

Privy Council Appeal No. 42 of 1921.

The Esquimalt and Nanaimo Railway Company - - - *Appellant*

v.

Elizabeth Dunlop and others - - - - *Respondents*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1921.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD CARSON.

MR. JUSTICE DUFF.

SIR ROBERT STOUT.

[*Delivered by* MR. JUSTICE DUFF.]

This appeal arises out of two actions brought by the appellant company to establish its title to certain lands granted to the respondent, Elizabeth Dunlop, under the authority of the Vancouver Island Settlers' Rights Act of 1904 and the amending Act of 1917; and presents the same questions of law as those already decided in *Wilson and McKenzies'* appeals (Nos. 43 and 44 of 1921) and was argued with it. Indeed, the only circumstances in which the appeals present any point of difference is this: that in the present case the majority of the Court of Appeal considered there was "reasonable proof" of improvement and residence within the meaning of the statute of 1904, and that consequently the ground upon which they held the appellant company entitled to succeed in *Wilson and McKenzies'* case failed and they therefore dismissed the actions with costs. The decision of this appeal is governed by the reasons given in *Wilson and McKenzies'* case, and their Lordships will therefore advise His Majesty that the appeal should be dismissed with costs, subject to a variation of the judgment in the sense of the variation directed in the last-mentioned appeals.

In the Privy Council.

THE ESQUIMALT AND NANAIMO RAILWAY
COMPANY

v.

ELIZABETH DUNLOP AND OTHERS.

DELIVERED BY MR. JUSTICE DUFF.

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