

Wharves.

1. Owners of lands on tide-waters may build docks, &c.
2. May, upon license, build beyond ordinary low water.
3. Chosen Freeholders to grant license to build beyond low water.
4. Proceedings of board on application for such license.
5. License what to specify, how signed and recorded.
6. Proceedings when tide water boundary between two counties, on application for license, &c.
7. In such case director to name members to act.
8. Act not to authorize owner to extend wharf beyond low water mark.
9. Proceedings may be reviewed by certiorari.
10. Docks in cities, how constructed.
11. Shore, shore-line and shore-owner defined.
12. Owners applying for license to pay expenses.
13. What sufficient notice of application for license.
14. Owners of docks, &c., may demand wharfage.

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

P. L. 1851, p. 335.

Approved March 18, 1851.

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 high water-mark; the shore, which is the land between ordinary high water-mark and ordinary low water-mark, and the lands under water, belong to the state, and are part of the sovereignty, *Gough v. Bell*, 2 Zab. 441, 3 Zab. 624. 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 it so as not to interfere injuriously with navigation; and when he has so improved or reclaimed the shore, his title will extend to actual high water-mark; and the state cannot grant the shore so recovered, nor appropriate it to public use without adequate compensation, *Ibid.* *O'Neill v. Annett*, 3 Dutch, 290, 293. 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 abridge 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 its arms below low water-mark, except by legislative grant, *Townsend v. Brown*, 4 Zab. 80, *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 inchoate right, which the owner of the upland has to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land while it remains under water; the state may grant it to a stranger at any time before it is improved, *State v. Jersey City*, 1 Dutch, 525. By the local custom of this state, the shore-owner 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. Co.*, 5 Vr. 532. The rights conferred by the wharf act are also revocable before execution by the land-owner, *Ibid.* The decisions heretofore made in this state, appear to be based on the concession, that unless the land under the flow of tide water has been actually reclaimed, it belongs, 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, *Keyport Steamboat Co. v. Farmers' Trans. Co.*, 3 C. E. Gr. 511, affirming *Id.* 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 *Gough v. Bell*, the supreme court and the court of errors were of opinion that the shore-owner has vested rights in the waters in front, which cannot be taken away by the state, *Ibid.* The state has the reversion 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 line for piers in the Hudson river, *Att'y-Gen. v. Hudson Tunnel Co.*, 12 C. E. Gr. 176. It holds the fee-simple absolute in lands under water between such exterior line of piers 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. Co.*, 5 Vr. 532. 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 the wharf act, *Stockham v. Browning*, 3 C. E. Gr. 390. No rule for ascertaining the line by which the shore in front of coterminous shore-owners shall be divided between them, has been adopted in New Jersey. But if a line claimed by one of them is more favorable to the other than that given by any of the 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 substantially a straight line, so extend his side lines as to make them rectangular with such high water-line, *D. L. and W. R. E. Co. ads. Hammon*, 8 Vr. 276. When 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 Keyport Dock Co., (P. L. 1851, p. 25), an adjoining shore-owner is not deprived of the privilege, obtained by charter or license, of wharfing out in front of his own lands, even if it prevents vessels from landing at the side of the complainants' wharf, *Keyport Steamboat Co. v. Farmers' Trans. Co.*, 3 C. E. Gr. 13. The exclusive right of the shore-owner, as supposed to exist before the wharf act of 1851, and as confirmed or conferred by that act, is to the shore and lands under water in front of his premises, giving the same right to the adjoining shore owner, and *ex necessitate* excluding him from acquiring any right taking away the right of the adjoining shore-owner, *Ibid.* To entitle the owner of land to a license to build docks and wharves, he must be the owner of the land above and adjoining the edge of the water at ordinary high water, *State v. Brown*, 3 Dutch, 13, case reversed, *Id.* 648. See *Hoboken Land Co. v. Hoboken*, 7 Vr. 540, 550. Where a license to build docks and wharves is applied for, to entitle him to the license, the applicant must show affirmatively that he is the shore-owner; but it is not necessary that such ownership should be an unqualified fee, *Ibid.* The landholder'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 freeholders 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. 1851, p. 335), the chosen freeholders 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 applied for will interfere injuriously with the public rights of navigation, *Ibid.* See P. L. 1871, p. 39. The board of freeholders have no power to compel the attendance of parties or witnesses, nor power to swear and examine the latter, should they 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 Kull, by P. L. 1869 p. 1017. See *State, Trask v. Carragan*, 8 Vr. 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.

May upon license obtained build beyond low water.

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.

Chosen freeholders to grant license to build beyond low water.

Notice of application.

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.

Proceedings of board on application for such license.

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 license shall not be assignable, except with, and as appurtenant to said lands, and shall pass, by any sale of said lands, as appurtenant thereto.

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

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.

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

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

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.

Act not to authorize shore owner to extend wharf beyond low water mark.

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.

Proceedings may be reviewed by certiorari.

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.

Docks in cities, how constructed.

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.

Shore, shore-line and shore owner defined.

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 shore-line, 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 shore-line.

P. L. 1853, p. 394.

Supplement.

Approved March 10, 1853.

Owners applying for license to pay expenses.

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.

P. L. 1871, p. 39.

Supplement.

Approved March 15, 1871.

What sufficient notice of application for license.

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.

P. L. 1848, p. 217.

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

Approved March 9, 1848.

Owners of docks, etc., may demand wharfage.

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 hinderance to the navigation.