#### The City of San Francisco vs. Clark *et al.*

Whether driving piles in Front street, in the city of San Francisco, (the street being laid out over the waters of the bay.) is an. obstruction to the free use of the street by the public, is a *question oí fact* for the jury; and where that question was not so submitted, a new trial was granted.

The case of *Woodworth* v. *Fullmq (ante, p.* 295,) affirmed.

Appeal from the superior court of the city of San Francisco. The facts are stated in the opinion of the court.

*John W. JDwinelle,* for The City.

*R.* Lochwood, for defendants.

*By the Court,*

Bennett, J.

The action was brought for the purpose of perpetually enjoining the defendants from driving piles in a street in the city of San Francisco known as Front street. The defendant, Clark, claims to be the owner of certain [\*387](#p387)lands bounded on Front street, and was engaged in driving piles for the purpose of making his lot accessible by way of this street, when the injunction was served upon him. It seems to have been conceded, on the argument, that the place where the defendants were driving piles, was a part of Front street, and the only question in the case is, whether the piles were an obstruction to the free use of the street by the public. It is well known as a matter of fact, that Front street, as laid down on the map of the city, lies below low water mark in the bay of San Francisco, and it is equally well known, as a matter of fact, that the ordinary method, if not the only one, of making this street and others similarly situated capable of use, is by driving piles and by planking over them. The defendant was enjoined from doing the very thing, by which alone Front street could be made passable ; and how such act could be an *obstruction* to the street it is difficult to see. But we cannot take judicial notice of the fact, that Front street is laid out over the water, or that driving piles is no obstruction. These are matters which, should be submitted to the jury. They were not so submitted, and a new trial should therefore be granted.

The grant which was offered in evidence was properly rejected. It conveyed no right to the defendant. *(Woodworth* v. Fulton, ante, *p.* 295.) What effect the late Act of the legislature may have had in confirming this grant is a question which does not arise on this appeal.

New trial granted.