

v. *Esson*, 9 S. C. R. 239, that the plaintiff cannot in this case in any event recover damages because the plaintiff's wharf is a wharf in the port of Halifax, and an obstruction to navigation and a public nuisance, and therefore the defendant corporation without any special injury to it can abate that nuisance and run it down at pleasure. I submit that assuming it to be the case that it was a nuisance, the case of *Dimes v. Petley*, 15 Q. B. 276, is a complete answer to any such contention.

There was no special injury to the defendant. You cannot run down a wharf if you can by exercise of ordinary care avoid it, any more than you can ride over a hobbled donkey on the highway.

But apart from that view, I take issue with the contention that a wharf in the port of Halifax is ipso facto a public nuisance. Whether or not such an erection is or is not a public nuisance is a question of fact. That has been repeated so often since Hales wrote it, and in connection with this very subject, that I forbear to cite authority.

I think it is necessary to consider two things—for there is confusion in the reporter's note in *Wood v. Esson*, and I have reason to remember that decision.

The first question is whether the Government had (say before the Confederation in 1867) power to grant water lots without legislation other than that enabling the Crown to grant the Crown lands. If it had then, the second question, whether having obtained such a grant of the water lot in front of the grantee's premises, he can erect upon it under any circumstances a wharf to give access to that wharf of ships coming to his premises in the course of navigation. The learned Judges in *Esson v. Wood*, perhaps with exception of Henry, J., kept these two things distinct. I have the appeal book before me, and the Government did not in that grant profess to grant more than a simple water lot. No reference was made to what erection if any was contemplated.

For over a century, the Government have been granting water lots in Halifax Harbour, and I suppose there is not a special statute enabling it to grant water lots, and for over a century the grantees have been erecting wharves for the convenience of the public engaged in navigation. I can scarcely imagine indictments for nuisance being launched against the wharf owners of the port.