Southmayd (C. F.)

BRIEF

OF

C. F. SOUTHMAYD,

IN RELATION TO THE

WEST STREET IMPROVEMENT BILL.

FEBRUARY, 1880.

EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET, N. Y.

BRIEF

In relation to the questions involved in the "WEST STREET IMPROVEMENT BILL," so-called, as pending before the Legislature, February, 1880.

In order to determine as to the reasonableness and propriety of the provisions of the act in question, it is necessary to attain a correct and complete understanding as to the legal rights of the private owners of the bulkhead and wharfage rights along the old line of West street as existing prior and up to the time of the commencement of the present widening and improvement of that street, and the respetive positions towards each other of such private owners and the Corporation of the City.

WEST STREET, as it existed up to the commencement of the improvement under the Act of 1871, was wholly of artificial construction.

It was built upon land originally part of the bed of the Hudson river, outside of the line of low water, and which formed part of the strip of land under water, extending into the river four hundred feet beyond low water mark, which was granted to the City, in part by the Montgomerie Charter of 1732, and the rest under the legislative act of April 5, 1807; the portion to the southward of the old "Bestaver's Killetje," or rivulet (at about the present line of Charlton street), was granted by the Montgomerie Charter; the portion to the northward of that point, under the act of April 3, 1807.

The substantial object of both these grants was

alike, viz., to enable the corporation to lay out and establish, properly and in a manner conducive to the commercial interests of the City, its water front and wharves.

That *this*, and not the mere making of lots out of the water to be used for the erection of buildings, was the main object and purpose of these grants of this wide strip of the river beyond low water mark, is abundantly manifest.

The *preamble* of the act of April 3, 1807, is as follows:

And, whereas, "*for the purpose* of duly *regulating* and "*constructing slips and basins*, and for *running out wharves* "*and piers*, is is *essential* that the right to the land under water below low water mark should be vested in the Corporation of the City of New York"—and following this preamble is the direction to the Commissioners of the Land Office, to issue Letters Patent to the Corporation of the City for the lands under water, four hundred feet beyond low water mark, extending four miles northwardly from Bestaver's Killetje; but such grant was made subject to the following proviso: " Provided, always, that the *proprietor or proprietors of* " *the lands adjacent* shall have the pre-emptive right in " in all grants made by the Corporation of the said " City of any lands under water granted to the said " Corporation under this act."

The Royal Charter of 1732, under which the City's title to the land under water to the southward of Bestaver's Killetje was derived, does not contain any recital of the objects or purposes for which the grant was made. But it does provide, in the section containing the grant (see Montgomerie Charter, § 38, Davies' Laws relating to the City of New York, Ed. 1855, pages 193-4), that the grantees shall have the full power to fill up and wharf out, as they may see fit, with the restriction that they shall *not* have the right "to wharf out before any persons " who have prior grants from us, or some " or one of our predecessors of keys or wharfs " beyond low water mark, without the actual agree- " ment or assent of such persons, their heirs or " assigns, owners of such keys or wharfs." " And also,

" that of the wharfs to be built or run out there shall " be left towards the East and North rivers forty feet " broad as well for the greater conveniency of trade " as at any time or times hereafter for us, our heirs " and successors, to plant batteries thereon in case of " any necessities."

Having reference to these provisions, and considering the nature of the property granted, and the small cost and value at that time of upland building lots, as compared with the heavy expense of making lots out of the water, and the uniform practice of the City authorities in dealing with their rights in respect of this land under water, until a period long subsequent to the laying out and establishment of West street, there can be no fair room to dispute or doubt, that as well in respect of the City's water right in the bed of the river below, as above Bestaver's Killetje, it was granted, and by the City authorities always regarded as being held, chiefly for the object and purpose of properly laying out and establishing a water front for the City, with proper wharves and piers, slips and basins, for the accommodation of commerce.

In the year 1798 the Common Council of the City determined upon a plan for the permanent regulation of the water front on both the East and North rivers.

Prior to that time the regulation and construction of the wharves or " keys," with the slips and basins (the improvements of that nature having been thus far confined chiefly, if not entirely, to the East river side of the City), had been upon a " patch-work" plan, with numerous irregularities, and considerable changes as the City grew. At first there was an exterior street called " Water" street (now far inland); then there was put in front of it a street called " Front" street; but these streets were constructed along portions only of the front, as individuals found occasion to take grants from the City and make their improvements, leaving large gaps between where there were no wharves or improvements and no outer street.

In 1798 the City authorities concluded that the proper time had come, when they should abandon the irregular and fluctuating system which had before then prevailed, and establish a plan for the water front which should be *regular*, *complete*, and PERMANENT.

They therefore laid out and established a plan for two such streets, the one on the East river side being called "South street," and that on the North or Hudson river being called "West street," which were to form the *permanent exterior line* of the City, and were to have the liberal width of seventy feet, instead of the forty feet prescribed by the old Montgomerie Charter; and as part of the same plan, piers were to be projected into the river at right angles to the exterior street, at suitable distances apart (they being in most instances located at the foot of the streets running down to the exterior street), so that when the exterior street (which also answered the purpose of a wharf), and the projecting piers, should be completed, the water space (in the nature of a *slip*) comprised between the two piers would afford wharfage room for vessels on three of its sides, viz., one side of each pier, and the outer side of the exterior street or wharf, called the "*bulkhead*," leaving the fourth side open to the river for the entrance of vessels which should lie at the piers and bulkhead.

Having determined upon this plan, the Corporation of the City presented their petition to the Legislature, stating that they had done so, and asking legislative sanction and aid for carrying it out.

A copy of this petition, which was dated February 12, 1798, and was under the corporate seal with the signature of the mayor, will be found in Davies' Laws, relating to the City of New York, pages 294-5. In it the Corporation state that they "have lately directed "a *permanent* street, of seventy feet wide, to be laid "out and completed, at and on the extremity of their "grants already made, and hereafter to be made, to "individuals, on the East river, called South street,

"and on the North or Hudson river, called West "street."

Thereupon the Legislature passed the act of April 3, 1798, under which West street was laid out, established and constructed as the permanent exterior street upon the North river.

This act contains a recital, as follows :

" Whereas, it would conduce to the improvement " and health of the said City, as well as to the safety " of such ships or vessels as may be employed in the " trade and commerce thereof, that *regular streets or* " *wharves of the width of seventy feet* should be laid at " and completed *in front* of those parts of the said " City *which adjoin to the East river or Sound and to* " *the North or Hudson river*, and that piers should be " extended from the said streets into the said rivers " respectively, at convenient distances," &c., &c., and then, after reciting the above-mentioned petition of the corporation, the *first* section *enacts*, " That it shall and may be lawful for the Mayor, Aldermen and Commonalty of the City of New York to lay out, according to such plan as they shall or may agree upon or determine, *such streets or wharves as hereinbefore* are mentioned *in front* of those parts of the said City which *adjoin to the said rivers*, and of such extent along those rivers respectively, as they may think proper, and that as the buildings of the said City shall be further extended along the said rivers, it shall and may be lawful for the said Mayor, Aldermen and Commonalty, from time to time, to lengthen and extend the said streets or wharves (*i. e.* the exterior street or wharf was to be put in front of the City so far as it was then built up, and as the growth of the City carried it further up town, the exterior street was to be put in front of the newly built up portion of the City.)

The *sixth* section provides for the construction of piers, at suitable distances "in front of the said streets or wharves."

The seventh section of this act contains the following important provision :

" Sec. 7. And be it further enacted, that no building " of any kind or description whatsoever, other than " the said piers or bridges shall at any time hereafter " be erected *upon the said streets or wharves, or between* " *them respectively and the rivers to which* they respec- " tively shall *front and adjoin.*"

Full and complete legal provision having thus been made for the establishment of the " street or wharf," called West street as the *permanent exterior street* of the City upon the Hudson river, it was requisite to get the street actually constructed. This involved a very large expense. It was necessary to make and sink the heavy crib of stone, suitably faced with timbers towards the river, and then to make the solid filling behind it, so as to complete including the stone work and the earth, the full widht of seventy feet required by the plan. The street or wharf, when thus constructed, would have a double character, differing therein from all the other City streets. It was, like other streets, to be used for passage and repassage of men and horses and vehicles, etc., and on the land side would have a sidewalk, and be faced by buildings fronting upon it, as on other streets. On the side towards the water, it would have no sidewalk, and, of course, no buildings, but would be a wharf, at which vessels would lie, and on and from which they would discharge and receive cargoes, in like manner as with other wharves.

The City had the title to the land under water, upon which the street was to be constructed, but that had no *practical* value until it should be improved, by sinking the crib, constructing the bulkhead, and making solid filling behind it. The City wished to avoid incurring the large expense of this operation, to be paid for out of its treasury or by taxation. It required the " street " for public and free use by its citizens. The wharf right was of a wholly different character. Every one using the wharf would have to pay for the privilege of so doing, and the wharfage right was a matter

of private emolument, which it was not at all ~~wonderful~~ needful that the City should retain to itself or possess; but it deemed it for its advantage and an act of economy and wise management, to dispose of whatever rights of that character might accrue from the proposed structure, for suitable consideration.

And thereupon, the City Corporation adopted and pursued the system under which the rights of the private owners of the bulkhead and wharfage rights along the line of West street have been acquired and are now held, which was as follows:

In making their grants for pecuniary consideration (in the shape of either present cash payment or perpetual quit rent adjusted in each case at what they deemed a fair price to be charged), of the water lots lying to the *east* of West street, to the owner of the adjoining upland, they imposed upon such grantees, the *entire cost and burthen* of sinking the bulkheads and and filling in and making West street of the full width of seventy feet, the City retaining to itself the legal title to the soil under water on which West street was built, and preserving the "street" in so far as it was to be used as a street, for free public use in like manner as other streets, but granting *all the wharfage and all the advantages and emoluments, of any and every kind whatsoever, which should accrue from the use of West street as a wharf*, to the party who thus constructed the street and wharf at his own cost, under the grant from the corporation, *to be held and enjoyed by such party and his heirs and assigns forever*: the grant of each wharfage and wharf rights being, of course, confined in each grant to that portion of West street which was constructed by the grantee.

The present owners of bulkheads and wharfage rights on the line of West street, whose rights are now in question, are the heirs and assigns of the parties to whom these grants were made.

The grants were made, and West street (in its different portions) was constructed by these grantees, in pursuance of the terms and conditions of the grants

as above mentioned, at various times between 1800 and 1830, almost all being before the date last mentioned, and in the great majority of cases these bulkheads and wharfage rights have been held in free and unquestioned enjoyment by the present owners and their predecessors in title, for periods of from sixty to seventy-five or eighty years.

In these grants from the Corporation (certainly in every one of them which I have examined, and I presume it will be found to be the case universally), West street is described as the *permanent line*, and each grant has annexed to it a map showing the property granted, and exhibiting West street as fronting upon the Hudson river, with a lettering along the outer line of West street, adjoining the river, stating it to be the *permanent line*.

The form adopted by the Corporation in these grants, for granting the wharfage and the wharf rights, is as follows:

(I quote from a grant made in 1810, to John Jacob Astor, of the bulkhead right between Hamersley (now Houston) street and Le Roy street, the title to which is now vested in the Langdon family, grandchildren of Mr. Astor.)

"And that the said party of the second part, *his* "*heirs and assigns* paying, performing and keeping the "several covenants and agreements hereinbefore men- "tioned and contained, on his and their part to be "paid, kept and performed, shall and may lawfully at "all times hereafter fully and freely have, use, and "enjoy to his and their own proper use, *all and all* "*manner* of wharfage, benefits and advantages grow- "ing, accruing and arising by or from the wharf or "wharves, to be erected on the westerly end of the "premises, being of the breadth along the Hudson "river of two hundred feet."

This wharf of 200 feet is simply "West street," shown on the map annexed to the grant, and there de-

scribed as "permanent line," and the premises are described in this deed as running westerly along the northerly line of Hamersley street "to the *westerly line of West street, commonly called the permanent line.*"

Whatever variations of phraseology may be found in the Corporation grants of these bulkheads and wharfage rights along the line of West street, on its entire length, I think it will be found that there is no variation in these essential particulars, viz., that all the grants are to the grantees and their heirs and assigns, *in perpetuity*, using the words "at all times hereafter," or "forever hereafter," which expressions are synonymous, and that they all speak of and recognize West street as the *permanent* exterior street, and its line as the permanent line or water front of the City.

The foregoing statement of facts would seem to place beyond question the proposition, that these private owners of bulkheads or wharfage rights along the old line of West street, hold, under grants made by the Corporation of the City upon valuable and full consideration, the *perpetual right* of wharfage upon the lines of water front embraced in their grants, and all benefits, emoluments and advantages in any and every form to accrue from such line of water front; West street being, in all these grants, as well as in the acts of the Legislature and petition to the Common Council before referred to, described expressly as being as well a wharf as a street (the words used in the grants being the "Street or Wharf" called West street), and being, in the grants, the petition of the Common Council and the act of the Legislature (in connection with which the City grants must, of course, be construed), expressly declared to be the permanent exterior line or water front of the City.

And if the City Corporation can be permitted, at all or under any circumstances by authority of the Legislature, to shut off from the river the wharves, in respect of which they have thus long ago granted away upon full consideration the perpetual right of wharfage, and all other emoluments to accrue from the use of the wharf, by putting another wharf in front of it,

at which the Corporation propose to receive the wharfage and other emoluments which would otherwise have accrued to the owners of the old bukhead and wharfage right, surely the corporation cannot be permitted thus to resume to themselves these perpetual wharfage and wharf rights which they granted away sixty or seventy years ago, without making adequate compensation to the private owners whose property is to be thus taken away from them.

Nevertheless, it is now claimed by some of the City authorities that the rights of these private owners of the bulkheads and wharfage rights on the line of West street, held under the grants above referred to, are not absolute or permanent, but are held merely at the pleasure of the City Corporation, and that the latter has the right to destroy the value of the present bulkhead for wharfage purposes, by shutting it off from the river, filling in the land and putting another wharf in front of it, without making any compensation whatever to the private owner for such destruction of his wharfage rights.

The basis of the claim thus made is as follows: It is not, and is not pretended to be, disputed, that in virtue of the grants, the grantees, or their heirs or assigns, have an absolute and perpetual right to the wharfage and to all advantages and emoluments accruing from the use of the outer side of West street as a wharf, so long as the street or wharf called West street, mentioned in the grant, continues to be the exterior line or water front of the City; but it is argued that there is nothing in the grant or in the proceedings of the Common Council and act of the Legislature under which the street or wharf called West street, described in the grant was laid out and established, which prevents the City from thereafter widening at its pleasure this street or wharf called West street, or from putting a new erection of any kind, as the City authorities may see fit, in front of that street or wharf, and thereby shutting it off from the river, and absolutely destroying all the wharfage rights without compensation.

In support of the claim thus set forth on behalf of the City, great reliance is placed upon a decision made by Judge VAN BRUNT, at Special Term, in the year 1878, in the case of *Langdon* vs. *The Mayor, &c., of New York*, in which, certainly, Judge VAN BRUNT did give substantially this construction to one of the corporation grants of the bulkhead and wharfage right on the line of West street, which had been made in the general form before mentioned in this brief.

This decision was based mainly upon two previous cases, supposed by Judge VAN BRUNT to be applicable to the case in question, and to establish the principle contended for by the City, namely, the case of *Furman* vs. *The Mayor, &c., of New York*, 5 Sand. Superior Court Rep., page 16, and an unreported case of *Whitney* vs. *The Mayor, &c., of New York*, decided by the Court of Appeals, in the year 1855, a reference to which was found in the treatise on the property rights of the Corporation of New York by the late Hon. MURRAY HOFFMAN.

We think it is only necessary to attain a correct understanding of the facts in the *Langdon* case, and of the kindred cases of bulkhead and wharfage rights on West street, which are now in question, and of the facts in the two former cases of Furman and of Whitney, to ascertain with perfect clearness, that this decision of Judge VAN BRUNT was a hasty and ill considered one, made upon a *complete misunderstanding of the actual facts of the case* before him, and that the previous cases of Furman and Whitney, which he supposed to be applicable and controlling, were in fact utterly different.

The case of Furman did not involve any question of the destruction of any wharf or wharfage rights. It was a dispute as to the title of certain water lots embraced in the original grant to the City, under the Montgomerie Charter, of the four hundred feet beyond low water mark, and involved the question whether under the Act of 1798, the owner of adjacent upland lots was entitled, by virtue of that act merely, and without taking out any grant of the water lots from

the Corporation, to fill in and appropriate to his own use the land lying inside of the exterior street (South street), established under that act.

The claim of Furman in that case was in virtue of a grant made to him in July, 1804, six years after South street was established as the exterior line of the City, which grant in express terms only extended as far into the river as Front street, leaving ungranted the block of water lots, between Front and South streets.

The grant to Furman had provided that Furman should be required to build the street called Front street whenever he should be required so to do by the Corporation, and that he should be entitled to all the wharfage and cranage accruing from Front street when so built. The Corporation had *not* required Front street to be made, and it had not been in fact made, and under these circumstamces the Corporation determined that South street should be built on the permanent exterior line as established under the Act of 1798, and offered Mr. Furman a grant of the water lots lying between Front and South streets, for what they regarded as a suitable pecuniary consideration. This Furman declined to accept, claiming that he had the absolute right to fill up and appropriate the lots to his own use without any grant and without making any payment. This point, after elaborate argument, was decided against him.

From the foregoing statement of facts it will be seen that if any claim for deprivation of a wharfage right could have been made by Furman in that case, it could not have been for taking away the right of wharfage to accrue from any wharf which had been actually constructed, but merely for deprivation of the right to build a wharf and thereupon to take the wharfage accruing from it, and it being an express provision of the grant that he had no right ever to build the wharf until the Corporation should direct him to do so, which they had never done.

After a very lengthy opinion by the New York Superior Court upon the question as to the title to the water lots, the opinion proceeds as follows :

"A single word as to the wharfage. The counsel "for the plaintiffs argued on the supposition that the "grant made to Furman contained an absolute "and unqualified grant of wharfage forever. The "grant extended only to Front street. *It was per-* "*fectly well known to all the parties at that time that* "*the permanent line extended further into the river,* "*and that the charter contemplated the building of* "*South street at the extremity of the line, whenever* "*the wants of the public demended it.* Now, the "covenant in the grant is not that the grantee should "always be entitled to wharfage, but merely to the "wharfage to accrue from Front street. Of course "when Front street was no longer an exterior street, "no wharfage would accrue from it, and the covenant "would not be violated; it would only be rendered in- "operative by reason of *an event contemplated by both* "*parties when the covenant was made.*"

The *Whitney* case did involve the question of a claim made by Mr. Whitney for compensation by reason of the destruction of his wharfage right upon a few feet of bulkhead in the East river by reason of the projection of a pier in front of it by the Corporation.

The Corporation grant upon which Whitney's right was founded was made long before the establishment of any permanent exterior line of water front, and the outer line of that land, upon which the bulkhead had been constructed, was upon the strip of four hundred feet in the East river beyond low water-mark, which had been granted to the City under the Montgomerie Charter of 1732, lying far inside of the City's outer line under that grant, and far inside of the exterior line established under the Act of 1798.

The question chiefly litigated in the Whitney case was, as to the regularity and propriety of the proceedings by which the City had constructed the pier in front of a part of Mr. Whitney's bulkhead, without giving him the option to which he claimed he was entitled, of uniting in the construction of the pier, and taking the due proportionate share of the wharfage accruing from it.

But a question did arise in the case, as to the nature and extent of Mr. Whitney's rights in the bulkhead, and the wharfage accruing from it, in virtue of the original grant. This case never having been regularly reported, there is some difficulty in ascertaining precisely what was decided by the court. There seem to have been preserved copies of two opinions delivered in the case, one by Judge EDWARDS and the other by Judge DENIO. I quote as follows from the opinion of Judge EDWARDS :

"But it is said that the defendants have restricted "themselves by their covenants, from doing any act "which shall interfere with the plaintiff's claim for "wharfage.

"As has been already stated, the defendants, in "their deeds to Rutgers & Provost, covenanted that "they and their heirs and assigns should have all "manner of wharfage, cranage, benefits and advan- "tages growing, arising or accruing by or from "the wharf which they agreed to make fronting "the East river. This is the covenant which is "relied upon by the plaintiff, and the first question "which is presented is, what is its meaning and "*extent? It will be remembered that the wharf to which* "*it applied was two hundred feet within the outer line of* "*the City, and that the two hundred feet outside of the* "*wharf was owned by the defendants; that at the time that* "*the covenant was entered into, the City was increasing* "*in its population and commerce, and it must then have* "*been apparent that, at some future period, it might be* "*expedient, if not absolutely necessary, to use the property* "*outside of the wharf. It was in reference to this state of* "*things that the covenant was made, and if it be so con-* "*strued, it seems to me that its meaning and effect is, that* "*the covenantees shall be entitled to the wharfage so long* "*as the wharf shall continue to be the outer extremity of* "*the City; that is, until the Mayor, Aldermen, and Com-* "*monalty shall deem it necessary for the public good to* "*use the land beyond it.*"

From the opinion of Judge DENIO, I quote as follows:

"By the conveyance of September 9, 1772, the parties under whom the respondent claims had the "covenant of the City to allow them to take in perpetuity the wharfage to arise from a bulkhead and "street, fifty feet wide, at the southerly line or water "part of the lots granted to them of land under "water in the East river, they agreeing to construct such street. *This street was not made, nor "does anything appear to have been done towards "it until after the passage of the acts of* 1798 *and* "1813. These acts ordained that the outer street "should be seventy feet, instead of forty feet "wide, and at the same time enacted the "provision respecting piers to which I have "referred. It is important to remember that they "were parcels of the same enactment, and that they "were respecting parts of a system for regulating the "water front of the city. South street was laid out "accordingly; covering forty feet of the respondent's "water lot, and an additional thirty feet in the river "adjoining. It may well be admitted that the respondent's right to wharfage would attach to the "water front to be created by the street, in the place "of the one contemplated by the conveyances of 1772, "subject, however, to the qualification created by the "authority to erect piers. So far, it impaired the full "effect of the covenants in those conveyances.

"It is argued by the appellant's counsel that the "corporation could not restrain itself by contracts "which should impair its authority as a municipal "legislature (see 5 *Cow.*, 539, 585, 588; 7 *Id.*, 349; "6 *Wheat.*, 593; 8 Cow., 146; *MSS.*, Opinion of "Judge NELSON, in Britton *v.* Mayor, &c., of N. Y.) "And it is said that, so far as that effect was produced, the covenants were void. *Without deciding "that question, I think this case may be safely rested on "the consent of the respondent to the new system organized by the acts to which I have referred. It was parcel of "the system that the street seventy feet wide should be con-*

" *structed* at the expense of the proprietors of lots, and " whose grants did not extend to the new water line, " were authorized to fill up the land under the water " to such line, and then to own it in fee simple.

" *The respondent assented to this arrangement, and* " *proceeded to construct the bulkhead opposite to his grants,* " *and he thereby acquired valuable rights. By this act he* " *assented to the qualification of his rights under his cov-* " *enant, and to the new system for regulating the water* " *front of the new City. The provision respecting piers* " *was an important feature in that system, which the re-* " *spondent, after affirming the portions which were for* " *his benefit, cannot repudiate.*"

It is thus clearly perceived that in both the *Furman* case and the *Whitney* case, the decision denying perpetuity to the wharfage grant, was based expressly upon the ground, that the wharf was not upon the exterior line of the city as contemplated at the time of the making of the grant, but was far within that line, and that the contemplation of the parties evidently was that the existence of such wharf should be only temporary and that it should be shut off from the river whenever the street upon the exterior line should be built, and that, therefore, according to the intention of both parties, clearly understood at the time, the wharfage right was to be temporary and not permanent.

Utterly different in their circumstances were these grants of the bulkhead and wharfage rights upon the line of West street. So far from its having been the intention or at all within the contemplation of the parties to this grant that the wharf or street called West street should be only temporarily the water-front of the City, and that a new wharf or street should be subsequently placed in front of it; it was the distinct understanding and agreement of all parties, and had been provided by the resolution of the Common Council and by statute of the State, in the most positive terms, that West street should be the permanent exterior street or water-front of the river. For proof of this (if the Corporation Counsel shall deny it, which I can hardly suppose) I have but

to refer to the following circumstances, before mentioned in this brief:

First.—The petition of the City Corporation of February 12, 1798 (in compliance with which the act of April 3, 1798, was passed) expressly declares that the "petitioners have lately directed a *permanent* "*street* of seventy feet wide to be laid out and com- "pleted at and on the extremity of their grants al- "ready made and hereafter to be made to individuals "on the East river called South street, and on the "north of Hudson's river, called West street." Davies' Laws relating to the City, page 395.

Second.—The act of April 3, 1798, recites that "it "would conduce to the improvement and health of the "City * * * that *regular streets* or wharfs "of the width of seventy feet, should be laid out and "completed *in front of* those parts of the said City "*which adjoin to the East river, or sound*, or to the "*North or Hudson's river*," and in the first section it enacts that it shall be lawful for the City Corporation "to lay out, according to such plan "as they shall or may agree upon or deter- "mine, *such streets or wharfs as hereinbefore are* "*mentioned* in *front* of those parts of the said "City which *adjoin to the said rivers*, and of such "extent *along those rivers*, respectively as they may "think proper." And in the seventh section it enacts "that *no building of any kind or description whatsoever* "*(other than the said piers or bridges) shall at any time* "*hereafter be erected* upon the said streets or wharfs, "or *between* them respectively *and the rivers to which* "*they respectively shall front and adjoin.*"

Third.—In all the Corporation grants, and on all the maps annexed to them, the outer line of West street is described or laid down as fronting on the river, and is expressly designated as "the permanent line." These grants and maps, of course, are to be construed with reference to the acts and proceedings of the Com-

mon Council and the act of the Legislature under which West street had been thus established as the permanent street fronting upon the river. And it is difficult to imagine how there could have been a more clear and decisive indication of the understanding and intention of both parties to these grants, that this street or wharf called West street should be not a temporary but a permanent street or wharf, to remain forever as the water front of the City, than we find as above stated.

In the *Whitney* and the *Furman* cases the court, pursuing the well-established general principle that a grant is to be construed according to the understanding and intent of the parties at the time it was made, and determining that by such understanding and intent the wharf in respect of which the wharfage right in dispute was obtained, was understood by the parties to be not permanent but temporary, construed the grant of the right of wharfage in accordance with such intent.

In these West street cases, it being clearly ascertained that the intent of the parties was that West street should always remain as the permanent water front of the City, the grant of the wharfage right, pursuing the like general principle of construction, must of course be so construed as to harmonize with the intention, and I do not see how any one, after correctly ascertaining the facts, can fairly doubt that it is an utter perversion of the actual understanding and intent of these parties to construe these grants as Judge VAN BRUNT (mistakenly) has done. He holds, in substance, that the language of the grant, to the effect that the grantee and his heirs and assigns shall "at all times hereafter," or "forever hereafter," take and enjoy to his own use the wharfage, and all other wharf rights or emoluments accruing from this permanent street or wharf called West street—then forming, and by the declared intent of the corporation and express legislative enactment always thereafter to form the permanent water front of the City—amounts merely to a declaration that the grantee shall enjoy

such wharfage rights until the corporation shall find it to their advantage to put another wharf in front of him.

Upon examining Judge VAN BRUNT'S opinion it would seem to be quite clear that he did not understand, or certainly had not in mind, the facts bearing upon this question. In his opinion he says: "The "counsel for the plaintiff in his argument assumed a "fact, which, as far as I have been able to discover, "does not exist, and that is, that the westerly line of "the grant is described as the permanent exterior line "of the City. I find nothing in the deed which refers "to any exterior line; the only reference to a perma-"nent line is to the permanent line of West street. "There is nothing in the deed which, in the most re-"mote degree, refers to an exterior line." Even had the case been as Judge VAN BRUNT supposes, that the words "permanent line," as used in these grants and maps, refer merely to the permanent line of West street, as a street, and not to the permanent line of water-front on the river, his argument would still be subject to the difficulty, that the operation which is complained of by these wharf owners, and which is claimed to have the effect of blotting out their wharfage rights, is the *alteration*, by widening, of the line of West street, which was declared to be *permanent*. But clearly the judge is mistaken in saying that there is nothing to show that the word "permanent line," as used in the deed and the map, referred to the permanent exterior line of the City. The grant and map, as before said, must be considered with reference to the acts and proceedings of the Common Council, and to the act of the Legislature under which this permanent line had been established, and these establish beyond possibility of doubt that the permanent line referred to is a permanent exterior line of the City; the legislative act had provided in the most express terms that the wharf or street called West street should be constructed as the front of that part of the City which adjoins to the North or Hudson river, and that no building of any kind shall

at any time hereafter be erected *between* West street and *the river to which it shall so front and adjoin.* If the judge had had in his mind these absolutely controlling provisions of the statute and the proceedings of the Common Council for laying out and establishing West street, as the *permanent* street fronting upon the water, we cannot think that he would ever have said that the words "permanent line," as used in this grant and map, do not refer to the permanent exterior line or water-front of the City.

Let us now refer to another reason assigned by Judge VAN BRUNT for his decision in this respect: from which it seems to us that we shall clearly perceive that he did not correctly understand, or did not have in mind, the considerations properly applicable to the subject he was discussing. He says in his opinion: "It was well known to the parties to the deed, that the City owned some two hundred feet of land under water beyond the line of West street, and only the clearest language would justify a court in holding that the City intended to make this large tract of land subservient to a grant made by them of premises much less in extent." Here the judge wholly loses sight of the object and purposes for which this land under water had been granted to and was held by the City. It is true, as the Judge says, that when this grant was made, West street, for a large part of its length, was laid out and constructed far inside of the outer line of the four hundred feet beyond low-water mark which the City held under its grant from the State. The outer boundary of the grant to the City not being a straight line, but a line extending 400 feet from low-water mark, its outer line, of course, preserved precisely, all the indentations and irregularities of the natural shore line at low water, and in the actual laying out and establishment by the corporation of the line of West street, its outer or water-front line lay a considerable distance, varying, say, from 100 to 200 feet, *inside* of the outer line of the grant of 400 feet beyond low-water mark. Now, it must be borne in mind that the legislative act, under which the City received the

grant of the 400 feet beyond the low-water mark, at the point where was made the grant which the judge had under consideration, expressly declared the object and purpose for which the grant was made. It was *not* for the purpose of making building lots to be sold or used for the pecuniary profit of the corporation, but *was* by the act expressly declared to be "for the purpose of *duly regulating and constructing slips and basins and for running out wharves and piers*" (see Act of April 3, 1807, before quoted).

The corporation had the option to place the line of West street as the permanent exterior street, at either extremity of the four hundred feet, or in the middle or at any other portion of that space. The primary purpose of the City in fixing the line of West street must be assumed to have been in accordance with the recital ofthe act under which it received the grant, viz., "the duly regulating and constructing slips and basins and running out wharves and piers." The material point was, not to make as many lots as possible, but to get the City water front in a suitable place, and so as to involve no unnecessary expenditure in its regulation and improvement, and the authorities deemed it best, having these considerations in view, to place the exterior line of West street where they did place it. They so placed it, with the distinct knowledge and understanding that *beyond it*, there was to be no filling in into the river, and that under the seventh section of the Act of 1798, there was an absolute prevention of interposing, *at any time thereafter*, any building between the outer line of West street as thus established and the river "to which the same should front and adjoin." Building outside of the line being thus prohibited, there could be, of course, no object in making water lots there. The necessary effect of placing West street as it was placed was, to *form a slip* between the piers, *to remain always covered by the waters of the river, and which should float the vessels which were to lie at the piers and the bulkhead*, forming three sides of the slip, and such appropriation and devotion to such purpose, of this part of the land under water embraced in

the grant to the City, was completely in pursuance of the object and purposes recited in the Act of April, 1807, under which the grant of the land under water had been received by the City, viz.: "Duly regulating "and making slips and basins and running out "wharves and piers."

Again, it is argued on the part of the City authorities, that the owners of wharfage rights can have no legal protection against having their rights utterly destroyed by the filling up of the land under water adjoining the wharf, unless they can point to a grant to themselves of the title to such land under water. But this is an entire mistake. It is not at all needful nor very usual that the owner of a wharf or wharfage right shall own the land under the water, upon which floats the vessel lying at his wharf. His only need is, to be assured that the land under water adjoining his wharf shall remain covered with water, so that vessels may approach and lie at his wharf, and this was secured, in the case of these West street wharfage grants, by the terms of the acts and proceedings of the Common Counsel and the act of the Legislature under which the water front of the City was established as a *permanent line.*

Suppose a private corporation, formed for the purpose of making docks and basins, and owning a large tract of land under water for that purpose, should construct along three sides of a water-basin, a wharf front, and then should grant out portions of that wharf-front, in lots to individuals, declaring in the grant, that such wharf-front had been established as the permanent line of the basin, and agreeing that the grantees should "at all times thereafter" be entitled to receive all wharfage and wharf emoluments arising from the portions of the wharf-front so granted to them; surely it would not be claimed that after making such grants, the wharf or basin company could fill up the basin, and thus utterly destroy the practical value of the wharf rights, merely because in their grant they had not conveyed, but had retained to themselves, the legal title to the land under water forming the basin.

I submit that these West street grants, of bulkhead and wharfage rights, do not differ in legal effect from the case above supposed.

I trust that it is above satisfactorily established that the owners of the bulkheads and wharfage rights upon West street have absolute and perpetual rights to the continued use of the outer side of West street for wharf purposes, which cannot be destroyed or taken away from them by the City, unless for some *legitimate public use*, in exercise of the right of *eminent domain*, and *then, only upon payment of just compensation.*

Upon this assumption, it remains to consider, whether the provisions of the West street improvement bill now pending, in the particulars in respect of which complaint is now made by some of the City authorities, are reasonable and proper.

Where wharf property of this general description is held and used by an individual for the mere purpose of renting it out or collecting wharfage from it for his profit or emolument, we are by no means prepared to concede, that it would be a legitimate exercise of the right of eminent domain, for the City authorities to take such wharf property from him by appraisement and payment under compulsory proceedings, merely for the purpose of having the City rent it out or collect the wharfage from it for their profit or emolument, or as part of the City revenues; but we do not propose here to discuss that question of law. If it were proposed merely to take these bulkheads and wharf rights from individuals and transfer them to the City upon terms of payment by the latter to the owners of their fair value, to be determined by appraisement in some suitable and satisfactory manner in case of failure by the parties to agree upon the value, it may be that these wharf owners would not deem it worth while to have a contest upon the question whether or not, such appropriation of their property was for a public use, justifying the exercise of the right of eminent domain.

But the claim made on behalf of the City authorities is *not* of a right to take this wharf property from the private owners, and appropriate it to the City's use upon payment of its value, but so to take it from the private owners, and transfer it to the City without any payment or consideration whatever.

The claim thus made on behalf of the City, to transfer the wharfage rights belonging to the West street water-front, from the hands of the private owners to the Corporation of the City without compensation, is based wholly upon the provisions of the act of April 18, 1871, establishing the new Department of Docks, and prescribing the powers and duties of the Dock Commissioners, and upon a deed executed by the Governor in the name of the State to the Corporation of the City of New York, dated September 28, 1871, purporting to convey to the City all the State's right in the lands under water of the North river for the distance of one thousand feet westerly from the easterly side of West street, which deed is claimed to be authorized by the tenth subdivision of section 99 of chapter 137 of Laws of 1870, as amended by section 6 of the before-mentioned Act of April 18, 1871. It is admitted that but for this Act of April 18, 1871, no such transfer of the wharfage rights of these private owners to the City without compensation would be possible.

When the scheme of thus confiscating the wharf property of these private owners, in virtue of the provisions of the Act of April 18, 1871, was developed and sought to be made practically operative, the wharf owners, finding themselves about to be involved in a long and costly litigation, during which they would be practically kept out of the use of their property, supposing them to be finally successful in the litigation, while if the construction sought to be given to the Act of April 18, 1871, by the City authorities should be maintained, they would lose their property altogether by means of a construction of that Act most unjust in itself, and which clearly was never intended or contemplated by the

Legislature which enacted it, applied to the Legislature of 1879 for relief; for which purpose an act was introduced into that Legislature, which, after protracted conferences between the representatives of the wharf owners and the Department of Docks and other City authorities, was understood or supposed by the wharf owners, to be satisfactory to and approved by the Dock Department and the chief executive officers of the City as being a fair compromise of the disputed questions. It was understood to be not seriously questioned by the Dock Department and the other City authorities, that the alleged construction of the act, which would confiscate this very valuable private property without compensation was based upon a mere technicality, which, if it could be legally sustained (which was not really expected), had certainly never been intended by the Legislature which enacted the law of 1871.

The plan of this compromise substantially was, that the owners of the old bulkhead and wharfage rights on West street should have the like rights upon the new bulkhead line as they had upon the old, in consideration of the agreed payment by them of one hundred dollars per running foot, on account of the cost of constructing the new bulkhead and filling in behind it, and that in consideration of making this cash payment the breadth of the new bulkhead should be somewhat enlarged and the rights of user more clearly defined.

The bill, as introduced on behalf of the wharf owners, contained a provision in express terms that those of the private owners who did not choose to accept this compromise should be entitled to receive from the City, compensation, to be determined by appraisement, for the value of their wharf property, appropriated by the City to its own use, by means of the establishment of a new exterior line. Although it was supposed that this provision had been agreed to, or at least would not be objected to, it turned out that there had been some mistake on that score, and when the bill came up for consideration this clause was strenuously objected to on behalf of the City, and after

conferences of some length, the wharf owners consented to withdraw that objectionable clause from the bill, and after such amendment the bill passed both houses of the Legislature without any further objection being made on the part of the City; a further amendment, however, having been made, by which the cash payment to be made by the wharf owners was raised from $100 to $125 per running foot. The bill, however, failed to become a law by the withholding of the Governor's signature after the adjournment of the Legislature, because of objections then, for the first time, made against the bill, by the Mayor and one of the Dock Commissioners, although the bill was still favored as being a fair and reasonable settlement of the controversy by the Comptroller, the Counsel to the Corporation, and one, at least, of the Dock Commissioners.

The great objection raised against the clause in this bill, providing for payment to the owners of the value of their wharf property or wharfage rights to be determined by appraisement was, that the property was so valuable, and the amount which would have to be paid for it upon appraisement would be so large, that it would be inexpedient and altogether objectionable to make the increase of the City debt which would be necessary in order to make the payment.

The bill, as introduced at this session, is substantially the same as that which passed at the last session, after it had been so amended as to suit the views and meet the approval of the City authorities. To the entire surprise of the wharf owners, it now meets objection from the very parties who last year assented to and approved of it.

Let us now consider specifically the newly-raised objections.

First.—Of course, we will not repeat the argument upon the legal question, before discussed, as to whether or not the rights of these private owners of the bulkheads and wharfage rights are absolute and perpetual. We think we have before shown conclusively that they are so. But, supposing the Legisla-

ture should consider that our position in that respect is not established beyond doubt, and it should be argued on the part of the City that the question, as one of law, should be left to the courts, without interference by the Legislature, it then becomes material to refer to the following considerations, which appear to us to make it clear that, whatever may be the technical merits of the construction of the Act of 1871, which is now claimed by the City authorities, no such construction was ever intended by the Legislature which passed the bill, and that if it had then been understood that the bill had or would have any such construction or effect the bill, ought not to have been and never would have been passed, and that any provisions contained in it which can be made to operate so as to produce the result of confiscating to the use of the City, without compensation, the property of these wharf owners should be, by the present Legislature, repealed, or so amended as to prevent the attainment of a result so wrongful.

If there be (as we certainly think there is not) any defect in the legal tenure by which these wharf rights are held, so as to make them terminable at the City's pleasure, because of the non-vesting in the wharf owners of a title to the land under water in front of the wharves, instead of being permanent or perpetual rights, as they have always been supposed to be, such defect is certainly purely technical, and entirely subversive of the understanding and intent of the parties to the grants of these bulkheads at the time when they were made.

Upon reference to the provisions of the Act of 1871, it is plainly apparent that the existence of these bulkhead and wharfage rights on the part of the private owners was perfectly understood by the framers of that act, and that the contemplation of the act, and the thing intended to be thereby provided for, was, that such rights should be fairly acquired by the Dock Department on behalf of the City, either by purchase from the owners at an agreed price, or by appraisement under legal proceedings in case of failure so to agree, and payment of such appraised value.

For proof of this we refer to the following provisions of the Act of April 18, 1871, sec. 99, sub-division 4, (p. 1237, L. 1871. "The said board of the Depart- " ment of Docks is hereby authorized to acquire in " the name and for the benefit of the Corporation of " the City of New York, *any and all wharf property* in " said city to which the Corporation of the City of " New York then has no right or title, and any *rights*, " *terms, easements and privileges pertaining to any wharf* " *property* in said City, and not owned by said Cor- " poration; and said board may acquire the same " either by purchase or by process of law, as therein " provided."

The act then proceeds with customary provisions of detail, providing for an attempted agreement upon price, and the execution thereupon of "the necessary conveyances and covenants for vesting said property, *rights, terms, easements, or privileges* in and assuring the same to the Mayor, Aldermen and Commonalty of the City of New York, forever, and said owners shall be paid such prices from the City Treasury as hereinafter provided," and for legal proceedings for appraisement of value in case of non-agreement and payment of the award.

It is plain enough that the words *rights, easements or privileges*, as here used, were intended to describes wharfage rights of the precise character of these rights of the West street private owners, and I state as a fact, within my personal knowledge, that when commencing their proceedings for the acquirement of property for the purposes of the improvement in question, in a case where the Dock Commissioners found themselves unable to agree with one of these West street bulkhead owners, as to the price to be paid to him for the acquisition of his rights by the City, they, through the Corporation Counsel, commenced legal proceedings in the Supreme Court for the appointment of appraisers to determine the value of such rights.

Before the appointment of such appraisers, however, some one connected with the Corporation Coun-

sel's office, or with some one of the departments, made the discovery of this unreported case of *Whitney* vs. *The Mayor, etc., of New York*, referred to in Hoffman's Treatise, and upon the finding of this mare's nest, the then Counsel of the Corporation for the first time took the ground, never before imagined by any one, that the City had the right to take or destroy these bulkhead rights by changing the exterior line and filling in in front of West street, without making compensation to the owner of the right thus destroyed or appropriated, and thereupon discontinued the proceeding for the appointment of appraisers, which had been commenced as above mentioned, and assigned as the reason for so doing, his discovery of this unreporced case of Whitney.

It seems proper to make some remarks in relation to the objection made against a bill providing, in express terms, that compensation shall be made by the City to the present owners of these bulkhead and wharfarge rights on West street, upon the alleged ground that payment of the value of such rights will involve so heavy a charge upon the City treasury as that it cannot be met without an increase of the City debt, which it regarded as inadmissible.

This objection strikes us as being a very singular one. These West street owners of bulkhead and wharfage rights do not at all ask the City authorities to purchase or acquire the property which they own in virtue of the Corporation grants, made sixty or seventy years ago. It has been before conclusively shown that when these grants were made, the City Corporation deliberately, and, for what was then regarded a full and fair consideration, sold and conveyed in perpetuity, to these private owners or their predecessors in title, all the rights of wharfage and all benefits, advantages and emoluments whatsoever to arise or accrue from the use of the exterior line of the City, on the North river side for wharf proposes; so that thereafter the City had

no wharfage or wharf rights whatever upon that line, excepting, of course, those of the piers which were built by the City instead of by individuals, and excepting these portions of the West street water front, (of which there were several,) which the City did not sell or grant away, but retained to itself.

The City now deems it expedient to change the line of water front by widening West street. There seems to be no naturalness or propriety in, and certainly no necessity for, the transfer of the wharfage rights from the hands of private individuals to the City *in consequence of* that measure. No reason is perceived, why the ownership of the wharfage rights in the new line should not be left to remain in the same hands which held it on the old line. If the City desires to acquire for itself the wharfage rights on the line of West street, where now it has no such rights, it can only be because it deems it for its profit and advantage so to do. If it be true, as asserted, that the City treasury is in too impoverished a condition to afford to buy this entirely new wharf property, which now it has not, the simple remedy appears to be not to buy it, but to leave it in its present hands. But the proposition that because the City cannot afford to buy it, it must therefore snatch it away from the present owners without paying for it, can hardly require serious discussion. If it is wise and expedient for the City to become the owner of these wharf rights, it must be because the revenue to be derived from them by the City will be more than adequate to meet the interest on the debt required to be created for acquiring them, so that the honest acquisition of these wharfage rights by fairly paying the owners for them will give a profit to, instead of imposing a burthen upon, the City treasury.

The compromise arrangement proposed by the bill in question, as by the bill of last year, under which the owners of the bulkheads and wharfage rights are merely to have their rights transferred from the old to the new bulkhead, and are still to pay one hundred and twenty-five dollars per running foot towards the cost

of the new bulkhead, was assented to by the private owners, mainly with a view of meeting the objections of the City authorities to making such an increase of the city debt as would be required to meet the cost of purchasing or acquiring by appraisement the rights of the private owners.

A great outcry has been raised in some of the newspapers against the bill in question, upon the ground that it proposes to transfer immensely valuable wharf property from the hands of the City to private parties. It is hardly necessary to discuss this absurd statement. The bill in question does not propose to transfer any wharf property or wharfage rights along that part of West street, where the city now has any such rights, to any private owner. It merely leaves the ownership to stand as at present, transferring it from the old to the new line. If the City wishes to recede from the arrangement which was last winter agreed to with the owners of bulkheads and wharfage rights, and to acquire to itself on the new line *the property of that description which now it has not*, it must, as a necessary condition, assent to a provision in the bill requiring it to pay for such property as existing on the old line, either at an agreed price or by fair appraisement, before it undertakes to appropriate it to its own use.

We will now consider another objection urged specifically against the bill in question.

It has been alleged in some quarters that this bill substantially transfers to the owners of the bulkheads and wharfage rights, the title to the outer fifty feet of the new exterior street, with the right to build warehouses in like manner as upon lots owned in fee in the ordinary manner, or otherwise to use it as if it were ordinary private property instead of being part of a wharf.

An examination of the provisions of the bill will clearly exhibit the groundlessness of these objections and the misstatement of facts on which they are founded.

The provisions of this act do not give to the private

owners any title whatever to the fifty feet. They leave that title in the city, and they preserve for that fifty feet its character of a wharf precisely like the other wharves and piers of the city.

The provision of the act against which this objection is made is as follows: "The outer wall of said "street [West street] and of the street upon the "Hudson river front in the City of New York as the "same is laid out by the Department of Docks, to be "erected upon the new exterior bulkhead line as es- "lished by law, and the fifty feet of said street, ex- "tending easterly therefrom, shall be known as the "new bulkhead intended by this act, and such space "of fifty feet may be used *for the landing and tempo-* "*rary storage of goods from vessels in like manner as* "*the other wharves may now be used*, under "such general regulations as may from time to "time be established by the Department of "Docks, who shall have jurisdiction thereof, as they "now have of piers, *and may be covered and protect-* "*ed by such sheds or other erections*, and in *such manner* "*as may be authorized or appoved by the Department of* "*Docks.*"

From an examination of this provision it will be clearly perceived that the fifty feet in question is carefully preserved for use for wharf purposes only, being completely under control of the Department of Docks, and the only uses of it provided for or contemplated, are those uses to which the existing piers and bulkheads, and the wooden bridges in front of the bulkheads, now are, and for many years have been, accustomed to be used. It has been found necessary for the proper accommodation of the City's commerce to put sheds on many of the piers and bulkheads, and the fact should not be lost sight of that the greater proportion of the present bulkheads upon West street have long had attached to them in front, wooden bridges or platforms on piles, placed there by the bulkhead owners, by permission of the City, from thirty to fifty years ago, and which are used for the receipt and delivery of goods in relief of so much of the solid land of West street, and upon many of which platforms

or bridges, sheds have been erected by permission of the authorities in like manner as upon the piers; so that the fifty feet of bulkhead referred to in this act when used for the purposes prescribed will give to the bulkhead owners little, if any, greater breadth of line for their accommodation than they have under the present arrangement.

Then the objection is raised—that the sum of one hundred and twenty-five dollars per running foot, which this act provides shall be paid by the private owners, is too small.

It is asserted that the entire cost of the new West street improvement will be from four hundred dollars to four hundred and fifty dollars per running foot, and it is urged that instead of paying one hundred and twenty-five dollars per running foot these bulkhead owners should be required to pay the whole or some much larger proportion of the four hundred dollars or four hundred and fifty dollars per foot. This, the bulkhead owners regard as wholly unreasonable, and are unwilling to agree to. Sooner than assent to any such terms they prefer that the City should take the property as it now is and pay for it the fair value, to be determined by appraisement, if it cannot be agreed upon. The one hundred dollars per foot which they assented to last winter was then understood to be about one-half the necessary cost of such an improvement as was really required, in order to give to West street the required breadth of two hundred and fifty feet. If the City choose to put a very costly stone bulkhead, for which there is no earthly necessity, instead of a solid and substantial crib and bulkhead, properly faced with timbers in the customary manner, the private owners are not disposed to pay the cost of such extravagance. The one hundred dollars per foot was originally assented to by the owners under the feeling that it was the utmost sum which they should be asked to pay, and the advance of twenty-five dollars per foot was yielded to quite reluctantly.

In considering the question what proportion of the

cost of this West street improvement it is fair to ask the bulkhead owners to pay, this consideration must always be borne in mind. The widening of West street from its present width of seventy feet to two hundred and fifty feet is not asked for nor desired by the bulkhead owners. Their rights were acquired upon the distinct agreement that the permanent exterior street should be seventy feet wide and no more. West street, as it now is, with the aid of the platforms or bridges in front of the bulkhead, now answers the purpose for wharf uses, and if the wishes of the owners were consulted they would prefer to leave it as it is.

The widening of West street to nearly four times its present width (certainly a costly operation) does not give to the bulkhead owners *a single additional inch of water front*, and this great enlargement of the width of the street is not required, and is not proposed to be made for wharf purposes, but for *street purposes*.

This great increase of width, so far as it is really required, is not required, and is not proposed to be used, in any great degree for the enlarged accommodation of water craft, but mainly by reason of the great increase in internal traffic, which it is well known, by reason of a change of the current of business and transportation, has been in large measure diverted from the rivers to the railroads, and the enlargement of the width of West street, is required, more by reason of the railroad tracks which have been placed there, and the others which will have to be placed there, than from any other cause.

CHS. F. SOUTHMAYD,
Owner of one of the West street bulkheads, and of counsel for other owners.

Feb. 19, 1880.