

defendants were operating a certain number of steamboats in passenger and freight trade between Hamilton and points on the lakes other than Toronto and Niagara; and it appears that during that year, and for some years after, the steamboats used by the defendants were of such beam as not to interfere, when lying at the defendants' wharf on the west side of James street, with the plaintiffs' steamboats lying at their wharf on the east side of James street. Within recent years, however, the defendants have become the owners of a number of steamboats of greater beam, and the effect is that when they are lying at defendants' wharf on the west side of James street, there is no room in the slip between plaintiffs' and defendants' wharves for either of plaintiffs' steamboats to come in and lie at plaintiffs' wharf on the east side of James street.

The plaintiffs' contention is, as expressed in the statement of claim, that the grant by the defendants to the plaintiffs of the lands and water lots described in the conveyance of 29th November, 1888, was upon an implied condition that the defendants should not derogate from the purposes of their grant by interfering with the plaintiffs in their enjoyment of their premises by taking their vessels into the slip at all times without any hindrance or prevention on the part of the defendants by reason of their steamboats lying or being tied up at the defendants' wharf on the west side. The plaintiffs do not claim, in fact they disclaim, any case of unreasonable user by the defendants of the slip between the wharves. Their claim is of a right founded on the grant.

The trial Judge held that the plaintiffs were entitled, upon the terms of the conveyance, to use the waters of the slip as an approach to their wharf in the manner and to the same extent as they were used by them under the former agreement, and as they used the waters at the time of the sale by the defendants to the plaintiffs of the premises.

The judgment perpetually restrains the defendants from using, or permitting to be used, the waters of the slip lying between the wharf premises of the plaintiffs and those of the defendants respectively, in any manner that will prejudicially interfere with the user by the plaintiffs of the waters of the slip as an approach to their wharf premises on the westerly side of the slip, by the steamboats Macassa