

### RIPARIAN RIGHTS MADE SUBJECT TO NAVIGATION RIGHT

#### Opinion of Judge Dillon Quoted to Show Legal Status of Waterfront; Relation to the Dock Bill.

By J. B. Ziegler.

For the benefit of the legislators at Salem, objecting to the dock bill, and suggesting various amendments thereof, permit me to again quote Judge Dillon, the greatest authority on the subject in this country.

It is said by these objectors that if the state can not convey to riparian owners it can not convey to the city— that a conveyance of public property to a private owner is an alienation, while a conveyance to the city is not, the city being an agent of both state and public.

Judge Dillon says on this point, page 498 Vol. 1, "Municipal Corporations": "But grants of submerged lands of a harbor are frequently made to municipalities, usually upon trusts and subject to public duties in furtherance of navigation and commerce. These grants, being made to agencies of the state and in furtherance of the trust upon which the state holds the submerged lands, are not open to objection. It has also been said that in every grant of lands bounded by navigable waters, made by the state as trustee for the public there is reserved by implication the right to improve the waterfront as to aid navigation for the benefit of the general public without compensation to the riparian owner. The implication springs from the title to the tideway of navigable waters, the nature of the subject of the grant, and its relation to navigable tidewater, which has been aptly called the 'highway of the world.'"

#### Navigation Rights Paramount.

"The purpose for which the state holds the title to lands under tidewater is consistent with the power to grant any easement or right to adjacent uplands that will prevent the state, when the necessities of commerce demand, from wharfing out to deep water. Hence it has been laid down as a general thesis that all the rights of riparian owners are subject to the paramount right of navigation over tidal and other navigable waters."

"The power to protect the dominant right of navigation includes not only the power to keep the navigable waters free from encroachment, but to improve the navigability of these waters by work upon old channels or digging new channels or otherwise below high water mark. The state has been held to have a right to construct works for the improvement of navigation without incurring any liability to riparian owners. Thus it has been held that the city of New York has power to improve the waterfront of Manhattan Island for the benefit of navigation free from any interference by the riparian owner. This right to improve navigation exists because, in every grant of lands bounded by navigable waters, the trustee for the public there is reserved

by implication the right to so improve the waterfront as to navigation for the benefit of the general public without compensation to the riparian owner. But the paramount right of the state must be exercised strictly in furtherance of the trust under which it holds the lands under water; that is, to improve navigation. A speedway or pleasure drive, from which are excluded commercial traffic, although made pursuant to statutory authority, is not an exercise by the city of the power conferred upon it as trustee for the public in and to navigable waters, and subjects the city to damages caused to riparian property."

#### Contrary to Trust.

It would seem by this construction of the law that harbor properties are not liable to other public burdens than that of public navigation and commerce, and consequently the diversion of revenues from such properties to other uses, such as the proposed leases for the benefit of the school fund, would be contrary to the trust imposed upon the state.

For the same reason, in great part, cities such as New York, London, Hamburg, where the value of harbor improvements, traffic connections, and consequent commercial development are recognized as the basis of municipal growth and welfare; public harbor properties are kept free from entanglement with other public utilities, and the revenue arising therefrom are devoted strictly and solely to the construction and maintenance of same.

Not only that, but England, Germany, France and Japan, have assisted maritime commerce by large subsidies, both to harbor improvements and traffic lines.

The people of Oregon would receive far greater benefit by permitting the city of Portland free use of the bed of the harbor and granting all legislative encouragement necessary than by levying upon it petty assessments in an appeal to the alleged rights of parts of the state, not in immediate contact with it, but yet dependent upon the traffic routes secured through the Portland terminal.

#### Much Depends on Port.

The prosperity of Oregon and Portland are as much interwoven as that of Germany is with its ports of Hamburg and Bremen. And the development of these and other 1877 unlimited state and municipal appropriations and an extensive and elaborate system of rate regulation is the marvel of the age.

There, however, the problem was studied as a science, hence it is neglected and left by ignorant politicians to the fortunes of chance, subservient to the whims of very petty political ambitions.

After 50 years of neglect and weak yielding of these public properties to the demands of incompetent and uncorrelated private interests, including attempts to divest the public title, and until railroads antagonistic to waterways have acquired 50 per cent of the riparian rights, with never a thought of public revenue.

Now, when the people of Portland have taken the necessary preliminary steps to assuming the ownership and improvement of the properties, and with great effort the legislature has been stirred to attention, we begin to hear of revenues due the state.

#### Belong More to City.

If such were not due under private administration, why under public administration. In fact the properties belong more to the city than to the state. The state has title because of her sovereignty. In this case the representative of the state has neglected and attempted to divest, and had forgotten the properties.

When the city appropriated funds and claimed the properties to improve, it was the public claimant in its own right. It is like a stop-father who, by assisting his claims of affection to the child when the real father appears, and then wants money to forego those claims.

However, if it will add any support to the bill, the small revenue they have in their eye is not of great importance. The denial and confusion of the city's right in these properties with other intricate exigencies is of more.

Clean cut possession and administration, entirely free from outside interference or burden, is the only correct policy for the basic utility of the port.

#### Statement Called Misleading.

It was stated in a review of a letter of Dock Chairman Mulkey to Senator McCulloch, published by a morning paper, that a wharf right when used becomes an irrevocable right, and can only be secured by exercise of the right of eminent domain.

The statement is misleading. It is true in relation to improvements and expenditures made, but not as to the franchise right itself. Just as in streets, the principle is being established that a franchise grant only a right of use to the extent specified and a right of none whatever to possession for speculation or exclusive purposes; like the principle is being applied to waterways. In Oregon the law is construed that the riparian has no right beyond ordinary high water line, except such as the state sees fit to permit, and in *Howly vs. Shively*, since the passage of the wharf right act of 1882, under which riparians are now claiming, Shively, the riparian, was held to have no rights, since he had not availed himself of the privilege conferred by the act.

Congress, invested with the rights of the United States to control navigation and commerce, is also taking cognizance of this question, and Major McCulloch, engineer in charge of this harbor, has very recently made a report to the secretary of war in obedience to a demand of congress, embodying specifically the following information:

#### Engineer Makes Report.

(a) The general location and description of water terminals and the extent and method of their use by water carriers and their general efficiency, and whether open to use by all water carriers on equal terms, and such information as may be accessible as to the terms and conditions of use.

(b) Whether physical connection exists between such water terminals and the railroad or railroads serving the same territory or municipality, and also whether there exists between any of the water carriers operating upon waters under improvement or heretofore improved and any railroad or railroads a mutual contract for interchange of traffic by prorating as to such long distance traffic as may be desired to be

carried partly by rail and partly by water to its destination.

(c) Whether improved and adequate highways have been constructed to each water terminal.

(d) If two water terminals exist, an opinion in general terms as to the necessity, number, and appropriate location of terminals upon such waters.

December 18, 1909, the board of engineers, appointed by congress, and attached to the war office, formulated the following rules, in force since:

"That no work of construction or maintenance be undertaken by the government at any harbor constructed by and operated in the interest of a corporation or private person, and adapted to the promotion of that interest only.

"That the work at any harbor be confined to the general part of the harbor, including as may be necessary the construction and maintenance of breakwaters with the general anchorage area protected thereby, of entrance piers and jetties at mouth of inner channels and the portion of such channels immediately between them, and the long general channels of approach as may be needed to connect the harbor with outside deep water.

"These things show that the federal government is recognizing the policy of public improvements of harbors, and is imposing the duty upon the local public and government in assuming the duty of keeping open access to the sea; and particularly announces the policy that government support to that extent will be withheld where public interest improvement, access and control of said harbors are neglected or lacking."

#### SAYS WILSON MAY HAVE TO BEGIN ON THOSE HANGINGS

(Continued From Page One.)

Bailey issued a statement this afternoon explaining the order and denying its illegality as alleged by Sprckles.

#### Bailey Explains Order.

"The order simply increases the number of depositories," said Bailey, "for the purpose of simplifying check exchange without materially increasing the fixed balance of national funds in national banks. Under the old system there were 450 national depositories carrying a total fixed balance of \$48,000,000. Under order No. 5 the number of depositories is increased to 550, and the fixed balance increased to about \$50,000,000. This means a decrease in each individual bank.

"Mr. Sprckles is entirely wrong in his argument. There will be no increase in the balance held by New York banks. On the contrary, there will be a marked decrease in individual balances. We deposit in New York about \$2,000,000 a day and withdraw about an equal amount."

Bailey explained that the government charges banks under the old system deposits because of the great assistance they render the trade in negotiating government securities free of cost to the government.

"Bosh," says MacVeagh.

"Bosh," says MacVeagh, "were the words most used by Secretary of the Treasury MacVeagh this afternoon in referring to the prediction in New York of Rudolph Sprckles that the country is threatened with financial difficulties as a result of the issuance of treasury circular No. 5. MacVeagh said: 'Sprckles' fear that money stringency will confront Woodrow Wilson's administration as a result of the order, is absurd. It is moonshine. The banks will merely have a working balance and will not be crowded with gold subject to call and subsequent hardship to anyone.'

"Sprckles' intimation of a plot by the outgoing Republican administration is utter hosh. It evidently was made on little information on the subject."

President Taft and the cabinet discussed this afternoon the possibility of the order causing a panic.

"I haven't seen the order," said Attorney General Wickersham; "but all talk of a plot to dynamite the Wilson administration with a panic bomb is nothing more than hot air."

The treasury department here is flooded with requests from treasury officials and national banks for copies of the order and also for its "official interpretation."

#### TAKING UP COAL LAND ON COQUILLE RIVER

(Special to The Journal.)

Marshfield, Or., Feb. 7.—Coal rights which it is believed will later on be highly valuable are being taken up in what is known as the Eden Ridge country, far down on the south fork of the Coquille river and in the southern part of Coos county. Coal is a very fine quality always has been known to exist there, but the previous inaccessibility of the country has caused it to be overlooked. The Smith-Powers Logging company is now building a railroad to that part of the country, and the prospect of transportation has directed attention to the valuable coal deposits.

Anticipating a move of this kind, a prospector and locator has been in the coal country for a year or two past, and has opened veins and investigated the coal on the government lands. He has located investors on these government lands, and in such cases the lands have been filed upon under the mineral act.

In the past year a number of Coos county men have taken up coal lands in the district, and since the railroad has started in that direction many others are investigating the lands.

#### WOLVERTON GIVES OUT THAT HE'S GOT LIVELY

New Sacramento Manager to Have Full Charge, According to Owner Atkin.

(United Press Leased Wire.)

Sacramento, Cal., Feb. 7.—Baseball is brightening up considerably here today following the arrival of Harry Wolverton, to whom Jack Atkin has turned over the reins of the Sacramento club for 1913.

Atkin has promised to furnish all that is needed in the way of financial backing and leaves the rest to Wolverton. The former Oakland leader has announced that Jack Lively, who was in a Sacramento uniform this season, and with Arletane, Munsell and Stroud, is expected to take his regular turn in the box.

Wolverton is preparing for the training season at Marysville. The Senators will begin the limbering up process about the first of next month, upon the arrival of a number of players from the east.

Watch for It

This Saturday's poultry columns in The Journal should be carefully scanned by all interested in poultry.

### WASHINGTON'S SOCCER TEAM BEATS LINCOLN

#### With Wind at Their Back East Siders Shoot Two Goals in Second Half.

The Lincoln High school soccer eleven was defeated yesterday afternoon by the Washington team by the score of 2 goals to none. The game was played on the Jefferson grounds, and good work was marred by a strong wind which swept the field.

The Cardinals succeeded in holding the Washington eleven scoreless in the first half, but in the second period, with the wind at their backs, the Washington players scored two goals. Adams and Gilbert scored Washington's goals.

The Lincoln team scored one goal in the first half, but this was disallowed, because the referee held the players were offside.

#### O'Neill Fixes Sox Training

Oakland, Cal., Feb. 7.—Tip O'Neill, who has been acting as Charles Comiskey's agent on the coast, announced today that one squad of the Chicago White Sox will train in Oakland.

O'Neill stated that the southern squad, which had planned to go to Pasadena, probably will be taken to Los Angeles where they can use the Washington park field of the Coast league.

O'Neill left this morning for Chicago to confer with Comiskey, and Manager Callahan of the Sox.

A modern Chinese trade union has recently been formed in Shanghai by about 5000 goldsmiths and silversmiths.

### BOB WOODWORTH WILL AID O. A. C. TRACK TEAM

#### Crack Lincoln High School Jumper Enrolls at Corvallis; Stewart Smiles.

(Special to The Journal.)

Oregon Agricultural College, Corvallis, Or., Feb. 7.—Dr. Stewart's hopes of a strong track team to represent the Oregon Agricultural college were considerably brightened when Robert Woodworth, the prominent Lincoln High school athlete, appeared at the registrar's desk to sign up for the coming semester. The addition of a man who can leap with any of the high jumpers of the northwest conference to the O. A. C. team has raised the status of the squad a good many points.

Woodworth has competed in all of the interscholastic meets held at the Oregon Agricultural college and University of Oregon for the past two years, winning the high jump last year and making a new record on the O. A. C. athletic field, clearing the bar at 5 feet 9 1/2 inches. That jump is good for a place in any meet in the northwest. This

### M'FARLAND, WATSON WILL BATTLE TONIGHT

#### Four Round Main Event Promises to Be Hummer for Lightweights.

(United Press Leased Wire.)

San Francisco, Feb. 7.—Possessed of a puzzling style and a "kick" that would wile a heavyweight, Tommy McFarland, the local lightweight, expects to dispose of Red Watson in short order in their four round main event here tonight.

Watson, on the other hand, cannot figure how McFarland is going to sur-

### Hints to Poultrymen

#### The poultry feature in the Saturday Journal is proving very interesting to poultrymen. These columns contain helpful hints that can be used to good advantage.

vive the big symbol of hismaker, right crosses and appropriate that in posing his way, and has already arranged to "blew" the winner's end of the purse. Both boys are in grand trim.

Johnny O'Leary, featherweight champion of the northwest, is billed to battle Roy Moore in the main preliminary. Antonio La Grave will do battle with Romeo Hagen of Seattle.

Joe Greggrains vs. Willie Murray; Kid Bertelson vs. Eddie Miller; Young Lawson vs. Kid Blake; Tom Nichols vs. Young Wolcott; Young Kelsch vs. Kid White; Soldier Murphy vs. Red Murphy; all of San Francisco, and Ray Campbell of San Francisco, vs. "The Montana Kid," of Butte, are the other preliminaries.

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