

curred in the grant of the marsh area and water, which had been sanctioned by order in council prior to Confederation, and was at last carried out by the Province clothing, as far as it could, the city with proprietary rights by patent of the 18th May, 1880.

By 1 Geo. V. ch. 119, sec. 4 (O.), the city was empowered to convey all the marsh and water property included in the Ontario patent of May, 1880, to a Board of Harbour Commissioners to be incorporated by the Dominion, and also to convey adjacent property. Thereupon the city conveyed the premises in question to the other defendants on the 29th December, 1911. By concurrent legislation of the Dominion, 1 & 2 Geo. V. ch. 26, the Board of Harbour Commissioners was constituted, in whom all the harbour property was to be vested, to take, hold, develop, and administer the area known as Ashbridge's Bay and other dock and water property owned by the city in the harbour, as defined by the Act, sec. 15.

Having dealt with the original boundary between the broken front lots and the marsh, it is now in order to consider the more recent delimitation of boundary under which the parties now hold.

From the earliest days of Toronto, a well-defined policy obtains as to the harbour and the marsh adjoining, namely, to preserve the harbour and utilise the marsh. The aim of the city was to obtain control of the marsh, primarily in the interests of the natural harbour, but, that being secured, for the benefit of the municipality.

[Consideration of the evidence given at the trial and the local condition of the marsh.]

There can be no reasonable doubt that the same relative condition of the marsh existed at the time the patents were granted as existed in 1872, when one McKee first placed his icehouse at the water's edge. My conclusion from the evidence is, that this was an act of encroachment upon the property of the Crown and on the possessory rights of the city.

The boundary then, as at the date of the patents, was, I think, the edge of the marsh—not the water's edge.

I have reached . . . the conclusion that the plaintiffs have no claim to riparian rights, and have no right of access by water to what may be the navigable water or may be made the navigable water in Ashbridge's Bay.

As to the nuisance from the pollution of the water and the air by reason of the discharge of fecal and other malodorous substances into Ashbridge's Bay, no case is made out for interfer-