

Canadian Yacht Club, and for an account of the value of the sand already removed, and for a declaration of forfeiture of the lease.

A. C. McMaster, for the plaintiffs.

W. M. Douglas, K.C., and F. M. Gray, for the defendants the Royal Canadian Yacht Club.

C. A. Moss, for the defendants Sand and Supplies Limited.

MIDDLETON, J.:—On the 1st June, 1905, the Corporation of the City of Toronto leased to the Royal Canadian Yacht Club certain parcels of land at Toronto Island for the term of twenty-one years from the 22nd June, 1901, the annual rental being \$5. This lease by recital refers to report number 19 of the Committee on Property, adopted by the City Council on the 8th October, 1904, recommending the granting of this lease.

The lease, in addition to ordinary covenants, contains the following proviso: "Provided also, and the said lessees, for themselves, their successors and assigns, covenant with the said lessors, their successors and assigns, that the said demised lands shall only be used for mooring purposes and for the purpose of obtaining reasonable access to the club house property of the lessees on the said island, by the construction of wharves or other proper approaches thereto by and with the consent of the Governor in Council, as provided in chapter 92 of the Revised Statutes of Canada, and also that no filling shall be done upon the said water lots to interfere with navigation, except what may be necessary in constructing wharves and approaches hereinbefore provided for."

It is quite clear that the lease was for a nominal rental only; the Yacht Club being regarded as a quasi-public institution and one which by the improvements it would make upon the demised premises would increase the value of the city's island property.

The Yacht Club have now made an arrangement with their co-defendants for the dredging of a large amount of sand from that portion of the demised premises covered by water; and the plaintiffs, who have succeeded to the city's title, seek an injunction restraining any further removal of sand and an accounting for the value of the sand already removed. A declaration that the lease has been forfeited by reason of the breach of covenant in assigning and subletting is also claimed; but no breach of this covenant has been established.