

the lease for a term not less then seven years upon the same terms. This lease was in fact a renewal of a similar lease made by the city to Sandall dated March 16th, 1858, for twelve years. On the 26th November, 1879, the city leased to one Joseph A. McAvity water lot No. 1 in block A. for a term of years at an annual rental of \$14, and in all respects upon the same terms and conditions as the lease to Sandall. Lot 1. leased to McAvity is of the same size as lot 2, it lies directly north of it and is bounded on its eastern side by the western side of Charlotte street and on the west by the Sydney Market wharf. This last lease is also a renewal of a similar lease made by the city to one John McAvity dated March 17th, 1858, for twelve years. It appears that many years ago—the precise time is not stated but I should say some forty odd years ago—wharves were built on these two lots and they were eventually used together as one lot. Their value, if unobstructed, is placed at \$3,000, and the rent last year was \$450. Through a series of intermediate assignments the present plaintiff became the assignee of these leases and of the improvements upon the lots in question on the 18th June, 1900, since which time he has been in possession of them as the tenant of the city. None of these leases contain any reservation of any kind by the city as to the use or occupation of the adjoining water lots. The western side of Charlotte street at this point extends down in a southerly direction to what is known as the Ballast wharf, a distance of some seven hundred feet. It runs below high water mark and is built up as a wharf at which vessels load and discharge and for which the city collects wharfage. At the southern side of the plaintiff's lot No. 2 there is at high water an average depth of water of about ten feet, and schooners of from eighty to one hundred and fifty tons come and discharge cargo there, though at low water the ground is dry. The wharves have been used at various times for different purposes as the business of the owner for the time being required—sometimes as a lumber yard and sometimes as a coal yard—and vessels came there discharging lumber or coal at the southern side of the lot as required for the business at the time being carried on there.

The defendants are a corporation under the New Brunswick Joint Stock Companies Act, and Francis Kerr is its manager and principal shareholder. On the 10th March last (1909) he obtained for the defendants from the city