

the defendants' intentions as to the use of the retained property in the future. The provision in the contemporaneous agreement giving to the defendants the liberty to transact and permit others to transact through passenger business at their wharves between Hamilton and all points except Toronto and Niagara, and intermediate points, and to transact their freight and other business free from all control and interference of the plaintiffs, is important. It shews the plaintiffs' knowledge of the defendants' intention to make use of their wharves to the fullest extent, except so far as passenger business between Toronto and Niagara and intermediate points is concerned. Subject to the exception, they were, upon the language of the instrument, at liberty to carry on their business with such vessels as they required, without limitation as to size or tonnage.

In thus dealing, the parties had in mind, no doubt, what would be reasonably apparent to any persons engaged in the business in which they were engaged—that probably in the near future, owing to the enlargement of the canals, larger vessels would be put in commission for through trade on the upper lakes. Both parties must be considered as knowing that their right to use the navigable waters in the slip was *publici juris*. There is nothing in what took place to shew that the defendants intended or that the plaintiffs believed that the defendants intended to prosecute their business otherwise than according to the best methods, including the acquisition and use of improved freight and passenger steamboats according as the advance of trade called for improvement in that direction. There is, on the contrary, much to shew that the plaintiffs understood that it was the intention of the defendants to so carry on their business. If there was nothing else there is the proviso in the contemporaneous agreement which goes far to displace the idea of an intended restricted use by the defendants of the retained premises. This, coupled with the admission of the plaintiffs' witness who was concerned in the negotiations and dealings between the parties, shews the plaintiffs' knowledge and understanding of the defendants' intentions. And with that knowledge and understanding they accept the conveyance. That being so, there is no good ground for the contention that any implied obligation of the kind now insisted on arose upon the conveyance by the defendants of the premises which the plaintiffs now own and are making use of for their business.