

New Jersey Court of Errors and Appeals.

Between	}	On Infor- mation.
JOHN W. WESCOTT, Attorney- General of the State of New Jersey,		
Informant-Respondent,		
and		
AMERICAN CREOSOTING COMPANY, Defendant-Appellant.		

BRIEF OF APPELLANT.

This suit was instituted by and in the name of the Attorney-General on behalf of the State of New Jersey to require the removal of the "New Dock 1911-1913" as shown on Schedule "A", being a map attached to the State of the Case, upon the ground that the State had not granted to the Appellant or its predecessors in title the riparian rights adjoining Appellant's ripa. The facts are as follows:

a. On February 18, 1876, the Freeholders of Essex and Hudson Counties executed and delivered to Appellant's predecessors in title a grant or license to build a dock, wharf or pier, upon the land covered by "New Dock 1911-1913" and other land. (See Paragraph 8 of Information pp. 8.)

b. The grant or license was given under the Wharf Act now found in Compiled Statutes of New Jersey Page 5856.

c. Within a year from the date of the grant or license the Appellant's predecessors in title put in a row of piling from the dock shown on said map marked "Old Dock" and extending along line established by the Commissioners as the Exterior Dock Line to the easterly line of their property and likewise put in a row of piling, the piling being six or seven feet apart, from said "Old Dock" and along said Exterior Dock line to the westerly line of their land which extended westerly beyond the westerly line of the "New Dock 1911-1913" and on the top of said rows of piling they placed cap logs about twelve or fourteen inches square, which logs were securely fastened to the "Old Dock."

d. The piling and cap logs were braced at about every other piling and were used for mooring boats until such boats could be brought to the "Old Dock" for the purpose of discharging and loading cargoes. (See testimony of William B. Adamson and Peter Hagen, pp. 26-32.)

e. The "New Dock 1911-13" was erected some time between the years 1911 and 1913.

POINTS.

The Fifth Section of the Wharf Act is as follows:

"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 said 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. (Rev. 1877, p. 1241.)

The case of Stockton, Attorney-General, against American Lucol Company, 36 Atl. Rep. 572, upon which Vice Chancellor Backes based his opinion in this case, the facts were that the Act of 1851 was repealed which repealer went into effect July 1, 1891; that Sawyer, the then owner of the riparian land obtained a license from the Board of Freeholders after the actual passage of the repealer and before July 1, 1891, the date when the repealer went into effect inclosed a portion of the tract mentioned in the license by building two lines of piles on the north and south lines extending one hundred feet from the shore and by building an exterior line of piles 1546 feet long and parallel with the exterior line named in the license. The piles were placed ten feet apart and connected with string pieces. No further building or improvement was made by Sawyer previous to the conveyance of the uplands to the defendant on November 23, 1893. The defendant between January 1, 1894 and May 1, 1894, built a wharf on a portion of the land included in the license, the wharf being forty feet in width and one hundred feet in length, and extending from the shore line to the exterior line put down by Sawyer in 1891, and defendant used in the construction of its wharf a number of piles already in the exterior line of piling without removing the same from their original places. The defendant erected its wharf without any license from the riparian commissioners.

Emery, V. C., says "that it seems to me clear that under this act of 1851 the license granted by the State contemplated an actual erection of a dock or

wharf useful for the purposes of navigation on the land below low water, and that the mere enclosure of a tract by piling is not sufficient under this act to vest title therein under the act. If the enclosure, by piling, of the lands included in the license for a wharf, is a sufficient erection of a wharf to vest title, then it must follow, I think, that the title to the lands enclosed, having once vested under the act, cannot be divested; and if the piling should be allowed to disappear, as was largely the case here, then, without actual construction of any wharf at all the licensee, who has obtained a grant of land for the public use of a wharf, and on the condition of building a wharf, has become vested with the title to the land on which the wharf was to be built, without complying with the spirit or letter of the license upon which it was granted."

It will be seen that Vice Chancellor Emery had a very different state of facts before him. In that case no wharf or dock was erected. There was nothing done but to fence in a portion of the land covered by the license. In our case there was a wharf—when it was built no one seems to know—to which was securely fastened cap logs and a row of piling from the east and west sides of said dock extending along the exterior dock line as established by the commissioners, and more than that said piling and cap logs were actually used in conjunction with the wharf. It can make no difference why the pilings were placed there, if they were actually used as a part of the dock.

The Standard Dictionary defines the noun "dock" as "an artificial basin for vessels. The space between two adjoining piers or wharves often roofed over and used as a temporary place of storage sometimes extended to the piers themselves."

The same dictionary defines the noun "wharf" as "a landing place for vessels and their cargoes; in the United States usually constructed of piling, braced and covered with timbers, and often filled in

with stone or earth. In Europe more commonly of solid masonry. A projecting wharf is called a pier; one that is parallel with the shore a quay."

We submit that the piling and cap pieces attached to the "Old Dock" became and were a part of the dock within the meaning of the act of 1851, and that the title to the lands covered by "New Dock 1911-1913" vested in appellant's predecessors in title and the State thereby lost all interest therein.

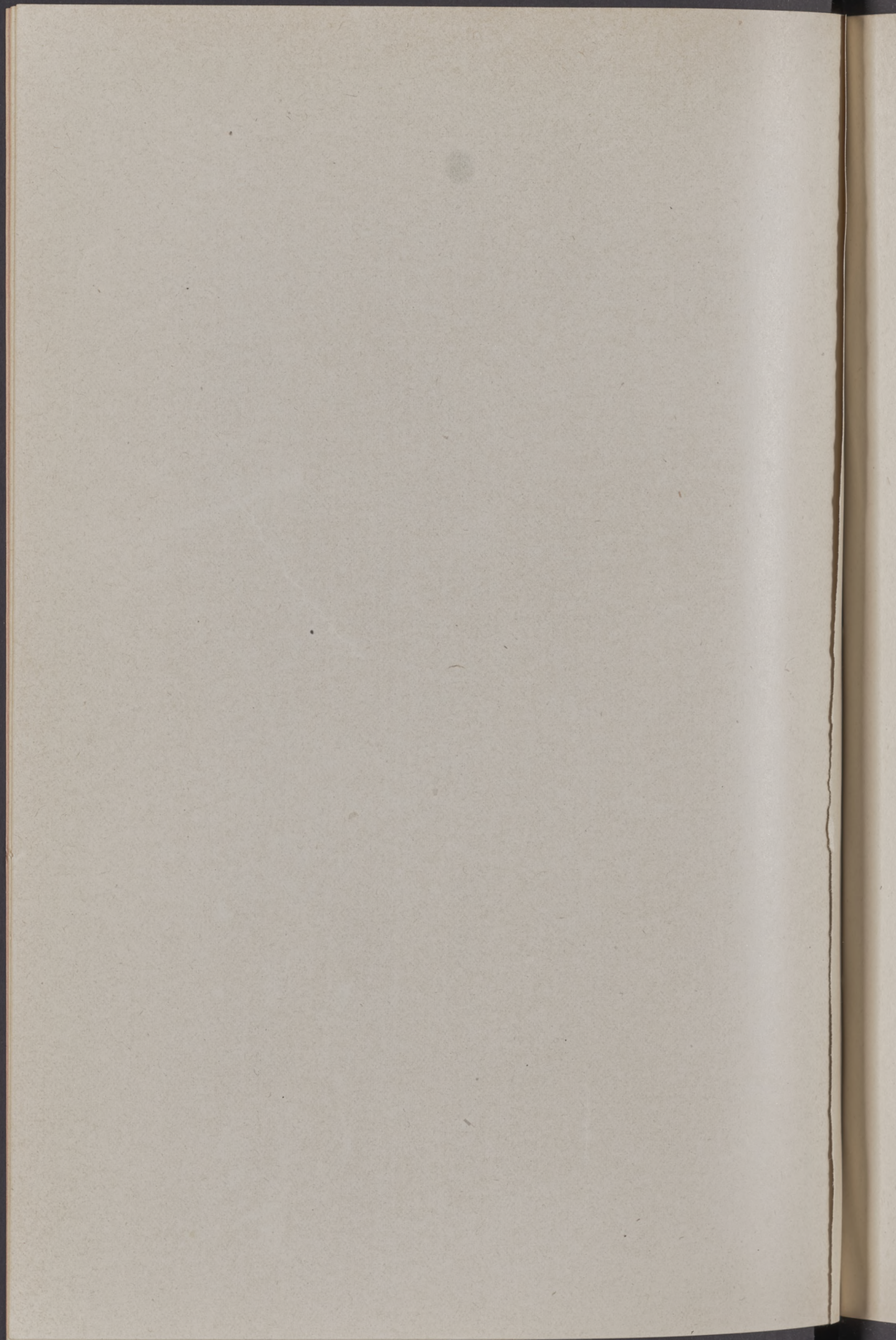
If the piling and stringer pieces connected with the "Old Dock" constituted a part of the dock within the meaning of the Wharf Act of 1851, as we claim it did, then the title vested in Appellant's predecessors in title and remained in them and their grantees notwithstanding that that part of the wharf was allowed to decay and wash away.

Simpson vs. Moorehead, 45 N. J. Eq. 623.

The learned Vice Chancellor seems to think that from the fact that the piling was put in, as Mr. Adamson says, "to conform with the law" that it was a mere simulation and therefore gave the Appellant no rights. We view it just the opposite. If the piling and cap logs were placed, as they were, under the belief that it was a wharf within the meaning of the Act of 1851 and was actually used in connection with and for the purpose of promoting navigation, then it seems to us it became a wharf within the meaning of said Act.

Respectfully submitted,

FRANCIS LAFFERTY,
Solicitor of Appellant.



NEW JERSEY
Court of Errors and Appeals

BETWEEN

JOHN W. WESCOTT, ATTORNEY-
GENERAL OF THE STATE OF
NEW JERSEY,
Informant-Respondent,

AND

AMERICAN CREOSOTING COM-
PANY,

Defendant-Appellant.

On Information.
On Appeal from
Court of
Chancery.

Brief for Informant-Respondent.

This is an appeal from a part of the decree of the Chancellor in the above case, decreeing that certain lands under water covered by the ebb and flow of the tide in the Passaic River, first described in said decree, are the sole and exclusive property of the State of New Jersey, and that the dock or wharf erected and now maintained upon said lands is an illegal erection and a purpresture upon the said lands of the State, and that the Appellant do forthwith remove the whole of said dock, wharf or pier now erected and maintained by it upon the lands first described in the said decree. The Appellant does not appeal from that part of the decree

which adjudges that the lands under water covered by the ebb and flow of the tide in the Passaic River, secondly described in the said decree, are the exclusive property of the State, and that so much of the dock, wharf or pier as is now erected and maintained upon the said lands, be removed by the Appellant. In fact, at the trial the Appellant did not deny that this part of the old wharf beyond the dock line established by the Commissioners in 1872, and the line established by the freeholders' grant, was a purpresture upon the lands of the State.

The Appellant founds its claim to these lands under water, and the right to maintain this wharf erected in 1911, upon a license granted to its predecessors in title, Baeder and Adamson, by the Boards of Chosen Freeholders of Essex and Hudson Counties, by virtue of the Wharf Act of 1851 (C. S. 5856), "An act to authorize the owners of lands upon tide waters to build wharves in front of the same." Section five (the section pertinent to the only question in this case) is as follows:

"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 tidewaters 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."

The contention of the State is that the licensee, or his assigns, did not erect the said dock, wharf or pier at any time within five years from the date of the grant, and that, therefore, no title or right became vested in the licensee as against the State.

The license was granted February 23, 1876, and extended along the whole of the river front of the licensee's land 891.65 feet, and into the river to the dock line fixed by the commission appointed for that purpose by the Legislature in 1872. The blue print attached to the State of the Case (Schedule "A") shows the Commissioners' Dock Line of 1872, to which the license extended, the high-water line, and the *dock in controversy*, marked thereon "*New Dock 1911-1915.*"

The testimony of William B. Adamson, one of the licensees (Case, p. 28), shows that soon after the dock license was acquired in 1876, within the same year, the licensees drove a row of pilings across the whole front of the lands under water covered by the license, on the Commissioners' Line of 1872, and put a cap log on top of this row of pilings (p. 26). This row of pilings and cap log extended across the whole front of the present dock and premises in controversy along the Commissioners' Dock Line of 1872, from the westerly line of the old dock marked "A" on the diagram, northerly to the northerly boundary of the licensees' premises, a distance of 76.37 feet. These pilings were about seven or eight feet apart, and the cap log was about twelve inches square, and at high water was six feet above the water (p. 26). This was the only improvement made upon the premises by the licensees or their assigns within the five years, and the contention of the State, and the finding of the Vice Chancellor is that this was not a wharf, dock or pier within the

meaning of the statute, and that consequently the licensees acquired no rights to the lands under water, or to erect the dock now upon these lands, erected in 1911.

The opinion of the Vice Chancellor will be found on pages 32 to 36, inclusive, of the State of the Case, and his reasoning, it is contended, is conclusive. The case is directly in line with the decision of Vice Chancellor Emery in *Stockton, Attorney-General, v. American Lucol Co.*, 36 *Atl. Rep.* 572.

In that case the Vice Chancellor held that the mere enclosure by licensee of the tract described in his license, by piles driven ten feet apart and connected by string pieces, did not constitute a wharf sufficient to vest title in him.

The only distinction (if distinction it be) between the case at bar and the case above cited is that pointed out and discussed by the Vice Chancellor in his opinion in this case, that the row of piling and the connecting cap log or stringer, when erected, extended from an old wharf (marked "Old Dock 'A'" on diagram), existing upon a part of the property granted by the license and erected before the date of the license, and that, as is contended by the Appellant, this row of piling and the connecting stringers, when erected, became an integral part and laterally expanded and spread this old dock over the whole of the licensees' 800 feet and more of the river front.

But this contention is unsound for two reasons.

First. The licensees, Baeder and Adamson, when they got their license from the Freeholders, put in the piling, not for the purpose of extending the wharf, but, as Mr. Adamson testifies, "to conform to the laws; we were notified." (P. 28, line 5.) That is, the licensees attempted to comply with the strict letter of the law, but evidently not with its spirit. They had no intention of making an improvement such as the act contemplated, but merely to make some sort of a show that would enable them to hold the lands covered by the license, without giving to the public the equivalent or

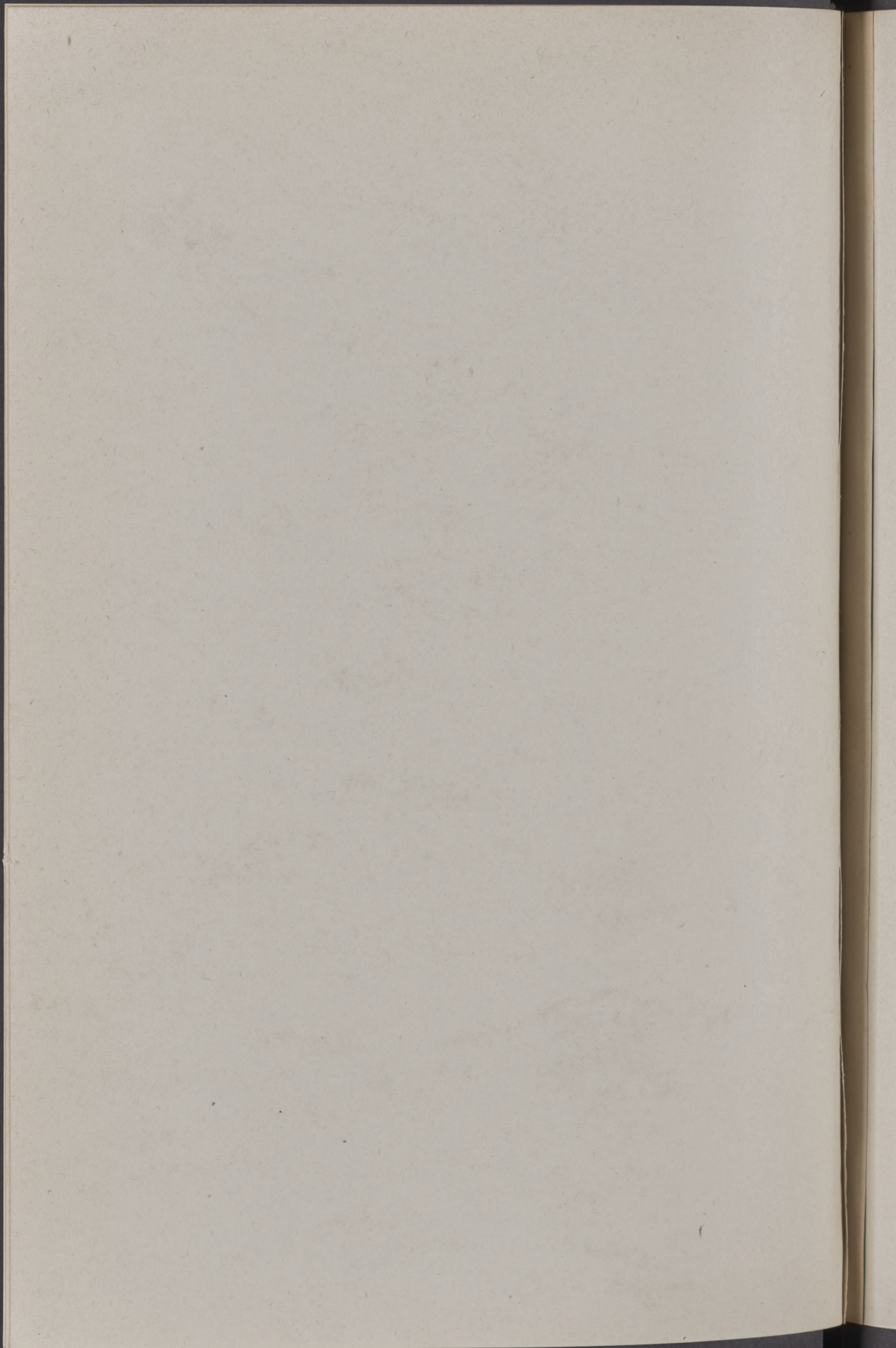
consideration for which the grant was really made. The mere fact that the pilings may have been used advantageously for the mooring of boats preparatory to loading and unloading did not make this line of pilings a constituent or essential part of the pre-existing wharf.

Second. This pre-existing wharf seems to have been built upon the State's land without any grant or license. If Baeder and Adamson ever acquired any title to these lands under water, covered by this pre-existing wharf, it does not appear in this case; but any such right, if existing, could not have authorized them to extend this pre-existing wharf over other lands of the State; nor could they thereby have acquired any rights in any such adjoining lands.

While it may be that private title might have been acquired in lands of the State under tidewater by actual reclamation prior to 1851, yet such rights, if they could be acquired, could only be in the land actually reclaimed, and since 1851 the right to reclaim lands, except in the manner provided in the Wharf Act, was absolutely taken away.

The lands under tidewater belong to the public, and are subject to the uncontrollable proprietorship of the State, since after 1851 any rights therein could only be acquired under the Wharf Act of that year, and since 1892, when the Wharf Act was specifically repealed, as to all parts of the State, private title in such land can only be acquired by riparian grant.

HERBERT BOGGS,
Assistant Attorney-General.
JOHN W. WESCOTT,
Attorney-General,
Of Counsel with Respondent.

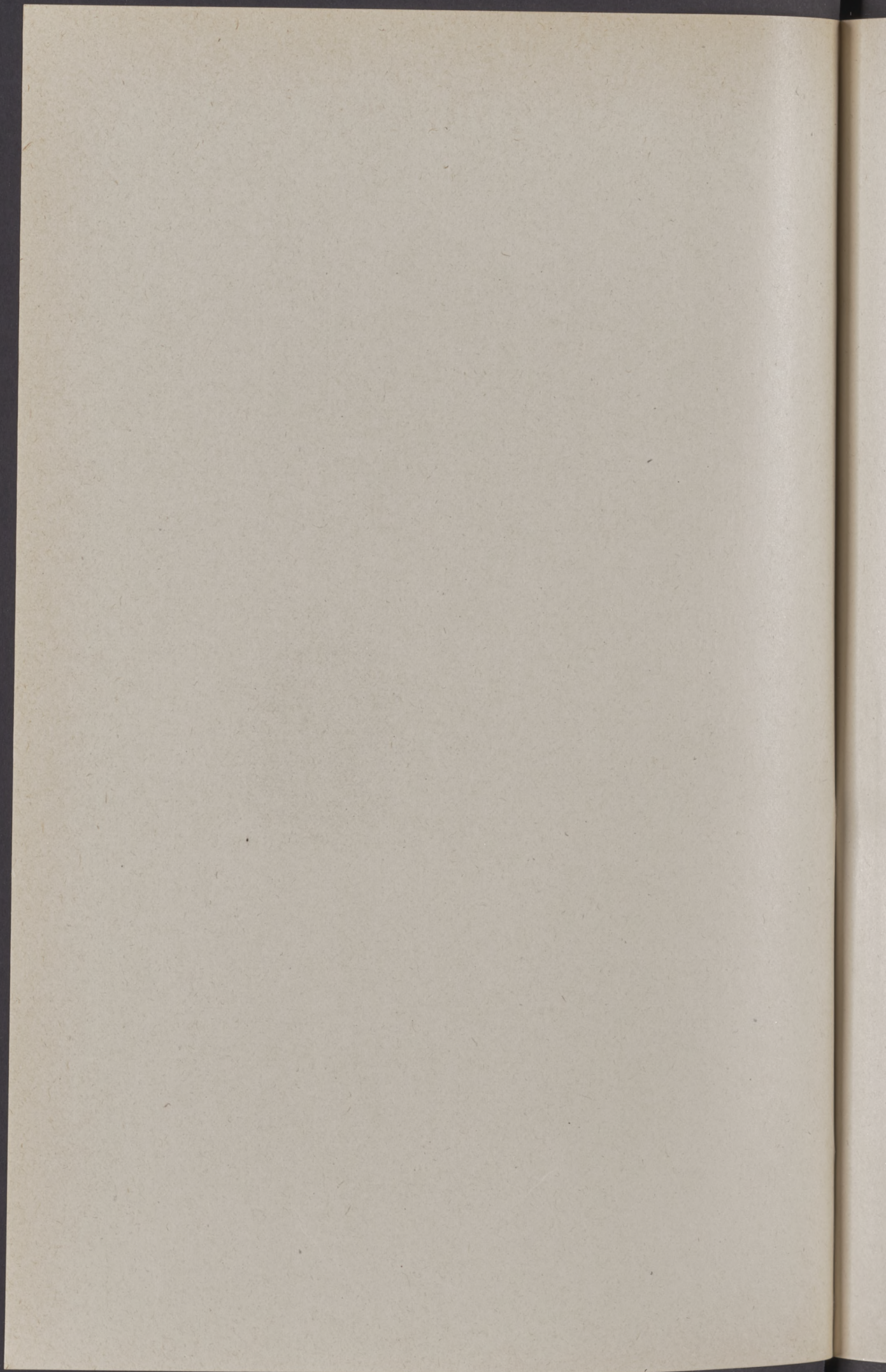


INDEX.

	Page
On Amended Information	1
Answer	15
Testimony	21
Conclusions	32
Final Decree	36
Notice of Appeal	42
Petition of Appellant	43
Acknowledgment of Petition of Appeal	46
Answer	47
 John C. Payne,	
Direct	21
Cross	23
 William B. Adamson,	
Direct	25
Cross	29
 Peter Hagan,	
Direct	29
Cross	31

EXHIBIT

Schedule A, inserted at end of book



On Amended Information.

Filed August 5, 1915.

IN CHANCERY OF NEW JERSEY

<p style="text-align: center;">Between</p> <p>JOHN W. WESCOTT, Attorney General of the State of New Jersey,</p> <p style="text-align: center;">Informant-respondent,</p> <p style="text-align: center;">and</p> <p>AMERICAN CREOSOTING COMPANY, Defendant-appellant.</p>	}	<p style="text-align: right;">2</p> <p style="text-align: right;">On Informa- tion.</p>
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To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:

The information of John W. Wescott, Attorney
General of the State of New Jersey, for and on
behalf of said State, respectfully shows:

1. That the American Creosoting Company is a
body corporate, existing under and by virtue of
the laws of the State of New Jersey, and is en-
gaged in the business of manufacturing, in the City
of Newark, County of Essex and State of New
Jersey.

2. That the said American Creosoting Company
is the owner of a large tract of land, situate in the
said City of Newark, bordering upon the southerly
side of the Passaic River, and extending along the
high-water line of said river a distance of 365.62
feet, more or less; that upon said land the said

On Amended Information.

American Creosoting Company has constructed buildings and factories for its manufacturing purposes.

3. That the American Creosoting Company has constructed and now maintains a certain dock, wharf or pier, extending from the said high-water line of the said Passaic River, easterly into and upon the said Passaic River, and beyond the high-water line of said river, a distance of 50.26 feet, more or less, to the westerly dock line as established by the Commissioners in 1872, as hereinafter more particularly set forth; that the said dock, wharf or pier extends along the aforesaid lands of said company a distance of 76.37 feet, more or less; that said dock, wharf or pier is used by the said American Creosoting Company in and about their said manufacturing business.

4. That the whole of said dock, wharf or pier is built and constructed upon lands under water and covered by the ebb and flow of the tide in the said Passaic River, (which said lands are the sole and exclusive property of the State of New Jersey,) and under the jurisdiction of the Board of Commerce and Navigation of the State of New Jersey, created by an act entitled "An act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April eighth, nineteen hundred and fifteen, and, before the first day of July, nineteen hundred and fifteen, were under the jurisdiction of the Board of Riparian Commissioners, whose duties and powers were merged and vested in the said Board of Commerce and Navigation in and by said last above mentioned act; that the said

On Amended Information.

lands under water, covered by said dock, wharf or pier, are more particularly located, bounded and described as follows:

Beginning at a point in the Exterior Dock Line adopted by the Commissioners appointed by act of the Legislature of the State of New Jersey April 1st, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey January 27th, 1877, said point being three and five-tenths (3.5) feet along said Exterior Dock Line on a course South eighty-six degrees two minutes East, from the land conveyed to A. A. Guigues by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, on page 598, etc., and from said beginning point running along said Exterior Dock Line South eighty-six degrees two minutes East, seventy-two and eighty-seven one-hundredths (72.87) feet, more or less, to the westerly side of a dock; thence along the westerly side of said dock South one degree eleven minutes West, fifty (50) feet to the original high water line of the southerly shore of Passaic River; thence westerly along the original high water line of the southerly shore of Passaic River, seventy-six (76) feet to a point three and five-tenths (3.5) feet easterly of the westerly line of lands of the said American Creosoting Company; thence North twenty-three minutes East, fifty and twenty-six one hundredths (50.26) feet to the Exterior Dock Line approved and adopted as aforesaid, the point or place of beginning.

That said dock, wharf or pier is shown upon the diagram or map annexed hereto as schedule A, in orange shaded lines, and marked "New Dock, 1911-1913, 2nd." That said dock, wharf or pier was constructed by the said American Creosoting Company sometime between the years 1911 and 1913, the exact date of the construction thereof being unknown to your Informant.

On Amended Information.

5. That said American Creosoting Company now maintains and uses a certain other dock, wharf or pier, adjoining said above mentioned dock, wharf or pier on the east thereof, and extending out into the Passaic River, beyond the southerly dock, or wharf line of said river, as established by the Commissioners appointed in 1872; that said certain other dock, wharf or pier, extends from the southerly high-water line of said Passaic River north-
11 less, and extends along the aforesaid lands of said company a distance of sixty feet more or less; that said dock, wharf or pier was built a number of years since, either by said American Creosoting Company, or by its predecessors in title, to said tract of land, so as aforesaid, now owned by the American Creosoting Company, but when and by whom said dock, wharf or pier was built your Informant does not know, and cannot state; that said dock, wharf or pier as so constructed extends out into the said river beyond the said Commissioners' dock, or wharf line of 1872, a distance of ten feet, on the westerly face or side of said dock, wharf or pier, and twenty-five feet on the
12 easterly face or side thereof; that so much of that part of said dock, wharf or pier as extends into said river beyond the said Commissioners' dock, or wharf line of 1872, is built, erected and maintained upon lands under waters covered by the ebb and flow of the tide in said Passaic River, which said lands are the sole and exclusive property of the State of New Jersey, and now under the jurisdiction of the Board of Commerce and Navigation of the State of New Jersey, and before the first day of July, nineteen hundred and fifteen, were under the jurisdiction of the said Board of Riparian Commissioners; that the said lands under water covered by the part of said dock, wharf or

On Amended Information.

pier extending out into said river beyond said Commissioners' dock, or wharf line of 1872, are particularly located, bounded and described as follows:

Beginning at a point in the Exterior Dock Line adopted by the Commissioners appointed by act of the Legislature of the State of New Jersey April 1st, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey January 27th, 1877, distant along said Exterior Dock Line on a course South eighty six degrees two minutes East, seventy-six and thirty-seven one hundredths (76.37) feet from the land conveyed to A. A. Guiges by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, on page 598, etc.; and from thence North one degree eleven minutes East, ten (10) feet to the northerly face of the said dock in question; thence along said northerly face of said dock South eighty-eight degrees forty-nine minutes East, sixty (60) feet to the easterly face of said dock; thence along the easterly face of said dock South one degree eleven minutes West, twenty-five (25) feet to the Exterior Dock Line adopted by the Commissioners appointed under the said act approved April 1st, 1872, and adopted by the Riparian Commissioners of the State of New Jersey January 27th, 1877; thence along said Exterior Dock Line North seventy-one degrees two minutes West, sixty-four and thirty-six one hundredths (64.36) feet to the point or place of Beginning.

That said part of said dock, wharf or pier so extending from the high-water of said Commissioners dock, or wharf line of 1872 is shown upon a map or diagram hereto annexed as "schedule A" marked "Old Dock A", and the part of said dock, wharf or pier, lying beyond or outside of said Commissioners' line of 1872, is shown on said diagram, marked "Old Dock B."

On Amended Information.

6 That in the year eighteen hundred and seventy-two, the Legislature of this State duly passed an act entitled "An act respecting the lines of wharfs, docks, slips and piers on the Passaic River in the counties of Essex and Hudson," approved April first, eighteen hundred and seventy-two; that therein it was, among other things, enacted that Aaron B. Baldwin and other persons named therein, residents and freeholders of Essex County, and John A. O'Neil and other persons named therein, residents and freeholders of Hudson County, be appointed Commissioners, with full power and authority to fix, establish and determine permanent and proper lines for the erection of wharfs, docks, slips and piers, at and beyond low-water mark on both sides of said Passaic River, within the limits of the said counties of Essex and Hudson, where the same had not been already fixed by the boards of Chosen Freeholders of Essex and Hudson counties; that said commissioners should fix, establish and determine said lines as soon as practicable after the passage of the act, and should cause such survey to be made as they should deem necessary for the full and complete carrying out of the provisions and requirements of the act; that when said Commissioners should have finally fixed and established said lines, or any section thereof, they should cause two copies of a suitable map and profile of the same to be made, certified and signed by said Commissioners, or a majority of them, and file one copy in the office of the County Clerk of Essex County and one copy in the office of the County Clerk of Hudson County, and that when said lines, or sections thereof, had been fixed, established and determined, and said maps and profiles, or any of them, made, certified, signed and filed as aforesaid, the lines as laid down thereon should be and remain the true and proper established lines

On Amended Information.

for the erection of wharfs, docks, slips and piers on said Passaic River, in both or either of said counties; that in and by the seventh section of said act, it was further enacted that nothing in the said act contained should be construed to authorize any person or persons to erect or cause to be erected any wharf, dock, slip or pier, along said river without obtaining license therefor, as then required, or as might thereafter be required by law; that immediately after the passage of said act, said Commissioners named therein proceeded to fix, establish and determine permanent and proper dock lines for the erection of wharves, docks, slips and piers, at and below low-water mark in the Passaic River, in the counties of Hudson and Essex, and especially in front of the lands above mentioned, now the property of said American Creosoting Company, and other lands adjoining the same, and did make maps and profiles and two copies thereof and did file one copy in the office of the Clerk of Hudson County, and one copy in the office of the Clerk of Essex County, both copies certified and signed by said Commissioners, or a majority of them. To which said copies of said maps and profiles so signed, certified and filed as aforesaid, this Informant begs to refer if it be necessary so to do. That said dock or wharf line, as established, fixed and determined by said Commissioners, and as shown on their said maps and profiles so fixed as aforesaid, as the same was established, fixed and determined in front of the lands above mentioned now the property of said American Creosoting Company, is shown on the said diagram or map annexed, Schedule A, marked in red "Commissioners' dock line 187?."

7. That the State of New Jersey, either by legislative grant, or through said Board of Commerce and Navigation, or said Board of Riparian

On Amended Information.

- Commissioners, or through any of its agencies, has not at any time made any grant or lease for any purpose whatsoever, of any or either of said above mentioned and described tracts of land and premises, either of the tract first above described, lying between high-water mark and the Commissioners' dock line of 1872, upon which said first above mentioned dock, wharf or pier, shown on said Schedule A and marked thereon "New Dock, 1911-1913, 2nd," was erected and is now maintained by said
- 23 American Creosoting Company, or, of the tract second above described, beyond the said Commissioners' dock line of 1872, and upon which, that part of the dock, wharf or pier second above mentioned, extending beyond said Commissioners' dock line of 1872, is now maintained by said American Creosoting Company, either to said American Creosoting Company or to any person, corporation or association whatsoever, or given or granted any interest, right, privilege or permission to erect or maintain said first mentioned dock, wharf or pier, or that portion of said second mentioned dock, wharf or pier extending beyond said Commissioners' dock line of 1872; and this Informant
- 24 expressly charges and insists that said first mentioned dock, wharf or pier so erected and maintained by said American Creosoting Company, and so much of said second mentioned dock, wharf or pier as extends beyond the said Commissioners' dock line of 1872, are illegal erections, and pre-
stures upon the lands of the State.

8. That on or about the eighteenth day of February, in the year eighteen hundred and seventy-six, the Board of Chosen Freeholders of the County of Essex, and the Board of Chosen Freeholders of the County of Hudson, executed and delivered to Charles Baeder, William Adamson, Benjamin F. Webb, Charles B. Baeder, Robert J. Adamson, Wil-

On Amended Information.

liam M. Scott and William B. Adamson, a license to build a dock, wharf or pier in front of, and along, the land of the said mentioned persons, comprising the firm of Baeder & Adamson, lying on said river, in the City of Newark aforesaid, the dimensions of said dock, wharf or pier to be as follows: to extend along said river from land now or formerly of Daniel Van Windle, to lands now or formerly of John Rutherford, a distance of 891.65 feet, more or less, and into said river to the wharf-line fixed by the Commissioners appointed under the act of April first, eighteen hundred and seventy-two, the same being more clearly represented upon the map or diagram thereunto attached, which said license was duly executed by Edgar Farmer, then Director of the Board of Chosen Freeholders of Essex County, and by Oba Woodruff, Clerk of said Board, D. C. Halstead, Director-at-large, Hudson County, New Jersey, and Charles J. Rowe, Clerk of the Board of Freeholders of Hudson County, in the presence of Marcus P. Hayne, and acknowledged by the said Edgar Farmer and Oba Woodruff, before George W. Hubbell, a Master in Chancery of New Jersey, on the twenty-third day of February, eighteen hundred and seventy-six, and by said David C. Halstead and Charles A. Rowe before Job H. Lippincott, Master in Chancery of New Jersey, on the third day of March, eighteen hundred and seventy-six, and recorded in the Register's Office of the County of Essex on the twenty-first day of April eighteen hundred and seventy-six, in Book S. 18 of Deeds, page 214; to which said license and the certificates of acknowledgment and of record thereon endorsed, or to a duly authenticated copy of the record thereof, your Informant begs leave to refer, if it be necessary so to do.

26

27

On Amended Information.

That the said lands of the said American Creosoting Company are part of the lands owned by the said Charles Baeder and others, to whom said license was granted, and came into the possession and ownership of the said American Creosoting Company by various mesne conveyances.

29 9. That said license was given and issued under and by virtue of the act of the Legislature of New Jersey, entitled, "An act to authorize the owners of lands upon tide waters to build wharves in front of the same," approved March eighteenth, eighteen hundred and fifty-one; that section five of said act authorizes and empowers the person or persons to whom the said license is given or granted, to erect the dock, wharf or pier at any time within five years from the date thereof; and that said docks, wharves or piers, or so much thereof as may be erected within said five years, shall be vested in the licensee, in the same manner, for the same estate, and for 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. That said persons to whom said license was given, or some one or more of them, 30 or their grantees, as your Informant is informed, erected the second above mentioned dock, wharf or pier, extending out into said river beyond the Commissioners' dock line of 1872, or some part thereof, within five years from and after the date of said license, and partly upon lands included in and covered by said license and as to that part thereof within said Commissioners' dock line of 1872, and between said line and the high-water line of said Passaic River, marked upon Schedule A, "Old Dock A," acquired thereby and by virtue and force of said license an estate in the lands covered thereby and the right to maintain that portion of said dock, wharf or pier; but this Informant shows

On Amended Information.

that said license by its express terms only licensed the licensee and their grantees of the adjoining lands, to erect a dock, wharf or pier out to the said Commissioners' dock line of 1872, and did not and could not license the grantees thereunder, or their grantees of the adjoining lands, to build or maintain said wharf, dock, or pier, upon the lands of the State outside of and beyond said Commissioners' dock line of 1872, and that so much of said dock, wharf or pier as extends and is now maintained beyond and outside of said dock line of 1872 is not authorized by such license, and that by virtue of said license or anything therein contained the said American Creosoting Company never acquired and now has no right or authority to maintain or use the same. 32

10. That no further or other dock, wharf or pier than that last mentioned and described in paragraph nine of this bill, was erected, constructed or maintained upon that part of the lands under water described in said license, adjoining the tract of land now owned by said American Creosoting Company, upon which it has erected its manufacturing buildings and now carries on its said business, within five years from and after the date of said license, and especially upon that part thereof first herein above described and upon which said dock, wharf or pier first above mentioned and shown upon said Schedule A as "New Dock, 1911-1913, 2nd," was erected and is now maintained, and that by reason thereof, neither said licensees, or said American Creosoting Company acquired or now have any right or authority whatsoever under and by authority of said license to maintain or use said dock, wharf or pier upon said lands under water, or any estate or interest in said lands under water; and said dock, wharf or pier was erected by said American Creosoting 33

On Amended Information.

Company sometime in the years nineteen hundred and eleven to nineteen hundred and thirteen, without any license or grant from the State or from the Board of Riparian Commissioners, in trespass and usurpation upon the lands and rights of the State of New Jersey, and is now maintained and used in usurpation and violation thereof.

35 11. That by the third section of an act of the Legislature of the State of New Jersey, entitled "A Supplement to an act entitled 'An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty-four," which supplement was approved March thirty-first, one thousand eight hundred and sixty-nine, as said section was amended by an act approved March twentieth, one thousand eight hundred and ninety-one, it was provided:

36 "3. And be it enacted, That the act entitled 'An act to authorize the owners of lands upon tide waters to build wharves in front of the same,' approved March eighteenth, one thousand eight hundred and fifty-one, be and the same is hereby repealed as to the tide waters of this state below the line of mean high tide; but said repeal shall not be construed to restore any supposed rights, usage or local common law, founded upon the tacit consent of the state or otherwise to fill in any land under water below mean high tide; and without the grant or permission of said commissioners no person or corporation shall fill in, build upon or make any erection on or reclaim any of the lands under the tide waters of this state; and in case any person or corporation so offending shall be guilty of purpresture, which shall

On Amended Information.

be abated at the cost and expense of such person or corporation, on application of the attorney general under decree of the court of chancery or by indictment in the county in which the same may be, or opposite to or adjoining which said purpresture may be;" * * * &c.

In tender consideration whereof, and for as much as your Informant is without adequate relief at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable; 38

To the end, therefore, that the said American Creosoting Company, a corporation as aforesaid, may, without oath, answer under oath being hereby expressly waived, full, true and perfect answer make to all and every the matters aforesaid, and that as fully and particularly as if the same were here again repeated, and they thereunto particularly interrogated; and that the said defendant may be restrained by the order and injunction of this Honorable Court from further maintaining, using or enjoying the said dock, wharf or pier first hereinabove described, and shown upon said plan or diagram, schedule A, in orange shaded lines, marked "New Dock, 1911-1913, 2nd," and being 76.37 feet, facing on said river, and extending back to high-water line of said river on the southerly bank thereof 50.26 feet; and from maintaining, using or enjoying so much of said dock second above described, as extends into said river beyond the Commissioners' dock line of 1872, a distance of ten feet on the westerly face or side thereof, and twenty-five feet on the easterly face or side thereof, as shown on the map of said Commissioner now on file in the Clerk's Office of the County of Essex, 39

On Amended Information.

and as shown on the plan or diagram, Schedule A, marked "Old Dock, B," and that the said defendant American Creosoting Company may be compelled, by the mandatory injunction and order of this Honorable Court to remove said dock, wharf or pier first above described, and shown upon said plan or diagram, Schedule A, in orange shaded lines, marked "New Dock, 1911-1913, 2nd," and being 76.37 feet facing on said river, and extending back to high-water line of said river on the southerly bank thereof 50.26 feet; and to remove so much of the said dock, wharf or pier secondly above described as extends into said river beyond the Commissioner's dock line of 1872, as shown on the map of said Commissioners now on file in the Clerk's Office of the County of Essex, a distance of ten feet on the westerly face or side thereof, and twenty-five feet on the easterly face or side thereof, and as shown as the plan or diagram, Schedule A, marked "Old Dock, B," from the lands of the State of New Jersey;

41
42 And that your Informant may have such further and other relief in the premises as the nature of the case may require, and as shall be just and equitable.

May it please your Honor, the premises considered, to grant unto your Informant the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said American Creosoting Company, a corporation as aforesaid, commanding it, at a certain day, and under a certain penalty therein to be expressed, to be and appear before this Honorable Court, then and there to answer all and singular the premises and to stand to, abide by, and perform such decree as to your Honor shall seem meet.

Answer.

And your Informant, as in duty bound, will ever pray, etc.

JOHN W. WESCOTT,
Attorney General of the State
of New Jersey,
Solicitor for and of counsel
with the Informant.

Answer.

44

IN CHANCERY OF NEW JERSEY.

Filed February 7, 1916.

<p style="text-align: center;">Between</p> <p>JOHN W. WESCOTT, Attorney General of the State of New Jersey,</p> <p style="text-align: center;">and</p> <p>AMERICAN CREOSOTING COMPANY Defendant.</p>	}	<p>Informant,</p> <p>On Amended Information.</p>
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The American Creosoting Company answering the Amended Information of John W. Wescott, Attorney General of the State of New Jersey says that:

1. It admits paragraph "1" of the Amended Information.
2. It admits paragraph "2" of the Amended Information.
3. It admits paragraph "3" of the Amended Information.

Answer.

4. It denies "that the whole of said dock, wharf or pier is built and constructed upon lands under water, and covered by the ebb and flow of the tide in the said Passaic River, which said lands are the sole and exclusive property of the State of New Jersey, and under the jurisdiction of the Board of Commerce and Navigation of the State of New Jersey created by an act entitled "An act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April eighth, nineteen hundred and fifteen, and, before the first day of July nineteen hundred and fifteen, were under the jurisdiction of the Board of Riparian Commissioners, whose duties and powers were merged and vested in the said Board of Commerce and Navigation in and by said last above mentioned act."

48 It admits that its dock or pier is built upon the land particularly described in said paragraph "4" which is referred to on the map annexed to said Information as "New Dock 1911-1913, 2nd" and that said dock, wharf or pier was constructed by this defendant some time between the years 1911 and 1913.

5. It admits paragraph "5" of the Amended Information.

6. It admits paragraph "6" of the Amended Information.

7. It denies the whole of paragraph "7" of the Amended Information, except that part thereof in which it is alleged that the State of New Jersey, either by legislative grant, or through the Board of Commerce and Navigation, or the Board of

Answer.

Riparian Commissioners, or through any of its agencies, has not at any time made any grant or lease for any purpose whatsoever, of "that part of dock, wharf or pier second above mentioned, extending beyond the said Commissioners' dock line of 1872, as now maintained by said American Creosoting Company either to said American Creosoting Company or to any person, corporation or association whatsoever."

8. It admits paragraph "8" of the Amended Information.

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9. It admits paragraph "9" of the Amended Information.

10. It denies paragraph "10" of the Amended Information and says that within five years from February 23rd, 1876, Charles Baeder, William Adamson, Benjamin F. Webb, Charles B. Baeder, J. Adamson, William M. Scott, and William B. Adamson, or their successors in title to the land now owned by this defendant, erected and built the wharf, dock or pier. Beginning at a point in the high water line of the southerly shore of the Passaic River, distant easterly 76.37 feet from lands conveyed to A. A. Guigues by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, Page 598, and from thence (1) northerly 0 degrees 23 minutes East about 60.26 feet; thence (2) South 86 degrees 49 minutes East 60 feet; thence (3) South 1 degree 11 minutes West about 54.29 feet to the original high water line of said Passaic River; thence (4) Westerly along the same to the place of beginning. Being the dock shown on the diagram or map attached to the Informant's Information and thereon designated as "Old Dock A and Old Dock B".

51

That in addition to the erection of said dock, and as a part thereof, this defendant's predecessors

Answer.

in title, within five years from February 23rd, 1876, (the date of the grant or license from the Board of Chosen Freeholders of the Counties of Essex and Hudson) for use in conjunction with the above mentioned dock or pier, drove piling along the exterior dock line as adopted April 1, 1872, by the Commissioners appointed by the Act of the Legislature of the State of New Jersey, in an easterly direction from the easterly line of said dock, or pier, a distance of 229.25 feet, which piling was connected by stringers or tie pieces and this defendant's predecessors in title also within said five years from the date of said grant or license, and to be used in conjunction with said pier, drove piling along the exterior dock line as adopted by the said commissioners, westerly from the westerly line of said dock or pier, a distance of 76.37 feet, which piling was connected by stringer or tie pieces; that said piling or tie pieces were used for the purpose of tying or mooring boats or vessels until such boats or vessels could be brought to said dock for the purpose of loading or unloading cargoes, and that by reason of the use for which said piling and stringer or tie pieces were placed and actually used, such piling and stringer or tie pieces became part and parcel of said dock, or wharf, and the lands between said rows of piling became and were vested in this defendant's predecessors in title, and such lands are now by mesne conveyances vested in this defendant.

11. There are no facts alleged by Informant in paragraph "11" of the Amended Information and this defendant is advised that it is not necessary for it to answer such paragraph.

12. This defendant further answering says that on February 23rd, 1876, the Boards of Chosen Freeholders of the Counties of Essex and Hudson

Answer.

granted to Charles Baeder and others (this defendant's predecessors in title, who were then the owners in fee of the adjoining ripa) the privilege of erecting a dock, wharf or pier on lands of which the following described is a part, that is to say:

Beginning in the southerly shore line of the Passaic River, (being the high water line) at the northeasterly corner of land conveyed to A. A. Guigues by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, Page 598, etc., thence (1) North 0 degrees 23 minutes East 50 feet to the exterior dock line; thence (2) South 86 degrees 2 minutes East 76.37 feet; thence (3) South 71 degrees 2 minutes East 64.36 feet; thence (4) South 87 degrees 10 minutes East 229.25 feet (the last three courses being along the said exterior dock line) thence (5) South 2 degrees 36 minutes West 79.29 feet to the high water line of the Passaic River and thence (6) Westerly and along the said high water line of the Passaic River to the point or place of beginning.

That all the above described lands were reclaimed in accordance with the statute in relation to such licenses issued by the Boards of Freeholders, and all proceedings and acts necessary to be done and performed under the terms of the Act of the Legislature and the terms of said grant or license have been and were done within the time required by law, whereby and by reason of which the title to the above described lands became vested in fee in said licensees, this defendant's predecessors in title, and by reason thereof this defendant's title is paramount to the title and ownership of the State, and the State is precluded from setting up or claiming any title thereto.

Answer.

And this defendant humbly prays to be hence dismissed.

AMERICAN CREOSOTING COMPANY

By Ernest G. Draper,
President.

Attest:

J. B. SINCLAIR,
Secretary.

59 (Seal)

State of New York, }
County of New York. }^{ss.:}

The answer of the defendant, American Creosoting Company, was taken this third day of February, 1916 before me, under the common seal of said corporation, as by its said seal, thereof affixed, appears.

DANIEL L. CAMPBELL,
Master in Chancery
of New Jersey.

60

Testimony.

IN CHANCERY OF NEW JERSEY.

Between JOHN W. WESCOTT, Attorney General of the State of New Jersey, Informant, and AMERICAN CREOSOTING COMPANY, Defendant.	On Informa- tion.
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62

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the fifth day of April, 1916, at 10:30 A. M.,

Before:

Hon. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

HERBERT BOGGS, Assistant Attorney-General, 63
 for the Attorney-General;

FRANCIS LAFFERTY, LEWIS STARR, and P.
 W. RUSSELL (of the New York Bar) for De-
 fendant.

JOHN C. PAYNE, a witness produced on be-
 half of the Informant, being duly sworn, testified
 as follows:

Direct examination by Mr. Boggs:

Q. Mr. Payne, what is your present position?

A. Assistant chief engineer of the Board of Com-
 merce and Navigation of the State of New Jersey.

John C. Payne—Direct.

Q. That board was organized when? A July 1, 1915.

Q. Under a law passed that year? A. Yes, sir.

Q. And before that time what was your position? A. I was the secretary and the engineer of the State Board of Riparian Commissioners, from 1897 up to that time.

Q. How long were you engineer, Mr. Payne? A. From 1897 until July 1, 1915.

65 Q. And before that time were you connected with the Riparian Board? A. Assistant engineer from 1877 to 1897, and then I became chief engineer.

Q. Were you connected with the Commission before 1877? A. Yes, sir, beginning in 1877, assistant chief engineer.

Q. Are you familiar with the lands in controversy in this case? A. Yes, sir.

Q. Did you personally make that diagram (showing witness a paper)? A. Yes, sir.

Q. This is the original drawing, isn't it, from which the one annexed to the bill was made? A. Well, they are both in my handwriting, and I think the one I have before me is the original.

66 Q. How long have you been familiar with the river front of the Passaic River at this part, where these lands are situated? A. 30 or 40 years, 30 years.

Q. Can you state anything relative to the existence of piles with string pieces attached upon the portion in front of, on the dock line of 1872, upon the part of the premises marked on the diagram, Schedule A annexed to the bill, as "New Dock, 1911-13?" A. I can state positively that in 1911, when I made the examination, which was being done because of work being carried on in connection with the old dock, that there was no piles, and consequently, no string pieces in the portion in question.

John C. Payne—Cross.

Q. Was the new dock there at that time? A. No, sir, I don't remember having seen any of the piling in that space at any time.

Q. How far back does your recollection go as to that? A. Distinctly, ten years.

Cross-examination by Mr. Russell:

Q. You haven't any recollection as to what was there prior to 1901? A. No distinct recollection, no.

68

Q. You couldn't say whether there was any sort of a structure there prior to 1901? A. Yes, Sir; there was no structure there, and the only confusion in my mind is, that there are pieces of piling, snags of piling at another part of the water-front in back of a shoal that is not used as much as this section is.

Q. How far back will your memory carry you as to the fact of whether or not there was any sort of structure there? A. Distinctly, ten years; I am now referring to the section that the Assistant Attorney-General referred to.

Q. That would be in 1901? A. Yes.

Q. Have you any memory of any character of structure there prior to that time? A. I have a distinct memory there was no structure there, and my only uncertainty is, that there are these snags of piling which would be covered at high water. I observed the conditions on that water-front.

69

Q. What period of time does that cover, this recollection you now speak of; what portion prior to 1901 does that cover? A. 30 years.

Q. So, that so far as your memory goes, there never was any structure there except this dock? A. Yes, except the row of piling with the snags still remaining; that was not in this section.

Q. No piling in this section? A. Previous to

John C. Payne—Cross.

1901 my recollection is not distinct; there might possibly be snags of piling covered at high water, there being access to it by boats would destroy any evidence of piling in that water.

Q. Am I to understand from what you say, that your memory is not sufficiently clear that you would be willing to say whether or not there was any structure there of any kind? A. I remember there was no structure there other than the old dock that is shown on the diagram as extending
71 beyond the solid filling line.

Q. What would you do, would you consider piling and string pieces on piling a structure? A. No, I would hardly call that a structure, but it would be such a construction that I would remember distinctly if I saw it.

Q. Was there any structure or piles and string pieces in the sight of the new dock, prior to 1901? A. I don't remember seeing any such.

Q. Will you say that there was not any? A. No, sir, not prior to 1901.

Re-direct examination by Mr. Boggs:

Q. According to your recollection, Mr. Payne, were there any piles or string pieces prior to 1901
72 upon this front, visible above the high water line? A. I don't remember seeing any in the section referred to, and my recollection is strengthened because I have always had in mind the sight of intermittent snags of piling more to the East of this section, East of the old dock, because that was my duty to observe whenever I was passing that section of the water front.

Q. You did see snags of that piling East? A. Yes, and that was what called my attention to this new dock in my examination and the report of the board.

Informant Rests.

William B. Adamson—Direct.

WILLIAM B ADAMSON, A witness produced on behalf of the Defendant, being duly sworn, testified as follows

Direct examination by Mr. Starr:

Q. Where do you reside? A. Philadelphia.

Q. Are you the William B. Adamson mentioned as one of the licensees in the Freeholders' dock license set up in the bill of complaint in this cause?

A. I am.

Q. As having been granted sometime in February, 1876? A. Yes, sir.

Q. At that time to what use was the property along the Passaic River in front of which this dock license was granted, put? A. To ship by canal boats the material we gathered from the tanneries at Newark.

Q. Was it used as a manufacturing place or a shipping place? A. For glue stock as a shipping place, and for hair as a manufacturing place.

Q. Was there a factory built back from the river? A. Yes.

Q. Were you a member of the firm of Bader, Adamson & Co at that time? A. Yes, sir, in 1873.

Q. How far back from that time can you remember this property at Newark? A. That would be very hard to say; I should say ten years, anyhow.

Q. I show you a map attached to the bill of complaint in this cause, and marked "Schedule A," and ask you whether you recognize the location of the old dock, that portion of the property which is marked "Old Dock?" A. Yes, sir, I recognize that.

Q. In 1876, was that old dock there? A. Yes, sir.

Q. To what use was the old dock put at that time? A. For loading and unloading canal boats.

William B. Adamson—Direct.

Q. After the Freeholders' dock license was acquired by Bader, Adamson and Company, what did that firm do with reference to the company reclaiming upon a portion of the land included in the license? A. We drove a row of piles and put a cap log on all across the property.

Q. That was upon this portion (indicating on the map)? A. Yes, sir.

Q. How far did that extend towards the West? A. The total front.

77 Q. And how far towards the East? A. It covered our front.

Q. Did it include the land now owned by the American Creosoting Company? A. Yes, sir.

Q. At the time the Freeholders' dock license was acquired— A. Yes.

Q. Did that extend beyond the land which is now owned by the American Creosoting Company? A. Yes, sir.

Q. On the East and West? A. Yes.

By the Court:

Q. What did? A. The piling cap log.

78 Q. What was the character of the construction of the piling and cap log? A. Regular piling driven in and a cap log secured to them.

Q. How far apart were the pilings? A. I should judge about seven or eight feet.

Q. What was the size of the cap log on top? A. About 12 inches, as I recall.

Q. Wide enough to walk on? A. Yes, sir.

Q. You mean a stringer? A. Yes, sir.

Q. At high water, how far was the cap log above the water? A. I should judge six feet.

Q. Can you tell us whether or not there was any visible connection between the line of pilings and

William B. Adamson—Direct.

the old dock? A. It was connected with the old dock.

Q. In what way? A. Spikes along, iron spikes that they build wharves with.

Q. To what use was the line of pilings with the stringer put after it was erected? A. To tie up the canal boats there waiting to be loaded and unloaded: the one at the dock would be loading or unloading, and the other one would be there.

Q. Would the string pieces be used by the men to get to the boats, the men on the dock? A. Yes. 80

Q. How late did that use of the line of pilings continue? A. I couldn't tell positively, but I should say about 1900, or '01 or '02, along there.

Q. What was the character of the use which the piling was put to up to that time? A. To secure boats to while loading and unloading.

Q. Do you remember when Bader, Adamson and Company sold the property? A. Six or seven years ago we sold to the American Hair Felt Company.

Q. Did you acquire title to the property? A. Yes, the property was all transferred to me for the purpose of re-transferring. At that time I was the only bachelor in the firm.

Q. It belonged to the firm until it was sold to the Hair Company? A. Yes. 81

Q. How long did your knowledge or familiarity with this property and the pilings in front of it, continue? A. Until we sold it.

Q. When you acquired the Freeholders' dock license, were you represented by counsel, do you remember? A. I think the Hon. John Griggs was our counsel at that time.

Q. Upon whose suggestion or advice did Bader, Adamson and Company drive pilings and put string pieces along your property?

Mr. Boggs: That is objected to.
The Court: Objection overruled.

William B. Adamson—Direct.

A. I couldn't answer that, because I don't know that there was any advice at all.

Q. What was your object in putting pilings along in front of the property at that time? A. To conform to the laws; we were notified.

Q. How soon after the dock license was acquired in 1876, did you begin putting this piling there?

A. I think it was within a year, that same year, I think.

83 Q. How long did the work continue; how long were you putting the pilings there? A. Oh, it shouldn't take more than a week.

Q. Were all the pilings placed there within five years after you acquired the license? A. Yes, sir, within five years after we acquired the license.

By the Court:

Q. Was the old dock built before or after the piling was put in position? A. No, before.

Q. What was the character of that old dock, what sort of a construction? A. I hardly know; it's a regular old-fashioned dock construction.

Q. It had a floor to it? A. Yes, sir.

Q. And a deck? A. Yes, sir.

Q. And pilings? A. Yes, sir.

84 Q. Were there any string pieces on any part of the construction or the piling, extending from the pilings towards the shore, the pilings on the old dock, whether there was anything connecting the pilings to the shore? A. Nothing, except braces.

Q. Where were those located? A. Against the cap log.

Q. And they extend to where? A. To the ground, to the braces.

Q. At what intervals were those braces put? A. About every other pile.

Q. Were those braces above the water or in the water? A. Above the water.

Peter Hagan—Direct.

By the Court:

Q. At the point where the brace struck the land, was the land under water? A. Yes, sir, under high water, but not at low water.

Q. How far was it, Mr. Adamson, according to your recollection, how far was it from the fast land at high tide to where the line of piling was located?

A. 20 or 25 feet.

Q. Did Bader, Adamson and Company do anything in the way of repair of that line of piling, from time to time? A. I don't think they ever did; I have no knowledge of it. 86

Cross-examination by Mr. Boggs:

Q. You said that this old original dock was built before 1876? A. Yes, sir.

Q. Did this old dock, built before 1876, extend out to its present location as shown on this map?

A. It extended out the distance when we sold the property; I can't tell you whether this is a new or old line, but if the dock has not been added to, it extended out.

Q. And was that same extension there in 1876? 87

A. Yes, sir.

Q. That is, did you extend it out at all after 1876? A. No, sir.

PETER HAGAN, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Starr:

Q. Mr. Hagan, where do you live? A. Camden.

Q. What is your business? A. I used to be in the water business, tugboats, but not now.

Peter Hagan—Direct

Q. Did you have anything to do with the shipping business conducted by Bader, Adamson and Company from their plant in Newark to Philadelphia? A. Yes, sir, from '67, oh, up until about, probably, 15 years ago.

Q. What had you to do with it? A. We had to carry all the stuff, the cargoes, from there, glue stock and hair, and sometimes fetch the coal over.

Q. Whose boats were you using for that purpose? A. My own and my brother's.

89 Q. Do you remember the old dock in use in front of their property on the Passaic River? A. Yes, sir.

Q. Do you remember a line of piling that extended towards the East and towards the West from the old dock? A. Yes, sir, I was there when they were putting them in.

Q. And what sort of a construction was used?

The Court: I think I have a mental picture of it.

90 Q. To what use was that piling put by you, or by the boats that were owned by you? A. We had to tie our boats up; it used to run in; above the dock and below the dock was connected; we could walk along the stringer and there would be planks to get ashore.

Q. How many boats would you have moored to the piling? A. I have seen seven or eight there at one time.

Q. How would the men get along the docks in the boats? A. Go along the dock and hoist it out.

Q. How long, according to your recollection, was the dock and the piling in connection with the dock, used in that way and for that purpose? A. The dock was there before my time.

Q. And speaking about the pilings? A. I judge

Peter Hagan—Cross.

the pilings was put in along '75, '76, or '77, along them years.

Q. How long did that use continue, according to your recollection? A. Them pilings?

Q. Yes, the use you say. A. We couldn't get along without the pilings.

Q. Why not? A. There wasn't wharf enough there; there was a short little bit of a wharf; we had to have the pilings to connect with the boat; it answered the same as the wharf; we made fast to it.

Q. Was that use limited to one side or both sides of the dock? A. Both sides. 92

Q. How late did Bader, Adamson and Company use the pilings and dock that way? A. I couldn't say; it's about 13 or 14 years since the railroad ran in there, and that put us out.

Q. Up to that time was it used in that way? A. Yes, sir.

Cross-Examination by Mr. Boggs:

Q. I understand that these boats were tied to these pilings only until there was an opportunity to go up to the wharf and unload; isn't that so? A. Yes, sir. 93

Q. You didn't unload until you got the boat up to the wharf? A. Yes.

Q. They were simply there to await their opportunity at the wharf? A. Yes, sir, to get into the short wharf.

Q. How large was this cap piece? A. 12 or 14 inches, quite a wide cap pieces.

By the Court:

Q. You load and unload a boat at a wharf? A. Yes, sir.

Q. You couldn't unload your boat along any line

Conclusions.

of piling except at this wharf? A. No, but you couldn't load without you had the pilings, you couldn't lay there.

Mr. Starr: We have other witnesses, but it would be cumulative and the same general character of testimony.

Mr. Boggs: We don't intend to rebut that; we have no rebuttal.

Both Sides Rest.

Conclusions.

Submitted, April 5, 1916.

Decided, April 12, 1916.

IN CHANCERY OF NEW JERSEY.

96

Between	}
JOHN W. WESCOTT, Attorney General of the State of New Jersey,	
Informant,	}
and	
AMERICAN CREOSOTING COMPANY, Defendant.	

A license granted under the Wharf Act of 1851 (C. S. 5856) is not executed by the stringing of piles along the dock-line on either side of, and tied to, a preexisting wharf; and the land thus enclosed is not thereby vested in the licensee

For the Informant: John W. Wescott. Esq., Atty.
General:

Conclusions.

For the Defendant: Mr. Francis Lafferty:

Backes, v. c.

This is an Information, by the Attorney General, who seeks to have a wharf, erected by the defendant on the southerly shore of the Passaic River at Newark, declared a purpresture, and an injunction for its removal. The defendant claims the right to maintain the wharf under a license granted to its predecessor in title, Baeder and Adamson, by the Board of Freeholders of Essex, by virtue of the Wharf Act of 1851 (C. S. 5856), the fifth section of which provides that such license 98

“Shall *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.” 99

The license was granted February 23, 1876, and extended across the whole of the river front of the licensee's land 891.65 feet, and into the river to the dock-line, fixed by a commission appointed, for that purpose, by the Legislature in 1872. Years before the license was obtained, Baeder and Adamson maintained a wharf on their property some 60 feet in width, reaching into the river a considerable

Conclusions.

distance beyond the after-established dock-line; but, by what right, if any, is not disclosed. This wharf is still standing and in use by the defendant. Within the year of the grant, the licensees sunk piling along the dock-line the entire length of their property, 7 or 8 feet apart, joined together by 12 inch cap logs or stringers and fastened to the wharf on either side. Nothing else was done until 1911, when the defendant built another wharf, the one in question, immediately adjoining and westerly of the old one. By that time the string of cap logs and piling had disintegrated.

A single question is submitted for decision: was the enclosure of the land by the row of piling and top pieces an execution of the license within the intent of the act above quoted, so as to divest the State of its land and vest it in the licensees? Such an enclosure, without more, was held by Vice-Chancellor Emery in *Stockton. Attorney General v. American Lucol Co.*, 36 Atl. Rep., 572 to be not a compliance with the terms of the grant. Assuming the doctrine of that case to be sound, defendant's counsel controverts its application to the present situation, because of the added feature here of the old wharf, of which, they contend, the row of piling and the connecting stringers, when erected, became an integral part and laterally expanded and spread it over the whole of the licensees' 800 feet and more of river front. The preexistence of this wharf, it seems to me, affords no differentiating factor, inasmuch as the premise upon which the theory of automatic enlargement rests is unsubstantial, for the reason that when Baeder and Adamson got their license from the Freeholders, they put in the piling, not for the purpose of extending the wharf, but, as Mr. Adamson says, "to conform to the laws"—simulation—tying them by stringers to the wharf, was an economic measure, without thought

Conclusions.

or intent of being complementary of the statutory requisite; and, further, because the price of the State's land was a practical and not an ideal compliance with the condition of the grant. True, it may be, as the defendant says, that the pilings were used and advantageously, for the mooring of boats preparatory to charging and discharging cargo, but the most that can be claimed on that score is that they furnish a convenience and facility for the work at the wharf, without being a constituent or essential part of it. I do not mean to indicate that the proprietary right acquired by a licensee erecting a wharf is confined to the area covered by the platform or floor-space of the structure, but my view is that the right is only coextensive with such immediate lateral fixtures necessary for its maintenance, and as are incidental to a full enjoyment of the privilege. The stretch of piling put in by the licensees to serve another purpose, obviously does not come within this criterion. The design of the act under consideration, to stimulate commercial navigation, and the legislative scheme imposing an obligation upon the licensee to build a dock, wharf or pier as consideration for the State's title, manifestly demands something more than the mere fencing in or enclosing the land by a line of poles.

The spirit and meaning of the statute is that, within the time limited, a licensee shall have bona fide erected a "wharf", viz.: A space of ground artificially prepared for the reception of merchandise from a ship or vessel, so as to promote the convenient loading and discharging of such vessel. Bouv. 3449. or, build a "dock", viz.: The slip or waterway extending between two piers or projecting wharfs for the reception of ships, sometimes including the piers themselves. Webster; in order to earn a concession, and that the land thus ceded

Final Decree.

was to be confined to the dock, wharf, or pier proper. The preemption, by virtue of the license, is not redeemed by a structure covering only a fractional portion of the grant.

The licensees not having in any sense met the requirements of the law, the defendant is adjudged guilty of purpresture in regard to the wharf built in 1911, and it will be ordered removed. So much of the old wharf maintained beyond the dock-line, the illegality of which was not denied, will also be ordered removed. Costs to the State.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Filed June 13, 1916.

	Between	
	JOHN W. WESCOTT, Attorney	} On Informa-
	General of the State of New	
	Jersey,	Informant,
108	and	} tion.
	AMERICAN CREOSOTING COMPANY,	
	Defendant.	

This matter coming on to be heard in the presence of Herbert Boggs, Esq., Assistant Attorney General, counsel for the Informant, and Messrs. Francis Lafferty and Louis Hood, counsel for the Defendant, and the court having heard the testimony and the argument of counsel, and considered the same, and it appearing that the said Defendant, the American Creosoting Company,

Final Decree.

has constructed and now maintains a certain dock, wharf or pier, extending from the high-water line of the Passaic River, in the City of Newark, County of Essex and State of New Jersey, easterly into and upon the said Passaic River, and beyond the high-water line of said river, a distance of 50.26 feet, more or less, to the westerly dock line as established by the Commissioners appointed by the act of the Legislature of the State of New Jersey, approved April 1, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey January 27, 1877, and extending along the lands of said Company a distance of 76.37 feet, more or less, and that the whole of said dock, wharf or pier is built and constructed upon lands under water and covered by the ebb and flow of the tide in the said Passaic River, which said lands are the sole and exclusive property of the State of New Jersey, and are more particularly bounded and described as follows:

Beginning at a point in the Exterior Dock Line adopted by the Commissioners appointed by act of the Legislature of the State of New Jersey April 1st. 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey, January 27th, 1877, said point being three and five-tenths (3.5) feet along said Exterior Dock Line on a course South eighty-six degrees two minutes East, from the land conveyed to A. A. Guiges by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, on page 598. etc.; and from said beginning point running along said Exterior Dock Line South eighty-six degrees two minutes East, seventy-two and eighty-seven one hundredths (72.87) feet, more or less, to the westerly side of a dock; thence along the westerly side of said dock South one degree eleven minutes West.

Final Decree.

fifty (50) feet to the original high water line of the southerly shore of Passaic River; thence westerly along the original high water line of the southerly shore of Passaic River, seventy-six (76) feet to a point three and five-tenths (3.5) feet easterly of the westerly line of lands of the said American Creosoting Company; thence North twenty-three minutes East, fifty and twenty-six one hundredths (50.26) feet to the Exterior Dock Line approved and adopted as aforesaid, the point or place of beginning; and that the said dock erected and now maintained upon said lands is an illegal erection and a purpresture upon the lands of the State;

113

114

And it further appearing that the said defendant, American Creosoting Company, now maintains and uses a certain other dock, wharf or pier, adjoining said last above mentioned dock, wharf or pier on the east thereof, and extending out into the Passaic River, beyond the southerly dock or wharf line of said river, as established by the said Commissioners appointed by the said act of the Legislature approved April 1, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey January 27, 1877, and extends from the southerly high water line of said Passaic River northerly into said river a distance of sixty feet, more or less, and extends along the aforesaid lands of said Company a distance of sixty feet, more or less, and that said dock, wharf or pier as so constructed, extends out into the said river beyond the said Commissioners' dock or wharf line of 1872, a distance of ten feet, on the westerly face or side of said dock, wharf or pier, and twenty-five feet on the easterly face or side thereof; and that so much of that part of said dock, wharf or pier as extends into said river beyond the said Commissioners' dock or wharf line of 1872, is built, erected and maintained upon lands under water

Final Decree.

covered by the ebb and flow of the tide in said Passaic River, which said lands are the sole and exclusive property of the State of New Jersey, and are more particularly bounded and described as follows:

Beginning at a point in the Exterior Dock Line adopted by the Commissioners appointed by act of the Legislature of the State of New Jersey April 1st, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey, January 27th, 1877, distant along said Exterior Dock Line on a course South eighty-six degrees two minutes East, seventy-six and thirty-seven one hundredths (76.37) feet from the land conveyed to A. A. Guigues by deed dated June 20th, 1906, and recorded in Book F. 40 of Deeds for Essex County, on page 598, etc.; and from thence North one degree eleven minutes East ten (10) feet to the northerly face of the said dock in question; thence along said northerly face of said dock South eighty-eight degrees forty-nine minutes East, sixty (60) feet to the easterly face of said dock; thence along the easterly face of said dock South one degree eleven minutes West, twenty-five (25) feet to the Exterior Dock Line adopted by the Commissioners appointed under the said act approved April 1st, 1872, and adopted by the Riparian Commissioners of the State of New Jersey January 27th, 1877; thence along said Exterior Dock Line North seventy-one degrees two minutes West, sixty-four and thirty-six one hundredths (64.36) feet to the point or place of beginning; and that so much of said dock, wharf or pier as is erected and now maintained upon said lands and as extends into the Passaic River, beyond and outside of the Exterior Dock line adopted by the Commissioners appointed in the year 1872, is an illegal erection and purpresture upon the said lands of the State.

Final Decree.

It is, on this 13th day of June, nineteen hundred and sixteen, ordered, adjudged and decreed, and the Chancellor doth, by virtue of the power and authority in him vested, order adjudge and decree that the said dock, wharf or pier erected and now maintained upon the lands and premises first hereinabove described is an illegal erection, usurpation and purpresture upon the lands of the State of New Jersey, and that the title to said lands herein first above described is vested in the State of New Jersey, and that the defendant, said American Creosoting Company has no right, title, interest or estate whatsoever in and to the same, or any part thereof; and that so much of the dock, wharf or pier as is now erected and maintained by the said defendant, American Creosoting Company, upon the lands and premises secondly hereinabove described is an illegal erection. usurpation and purpresture upon the lands of the State of New Jersey, and that the title to the said lands secondly hereinabove described is vested in the State of New Jersey, and that the defendant, said American Creosoting Company, has no right, title, interest or estate whatsoever in and to the same or any part thereof, and that the said defendant, American Creosoting Company, do forthwith remove the whole of said dock, wharf or pier now erected and maintained by it upon the lands first above described, and so much of the dock, wharf or pier as is now erected and maintained upon the said premises secondly above described.

And it is further ordered, adjudged and decreed that a mandatory writ of injunction do issue out of and under the seal of this Court, directed to the said defendant, American Creosoting Company, commanding and directing the said defendant, American Creosoting Company, that it do forthwith remove the whole of the dock, wharf or

Final Decree.

pier now erected and maintained upon the premises first hereinabove described, and so much of the dock, wharf or pier as is now erected and maintained upon the premises secondly hereinabove described.

And it is further ordered that the defendant do pay the Informant's costs in this suit to be taxed.

E. R. WALKER,
C.

122

Respectfully advised,
JOHN H. BACHES,
V. C.

A True Copy,
ROBERT H. MCADAMS,
Clerk.

123

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Filed, June 22, 1916.

	Between	
125	JOHN W. WESCOTT, Attorney General of the State of New Jersey,	Informant.
	and	
	AMERICAN CREOSOTING COMPANY, Defendant.	

126 The Defendant, American Creosoting, Company, hereby appeals from so much of the Final Decree made in this Court in the above stated cause, as decrees that the dock, wharf or pier located and now maintained upon the land first described in the preamble of the Decree and referred to in said Decree as "the lands and premises first hereinabove described" is an illegal erection, usurpation and purpresture upon the lands of the State of New Jersey and that the title to the land in the Decree first described is vested in the State of New Jersey and that the Defendant, American Creosoting Company, has no right, title, interest or estate whatsoever in the same, or any part thereof.

FRANCIS LAFFERTY,
Solicitor of and Counsel with
The Defendant, American Creosoting Co.

I conceive there is good cause for appeal in the above stated cause.

FRANCIS LAFFERTY
Of Counsel with Informant.

Petition of Appellant.

NEW JERSEY COURT OF ERRORS

AND APPEALS.

Filed, July 6, 1916.

<p style="text-align: center;">Between</p> <p>JOHN W. WESCOTT, Attorney General of the State of New Jersey,</p> <p style="text-align: center;">Informant-respondant,</p> <p style="text-align: center;">and</p> <p>AMERICAN CREOSOTING COMPANY, Defendant-appellant.</p>	}	<p>On Bill &c.</p>	128
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To the Honorable, the Court of Errors and Appeals of the State of New Jersey in the Last Resort in all Cases:

Petition of the American Creosoting Company, the appellant in the above stated cause, respectfully shows that your petitioner is aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date June 13, 1916, wherein John W. Wescott, Attorney General of the State of New Jersey is Informant and the appellant is defendant, in the following respects, to-wit:

1. That said Court of Chancery, by its decree dated June 13, 1916, adjudged and decreed that the State of New Jersey is seized of the following described lands, situate in the City of Newark, County of Essex and State of New Jersey:

Beginning at a point in the Exterior Dock Line adopted by the Commissioners appointed by act of the Legislature of the State of New Jersey

Petition of Appellant.

April 1, 1872, and adopted by the Board of Riparian Commissioners of the State of New Jersey January 27, 1877, said point being three and five-tenths (3.5) feet along said Exterior Dock Line on a course South eighty-six degrees two minutes East, from the lands conveyed to A. A. Guiges by deed dated June 20, 1906, and recorded in Book F. 40 of Deeds for Essex County, on Page 598, etc; and from said beginning point running along said Exterior Dock Line South eighty-six degrees two minutes East, seventy-two and eighty-seven one-hundredths (72.87) feet, more or less, to the westerly side of a dock; thence along the westerly side of said dock South one degree eleven minutes West, fifty (50) feet to the original high water line of the southerly shore of Passaic River; thence westerly along the original high water line of the southerly shore of Passaic River seventy-six (76) feet to a point three and five-tenths (3.5) feet easterly of the westerly line of land of the said American Creosoting Company; thence North twenty-three minutes East, fifty and twenty-six one-hundredths (50.26) feet to the Exterior Dock line approved and adopted as aforesaid, the point or place of beginning.

2. That said Court further decreed the dock, wharf or pier erected upon the above described lands and now maintained by the appellant is an illegal erection, usurpation and purpresture upon the lands of the State of New Jersey and that this appellant has no right, title, interest or estate whatsoever in and to the same or any part thereof and said Court further decreed that the appellant should forthwith remove the whole of said dock, wharf or pier now erected and maintained by it upon the above described lands and further decreed that a mandatory writ of injunction should issue out of and under the seal of said court to the ap-

Petition of Appellant.

pellant commanding and directing it to forthwith remove the whole of the dock, wharf or pier now erected and maintained upon the above described premises.

3. That your petitioner humbly appeals from that part of the decree which decrees as aforesaid, upon the ground that the same is erroneous for that this appellant's predecessor in title on February 23, 1876, acquired from the Freeholders of the Counties of Essex and Hudson, in this State, a valid freeholder's license to erect upon the above described premises a dock, wharf or pier, and within five years from the date of said license the licensee therein named, being the owner in fee simple of the ripa, did erect a dock, wharf or pier on said lands, by reason whereof the title to said lands, in fee simple, vested in your petitioner's predecessor in title and by mesne conveyances is now vested in fee simple in your petitioner and that said dock, wharf or pier now erected on said lands is not an illegal erection, usurpation or purpresture upon the lands of the State of New Jersey. 134

YOUR PETITIONER THEREFORE PRAYS that said decree of said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 135

FRANCIS LAFFERTY,
Solicitor of Appellant
of Counsel with Appellant.

**Acknowledgment of Petition of
Appeal.**

NEW JERSEY COURT OF ERRORS
AND APPEALS.

137	<p style="text-align: center;">Between</p> <p>JOHN W. WESCOTT, Attorney General of the State of New Jersey,</p> <p style="text-align: center;">Informant-respondant,</p> <p style="text-align: center;">and</p> <p>AMERICAN CREOSOTING COMPANY, Defendant-appellant.</p>	} On Bill &c.
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Due and legal service of the petition filed in the
above entitled cause is hereby acknowledged.

JOHN W. WESCOTT,
Attorney General.

Answer.NEW JERSEY COURT OF ERRORS
AND APPEALS.

Filed September 27, 1916

Between JOHN W. WESCOTT, Attorney General of the State of New Jersey, Informant-respondant, and AMERICAN CREOSOTING COMPANY, Defendant.	}	On Bill, &c.	140
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The answer of the above-named respondent to the petition of appeal of the above-named appellant. This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the thirteenth day of June, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

JOHN W. WESCOTT,
 Attorney General of the State
 of New Jersey,
 Solicitor for and of Counsel
 with Respondent.

142

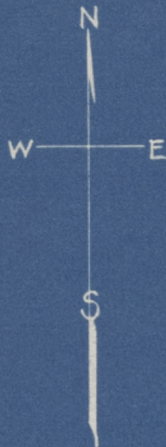
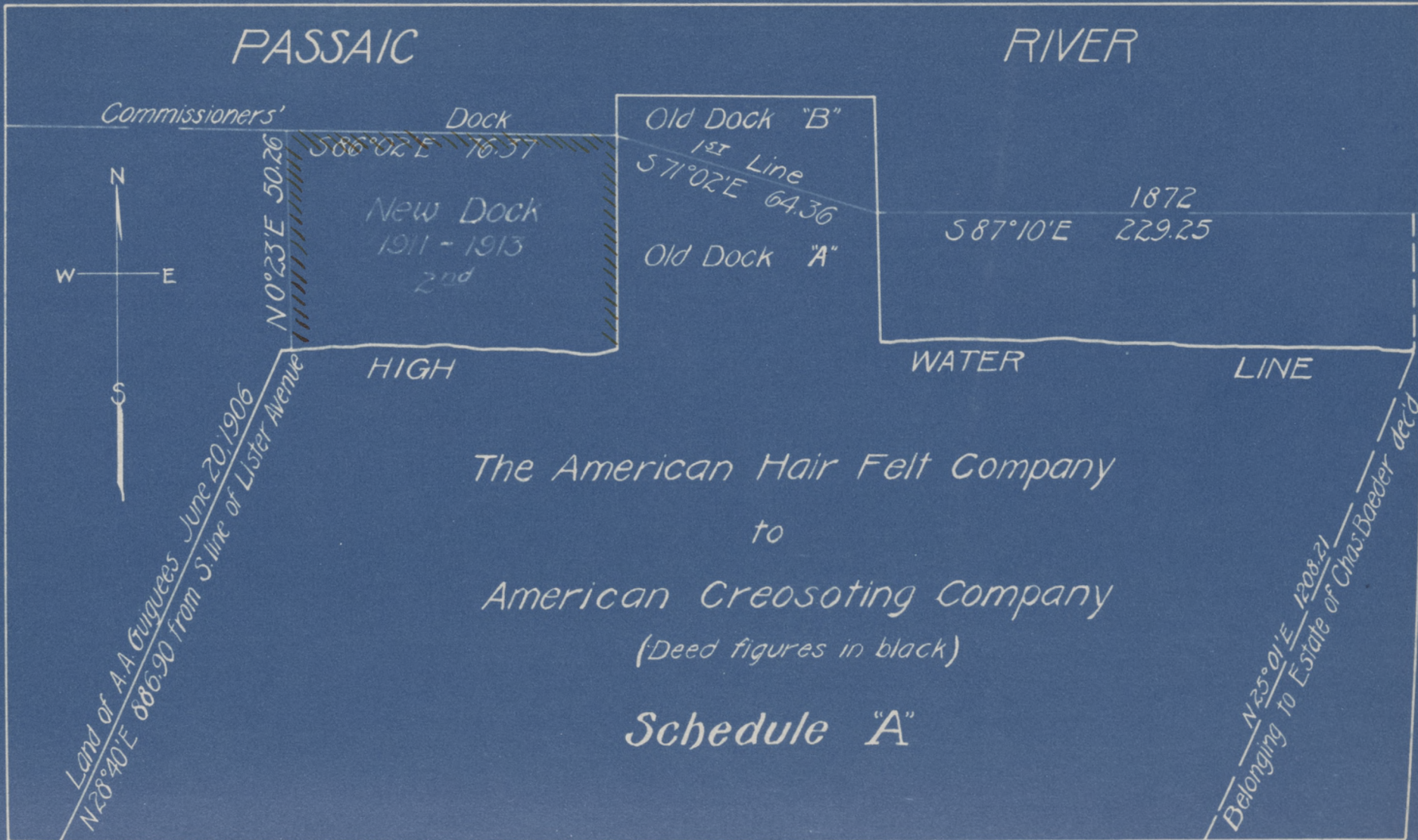
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143

144

PASSAIC

RIVER



N20°40'E 886.90 From S line of Lister Avenue

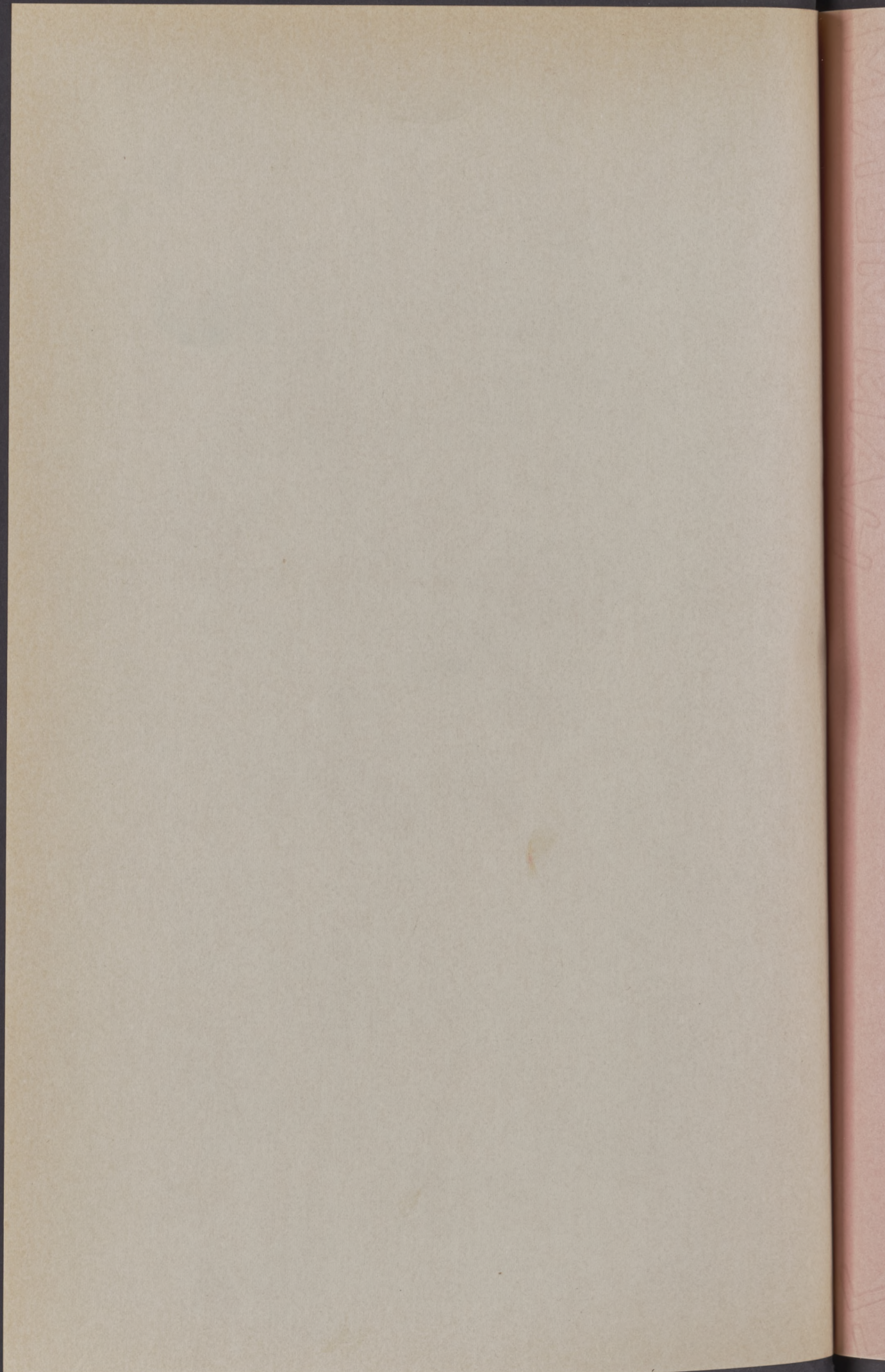
N0°23'E 50.26

586°02'E 76.57

571°02'E 64.36

587°10'E 229.25

N25°01'E 1208.21



MEMORANDUM

MEMBERSHIP