

EJECTMENT—DOMINION LEASE TO PLAINTIFF—DECEIT—LESSEE
TAKING WITHOUT NOTICE OF PREVIOUS GRANT.

Vancouver v. Vancouver Lumber Co. (1911) A.C. 711. This was an action concerning Deadman's Island, which had formed part of Stanley Park, Vancouver, and appears to have been a fruitful source of litigation for some years past. The action was for ejectment against the city of Vancouver, and the plaintiffs were a lumber Company claiming under a lease from the Dominion Government made in 1899. It appeared that the island, assumed to be part of a military reserve, had, by an order in council of 1887, been permitted to be used by the city of Vancouver for a public park, subject to the right of the Government to resume possession if required. The city entered into possession and used the island for park purposes, but certain squatters also seem to have entered whom the city, for want of title, found they could not eject. Negotiations took place with the view to a lease being granted, which was refused. Up to this time there had been no reference to the island by name or otherwise in the communications passing between the city and the Government. In 1899 a lease of the island for 25 years was made by the Government to the plaintiffs at a yearly rent of \$500. On the city learning of this lease they asked the Government to revoke it, on the ground that the island was included in the property covered by the order in council of 1887; and in answer the Minister of Militia replied that the island had not been considered part of the military reserve; thereupon a writ was issued by the Attorney-General for the Province of British Columbia against the plaintiffs in the present action, claiming that the land belonged to the Crown in right of the Province, but this failed and the land was adjudged to belong to the Dominion. Further negotiations with the Dominion Government resulted in the order in council of 1887 being cancelled, and in August, 1906, a 99 years' lease was recommended by order in council of the Dominion Government to be made to the city of the military property known as Stanley Park, which lease was ultimately executed in 1908. The city relied on its possession as against the prior lease of the plaintiff, which on appeal they claimed was invalid (1) for want of being under seal and (2) as having been obtained by deceit of the Crown. But both points failed, the first because it had not been taken in the court below, and the second because it was not shown that the plaintiffs when taking their lease in 1899 had any notice of the claim of the city.