

and Modjeska, or by any other steamboat of no greater size that may be substituted for either of them.

The whole question, therefore, turns on the effect of the conveyance, having regard to all the facts and circumstances of the case at the time when it was made.

There was evidence at the trial that during the negotiations which culminated in the conveyance and agreement of 29th November, 1888, the plaintiffs were desirous of obtaining from the defendants an express right to the exclusive use of the slip for their steamboats at all times when they desired or required its use for that purpose; but the defendants refused to agree to that, giving as a reason the enlargement of the Welland canal which was in progress at the time and was nearing completion; and that the defendants were looking forward to building or acquiring larger steamboats as the trade increased, and would need the use of the slip for them. The plaintiffs were fully aware of the position taken by the defendants and their reasons for it.

Throughout this action the plaintiffs seem to have been under an erroneous impression as to the rights of the parties in respect of the waters of the slip; and the formal judgment seems to have been drawn up under the same impression. It is scarcely necessary to say that the waters of the slip being navigable waters neither party has any proprietary right therein. Their rights therein are no greater than those of the rest of the public. They are entitled to access to and from their abutting properties to the waters of the slip, and being upon them they are entitled, together with the rest of the public, to make a reasonable use of them for their business or pleasure, but they have no right to use them to the exclusion of others of the public, or to make any unreasonable user as against one another. Their proprietary rights are in respect only of their wharves and premises adjoining the slip, and of these they can make such exclusive use as they see fit, or as their business justifies when carried on in a legal way.

The plaintiffs, however, contend that by reason of the conveyance to them made under the circumstances already stated, they are entitled to control the defendants' use of their premises in a manner not ordinarily exercisable by a proprietor of one parcel of land over that of another. Their claim, though it has not been awarded to them in precisely the terms asked, is that the defendants are ob-