

the land now owned by the plaintiffs were interested, and to the costs of which they contributed: *Merritt v. City of Toronto* (1911-12), 23 O.L.R. 365, 2 O.W.N. 817, 27 O.L.R. 1, 3 O.W.N. 1550. The broad distinction between that case and the present is, that *Merritt's* property abutted on almost dry marsh land, while the plaintiffs' lots have water in front. You can go by motor boat of light draught from Toronto Bay to the water front at Carlaw avenue, where the plaintiffs carry on business, and to the south one sees a body of water affording easy access to the harbour.

The question is, whether this present access by water is a well-founded legal right.

"Riparian," the word used in the pleadings, is not accurate, as it applies to a river and flowing water. There is no apt epithet expressive of this unique situation; and so, for the sake of convenience, "riparian" may be used. . . .

[Reference to the title to the lands; the meaning of "broken front;" historical account of the harbour of Toronto, with reference to maps, plans, surveys, reports, and other documents; reference to statutes 4 Wm. IV. ch. 23, secs. 2, 13; 3 Wm. IV. ch. 32, sec. 2; 13 & 14 Vict. ch. 60; 18 Vict. ch. 145.]

In 1867, the British North America Act declared that the public works and property of each Province enumerated in the 3rd schedule were to be the property of the Dominion of Canada: sec. 108. This schedule includes (item 2) "public harbours." The proprietary rights in this harbour, as defined by the statute of 1834, 4 Wm. IV. ch. 23, sec. 13, became vested in Her Majesty as sovereign head of the Dominion, subject to the license of occupation granted in 1847, and confirmed by statute in 1855, to the City of Toronto. This result as to ownership is the effect of the decision of the Privy Council in *Attorney-General for the Dominion of Canada v. Attorneys-General for the Provinces of Ontario Quebec and Nova Scotia*, [1908] A.C. 700.

There is no peradventure as to what may be required for or comprised in "Toronto harbour," as a matter of evidence; because a competent Legislature had already designated and set apart this whole area as part of the harbour. The Imperial statute was passed on the 29th March, 1867; but it did not take effect in the creation of the Dominion till this was so declared by order in council and Royal proclamation of the 1st July, 1867. pursuant to sec. 3 of the Act.

Before this change the Province had conveyed that part of the harbour called "the Island" or "Peninsula" to the city by patent of the 26th June, 1867. Delay from various causes oc-