Gage (No. 1)* (1908), 13 C.C.C. 415 (Man. K.B.); *R. v. Beckett*, *supra* note 8. See also Benedickson, *supra* note 3 at 64.

<sup>168</sup>Benedickson, *ibid.* at 70.

Thus it is possible to conclude that, in terms of Canadian restraint of trade law as it ultimately developed, Vice-Chancellor Strong was prescient. His judicial tariff preceded the imposition of a national tariff policy by several years. He also recognized, without needing to since it was self-evident, that public was private, that private was public, and that each had to support the other if the nation were to progress.

Having succeeded on the demurrer, Ontario Salt *et al.* then sued for an injunction to restrain the sale of salt contrary to the terms of the Canadian Salt Association's agreement. On 15 November 1871, Chancellor John Godfrey Spragge, based on the reasons for judgment of Vice-Chancellor Strong, held that "the plaintiffs are entitled to an injunction, and that this is not a case in which the balance of convenience is in favor of leaving the defendants to conduct a separate, independent business, in contravention of articles of association to which they became parties."<sup>169</sup>

The *Globe* reported, without commentary, on the second decision, but the *Signal* did not cover it.<sup>170</sup> The *Signal* had stated that Strong's judgment would "be fraught with consequences for the Seaforth Company, as [it would] no doubt be responsible for all loss to the Association, through lower prices and loss of business resulting from their action."<sup>171</sup> There is no record of such payments being enforced. After its report on the judgment of the Chancery Court, neither the *Signal* nor the *Globe* spoke of the Canadian Salt Association. The *Monetary Times* mentioned only its demise:

Since the Salt Association was dissolved, the price of salt has gone down to a price which fails to yield any profit to the producer. We have frequently spoken of the baneful effects of excessive competition, and we think those localities which have been unsuccessful in their search after this now abundant material have very little reason to regret. So long as our producers have only the limited market of Ontario to depend upon, some limit must be placed upon the production if the business is to be conducted profitably. The present number of wells are capable of yielding brine enough to supply the whole Dominion with salt. The increasing price of wood, which is principally used for fuel in the process of evaporation, continually adds to the cost of manufacture: in some instances where the refuse of saw mills and tanneries is used, the expense is so much reduced that it will be difficult for the owners of wells not possessed of these advantages to compete, or to be successful in any attempt to force up the prices.<sup>172</sup>

Not only was the Association defunct, but various manufacturers continued to find ways to undercut their fellow Canadians. The Canadian salt industry was moribund. Its boom had been extremely short-lived. In his 1876 deposition before the House of Commons Committee on the Salt Interest, one Grey of Seaforth testified that the salt industry had been profitable from 1866 to 1870 and in 1873. In the former years, he said, the demand exceeded supply. In 1873, a rise in the price of coal in England forced up the price of salt worldwide, enabling Canadian salt manufacturers to profit.<sup>173</sup>

---

<sup>169</sup>*Ontario Salt Company v. Merchants Salt Company* (1871), 18 Gr. 551 at 556.

<sup>170</sup>"Legal Intelligence" *The [Toronto] Daily Globe* (16 November 1871) 4.

<sup>171</sup>"The Salt Amalgamation" *Signal* (31 October 1871) 2.

<sup>172</sup>*Monetary Times* (9 February 1872) 632.

<sup>173</sup>"Select Committee," *supra* note 22.

By 1879, Seaforth and Clinton, whose fuel supplies remained inexpensive, "paralyzed the entire trade and crippled the prosperity of the county town [Goderich], to the corresponding benefit of its more lucky rival." In that same year, only four of the Goderich works remained in operation. Two of those works had achieved relative success thanks to a large flour mill that began operations in the mid-1870s. The mill was powered by steam, and the exhaust steam was utilized, instead of wood, in the evaporation of brine. Both cheap and convenient, this evaporation method ensured that Goderich was able to supply the Chicago and Milwaukee markets. All markets to the east, including the entire Canadian market, were supplied by the salt manufacturers of Seaforth and Clinton.<sup>174</sup>

The cartel was a last resort for the salt men of Goderich. They had tried every other legitimate means to gain competitive advantage over their American competitors, but to no avail. Finally, they tried to get the state to enforce their cartel, their attempt to gain artificially that which they felt belonged to them in equity: a living profit. They failed. Ontario's Chancery Court gave the salt men what it could, namely the right to protect and promote the interests of their community by combining and forcing up prices. But that combination resulted only in a further expansion of an already over-developed industry. What was required was an expansion of the market for Canadian salt, something that was beyond the reach of Vice-Chancellor Strong. It may also have been beyond the reach of the Dominion Parliament. While it was true that the imposition of a Canadian import duty on salt would have had the effect of expanding the Canadian market, an industry with a productive potential as vast as that of the Goderich region required a much larger market. Only free trade with the Americans would have offered a market of a size that would have permitted the continued expansion of the Canadian salt industry.

## Conclusion

I wish my object had been to bolster Canadian national pride by the powerful rendering of a tale involving the successes and failures of creative, intelligent and industrious pioneers armed with good intentions and good faith. I now believe that it is such a story, but my intention was not that it come out that way. It just happened.<sup>175</sup> Douglas Hay has stated that it is essential, when elucidating a series of cases, to reconstruct not only the doctrinal history and intellectual movements, but also the larger histories of actual litigation and the wider social context. "Only then will we illuminate the policy considerations and prejudices which are referred to so fleetingly in the reported cases, if at all, and be able to judge the relative autonomy of doctrine from economic theories, class strategies, and imperatives of government."<sup>176</sup>

In the present paper, I have tried, for a single case, to follow Hay's advice<sup>177</sup>. Some of the policy considerations and prejudices to which Hay

---

<sup>174</sup>See generally *Historical Atlas*, *supra* note 16 at 8-10.

<sup>175</sup>That it did was at least partially foreseeable, of course, since I undertook no primary research on the Onondaga Company or the New York salt industry. Virtually the entire story was told from the viewpoint of the most partisan of spectators — the local newspaper.

<sup>176</sup>Hay, *supra* note 143 at 13.

<sup>177</sup>There are other ways to tell the story of *Ontario Salt*. The first time I read about it was in

referred have been exposed in the contextualization of *Ontario Salt*. In Goderich during the late 1860s and early 1870s was a group of businessmen who exemplified the business ethos of many other Canadian entrepreneurs. With their world view clouded by the ideological primacy of progress and growth, the salt men of Goderich rode the rising tide of protectionism and learned to exploit a burgeoning Canadian nationalism for the benefit of the community and for their own profit. In so doing, they united the local population and sought to lead that community to greater and greater prosperity. Knowing that self-reliance and independence of spirit were not in themselves sufficient, they sought the backing of the Dominion. Unfortunately, they failed to convince the rest of the Dominion that the prosperity of Goderich was in the national interest. When, as a last resort, Goderich looked to Ontario's Court of Chancery for assistance, they found it in a sympathetic Vice-Chancellor Strong who judicially subsidized the community's salt project. He viewed as self-evident and genuine the objects and purposes of the Canadian Salt Association and knew that the community was being properly served by the salt combination. Strong did employ a "simplified and popularized version" of political economy, but it was neither a misapplication of Ricardo (for Ricardo simply was not that significant in late-nineteenth-century Canadian political economy) nor defined by rising industrial interests. The version of political economy Strong applied in *Ontario Salt* was the emerging protectionism of non-economist Canadians who did not distinguish between industrial and consumer interests. For them, the public interest was also the private, and it had not yet been uniquely identified with the consumer.

It could be argued that, had it been properly applied by Canadian courts, the law could have significantly enhanced consumer efficiency (consumer welfare) by discouraging the maintenance of bare cartels.<sup>178</sup> Though the present paper is the history of just one case, it seems possible to conclude that the law, understood here as judge-made law, could have done nothing of the sort. In

---

Michael Trebilcock's *The Common Law of Restraint of Trade* (*supra* note 3). Trebilcock's concern was the application of restraint of trade doctrine to cartels. For him, legal history is determined by intellectual history, and his history was written to serve the presentist concerns of neo-classical economists. Trebilcock treated *Ontario Salt* as one of many in a doctrinal line of cases that misused and misconstrued the liberalism and political utilitarianism of David Ricardo and John Stuart Mill. Within Trebilcock's economic framework, the common law cases, including *Ontario Salt*, were "straightforwardly objectionable." He concluded that Strong, like other judges of his time, misapplied Ricardo's ideas, because he employed a version of them that was "simplified and popularized by the rising industrial interests of the period." Courts misinterpreted and misapplied restraint of trade doctrine because judges were overly dogmatic in blindly imposing a caricature of true liberalism. He condemned them for permitting doctrine to develop that generally enforced cartel agreements at the expense of third parties and of the consuming public. The common law and its judges failed to control behaviour that should have been banned, for the good of all. For Trebilcock, the common law cartel cases were "an immutable and somewhat embarrassing historical legacy of the common law's failure to address an important private abuse of economic power and an abdication of the more exalted role which it had begun to define for itself in the mercantilist era and which it has to some extent managed to recapture in other areas of the restraint of trade doctrine in the modern era." Strong was one of those embarrassing judges, and the Goderich salt men abused private economic power at the expense of consumers.

<sup>178</sup>Compare Trebilcock, *ibid.* at 299.

*Ontario Salt*, it could have done only one of two things: enforced the cartel or dissolved it. Neither action would have made any great difference to the prospects of the salt industry or the maintenance of cartels. The former was determined almost entirely by decisions made elsewhere, namely in Ottawa, London and Washington. The creation of cartels was the result, not of promotion or legitimation by courts, but of a developing protectionist world view that enabled contemporaries to determine a fair price based on moral right to the exclusion of market efficiency. It was not judicial confirmation that legitimized the cartelizing conduct of private businessmen in late-nineteenth-century Canada. That conduct was the natural consequence of the conjunction of circumstances that constituted the essence of the desire in late-nineteenth-century Canada for social harmony. That harmony was consciously pursued by all public institutions, and Strong's judgment in *Ontario Salt* merely confirmed an already well-entrenched commitment by public institutions to support the development of the nation. That was one of law's roles in that context.

Michael Bliss has remarked that our impression of late-nineteenth-century business and the consequences of competition would not be complete until more work had been undertaken on Canada's business failures, "the staple of every trade journal and the spectre haunting every businessman hoping to succeed."<sup>179</sup> The story of the Goderich salt men and *Ontario Salt* may be one of those failures. The only mistake would be to consider the industry, the salt men or Strong's judgment a failure. The error is in judging: good or bad, right or wrong, success or failure. Judges judge, because they have to. Historians tell stories. Their stories have terminated and their actors have disappeared, never to return. The historian brings them back to life, but only for our entertainment and, perhaps, enlightenment and inspiration. In describing "the life of yesterday in the present," there is no need for judgment, only good reporting.

\* \* \*

### Appendix

The diagram on the following page clearly illustrates the decline in the price of salt and the inability of the salt cartel to prohibit that decline.

The increase beginning at No. 14 (13 October 1870) is seasonal in nature. Until that time the price remained reasonably stable, reflecting the time required for most new entry into the market to occur. The price starts to fall at the beginning of 1871. This is likely in response to successful completion of the majority of the Goderich wells. It also may have something to do with dumping by the Americans, though this is not reflected in the American price.

The jump in price at No. 24 (6 July 1871) is the increase that was artificially imposed by the Canadian Salt Association, which had been formed the week before, on 29 June 1871. The final rise in price at No. 39 (17 June 1872) was a response to the fifty per cent reduction of the U.S. tariff on salt.

---

<sup>179</sup>A *Living Profit*, *supra* note 64 at 139-40.

## APPENDIX: Salt Prices on the Toronto Market, 1867-1872

No.	Date	Price per Barrel of:	
		Goderich Salt	American Salt
1	15 Jul 1867	none	1.80
2	15 Jul 1868	none	1.60
3	29 Oct 1868	1.45	1.60
4	21 Jan 1869	1.60	1.35
5	08 Apr 1869	1.60	1.50
6	17 Feb 1870	1.55	1.35
7	18 Mar 1870	1.55	1.35
8	21 Apr 1870	1.55	1.35
9	19 May 1870	1.55	1.35
10	16 Jun 1870	1.55	0.00
11	07 Jul 1870	1.55	0.00
12	11 Aug 1870	1.55	0.00
13	01 Sep 1870	1.55	1.75
14	13 Oct 1870	1.65	1.75
15	17 Nov 1870	1.65	1.85
16	15 Dec 1870	1.65	1.85
17	30 Jan 1871	1.58	1.85
18	20 Feb 1871	1.58	1.85
19	09 Mar 1871	1.43	0.00
20	20 Apr 1871	1.35	0.00
21	15 May 1871	1.35	0.00
22	15 Jun 1871	1.25	0.00
23	29 Jun 1871	1.23	0.00
24	06 Jul 1871	1.55	0.00
25	17 Aug 1871	1.55	0.00
26	21 Sep 1871	1.48	0.00
27	26 Oct 1871	1.48	0.00
28	23 Nov 1871	1.35	0.00
29	14 Dec 1871	1.35	0.00
30	28 Dec 1871	1.28	0.00
31	18 Jan 1872	1.28	0.00
32	25 Jan 1872	1.23	0.00
33	08 Feb 1872	1.15	0.00
34	15 Feb 1872	1.18	0.00
35	26 Feb 1872	1.15	0.00
36	18 Mar 1872	1.18	0.00
37	25 Apr 1872	1.10	0.00
38	16 May 1872	1.18	0.00
39	17 Jun 1872	1.27	0.00

These numbers were taken from the Weekly Market Report in the *Globe*. It was usually printed on Thursdays. When it was not, I used the business report of any other weekday that included the price for salt.

Before October 1868, Goderich salt was probably available on the Toronto market but was not yet of sufficient importance to justify giving it space in the Market Report. At that time, American salt was priced high. The introduction of Goderich salt succeeded in immediately reducing the price of American salt (from \$1.80 to \$1.60/bbl).

The low prices for American salt in 1869 and in early 1870 may attest to the attempts by the Americans to undersell the Goderich salt manufacturers. The Americans then dropped out of the market during Goderich's high season (Summer, 1870). The Americans returned to the Winter market with high prices. This does not accord with the story told by C.T. Hurrell to the House of Commons. He claimed that the Americans dumped tons of salt on the market, thereby forcing the Goderich works out of business and the salt workers into unemployment and starvation. It appears that the Goderich salt price actually increased. The fall in price of Goderich salt at the same time may be a reflection of this dumping.

No explanation was found for the disappearance of American salt from the Toronto market after February, 1871. The *Globe* stopped reporting the price, but it is hard to believe that Goderich captured the whole market.