

The issue in the action is narrowed by the statement of counsel for the defendants that the defendants are content to confine their operations within the limit of what is reasonably necessary for the beneficial enjoyment of the demised premises by the Yacht Club as a mooring ground for its use.

As I understand the attitude of the Harbour Commissioners, no objection will be made to any dredging necessary to afford reasonable access to the docks and premises of the Yacht Club; but, as the Harbour Commissioners are about undertaking extensive works for the protection of the harbour, and in the execution of these works all sand that can be excavated from the bay will be needed for proposed filling-in, they object to the removal of sand.

It appears that by arrangement in writing the Yacht Club and the company have agreed that the company shall take from the water lots in question whatever sand they require, to a depth of sixteen feet, at a nominal price of \$1 per annum for the next fifteen years; the minimum amount taken to be at least 15,000 cubic yards annually.

The bona fides of this arrangement was attacked at the hearing. It was shewn that officers of the Yacht Club were the main shareholders of the company, and that the contract-price was entirely inadequate; the sand, which was being taken for nothing, having a large commercial value.

I am in no way concerned with the situation as between the defendants, nor as to the righteousness of the conduct of the officers in question; and the evidence in regard to this is only of importance if the contention of the defendants is accepted, that they have the right to excavate sand to the extent necessary for the beneficial enjoyment of the lots in question as a mooring ground, for then the bona fides of the defendants would be in question, and it would have to be seen whether the excavation was for the purpose of making a proper mooring ground, or whether it was merely set up as a cloak to enable a large profit to be made by the removal of sand not really necessary for that purpose.

Before passing to the consideration of the more important question of the right to remove, I may perhaps state that it was shewn that sand could be sold at 75 cents per yard; and I am satisfied, upon the evidence, that of this fifty per cent. is profit; as the cost of dredging is only 23 cents, plus an allowance for overhead charges.

The determination of the main question depends, in the first