An act to authorize the owners of lands upon tide-waters, to build wharves in front of the same.(1)

Approved March 18, 1861.

Owner of lands on tide waters may build docks.

1. That it shall be lawful for the owner of lands, situate along or upon tide-waters, to build docks or wharves upon the shore, in front of his lands, and in any other way to improve the same and, when so built upon or improved, to appropriate the same to his own exclusive use.(a)

(a) At common law, the right of the owner of lands along the shore of the sea, or of navigable waters in which the tide ebbs and flows, extends only to the shore or ordinary low water mark; and the lands under water, belong to the state, and are part of its sovereignty. Gunning v. Ellis. 2 Rob. 444, 3 Rob. 621. But in New Jersey, the owner of lands along the shore of tide-waters may extend his improvements by wharves or filling up, over the shore in front of his lands, to low water mark, unless prevented by the state, provided he do so as not to interfere with navigation; and when he has so improved or reclaimed the shore, his title will extend to actual low water mark, and the state cannot grant the shore so recovered, nor appropriate it to public use without adequate compensation. (c)(d) (for of Armit, 3 Dall. 260, 263.) Query. Whether the owner of lands on tide-water has such right to the use of the water, that the state cannot authorize any improvements in front of his lands, which will destroy or abbreviate that right without compensation. Ibid. It has never been held in New Jersey that there could be any individual ownership in the soil of the sea or in its arms below low water-mark, except by legislative grant. Townsend v. Brown, 4 Rob. 90. Green, C.J. The right of the owner of lands bounding on a navigable river extends only to high water mark, and all below that belongs to the state. The inchmeal right, which the owner of the upland has to acquire an exclusive right to the property, by wharving out or otherwise improving the same, gives him no property in the land while it remains in the state's hands; but it may grant it to a stranger at any time before it is improved. State v. Jersey City, 1 Dall. 263. Under the local custom of this state, the shore-own can reclaim the land between high and low water mark; but such privilege is a mere license, which the legislature may revoke at any time before execution. Stevens v. P. and N. R.R. Co., 3 S.C. 363. The rights conferred by the shore are voidable before execution by the land owner. Ibid. The decisions hereabove made in this state, appear to be based on the assumption, that the land under the flow of tide water has actually reclaimed, it belonging, as property, to the public, and as such, is subject to the uncontrollable proprietorship of the state: and this doctrine appears to be sustained by the current of decisions in the United States. Keppel Steamboat Co. v. Forward Trans. Co., 3 C. E. G. 011, affining Bl. 13. The question, whether in New Jersey the legislature has power to grant to a stranger the right to cut off a shore owner from access, and other advantages of adjacency to the water directly in front of his shore along tide-waters, is an open one, so far as any question is to be considered open upon which there is no direct judicial decision. Ibid. It would seem that in the decisions of Gunning v. Ellis, the supreme court and the court of errors were of opinion that the shore-owner has vested rights in the front, which cannot be taken away by the state. Ibid. The state has the reservation in fee in any lands leased by the board of riparian commissioners, lying under the waters of the bay of New York, adjacent to the city of Jersey City, between the original line of high water and the line fixed for the exterior lot for pier and wharf Halsey Street and Hudson Turnpike Co., 12 C. E. G. 176. It holds the fee simple absolute in lands adjacent to such exterior line or plasters, and the state line. Ibid. The state is the absolute owner of the land in all navigable waters within its territorial limits, and such land can be granted to any one either public or private, without making compensation to the owner of the shore. Stevens v. P. and N. R. R. Co., 3 S.C. 363. Where an old division line between lands lying on tide water has for more than forty years, been treated by the owners as extending over the shore, or the lands between high and low water, and regarded as the division line of their right upon the shore, the line so recognized will be established as the line which will govern their rights to reclaim and appropriate the shore under different rules adopted by the courts of the several states, he will be protected in the line so claimed, unless a different line has been adopted by the owners, by acquiescence or otherwise, Ibid. By force of the statute, a riparian owner, when he extends his shore front, must, if the high water-line is not straight, the extension of the shore front must be divided proportionately among the riparian owners. Ibid. By the act to incorporate the Kephart Dock Co. (P. L. 1861, p. 20), an adjoining shore-owner is not deprived of the privilege, obtained by charter or license, of wharving out in front of his own lands, even if it prevents vessels from landing at the side of the complainant's wharf, Keppel Steamboat Co. v. Forward Trans. Co., 3 C. E. G. 011. The exclusive right of the shore-owner, as supposed to exist before the wharf act of 1861, and the rights conferred by that act, is to the shore and lands under water in front of his premises, giving the shore-owner to the adjoining shore owner, and ex necessitate excluding him from acquiring any right taking away the right of the adjoining Shoreowner. Ibid. In order to be entitled to a location to build docks and wharves, he must be the owner of the land and having the actual right to appropriate the high water. State v. Brown, 3 Dall. 18, case reversed, Id. 643. See Roberts L.L.C. v. Roberts, 7 C. E. G. 340. Where a license to build docks and wharves is applied for, to enable him to the licence, the applicant must show that he is the shore-owner, and it is not necessary that such ownership should be an unqualified fee. Ibid. The landowner's rights to lands under water are mere incidents to the ownership of the adjoining shore, and, as such incidents, they pass with the grant of the land. Ibid. Where a corporation becomes shore owners, with the right to use the land for a particular purpose only, they have the right to prevent any other person from building docks and wharves in front of their land, whether they have the right to build such docks and wharves or not. Ibid. On an application to the board of chosen freetholders under the act entitled "An act to authorize the owners of lands on tide-waters to build wharves in front of the same," (P. L. 1861, p. 335), the chosen freetholders have no power to examine into, and decide upon, the applicant's title to the land. Ibid. If proof is made and filed with their clerk that the notice required by the act was given according to law, the only question they can examine and decide, is, whether the dock, wharf or pier, appears to be injuriously with the public rights of navigation. Ibid. See P. L. 1861, p. 39. The board of chosen freetholders have power to compel the attendance of parties or witnesses, nor power to swear and examine the lands are limited for such a purpose, and who voluntarily attend, even upon the public question submitted to them. Ibid.

(1) This act is repealed as to the tidewaters of the Hudson river, New York Bay and Kill Von Kill, by P. L. 1869 p. 1017. See State v. Fruit v. Caron, 8 C. E. G. 264. Supra, Riparian Rights, Sec. 9.
2. That it shall be lawful for the owner of lands, situate along or upon tide-waters, to build docks, wharves, and piers in front of his lands, beyond the limits of ordinary low water, in such manner as not to hinder, interfere with, or impair the public right of navigation, upon license obtained for that purpose, as hereinafter provided.

3. That any owner of lands situate upon tide-waters, who may be desirous to build any dock, wharf, or pier in front of the same, to extend beyond the limits of ordinary low water, shall first obtain license for that purpose from the board of chosen freeholders of the county in which such lands may lie; and notice of the application for such license shall be given by advertisement, inserted for six weeks in a public newspaper published in said county, and if none be published therein, then in a newspaper circulating therein, published in an adjoining county, and put up, for the same space of time, in five of the most public places in the neighborhood of said lands; which notice shall specify the time and place of such application, and the location and dimensions of the dock, wharf, or pier intended to be built.

4. That the board of chosen freeholders of any county in this state, upon proof, made and filed with their clerk, of notice having been given, as hereinbefore directed, shall hear such application, which shall be in writing; and if no objection shall be made thereto, and if the improvement applied for shall not appear to them to be injurious to public navigation, shall grant license to such applicant to build such dock, wharf, or pier, or so much thereof as shall appear not to conflict with the public right of navigation in said waters; and if any opposition be made to said application, said board may, at their own discretion, proceed to hear and determine the same, or may appoint a committee of three of their own number to examine the premises, and report on such application; after which hearing or report, said board shall grant to such applicant a license to build the dock, wharf, or pier applied for, if the same shall appear to them not to interfere injuriously with the public right of navigation, or so much thereof as they shall think does not so interfere.

5. That such license shall specify the limits of said improvement, shall be signed by the director and clerk of said board, and, before delivery, be recorded in the minutes of said board; and also, when the signing of the same by the director shall have been acknowledged or proved, in the same manner as the execution of deeds is now directed by law to be, shall be recorded in the county clerk's office of such county, in the records of deeds, and shall, when so recorded and delivered, authorize and empower the said applicant to erect the dock, wharf, or pier at any time within five years from the date thereof; and said docks, wharves, or piers, or so much thereof as may be erected within said five years, shall be vested in said shore owner, in the same manner, for the same estate, and with the same limitations over, in remainder or otherwise, as the lands along said tide-waters in front of which the same were made may be; and such licenses shall not be assignable, except with, and as appurtenant to said lands, and shall pass, by any sale of said lands, as appurtenant thereto.

6. That when any owner of lands situated upon any tide-water, which is a boundary between any two counties of this state, shall be desirous to build any dock, wharf or pier in front of the same, as mentioned in the third section of this act, the respective directors of the boards of freeholders of said respective counties, together with six other members of each of said boards, shall constitute a board of commissioners, to hear and determine the application for license for said purpose; and the application for any such license shall be made to the respective directors of said boards of freeholders, and the same shall be conducted and heard, and determined in the same manner and way, as is hereinbefore provided with respect to the board of chosen freeholders, except that notice as aforesaid shall be given in each county; and the license shall be signed by the directors and clerks, and recorded in the minutes of the respective boards.

7. That the board of chosen freeholders to whom any application shall be made, under the preceding section, through the director thereof, shall name and designate the six other members to be joined in the commission, who shall not be interested in the application; and the license

May upon license obtained build beyond low water.

Chosen freeholders to grant license to build beyond low water.

Notice of application.

Proceedings of board on application for such license.

License to specify limits of improvement to be signed by director and clerk and recorded.

Proceedings when tide water is a boundary between two counties, on application for license, etc.

In such case director to name members to act.
granted by said board of commissioners may be acknowledged or proved, and recorded in the same manner as the license granted by the board of freeholders, and shall have the same operation, force and effect.

8. That anything in this act contained, or any license granted by virtue thereof, shall not authorize any shore owner to extend any wharf, or other improvement, over lands on the shore or under water, beyond low water mark, the title to which, or any easement therein, by grant from this state or otherwise, may be vested in any other person than such shore owner; and nothing herein contained shall, before any improvement be actually made by virtue thereof, prevent the state from appropriating to public use the lands lying under water, in the same manner as could be done before the passage of this act; and the board of chosen freeholders of the county wherein the same may lie, may require any wharf so built beyond low water mark, or any part thereof, to be kept as a public wharf, open to all persons whatever, under such regulations and at such reasonable rates of wharfage as they may direct.

9. That any proceedings under this act may be removed into the supreme court by certiorari, and may be there examined and reviewed upon the law and facts and merits of the case; and the said court may, whenever they may deem it necessary, cause any matter of fact involved in any case, to be tried by a jury in such county as they may see fit.

10. That all docks, wharves, and piers, which may be constructed by virtue of any license under this act, in any incorporated city or borough, which may have power to regulate and direct the manner of building docks, wharves, and piers within their limits, shall be built according to such order and direction made, pursuant to such powers.

11. That the term shore, in this act, shall be construed to mean the land between the limits of ordinary high and low water; the term shoreline, to mean the edge of the water at ordinary high water, and the term shore owner, to mean the owner of the lands above and adjoining the shoreline.

Supplement.

Approved March 10, 1863.

12. Sec. 1. That the necessary and legal expenses of the board of chosen freeholders of any county in this state, or of any committee thereof, or of the board of commissioners authorized by the sixth section of the act to which this is a supplement, which may be incurred in hearing and determining any application for license to build a dock, wharf or pier, according to the provisions of said act, shall be paid by the owner or owners of lands, making application therefor.

Supplement.

Approved March 10, 1871.

13. Sec. 1. That putting up the notices required by the third, fourth and sixth sections of the act to which this is a supplement, two weeks before any application to be made under said act, and publishing the same before said application for fourteen consecutive days, exclusive of Sundays, in such newspaper or newspapers as may be required by said act, shall be deemed sufficient notice for the purposes of said act, in lieu of the periods for posting and publishing now required by said act.

An act to protect the private rights of the owners of docks, wharves, store-houses, and piers.

Approved March 9, 1868.

14. Sec. 1. That it may and shall be lawful for the owners and holders of all docks, wharves, store-houses, and piers, to use, possess, repair, and keep in order, and to lay any steamboat, vessel, or other craft at the same; and to demand, take, sue for, and recover reasonable wharfage, demurrage, rent, or dockage, of and from any steamboat, vessel, or other craft using the same, and from all persons who may use the said docks, wharves, store-houses, and piers, in any way whatever, and shall also be authorized to recover for any damage that may be done to the same; provided, that this act shall not impair the legal rights of any other persons or authorize any hindrance to the navigation.