

Moss, C.J.O.:—The plaintiffs' claim is for an injunction restraining the defendants from obstructing the plaintiffs in mooring their steamboats at their landing place on the westerly side of wharf premises owned by the plaintiffs, situate on the east side of the line of James street produced into the waters of Hamilton Bay; and also restraining the defendants from mooring or permitting to be moored vessels on the easterly side of wharf premises owned by them, and situate on the west side of the line of James street produced, thereby obstructing, as it is alleged, the access of the plaintiffs' steamboats to their landing place at the plaintiffs' wharf premises.

The plaintiffs found their claim upon a conveyance dated 29th November, 1888, made in pursuance of the Act respecting short forms of conveyance, by the defendants to the plaintiffs. Prior to the making of this conveyance, the defendants were the owners of certain parcels of land on James street, a public highway in the city of Hamilton, and of portions of certain water lots in front thereof and extending into Hamilton Bay, the waters of which are navigable.

The defendants' parcels of land and water lots were situate upon each side of the line of James street produced, and they had constructed on each side wharves which they used in their business as wharfingers, forwarders, and carriers of freight and passengers.

In the year 1887 the plaintiffs and defendants entered into an agreement whereby the defendants agreed to furnish suitable accommodation at their wharves at the foot of James street for three steamboats owned or leased by the plaintiffs, and running from the wharves to points on Hamilton Bay and Lake Ontario; and they also agreed, so far as they could, to give no other person or company, firm or steamboat, the right to use any of their said wharves for the purpose of steamboats running on Hamilton Bay and Lake Ontario, for excursion or regular passenger-boat business; but if obliged to do so, would make charge against such company or steamboat, and account for one-half to the plaintiffs. There are also provisions in the agreement for regulating the user of the wharves, for the payment of a rental and other charges, and for the duration of the arrangement for 3 or 5 years as expressed in the agreement.

During the season of 1888 the plaintiffs and defendants used the wharves under the terms of the agreement, but as