

of St. John a lease of water lot No. 3 lying immediately to the south of the plaintiff's lot. It extends along the southern line of lot No. 2, and across the southern end of the Sydney street wharf, in all a distance of one hundred and forty feet and has a width of one hundred feet, making a lot one hundred by one hundred and forty feet. The defendants have in course of erection on this lot a wharf, occupying its entire area, for the purpose of carrying on the coal business. The effect of this structure is to deprive the plaintiff altogether of access to his wharf by water as the defendants' wharf occupies the entire water frontage of eighty feet which the plaintiff and others used as I have described. The defendants' lease was not produced but I understand that it is precisely similar in terms to the plaintiff's lease except as to the rent reserved. Speaking in general terms the situation of these lots is this. They are both held by tenants of the same landlord under leases, one granted over forty years ago, the other a few months ago; they are both water lots lying between high and low water mark and forming a part of the foreshore owned by the city when the first lease was made and continuously since; the wharf now under construction by the defendants will when completed close up the water frontage of the plaintiff's lot, the effect of which will necessarily be to materially reduce its value. The defendants say that they have by virtue of their lease authority to do this—not that the lease in any way specifically authorizes it, for it does not—but simply as a result of the demise itself. At first blush it seems a somewhat startling proposition that under the conditions existing here, the city can thus enrich one of its tenants at the expense of another, or increase the harbour facilities for the benefit of the public by expropriating the property of a private citizen without his consent and without compensation. I thought it likely that the recorder of the city, who appeared for the defendants and is necessarily familiar with the legislation procured by the city during the last century, would cite some statute bearing on the subject, but with the exception of the charter of the city he has produced none, and I therefore assume that there is none. This reduces the question to a comparatively narrow compass.

It is scarcely necessary to point out that by the charter of the city of St. John, confirmed as it was by an Act of the legislature, the title to these water lots between high and low water mark is vested in the city. In addition to this