

NEW BRUNSWICK.

SUPREME COURT IN EQUITY.

JUNE 29TH, 1909.

SEELY ET AL. v. KERR ET AL.

*Lease from Civic Corporation—Foreshore or Water Lots—
Damaging Erections—Legislative Authority—Injunction.*

A. O. Earle, K.C. and A. A. Wilson, K.C., for the plaintiffs.

C. N. Skinner, K.C., for the defendants.

BARKER, C.J.:—This is a motion on notice for an injunction to restrain the defendants from further proceeding with the building of a wharf on a water lot leased to them by the city of St. John so as to obstruct the plaintiff's access by water to his lot, also under lease to him from the city. The facts are not complicated and there is substantially no dispute in reference to them. It appears that by a certain indenture of lease dated February 2nd, 1882, the city of St. John leased to one John Sandall a certain water lot described in the lease as follows:—"that certain lot, piece or parcel of land, beach or flats situate lying and being in Sydney Ward in the said city and known and distinguished in the plan of water lots laid out by the said mayor, aldermen and commonalty of the city of St. John approved of in common council the 26th October, A.D. 1836, and on file in the office of the common clerk of the said city by the number (2) two block A., the said lot being 50 feet front on Charlotte street extending back preserving the same breadth 80 feet or to the east side line of the wharf erected as and for a public highway on the east side of Sydney Market slip." The term was seven years from May 1st, 1877, and the annual rent was \$14. In addition to the usual covenants for payment of rent and the right to re-enter in case of default, the lease contains a proviso that in case the lessee shall during the term erect or put upon the lot any wharves, bridges, buildings or other erections, the value of the same shall at the expiration of the term be appraised by two persons, one to be chosen by the lessor and one by the lessee, which two in case of their disagreement shall choose a third, and the value so appraised the city agreed to pay or renew