

apply his language to the portion of Burrard Inlet lying between those points which were involved in the suit, and as was pointed out by the Lords of the Privy Council that was the southern shore of Burrard Inlet and the land in question here is on the northern shore, and there is not a tittle of evidence to show that that land was ever used as a public harbour in any way; the particular land which the plaintiff claims.

If it was never used as a public harbour the Dominion Government would have no jurisdiction over it and could not give anybody jurisdiction over it. It belonged to the province. In addition to that the statute gave the Minister the right only to grant leases or conveyances upon the passing of an order in council, with the consent of the Governor in Council and that consent has not been proved and according to the cases referred to by Mr. Mayers that will not be inferred in order to make the title good. In addition to that the title of the plaintiff from the commissioners is possibly defective, but I need not go into that point because if the Dominion government had no title; and it must be proved to have title, then, of course, the plaintiff must derive title from them.

This does not seem to be an action for trespass, but one of a nuisance, and the plaintiff must prove title and not having proved it at all, then the action maintainable would be an action by the Crown on the part of the Attorney-General to abate this nuisance. No doubt there is a nuisance there and the sewer was never built in accordance with the plans authorised; the outlet is far short of what it should be.

Therefore, I have regrettably come to the conclusion that the Plaintiff cannot maintain this action. I would like to have given it further consideration, but as I say the public interest