vessels. (*k*) Whence it appears, that no wharf can be extended beyond the margin of the channel, even with the consent of the port wardens. And these port wardens having, as directed by this law, made a survey designating the lines of the channel, that is the line, now commonly called the port warden's line, beyond which no improvements can be made into the basin.

These provisions do certainly restrict the mode of acquisition given by the act for making improvements; (*l*) and assist in giving perpetuity to the public right of navigation with which the soil was originally encumbered, by requiring, that care should be taken to keep it always free from obstruction. This last act, it is therefore evident, cannot be so construed as to give any additional facilities to acquiring title to, and making fast land of any portion of the bed of the basin; but, on the contrary, as directly curtailing those means by which a title to, and the use of it, might previously have been obtained. The port wardens could give to no one a right to encroach upon the basin in any direction, or to make a wharf where, prior to the passage of this law, he had no such right; they might limit and control the then existing powers of individuals, but could give them no new powers or rights whatever. This is the view which has long since been taken of this law by the courts of justice. (*m*)

Hence it is manifest, that the permission given by the port wardens to *John Smith*, to fill up and build a wharf on eleven feet of Gay street, was wholly illegal and a mere nullity; and as to the farther encroachment upon Gay street, it has not been intimated, that *Smith* and others had even a pretext or shadow of legal authority to do what has been done by them.

It is perfectly clear, from the proofs, that the strip of land in question cannot, in any way, be regarded as an alluvion, the right to which would accrue to the owner of the adjacent land to which it had fastened; (*n*) but having been made, and built up, as a

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(*k*) April, 1783, ch. 24, s. 8 and 9; 1753, ch. 27.—(*l*) 1745, ch. 9.—(*m*) Harrison *v.* Sterett, 4 H. & McH. 540; Smith *v.* Hollingsworth, ante 381.—(*n*) Browne *v.* Kennedy, 5 H. & J. 195; Ridgely *v.* Johnson, 1 Bland, 316, note; The King *v.* Lord Yarborough, 10 Com. Law Rep. 19; Gifford *v.* Lord Yarborough, 15 Com. Law Rep. 403.

HAMMOND *v.* FORREST.—16*th November*, 1810.—KILTY, *Chancellor*.—The hearing of the *caveat* in this case came on in the Land Office on the 15th, when the exhibits and depositions were read, and the case was argued by counsel on each side.

On consideration, the Chancellor is of opinion, that the *caveat* ought to prevail, and that the defendant is not entitled to a patent. It does not appear, however, that