



OAKLAND GIVEN HER WATER FRONT.

The Southern Pacific Railroad Company Had No Valid Title.

VICTORY FOR THE CITY.

Judge Ogden Follows the Rulings Laid Down in the Chicago Decisions.

AN APPEAL IS TO BE TAKEN.

The Old Deed to Carpenter Was Void, as it Was Against Public Policy.

Judge Ogden decided yesterday that the water-front property which was illegally deeded by Amadeo Marier to Horace Carpenter in 1852 is and always has been the property of the city of Oakland.

His Honor had given notice that at the opening of court yesterday he would render his decision in the celebrated suit brought against the water-front company and allied corporations by the city of Oakland.

The court room was crowded and everybody was in suspense, for, contrary to precedent, there had been no leak, and attorneys for both sides were confident and fearful up to the fateful hour.

Promptly at 10 o'clock Judge Ogden ascended the bench. The proceedings were somewhat of a disappointment to the large lobby, which had prepared itself for a grand-stand play.

"City of Oakland against The Oakland Water-front Company," said the court. "Decision in accordance with the written decision filed." That was all, and Judge Ogden was preparing to leave the bench when Attorney J. C. Martin of the water-front company said, "I suppose that the opinion will take the place of findings."

Attorney W. R. Davis of counsel for the city replied: "If the decision is in our favor we will prepare findings with pleasure and serve the other side with them."

Then a dozen attorneys eagerly scanned the voluminous opinion. It was necessary to go entirely through it before a correct opinion could be formed as to what each party received under the terms of the decision. The railroad company is left in possession of about eighty acres of water-front land actually in use for purposes of commerce.

The company also retains all wharves that have been built since 1868, although the land under them belongs to the city. The decision throughout is based upon the general principles laid down in the Chicago lake-front case, and shows that the course of judicial decisions in California for many years before the Chicago decision had not been contrary thereto, but in accordance with it.

The principle is clearly laid down that the grant to Carpenter was against public policy. The titles held by the water-front company numbered fourteen, and the court destroys all of them and holds that the title to the water-front lands is vested solely in the city. The city gains 7870 acres, as computed from the maps, charts and other evidence introduced during the trial. The rights of third parties who may now occupy parcels of the property do not figure primarily in the decision, although Judge Ogden establishes a principle that the city may have title, but must make compensation in these cases. Each of these cases, however, must be determined on its individual merits.

All improvements that have been made under the provisions of the compromise of 1868, referred to in the decision, are not to be molested. A large portion of the original grant to Carpenter of the town of Oakland is found not to be affected by the decision, as it is not now within the corporate limits of Oakland. This land is located south of the water line of the estuary. Title to it, under the decision, will rest either in the city of Alameda or in the State.

As the Central and Southern Pacific companies were not parties to the suit, the title to the land held by them could not be directly passed upon in this action, but the grounds of the present decision are such that when a case against these two corporations is presented, their asserted title must go the same way that the title of the water-front company has gone.

As soon as Mayor Davie heard of the decision he ordered the biggest flag in the city's possession to be hoisted over the City Hall.

Ex-Judge Harvey Brown, counsel for the water-front company, said yesterday: "I have not yet read the decision, but I understand it is in favor of the city. The case will, of course, be appealed to the Supreme Court."

WHAT IT MEANS.

Oakland Can Furnish Ample Room for One Hundred Railroads.

Attorney W. R. Davis, the leading counsel for the city of Oakland throughout the trial, was asked yesterday to express as succinctly as possible just what the decision means.

"Under the decision," he said, "the city of Oakland and the public recover everything that she could ever need, and the property thus recovered will furnish ample room for one hundred railroads with all their landings, depots and every facility known to commerce.

"Three principles are also laid down very clearly. "First—That the city's claim and title is held good, and prevails against all private claims. This ground of the decision is based upon the character of the property concerned, namely: that it is a part of the bay of San Francisco, is covered by natural tides, is navigable in fact, and declared navigable by the Legislature. This portion of the opinion follows the contention of the city and her counsel made from the beginning, and is in conformity with the doctrine laid down in the Chicago lake-front case.

the north side of the estuary, around the east end, along the south line of the estuary on the Alameda side, and thence southwesterly from Alameda Point to ship channel, thus taking in not only the water front of Oakland but also the water front of what is now the city of Alameda, both its northern and western water front. In later years the boundaries of the city of Oakland and its present boundary on the south is as follows: A line running on the eastern end of the canal and estuary down to the center of the estuary; thence along its center westward to its mouth, and thence to ship channel in the bay, thus excluding from the present city of Oakland the southern half of the estuary and a parallelogram extending southwesterly about half a mile wide and two miles long. This southern strip, Judge Ogden holds, is no longer within the jurisdiction and control of the city of Oakland, from which it would follow that it is either under the jurisdiction and control of the city of Alameda or under the jurisdiction and control of the State of California directly.

"Third—He holds that where the water-front company has made or caused to be made improvements actually used in aid of commerce and navigation, as to those small pieces the city is estopped to take possession or take them away from the water-front company on the doctrine of estoppel founded practically on natural justice—i. e., if the city after the compromise of 1868 has stood by and seen the defendant expend money on certain parcels and use them not in violation of but in aid of commerce and navigation, she, the city, ought not now to be permitted to take them away from such defendant so using these parcels. It is to be observed that the nature of the use is included in his determination, namely, that the use is not an exclusive private use, but one devoted to commerce and navigation, which subserves the public use and benefit."

THE DECISION.

Carpenter's Grant Was an Illegal Delegation of Power.

After reciting the text of the case the opinion proceeds: The land embraced within the description contained in the complaint includes all the land lying below the line of ordinary high water and within the boundaries of the city of Oakland as originally fixed by the statutes incorporating said city (save that portion now known as Lake Merritt). In all it includes nearly 8000 acres of submerged land.

The complaint alleges that the plaintiff is the owner in fee of said lands, but that the title thereto is vested in, and held by, the plaintiff as a public corporation and governmental agency of the State of California for the common benefit of all the people of the State.

The answer denies the title of the plaintiff in and to any portion of said lands, and alleges title in fee in the defendant, except certain portions of said harbor and bay deeded to third parties, and two pieces of said harbor lands heretofore deeded to plaintiff; one, a tract of land situated below Peralta street; and one, a tract of land situated in said harbor between the center line of Franklin street and the easterly line of Webster street in said city.

The answer also avers that the Government of the United States, through its engineers and the Secretary of War, has established a bulkhead and a pierhead line of said harbor; that said bulk line is mainly established upon the line of ordinary low-water mark, and that the pierhead line is established between said bulkhead line and the channel of the estuary; and that all the land in said harbor and bay beyond the pierhead line is solely under the control and management of the Government of the United States; and, as to these last-named lands, situated below the pierhead lines, the defendant dedicated the whole thereof to the Government of the United States for a harbor and for commercial purposes; but, conceding, however, that without such dedication the Government has full power and authority, with or without the consent of the owner in fee, to appropriate the same for public uses in the interest of commerce and navigation.

The proceedings of the Board of Trustees

tees who conveyed the land to Carpenter are reviewed at great length, and the testimony on both sides is carefully weighed. Much reference is made and many quotations are taken from the Chicago decision, and the definition of public lands is made very clear and exhaustive.

Coming down to the conclusions of fact, the court says: THE CITY'S RIGHTS. It will thus be seen that, admitting for the sake of the argument, by charter the city of Oakland was granted the power ordinarily vested in the Legislature, to regulate and declare the uses to which these lands were to be put—to fix a water-front boundary and to fill and reclaim lands lying below high-tide mark—yet a grant of such power to a private person or corporation amounts to an abdication of one of the duties devolving upon the municipality or the State.

But I have looked in vain for any express authority conferred by the Legislature upon either the town or city of Oakland whereby it was given the right to fill in or change the

ONE URGED SILVER, THE OTHER GOLD

697) granted the right to the city of Oakland to open streets to the channel of said creek and to deep water in the bay of San Francisco. This is the first express authority given to the city of Oakland to encroach upon the navigable waters, save by the erection of wharves.

It has been contended by defendant that because the United States through its War Department has adopted a "plan of Oakland harbor," wherein is delineated a pierhead and bulkhead lines, without further legislation it has the right to fill in up to the bulkhead line and construct piers up to the pierhead line.

Under the Federal constitution Congress is given the power to regulate commerce, etc., and it has been held that whenever Congress exercises this form of regulation, State regulation must invariably give way. But this regulation is of a political nature.

POWER OF THE LEGISLATURE.

Were it not for the language used in the Chicago case already quoted it would remain extremely doubtful whether the Legislature has the power to delegate to municipalities the sole power of controlling the governing tide lands and navigable waters thereon.

Ordinarily no greater power can be granted a municipality over navigable waters and the land thereunder than can be granted to such

part with its title to land held in trust for the benefit of the people, to be converted into private ownership. (Conceding that it had that power.) No case has been presented to the court wherein it has been squarely held that a grant of all the land under navigable waters immediately in front of and around a maritime city was valid.

At common law all streams in which the tide ebbs and flows are navigable streams, and this rule does not depend upon the navigability or non-navigability in fact of a stream, but upon the criterion afforded by the influx and reflux of the tide.

The learned jurist who wrote the opinion in the case of Illinois Central Railroad Company vs. Illinois (supra) there said: "We cannot, it is true, cite any authority where a grant of this kind has been held invalid, for we believe that no instance exists where the harbor of a great city and its commerce have been allowed to pass into the control of any private corporation. But the decisions are numerous which declare that such

these claims would be a violation of national faith. PROTECTION OF TIDE LANDS. With such jealous eyes has our Supreme Court guarded our tide lands, that in construing acts of the Legislature they have until the passage of the act of 1872 held that it was never intended to sell tide lands upon the shores of the sea.

It is hard to conceive how a grant of an extended strip of tide lands immediately in front of a maritime city would not interfere with navigation and commerce. It is the history of nearly every harbor that at the mouth there forms a bar, rendering navigation either difficult or impossible. This must be removed either by dredging or by a system of jetties. In the case of the Oakland harbor by both.

If it be true that the defendant herein owns the fee in the bed of the estuary, then no dredging can take place therein without its consent; for the statutes make it larceny to sever the reality of another with felonious intent.

THE GRANT IS VOID. Upon other grounds must we hold the grant void. It seems, and its effect is, to take away from riparian owners vested rights given them by the common law.

In the case at bar the land in question is bounded by the proprietary lands conveyed by the United States to its grantees. Until the Legislature shall by express enactment or by implication take from them this right existing at common law, we are forced to believe that littoral proprietors have a riparian right in the waters in front of their lands.

This right, however, is not a title in the soil below high water mark, nor a right to build thereon, but a right of access only, analogous to that of the abutter upon a highway. And also the right to the secretion and alluvion.

While the State may either expressly or impliedly take away this right by legislation, as it probably did in the case of San Francisco by giving to the riparian owner a highway upon the land extending to the line of tide waters, yet in the case at bar no new water line front was fixed and the lines fixed by nature were left unchanged by legislation, either municipal or State.

We do not mean to be understood as holding that this right cannot be taken at any time, or under any circumstances without compensation; but only that it cannot be taken unless the general good will suffer by not taking it away.

THE WHARF RIGHTS. While the plea of estoppel and statute of limitations can avail the defendant nothing as to all the land lying under tide water not actually reduced to possession, yet a different rule might prevail with reference to the parcels built upon by substantial wharves and used in aid of trade and commerce. There are many cases holding that a title to tide lands cannot be acquired by adverse possession, but in all these cases the occupation was by implied license.

The grant to the defendant might be considered to an extent an express license, depending upon the size of the strip taken, the use to which it was put, whether built upon by consent of the riparian owner, the nature of the improvements when constructed, etc.

WHO OWNS THE WHARVES? It may be said that all wharves erected under the thirty-seven-year contract must now revert to the city. All wharves erected upon the faith of the declaration of the city of Oakland that the defendant was the owner of the property in dispute cannot be taken without making compensation therefor, unless it should appear that such wharves constitute an obstruction to commerce.

No testimony has been adduced on the part of the defendant, however, sufficient to bring the case within this rule.

While this might be said of the defendant's case, yet the answer can be made that the plaintiff as to the wharves in question has not made out its case, while it sufficiently appears that the title to the land below tide water beneath them is in the city, yet it nowhere appears that the defendant has not an easement thereon for the purposes for which the wharves were built.

Even where wharves are built by volunteers on tide waters courts of equity have no power to decree their destruction unless it is shown they are a nuisance.

"Wharves in themselves considered are not of evil consequence, but the reverse." "The right is in the executive arm of the Government to order the abatement of wharves, moles or embankments on the line of naviga-

Editor Horr and Author Harvey Began the Great Eight-Day Battle.

NOTED PERSONS PRESENT

Champions of the Rival Metals Made Heated but Telling Arguments.

"COIN'S SCHOOL" WAS SCORED.

During the Debate the Speakers Had Hard Work to Preserve Their Tempers.

CHICAGO, ILL., July 16.—Two men met in a little room at the Illinois Club this afternoon, and began a spirited contest of National moment, one fighting for silver and the other for gold, with all the intellectual powers, facts and authorities at their command. One of them was Roswell G. Horr, once a member of Congress from Michigan, now an editorial writer on the New York Tribune, and the other was W. H. Harvey of Chicago, author of "Coin's Financial School." Mr. Horr championed the cause of gold, while Mr. Harvey threw down the gauntlet for silver.

The privilege of being present at this momentous contest was accorded to few. There were seats for about 200 persons in the assembly-room of the clubhouse, but only a little over half that number were present. Ex-Congressman J. C. Sibley of Pennsylvania, a leader of the free-silver forces in the East, occupied a prominent seat.

He will remain during the debate unless business engagements prevent. A prominent advocate of the gold standard was A. B. Humphrey, secretary of the National League of Republican clubs. Others present were W. W. Meagher of the Bimetallist League; Lyman J. Gage, referee for Mr. Horr; Fred W. Peck and A. H. Revell of Chicago, L. G. Powers of St. Paul, Dr. S. A. Robinson of New York and Charles H. Sergel of Chicago. The last three acted as advisers to Mr. Horr and sat by his side taking copious notes while Mr. Harvey spoke.

Mr. Harvey consulted little with anybody. He brought with him a great pile of authorities for the purpose of substantiating statements made in his book, to which he frequently referred.

A man with a watch sat at a table near the speakers, and whenever one had spoken eight minutes he would run loudly on a call bell. This gave the speaker warning that he had two minutes more to conclude his statement. By these stages of ten minutes each the speakers will proceed for eight days, using only the afternoons and resting Sundays.

Dr. Homer Thomas, president of the Illinois Club, called the assemblage to order, briefly setting forth the objects of the debate. He introduced Hon. H. G. Miller and ex-Judge William A. Vincent, both of Chicago, who, he said, would be judges, and at the conclusion of the controversy would decide which had the best of the novel debate.

Mr. Miller then read the rules which are to govern. It was, he said, the intention of the speakers to deliver altogether 140,000 words. Of these, 5000 are to be reserved for use at the end of the discussion. This will give each a chance to recapitulate his argument in 2500 words, and 300 words additional will be allowed each contestant as a rejoinder to his adversary's closing argument. Mr. Miller stated that the whole discussion was copyrighted, and that while it would be given the widest publicity through the press, it was the intention of the principals to preserve the debate as private property and issue it in book form.

The debate was started by Mr. Horr, who referred to the author of "Coin's Financial School" with some severity. He said he never read a book containing so many misstatements.

Mr. Harvey in his opening statement contented himself with a presentation of his plan of campaign and told what he would prove. Mr. Horr wanted to know why the names of prominent citizens had been used in Mr. Harvey's book and words put into their mouths that they had never used. Harvey replied his book was simply an allegory and the fact that a little boy was put in as teacher ought to be enough to prove to any sensible person that this was so.

The speakers plunged at once into the thick of the fight. The argument at all times was very spirited and both speakers several times had hard work to preserve their tempers. Following is a synopsis of the arguments this afternoon:

After criticizing Mr. Harvey's unauthorized use of Chicago business men's names, attributing to them statements which they never uttered, merely for the sake of allegory, instead of using the names of fictitious persons, Mr. Horr said: "Now I come to the motto of the book, which is this: 'I thank thee, O Father, Lord of heaven and earth, because thou hast hid these things from the wise and prudent and hast revealed them unto babes.' I would like my friend to tell me why he used that motto. Does he desire to intimate that the kind of finance which he teaches is something that babes will understand, but that people who know anything will never be able to comprehend?"

"Of course I cannot conceive what the object of the motto is, but the motto

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THE HON. FRANK B. OGDEN, JUDGE OF THE SUPERIOR COURT OF ALAMEDA COUNTY.

[From a photograph.]

public character of any considerable portion of the tide lands within its borders.

Upon the contrary, by its solemn act passed in 1851, the Legislature declared the estuary of San Antonio from its mouth to the Embarcadero to be navigable, thereby dedicating it to public use.

The statutes of 1867-68 empowered the city of Oakland to issue bonds for removing obstructions at the mouth of the estuary and to keep the channel of said creek open for navigation.

In 1859 the Legislature passed an act to improve the navigation of San Antonio Creek and constituting the Board of Supervisors a board of commissioners for that purpose.

In 1875 the Legislature (statutes 1875-76, page

cities in control of their streets and highways.

It would follow from the views above expressed that the conveyance from the town of Oakland to Carpenter is void as against public policy.

If void, could the subsequent ordinances of confirmation cure the defect?

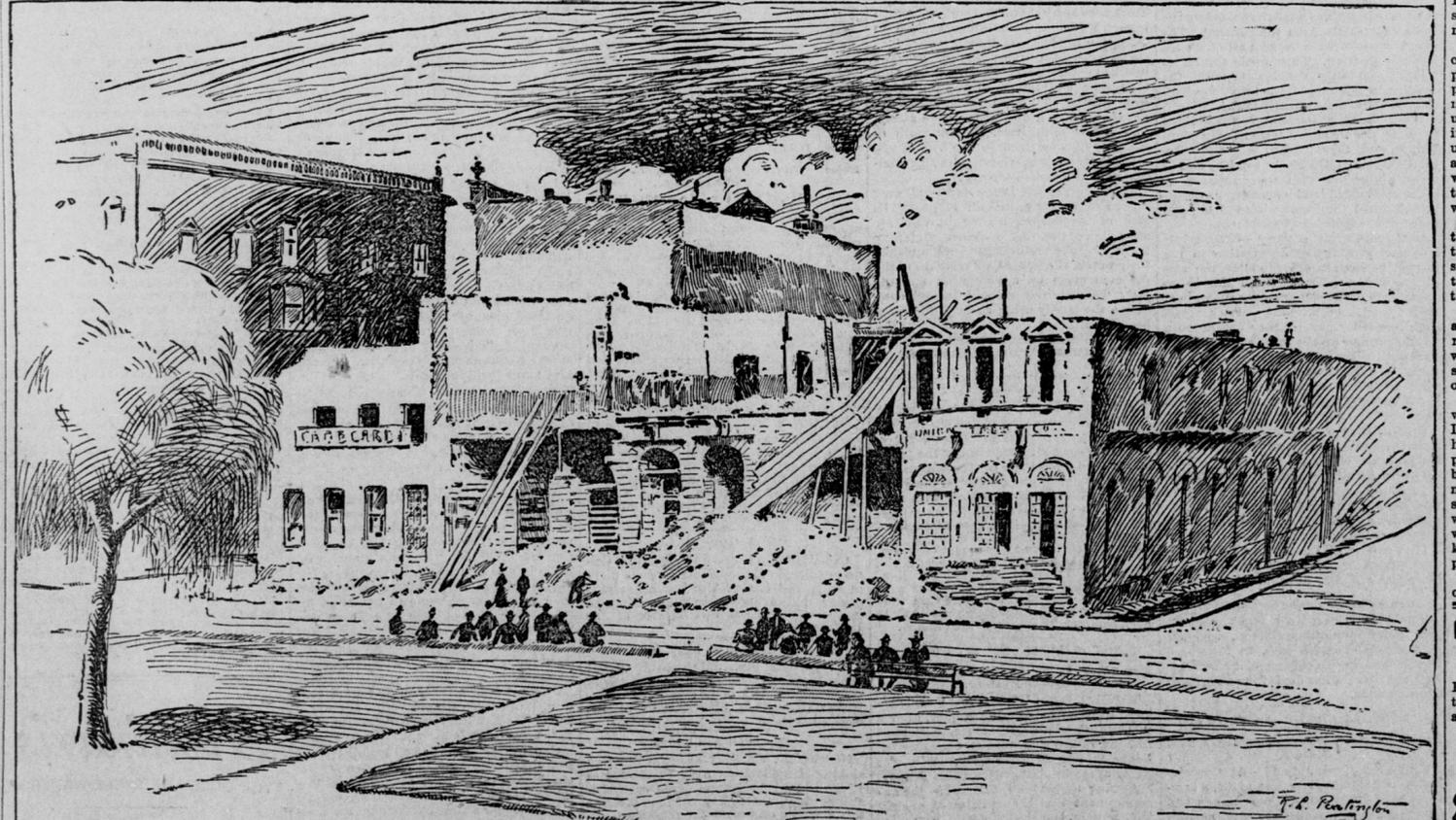
Confirmation may make good a voidable or defeasible estate, but cannot operate upon or aid an estate which is void in law.

Neither can the act of the Legislature in confirming the ordinances of the Board of Trustees be construed into a new grant of these tide lands to Carpenter. Nothing short of a very explicit expression by the Legislature would justify a court in holding that it intended to

property is held by the State by virtue of her sovereignty in trust for the public. The trust with which they are held, therefore, is governmental and cannot be alienated except in the improvement of the interest thus held.

The Supreme Court of this State has not varied from the rule here stated, except in certain cases, where they have held that a patent of the United States confirmatory of a Mexican grant conveyed the land below tide waters.

This was upon the theory that where grants had been made by the Mexican Government, while sovereign of California territory, this Government was bound by the treaty of Guadalupe Hidalgo to confirm. And even in the absence of such a treaty a refusal to confirm



THE PRESENT CONDITION OF THE OLD CITY HALL.

[Sketched by a "Call" artist.]