

granting a new trial by the same principles as the full court. Appeal allowed.

*Davis*, K.C., for appellant. *McPhillips*, K.C., for respondents.

Full Court.] *MCLEOD v. CROW'S NEST PASS COAL CO.* [April 8.

*Practice—Test action—Substitution of another action as test action.*

Appeal from an order of WALKEM, J., refusing to substitute another action for an action already ordered to be tried as a test action, after one of a number of actions brought by different plaintiffs against the same defendants in respect of causes of action which were identical has been ordered to be tried as a test action. Twenty-nine actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion in the defendants' coal mine, and on plaintiffs' application an order for a test action was made, the order providing that defendants if dissatisfied with the result of the test action might apply to have the other action proceeded with, and that they might apply to have any of the actions forthwith proceeded with if there existed any special ground of defence applicable to it, and not raised in the test action. After obtaining the order plaintiffs' solicitor discovered that on account of the particular place in the mine at which McLeod was killed a separate defence not applicable to the other cases might apply, and an application was made for the substitution of another action as the test action.

*Held*, (reversing WALKEM, J., who held that there was no jurisdiction to substitute another action) that the object of the order which was provisional in its nature was to have a fair test action, and as the one chosen would not be a fair one another should be chosen. Appeal allowed.

*Taylor*, K.C., for appellants. *Davis*, K.C., for respondents.

Full Court.] [April 22.

ATTORNEY-GENERAL FOR BRITISH COLUMBIA EX REL. CITY OF VANCOUVER *v.* CANADIAN PACIFIC R.W. CO.

*Practice—Cause of action—Crown—Foreshore—Order XIX., v. 27 and Order XXV., rr. 2 and 4.*

Appeal from an order of DRAKE, J. In an action for damages and an injunction, the plaintiff alleged in the statement of claim that the defendant company had wrongfully erected an embankment on the foreshore of Burrard Inlet and thereby obstructed the outfall of sewers to the damage and annoyance of the people of Vancouver;

*Held*, on an application to strike out the pleading as embarrassing and as disclosing no cause of action, that the pleading was good.

In such an action it is not necessary for the plaintiff to allege ownership in the foreshore.