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FACTS

FOR THE

SHORE OWNERS

OF THE

STATE OF NEW JERSEY.

ISSUED BY THE

New Jersey Riparian Association.

JERSEY CITY, N. J.,

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IMPORTANT INFORMATION.

To the Riparian Owners of the State of New Jersey :

You are all earnestly requested to read this work, especially the Acts of the Legislature, passed 1869, and the judicial decisions of the Courts, as to the ownership of the lands under water opposite the shores.

The question of the titles to the lands lying under tide waters is no new one; they have been legislated upon for centuries, by all countries. The Courts have decided upon them again and again in nearly all its phases, but no country or State has ever before passed a bill attempting to take the shores and lands under water from the riparian owner and sell them to others, until this year (1869) the Legislature passed the bill called Senate Bill No. 76. The effect of this bill is to place all the shore front of Bergen and Hudson Counties in the power of a commission of six men to do as they please.

Many acts have been passed by the Legislature of this State when those directly interested have desired them, and a few local bills, but no bill was passed until April 11th, 1864; when a Company desiring extensive privileges, and for speculative purposes offered the State twenty-five dollars a foot. (*See American Dock Company's Act.*)

This commenced the plan of paying the State for its right of eminent domain, or in other words, for a release of all its claim on the lands under tide waters about the same time. The BOARD OF COMMERCE of the State of New York began to fear, (after the New Yorkers having filled up every foot they could of their shore) that the New Jersey people might encroach as much on the harbor as they had, and the result would be injurious to navigation, they appointed a committee to go to Trenton and prevent the improvements of the New Jersey shores. (*See Report of the Committee on Harbor Encroachments.*) This Committee, through some means, got a commission appointed, (see copy of Bill passed April 11, 1864), they went to work and in 1865 made a report, (See Report of Commissioners). The Legislature refused to adopt their report or extend the time of the commission, but every year, the Chairman of the Committee from the Board of Commerce has been at Trenton, and by wire-pulling and representations to the members of the country that these shores were worth millions of Dollars, and that they rightfully belonged to the State, that if sold they would pay off the State

debt and add to the School fund; free them from State taxation, support all the criminals and paupers, in fact, do most anything; still, the bill could not be enacted. At last when the Chairman of the Board of Committee of Commerce of New York, and the Morris County Delegation were in despair, a bargain was made with the Camden and Amboy Railroad Co., the New Jersey Railroad Co. and the Delaware and Raritan Canal Company to exempt them by the passage of a bill (*See Senate Bill 306*) which gives to these rich corporations all their water front free of all charge, except the paltry sum of Twenty Thousand Dollars, provided they, the Companies, would push the Bill 76 through; in less than an hour bill 306 was passed through both Houses, and then bill 76 was passed, and so this crowning infamy, a bill whose title should be, said an eminent lawyer, a bill to rob the widows and orphans—as another remarks, a bill to build up New York, and as we say, a bill to prevent the improvement of the Jersey Shores for years, and to put the State into expensive litigation.

We have for several weeks since the passage of bill 76, had council employed, searching, examining and copying all the decisions upon that which has any bearing upon this case, and after a careful examination of them, we are satisfied that we have the following reasons for the defence of our shores:

- 1st.—The right of all the soil conveyed by Patents and Deeds to low water mark long before Jersey was a State.
- 2d.—The right to the alluvion or additional land made by the action of nature on our shores.
- 3d.—The right to sail to and from our shores; our property being bounded by the rivers or bays, no power can legally force it away from us.
- 4th.—The right to Fish, Oysters and Clams from our shores.
- 5th.—The right to improve our shores, fill in, reclaim and build upon them for the benefit of ourselves and the public.
- 6th.—The right to enjoy our property that even the State cannot claim by its own acts of limitation to recover.

The decisions of the Courts, Customs and Laws are all on our side. Shall we be robbed of our birthrights without a struggle?

The state of the case therefore appears to be that navigable waters, and a right to use them for purposes of navigation and commerce belong to the public—to all the world; but the land over which such waters flow, to the extent of three miles from the *foreshore*, is, in Great Britain, private property, and such was formerly held to be the law in New Jersey, as is shown by the fact that in almost every grant by the Legislature of leave, whether to individuals or corporations, to fill in and reclaim submerged lands, construct bulkheads, wharves, piers, bridges, &c., or establish ferries, in or over navigable waters, the lands upon which they were to be constructed, or which would be affected by their construction and use, were distinctly admitted, by words contained in the grants, to be then owned by the grantees, or to be purchased by them before they could be entered upon and used for the purposes specified, and such will probably again be considered the law, as certain portions of crude and ill-advised legislation in Trenton, within the last seven years, will no doubt be corrected by the court of last resort at Washington.

The NEW JERSEY RIPARIAN ASSOCIATION has for three years endeavored to protect the shore owners from unjust and aggressive legislation, but they have used no corrupt means for their aid, relying upon the justice of their cause and knowing that any illegal acts would be set aside by the Courts.

Our case must be taken to the Courts; by the terms of the bill that created this commission, any one can apply for a shore front, and if the owner does not buy it the stranger can. We propose to protect every member of this Association, and by paying a small sum, any owner in the State can become a member and share its protection. In union there is strength, and in this case economy. We desire every owner of shore property to join us, and test this question. We do not propose to protect those who do not join us, they must do it themselves.

A Review of the Rights of the Riparian Owners.

Before the Commissioners recently appointed for that purpose, proceed to sell the submerged lands lying in Hudson County, for the purpose of replenishing the State treasury, it would seem proper for them or some other State official, duly authorized and instructed in the premises, to inform the public generally, and especially those who desire to become purchasers of those lands, when, from whom, how, or by what form of conveyance the State became the owner of the lands which the Commissioners are authorized and instructed to sell. Such information would afford those to whom they are offered an opportunity to inquire, and perhaps learn whether the deeds or other instruments professing to invest purchasers with a legal title thereto, would really transfer the ownership and dispossess those who have held them from the settlement of the country down to 1864—the date of the Charter of the "*American Dock and Improvement Co.*," in which the claim now asserted, on the part of the State, first received legislative recognition, all previous legislation relating thereto, having recognized (generally in express terms) the private ownership of the lands, which were simply permitted by the Legislature to be filled up, reclaimed, and occupied by proprietors whose titles were unquestioned, and supposed to be unquestionable.

Those who assert the right of the State to these lands have hitherto failed to produce the slightest shadow of evidence in support of the claim, or show when or from whom the title was derived—here assertion is substituted for title deeds, and documentary evidence of transfer; and there is a like absence of all direct, circumstantial or historical proof to sustain the claim.

The assumption that while the colony was subject to Great Britain, the lands in question were the property of the Sovereign, and as such, became the property of the State, at the formation of the new Government, is equally erroneous. The relation of the Sovereign of Great Britain to public property throughout his dominions has ever since 1215 (the date of Magna Charta) been that of trustee for his subjects, and not the proprietor. He was bound to preserve and improve the Royal domains, so called, but could not sell, or grant, or use any portion thereof except for the common benefit. Respecting this matter, Chief Justice Tancy, who delivered the opinion of the

Supreme Court of the United States, in the case of *Martin and others vs. Waddell*, said, "In all of them (the colonies) from the time of the settlement to the present day, the previous habits and usages of the colonists have been respected, and they have been accustomed to enjoy in common the benefits and advantages of the navigable waters, for the same purposes and to the same extent that they have been used and enjoyed for centuries in England; indeed it could not well have been otherwise. For the men who first formed the English settlements could not have been expected to encounter the many hardships that unavoidably attended their emigration to the new world, and to people the banks of its bays and rivers, if the land under water, at their very doors was liable to immediate appropriation by another as private property; and the settler upon the first lands thereby excluded from its enjoyment and unable to take a shell fish from the bottom, or fasten there a stake, or even bathe in its waters without becoming a trespasser upon the rights of another.

The usage in New Jersey has in this respect, from its original settlement, conformed to the practice of the other chartered colonies."

It appears from the above, and other portions of the same opinion, that the assumption by advocates of the claim recently set up by the State that the lands in question were, before the revolution, the property of the Crown, and therefore on the formation of the new Government they, together with all other rights and prerogatives of the Crown and Parliament became rightfully vested in the State, is wholly without foundation, and has arisen from a misconception of the legal import of the phrase "*Property of the Crown*"; which, in Great Britain, is applied to a large amount of real property of which the Sovereign through his officials has exclusive charge, but which is used for the benefit of all his subjects.

Besides the erroneous opinion above discussed there does not appear to be a shadow of foundation for the claim to the lands now set up and attempted to be enforced. No one pretends that they were originally discovered by the State, or that it acquired them by purchase, or gift from former owners, or that they have been confiscated or received as escheats.

It is difficult therefore to conceive why the State Government should at this day attempt to enforce a claim, which, even had it been once valid, was allowed to remain ninety years unasserted and unthought of—while during that time fifty or more Acts have been passed by the Legislature authorizing the occupation and improvement of portions of these same submerged lands, which from the first settlement of the country have been held to belong to the owners of the adjoining upland.

The enforcement of the recently enacted law and appropriating the money received for the lands, when sold, to the payment of current State expenses and the support of public schools would be a direct, positive and unequivocal violation of the Constitution of the United States and of the Constitution of New Jersey, both of which prohibit taking "private property for public use without just compensation."

And it does not very clearly appear how, if the State Commissioners sell the lands, they can place the purchasers in possession while the "Act for the limitation of suits respecting titles to land," remains upon the statute book. In this it is enacted, section 17, that "Every real, possessory, ancestral,

mixed or other action, for any lands, tenements or hereditaments, shall be brought or instituted within twenty years next after the right or title thereto, or cause of such action shall accrue, and not after; *provided always*, that the time, during which the person who hath, or shall have such right or title, or cause of action shall have been under the age of twenty-one years, feme covert, or insane, shall not be taken or computed as part of the said limited period of twenty years."

Now, if the State of New Jersey ever had any right, title or claim, in or to the lands in question, it must have accrued at the time the New State Government superseded that of the British Crown, in August, 1776, or nearly ninety-three years ago; and if the present owners should choose not to be dispossessed of their lands without a struggle, would any court, while that limitation remains, permit an action of ejectment to be brought before it, either by the Commissioners or their grantees?

This is a question which courts must decide when brought before them; as no doubt it will be if any determined attempt shall be made to carry the provisions of the act into effect.

JOHN D. WARD.

On the Ownership of Lands Under Water.

WRITTEN BY ONE WHO KNOWS, IN 1865.

If the old legal maxim be true, that "Ignorance of the law excuseth no man," then are a majority of the people of New Jersey inexcusable respecting one point of law at least—the legal rights of shore owners in adjoining lands which are covered by water.

Widely different opinions have prevailed in the halls of legislation and in courts of law relating to this matter—within the last half century acts have been passed recognizing the rights of ownership in them by individuals, and other acts asserting by implication, the ownership of all submerged lands by the State—and a similar diversity has prevailed in the decisions of the courts. Thus the constantly varying legislation proceeding from the former, and the vacillating action of the latter, have kept the proprietors of shore line property ignorant of the law, or at all events ignorant of the phase it might assume when the next case should be presented for consideration; and if they are not excusable for this, they certainly ought to be excused for desiring to have it so fixed and defined that they may hereafter understand what their rights really are.

It appears to be conceded by all that in the interior of the country, where comparatively small streams form the boundaries of farms or tracts of land,

the rights of the owners extend *ad flum aquas*, or to the thread of the stream, which is generally held to be at the middle of its breadth; but for some reason not very apparent it has frequently been held in New Jersey that the rights of owners upon the banks of the same streams, after they are sufficiently increased in size to be considered navigable, and especially in that part of their course where the tide ebbs and flows, are restricted to high water mark, with some undefined claim to that part of the shore or bank extending from high water to low water.

For this restriction no sufficient reason has ever been assigned, and we are entirely unable to understand why an increased volume of water, or the flux and reflux of the tide, can be supposed to change or modify the rights of the owner of the shore. If this rule for determining the ownership be the proper one, the bottom of a river flowing through an extensive farm may in one part belong to the State, and in another part to the owner or owners, of the land which forms its banks.

This uncertainty, or "ignorance of the law which excuseth no man," has led to no inconsiderable amount of litigation in the courts, and has furnished the plea for considerable expenditures by the State, in attempts to arrive at something like certainty respecting the ownership of submerged lands in various places within its boundaries, and especially in the counties of Hudson and Camden, where they are supposed by some to be so valuable that if the State can gain possession of them, and establish a proper agency for their management and sale, a sum may be realized from them sufficient to pay the present State debt, at least.

If the Legislature of 1848 and 1864 had not been "ignorant of the law," it is confidently believed that neither would have involved the State in the expense attendant upon the appointment of commissioners to inquire into and report to succeeding Legislatures respecting a matter which both the makers and the administrators of the laws are, by the theory of our system of government, supposed to understand—or, in other words, to ascertain to whom, of right, the lands under water in the State of New Jersey belong.

Had this matter been carefully examined by the law makers, they would unquestionably have learned that all navigable waters are *public highways*; and that, as such, the long existing and well understood laws, relating to those constructed upon the land, are equally applicable to those furnished by creeks, bays, rivers and other bodies of navigable water. The owner of a farm bounded on any side by a public road or highway, owns the fee of the land upon which it is constructed, to the middle thereof—or if the road passes through a farm, the fee of the whole is in the land owner, and he may carry a water pipe, or construct an arched passage under the roadway from one part of the farm to another; or plant trees upon it and gather the fruit from them, or remove them at his will; or remove earth or minerals from any part of it, not interfering with the public servitude or easement. And if those acts are done by another without the land owner's leave, the doer is liable as a trespasser, in the same manner, and to the same extent, as if done in the adjoining enclosures.

So rivers, creeks, bays and other navigable waters, being public highways, the ownership or fee of the land over which the water flows is in the owners of the shores; though the right to use the water for the purposes of naviga-

tion and fishery belongs to the public, and the State is bound to maintain this public right unimpaired. And if mines of coal or iron, or other minerals be found extending beneath navigable waters, the owners of the adjoining shores have the right to work them—the owner of each shore, to the middle of the creek, river or bay under which the minerals lie. In England the workings of some mines extend far under the bed of the ocean, so that the miners hear the storms raging over their heads while engaged in their work. If the sovereign owned the soil under navigable waters, the proprietors of such mines could not thus extend their workings; but such ownership is not claimed even there, where prerogative rights are much more extensive than are ever claimed in this country. A case has been decided lately in the English courts affirming this view. "The Queen *vs.* the Prince of Wales." The Prince worked his mines in Wales under the sea; the Queen claimed the Tin, but the court held that the Prince was the owner.

Again: If, by the operation of natural causes, additions are made to the upland, the owner of the shore where it occurs, in all cases, takes possession of the newly formed land as the rightful owner—or, if by the action of the waves or currents, the upland is abraded or carried away, the shore owner loses his right to occupy, but not the ownership of the soil—the water which covers it passes into the care and custody of the State, as part of the great highway which it is bound to preserve unimpaired for the use of all; unless by natural causes it be restored to its previous condition.

If a shore owner builds a wharf or pier extending into navigable water, without authority first obtained from the State, or from agents to whom it has delegated the right to decide upon the propriety of its construction, the law declares it a common nuisance, which may be abated by the same proceedings that are required for abating nuisances in highways upon the land, caused by excavating pits, or placing obstructions of any kind in such situations as to render travel difficult or dangerous. And should a vessel run upon any such unauthorized dock or pier, the owner would be held liable for the damages she might sustain by the collision—but even in New Jersey it has never been held that the builder of a wharf extending from his own shore into navigable water was a trespasser, simply because no man can commit a trespass upon his own property; nor has a suit ever been instituted on the part of the State to dispossess such owner.

The present Riparian Commissioners [1865] have, in their report, modestly repeated the conclusion arrived at by their predecessors, the Commissioners of 1848, who expressed the opinion that the lands under water in Hudson River and New York Bay are of great value, and that they ought to be disposed of for the benefit of the State.

For their time and labor bestowed in hearing claimants, collecting facts and presenting a synopsis of the whole to the Legislature, they were paid a few hundred dollars—their report was printed and forgotten. The first commission consisted of three members only, but the present contains six, and as they are operating on a much more extensive scale than their predecessors—they employ secretaries, surveyors, draftsmen and assistants, their expenditures, instead of being limited to a few hundreds, will no doubt extend to several thousands of dollars [eleven thousand has been paid, more may be

asked for]; for which the treasury of the State will probably never be reimbursed. What will the new 1869 Commissioners cost the State?

The idea that the State will ever realize anything from the sale of lands it does not own, is an illusion; and should an attempt be made to carry out the plans suggested in the Commissioners' report, it would soon be found that parcels of the New Jersey shores belonged to citizens of New York and Pennsylvania, and that the question of title to the lands under water in front thereof must be referred to the United States Courts for decision, where the recommendations of Riparian Commissioners will have little weight if the decisions in the "Batture" case at New Orleans, and the case of Pintado at Pensacola, are still held to be sound law. And the expectation that the submerged lands in New York Bay and Delaware River will produce a sum sufficient to discharge the war debt of New Jersey, will be "dissolved like the baseless fabric of a vision, and leave not a rack behind."

The whole argument may be shortly summed up thus: The State, as conservator of the public interest, has a clear, full, perfect and indefeasible right to *control* all the navigable waters within its limits, and is charged with the duty of preserving them undiminished in extent and with their usefulness unimpaired, permitting the construction of no works therein not necessary or beneficial to the operations of navigation or commerce, and permitting such only after carefully ascertaining that they will add to the public convenience. And on the other hand, the State has no claim to, or right in, land over which the navigable waters flow, except the right of eminent domain, and cannot legally dispose of, or appropriate to its own use, the smallest portion of it without awarding proper and reasonable compensation therefor to the owner.

Former Legislation Respecting Submerged Lands.

The first grant in the order of time, was one to Nathaniel Budd, in 1802. This does not assert any right of the State in the land, which is described in the act as being in controversy, but only authorizes the erection of ferry houses, stables and other buildings, at or near the said dock and ferry stairs, on two acres of land; a part of which may have been covered with water, but it is not so described.

The act incorporating the Associates of the Jersey Company, which was passed in 1804, distinctly recognizes the ownership, by the corporators, of the land described in the preamble, a considerable portion of which was then lying under water.

The preamble to the grant to Aaron Ogden recites that he had acquired, "by deeds," the land to which the State relinquished its rights, except the right of sovereignty, without asserting or even intimating that it had any right of ownership in the land described—admitting, in fact, that it already belonged to Ogden, he having acquired it by deeds. If he had so acquired it before his application to the Legislature, then the relinquishment by the

State, of its rights, must have been, not rights to the land, of which it was admitted he was the owner, but of some use or servitude of which the grantee desired it to be relieved. If he had not the title, as represented, the grant by the Legislature is clearly void, having been obtained through false pretences.

The Hoboken Land and Improvement Company were authorized, by their charter, "to hold, acquire, and convey one thousand acres of land—and to fill up, occupy, and possess and enjoy, all land covered with water fronting and adjoining the lands that may be owned by them, and construct thereon wharves, harbors, piers and slips, and all other structures requisite and proper for commercial and shipping purposes."

And by an act dated 24th February, 1833, similar, and even more extensive powers were granted to the "Bergen Land and Improvement Company."

Sundry other joint stock companies have been chartered from time to time, to which similar powers are given—but the same absence of any pretence of claim to ownership in the lands described, extends through all the charters and grants enumerated in the appendix; which was intended to include all that have heretofore been made to individuals or corporations.

The State of New Jersey has not hitherto sold, or attempted to sell, or claimed the right to sell any lands under water, within its limits, or made any charge for granting a right to occupy such lands, when leave to do so has been granted to owners of the adjoining shores. But in a majority of the cases where grants to construct wharves and reclaim submerged lands have been made, the Legislature has, in direct terms, acknowledged the titles of shore owners, to the lands under water, described in the acts, and intended to be occupied by the works so authorized—and has usually inserted a clause forbidding the grantees from occupying submerged lands in front of upland belonging to other owners, without their consent.

Thus it appears, upon a careful examination of the fifty or more grants which are cited by the Commissioners, that the Legislature never has "*de facto*" made, or pretended to make, grants of the *land* to which the several acts relate; but that these were merely intended as licenses for the exercise of riparian rights without restrictions, within certain limits described in the grants—and although these are cited to prove the ownership of the State to lands under water, they show conclusively that in all legislation hitherto, relating to them, no such claim has been set up, but that, in every case, the claims of individual ownership have been referred to and recognized. What reason, then, can there be, at this day, for attempting to subject the lands under water in New York Bay and Delaware River to new, untried and oppressive rules of law—depriving shore owners of property and rights, which they have held and exercised so long that the memory of man runneth not to the contrary; and nullifying the 16th section of the first article of the Constitution of New Jersey; for assuredly, asserting and enforcing the right to sell these lands, and depositing the proceeds of such sales in the public treasury, would be taking private property for public use without just compensation.

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.

PREAMBLE:

WHEREAS, It is represented to the Legislature of the State, that grants of rights to occupy lands under the waters of the Bay of New York and the Hudson River, and elsewhere within the State have been made and are liable to be made, without sufficient information of the rights of the State and of the Riparian owners in the same, therefore, with the view of obtaining the proper information to enable the Legislature to protect the rights of the State,

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That a Board of Commissioners be nominated by the Governor and confirmed by the Senate, to consist of six citizens of this State, who shall have power and whose duty it shall be, to cause the necessary surveys and examinations to be made by competent surveyors, of the lands lying under the waters of the Bay of New York and of the Hudson River, and of the lands adjacent thereto, the Kill Von Kull, Newark Bay, Arthur's Kill, the Raritan Bay, and the lands lying under the waters of the Delaware River, opposite to the County of Philadelphia, the right to reclaim which has not been granted by the State, and to obtain all needful information from other sources, in order to ascertain the present rights of the State in the same, and the value of said rights; and to fix and establish an exterior line in the said Bays and Rivers, beyond which no pier, wharf, bulkhead erection or permanent obstruction of any kind shall be permitted to be made, and to report to the next Legislature, on or before the first day of February next, the result of the information thus obtained, and the value of the said rights, together with the evidence upon which the same is founded; and second, that they shall recommend to the Legislature such plans and provisions for the improvement, use, renting or leasing of the said lands under water as they shall deem necessary for and most conducive to the interests of the State; and to have prepared and submit with their Report, maps of said land, exhibiting the exterior line fixed and established by them in said Bays and Rivers, and the lines of the existing piers, wharves, and bulkheads, and also showing any grants of lands under the waters of said Bays and Rivers which have not been occupied, and also the original shore line as far as the same can be ascertained, accompanied with such field notes, measurements and elucidations as they shall deem necessary to a full exposition and understanding on the subject.

PROCEEDINGS REGULATED.

2. *And be it enacted,* That until such Report is made no further grant, lease or sale, of any of said lands shall be made, and the said Commissioners may apply to the Chancellor for an order to restrain and stay all proceedings, erections and obstructions, until the further direction of the Legislature; and if any permanent erection in, or obstruction of the said waters, within the said exterior line to be fixed or established by them, be commenced or continued after such order, the said Chancellor may cause the said order to be enforced, and disobedience thereof to be punished by the Court of Chancery,

in the same manner and to the same extent as in cases of injunction issued out of said Court; and any permanent erection or obstruction, made contrary to any such written order, may be removed and abated by the order of the Chancellor.

PROVISO.

Provided however, That the said Commissioners or the Chancellor shall not interfere with any rights already granted, or which have been or may be granted at the present session of the Legislature.

OATH OF OFFICE.

3. *And be it enacted,* That the said Commissioners shall take, and file in the office of the Secretary of State, an Oath, well, truly and faithfully to perform the duties of their appointment, before entering upon said duties; and they shall not be or become interested, directly or indirectly, in any water rights, or rights to occupy lands under water in the said Bays or Rivers, nor in any real estate that can in any way be benefited or affected by the establishment of such exterior lines, or by any measures that they may recommend; and upon proof being made to the Governor by any one of said Commissioners being so interested, and upon a hearing of a party so charged, he may be removed from office by the Governor.

VACANCIES.

4. *And be it enacted,* That any vacancies in the above Board of Commissioners, caused by removal, resignation, refusal to serve, or otherwise, shall be filled by appointment by the Governor, of a citizen of this State not interested as aforesaid.

5. *And be it enacted,* That the said Commissioners may appoint Surveyors, Agents, and others necessary for the discharge of the duties, and they and their agents may enter upon any land for the purpose of surveying or obtaining any information on the subject of their appointment.

6. *And be it enacted,* That each Commissioner shall receive five dollars for every day actually employed by him in the duties of his said appointment, and his actual travelling expenses, when absent from his residence.

7. *And be it enacted,* That the said Commissioners shall give public notice of the time and place of their first meeting by advertisement, published for ten days in each of the papers printed in the counties in which the Commissioners shall make their investigation, and all subsequent meetings of the Commissioners shall be publicly adjourned to some particular time and place.

8. *And be it enacted,* That this Act shall be deemed a public Act, and shall take effect immediately.

Approved April 11, 1864.

SENATE--No. 76.

Re-Print.

STATE OF NEW JERSEY.

Supplement to an Act entitled "An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the bulkhead line or lines of solid filling and the pier lines in the tidewaters of the Hudson River, New York Bay, and Kill Von Kull, lying between Enyard's Dock, on the Kill Von Kull and the New York State line, so far as they have been recommended and reported to the Legislature by the Commissioners appointed under the original Act of which this is a supplement, by report bearing date February first, eighteen hundred and sixty-five, are hereby adopted and declared to be fixed and established, as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines, so fixed, established and adopted, are shown upon the manuscript maps, accompanying said Report, and filed in the office of the Secretary of State, except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by Act approved March fourteenth, eighteen hundred and sixty-seven.

2. *And be it enacted*, That it shall not be lawful to fill in with earth, stones, or other solid material, in the tidewaters of the Hudson River, New York Bay, and Kill Von Kull, beyond the bulkhead line or lines of solid filling by this Act adopted, fixed, and established, laid down and exhibited on the aforesaid maps; and that it shall not be lawful to erect or maintain any pier or other structure exterior to the said bulkhead line or lines of solid filling in any place or places where no exterior line for piers is reported or indicated by said maps, on the Hudson River, New York Bay, and Kill Von Kull; and that when an exterior line for piers is recommended and shown by said Report and maps, no erection or structure of any kind shall hereafter be erected, allowed, or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except piers which shall not exceed one hundred feet in width respectively, and which shall in no case extend beyond the line indicated for piers on said maps accompanying said report; and no piers shall hereafter be constructed in said tidewaters, when such exterior pier lines are

adopted, fixed, and established, at less intervals between such piers than seventy-five feet, except at places occupied and used for ferries, or to be so occupied or used, when the spaces between the piers may be less; nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges; and if on blocks and bridges, such blocks and bridges shall not occupy more than one-half of the length of the pier, and they shall be so constructed as to permit a free flow or passage of water under and through them, without any other interruption or obstruction than the piles or blocks necessary to support said piers.

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, eighteen hundred and fifty-one, be and the same is hereby repealed, as to the tide waters of the Hudson River, New York Bay, and Kill Von Kull, below the line of mean high tide; but said repeal shall not be construed to restore any supposed usage, right, custom, 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 land under the tide-waters of this State in New York Bay, Hudson River, or Kill Von Kull; and in case any person or corporation so offending, shall be guilty of a prepestrata, which shall be abated at the costs 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 and adjoining which prepestrata may be; *provided however*, that neither this section nor any provision in this Act contained, shall in anywise repeal or impair any grant of land under water, or grant or license to reclaim or improve lands under water, heretofore made or given directly by Legislative Act, whether said Acts are or are not repealable, and as to any revocable license given by the Board of Chosen Freeholders of a county to build docks, wharves, or piers, or to fill in or reclaim any lands under water in the said New York Bay, Hudson River, or Kill Von Kull, the same shall be irrevocable, so far as the land under water has been reclaimed or built upon under such license, at the time that this Act takes effect, but as to the future such revocable license is hereby revoked, and no occupation or reclamation of land under water, without such Legislative Act, or revocable license shall divert the title of the State, or confer any rights upon the party who has reclaimed, or who is in possession of the same.

4. *And be it enacted*, That in case any person or corporation who is a grantee or licensee by such Legislative Act as aforesaid, or any of his, her or their representatives or assigns of the whole or part of lands under water, or of a right to fill in or improve lands under water, or of lands which have heretofore been filled in or improved, under such Legislative Act, shall, for any reason, desire a paper capable of being acknowledged and recorded, granting and describing by metes and bounds such lands under water, or which, having been under water, have been heretofore reclaimed, which are retained by the original grantee or licensee, or were granted, or which has devolved to such representatives or assignees, or in case the original grant or license by Legislative Act authorized the filling in or improvement of lands

under water, shall desire such paper as aforesaid, passing the actual title to the lands now under water, described by metes and bounds, instead of the incorporeal right originally granted or given, and to the land heretofore under water which has been filled in and improved, either by the original grantee or licensee, his, her, or their representatives or assigns, under such grant or license by Legislative Act as aforesaid, and the benefit of an express covenant in either of the above mentioned cases, that the State will not make any grant or license affecting lands under water in front of said lands, then, and in either of such cases, such grantee or licensee, his, her, or their representatives or assigns, on producing satisfactory evidence to said commissioners of such grant or license by Legislative Act, and in case of a representative or assignee, also satisfactory evidence of the title derived from such original grantee or licensee, and requesting such grant and benefits in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners, or any two of them, with the Governor and Attorney-General, for the time being concurring, shall and may execute and deliver, in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee, or to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her, or their securing to be paid to the State, an annual rental of three dollars for each and every lineal foot, measuring on the bulkhead line, or shall make a grant to such grantee or licensee, or to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, in fee, upon his, her, or their paying to the State fifty dollars for each and every lineal foot, measuring on the bulkhead line; *provided*, that the said act of any representative or assignee of any such person or corporation, claiming to be such grantee or licensee by Legislative Act, shall not, in any wise affect the right, title, interest, or claim of the said person or corporation; *and provided also*, that the said commissioners shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established.

5. *And be it enacted*, That no grant hereafter made, extending beyond the line of high water mark, shall be in force or operation as to so much thereof as extends below said line of high water mark, until the grantee or grantees shall have paid into the treasury of the State such compensation or rentals, or secured to the State such payment or rentals for the estate in the lands lying below the said line of mean high water mark, contained in and conveyed by such grant or lease as is hereinafter provided.

6. *And be it enacted*, That four commissioners shall be appointed by the Governor, by and with the advice and consent of the Senate, who are hereby required and empowered to complete as much of the details of the work assigned to them by such original act, by surveys and otherwise, on the Hudson River, New York Bay, and Kill Von Kull, as in their judgment the interest of the State requires.

7. *And be it enacted*, That all the powers and duties of the said commissioners, contained in the Act to which this is a supplement, be and the same are hereby continued in force, except so far as the same are superseded or modified by any of the provisions of this Act.

8. *And be it enacted*, That if any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved under any grant or license protected by the provisions of this Act, it shall be lawful for any two of the said commissioners concurring, together with the Governor and Attorney-General of the State, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals, for so much of said lands as lie below high water mark as are to be included in the grant or lease for which such application shall be made, and to certify the boundaries, and the price, compensation, or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the Secretary of State, and upon the payment of such price, or compensation, or annual rentals, or securing the same to be paid to the Treasurer of this State, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the said commissioners shall in the name of the State, and under the great seal of the State, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the Governor, and attested by the Attorney-General and Secretary of State, and shall be prepared under the direction of the Attorney-General, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance the grantee may reclaim, improve, and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of the first and second sections of this act, and such lands shall thereupon vest in said applicant; *provided*, that no grant or license shall be granted to any other than a Riparian proprietor, until six calendar months after the Riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price that said commission shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon president, secretary, treasurer, or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson County, and in a daily newspaper published in New York City.

9. *And be it enacted*, That the same compensation for the time and personal expenses of said commissioners shall be allowed and paid as heretofore, and all other expenditures to be incurred by the said commissioners in the prosecution and completion of their works contemplated by the original act and this supplement, shall not exceed the sum of five thousand dollars annually, which sum is hereby appropriated out of any money in the treasury, not otherwise appropriated, to be subject to the draft of said commissioners, and shall be paid upon the warrant of the Comptroller, upon satisfactory vouchers being produced of such expenditures made or incurred.

10. *And be it enacted*, That the moneys so received from the sales and rentals of the said lands under water shall be first appropriated to the pay-

ment of such obligations as the Legislature may authorize, from time to time, then to the payment and liquidation of the State debt, and afterwards the same shall be invested according to law, and the interest thereof be annually paid over to the Trustees of the School Fund, to be appropriated by them towards the maintenance of free schools.

11. *And be it enacted*, That the said commissioners shall take and file in the office of the Secretary of State, an oath, well, truly and faithfully to perform the duties of their appointment before entering upon their said duties.

12. *And be it enacted*, That the said commissioners may commence proceedings in the name of the State of New Jersey, by ejectment or otherwise, against persons and corporations trespassing upon or occupying the lands of the State under water, or which were heretofore under water, and the Attorney-General of the State is hereby required to commence and prosecute such actions as may be instituted or directed by the said commissioners; and his expenses and disbursements, and the expenses and disbursements of such assistants as may be appointed by the Governor, and their reasonable charges and counsel fees shall be taxed by the Chief Justice and paid by the Treasurer, on presentation of the bill so taxed.

13. *And be it enacted*, That in any case where a grant of the lands of the State under water is made by the Commissioners to any person other than the Riparian owner, that the State's grantee shall not fill up or improve said lands under water until the rights and interests of the Riparian owner in said lands under water (if any he has) shall be extinguished, as follows: The said Commissioners shall fix the amount to be paid to said Riparian owner for his rights and interests therein, (if any he has) and said Riparian owner shall have the right within twenty days after he has been notified of said amount, to accept said sum in full extinguishment of all his rights, or if he is dissatisfied with said award, he may apply to the Supreme Court at the next term thereafter for a struck jury to try the question, in such place as may be designated by said Court; and said jury may increase or diminish the amount to be paid the said Riparian owner, and their verdict shall be final as to said amount, and on the payment or tender by the State's grantee to the Riparian owner of the amount fixed by said jury, all the rights and interests of said Riparian owner in the lands of the State under water in front of his lands, shall be extinguished; that the costs of the trial shall be paid as follows: If the verdict of the jury is greater than the award of the Commissioners, then the State shall pay the costs of the trial; if the verdict is the same as the award or less than the award of the Commissioners, then the Riparian owner shall pay the costs.

14. *And be it enacted*, That this Act shall take effect immediately.

This bill was the price of passing bill 76, a reading of it in comparison with bill 76 will show how much honor there was in the parties who managed it, and at what a price bill 76 was put through.

No. 306.

Passed March 26, 1869.

STATE OF NEW JERSEY.

An Act to enable the United Companies to improve lands under water at Kill Von Kull and other places.

WHEREAS, the United Delaware and Raritan Canal Company, the Camden and Amboy Railroad and Transportation Company, and the New Jersey Railroad and Transportation Company, have recently secured to this State the payment of five hundred thousand dollars for the grant of lands under water, in front of lands owned by them; and are desirous of having the right and privilege of erecting and making wharves, piers and other improvements in front of other lands now owned by or in trust for them; so that they may safely make such improvements as they may find necessary to facilitate their business; therefore,

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the said United Companies shall be and they are hereby authorized to reclaim and erect wharves and other improvements in front of any lands now owned by or in trust by them, or either of them, or by any company in which they now hold the controlling interest, adjoining Kill Von Kull or any other tide waters of this State; and when so reclaimed and improved to have, hold possess and enjoy the same as owners thereof; *provided*, that such improvements shall be subject to the regulations (where applicable) as to the line of solid filling and as to pier lines heretofore recommended in the report of the commissioners made and filed under the 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 this State," approved April eleventh, eighteen hundred and sixty-four, but neither said improvements nor those which may be made by said companies in Harbors Cove shall be subject to any other restrictions than those contained in said report; *and provided further* that the said United Companies shall on or before the first day of July next, pay to the Treasurer of this State the further sum of twenty thousand dollars in full satisfaction for the right and privilege hereby granted; *and provided further* that the said United Companies shall on or before the said first day of July, file in the office of the Secretary of State a map and description of the lands under water in front of the upland referred to in this section.

2. *And be it enacted*, That this Act shall take effect immediately.

REPORT

OF THE

Committee on Harbor Encroachments.

To the Chamber of Commerce of the State of New York:

The Committee appointed on the 17th of March, to inquire into and report upon the action of the Legislature of the State of New Jersey, upon a proposed filling in of a considerable portion of the waters, forming a part of the bay of New York, lying south of Jersey City, I desire, respectfully, to report, that for several weeks after the appointment of said Committee, my absence from the city, at Trenton, prevented my meeting with or consulting them upon the subject.

In their behalf I had the honor of addressing a letter to the former advisory committee of the Commissioners appointed by the Legislature of this State, in 1856, to determine the exterior lines of our harbor, and have now the pleasure of submitting with this, the opinion of the very distinguished gentlemen, viz.: General JOSEPH G. TOTTEN, United States Engineer; Prof. A. D. BACHE, Superintendent United States Coast Survey; and Admiral C. H. DAVIS, United States Navy.

This opinion was submitted to the members of the Legislature of New Jersey, and it affords me pleasure to inform the Chamber that a commission has been appointed to report upon an exterior line for the whole of the shore of New Jersey, bordering on the Hudson River. The bill is, in all respects, similar to the one passed by this State for regulating the exterior line of our harbor.

With a recommendation that the opinion of the very eminent gentlemen, Messrs. TOTTEN, BACHE and DAVIS, be published, and that the thanks of the Chamber be presented them for this communication, and for their efforts to prevent encroachments in the Harbor of New York, I would suggest that this report be accepted and the Committee discharged.

F. S. LATHROP,

In Behalf of the Committee.

NEW YORK, May 4, 1864.

The bill referred to is the first one passed—April 11, 1864. It will be seen by this report that the Riparian Owners are under deep obligations to the Chamber of Commerce of New York, for their interference in our legislative affairs, and a paternal regard for their shores. Now we have the new bill—Bill 76—to defeat in the Courts.

TO THE SHORE OWNERS OF THE STATE OF NEW JERSEY.

For many years interested persons have insisted that the State owned the lands under water adjacent to the shores of the navigable rivers, bays and ocean to high water mark; that the legislature had power to take and dispose of those lands as they pleased. A number of speculators (the American Dock Company, in 1864) paid the State twenty-five dollars per foot, with other privileges worth more than the amount given. This, the first payment to the State, for its alleged ownership had great weight with the legislature in deciding on its future action. In 1868 the united Railroad Companies agreed to pay the State \$500,000 for the lands under water in Harsimus Cove, Jersey City, New Jersey, but they were also exempt from the payment of all local taxes, now and hereafter, upon over ninety acres of land, which, when improved, would have had to pay \$100,000 annually for city and county taxes, besides the piers. The same year, 1869, the Morris Canal Company agreed to pay the State \$25,000 a year for the wet basin in Jersey City, but were forced to do so, or it would have been let to the Sugar House Company; this property is also exempt from local taxation. The New York and Newark Railroad Company agreed to pay the State for a grant in Jersey City—they were compelled to it but have not paid a dollar. These four are all the companies that have agreed to pay; but each one had special privileges that were worth to them more than the amounts paid or agreed to be paid. The New York Chamber of Commerce, in 1864, sent a Mr. Lathrop, who resides somewhere in the country in New Jersey, but who does business in New York, is a member of the old fossil board above mentioned, that is always afraid of the New Jersey shores, to remonstrate with the legislature upon our enterprising shore owners building out in the New York bay and Hudson river, and by some means got the legislature to appoint him and five others a committee upon riparian rights, and to make boundary lines for the Jersey shores. They served one year, and made lines for solid filling and pier lines, which lines will be utterly disregarded hereafter as far as the Hudson river and New York bay are concerned. The mud

fills in the docks at Jersey City and Hoboken every three months, rendering them almost useless for commercial purposes, except at a great expense for dredging.

The legislature of 1865 refused to adopt the report of the commission, or to make these lines permanent ones.

Every year, however, the chairman, Lathrop, working in the interest of the New Yorkers, not forgetting himself, worked upon the minds of the senators and assemblymen with his usual energy and persistence until 1869, when he got his robbing bill passed in the Senate, and by the aid of railroad money the bill was put through the Assembly and signed by the railroad Governor (Randolph). This bill authorizes the commissioners to sell the lands under water in front of any corporation's or person's shores to high water mark, or they must pay such price or annual rental as the commissioners see fit to demand, except where the State has made some grant by which the owners were allowed to fill out. Then if they wish to settle with the commissioners they must pay fifty dollars per foot to the commissioners. The commissioners have held some meetings and received a few applications: one from the Pennsylvania Coal Company for 318 feet; Hoboken Land and Improvement Company, 710 feet; John Weeks, 2,650 feet; Brown Bros., 2,416 feet; Dupont & Co., 1,570 feet; Morris and Essex Railroad Company, 1,400 feet; Jersey Shore Improvement Co., 780 feet; Wm. E. Dodge, 260 feet; James G. King, 2,490 feet; nearly all these have paid the association their assessments to contest the law.

The commissioners in their report to the Governor, say that the Central and Erie Railroad Companies were filling out regardless of the law; they further say that not to exceed four miles out of thirty-two on the Kill von Kull, New York bay and Hudson river, is granted by the State (*the commissioners do not recognize the freeholders licenses as valid in any case*).

They report that they expect to realize not less than three or four millions of dollars from the twenty-eight miles yet unapplied for in Hudson River, New York Bay, and Kill von Kull.

In conclusion, they recommend that the policy be adhered to by the State. If, as the State water rights believers force this bill on the rest of the State, they could raise (if lawful) twenty to thirty millions of money.

That they intend is certain, and if it is lawful and just that the shores of part of Kill von Kull, New York bay and Hudson river should be taxed or sold, then it is right that the rivers, bays, etc., in

the rest of the State should be taxed, and that they will be, is as sure and certain as anything can be, at the next session of the Legislature.

The action of the legislature at the recent session, 1870, shows how strong this plan of taxation has taken hold of the members.

March 3d, 1870, the following bill was introduced in the Assembly:

A S S E M B L Y 4 2 7 .

STATE OF NEW JERSEY.

Supplement to the supplement to the Act entitled "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four, which supplement was approved March thirty-first, eighteen hundred and sixty-nine.

1. BE IT ENACTED, *by the Senate and General Assembly of the State of New Jersey*, That all the provisions of the act to which this is a supplement, be and the same hereby are extended to all the lands lying under the waters of the ocean, bays and navigable rivers of the State of New Jersey, where the same may be situated within the jurisdiction of this State.

2. *And be it enacted*, That this act shall take effect immediately.

March 15th the bill passed the Assembly, 39 for, to 10 against; eight more than was necessary.

When it was on its second reading, the following amendments were offered, but were voted down, thus conclusively showing the feeling of the present Assembly. The amendments were advocated by the most eloquent member of the House, the Hon. LEON ABBETT, (Speaker,) in his usual forcible style, but it was of no use; the country members anxious to make the river counties pay the debts and expenses of the State to save their money, voted solid against them.

T H E A M E N D M E N T S

offered by the Hon. Sidney B. Bevens, of Jersey City, N. J.

2. *And be it enacted*, That in no case whatever shall the commissioners appointed under the act to which this is a supplement, demand or receive from any shore owner or owners, for a grant for the lands of the State under water, more than twenty dollars per lineal foot

on the bulkhead line, laid down by said commissioners, or over one dollar and fifty cents on each lineal foot for rent of the same per annum.

3d. *Be it enacted*, That the said commissioners shall graduate the price for the sale or rental of the said lands under water, in proportion to the actual value of said lands thereof, but in no case to exceed the amount of sale or rental as stated in section two.

4th. *Be it enacted*, That the commissioners now in office shall hold said office until the first Monday in February next, eighteen hundred and seventy-one, and no longer.

5th. *Be it enacted*, That it shall be the duty of the governor to appoint, on or before the third Monday in January of each year, by and with the advice and consent of the Senate, six commissioners, who shall hold or serve for one year; that is, from the first Monday in February to the next first Monday in February ensuing.

6th. *Be it enacted*, That the commissioners shall be selected as follows: one from Hudson county, one from Bergen county, one from Union county; one from Essex county, one from Camden county, one from Middlesex county.

7th. *Be it enacted*, That said commissioners shall receive applications from the shore owners for grants in each of their respective counties, and upon said application summons said commissioners, or a majority of them, to view in person the lands for which said application is made, and fix the price or annual rental as before mentioned. Said commissioners shall make said grant or lease as applied for within thirty days of said application.

8th. *Be it enacted*, That the commissioners shall pay over to the State treasurer, as soon as received, any moneys received for said lands or rentals, and on the third Monday of January, report to the legislature in full, their proceedings.

9th. *Be it enacted*, That all acts or parts inconsistent with this act be and the same are hereby repealed, and that this act take effect immediately.

The bill was brought before the Senate on the last day of the session, March 17, and although a large majority of the Senate were in favor of it, yet it failed to become a law, as a senator opposed to it, objected to its passage on the technical ground that it could not be read three times and passed the same day. Thus the act lays over until the next (or extra) session.

The question for shore owners to briefly consider are these: shall we contest this question in the United States Courts through our association, or submit to which the State demands fifty dollars per foot. The Association requests but one dollar a foot for the most valuable shores. If a shore owner owns 100 feet on the Hudson river or any other river, it will cost him not to exceed twenty cents per foot to test the question, or twenty dollars. The State wants five thousand dollars. Which will you pay? This question cannot be settled in less than five years, and the saving of interest alone will be, on 100 feet, \$1,750, without considering compound interest. The question will arise, what chance have we of gaining our suit? This is asked every day. The decisions of the courts have been carefully examined and every decision that can be found is in our favor, not one against us.

Our counsel is satisfied that we shall gain our suits. We shall enjoin the commissioners from taking any money or molesting any one who pays his share into our association, but it must be distinctly understood that we protect none but our members. Again, we do not propose to commence any suits against the commissioners unless they molest our members.

Therefore, all who join us from any part of the State, can be sure of our taking care of their rights. We do not beg for means, but leave it to the shore owners own judgment. The two miles of shore front that has been leased, is the most valuable in the State, and many of them have paid their assessments to our association, so that in case the law is declared void they will get their money returned from the State. The twenty-eight miles of shores yet unapplied for by the owners, need not be, and most of it will not be, as they are members of our association.

We will send our constitution and copies of the documents of the association and maps of the shores of Kill von Kull, New York Bay and Hudson river to any shore owner.

It seems to be the determination of the legislature to insist upon forcing this unjust law upon the people of this State, although the owners of the shores upon the Hudson river, New York Bay and Kill von Kull for this year are the only ones directly affected, yet the law if extended, as it will be, will virtually cause the shore owners to pay for improvements now or to be made. (SEE SECTION 4 OF THE ACT.)

Any shore owner who desires to protect himself at a small expense, can do so by sending the number of feet he owns, the name of the river, and fair valuation of the lands under water and shore front, to the undersigned.

The New York Chamber of Commerce, in its endeavors to prevent the improvement of the shores of New Jersey, has this winter (1870) applied to Congress to prevent the Central Railroad Company from filling out to deep water, thus showing that they believe the real source of power to get our grants, if any we need, is from Congress. We desire the hearty political and financial co-operation from shore owners, and hope that all will join us.

A. BERNEY,
Chairman of the Executive Committee
of the New Jersey Riparian Association.
Residence, 208 WAYNE STREET,
Jersey City, New Jersey.

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ATTORNEY-GENERAL'S OPINION

AS TO

FREEHOLDERS' LICENSES.

The following opinion of ATTORNEY-GENERAL GILCHRIST, in reference to the right of Boards of Freeholders to grant wharf licenses, fully explains itself:

STATE OF NEW JERSEY,
ATTORNEY-GENERAL'S OFFICE,
TRENTON, April 30, 1870.

Gus. T. Thebaud, Esq., Summit, N. J.:

MY DEAR SIR:—I received yours of yesterday, in which you state that "in view of recent legislation respecting water fronts, Riparian rights and the State's right in lands under water, you will find it difficult as a member of the Board of Chosen Freeholders of the county of Union, to reconcile our 'Wharf Act' with such recent laws so as to enable you to act intelligently," and you therefore respectfully ask my opinion as to what action your Board should take on application under said Act.

It is difficult, if not entirely impossible, to reconcile recent legislation with the Wharf Act, so far as that Act may be supposed to authorize licenses by the Boards of Freeholders in Union, Essex and Middlesex.

So far as relates to the Hudson River and Kill Von Kull, the Wharf Act is expressly repealed.

With reference to your county and Essex and Middlesex, there is not only still existing the Riparian Act (so called) of 1864, so far as not modified or superseded by the Act of 1869, but the Riparian Act of 1869 and the Act entitled "An Act to authorize the drainage of marsh and swamp lands," passed in 1870.

The Act of 1869, in section 7, continues in force all the powers and duties of the Commissioners of 1864, except so far as the same are suspended or modified by any of the provisions of the Act of 1869.

By the 12th section of the Act of 1869, the Commissioners are authorized to bring suits against persons or corporations trespassing on the lands of the State under water.

The Act of 1864 makes it the duty of the Commissioners to cause surveys of the lands under water in Newark Bay, Arthur's Kill, Raritan Bay, and other places not necessary to mention, and to fix and establish an exterior line, beyond which no pier or permanent obstruction of any kind shall be permitted. The second section provides that until their report is made, no grant or lease of any lands shall be made. They never have reported an exterior line for Raritan Bay, Newark Bay or Arthur's Kill. By the same second section, the Commissioners may apply to the Chancellor for an order to restrain all erections until the further direction of the Legislature, and the Chancellor is authorized to decree the abatement of any erection contrary to order.

These provisions, and others which provide for obtaining the State revenue out of lands under tide-water, are certainly difficult to reconcile with the Wharf Act.

The Act of 1870 to authorize the drainage of marsh and swamp lands, though an Act from which a private corporation may derive emolument, contains most important provisions in favor of the State as to lands under the tide water in Essex, Union and Middlesex. The sixth section authorizes the Driggs Drainage Company to reclaim and drain, wet or overflowed lands and tidewater marshes in these three counties, and the twelfth section provides for the State's obtaining, either from the Driggs Company or the Riparian owner, the value of the State lands under tidewater.

The Freeholders have no power to exact compensation for licenses, and this, I think, should decide you not to consent to them. It must be remembered that the whole policy of the State, since the Wharf Act of 1851, has been altered, and that in the Act of 1869, licenses by the Freeholders were expressly revoked. Whatever the effect of the legislation above referred to is on the power of the Freeholders—whether it repeals by implication the power of the Freeholders to grant licenses to erect docks below low water, which I think is likely to be the construction, or whether it leaves their power unimpaired, it seems to me your action should be guided by the manifest policy of the State, which is to get revenue from these lands. Otherwise it appears to me that that policy will be thwarted by the State's subordinate jurisdiction.

Your obedient servant,

ROBERT GILCHRIST.