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## **The Battle for the Tidelands in the Constitutional Convention**

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- Part I, WASH. ST. B. NEWS, March 1990, at 15-21
- Part II, WASH. ST. B. NEWS, April 1990, at 15-19
- Part III, WASH. ST. B. NEWS, May 1990, at 47-52

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# The Battle for the Tidelands in the Constitutional Convention

by Charles K. Wiggins  
(The First of Three Parts)

## Railroads, Jumpers, Squatters and the Public Interest

The contemporary notion of constitutions and constitution-making emphasizes civil liberties, personal rights, powers of government and the separation of powers among the branches of government. But the bitterest and most divisive battle of the Washington constitutional convention of 1889 was fought, not over any of these fundamental governmental structures, but over the public domain. Although the federal government had sold or given vast quantities of land in the new state to individual settlers and to the Northern Pacific Railroad under its land grant, the government had never parted with title to the extensive tidelands of Puget Sound and of the Pacific Coast. The tideland, that strip of land between ordinary low water and ordinary high water, was particularly valuable because it was the gateway for commerce and transportation between land and water. These lands were particularly valuable within the major port cities of Seattle and Tacoma, and valuable for another reason — they were the only significant level land on Seattle's Elliott Bay and Tacoma's Commencement Bay. It was widely recognized that these cities could only realize their future potential if the large mudflats at the mouths of the Duwamish and Puyal-

up rivers could be diked and filled for commercial development.

The western Washington delegates generally wished to recognize the vested rights in the tidelands, but they were badly divided on which rights to recognize. The railroads claimed ownership to portions of the tidelands under various legal theories, but they were unable to agree on a unified strategy because their own interests conflicted. Some Western delegates favored the rights of the early settlers, who had taken claims upland from the tidelands and had built improvements on the tidelands. Other individuals claimed the tide-

lands against the rights of the upland owners. Indeed, the debates in convention disclosed the fact that several of the western Washington delegates claimed interests in the tidelands.

The eastern Washington delegates were unhampered by the need to consider the vested rights of influential constituents who had elected them. As a group, they were more inclined to recognize the rights of the state, regarding the upland owners who claimed riparian rights in the tidelands as "squatters" and the individuals who claimed in derogation of the upland owners as "jumpers."<sup>1</sup>

The politics of the tidelands were

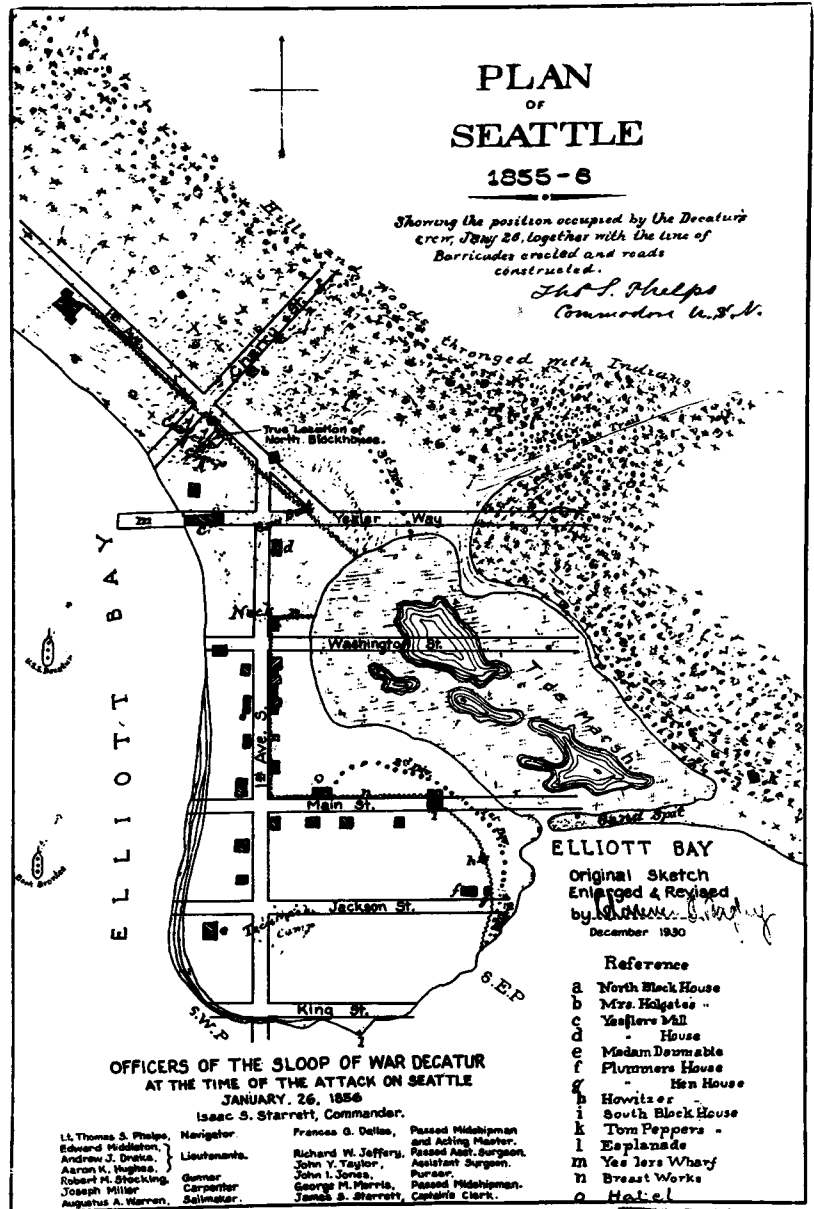


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infinitely complicated by the tortured history of the Seattle ones. The Seattle City Council had given exclusive waterfront franchises to railroads which promised to connect the city with the east. Seattle had traded away its waterfront, not once, but twice, cinching a legal Gordian knot which would not be resolved until 1902 with the construction of a railroad tunnel under the Seattle business district. Even with an understanding of the problems in Seattle, the debate on the tidelands is barely comprehensible;

without some understanding, the debate is mystifying.

### **The Problem in Seattle: Esau's Mess of Pottage**

Early-day Washington lawyer Orange Jacobs commented in his memoirs on the railroad franchises granted by the city of Seattle along its waterfront:

Esau sold his birthright, with all that it implied, for a mess of pottage. Infant communities, wheth-

er territorial or municipal, feeling the pressure of present want, are always tempted by money sharks to mortgage, sell or surrender, for a mere song, rights and franchises of a constantly increasing income, and relinquish political power necessary for a legitimate assertion and protection of their rights in years to come... The applicant for this birthright, and all its prospective enormous income, finds his most congenial and hospitable host in a municipal legislature. He is usually, but not always, accompanied by the fascinating Miss Graftis.<sup>2</sup>

In the early 1870s the Puget Sound cities, none of which were large, all aspired to become the terminus of the transcontinental Northern Pacific Railroad. The settlers of each town realized that location of the railroad would bring construction and shipping, with their attendant payrolls and increases in real estate values. Olympia and Seattle, with populations of about 1,200 each, were considered the leading contenders, while Tacoma, with less than 200 people, hardly seemed in the running. A committee of the Board of Directors of the Northern Pacific visited Puget Sound in the summer of 1872, inspecting possible terminal locations and determining what offer each city would make in order to secure the terminus. The people of Seattle offered 7,500 town lots, 3,000 acres of land, \$50,000 in cash, \$200,000 in bonds, and considerable tidelands for tracks and depots. But cheaper land was to be had on Commencement Bay, where fewer settlers had made claims and where the company could reserve large tracts of land through its land grant. In the summer of 1873, the Northern Pacific selected Tacoma as its western terminus.<sup>3</sup>

This was a defeat for Seattle, but not fatal. Selucius Garfield, a Seattle lawyer who had served as territorial delegate to Congress, addressed the people of Seattle at a public meeting in front of the Yesler Cook House and inspired them to build their own railroad through Snoqualmie Pass to Walla Walla County, at that time the most populous county in the state and the richest.<sup>4</sup> The people responded enthusiastically and incorporated the

Seattle and Walla Walla Railroad. The city granted to the railroad a right-of-way along the irregular waterfront, which became known as the "ram's horn" because of its twisted shape.<sup>5</sup> Seattle's legislative representative, J.J. McGilvra, prevailed upon the territorial Legislature to relinquish all right, title and interest of the territory to all tidelands in Elliott Bay south of King Street, granting them to the proposed railroad.<sup>6</sup>

The people of Seattle themselves provided the necessary labor to begin construction of the railroad on May 1, 1874:

The day dawned bright and clear, and all the steam whistles in town and harbor hailed it with long blasts. A few pieces of cannon and several anvils were fired, the church bells and school bells were rung, business was wholly suspended and at an early hour, every man, woman and child in Seattle went on board steamboats, barges and every other conveyance which could be brought into use to take them up the river to the place where work was to be begun. This had been chosen at a point nearly three miles from the proposed terminus, where work would be easiest, and where the best showing would be made as a result of the day's operations. Here the men and able bodied boys began work. Some with axes and saws cleared the right-of-way; others with pick and shovel threw up the dirt for the grade.<sup>7</sup>

The women and girls provided the lunch, which was followed by speeches, "the last of them made by Henry Yesler, who stopped his incessant whittling long enough to sound the keynote of the day by shouting, 'quit your fooling, and go to work.'"<sup>8</sup> The little railroad never made it to Walla Walla, or even across Snoqualmie Pass, but it did reach the coal mines at Renton and Newcastle, and it played an important role in the development of Seattle.<sup>9</sup>

In 1881 the Seattle and Walla Walla was acquired by the Columbia and Puget Sound Railroad Company, a subsidiary of the Oregon Improvement Company.<sup>10</sup> The Puget Sound shore line gave Seattle a transconti-

mental railroad connection with the Northern Pacific. However, when Villard lost control of the Northern Pacific in 1883, it discontinued service to Seattle, and the Puget Sound shore line became known as the "orphan road."<sup>11</sup> Judge Thomas Burke, a highly influential Seattle attorney, devised the solution: organize another railroad and grant it access to the waterfront, just as Seattle had done with the Seattle and Walla Walla in 1873.<sup>12</sup> Burke organized the Seattle Lakeshore and Eastern Rail-

way in 1885.

The Seattle Lakeshore and Eastern faced a major obstacle: the good people of Seattle had already given away the waterfront to the Seattle and Walla Walla. Burke devised an ingenious solution: the city would create a new waterfront, a 120-foot-wide right-of-way to be built several hundred yards off shore out over the water.<sup>13</sup> This expedient solution resulted in Railroad Avenue, now Alaskan Way, which was eventually diked with a sea wall and filled with the

earth removed from Denny Hill.<sup>14</sup> Doubtful of its own power to appropriate the bed of Elliott Bay in this peremptory fashion, the City Council asked upland owners to dedicate to the city any right they might have in the area covered by Railroad Avenue.<sup>15</sup> Its construction was carried out by the company building the Seattle Lakeshore and Eastern, and by the time of the constitutional convention, the trestles of Railroad Avenue cut across the Seattle waterfront.

This tangled history left a maze of

conflicting claims to the tidelands in front of Seattle. To complicate matters further, in the 1880s a series of claims was made to Seattle tidelands by individuals holding congressional land scrip. On several occasions Congress had awarded to specific individuals the right to settle on unclaimed and unspecified public land. The "Porterfield scrip" was given by Congress in recognition of Porterfield's services to the country during the Revolutionary War.<sup>16</sup> The "Valentine scrip" was granted by Con-

gress to Thomas Valentine, to replace a grant of 13,000 acres of land in what was then Mexico, and later California.<sup>17</sup> Speculators obtained this scrip and filed claims to hundreds of acres of tidelands in Seattle and Tacoma.<sup>18</sup> The Washington Supreme Court eventually rejected the claims of the scrip holders to tidelands, holding that "public land" meant uplands, not land beneath navigable waters,<sup>19</sup> but at the time of the constitutional convention the status of the scrip claims was very much an open question.

### **Early Skirmishes: Muck Amuck Illahe**

The opening skirmishes of the battle for the tidelands took place early in the convention. The first controversy arose over chairman Hoyt's appointment of Seattle delegate David Durie as chairman of the committee on harbors, tidewater and navigable streams. Durie was a member of the Seattle City Council, and he owned substantial interests in the tidelands through his interests in the Seattle Drydock Company.<sup>20</sup> To defuse criticism of this apparent conflict of interest, Hoyt explained that disposition of the tidelands would come before the committee on state, school and granted lands, chaired by delegate Oregon Dunbar from Klickitat County.<sup>21</sup>

A protracted debate erupted when James Z. Moore of Spokane Falls introduced a resolution calling for a full investigation of the history of the tidelands and all details concerning them.<sup>22</sup> Moore's resolution reflected the unfamiliarity and uncertainty of the eastern Washington delegates over tideland disposition. Moore played a prominent role in the debates, employing all of the qualities attributed to him by a contemporary newspaper account:

He is a frequent and very fluent speaker and in well rounded sentences, of the purest English, he always commands the attention and interest of his audience, frequently electrifying and inspiring them by his eloquence.<sup>23</sup>

He also possessed "rather a fiery Southern temper on occasions, and had great disgust for cowardice and betrayal of public office."<sup>24</sup>

Moore's request for information on the tidelands was well-directed,

for, as discussed above, it was scarcely possible for the delegates to evaluate the proposals before them without understanding the history of the competing claims. The resolution, however, was not well-received. Buchanan, the "thrifty Scotsman of Ritzville," protested that every member of the convention knew the history of the tidelands: "The tide has flowed and ebbed and ebbed and flowed over them from the very beginning, and that is all the history they have."<sup>25</sup> Buchanan suggested that the resolution would more appropriately be referred to the judiciary committee for an inquiry into the legal status of the tidelands. Moore was content to have the issue referred to the judiciary committee, headed by his fellow Spokane delegate judge George Turner, rather than the public lands committee, headed by Dunbar, who felt that the tideland issue should be resolved by the Legislature, not the constitution.<sup>26</sup> A lively debate ensued, in which "nearly every delegate took occasion to tell what he didn't know about the tidelands."<sup>27</sup> Finally, the delegates decided that the judiciary committee was the more appropriate, but voted against the resolution: "So it decided upon nothing and referred it to the judiciary committee."<sup>28</sup>

The debate then shifted to the committee on state, school and granted lands, which patiently listened to the opinions and recommendations of a parade of disinterested and interested citizens. One of the influential witnesses was W. Lair Hill, an attorney who had practiced in Oregon and California, and had recently moved to Seattle. Hill was a former editor of the *Daily Oregonian*, and had been asked by that newspaper to draft a proposed constitution for the state of Washington. The Hill constitution was distributed to all the convention delegates and greatly influenced them. In his commentary on the proposed constitution, Hill observed that the new state of Washington would own more tidelands than any other state in the union; they would cover over 2,500 miles of coastline and directly or indirectly influence every industry and activity on Puget Sound.<sup>29</sup>

Hill emphatically declared that the tidelands were held in absolute trust by the United States for the people of

the new state, that any grant or patent given by the U.S. conferred no title to tidelands upon the grantee, and that the shoreland owners had no rights to the tidelands. Hill admitted, however, that the history of other states revealed that public lands inevitably became a fertile field of "jobbery" and corruption, and that valuable rights of the people had too often been squandered. Although he recognized that no constitution could fully guard against corruption, Hill recommended that some restrictions be

placed in the constitution to protect the rights of the people:

While human nature is human nature, it is not probable that any constitutional provision or inhibitions will be found sufficiently strong or sufficiently strict to convert professional lobbyists into honest citizens and speculators into disinterested patriots, or entirely to preclude in all cases a combination of these classes from at least partial success... But something is gained if

provision can be made by which a practical approach to the actual value of the property can be secured, and by which some restraint may be thrown around the disposition of the lands to those who seek them merely for speculative purposes.<sup>30</sup>

To accomplish these goals, Hill recommended that the constitution unequivocally declare the state's ownership of the tidelands, that persons who had built improvements on tidelands be granted preemptive rights to purchase the tidelands at their appraised value less the cost of the improvements, that the state forever retain the title and control of landings and wharfage privileges upon shore or tidelands, and that no public land be sold "except for appraised value."<sup>31</sup> Appearing before the committee on public lands, Hill again recommended the sale of the tidelands, primarily to provide level land for factories.<sup>32</sup>

The committee also heard from representatives of upland landowners, who claimed a right of ownership in the tidelands which could not be

taken away without compensation.<sup>33</sup> Delegate Durie of Seattle "presented the needs of the people of Seattle in strong terms" stressing why Seattle should have absolute control of its own harbor.<sup>34</sup>

The convention was also presented with a variety of propositions calling for disposition of the tidelands. Kinnear of Seattle proposed that streets and alleys of cities and towns located on tidelands should be dedicated to the cities, which would have validated the creation of Railroad Avenue. Power of Skagit County proposed that title to marshlands which had been granted by U.S. patent to settlers should be confirmed in the settlers. Power explained, "the government has disposed of the marshlands, actual settlers have taken them up and improved them in good faith, and it would be nothing short of an outrage for the state to claim ownership of them."<sup>35</sup> Stiles of Tacoma and Prosser of Yakima both presented propositions declaring that the tidelands were the property of the state and should not be sold.<sup>36</sup> Durie of Seattle presented another proposi-

tion important to Seattle, invalidating the legislative grant of 1873 of most of Elliott Bay to the Seattle and Walla Walla Railway.<sup>37</sup>

Throughout this preliminary sparring, the delegates managed to maintain some perspective and a sense of humor over the tidelands issue. When the delegates considered the prohibition against the Legislature's authorizing a lottery, Austin Mires objected that the article should be stricken out, "because it may be necessary to dispose of the tidelands question by lottery."<sup>38</sup> Mires' suggestion was amplified in a tongue-in-cheek memorial presented to the convention by a group of old settlers, including A.A. Denny, Henry Yesler, Dexter Horton, James Swan, and others. They proposed that the tidelands should be set aside for the benefit of old settlers as "muck amuck illahe," Chinook jargon for clam lands:

Whereas grave doubts now exist, and have existed, in legislative and judicial minds since the day when Moses was found in the bull rushes, as to what constitutes tidelands in law and in fact, therefore, in order to settle that question forever it is hereby declared that the true definition of the term tidelands, as established by immemorial usage on Puget Sound is "muck amuck illahe," or clam lands, and that all lands and water producing clams shall be held and treated as tidelands as hereafter provided.<sup>39</sup>

The memorial provided that the tidelands would be divided into separate claims (marked, appropriately, by mounds of clam shells) and should be granted to old settlers (including, diplomatically, the 75 members of the constitutional convention), based on a lottery. The memorial satirized the proposal to take property away from those who had improved the tidelands by requiring improvers to remove any buildings, wharves, pilings, or fill, and to reestablish clams at the rate of 25 bushels per acre. The memorial also satirized the tendency of the constitutional convention to become too "legislative" by spelling out matters in excessive detail; it provided that the names of the old settlers be placed in butter churns, which "shall be turned a sufficient length of



time to make butter come, provided, that if churns cannot be procured, ice cream freezers may be substituted..."<sup>40</sup> The memorial was signed by a number of prominent attorneys, including Thomas Burke, Orange Jacobs and others, and one J.B. Metcalfe, who added his opinion: "I believe these sections will hold water in any court."

<sup>1</sup>R. Nesbit, "He Built Seattle": A Biography of Judge Thomas Burke, p. 317 (1961).

<sup>2</sup>O. Jacobs, *Memoirs of Orange Jacobs*, p. 181 (1908).

<sup>3</sup>C. Snowden, *History of Washington*, pp. 215-27 (1908).

<sup>4</sup>*Id.*, p. 222, 232.

<sup>5</sup>Nesbit, *supra*, p. 116.

<sup>6</sup>Snowden, *supra*, p. 233.

<sup>7</sup>Snowden, *supra*, pp. 234-35.

<sup>8</sup>G. Quiett, *They Built The West*, p. 448 (1934).

<sup>9</sup>H. Hunt, *Washington West of the Cascades*, p. 260 (1917).

<sup>10</sup>Hunt, *supra*, p. 308.

<sup>11</sup>See "Charles S. Voorhees and the Omnibus Admissions Act," 43 *Wash. St. Bar News* 25 (June 1989).

<sup>12</sup>Nesbit, *supra*, p. 105.

<sup>13</sup>*Id.*, p. 116.

<sup>14</sup>M. Phelps, *Public Works in Seattle*, pp. 73-74 (1978).

<sup>15</sup>Nesbit, p. 116; *Seattle-Post Intelligencer*, December 28, 1888.

<sup>16</sup>*McSorley v. Hill*, 2 Wash. 638, 649-52 (1891). *McSorley v. Hill* was the final case in the long battle between the Porterfield claimants and the heirs of the grantees of early-day Seattle settler David "Doc" Maynard to a portion of what is now downtown Seattle. The case turned on the rights under the Oregon Donation Act of 1850 of Maynard and his second wife, whom he married after obtaining a legislative divorce from his first wife without notice of service of process. *Maynard v. Valentine*, 2 Wash. Terr. 3 (1880).

<sup>17</sup>"Jumping Tidelands," newspaper article of January 1889, Vol. 35, Northern Pacific clipping scrapbook, August 1887 to February 1894, p. 94, Minnesota Historical Society microfilm 522, roll 9.

<sup>18</sup>*Id.*; Nesbit, *supra*, p. 311.

<sup>19</sup>*Baer v. Moran Brothers Co.*, 2 Wash. 608 (1891).

<sup>20</sup>*Tacoma Morning Globe*, August 15, 1889.

<sup>21</sup>*Tacoma Morning Globe*, July 10-11, 1889.

<sup>22</sup>*Seattle P.I.*, July 14, 1889.

<sup>23</sup>*Olympia, Washington Standard*, August 23, 1889.

<sup>24</sup>University of Washington Law Library Lawyer File.

<sup>25</sup>*Seattle P.I.*, July 14, 1889.

<sup>26</sup>*Spokane Falls Review*, July 16, 1889.

<sup>27</sup>*Seattle P.I.*, July 16, 1889.

<sup>28</sup>*Seattle P.I.*, July 16, 1889.

<sup>29</sup>*Daily Oregonian*, July 4, 1889.

<sup>30</sup>*Id.*

<sup>31</sup>Hill Constitution, Article XII, *Daily Oregonian*, July 4, 1889.

<sup>32</sup>*Tacoma Morning Globe*, July 14, 1889.

<sup>33</sup>*Seattle-Post Intelligencer*, July 18, 1889; *Tacoma Morning Globe*, July 18, 1889.

<sup>34</sup>*Seattle-Post Intelligencer*, July 12, 1889.

<sup>35</sup>*Id.*

<sup>36</sup>*Journal of the Washington State Constitutional Convention*, p. 40, 42 (B. Rose now ed. 1962) (hereafter "Journal of the Convention").

<sup>37</sup>*Seattle-Post Intelligencer*, July 14, 1889.

<sup>38</sup>*Tacoma Morning Globe*, August 8, 1889.

<sup>39</sup>*Spokane Falls Review*, August 4, 1889.

<sup>40</sup>*Id.*

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# THE BATTLE FOR THE TIDELANDS IN THE CONSTITUTIONAL CONVENTION

*Part I, published last month, described the competing interests in the tidelands, and sketched the history of the Seattle waterfront. This Part II recounts the debate over the harbors article, and next month Part III will conclude with the final resolution of the tidelands issues.*

by Charles K. Wiggins

*Part II: The Harbors Article*

The committee on public lands presented its proposed article on the school lands and the tidelands on August 1, 1889. The Spokane delegation, together with their eastern colleagues, unified in opposition to the proposed article.<sup>41</sup> But on August 4 an extensive fire destroyed the business district of Spokane.<sup>42</sup> Spokane delegate J.J. Browne, who owned a substantial portion of Spokane, returned home on leave, together with Allen.<sup>43</sup> The railroad lobbyists saw in this disaster an opportunity to free themselves of George Turner's opposition, both on the tideland issues and on the proposal to establish a railroad commission, which Turner stoutly advocated and the railroads vigorously opposed. Railroad lobbyists suggested to Turner that he return home to tend to his private affairs and run for the U.S. Senate in 1890, assisted by an election fund of \$25,000 contributed by the railroads.<sup>44</sup> Twenty-five years later, Turner described the incident, perhaps embellishing slightly, in the heat of his unsuccessful campaign for the U.S. Senate:

While these articles were under fire in the convention Spokane was swept by a great conflagration and my office, books and

papers, constituting the little wealth that I possessed, were destroyed. The corporations then took me up on the mountain and pointed out to me the beautiful land spread out below and promised me dominion over it and all that it contained if I would only go home and look over my wasted and devastated private interests.

The senate of the United States and a sufficient fund to assure it were some of the baubles held out before my supposedly ambitious eyes.... I remained at my post of duty until the end, and, not wavering once, assisted in the adoption of everything that is truly progressive in our state constitution.<sup>45</sup>

Turner's biographer reports that his reply to the lobbyists was "brief, direct, adequate, just, forgivably profane and legally unprintable," earning Turner "a barbed-wire corsage for mastery of scathing invective."<sup>46</sup>

The Spokane delegates managed to postpone the debate on the tidelands until August 13, when the convention took up both the article on tidelands and the article on harbors. The harbors article dealt specifically with the disposition of tidelands

in front of incorporated cities and whether those lands should be specially set aside for state ownership for the convenience of commerce and navigation. The committee proposed that the harbor lines be established by a legislatively appointed Harbors Commission. The Commission was to establish an outer harbor line at a depth of no less than 24 feet at ordinary low tide and an inner line between the outer line and the line of ordinary high tide, provided that the harbor area was to be from 200 to 600 feet in width. Within the harbor area, the state was prohibited from selling, leasing or giving any of the property to any private person, corporation or association.<sup>47</sup> Cities were given the right to extend their streets over tidelands.<sup>48</sup>

The delegates debated the harbors article at length. Two main assaults were made on the article: to eliminate the inner harbor line, simply establishing an outer line beyond which wharves and improvements could not be built; and to give the cities control over their own harbor areas. P.C. Sullivan of Tacoma and Weir of Port Townsend both argued for the rights of private individuals who had spent millions of dollars on harbor improvements, particularly wharves. Turner responded that none of these

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people had any right to occupy the tidelands and were technically trespassers, but that the Legislature could certainly compensate them for their property. Judge Thomas Burke, who had apparently been given the privileges of the floor for the day, asked whether it was right to leave out in the cold persons who had invested millions in improvements. Turner responded that he did not

take that position, but did believe that "for every dollar they have invested they have taken three, and they have got them in their pockets right now."<sup>49</sup> Eventually, the delegates adopted the harbors article as proposed, but they eliminated the 24-foot depth for the outer harbor line and changed the minimum harbor width from 200 feet to 50 feet.<sup>50</sup>

The next day David Durie of Se-

attle again attempted to place control of the harbors in the cities rather than the state, proposing an additional section to the harbors article vesting all control in the cities.<sup>51</sup> At this point, James Moore of Spokane introduced a resolution that any delegate of the convention holding an interest in or claim to any of the lands of the new state should disclose that interest in convention and refrain from voting on all questions directly or indirectly affecting the property.<sup>52</sup> Moore pointed out that the convention had placed a similar requirement in the legislative article and argued that the same rule should apply to the convention itself. Moore claimed that 75 percent of the members of the Seattle City Council were tideland "jumpers," and he would not sit still while these interested persons voted away the interests of the state. S.G. Cosgrove of Garfield argued that it was improper to impeach any gentleman's motive in voting: What if the rule disqualified two-thirds of the members of the convention? Moore responded that he did not "expect that any ideas will get into the gentleman's head until his cap is removed and a surgical operation is performed."<sup>53</sup> The proceedings disintegrated into a cross-fire of personalities until the chairman was able to restore order. Moore continued his attack:

He referred to the settlers on tidelands as trespassers who had no equities. They tearfully demanded that they be left alone, the poor fellows who have made millions, then come down here with an army of lobbyists and an open sack. They have the audacity to come to a constitutional convention, supposed to be composed of honest men, and ask us to throw down the bars and step in to grab the peoples' property. "Why, Mr. Chairman," he exclaimed, "there are more graves of statesmen on these tidelands that we have any idea of."<sup>54</sup>

Durie's proposed section was defeated by the largest margin to date, 70 to 3.<sup>55</sup> After the vote, Durie rose to a question of privilege to answer

some of the "cowardly insinuations that had been made with blatant demagoguery against members of city governments who are members of the convention." Durie explained that he was a member of the Seattle City Council and was interested in the Seattle Drydock Company, a fact which he had never concealed and had made known to the harbor committee. Chairman Eldridge concluded the episode by remarking that "a whole lot" of unparliamentary language had been used.<sup>56</sup>

### **The Oregon Improvement Company**

The newspapers carefully watched the tideland debates for any hint of bribery or corruption in the disposition of the tidelands. The *Seattle Post-Intelligencer* had warned from the outset that the Oregon Improvement Company would "besiege the constitutional convention with a powerful lobby, the object of its efforts being to obtain a title to the tidelands of Elliott Bay."<sup>57</sup> The *P.I.* warned that the OIC would play a "deep and silent game" in order to obtain a clause in the constitution confirming the old grant to the Seattle & Walla Walla Railroad or alternatively confirming all acts passed by the Territorial Legislature.<sup>58</sup> As the tideland debate proceeded, the *P.I.* complained that any provision allowing the sale of the tidelands, even at an appraised valuation, would result in robbing the state of millions of dollars: "The appraisement will be so 'managed' as to give the lands to the grabbers for a small fraction of their value."<sup>59</sup> The *Tacoma Morning Globe* also warned of lobbying efforts by OIC and other railroads:

The biggest and most powerful lobby since the convention began is actively at work on the tidelands question. There are four men here representing tidelands interests aggregating in value \$100 million. All this monied influence will endeavor to convince the delegates that the persons who have improved the land and who have titles, have rights which the state, the

United States or anybody else should not infringe upon. The railroads and the Oregon Improvement Company are principally interested, and they have formed a combination with the owners of riparian rights and others who have similar interests and stakes to secure action favorable to them.<sup>60</sup>

The *Globe* reported a prominent

rumor that certain railroads had resorted to bribery to gain support for the "tidelands syndicate."<sup>61</sup>

Delegate Austin Mires recorded his own suspicions in his diary, writing on August 13, the day on which the tideland and harbor debate began:

T. C. Griffiths has been bought over by somebody. Also Fairweather and Manley. Mr. El-

more, Struve and others are here lobbying in favor of tideland grabbers and corporations.<sup>62</sup>

On August 14, Mires reported more optimistically that "the lobby seems to be losing its grip," and that "Griffitts is attempting to get back to the side of the people."<sup>63</sup> Mires decried the "strong tendency to throw away the valuable rights of the future state," observing that "corporate influence seems to have too much sway."<sup>64</sup>

Correspondence in the files of the Oregon Improvement Company,<sup>65</sup> although unknown to Mires, confirms his suspicions that some delegates had "been bought over by somebody." OIC officials sought a confirmation of the 1873 grant of Elliott Bay to the Seattle & Walla Walla, but doubted they could achieve this goal because it would threaten the position of the Northern Pacific in Seattle and because the newspapers had warned against this possibility, especially the *Seattle Post-Intelligencer*, "whose editor seems lately to have run wild on this topic."<sup>66</sup> But E. H. Morrison, who appears to have been a lobbyist for the OIC, assured the OIC that the convention could be persuaded to confirm the grant.<sup>67</sup> Morrison had enlisted the services of delegate H.W. Fairweather of Sprague in Lincoln County, west of Spokane. Fairweather, a former superintendent for the Northern Pacific, was a well-established banker and businessman.<sup>68</sup>

OIC officials met in Olympia with Morrison, Fairweather and Col. J. C. Haines, a prominent Seattle attorney representing the OIC:

[Morrison] stated the position to be — that neither money nor anything else would get that grant openly confirmed by the convention — but that he thought 40 men could be influenced to support the measure indirectly, say in an omnibus ratification of all territorial acts; and estimated the damages at from \$150,000 to \$200,000. I said alright, provided the goods were delivered and the constitution adopted I would see the

matter through up to \$150,000. So it rests.<sup>69</sup>

The president of the OIC approved of this plan, though not without misgivings as to its success.<sup>70</sup> With president Smith in New York City and resident manager McNeill shuttling between Seattle, Olympia and Portland, communication was difficult. OIC officials resorted to encoded telegrams, such as the following:

Handsome all Earl and dull eye that Druid proposed will mouse fiddlers of our haddock to Pachyderm by convention and man trap hereafter to implore it dreadless escalate possibility of erasing undone and filthier only as suggested when outparish all moused hamster elapse.<sup>71</sup>

This form of communication was less than ideal, and occasionally led to misunderstandings.<sup>72</sup>

OIC officials discussed their efforts with territorial governor Miles Moore, who cautioned against an open confirmation of the Seattle & Walla Walla grant, warning that this might result in public rejection and a popular vote against ratification of the entire constitution.<sup>73</sup> OIC attorney Haines and Seattle resident manager McNeill traveled to Olympia on the night of Monday, August 12, in order to reinforce Morrison. They caucused all night, but were unable to "make a combination."<sup>74</sup> They determined to "work on a line of policy of preventing any negative action being taken by the convention."<sup>75</sup> □

(Footnote numbering continued from part I, March 1989 Bar News)

<sup>40</sup>*Id.*

<sup>41</sup>*Tacoma Morning Globe*, August 9, 1889.

<sup>42</sup>*Seattle P.I.*, August 6, 1889.

<sup>43</sup>*Tacoma Morning Globe*, August 8, 1889.

<sup>44</sup>Johnson, "George Turner, a Character from Plutarch," 18 *Wash. L. Rev.* 167, 172 (1943).

<sup>45</sup>*Spokane Spokesman Review*, April 19, 1914.

<sup>46</sup>Johnson, *supra*.

<sup>47</sup>*Journal of the Convention, supra*, p. 783.

<sup>48</sup>*Id.*, p. 791.

<sup>49</sup>*Tacoma Morning Globe*, August 14, 1889.

<sup>50</sup>*Journal of the Convention, supra*, p. 788.

<sup>51</sup>*Journal of the Convention, supra*, pp. 791-92.

<sup>52</sup>*Tacoma Morning Globe*, August 15, 1889.

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>*Id.*

<sup>57</sup>*Seattle P.I.*, July 4, 1889.

<sup>58</sup>*Id.*

<sup>59</sup>*Seattle P.I.*, August 15, 1889.

<sup>60</sup>*Tacoma Morning Globe*, August 11, 1889.

<sup>61</sup>*Tacoma Morning Globe*, August 14, 1889.

<sup>62</sup>Austin Mires' diary, August 13, 1889, Austin Mires Papers, Washington State University Library.

<sup>63</sup>*Id.*, August 14, 1889.

<sup>64</sup>*Id.*, August 15, 1889.

<sup>65</sup>The University of Washington Libraries are the repository of the Oregon Improvement Company records, 1880-1896. The Pacific Coast Company purchased the OIC in 1896, and in 1963 the Pacific Coast Coal & Oil Company gave the OIC records to the U.W. Libraries.

<sup>66</sup>OIC records, correspondence: Inter-office, Box 46, Folder 34, H.W. McNeill (Seattle resident manager) to Elijah Smith (OIC president, New York City), July 25, 1889; John Howard (San Francisco manager) to Elijah Smith, July 25, 1889.

<sup>67</sup>OIC records, Morrison to Smith, July 27, 1889.

<sup>68</sup>*II History of the Pacific Northwest: Oregon and Washington*, p. 321 (1889).

<sup>69</sup>OIC records, correspondence: Inter-office, Box 46, Folder 36, McNeill to Smith, July 30, 1889.

<sup>70</sup>OIC records, general outgoing correspondence, Smith to McNeill, August 9, 1889.

<sup>71</sup>OIC records, correspondence: Inter-office, telegram, Smith to McNeill, August 11, 1889. Translation:

If you all agree and advise that action proposed will secure confirmation of our title to tidelands Seattle by convention and ratification hereafter so making it absolute beyond possibility of being undone and consideration only as suggested when that is all secured, I will approve.

<sup>72</sup>Such as Smith's petulant letter questioning the interpretation of Morrison's August 10 telegram: "Cipher word hash means location, which don't make sense." OIC records, Smith to Morrison, August 26, 1889.

<sup>73</sup>OIC records, correspondence: Inter-office, Box 46, Folder 39, McNeill to Smith, August 10, 1889.

<sup>74</sup>OIC records, correspondence: Inter-office, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

<sup>75</sup>*Id.*

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# THE BATTLE FOR THE TIDELANDS IN THE CONSTITUTIONAL CONVENTION

## Part III

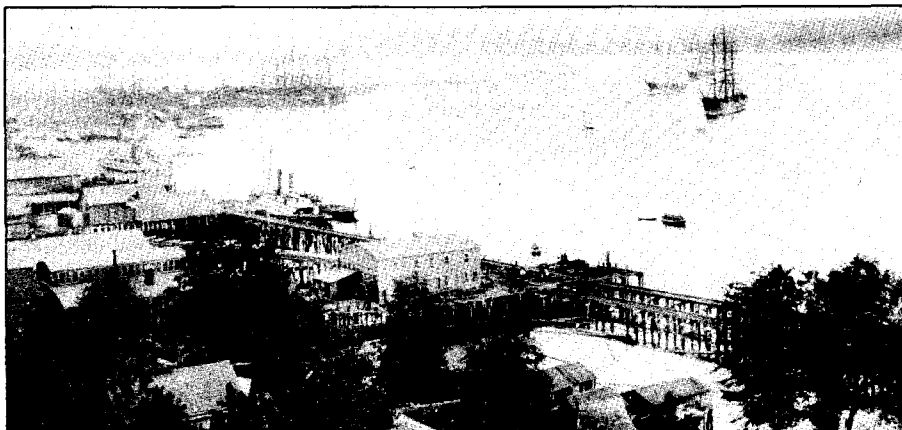
by Charles K. Wiggins

### The Lobby Almost Succeeds: The Stalemate

Having adopted the harbors article, the delegates turned to the public lands article, which included the tidelands. As proposed by the public lands committee, Section 1 authorized the sale of any of the public lands of the state for full market value to be ascertained as provided by law.<sup>76</sup> The only dissenting vote was that of delegate Griffiths of Spokane, who offered a substitute providing that the tidelands would remain forever the property of the state.<sup>77</sup> Griffiths' substitute was decisively defeated and Section 1 was adopted, much to the disgust of the *Seattle Post Intelligencer* (P.I.).

Under this provision the second proceeding in the scheme of the grabbers will be entirely practicable. This will be to have the lands appraised and sold, giving the grabber (who will appear under one title or another invented to conceal his real character) the first right to buy at the *appraised valuation*. The fraud will lie in the provision contained in the emphasized words. Under the plan outlined the appraisalment will be so "managed" as to give the lands to the grabbers for a small fraction of their value.<sup>78</sup>

The public lands article did not claim any state ownership in the tidelands, but simply prohibited waterfront owners from excluding right-of-way to the water whenever it is required for any public purpose or navigation.<sup>79</sup> Turner opened the battle on this section by proposing a substitute which declared the state's ownership in all of the tidelands, and disclaimed the 1873 grant of Elliott Bay to the Seattle & Walla Walla Railroad by providing that no official or private act "shall be permitted to prejudice the state in the assertion and maintenance of such ownership."<sup>80</sup> Seattle delegate Kinnear agreed with Turner that the Legislature had no power to grant this land to the Seattle & Walla Walla and



that the convention had the power and right to correct the Legislature's error.<sup>81</sup> Tacoma delegate Stiles disagreed and vigorously debated Turner's position, citing U.S. Supreme Court case law and the 14th amendment.<sup>82</sup> Following a lengthy legal debate among the lawyer delegates, Turner's substitute carried by a vote of 36 to 33.<sup>83</sup>

Delegate Hoyt of Seattle triggered the next debate when he offered a section confirming all United States patents<sup>84</sup> purporting to grant land between the line of ordinary high tide and the meander line<sup>85</sup> of the United States survey.<sup>86</sup> The vote on this proposal was geographical, the western delegates in favor and the eastern opposed. Spokane delegate Moore protested that the matter should be left to the Legislature, and that the convention was not the place to decide individual land claims. Hoyt sarcastically responded that he was glad that Moore had instructed the convention on what it ought to do, but he thought that the convention had the power to confirm the patents and should do so because it was right. Hoyt argued that commercial interests in Seattle needed a resolution so that they could borrow money and build on those properties. He also argued that men have purchased land in good faith relying on their patents, and it was morally right to confirm the patents. Moore derided the "old settler dodge" protesting that a job was being foisted on the convention.<sup>87</sup>

Weisenberger of Whatcom County thought that the people from the Sound had as much knowledge of navigation as the eastern delegates "who were in the

habit of sailing prairie schooners across the sagebrush deserts."<sup>88</sup> Weisenberger argued the importance of this section to the people of Whatcom (now Bellingham) whose business section is located on 12 acres of land covered by patents, all of which was on tidelands.<sup>89</sup> Speaker after speaker expressed his views. After long debate, Turner offered a compromise, permitting the Legislature to make laws to confirm and validate U.S. patents so long as the state should not part with the title to lands necessary for harbor purposes.<sup>90</sup> Hoyt opposed Turner's substitute on the ground that it would negate the basic purpose of validating patents on the Seattle waterfront, and Turner's substitute was lost by a vote of 26 to 39.<sup>91</sup> The debate concluded with a dramatic gesture by delegate Power of La Conner:

Power capped the climax when he drew a musty government patent from his pocket and shook it with great dramatic effect in the eyes of the convention and wanted to know if the members would look upon that which contained the sacred signature and seal of the President of the United States and deliberately vote away the happy homes of the old settlers. That settled it and the convention endorsed the proposition by a heavy majority.<sup>92</sup>

In the following days, the delegates continued to amend and rework the tidelands sections of the public lands article. The P.I. reported that the

disgruntled eastern Washington delegates had combined with the disgruntled delegates who favored the rights of uplands owners, and that this combination would burden the article with amendments.<sup>93</sup> Reports of this combination raised serious concerns that the amendments would result in the defeat of the entire article. Mires observed in his diary, "the tidelands jumpers, corporations, et al. are weighing the report down with such amendments as will kill the report."<sup>94</sup>

The first amendment was to strike the provision that any law governing the sale of the tidelands must be enacted by two successive Legislatures.<sup>95</sup> Delegate Weir of Port Townsend again offered his section giving prior right of purchase to persons who had built improvements on tidelands, and this time Weir's proposal was accepted.<sup>96</sup> The *P.I.* opined that the support for Weir's amendment was "not honest," and would be withdrawn, leading to the defeat of the entire article on its third reading.<sup>97</sup> Griffiths of Spokane offered one final amendment in disgust: "If any of the lands of this state have not been given away in this article the omission to do so is unintentional on our part."<sup>98</sup>

The public lands article, including the tidelands section, came up for a final vote on Monday, August 19. The entire article was defeated by a vote of 35 to 34, with four members abstaining and two on leave.<sup>99</sup> Turner then moved the adoption of a new article which declared the state's ownership in the tidelands, disclaimed prior official acts purporting to give title, allowed anyone to assert his claim to vested rights in a court of law, allowed the Legislature to confirm United States patents, and prohibited the sale of harbor areas. Turner's substitute resulted in a deadlock of 35 to 35, thus failing to pass.<sup>100</sup> The convention then passed a separate article dealing solely with the school lands, and referred the tidelands article back to the committee on public lands.<sup>101</sup> McNeill of the Oregon Improvement Company reported to president Smith that the convention's action greatly enhanced the OIC's claim to the Seattle & Walla Walla grant, but McNeill feared that the game was not yet over:

If an adjournment could have been forced at this point we

have cause for great congratulation. But I feel sure from the howl of the press and the desire of the politicians to manufacture capital, additional articles of some character will be forced through the convention before it does adjourn.<sup>102</sup>

### The Final Compromise

The tidelands deadlock continued for three days. On August 20, Stiles of Tacoma proposed that upland owners be given a priority right to purchase tidelands on which they had made improvements.<sup>103</sup> When Eldridge of Whatcom supported the measure, Moore demanded to know whether Eldridge did not own a mill on Bellingham Bay. Hoyt ruled Moore's inquiry out of order,<sup>104</sup> but Moore bitterly denounced the efforts to "bring matters of equity before the convention for adjudication."<sup>105</sup> Stiles' measure carried, but the delegates still refused to pass the article.

On August 21, the delegates again voted down the tidelands article. E.H. Sullivan of Colfax proposed a substitute leaving all tidelands issues to the Legislature. Both Sullivan's and Turner's proposals were defeated. Power then proposed a substitute which confirmed all patents, asking for a vote on that issue alone. The delegates "continued to stand in with the old settlers," and Power's substitute passed. McElroy of Seattle proposed another separate measure, declaring state ownership of the tidelands, and this too passed.<sup>106</sup>

As the deadlock continued, it appeared the railroads might succeed in blocking any meaningful policy on the tidelands. But on the night of August 21, several eastern and western delegates hammered out a compromise. Mires wrote in his diary:

Drank a good deal in evening with Fairweather, Booge, et al. In the evening I called at T.L. Stiles' rooms to discuss the advisability of passing something ref. to tidelands as he has been one of the vigorous opponents. Allen Weir was there also. We agreed on an article. Stiles drew it. Each agreed to not oppose it. I am to introduce it. Weir joined us on



several drinks of whiskey.<sup>107</sup>

The compromise measure declared the state's ownership and allowed any person to assert his claim to vested rights in the courts of the state.<sup>108</sup> When Mires introduced it on August 22, "a murmur of satisfaction went around the hall."<sup>109</sup> The compromise was pushed through before it could be amended. "So," observed Mires in his diary, "ended the great strife."<sup>110</sup> With the tidelands issues resolved, the convention adjourned that evening after the delegates had signed the engrossed constitution.

The final result was that the convention had declared state ownership of the tidelands, and had prohibited sale of the tidelands within the harbor areas which would be established by a harbor commission.<sup>111</sup> These provisions would serve to protect the needs of commerce in front of the cities, but only if the harbor lines were properly established and the tidelands which were sold were properly appraised.

### Later History of the Tidelands

The first Legislature was overwhelmingly Republican, but was divided by the same conflicts regarding the tidelands which had so badly fractured the constitutional convention. The western representatives were divided between the interests of the upland owners (the jumpers) and those who had built improvements on the tidelands (the squatters). The eastern delegates were unsympathetic to either group.<sup>112</sup> The eastern delegates generally favored sale of the tidelands in an open auction. Alarmed by the prospect of competitive bidding, the upland owners and the improvers drafted a compromise procedure for sale of the tidelands. The tidelands would be appraised, then the upland owner would have the option to purchase at the appraised valuation, subject to a preference in favor of persons who had built bona fide improvements before passage of the act.<sup>113</sup> But the tidelands in front of the cities could still not be sold until harbor lines were drawn, and the Legislature provided for the appointment of a five-member commission by the governor.

Washington's first governor, Elijah P. Ferry, a former territorial governor, had represented the Northern Pacific Railroad, but showed commendable independence in appointing the Commission.<sup>114</sup> The post of Harbor Line Commissioner proved to be a political hot potato, and a number of prominent citizens declined Ferry's offer of a position, including George Turner, former territorial governor Miles Moore, former congressional delegate Thomas Brents and Judge Orange Jacobs of Seattle. Eventually Ferry was able to find five commissioners, surprisingly including William F. Prosser of Yakima, a delegate to the constitutional convention who had worked hard for permanent state ownership of the tidelands, and who was endorsed for commissioner by former delegates Stiles of Tacoma and Kinnear of Seattle.<sup>115</sup> The commission began its work in Seattle in late July 1890, in view of the extensive tidelands fronting on Seattle and the business interests eagerly awaiting the opportunity to develop the Seattle waterfront.<sup>116</sup>

But in 1890 intense railroad rivalries along the Seattle waterfront rendered all the more complex the task of drawing the harbor lines. James J. Hill, the great railroad empire builder of St. Paul, was eyeing Seattle as a terminus for his newly organized transcontinental railroad company the Great Northern. Hill had already connected St. Paul with Butte, Montana through his Montana Central Railroad. In 1880 Hill was laying out a railroad route to connect Puget Sound with the Montana Central, and hence with St. Paul. In a fruitless effort to prevent Hill's entry into Seattle, the Northern Pacific bought the Seattle Lakeshore & Eastern.<sup>117</sup> Hill's representative, Col. William Clough, hired Judge Thomas Burke of Seattle to organize a new railroad, the Seattle & Montana to provide Hill's entry into Seattle.<sup>118</sup> Burke prevailed upon the Seattle City Council to grant to the new railroad half of the right-of-way on Railroad Avenue. Having given 30 feet to the Seattle Lakeshore & Eastern, and 60 feet to the Seattle & Montana, this left only 30 feet remaining on Railroad

Avenue. This latest generous gesture triggered a bitter and protracted battle which would not be resolved for another decade.<sup>119</sup> With Hill dangling before their eyes a transcontinental railroad connection, Judge Burke and the Seattle City Council were all the more determined that the harbor lines must not interfere with Railroad Avenue and the development of the Seattle waterfront.

The Harbor Commission investigated harbor conditions in other states, both in California and on the east coast. The commission took testimony from civil engineers who had considerable experience in harbor lines and improvements.<sup>120</sup> The Commission listened patiently to the petitions of interested property owners of Seattle, who urged that the inner harbor line be placed in 50 feet of water at low tide, with the outer line in even deeper water:

The object of the proposition was to place the inner line beyond any wharves or other structures upon the present line of deep water and virtually leave the entire control of the commerce of the city in the hands of those who now occupy the waterfront. In other words, the establishment of

such a line would practically result in the absolute nullification of the constitution and of the acts of the Legislature on the whole subject.<sup>121</sup>

The Commission concluded that the entire 600 feet allowed by the constitution should be reserved on the Seattle waterfront, with the inner line between the high-tide and low-tide marks, and the outer line 600 feet beyond, out into deep water. On October 28 by unanimous resolution the Commission established by metes and bounds harbor lines in Elliott Bay reserving the 600-foot-wide harbor area: "These lines, as so located by us, included the space known as Railroad Avenue for about 2 miles, and also more or less of the space occupied by about 35 wharves, most of the wharves extending from the avenue mentioned to deep water."<sup>122</sup>

In order to prevent the Commission from filing maps permanently locating these harbor lines, Seattle lawyers Thomas Burke and J.C. Haines worked late into the night to prepare a petition for a writ of prohibition.<sup>123</sup> The petition, on behalf of Henry Yesler, sought to preclude the Commission from interfering with his operation of his wharf, and the King County Superior Court issued the writ of

prohibition the following day. The Yesler lawsuit was followed by a series of similar actions which delayed the Commission but were ultimately unsuccessful. In July 1891 the state Supreme Court reversed the writ of prohibition and upheld the Harbor Line Commission. The decision, written by Justice Hoyt, who had presided over the convention, held that Yesler owned only the wharf, and not the land on which it stood, and his title was not clouded in any way by the harbor lines.<sup>124</sup>

Foreseeing eventual defeat in the state Supreme Court, Burke had commenced another action in federal court similarly enjoining the Harbor Commission.<sup>125</sup> This injunction as also doomed to defeat, this time in the U.S. Supreme Court:

Burke won only the preliminary skirmishes and lost all of the major battles in his struggle with the Harbor Line Commission. But he won the war. The term of the Commission was to expire on January 15, 1893. The United States Supreme Court rejected jurisdiction on December 19, 1892, but there remained the other suits to be cleared up which could easily delay matters for the necessary time.<sup>126</sup>

Outgoing governor Ferry recommended the extension of the term of the Harbor Line Commission, but the new governor, John McGraw, appointed a new commission more sympathetic to the needs of the Seattle waterfront owners. The new commission located the harbor lines in front of Seattle in order to avoid existing improvements insofar as possible.<sup>127</sup>

The loss of the tidelands was unfortunate for the city of Seattle. In 1895, Virgil Bogue, a consulting engineer, developed a coordinated plan for the development of Seattle's harbor. He pointed out that the system of independent railroad franchises along the waterfront created an intolerable situation of duplication of facilities and needless expense. Bogue recommended that the greatest commercial success would result from public ownership and control of dock facilities and a single

terminal company serving all railroads.<sup>128</sup> The Bogue plan was never implemented, and in 1910 the federal Commissioner on Corporations observed, "This situation on Railroad Avenue seems to make the provisions for public control of the waterfront of no effect insofar as this particular portion thereof is concerned."<sup>129</sup> Finally, enough interested citizens realized that it would be necessary to create a public port district, which resulted in the creation of the Port of Seattle. The Port's first business was to buy back from private ownership the tidelands which had been so generously and cheaply sold only a few years earlier.

As an example of Judge Burke's wisdom in stripping the Harbor Line Commission of tideland property, the site for the east waterway terminal, consisting of block 375 and half of blocks 376 and 386, was purchased by the Port Commission from the Hefferman Drydock Company for \$425,000. Little more than a decade before, the state had surrendered all of Seattle tidelands blocks 375, 376 and 378 for a total of \$4,286.<sup>130</sup>

It is tempting, but simplistic, to blame the delegates to the Constitutional Convention for the disposition of the tidelands. As early as the adjournment of the convention, the *Seattle P.I.*, while generally approving the constitution, saw the tidelands policy as the chief mistake of the convention, predicting that it would "result in the hindrance of enterprise in many ways and in great loss to the state."<sup>131</sup> In reality, however, the delegates had probably reached the best compromise which could be achieved under the circumstances, in view of the heavy lobbying efforts, the complexity of the problem, and the division of opinion within the convention itself. As one writer concluded, "It cannot be claimed that the delegates allowed the sale of the tidelands, they merely allowed the Legislature to sell them. The fact that no constitutional provisions were made for their sale is a tribute to the integrity

of the delegates to the convention."<sup>132</sup>  
□

*Footnotes* (numbering carried over from "The Tidelands, Part II," in the April 1990 *Bar News*):

<sup>73</sup>OIC Records, Correspondence: Interoffice, Box 46, Folder 39, McNeill to Smith, August 10, 1889.

<sup>74</sup>OIC Records, Correspondence: Interoffice, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

<sup>75</sup>*Id.*

<sup>76</sup>*Journal of the Convention, supra*, p. 204, August 1, 1889.

<sup>77</sup>*Seattle P.I.*, August 15, 1889.

<sup>78</sup>*Seattle P.I.*, August 15, 1889.

<sup>79</sup>*Journal of the Convention, supra*, p. 204, August 1, 1889.

<sup>80</sup>*Id.*, p. 812.

<sup>81</sup>*Tacoma Morning Globe*, August 16, 1889.

<sup>82</sup>*Id.*

<sup>83</sup>*Seattle P.I.*, August 16, 1889.

<sup>84</sup>A government patent is, "the instrument by which a state or government grants public lands to an individual." *Black's Law Dictionary* (revised 4th ed. 1968).

<sup>85</sup>"The meander line is not a boundary line but exists for the purpose of defining the sinuosities of the bank or shore and for ascertaining the quantity of land remaining in a particular section or

subdivision thereof or in a donation land claim after the segregation of the navigable water area. Numerous decisions by the United States Supreme Court and many state courts have held that meander lines do not constitute boundaries but are run only for the purposes set forth above, and that the line of mean high water or line of ordinary high tide, as the case may be, forms the boundary." M. Phelps, *Public Works in Seattle: A Narrative History of the Engineering Department 1875-1975*, pp. 65-66 (1978).

<sup>86</sup>*Seattle P.I.*, August 16, 1889.

<sup>87</sup>*Id.*

<sup>88</sup>*Tacoma Morning Globe*, August 16, 1889.

<sup>89</sup>*Seattle P.I.*, August 16, 1889.

<sup>90</sup>*Tacoma Morning Globe*, August 16, 1889.

<sup>91</sup>*Id.*

<sup>92</sup>*Seattle P.I.*, August 16, 1889.

<sup>93</sup>*Seattle P.I.*, August 17, 1889.

<sup>94</sup>Mires Diary, *supra*, Friday, August 16, 1889.

<sup>95</sup>*Tacoma Morning Globe*, August 18, 1889.

<sup>96</sup>*Id.*

<sup>97</sup>*Seattle P.I.*, August 18, 1889.

<sup>98</sup>*Tacoma Morning Globe*, August 18, 1889.

<sup>99</sup>*Journal of the Convention, supra*, p. 401, August 19, 1889. Strangely, the

microfilmed editions of the *Seattle Post Intelligencer*, *The Seattle Times*, and the *Tacoma Morning Globe* are missing the report of convention proceedings for August 19. The entry in the *Spokane Falls Review* is atypically brief.

<sup>100</sup>*Id.*, pp. 402-03. Delegate Neace was on leave, and Kinnear and Hoyt were absent without leave, having returned to Seattle to attend to their

political interests, being locked in a battle with former governor Watson Squires for control of the Republican Party. *Tacoma Morning Globe*, August 21-22, 1889. One wonders how matters would have been resolved if Hoyt and Kinnear had remained at their posts.

<sup>101</sup>*Journal of the Convention, supra*, pp. 404-05.

<sup>102</sup>OIC Records, Correspondence:

Interoffice, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

<sup>103</sup>*Tacoma Morning Globe*, August 21, 1889.

<sup>104</sup>Eldridge responded to Moor's charge the following day explaining that he was the part owner of a sawmill on the Sound, which had been built under territorial legislation. *Tacoma Morning Globe*, August 22, 1889.

<sup>105</sup>*Id.*

<sup>106</sup>*Seattle P.I.*, August 22, 1889.

<sup>107</sup>Mires Diary, *supra*, August 21, 1889.

<sup>108</sup>*Tacoma Morning Globe*, August 23, 1889.

<sup>109</sup>*Id.*

<sup>110</sup>Mires Diary, *supra*, August 21, 1889.

<sup>111</sup>Wash. Const., Art. XV, Sec. 1, Art. XVII, Sec. 1.

<sup>112</sup>Nesbitt, *supra*, p. 317.

<sup>113</sup>*Id.* at 318.

<sup>114</sup>*Id.* at 320-21.

<sup>115</sup>Nesbitt, *supra*, pp. 321-22.

<sup>116</sup>State of Washington, *First Report of the Harbor Line Commission*, p. 9, 1891.

<sup>117</sup>Nesbitt, *supra*, pp. 158-59.

<sup>118</sup>G. Quiett, *They Built the West*, p. 460, 1934.

<sup>119</sup>Nesbitt, *supra*, pp. 216-27.

<sup>120</sup>*First Report of the Harbor Line Commission*, p. 10, 1891.

<sup>121</sup>*Id.* at p. 13.

<sup>122</sup>*Id.* at p. 26.

<sup>123</sup>Nesbitt, *supra*, p. 327.

<sup>124</sup>*Harbor Line Commissioners v. State*, 2 Wash. 530, 1891.

<sup>125</sup>Nesbitt, *supra*, p. 333.

<sup>126</sup>Nesbitt, *supra*, p. 337.

<sup>127</sup>Nesbitt, *supra*, pp. 338-39; I.W. Prosser, *A History of the Puget Sound Country*, pp. 217-18, 1903.

<sup>128</sup>Nesbitt, *supra*, pp. 236-37.

<sup>129</sup>*Id.*, p. 242.

<sup>130</sup>*Id.* at p. 342.

<sup>131</sup>*Seattle P.I.*, August 23, 1889.

<sup>132</sup>J. Fitts, *The Washington Constitutional Convention of 1889*, p. 185 (Master's Thesis, University of Washington, 1951).

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