Moss, C.J.O.:— . . . The plaintiff rests and can only rest his case against the defendants upon such rights as he has under the grant to him of what is designated the lot covered with water extending south to the property granted to the defendants by the two several patents in the case. And it was incumbent upon him to shew, not only that the waters of Ashbridge's Bay were navigable in the sense in which that quality is to be found in order to confer riparian rights of the kind claimed, but also that his property did in fact border upon the waters. If that which intervenes between his dry land fronting on Eastern avenue and the north limit of the defendants' property has always been marshy, boggy land, and the defendants' property for some distance south of the north limit has always been of the same nature, there is nothing in the respective grants and conveyances to turn them into water lots.

Upon the best consideration I have been able to give to the testimony, and without the aid of what is recorded in the publications referred to by Middleton, J. (in the Divisional Court), I come to the same conclusion as the Chancellor, viz., that the plaintiff's property, comprised within the conveyances and grants under which he claims, is now and always has been marsh, and nothing but marsh; and that, between it and the artificial channel through which he seeks access as riparian owner, there is land of a like character.

Present appearances, after so much has been done by means of dredging and channelling to create a condition of open water, afford no index to the condition in early days of the waters of the Ashbridge's Bay marsh and of the lands bordering upon them. But, whatever the conditions may have been at the easterly part, the testimony makes it plain that there always was bog and marsh to the west in front of the property now claimed by the plaintiff, and that its character has undergone but slight change, though liable of course to some changes in appearance and wetness according as the year or season was a wet or dry one.

Upon the whole, I am unable to say that the conclusion of the Divisional Court is erroneous, and I would, therefore, dismiss the appeal.

SUTHERLAND, J., agreed with MOSS, C.J.O.

MEREDITH, J.A., agreed that the appeal should be dismissed, for reasons stated in writing. He referred to Niles v. Cedar Point Club, 175 N.J. 300, and Ross v. Village of Portsmouth, 17 C.P. 195.