

do; but it has no right to obstruct the use of the slip, or of any part of it, which may be required by the public in mooring boats along either the Twenty-second or Twenty-third street wharves up to the line of the bulk-head, nor to interfere with any other appropriate use of a wharf, such as a ferry landing, which the city and state may authorize.

This case differs from all others which have been cited in support of the injunction, in the fact that the complainant and those whom he represents have neither any title to the slip or to the land in front of the bulk-head, nor any express grant of a right of wharfage, nor any evidence of any intent by the state or city to grant such a right. The case of *Lansing v. Smith, supra*, as above observed, long since decided that even if wharfage had been granted, subsequent obstructions in front, necessary for the public convenience, were no grounds for a claim of damages, so long as access, though impaired, still remained. In the present case a basin of 145 feet long by the wharf will remain free along the upper part of the bulk-head; while the lower part, embracing more than one-half the complainant's frontage, will be completely open and unobstructed as before.

The papers before me do not show any legal rights in the complainant beyond this means of access still reserved to him by the proposed structures; and without referring to the other points raised, the motion should, upon the above ground, be denied.

PHILADELPHIA & READING COAL & IRON CO. v. THE MAYOR, etc.

(Circuit Court, S. D. New York. July 21, 1884.)

1. LESSOR AND LESSEE—TITLE OF LESSOR—LESSEE CHARGED WITH NOTICE OF RIGHTS OF LESSOR.

A lessee is charged with full notice of the terms of a grant of the leased premises to his lessor, and his rights are subject to those terms, unless subsequently released or extinguished.

2. SAME.

Where a grantee acquires wharfage rights in the premises, his lessee, as against the grantor, may exercise similar rights, subject only to the terms of the grant to his lessor; and aside from those terms, only the lessor could question the lessee's right to an easement over the remaining lands granted to the lessor.

3. SAME—INJUNCTION—LESSEE'S RIGHT TO CONTINUANCE OF.

Where a lessee is in possession of valuable wharfage privileges, he has a right to a continuance of an injunction to restrain the cutting off of those privileges until his legal rights are compensated for under the act of 1871, requiring the dock department of the city to make such compensation.

In Equity.

Mitchell & Mitchell, for plaintiff.

E. H. Lacombe, for defendant.

BROWN, J. The dock department of the city of New York, under the act of 1871, is required to provide for compensation to the owners of existing wharfage rights before building the exterior wall in the Hudson river which would cut off those rights. I cannot doubt that the complainant and its receiver are lawfully possessed of certain wharfage rights and privileges along the wharf erected inside of the line of Twelfth avenue, upon the land leased from the estate of Cornelius Ray, and that these rights are of some value, although they might possibly be abridged or destroyed hereafter through proceedings taken by the city and the estate of Ray, or its successors, in accordance with the terms of the grant by the mayor, etc., in 1838. The complainant is chargeable with full notice of the terms of that grant, and their rights are subject to those terms, unless they have been subsequently released or in some way extinguished.

Under the grant by the city to the estate of Ray, which expressly conveyed the right to wharfage along Twelfth avenue, which was then the city's exterior line of land under water, I think wharfage rights might be exercised by that estate inside of the line of Twelfth avenue, so long as the lots under water were not filled in, as well as along its western line; and the lessees from Ray's executors might, therefore, as against the city, exercise similar rights, subject only to the terms of the grant to their lessors, requiring the streets to be filled in, on three months' notice; and, aside from those terms, only Ray's estate could question their lessee's right to an easement over the estate's remaining lands under water out to the exterior line of Twelfth avenue. Being then lawfully in possession of wharfage privileges of some value, complainants have a right to a continuance of the injunction until their existing legal rights, so long as they shall exist, are compensated for under the act of 1871; and the motion to vacate the injunction must be denied. But the injunction must not be so construed as to prevent any enforcement by the city of the terms of its grant to Ray's estate, or any preliminary steps, by notice or otherwise, necessary thereto. Other parties and other questions than those now before the court are involved in any proceedings of that kind which might affect the complainant's rights; and if the complainant has any grounds on which to oppose the enforcement of those terms, they should be presented by an appropriate action, and with all the necessary parties before the court, after some proceedings to enforce the terms of the grant have been had, or appear about to be taken. A modification of the injunction to that extent may, if desired, be had.

THE EXCHANGE BANK TAX CASES.

WILLIAMS v. BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

(Circuit Court, N. D. New York. July 23, 1884.)

1. TAXATION OF NATIONAL BANK SHARES BY STATE—ACT OF LEGISLATURE OF NEW YORK—LAWS 1883, CH. 345—VALIDITY.

The legislature of a state cannot validate a tax which is prohibited by the laws of the United States; but it is competent for it to sanction retroactively such proceedings in the assessment of a tax as they could have legitimately sanctioned in advance.

2. SAME—ACT OF NEW YORK LEGISLATURE OF 1881, CH. 271—THE DEFECT IN THAT ACT.

In the act of 1881, c. 271, Laws New York, the fatal vice was the denial of an opportunity to those assessed to be heard and permitted to obtain the deductions and corrections allowed by the general system of assessments.

3. SAME—VALIDATING ACTS.

The general rule has often been declared that the legislature may validate retrospectively any proceedings which they may have authorized in advance; and it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation.

4. SAME—VALIDATING ACT—PAYMENT OF TAXES IN ADVANCE OF OPPORTUNITY TO BE HEARD.

If it was within the power of the legislature to provide for the collection of a tax by a system which requires the tax-payers to pay in advance of an opportunity to be heard, but permits them to have a subsequent hearing and to obtain restitution, if restitution ought to be made, the validating act was constitutional.

5. SAME—SUMMARY METHODS OF DISPOSSESSION UNDER TAXATION—OTHERWISE IN JUDICIAL PROCEEDINGS.

In judicial proceedings due process of law requires a hearing before condemnation, and judgment before dispossession; but when property is appropriated to or under the power of taxation, different considerations from those which prevail between individuals obtain. It is not indispensable that a hearing be secured before assessment or before collection of the tax; but it is sufficient if reasonable provision is made for a hearing afterwards, a correction of errors, or a restitution of the tax or part of a tax unjustly imposed.

At Law.

Matthew Hale, for plaintiff.

Peckham & Rosendale, for defendant.

WALLACE, J. This action is brought to recover certain taxes assessed against the plaintiff and several assignors of the plaintiff, in the years 1877, 1878, and 1879, and collected by the defendant. The persons thus assessed were stockholders of the National Albany Exchange Bank, of the city of Albany. The assessors omitted in those years to place the names of the shareholders upon the assessment roll in accordance with the requirements of the state laws regulating assessments; and it was held by this court in *Albany City Nat. Bank v. Mahar*, 6 FED. REP. 417, that such omission rendered the tax illegal, because the requirement which was disregarded by the assessors was designed to afford tax-payers an opportunity for the