REPORT

OF THE

Committee of the Senate and House of Assembly

OF THE

STATE OF NEW JERSEY

TO

Investigate the Granting of Riparian Lands by the State, Etc

TRENTON, N J
MACCRELLISH & QUIGLEY, STATE PRINTERS
1907

COMMITTEE.

EDMUND W WAKELEE, Senator from Bergen,

JOHN BOYD AVIS, Senator from Gloucester,

JAMES F MINTURN, Assemblyman from Hudson,

FRANK CROWTHER, Assemblyman from Middlesex,

WALTER SCOTT REED, Assemblyman from Monmouth,

SAMUEL P JONES, Assemblyman from Camden,

OLIVER C HOLCOMBE, Assemblyman from Hunterdon,

ALFRED N BARBER, Assemblyman from Mercer

REPORT.

To the Senate and General Assembly of the State of New Jersey

The Committee of the Legislature appointed by the President of the Senate and the Speaker of the House of Assembly, pursuant to the provisions of Joint Resolution No 9, Laws of 1906, page 742, respectfully submits herewith its report

The said Joint Resolution is as follows

"JOINT RESOLUTION No 9"

"Joint Resolution providing for the appointment of a committee of the Legislature to investigate the granting of riparian lands by the State, and report what changes, if any, should be made in the law in connection therewith

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey*

1 That a committee of the Legislature, to consist of three Senators, to be appointed by the President, and five members of the General Assembly, to be appointed by the Speaker, be authorized and directed to investigate the entire subject of the granting by the State of leases and grants of riparian lands, what methods have been pursued in the past, what lands are now held by the State which may hereafter be the subject of riparian lease or grant, what lands have been heretofore granted by the State and under what condition, what methods have been used for the determination of values in fixing the rentals, and in general the whole subject of leases granted by the State of its riparian lands

2 The said committee shall have the right to employ counsel, a stenographer and other clerical assistants as may be necessary, and, with the approval of the Governor, fix their compensation, which shall be paid by the Treasurer on the warrant of the Comptroller

3 The said committee shall have the authority to sit after the final adjournment of the Legislature

4 This resolution shall take effect immediately Approved May 22, 1906"

The Committee held its first session in the Senate Chamber at Trenton, on July 11th, 1906, the entire Committee, consisting of Senators Wakelee, Avis and Minturn, and Assemblymen Crowther, Reed, Jones, Holcombe and Barber, was present

Senator Edmund W Wakelee was selected as Chairman, Assemblyman A N Barber was selected as Secretary, and the Attorney General, Robert H McCarter, Esquire, was requested to serve as counsel Mr Frederick W Gnichtel was appointed official stenographer, and John D Lovett was appointed sergeant-at-arms

The Riparian Commissioners and their Secretary and Engineer were requested to appear before the Committee and bring data and maps bearing on the subject of the Committee's investigation

Many meetings were subsequently held by the Committee, at which were examined the Riparian Commissioners, their Secretary and Engineer, former members of the Board of Riparian Commissioners, the former Counsel of the Board, and a large number of witnesses

A great quantity of testimony was taken and is herewith submitted in printed form for the consideration of the Legislature

HISTORY OF STATE'S TITLE TO RIPARIAN LANDS

The Committee deems it of interest in this connection to briefly refer to the source of the title of the State to its lands under water

The common or popular idea formerly was that the owner of the abutting upland was also the owner of the land under water adjacent thereto, so far as not to interfere with navigation, and when the State, through its appointed agents, took absolute and notorious control of its lands under water from the line of mean high water out to such limits as were fixed for the improvement, by reclamation and construction of docks and wharves, there was much objection and some litigation on the part of owners of the water front lands to the assumption of title by the State

The title of the State is founded in the ancient doctrine of the sovereignty of the King The first diversion of the title of the King is that of the grant from Charles II to James, the Duke of York, March 12th, 1663 This grant covered much of the land

along the coast, from Maryland to Maine, and on June 24th, 1664, James, the Duke of York, sold to Berkeley and Cartaret that part of the grant from King Charles, of March 12th, 1663, now known as New Jersey, and in 1676, New Jersey was divided into East and West Jersey and held by what were known as the Lords Proprietors

In the year 1702 these Proprietors surrendered to Queen Anne all the rights of Government held by them, reserving, however, the rights of property The title to the soil of the tidal waters was not within the reservation, but again passed by the surrender of the Government of the proprietors to the Crown of England

Thus the title to the lands under water, being vested in the King of Great Britain, at and before the Revolution of 1776, became vested, by the law of nations and the right of conquest, in the people of the then Colony, and now State, of New Jersey, by the successful War of Independence

No general supervision or control seems to have been exercised by the State over its lands under water until 1851, when the Legislature passed what is known as the Wharf Act, entitled "An Act to authorize the owners of lands upon tide waters to build wharves in front of the same" (*P L 1851, p 335*) The Legislature did, however, from time to time, by special acts, make grants of riparian lands to different persons

The Wharf Act gave to the Freeholders of the various riparian counties the authority to license, under certain conditions, riparian owners to wharf out into the tidal waters of the State

In 1864 (*P L 1864, p 681*), the Legislature appointed a Commission to look into the subject of the riparian rights of the State, and in 1865 this Commission made a report In 1869, (*P L 1869, p 1017*), the act was passed creating the Riparian Commission and repealing the Wharf Act as to the Hudson River, New York Bay and Kill von Kull In 1891 (*P L 1891, p 216*), the Wharf Act was repealed as to the rest of the tidal waters of the State, and thereafter the Riparian Commission was the only source through which riparian grants were made

Attention is here called to the fact, that until 1891 the Freeholders of the riparian counties of the State also had authority to grant licenses to build docks, excepting as to the Hudson River, New York Bay and Kill von Kull

With this short historical review let us take up the subjects in the order named in the Joint Resolution

1 "What methods have been pursued in the past "

(*a*) The methods purued in the past have been conveyances by grants in fee to the riparian owner, or under consent by the riparian owner

(*b*) Leases in perpetuity at a fixed principal sum, bearing interest at seven per cent per annum, with provision, upon application by the leasee, for conversion into a grant in fee

(*c*) Licenses upon terms and compensation fixed by the Commission and revocable at the pleasure of the Commission

(*d*) Licenses to railroad corporations made under the Thirty-sixth Section of an Act of the Legislature entitled "An Act to authorize the formation of railroad corporations and regulate the same," approved April 2d, 1873 and the supplements thereto

2 "What lands are now held by the State which may hereafter be the subject of riparian lease or grant "

The following is a statement of the unsold lands of the State in its various riparian counties

Bergen County

Hudson River,	7¾	miles
Rivers and Creeks,	22	miles

Hudson County

Hudson River, New York Bay, Kill von Kull,	1⅓	miles
Newark Bay, Hackensack River, Creeks, etc ,	25	miles

Essex County

Newark Bay, Passaic River,	17 5	miles

Union County

Newark Bay, Arthur Kill,	3	miles
Elizabeth River, Rahway River, Norses Creek,	20	miles

Middlesex County

Arthur Kill,	5½	miles

Monmouth County

Ocean, Bays, Rivers and Creeks,	about	60	miles

Ocean County

Bays, Rivers Ocean and Creek,	about	145	miles

Burlington County

Ocean, Rivers and Creek,	about	130	miles

Atlantic County

Ocean, Bays and Rivers,		145	miles

Cape May County

Ocean, Bays and Rivers,		115	miles

Cumberland County

Bay, River and Creeks,		115	miles

Salem County

Bay, River and Creeks,		85	miles

Gloucester County

Rivers and Creeks,		40	miles

Camden County

Rivers and Creeks,		4	miles

Mercer County

River and Creek,		8	miles

It was estimated by the Engineer of the Commission that the above unsold lands are worth about $15,000,000

The following is a supplemental statement of the unsold lands of the State, prepared and testified to as an active asset or lands that are likely to come into demand in the not distant future

LANDS UNDER WATER ON THE HUDSON RIVER, OPPOSITE THE CITY OF NEW YORK

About 1 8 miles, estimated value, $1,019,500

These lands are available for enterprises of the highest commercial importance, they have railroad facilities and they are opposite the very valuable water front of the city of New York

The railroad companies have their terminals along this front, large industries are established and in operation in the vicinity

LANDS UNDER WATER IN NEW YORK BAY

About one-half a mile of front, estimated value, $250,000

These lands are available only after certain work, such as dredging channels, to bring them into communication with the deeper waters of New York Bay The Pennsylvania Railroad Company, the Standard Oil Company and the National Storage Company have utilized them, and there is no question but that they are very valuable assets to the State

KILL VON KULL (CONNECTING NEW YORK AND NEWARK BAY)

About one-half mile, estimated value, $125,000

These lands are available for all kinds of manufacturing purposes and are utilized in part by such enterprises as the Babcock & Wilcox Co, the Guffey Petroleum Co, the Standard Oil Co, copper refineries and kindred industries

NEWARK BAY, HACKENSACK AND PASSAIC RIVERS

About 19 3 miles, estimated value, $929,000.

All of this water front is available for manufacturing purposes of all kinds where deep draught vessels are not used, and are very valuable for this purpose, and with the deepening of Newark Bay and the rivers, will become still more valuable

STATEN ISLAND SOUND (CONNECTING NEWARK AND RARITAN BAYS)

About 6 miles, estimated value, $800,000

This water front is very valuable and available for manufacturing purposes, for refineries and kindred industries, not permissable, perhaps, very near to closely built up sections It is one of the most valuable sections of water front in the State

RARITAN RIVER (NORTH AND SOUTH SIDES)

About 2½ miles, estimated value, $900,000

Available for smelting works, brick manufactories and kindred industries not requiring vessels of great draught

DELAWARE RIVER (AT CAMDEN)

About three miles, estimated value, $172,500

This front is available for railroad termini, manufactories, refineries and kindred industries needing railroad as well as water communication

The total value of this last class is estimated at $3,386,000

3 "What lands have been heretofore granted by the State"

The following is a statement made by the Engineer of the Commission, of the lands of the State heretofore granted

Bergen County

Hudson River,	5½ miles
Rivers and Creeks,	Very little sold

Hudson County

Hudson River, New York Bay, Kill von Kull, Newark Bay, Hackensack River, Creeks, &c,	14 miles

Essex County

Newark Bay, Passaic River,	3 miles

Union County

Newark Bay, Arthur Kill,	4¼ miles
Elizabeth River, Rahway River, Norses Creek,	Very Little

Middlesex County

Arthur Kill,	2¾ miles
Bays, Rivers, and Creeks,	Very little

Monmouth County

Ocean, Bays, Rivers and Creeks,	26 miles

Ocean County

Bays, Rivers, Ocean and Creek,	11 miles

Burlington County

Ocean, Rivers and Creek,	8 miles.

Atlantic County

Ocean, Bays and Rivers,	14 miles.

Cape May County

Ocean, Bays and Rivers,	18 miles.

Cumberland County

Bay, River and Creeks,	3¼ miles.

Salem County

Bay, River and Creeks,	⅓ mile

Gloucester County

Rivers and Creek,	3 miles.

Camden County

Rivers and Creeks,	5½ miles.

Mercer County

River and Creek,	½ mile.

The sale of the above lands has brought into the State Treasury about $6,250,000

These lands have been sold by the State, through the Riparian Commission, invariably to the shore owner, as the law prescribed, the law providing that the riparian owner should have the first right to acquire

The conveyances were by grant in fee and perpetual lease, convertible into grant, as provided for in the act of 1869 and its supplements

4 "What methods have been used for the determination of the values in fixing the rentals "

The testimony of the present Chairman of the Commission on the above question is as follows

> "If we are unfamiliar with the matter, and it is a matter of importance—generally we are pretty familiar with the entire situation, but if it is a matter of considerable importance we go and look at it, send the Engineer, or the Committee goes and investigates the matter, but generally we are pretty familiar with the physical situation of all our tidal waters, especially those which we call active riparian properties, that is to say, where they are in demand and nearby Then we consult among ourselves as to the value We generally ask the applicant what is his view about it We arrive, after consultation among ourselves as to the situation there, its convenience to ports, the character of the water, as to whether it is navigable, and a number of factors entering into it—at a conclusion We fix the value, if it is a grant, at so much a running foot front If it is a lease, we fix it in the same way "

And still further on this subject, the Chairman testified as follows

> "I say as a matter of strict construction I should say that we are not in a position to make any concession to anybody for any purpose, yet at the same time, we have discretion, there is discretion lodged in us, and we are supposed to have common sense and bring it to bear upon these problems, and when a public corporation applies for property for public purposes and not as a means of gain, it seems to me reasonable that we should at least give them the benefit of whatever doubt that we have And so if a large corporation wants to come to

> New Jersey, hesitating whether it should come to New Jersey or go to Staten Island or go to Connecticut, and if they are going to locate a plant in this State that will give employment to many men and increase our taxable property enormously, we give them consideration"

Your Committee has no reason to doubt that the foregoing extracts from the testimony of the Chairman of the present Commission do not correctly describe the practice that now and for some years has prevailed in the board, but, as will appear as we progress in this report, the evidence discloses that a sadly different practice has prevailed in arriving at the price, that, for example, grants were frequently made on the most valuable part of the Hudson River front, at prices very much lower than were received for grants on the same river, considerably further up and much less valuable No adequate explanation seems to have been offered for these varying prices Prices were made, for instance, at $75 per foot, and some years after, further down the river, much more valuable water front as to location and general situation, was granted at $40 a foot—and this not in isolated cases—and it seems that for ten or fifteen years no logical rule was followed, but the fixing of prices seems to have been a haphazard operation, and the only explanation brought out in the testimony will be referred to hereafter, and seems not (to say the least) to reflect credit on the judgment or management of the Commission's affairs

The same state of affairs is true of Staten Island Sound, of Raritan Bay, of the Shrewsbury River, and notably true of the Delaware River at Camden, where grants were made years ago at $3 50 a foot, subsequently more valuable front was disposed of at $2 a foot, then at $3 a foot, and then again at $2 a foot, and the present board is now asking and receiving for these same lands $10 a foot

5 "In general the whole subject of leases granted by the State of its riparian lands"

From the testimony it would appear that, originally, the doctrine of the State's ownership of its lands under water, not being well established and the commercial development of the water front being in its infancy, the question was treated liberally and with an evident desire to foster and encourage industries

It was not questioned but that, had those originally entrusted with the administration of the riparian interests of the State, foreseen the enormous developement and value of these lands

that were to come, they would have felt justified in securing to the State some interest or share in this great prospective value As it was, the greater and more valuable part of the riparian rights of the State have been disposed of under these liberal terms and irrevocably diverted from the school fund

Coming down to more recent years—say within the last ten or fifteen years—it would seem that this idea of encouraging industries has been carried to such a degree as almost to lose sight of the fact that these rights were the property of the State, for which adequate compensation should be secured, and the testimony developed a state of affairs in the administration of the riparian interests, if not criminal in its character, certainly less mindful of the interests of the State than of the individuals concerned

For example, it was developed in this investigation that, in the Hudson River, the most valuable water front of the State, grants were made at varying prices, for which no adequate explanation was offered, and at prices that were not more than a quarter as high as those now readily paid by applicants, and it further appeared that, in several cases, a member of the then existing Riparian Commission was personally interested in these properties or the acquisition of the grants

It appears that in one case in which the then chairman of the board, or his firm, was interested, the Riparian Commission was led to believe that the location of an enterprise was dependent upon the granting of a certain piece of water front at a very low rate, whereas the fact was that the locating company already owned four-fifths of all the upland rights required, and had already determined to locate there, so that there was no necessity for the State's disposing of this water front for the purposes stated All this fully appears in the evidence and on the map printed on page 419 of the testimony

The fact that the present Commissioners are asking and receiving prices three or four times higher than those at which grants were made up to three or four years ago, points rather to a reprehensible administration than to any defect in the principle of disposing of the State's lands, for it has been the practically unanimous view of those who appeared before this Committee, representing all interests, that the conveyances in the form in which they are now made were not only the most attractive, but were, in fact, the only form of conveyances that would have been accepted and paid for by them

A flagrant illustration of this maladministration was the granting of a considerable tract of valuable land under water on the Hudson River for a nominal consideration to one Goetchius, under the claim of an ancient legislative grant This was done under the advice of the then counsel of the board, notwithstanding the Fourth Section of the Act of 1869, which provides

> "That in case any person or corporation who, by a legislative act, is a grantee, etc, shall desire a paper, capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, etc, that the Riparian Commissioners may execute such a paper upon receiving the compensation of fifty dollars per foot for the land included within the grant"

The explanation of the then counsel for the Riparian Commission and of the then chairman of the board, both of whom were examined as to this transaction, was that they believed that this Fourth Section of the Act of 1869 had been repealed, but it appears that a short time prior to the time of advising the board to make this grant for a nominal consideration, the same counsel of the board had written an opinion, concurred in by Attorney-General Grey, that the Fourth Section of the Act of 1869 was in force

The facts attending this so-called Goetchius grant are so remarkable that your committee deems it of importance that their history should be adverted to

On or about the 18th day of April, 1874, two leases were made by the Commission to the heirs of Robert Annett Upon these leases rent was paid up to October 18th, 1875, at which time payment ceased

On November 13th, 1890, George L Record, Esquire, on behalf of one of the Annett heirs, presented to the board an application for the conversion of a part of these Annett leases, in the Hudson River at Fort Lee, into a grant, which application, after being referred to the Chairman and Engineer of the board and the Attorney-General, was, on November 28th, 1890, declined

On March 28th, 1895, the Secretary of the Board presented a list to the board from the State Treasurer, showing the rentals due on a number of leases, and the minutes disclose that this list was referred to the General Counsel, who was Mr Record

One of the largest arrearages, if not the largest, contained in this list, was that due on the Annett leases

The testimony further discloses a correspondence between Mr Record, and Attorney-General Stockton, in which the latter gave the former the right to use his name in any proceedings to recover this rent, and, under date of July 25th, 1895, the Attorney-General, in reply to a request from Mr Record for compensation for his services in connection with his attempt to collect these arrearages, says

> "When some important result is reached, such as cancelling of the Brownwell leases or the settling of the Annett matter, it will be easier, of course, to get you a proper compensation than in the ordinary routine of matters

It thus plainly appears that Mr Record was engaged in endeavoring to collect the rents due the State from the Annett Heirs, which at that time amounted to $31,590, and was claiming compensation for his efforts in that direction It further appears that an information had been filed in the Court of Chancery by Attorney-General Stockton against the Annett Heirs, including one Hannah Hawes, seeking to set aside these leases upon the ground of the failure of the tenants to pay any of the rent for a period of more than sixteen years Mr Record, on behalf of some of the Annett Heirs, including Mrs Hawes, moved to dismiss this information on the ground that the Court of Chancery had no jurisdiction, and his brief upon that motion is printed in full on page 614 of the testimony The brief ends with the following summary

> "The case in a nutshell is this The State has made leases to the Annetts on annual rentals secured by the right of re-entry, distress and forfeiture For 17 years it has allowed the Annetts to default in payment of the rentals and now seeks to collect the rentals and forfeit the leases by decree of Chancery
>
> "The State can maintain ejectment at any time The right of entry is perfectly valid and at all times available There is no fraud, actual or constructive, in the case The leases were a prudent exercise of the discretion vested in the Riparian Commissioners, and the State's only trouble is in the neglect of its appropriate officers to enforce the payments of the rents by distress or ejectment The school fund has nothing to do with the case The demand for the rents and the forfeiture of the lease is inequitable and multifarious There is, therefore, no equity in the bill

This case was argued before, but never decided by, the late Chancellor McGill

This was the situation in 1901 In that year correspondence was opened with the Riparian Commission by Senator William M Johnson, then Assistant Postmaster-General of the United States, on behalf of John M Goetchius, desiring a grant from the State of a portion of the same property included in the Annett Leases To this application a reply was sent by Mr Record, in which he says

> "The land involved in your client's application is about two acres, which, at the rate mentioned, waiving the charges per foot, would call for the payment of $1500"

Mr Johnson then withdrew, and the Goetchius application was thereafter handled by other counsel, whereupon a written opinion was given to the board by Mr Record, concerning this application, in which he advises that the rights of the State, if any, to these lands under water are practically without value, and in which he identified the property in question as lying "in front of lands owned by the said Goetchius, which are commonly known as the 'Annett Property'," and says

> "Prior to 1844, Robert Annett, the then owner of the upland, had constructed two wharves upon the land under water included within the application of Goetchius These wharves were constructed without any license or authority from the State In 1844 an act of the legislature was passed, a copy of which is hereto annexed"

The opinion then continues

> "Under these circumstances, the rights of the State, if any, to the land under water, are practically without value In one or two instances, under somewhat similar circumstances, as for example, in the Donohoe grant, it has been the practice of the board to make a grant, for a nominal consideration, and I am of the opinion that such a course should be followed in this instance"

It should, perhaps, be noted in passing, that the Donohoe grant, referred to in the opinion, was made because of a legislative grant to Ingham and Jenkins, under which, in the case of the Guffey Petroleum Company, the State has received the sum of $27,000 for a grant such as was desired by Goetchius, after some protracted litigation in the Court of Chancery, so that the Donohoe grant really constitutes no precedent for the advice in the opinion

The grant was made pursuant to this advice, for a nominal consideration, not alone of the two acres referred to by Mr Record in his letter above mentioned to Senator Johnson wherein he valued them at at least $1500, but of a tract of land under water, comprising 2,646 feet front, and containing about 60 acres of land under water, and valued, at the rates quoted in the above letter of Mr Record, at over $150,000 00

The result of this was, that the State, which, by the terms of the grant, quit-claimed all of its interest in this property, undertook to dispose of its interest therein for a mere song, and it is claimed by the grantees, also lost its right to collect the arrearages of rentals, amounting as before stated to the sum of $31,590

The position of Mr Record upon this whole subject is, as it seems to your Committee, altogether inexplicable, particularly in view of the further fact brought out in the evidence that, on April 7th, 1899, on the application of the Hoboken Land and Improvement Company for a grant capable of being acknowledged, pursuant to the Fourth Section of the Act of 1869, of lands under water on the Hudson river—they also claiming under a special legislative grant—he had, as we have already seen, given a written opinion to the Commission, concurred in by Attorney-General Grey, advising the board to grant the application at the rate of fifty dollars per foot

The gentlemen who were members of the Riparian Commission at the time of this occurrence, who were examined, expressed entire ignorance of this situation, and excused their action in making this grant for a nominal consideration by the fact that they relied upon the counsel of the board

Your Committee cannot but conclude that the Riparian Board in this transaction were so negligent of the interests of the State as to merit severe condemnation It would seem to your Committee that the slightest investigation on the part of the members of the board would have recalled to their recollection the true situation of affairs, and that they had no right to rely supinely upon the legal opinion of their counsel, and overlook facts that they should have remembered or called to mind, and thereby have more diligently safeguarded the interests of the State

It may be added that the present Riparian Commission has placed in motion the machinery of the law to test the legality of this conveyance, and, if possible, to secure the return to the State of this most valuable property

This and similar cases point to a reprehensible administration of the office of the Riparian Commission rather than to any defect in the laws governing the same For, if the law had been carried out in this case the applicant would have been obliged to pay the prescribed price of $50 a foot before receiving this executed paper, capable of being acknowledged and recorded, or he could not have received the grant

RAILROAD LICENSES

The question of licenses issued to railroad companies under the Thirty-sixth section of the General Railroad Act, occupied a considerable part of the attention of the Committee

It was developed that a license was issued to the Navesink Railroad Company in 1891 to construct a railroad along the shore of Raritan Bay, for a distance of nearly a mile, the right of way of which railroad lay partly within and partly above the waters of said bay

The circumstances attending the granting of this license, as shown by the testimony, were of such a character as to give rise to grave suspicion that the action of that particular board was improperly influenced in the matter It was during the hearing, brought out by a witness, who was at the time of the giving of the license one of the attorneys of the board, and afterward became the General Counsel of the board, that he was employed by the railroad company to put the matter through It further appeared that this same attorney employed the son and private Secretary of the then Governor to pose as counsel for the railroad company, although the latter seems never to have appeared before the Commission, his name being signed to the papers by this same attorney The license was executed at a meeting of the Riparian Commission held at half-past 9 o'clock on a morning, and less than forty-eight hours after notice had been mailed to some shore owners, while the law required six months' notice It further appeared that no opinion of the then Attorney-General is on file, or no written opinion was ever given approving such a construction of the general railroad law as would warrant the granting of a license along the edge of a bay or river under the idea that it was a "crossing," but on the contrary, there is an opinion from this same attorney, who had in the meantime become General Counsel of the Board, concurred in by the Attorney-General, in a case of

some two years later, against such a construction, in which he says

> "The provision of the statute is confined entirely to crossing the lands of the State and provides minutely for draws, lights and other means to facilitate and protect navigation"

The action of the former Riparian Commission in 1891 in granting this license, without reference to the Attorney General, was followed in 1902 by a similar action in granting a license under similar circumstances, along the shore of the Hudson River, with the concurrence of the same General Counsel, notwithstanding his opinion in 1893, above quoted, and that without notice to the shore owners

This railroad license was made to the Edgewater and Fort Lee Railroad Company in May, 1902,—a railroad projected to run along the shore of the Hudson River to Fort Lee, and to make accessible to railroads the vast amount of territory in that vicinity

This company desired the right or license to lay its tracks along the lands of the State for a distance of a mile and a half, and upon the presentation of its application it appears that several property owners along the river appeared before the Commission and drew its attention to the fact that this railroad, if built, would not only enhance the value of their property, but the riparian lands still belonging to the State, at present inaccessible to railroads, would thereby be also enhanced in value

The result was that a license was made to this company for the sum of $1500, being exactly the amount it offered, provided the railroad was completed within two years At the expiration of that time the company again appeared before the Commission and showed that, owing to delay in securing its right of way over the property of private owners, by reason of protracted condemnation proceedings, it had been unable to complete its road within the required time, and sought a further extension This was granted

At the end of this extended period another application was made to the Commission, for similar reasons, but the same was not granted, the whole matter being referred to the Attorney-General, the subject having become, in the meantime, involved, in view of the decision of the Supreme Court in the case of the New Jersey Shore Line Railroad Company hereinafter mentioned

It is apparent that the action of the Commission in making this license, without notice to the shore owners, was improper, and it

also is very questionable whether its action in readily accepting the sum offered by the Railroad Company, without endeavoring to get more for the school fund on the theory of the future benefit that would come to its other lands, was justifiable

Another instance of licenses of this character and under similar circumstances was the granting of a license to the New Jersey Shore Line Railroad Company in March, 1904 This license was to construct a railroad along the shore of the Hudson River, and was also made with the concurrence of the same general counsel, and without notice to shore owners It has since been declared void by the court See *Shamberg* v *Riparian Commissioners, 43 Vr 132*

Another incident brought out in the testimony was the making of a grant of several thousand feet of valuable water front on the Shrewsbury River at the rate of seventeen cents a foot while on precisely the same water front, and with the same character of lands, grants had been previously made at $2 a foot There does not seem to have been any adequate explanation for this, unless it be that offered by a former member of the Commission, who testified (page 468)

> "The reason he suggested was that if at the end of the year the board made its annual report to the Legislature without showing any receipts, the Legislature might feel that the usefulness of the board had ended, and himself and myself, and, I suppose, all the other members might lose their little stipend of fifteen hundred dollars a year"

FEES

A matter developing in the investigation, which occupied some attention, was the question of the collection of certain fees by the counsel of the board, said to be for the examination of abstracts furnished by the applicants, for the furnishing of a certificate of such examination by the counsel of the board, and the preparation of papers These fees were divided between the counsel and the secretary of the board The explanation of the secretary was he had prepared the grants, leases, maps, etc, and under the provision in the Act of March 27th, 1874, page 103, to the effect that "all such conveyances or leases shall be prepared by the said Commissioners or their agents, at the cost and expense of the grantee or lessee therein," that he had personally prepared these

papers and accepted a division of the fees, and also that he had applied the same to the payment of the office expenses of the Commission, as no provision had been made by the Riparian Commission for the employment of clerks and the payment of the other necessary work of the Commission The attorney of the board, who was also under salary, claimed a right to collect these fees for services in examining the titles of the applicants, but the fact remains that out of a total of 342 cases, in which the counsel of the board charged fees for "examination of abstracts, furnishing certificates, and preparing papers," he furnished only fourteen certificates, and of the remaining 328 cases for which he charged a fee for "examining abstracts," in at least 174 cases no abstracts were ever furnished

The amount of these fees aggregated the sum of $7,000 thus received and divided, and covered a period of above seven years

GRANTS AFFECTING MUNICIPALITIES

It developed in the investigation that in former years, and up to a recent period, it had been the practice of the Riparian Commission to grant to individuals the lands under water at the ends of the streets in our municipalities, and while it is in evidence that in recent years the Commission has not followed this practice, it is recommended and urged that hereafter in every application the proper officers of the municipality in which the lands are situated be given ample notice of such application, and of the time and place for the hearing and consideration of the same, so that the municipality may be in position to assert its rights, if any, and have them conserved

COLLECTION OF RENTALS

One of the questions arising in this investigation was as to the collection of rentals due on riparian leases and the arrearages of the same

Considerable attention was devoted by your Committee to an investigation of the reasons why so large an arrearage of rentals has been permitted to remain, and your Committee feel satisfied that this has been largely, if not altogether, due to technicalities existing in the law, by which, according to Attorneys-General

Stockton and Grey, there was no way in which the payment of the moneys due for back rentals could be enforced

With this defect in mind, a remedial act was prepared and introduced into the Legislature in 1905, but failed of passage A somewhat similar act, however, was passed in 1906, and under its provisions the riparian board is at present successfully engaged in collecting large amounts of these arrearages

IN GENERAL

The Committee believes the evidence shows a lax, and, to say the least, questionable administration of the riparian interests of the State, both as to policy and practice Your Committee believes that, for the last fifteen or twenty years, the character and value of the State's holdings on its commercial waters is so fixed and established that no such inadequate prices as were fixed by the former Commission for the valuable lands on the Hudson River, Staten Island Sound and Delaware River were needed to induce purchasers to locate in the State of New Jersey, and your Committee points for corroboration of this opinion to the fact that the present Commissioners are asking and receiving prices three and four times in excess of those at which grants were made by the preceding commission, and the State has, in our judgment, been deprived of hundreds of thousands of dollars in this way

Your Committee is impressed by the fact that, situated as the water front of the State of New Jersey is, it is in a distinctly different class from that of the city of New York, and a development and supervision possible in the city of New York is not practicable in the State of New Jersey The City of New York has a public street running around almost its entire water front, giving uninterrupted access to its water, and making it possible for the municipality to improve the water front and dispose of it by sale or lease without consulting any other interest

This is not so in the State of New Jersey The water front is geographically and physically so situated and shaped that such development is impossible The owner of the land down to the high-water line is practically the only person that can develop the adjacent water front advantageously, or, indeed, at all, and though the State's title to the land under water may be complete, it cannot furnish access to this land under water without the acquiescence of the upland owner

Your Committee, in the course of this investigation has, in addition to hearing a great deal of testimony, made various examinations of the shore front of the State, and, in the examination of one section of the State, running from Elizabethport, on Newark Bay, through the Kill von Kull, up the Bay of New York and up the Hudson River, above Fort Lee, to the beginning of the Palisade Reservation, was impressed by the importance and the magnitude of the Commercial development of this shore front

The water front of Elizabeth, of Bayonne, of Jersey City, of the city of Hoboken, shows the magnificent development that has taken place, and while your Committee is mindful of the large present value of this water front, it is also impressed with the enterprise, skill and the enormous amount of money involved in this development It also recognizes that neither the State nor the municipalities could ever have advanced the money necessary to have made these improvements, nor would they have possessed the foresight or skill to have successfully planned them

So that your Committee is not prepared to advise that the policy which has made possible this development was altogether wrong, nor is it, on the other hand, prepared to endorse the ideas advanced by the present Chairman of the Riparian Commission, that any great inducement is now needed to cause a sale of these commercial waters of the State It has seemed to your Committee, and the evidence corroborates the impression, that this doctrine had been carried to a point reprehensible in its workings and disastrous to the school fund, to which the proceeds from the sale of the riparian lands are irrevocably applied

There is no question in the mind of the Committee that the board preceding the present Riparian Commission, in making sales of water front land on the Hudson river at $40 a foot, and in quit-claiming the rights of the State, as in the Goetchius case, to valuable water front on the Hudson river at Fort Lee, without a judicial decision of the rights of the State in said lands, was derelict, if not worse than that, in discharging their duty, the granting of licenses to railroads without adequate compensation and without observing the law in relation to the rights of the shore owners affected, was a great wrong to the State, as well to the upland owners, and resulted in the loss of thousands of dollars to the school fund

Your Committee recommends that not only shall no such unwarranted inducements, as have characterized some of the past

grants, be hereafter offered, but that the Riparian Commission, or other body hereafter charged with this property of the State, diligently inquire into and inform itself of the value of these remaining lands, and while encouraging the establishment of industries on the shores of the State of New Jersey, have due regard to the immense and growing value of its water front

LESSON OF THE RAILROAD LICENSES

The courts have decided that such licenses are void without notice of the application to the riparian owner, and this Committee not only recommends that hereafter full and ample notice of such applications be given to all riparian owners affected, and that hearings be fixed in which the relative interests of the parties may be discussed and conserved, but it also recommends that the fundamental question itself be referred to the Attorney General for an exhaustive opinion on the question whether, under the general railroad law and the powers conferred upon the Riparian Commission, an occupation of the lands under the waters of the State of a strip parallel with and contiguous to the shore, is properly the subject for exercise of the Commission as a railroad "crossing," and that he define, for the use of the Commission, the meaning of such section (now section 16) of the railroad law

And this Committee further advises that in all cases where the interpretation of an old act of the Legislature is involved, purporting to convey riparian interests, the fullest investigation be had, and the opinion of the Attorney General be secured as to the legal status of these legislative grants, before any action is taken by the Riparian Commission

THE OYSTER QUESTION

It has been claimed before this Committee by those interested in the public use of oyster lands, that the Riparian Commission has made grants in front of the lands of riparian owners to such owners where natural and public oyster grounds are located There was testimony on both sides of this question, and in view of the opinion of the Attorney-General hereto annexed, your Committee recommends that no further grants be made by the Riparian Commission in the neighborhood of oyster lands until the Oyster Commission of the county in which the lands are

situated be notified, so that the true facts may be ascertained, and in the event of it appearing that the Oyster Commission has jurisdiction over the land proposed to be conveyed, that action be delayed until the requisite legislation suggested in the Attorney General's communication be obtained

GRANTS TO MUNICIPALITIES

Inasmuch as the State cannot develop the lands under water, where riparian lands are owned by municipalities, it is apparent that these lands are taken out of the market for general commercial development, and to that extent their value is impaired or reduced, and, as their use is directly for the public good, it is believed that a wise policy for the future would warrant the leasing of these lands under water to the municipalties at figures that take into account this reduced value, with the provision that whenever their public use by the municipalities ceases, they shall revert to the State It is thought that in this recommendation the actual value of the lands in question will be secured, and the municipalties will be aided as well

GRANTS IN FEE

A great deal of criticism has been directed against the practice of the Riparian Commission in making grants in fee and leases in perpetuity The attention of your Committee was particularly given to this subject

Hearings of the Committee were publicly advertised, and personal notices sent to those people of the State and adjoining states who might reasonably be supposed to be interested in this subject to appear before the Committee and give it the benefit of their judgment

A large number of representative men—men who own water front property as manufacturers, or who were attorneys for such holders of water front property, or who were interested in the sale and development of the same—appeared before the Committee, and, of all the men who so appeared on this subject, but one argued in support of limited leases and against the practice of making grants in fee or perpetual leases, but, with one single exception, all of these men, intimately interested and connected with this subject, advocated the continuance of the practice which has obtained in the past.

The following are a few of the opinions expressed

Mr P Sanford Ross, the head of a large dredging and dock building company, said

> "To those people who own their own water fronts, by grant, in a financial way, I consider the stopping of making grants would be an advantage to them, make their lands more valuable I think it would be a bad thing for the State to decide to make no more grants and merely make leases, for the reason that improvements to these lands are very expensive The bulkheading and filling would represent three to four times, and may be five times in some cases, the value of the grant purchased from the State The improvements are generally very important work, costing hundreds and thousands of dollars, and sometimes running into millions of dollars, and the people who want these lands want them for large manufacturing and commercial interests, and have to make or should make permanent improvements If they own the land they would not hesitate to make such improvements If they were not able to buy the land under water, but only lease the land, even though it were for a long term, I think the tendency would be to make as economical improvements as possible, what might be called temporary improvements, which would not certainly be as attractive as more permanent improvements, and would be less valuable
>
> "Then, again, it would not attract large interests to our shore if they could be accommodated elsewhere, as they could be in Staten Island and at Newton creek, although that is pretty well improved
>
> "Now, on the shore of Long Island and at Mott Haven, there is still a large property to be secured The tendency would be to stay away from New Jersey, although their preference would be to come here"

Mr Harrison Van Duyne, Civil Engineer, representing important industries on the Passaic river at Newark, testified

> "So that in my judgment it is tremendously against the interests of any municipality to have its water front put in that position of a leasehold, unless the State is in the position of being ready to buy the shore front You must remember the State could not get on its property except from the water side, unless the State is ready to put itself in the positions of buying the shore there and building the docks"

Frederick Seymour, Esqure, of Orange, representing important commercial interests on the Hudson river, said

> "Our application has been pending two years A good part of that time we have been trying to fight down this price, we thought it was unfair and unjust, jumping us from $60 to $150, but we were never able to persuade the Riparian Commissioners to take our view of the matter, and we have, therefore, accepted the inevitable, and, so far as lies in our power, have accepted the valuation which they have put upon it It would be, it seems to me, the height of foolishness for us to accept a lease of 20 or 25 years for property the extreme value of which is now placed at $50,000, when to utilize it we must put from $350,000 to $400,000 of additional value upon it, not in buildings which will deteriorate, not in the superstructures, but in the making of this land under water land above water, so that it can be used for putting buildings there, so that it can be used for any purpose whatever If we should have a 20 or 25 years' lease for nothing, I don't see how any man would be justified in sinking there $350,000 or $400,000, which would become the property of the State at the termination of that lease, unless the State is prepared to say that it will buy from us the land we have made there at that time Of course, I haven't given that any very serious consideration, in view of the fact that the proceeds of the riparian lands are devoted to the school fund, but I have had some difficulty in seeing where the State would get the money to do it I suppose it might be appropriated from the general fund"

H A Smythe Martin, Esquire, the president of the Water Front Improvement Company

> "Now, for the last year, I have worked simply with factories to bring them to this piece of property, but I can't get anybody to settle there on a lease No one will take a lease and build a factory there and go to the expense of bulkheading, the expense of filling in, and the expense of dredging, after you get your alleged water front, which is a mud front along there These

expenses are so excessive that no one would do it, for two reasons No sound business man could get any backing—any assistance financially Both these companies there mortgaged their plants The Pearline Company issued bonds, and only did so by paying off the mortgage, and I have a letter which answers the question which was put to me the other day by the Riparian Commission, 'How soon will you exercise your right to convert this lease into a grant'? I said just as soon as the property is sold from time to time, or as soon as we get the ready money I said, we are carrying a very heavy piece of property, sixty acres, and out of that sixty acres we have eighteen acres of meadow land, all the rest is the side of a hill We are going to take down the side of the hill and throw it into the front, as soon as we can, and fill in back of the bulkhead with ashes, if necessary

"Now, gentlemen, I do not want to take too much of your time I want to say, after years of experience in developing property and selling it to factories, I have not met one manufacturer who would consent to build on it I can put in the hands of the Chairman letters signed by manufacturers there, stating that they would not have established there, if they could not get grants on property along that coast Now, I do not think the proverbial fellow who builds his house on the sand would be anything more than a monument of wisdom compared with manufacturers building on leased ground He has got to bulkhead and then place his factory there, put piles in The expense is enormous It is our final decision We will not take a lease convertible into a grant for our business I thank you, gentlemen, for your kind attention"

From these and other expressions, your Committee is convinced that all it is justified in recommending is that when the interest of the State will be best conserved by a limited lease, it be hereafter given, with proper provisions for an appraisement at the end of the term, that when such leases cannot be advantageously made, the prices fixed for grants in fee shall, as far as possible, anticipate the advance in value in the near future

During the course of our investigation, the Attorney-General was requested to advise your Committee upon several interesting legal questions bearing upon riparian matters, and your Committee takes pleasure in annexing to this report a copy of his opinion thereon

In closing, your Committee begs leave to make the following recommendation

The investigation made by your Committee has impressed it with the great importance of a careful conservation of the interests of the State in its remaining riparian lands, and, in order to maintain this, and at the same time bring about simplicity and economy, it has seemed to your Committee judicious to advise the amalgamation into one responsible board, of the Riparian Commission and several other existing and projected Commissions who will have in charge important and kindred interests of the State Should this be done, the State could well afford to pay the members of such a unified commission a sum sufficient to induce them to devote their personal energies and attention more completely to the important interests that would then be committed to their charge Your Committee believes that there is danger of there being too many Commissions and boards in existence in our State Rivalries and conflicts are apt to ensue, and a lack of attainment, due to a division of labor and a want of responsibility It is believed that the time is now ripe to unite in the responsible charge of one board many commissions having germane subjects in charge, and that to such a body it would be advisable to commit the future guardianship of our riparian interests

In any event your Committee recommends that the headquarters or offices of the persons having in charge the riparian interests be removed, with all documents and records of the Riparian Commission, to suitable offices in the State House Building, as speedily as accommodations can be found there for them Your Committee sees no reason why a separate office should be maintained in Jersey City for this Commission, or for its successor Your Committee further believes that legislation to cure the defects in the present riparian laws, pointed out in the opinion of the Attorney-General, should be enacted without delay and as soon as it shall be determined what body shall have in charge the riparian interests of the State in the future It is apparent that the laws are at present in a most unfortunate, if not in a fatally defective condition, and that no time should be lost in remedying this

We have requested the Attorney-General to prepare at his earliest convenience legislation in accordance with the foregoing recommendations.

A N BARBER,
FRANK CROWTHER,
SAMUEL P JONES,
WALTER S REED,
OLIVER C HOLCOMBE,
EDMUND W WAKELEE,
JOHN BOYD AVIS

I agree with the foregoing report except as to the recommendation concerning grants I would limit the making of grants to lands upon which manufacturing plants are to be erected In other cases I would limit the Riparian Commission to the making of leases

JAMES F MINTURN

STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY-GENERAL,
ROBERT H McCARTER, Attorney-General
NELSON B GASKILL, Assistant Attorney-General

TRENTON, N J , March 18, 1907

Hon Edmund W Wakelee, Chairman, &c

MY DEAR SENATOR WAKELEE—Pursuant to the request of your Committee, I have given considerable attention to the examination of the legal matters involved in the questions submitted by your Committee to me for an opinion, and the Assistant Attorney-General, at my request, has given the subject a most thorough and exhaustive study He has prepared the accompanying opinion, which I have carefully examined, and inasmuch as the conclusions he reaches are the same as those I had reached upon an independent investigation, and he has, in my judgment, so plainly expressed those views in the opinion, I have not deemed it worth while to personally rewrite another opinion, and I take pleasure, therefore, in enclosing you this memorandum, as containing, what I believe to be, the correct answers to your inquiries

Yours very respectfully,

ROBERT H McCARTER,
Attorney-General

Hon Robert H McCarter, Attorney-General of New Jersey

SIR—In accordance with your request that I consider certain questions propounded by the Committee of the Senate and House of Assembly of the State of New Jersey, appointed to investigate the granting of riparian lands by the State, I beg to submit the following

This Committee has first asked to be furnished with an opinion as to the legal and constitutional power of the Riparian Commission under the present acts of the Legislature to make grants and leases of lands under water belonging to this State To be legal the creation and power of the Riparian Commission must first be constitutional, and I shall, therefore, consider first the constitutional aspect of the question presented, which will, I think, determine the legal situation, as will appear hereafter

The Riparian Commission as now constituted seems to have had its origin in an act entitled "An Act to ascertain the rights

of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State," approved April 11, 1864 (*P L 1864, p 681*)

The purpose of the act, as stated in the title, is clearly inquisitorial The body of the act throughout the entire enacting clause, indicates that investigation and report is the sole purpose for which the Commission is authorized and appointed

The preamble of the act recites that grants of land lying under water are being made without sufficient information as to the rights of the State and the rights of the riparian owners, and, therefore, with a view to obtaining proper information,

Section 1 authorizes the appointment of a Board of Commissioners, whose power and duty shall be to cause necessary surveys and examinations to be made, and obtain all needful information from other sources, "in order to ascertain the present rights of the State in the same, and the value of the said rights" The Commission was also directed to fix an exterior bulkhead line, to report to the next Legislature the result of their investigation and inquiry, and the location of the exterior bulkhead line, as it might seem best to them to have the same fixed, and also "to recommend to the Legislature such plans and provisions for the improvement, use, renting or leasing of the said lands," to prepare the necessary maps, etc , to make clear to the Legislature to which they were to report the substance of their recommendations

Section 2 prohibits any further grants, leases or sales until the coming in of this report

Section 3 provides for the oath of the Commissioners, and also that they shall not become interested in any lands lying under water, or any other real estate that might in any way be benefited by the adoption of any measures that they might recommend

Section 4 provides for the filling of vacancies that may occur in the Commission

Section 5 authorizes the Commission to appoint surveyors and agents

Section 6 provides for the compensation of the Commissioners

Section 7 provides that public notice of meetings shall be given

It will be seen at once that there is nothing in this act which contemplates the formation of a permanent Commission, holding the necessary delegation of power from the Legislature to make grants and leases of the State lands

The report of this Commission was presented to the Legislature of 1865 (Legislative Documents, 1865) The language of the report sufficiently indicates that the Commissioners considered their powers to be limited to inquiry and investigation, nor did they believe that it lay within their power to inquire into at least one of the matters which was presented to them, for they distinctly stated that in their judgment the status of the rights of riparian owners was a judicial question over which they had no authority, and into which, therefore, they did not inquire They state at length the details of their inquiry and investigation, the theories which they developed and upon which they submitted their report and recommendation The minutes of the House of Assembly and the Senate Journal for 1865 show that this report was ordered printed, and instead of being acted upon by the Legislature, to which it was submitted, a special joint committee of both Houses was created, to which the report was submitted for action

Until the session of 1869 no action appears to have been taken upon this report, nor does an examination of the Minutes of the Assembly or the Senate Journal give any light as to the further operations of the Commission appointed in 1864, but there appear in 1869 an act of the Legislature entitled "A Supplement to an act entitled 'An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," which was approved March 31, 1869 (*P L 1869, p 1017*) This act refers to the act of 1864, and to the report of the Commission appointed in accordance therewith, made to the Legislature of 1865, adopts the recommendations of the report of 1865, in so far as the fixing of a bulkhead line is concerned, and then authorizes the appointment of four Commissioners to complete the work of the prior Commission, but, in addition, this supplement to the Act of 1864, which was an act authorizing an inquiry, gives to these Commissioners now authorized to be appointed, power to execute leases in perpetuity to holders of legislative grants, and by another section thereof to grant or lease lands under water The Commissioners so appointed appear to have been the first of the Riparian Commissioners as now constituted

This supplement of 1869 was followed by a further supplement in 1871, entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian

owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 21, 1871 (*P L 1871, p 44*) The purpose of this act was to authorize the Commission as constituted under the first supplement, to lease or grant the lands of the State lying under water, except in certain locations

This was followed by an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 4, 1872 This act authorized the Commissioners to make changes in the line for solid filling, to prohibit encroachments, and to lease or sell lands lying under water fronting on certain established basins

Next, an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this state,' approved April eleventh, eighteen hundred and sixty-four," approved March 27, 1874 The purpose of this act was to regulate the number of votes in the Commission necessary to grant or to lease any lands lying under water, and also declare who should prepare and who should pay for the preparation and execution of such leases

An act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 27, 1874 This act has reference to the payment for riparian lands taken by a company incorporated under the act entitled "An act to incorporate a company to form an artificial navigation between the waters of Newark Bay and New York Bay," approved March 18, 1866

This was followed in 1875 by an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 5, 1875 This act authorized the riparian commissioners to retain and expend a certain per centum of the amounts named in the grants or leases made to the riparian owners to cover the cost of mapping, &c

The next act was entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 9, 1877 This act declares when the owner of land shall be held to be the riparian owner for the purpose of receiving grants of land lying under water, &c

Then came an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved April 20, 1885 (Why this supplement entitles the original act a revision does not appear, for there is absolutely nothing in the body of the act which has any of the character of a revision, and the title "Revision" was soon dropped, as appears by the further recitals) This act authorized the Commissioners to classify themselves, provide the terms of commissioners hereafter to be appointed, and for the filling of vacancies

This was followed by an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved March 6, 1888 This act prohibited the issuance of grants of land upon which were located natural oyster beds, except for certain declared purposes

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved March 27, 1888 This act considered the method of the appointment of commissioners and declared their term of office

The following act was entitled "A Supplement to an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,'' approved April eleventh, eighteen hundred and sixty-four,'

which supplement was approved April fifth, eighteen hundred and seventy-five," approved April 17, 1888 By this section one of the supplements was amended so that the Commissioners were authorized at the request of riparian owners to extend surveys already made

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 18, 1889 This act considered the method of appointment of commissioners, their term of office and the filling of vacancies

The next act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved April 19, 1889 By the terms of this act cities were empowered to apply for grants of land lying under water

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved February 10, 1891 This act authorized the Riparian Commissioners to establish exterior lines for solid filling and wharf lines in tidal waters, and further authorized the Commissioners to sell or let lands under water

The next act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11th, 1864," approved March 20, 1891 The purpose of this act was to authorize the Commissioners to license persons to dig, dredge, &c., from lands of the State lying under water, and further provided for the leasing and sale of lands lying under water

The next act was entitled "An act to amend an act entitled 'A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11th, 1864, which was approved March 31st, 1864,"

approved March 20, 1891 This act provided that no person should fill in lands lying under water without a grant from the Commissioners first had and obtained

The next act is "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864," approved April 19, 1895 This act provided that leases and grants of lands lying under water in front of the palisades of the Hudson should be subject to certain conditions

This was followed by an act entitled "An act to amend an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864,' which supplement was approved February 19, 1895," approved May 18, 1898 This amendment changed the conditions under which grants in front of the palisades of the Hudson should be made

The following act is entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April 11, 1864," approved March 22, 1901 The purpose of this supplement was to secure riparian lands for public parks, authorizing the Commissioners to make such grants, providing for the consideration, the reversion and future conveyances

An act entitled "A Supplement to an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864, and the several supplements thereto,' which said supplement was approved April 19, 1899," approved March 7, 1901 This act provided that riparian rights facing public parks may be devoted to business purposes, and that such use should not work a forfeiture of the grant to the municipality

This was followed by an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864," approved April 8, 1903 This act added to the powers already given the Commissioners to make grants of lands lying under water for Park purposes, the consideration, the reversion and the future conveyances thereof

All the acts which have been enumerated above have been supplements by title as well as supplements by object There are three acts, however, which are clearly supplements by object not so entitled These are, the act of 1871, entitled "An Act relative to the Riparian Commission" (*P L 1871, p 113*)

The preamble recites that doubts have arisen as to grants of land which were, but are not now, under tide water, and in view of the fact that leases containing grants and conveyances authorized by Section Four of an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 31, 1869, and the joint resolution of 1870, are more satisfactory

Section 1 authorizes the "said commissioners" to grant and to convey lands lying under water under certain specified conditions

It is clear from the reading of this act that it is not a separate act, but is, in fact, a supplement as clearly as though it were so entitled It could not stand alone as an independent act It does not purport to create or to delegate any power to the body whose operations it limits It has life and force only as it applies to the prior acts of 1869 and 1864

The second act with a distinctive title is "An act to reorganize the Board of Riparian Commissioners of this State," approved March 10, 1892 This act affects only the constitution of the Board, provides that the term of office of the then present Board shall expire at a certain time, and fixes compensation This act does not in any sense affect the powers and duties of the Commission, is not a revision, but merely affects the administrative organization

This is true of the third act entitled "An act to reorganize the Board of Riparian Commissioners of this State," approved May 9, 1894

None of these three acts standing alone could give to the Board of Riparian Commissioners, as now constituted, any power or vitality which it would not have otherwise than through the various supplements to the act of 1864

The Constitution of 1844, in force at the time of the passage of the original legislation, contains this provision "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each

other, every law shall embrace but one object, and that shall be expressed in the title" *Constitution of 1844, Article IV, Section 7, Par 4*

This clause remained unchanged by the amendment of 1875, and is, therefore, in force at the present time *Constitution of New Jersey, Article IV, Section 7, Par 4*

The constitutionality of the present Board of Riparian Commissioners depends upon the solution of the question as to whether the powers and duties of the Commission arising out of the various supplements to the act of 1864 can fairly be said to be embraced in the title of the act of 1864

The object of the original act was an investigation and inquiry and a report The appointment of a permanent Commission, with power to make grants or leases of the State's lands lying under water has no such relationship to the proposed inquiry that it can be deemed to follow as a necessary or implied portion of the avowed purpose of that original act, that is to say, the investigation Aside from deductive reasoning, the fact that the report of the Committee, made to the Legislature of 1865, was laid over until acted upon by the Legislature of 1869, with the creation thereby of a new Commission, with additional powers, shows clearly the separation of the two objects The investigation being closed, the Commission was created and endowed with a delegation of power by the Legislature

The rule of law may be thus stated

> "The unity of the object must be sought in the end which the legislative act purposes to accomplish, and not in the details provided to reach that end The degree of particularity which must be used in the title of an act rests in legislative discretion, and is not defined by the constitution There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to the act, if by fair intendment it can be connected with it"

Walter v *Town of Union, 4 Vr 350, Deegan* v *Morrow, 2 Vr 136*

This is the general rule by which the relationship between the various supplements to the parent act must be tested Can the object of the supplements by fair intendment be connected with the investigation stated as the purpose of the act of 1864?

Certain cases appear in our reports in which it was held that

the object of various acts could not by fair intendment be connected with expressions of the title, and, in my judgment, none of these present so strong a ground of variance as that now under consideration *Rader* v *Township of Union, 10 Vr at page 515, Hendrickson* v *Fries, 16 Vr 555* In this case Depue, J, said

> "Under the provision of our constitution, the title of a statute is not only an indication of the legislative intent, but is also a limitation upon the enacting part of the law It can have no effect with respect to any object that is not expressed in the title"

Citing cases

Daubman v *Smith, 18 Vr at page 202*, where MAGIE, *J*, said, citing cases

> "Upon these cases it must be considered as settled in this State that when a legislative act is designed to effect one object, it will not be objectionable because it embraces details and incidents comprehended within the object If the whole act in each part be germane to one plain end, the constitutional requirement will be satisfied, although the act comprehends a variety of incidents But whenever parts of an act are not germane to, or comprehended within, its plain object, then the legislation is objectionable under this clause
>
> "In like manner it must be taken as indisputable that the title of an act must fairly express its single object * * * When the title is inapt to express the obejct, or deceptive in its expression, then the legislation is repugnant to this clause"

Lane v *State, 20 Vr 673, Dobbins* v *Northampton, 21 Vr at page 499* This was a decision by GARRISON, *J*

> "The constitutional mandate that the object of every law shall be expressed in its title, has given the title of an act a twofold effect It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law The enacting part of a statute, however clearly expressed, can have no effect beyond the object expressed in the title To maintain any part of such a statute, those portions not embraced within the purview of the title must be

> exscinded, and if the superaddition to the declared object cannot be separated and rejected, the entire act must fail"

Citing cases *Falkner* v *Dorland, 25 Vr 409*

Nor does it save an act from the operation of this rule, if the matters not expressed within the title have been added in the form of supplements If the objects of the supplements do not fairly come within the object expressed by the title of the supplemented act they are repugnant to the constitutional provision, though the original act may still stand

In *Rahway Savings Institution* v *Rahway, 24 Vr p 51*, MAGIE, *J*, said

> "The ordinary meaning of the word 'Supplement' doubtless is a 'supplying by addition of what is wanting' A glance at our legislation from the time of the adoption of the constitutional provision will show that the word has constantly been used in a sense so broad as to possibly justify a claim that it has acquired thereby a special meaning broader than the ordinary one But for the purposes of this case it is sufficient to say, that the ordinary meaning of the word will, under our construction of this clause, cover every species of amendatory legislation which goes to complete the legislative scheme"

So in *New York, &c, R R Co* v *Montclair, 2 Dick 592*, opinion by REED, *J*

> "The defect is, that the title of the act does not express the subject of the legislation, but is vague and misleading The title is this "An act entitled 'A supplement to an act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' approved April 2, 1873," which supplement was approved March 31st, 1882
>
> "It is perceived that while the act does not purport to be a supplement to the supplement of March 31st, 1882, its effect is to leave the impression that it is a supplement to the earlier supplement
>
> "Any person reading the title to the act would conclude that the subject of the statute was the same as that involved in the act of March 31st, 1882
>
> "Now, the act last mentioned deals with a subject entirely foreign to the subject-matter of the present stat-

ute * * * It is too obvious for argument that the title was entirely misleading, and so encounters the constitutional requirement For this reason the act is void"

See also *Hann* v *Bedell, 38 Vr 148*

It may be argued in opposition to the result I have thus stated that the lapse of time during which the existence and operation of the Board of Riparian Commissioners has received at least tacit acquiescence, will operate as a bar to a present adverse decision But I am not convinced of the sufficiency or conclusiveness of this contention

The authorities which might be urged against the opinion which I have reached are

Board v *Cronk, 1 Halstead 120*

"Where a statute has already received its construction and where the practice under it has been uniform for fifty years or more, and so become the settled law of the land, it would be going a great way for a court to give it a new construction under the pretence of making it better"

So in *State* v *Kelsey, 15 Vr at p 22*

"Long and continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of the words"

And on p 48, MAGIE, *C*, supports the rule as elsewhere cited

"The rule amounts to no more than this that if the act be susceptible of the interpretation which has been put upon it by long usage, the courts will not disturb that construction"

Board of Assessors v *Central R R Co, 19 Vr 304, Fritts* v *Kuhl, 22 Vr 191, Engeman* v *State, 25 Vr 247, McNeal Pipe Co* v *Lippincott, 28 Vr 542,* where MAGIE, *C*, said

"If, however, there was a debatable question as to the true construction of the act, then as the interpretation I have indicated is clearly admissible, we should be bound by the contemporaneous and continuous exposition exhibited in the usage and practice under it, to give it that construction"

Answering the argument so based, it occurs to me that the interpretation of the constitutional clause is not now involved That clause has received its interpretation The question is rather as to whether that interpretation can now for the first

time be applied to a statute of long standing to determine its validity Had this test been applied to the supplement of 1869 with reference to the supplemented Act of 1864, at or following its enactment, I am quite clear that the supplement must have fallen But there has been no interpretation of this difficulty and therefore no construction acquiesced in Indeed, it is hard to see how the question could have been raised As between the State and its grantee, neither apparently had any reason to question the constitutionality of the act creating the Board of Riparian Commissioners and an outsider would have no standing in a collateral attack

So far, therefore, from the existence of a long standing acquiesence in an accepted construction, it seems that there has been no construction whatever, merely a default in applying the terms of an interpreted clause of the constitution to the facts at hand I do not believe that this default can operate to prevent the raising of the constitutional bar at this day

The objects of the various supplements to the Act of 1864 are, in my opinion, not such as can fairly be considered to be concluded within the object of the original act as expressed and limited by its title These supplements, therefore, fall by their repugnance to the Constitution, and the Commission seems to have been improperly clothed with the powers attempted to be conferred by these supplements

It becomes necessary to consider, then, the force to be given to the Act of 1871 It is clearly established that this act has not the essential characteristics of an independent act It does not purport to create a commission to execute the duties and powers conferred, but relates to a prior commission Was there any such commission then in existence that it could, as a legal body, receive this delegation of power?

As has been stated, the supplement of 1869 creating the commission, granted two separate powers to it First, the power to continue the investigation authorized by the supplemented Act of 1864 and, second, the power of conveyance As I have stated, this latter part of the act was void, as not coming within the object of the Act of 1864, to which the Act of 1869 was a supplement But the Act of 1869 in part seems to have been valid in that it created, with all necessary incidents, a new commission to carry on the investigation in so far as it had been left unfinished by the Commission of 1864, authorized by that parent Act of 1864 In so far, the Act of 1869 seems to have created a Riparian

Commission, to which the Act of 1871 might properly refer as an existing Riparian Commission And as this Act of 1871 was a general act, not a supplement to the Act of 1864 or 1869, its enacting clause is within the limitations of its title and open to no seeming objections on that score

I conclude, therefore, that the Act of 1869 created a commission, which derives its only valid powers at present from the act creating it and from the Act of April 6, 1871 (*P L 1871, p 113*)

The matter, however, is not free from doubt Whether, if the question were directly raised, the courts of this State would hold that the supplement of 1869 was valid for any purpose, cannot be accurately forecasted They have from time to time considered various statutes in the light of duplicity of objects, and sometimes have sustained these statutes in part In other instances, upon the ground that the major portion of the act, that which it was the main purpose of the Legislature to enact in execution of their purpose, being faulty, they refused to sustain the statute because an incidental object was properly enacted And in the Act of 1869 it may well be doubted if the valid portion is the main object, the principal purpose of the act

The Court of Chancery has, through Pitney, V C, expressed an opinion, as follows

> "With regard to the constitutional question, which is based upon the lack of scope of the title of the Act of April 11, 1864, it is to be observed that the riparian grant, under which the complainants in this case claim, was made under the Act of April 6, 1871 * * * * The title of that act is as follows 'An act relative to the riparian commission' In this it varies from the several supplements to the Act of 1864, most important of which was the Act of March 21, 1869 * * * * These, by their terms, were mere supplements to the original act, and, therefore, confined in their scope by the title of that act, while the Act of April 6, 1871, is an independent act and its title is sufficiently broad, as it seems to me to include the power to make the grant in question At the time of its passage the Riparian Commission was an established institution in the State of New Jersey"

While this opinion goes far to sustain the conclusion I have reached, it is not conclusive How the learned Vice-Chancellor reached his conclusion that the Riparian Commission was an established institution at the time the Act of 1871 went into effect does not appear His views are not fully stated, and his interpretation of the validity of the Act of 1869 not entirely made plain, nor the method by which his result was reached

It may be, therefore, that the entire superstructure of the Riparian Commission may be without valid foundation upon the Act of 1864, and, consequently, wholly and absolutely void Or the commission may be endowed with the powers granted by the Act of 1871 That it can have any other powers, I seriously do not consider

In view of this very grave situation, I strongly recommend immediate remedial legislation If a revision of the riparian laws is deemed necessary, as I think it most assuredly is, it should cover the field of prior legislation and judicial decision in this State and in other States The status of past grants should be fixed by a validating act or acts, omitting such grants as the Committee or the Legislature may desire for any reason to have revoked The whole question involves so many valuable rights, that whatever action is taken should be carefully and well considered

Again, I am asked "Has the Legislature itself power to grant and lease public lands under water?"

I understand this question to be directed to the jurisdiction of the legislative branch of the government over those rights which are common to all the people, so as to divest the people of such rights and invest a private person or corporation with complete dominion over some portion thereof I assume, for the purposes of this question, that there is no existing limitation upon the lands of the State lying under water in the nature of a perpetual trust, and will consider, therefore, generally, the power of the Legislature to make grants of State land for private and individual purposes

Upon the general subject of the right of the State to lands lying under tide water but little remains to be said at this day in New Jersey That question is fully settled The State is the successor to the King of Great Britain in this title, and at the Revolution became invested with it as a sovereign, as a representative or trustee of the people of the State This matter has several times been the subject of judicial investigation, always with the result just stated In the case of the *Attorney-General* v *Stevens, Saxton, at p 380*, the then Chancellor said

"The right to the use of this navigable stream is a right common to all the people of the State Before the Revolution the right was in the Crown The people are now the sovereign power, and the right is vested in them It is their property, and as such may be disposed of for the common benefit in such way as they may see fit This disposition can only be made by the Legislature of the State, which is the rightful representative of the people And when such disposition is made 'consistently with the principles of the law of nature, and the constitution of a well-ordered society,' it must be considered valid Such, as I conceive, has ever been the sound construction of the legislative power, and its exercise has been in perfect accordance with it"

So, in *Delaware & Raritan Canal Co , &c ,* v *Raritan & Delaware Bay R Co , 16 N J Eq , at p 365,* opinion by the then Chancellor

"The doctrine as attempted to be applied by counsel, carried to its legitimate conclusion, would deprive the Legislature of all power of disposing of public property The sale of a part of the public domain, in one sense, derogates from the power of future Legislatures What has once been granted cannot be granted again And yet the power of the Legislature, as well as of Parliament, to alienate the public domain, to convert arms of the sea, where the tide ebbs and flows, into arable land, to the utter destruction of the common rights of navigation and fishing, is well settled, and has been repeatedly exercised" (Citing cases)

In *Gough* v *Bell, 2 Zab , at p 455,*

"It is said in the books that the title to the soil of navigable rivers, and to the shores of the sea, and of the arms of the sea, is a branch of the King's prerogative, of which he cannot divest himself, that the title is in him in trust for the public, that the rights of navigation and of fishery, and the use of the shores of the sea, are common rights, of which the people cannot be divested, except by their consent Hence, they cannot be alienated by the Crown" (Citing cases) * * * *

"Whatever doubts may exist in regard to the power of the King to dispose of common rights, there exists none in regard to the power of Parliament Parliament

not only may, but does, exercise the power of alienating the public domain, of disposing of common rights and of converting arms of the sea, where the tide ebbs and flows, into arable land to the utter destruction of the common rights of navigation and fishing

"This power is attributed to the omnipotence of Parliament, and it is said that no such omnipotence is vested in the Legislature The Legislature, it is true, is not omnipotent in the sense in which Parliament is so It is restrained by constitutional provisions Its powers are abridged by fundamental laws But it would seem clear, upon principle, that in every political existence, in every organized government, whatever may be its form, there must be vested somewhere ultimate dominion, the absolute power of disposing of the property of every citizen In this consists eminent domain, which is an inseparable attribute of sovereignty This constitutes the omnipotence of Parliament If the Legislature may dispose of the property of each individual citizen for the public good it would seem to be no greater exercise of power to dispose of public property or the common rights of all the people for the same end The objection to an alienation of the public domain by the King is that he is but a trustee for the community But the Legislature are not mere trustees of common rights for the people These rights are vested in the people themselves, the Legislature, in disposing of them, act as their representatives, in their name and in their stead The act of the Legislature is the act of the people, not that of a mere trustee holding the legal title for the public good"

So in *Stevens* v *Paterson and Newark R R Co , 5 Vr 533,* and *Hoboken* v *P R R , 124 U S 656*

A number of other cases might be cited, but the above are sufficient to indicate the trend of the authorities in this State The cases referred to have been cited with approval again and again until the propositions therein laid down are no longer open to doubt

I conclude, therefore, that the Legislature has the power within itself to grant and to lease the lands of the State under water, subject, however, to the existence of a constitutional limitation

The third question propounded to me is, "Has the Legislature the power to delegate to any board or body whatever authority the Legislature itself may have to make grants or leases of the State lands lying under water?"

An examination of the Constitution discloses no direct limitation upon the Legislature in restraint of the delegation of its authority A limitation has been implied, however, from Art IV, Sec 1, Par 1, which reads as follows

> "The legislative power shall be vested in a Senate and General Assembly"

The legislative power, therefore, the Legislature cannot delegate to any other body or invest in any individual or corporation It is the one part of its sovereignty of which, as was said in *D & R Canal Co* v *Rar & Del Bay R R Co*, 1 *C E Green 321*, the Legislature cannot divest itself or its successor It not only may, but must determine in what manner that sovereignty must be exercised

Statutes which carry power to establish boards or organizations must stand or fall according as they are deemed to carry or omit a delegation of the legislative power Thus it has been determined that a grant of power to a turnpike company to appropriate a public road to their use, with the consent of a majority of the voters of a township, was not improper *Morgan* v *Monmouth, 2 Dutch 99*

Conferring on a board of freeholders power to fix rates of ferriage is not improper *Freeholders* v *State, 4 Zab 718*

The Legislature has the right to delegate to the Board of Managers of the Geological Survey the discretion of determining the purpose for which the right of eminent domain should be exercised *In re Lower Chatham, 6 Vr 497*

But the Legislature cannot leave it to a board of commissioners to determine in what proportion the expense of laying out and opening a public avenue shall be imposed on the townships of a county or wards of a city *Gaines* v *Hudson Co Commrs, 8 Vr 12*

The General Railroad Law, in respect to the delegation of the power of eminent domain to corporations organized under it, is constitutional *National Docks R R Co* v *Central R R Co, 5 Stew 755*

But again

> "The power of deciding questions of public policy which relate to the organization and extent of municipal corporations is one properly belonging, under our constitution, to the legislative department of the government, and, therefore, it cannot be exercised by any person or persons belonging to or constituting either the executive or the judicial department"

In re Ridgefield Park, 25 Vr 288

Similar questions were presented and decided as the facts fell within or without the line of judicial determination in *Gilhooly* v *Elizabeth, 66 N J L 484, Paul* v *Gloucester Co, 50 N J L 585, Allison* v *Corker, 67 N J L 596*

None of these cases present an exact authority as precedent in the present case Perhaps those which approach most nearly in similarity are the two cases cited upholding a delegation of the right of eminent domain as constitutional This is, as I have said, one of the essentials of the sovereignty of the Legislature, and there seems to me that there is nothing distinctive in principle between such a grant of power and that with which it would be necessary to endow a board or commission to enable them to convey the land of the State lying under water, provided the necessary limitations were observed

I conclude, therefore, that the Legislature can, by an enactment, constitute a proper board for this purpose, and delegate to it the necessary power to execute such right of conveyance of the State's lands as the Legislature itself possesses But such act should prescribe the terms and conditions of such conveyances and all other details as will leave in the board so constituted merely power to carry out the purposes of the Legislature by means and upon terms specifically prescribed Too much discretionary power must be avoided, lest thereby the legislative prerogative be encroached upon and the act rendered void

Fourth I am asked whether or not these lands owned by the State, lying under water, are not to be held forever inviolate in trust for the people as a fund for the support of public education in this State?

This question covers the matters excluded from consideration in my answer to the second question And the response to that question must be read in connection with the discussion of the pending question

The Constitution of 1844 contains this provision

> "The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the

treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund, and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the equal benefit of all the people of the State, and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof, for any other purpose, under any pretense whatever" (Art 4, sec 7, par 6)

In similar nature is the provision of the amended Constitution of 1875

"The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund, and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State, and it shall not be competent for the Legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years" (Art 4, sec 7, par 6)

It is clear, therefore, that "all money, stock and other property which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund" has passed beyond the sphere of legislative control, except as to the designation of the mode in which the interest and dividends arising therefrom shall be applied for support of public schools *Amboy Dock & Improvement Co* v *Trustees, etc , 8 Stew 182*

By an act passed on the 6th of April, 1871, entitled "An act to increase the school fund of the State," it was enacted that "all moneys hereafter received from the sales and rentals of the land

under water belonging to the State shall be paid over to the trustees of the school fund and appropriated for the support of free public schools and shall be held by them in trust for that purpose, and shall be invested by the treasurer of the State under their direction in the same manner as the funds now held by them are invested, the same to constitute a part of the permanent school fund of the State and the interest thereof to be applied to the support of public schools in the mode which is now or may hereafter be directed by law and to no other use or purpose whatever" (*P L 1861, p 98*)

In 1872 the following statute was passed

"That all leases which shall hereafter be made of lands belonging to the State, now or formerly lying under water, or which have been made since the sixth day of April, one thousand eight hundred and seventy-one, shall be transferred to the trustees of the school fund of this State and become a portion of the free school fund, and that the annual income arising from such leases shall be distributed by the said trustees for the support of free public schools in the same manner that other moneys are now distributed for that purpose" (*P L 1872, p 61*)

The income from the lands of the State lying under water was by force of these statutes and the constitutional provision passed into a "perpetual fund," not subject to subsequent diversion at the hands of the Legislature This appears to be the first addition to the school fund from the riparian lands of the State

In 1894, however, a statute was enacted in broader language, and with more extensive import

"A supplement to an act entitled 'An act to establish a system of public instruction,' Revision, approved March twenty-seventh, one thousand eight hundred and seventy-four," approved April 24, 1894

Sec 1 Be it enacted by the Senate and General Assembly of the State of New Jersey that all the lands under water belonging to this State be and the same hereby are irrevocably appropriated for the support of free schools in this State, and that all moneys hereafter received from the sales and rentals of such lands under water belonging to this State, shall be paid over to the trustees of the school fund and appropriated for the support of free public schools, and shall be held in trust by

them for that purpose and shall be invested by the treasurer of the State under their direction in the same manner as the funds now held by them are invested, the same to constitute a part of the permanent school fund of the State and the interest thereof to be applied to the support of public schools in the mode which now is or may hereafter be directed by law and to no other purpose whatever

2 And be it enacted that all leases which have been made by this State or any board or officer of this State in pursuance of the provisions of an act entitled 'An act to provide for the use of the proceeds of riparian sales, grants and leases, approved March nineteenth, one thousand eight hundred and ninety,' of lands belonging to the State now or formerly lying under water, be and the same hereby are transferred to the trustees of the school fund of this State to become a portion of the free school fund and that the income arising from such leases shall be distributed by the said trustees for the support of free public schools in the same manner that other moneys are now distributed for that purpose"

(The word "irrevocable" in the first section is unnecessary The clause of the constitution referred to fixes the permanent quality of the appropriation)

The school law of 1894 was repealed, but there is no necessity for discussing the question how far such repeal could affect the appropriation to the school fund made therein, since the school law of 1902 practically re-enacts the law of 1894

Not in precise words, but in effect the same

"163 All lands belonging to this State now or formerly lying under water are appropriated for the support of public schools, and all moneys hereafter received from the sales of such lands shall be paid to 'The Trustees for the Support of Public Schools,' and shall be invested by said board, and shall constitute a part of the permanent school fund of the State

164 All leases which have been heretofore made or which shall be hereafter made of such lands, shall be held by 'The Trustees for the Support of Public Schools,' as a part of the principal of the school fund, and the income arising from said leases shall be a part

of the income of said school fund" (*P L 1902, p 127*)

These two sections *in toto* were included in the present school law and are now in force *P L (Special Session 1903) 1904, p 63*

The Act of 1871 appropriated "all moneys" received from sales and rentals and went no farther By the Act of 1872 "all leases" were transferred to the school fund But note that the Act of 1894 and the acts following down to the present, appropriate the lands, the moneys and the leases to the permanent school fund

Upon this situation, three questions present themselves

1st Did the appropriation of the lands lying under water, belonging to the State, by virtue of this legislation and the constitutional provision as to "other property which may hereafter be appropriated for that purpose" invest such lands with any restrictions in the nature of trusts for the benefit of the public school fund?

2d If not, or also, Was the appropriation of the moneys arising from the sale and leasing of the land lying under water, belonging to the State, sufficient to invest the land from which such income must be derived with any restrictions as to conveyance or otherwise in the nature of a trust for the benefit of the school fund to which such income was appropriated?

3d What was the scope of any such limitation arising under either or both sources and what was its proper effect upon the further alienation of the lands of the State lying under water?

The Act of 1894 and the re-enactment of its provisions in the succeeding and present school laws has resulted in an appropriation of the lands of the State lying under water to the school fund I do not comprehend that this is sufficient to repeal by implication the previous grant of power to the Riparian Commission, or to prevent the sale or leasing of such lands under any and all circumstances, but, in my judgment, it does give the school fund such interest in these lands that sales or leases, in fact, the management of the State's lands under water must be conducted with a view to realizing the greatest possible benefit from such lands, not to the State at large, but to the school fund as *"cestui que trust,"* in its present and also in its future estates

Prior to such appropriation, the people of the State were the parties in interest, subsequent thereto the school fund is substituted for the people at large, and any operation, conveyance or

grant in defeasance or in diminution of the lands of the State lying under water which cannot be justified as a realization of the present and also future interest of the school fund therein, is, in my opinion, improper

Whether this appropriation of the lands themselves to the school fund is permanent depends upon the construction given to the phrase of the Constitution, "all money, stock and other property, which may hereafter be appropriated for that purpose * * * a perpetual fund" If "other property" in that connection be used so broadly as to include realty, then the appropriation has become permanent, but if the phrase is to be qualified by the words "money" and "stocks" to a meaning strictly consonant, then "other property" cannot include realty and the appropriation is subject to repeal at the will of the Legislature

I incline to the opinion that the rule of interpretation whereby general words following an enumeration of particular words, in a statute, are limited by the particular words to a similarity does not govern this case But "other property" has in this case a peculiar and forcible significance Particularly in view of the purpose of the section of the Constitution in which the phrase appears, and the conditions under which it was adopted Then, as now, the school fund was inadequate for its purposes and constant additions were made to it of taxes, canal stock, turnpike stock and bonds and the like Therefore, the purpose was to increase the school fund, and an interpretation which narrows and limits the method or sources of increase, seems hostile to the purpose of the framers of the Constitution "Other property" liberally construed furthers the intended increase of the school fund, and, therefore, I adopt it instead of restricting the meaning of the phrase to personalty It must be noted, too, that the phrase is conjunctive, not disjunctive "Other property" is in addition to what has been named before The maxim *nocitur a socus* is usually applied where the disjunctive, not the conjunctive, is used The result is to work a permanent appropriation of the State's lands lying under water to the school fund, removing them from any subsequent and different appropriation by legislative action

It is to be noted that the case of *Amboy Dock and Imp Co* v *Trustees of Public Schools, 8 Stew 181 (March Term 1882)*, was decided with reference to the situation existing under the Act of 1871, and possibly the Act of 1872, and prior to the Act of 1894

This case held that the Trustees for the Support of Public Schools have no control over the State's lands under water, no authority to decide what lands under water shall or shall not be sold, or to fix the price or dictate the terms and conditions on which sales shall be made, nor power to rescind contracts of sale made by the Riparian Commissioners which they may deem prejudicial to the school fund

In reading this case it must borne in mind that at the time the cause of action arose there had been no appropriation of the lands as such, but only by the Act of 1871 of all moneys received from sales and rentals, and by the Act of 1872 of all leases of riparian lands I consider that the Act of 1894 and the following acts have made a material difference in the conditions, and I do not accept the decision referred to as a binding authority at the present time

The case of *Henderson* v *Atlantic City (64 N J E 583)*, supports this view

The constitutionality of the act of the Legislature of March 22, 1901 (*P L 1901, p 374,*) was attacked upon the insistence that the lands thereby authorized to be granted by the Riparian Commissioners were irrevocably devoted to the support of free public schools, while the Act of 1901, referred to, devotes a portion of such lands to other purposes, that is, public parks

Reed, V C, reviews the constitutional provisions and the Act of 1901 in the light of the same, and in pronouncing the opinion of the court, said

> "In my judgment the only ground for attack upon this act is to be found in that part of section 2 which provides that the Commissioners may, in their discretion, charge therefor a nominal consideration only It is quite clear that the grant provided for under the Act of 1901 is for a puplic purpose It is equally clear that apart from the Act of 1894 the Legislature could devote the property of the State to any public purpose It seems also manifest that the appropriation of these lands as property under the constitutional provision had in view the conversion of this property into money which was to be securely invested There was left in the State, therefore, the discretion when and how to transmute this property into money and to make all reasonable regulations for the use of the property until

it was sold It could probably grant a perpetual right to lay out its streets or highways through it, regarding the presence of such streets as likely to enhance the value of this property So, too, perhaps, a privilege could be granted to a municipality to use it as a park until such times as the State thought it to the benefit of the school fund to transmute the land into money by sale or lease So, too, I think, the State had a right to provide that under the conditions mentioned in the Act of 1901 a sale should be made exclusively to a municipality having control of a public park

"The question, however, is whether it could make a perpetual gift of these lands to anyone, for this, it can not be doubted, is intended by the language of the legislative act The grant is for an easement, which is practically perpetual and exclusive There remains nothing of the least value to the State The grant is intended to be gratuitous

"While it is true that a board may charge the same rate for a grant to a municipal corporation for a public park as to any other grantee, nevertheless, the purpose for which the discretionary power was conferred upon the Riparian Board is manifest, and that purpose was executed in making this grant

"For the extensive grant made to Atlantic City the consideration is $1, and for the restricted grant made to the complainants the consideration is $990

"The grant to Atlantic City would have been null, if the same consideration had been charged for it as for other grants to riparian owners, for the power to charge nothing taints the statutory clause and entirely destroys its force as an authority to make any grants

"In the language of Judge Earl, in *Stuart* v *Palmer, 74 N Y 183*, 'the constitutional validity of a law is to be tested, not by what has been done under it, but by what, by its authority, may be done'

"I am constrained to the conclusion that Atlantic City has no claim to the locus in quo under its grant" (*64 N J E, at p 586*)

But granting, for the purpose of argument, that the interpretation now presently given to the constitutional phrase "all money, stock and other property," is too broad, and that realty

cannot thereby permanently pass into the school fund, there is another aspect of the situation which demands attention

The Acts of 1871 1872, 1894 and the following school laws have unquestionably devoted to the school fund all moneys arising by sale or lease from the State's riparian lands At least, this is true as to all income arising or to arise therefrom since those acts became effective Whether or not those lands themselves have permanently passed into the school fund, the income from them has so passed permanently and inviolably This in itself would vest the school fund with an equitable interest in the sources of that income

It has been held repeatedly in this State that "A gift of the rents and profits of land, in the absence of any expression of a different intention, is tantamount to a devise of the land itself" *Beasley, C J, in Diament* v *Lore, 31 N J L 222*, citing cases in support, among them *Den* v *Manners, Spencer, 144*

> "The rule appears to be settled that the bequest of the income without limit as to time, or gift over which can operate, is a bequest of the principal, if there be no expression of a contrary intent *Elton* v *Sheppard, 1 Bro Ch C 532, Haig* v *Swiney, 1 Sim & S 487, Manning* v *Craig, 3 Gr Ch 436, Craft* v *Snook, 2 Beas 121, Gulick* v *Gulick, 12 C E Gr 500* The same rule applies whether the gift be direct, or through the intervention of a trustee Ibid So a devise of the income of land without limitation or devise over is equivalent to a devise of the land itself *Den* v *Manners, Spenc 144, Diament* v *Lore, 2 Vr 222, Post* v *Rivers, 13 Stew Eq 22, Conynham* v *Conynham, 1 Ves Sr 522*, Sir Thomas Plumer, V C, in *Stretch* v *Watkins, 1 Madd 143* The same rule applies to a gift of a perpetual annuity *Huston* v *Read, 5 Stew Eq 596* * * * The operation of the rule is not defeated because some duty in realizing assets and securing and paying the income is cast upon the trustees In *Earl* v *Grim, 1 Johns Ch 499*, executors were directed by the will to rent or sell lands as they saw fit, and, in case of sale, to put the money at interest and pay the interest annually to G P, &c Chancellor Kent held that those who, by the terms of the will, were entitled to the interest were also entitled to the principal of the proceeds of sale"

Opinion by Grey, V C, *in Passman* v *Trust Co*, *57 N J Eq 273* For further authorities, see *Amer & Eng Encyc of Law, 2nd Ed, Vol 16, page 148 (title estates for life-land itself) Ibid, Vol 18, p 711*

In the matter under consideration there was no expression by the Legislature of any intention contrary to an appropriation of the lands themselves to the school, but instead a twice-repeated declaration of that identical purpose

Upon this permanent appropriation of income, therefore, I also base my opinion that the Legislature has created a permanent and lasting trust in the lands of the State lying under water, of which trust the Riparian Commissioners, or whatever board may be delegated to have these lands in management and control, are the trustees and the school fund is the beneficiary

As previously stated, I do not consider that this operates to prevent any alienation of the State's riparian lands But the effect is to properly restrain any and all sales or leases for purely nominal considerations, or for such consideration as does not properly consider and include the present and future values of the lands so sold or leased In a word, the familiar principles of trust estates apply to and govern the sale and lease of the State's lands lying under water

The fifth question is as to the right of the Riparian Commissioners to grant lands under water in the bays and tributaries of the bays in this State, where the Oyster Commission has jurisdiction under the various enactments of the Legislature of this State

The regulation and control of the oyster-growing lands of the State has been delegated by the Legislature to three commissions, as follows

The Delaware Bay and Maurice River Oyster Commission,

The Ocean County Oyster Commission,

The Atlantic County Oyster Commission

The eraliest of these, as now constituted, and I understand the question to be directed to present conditions, is the Delaware Bay and Maurice River Commission, created by an act of the Legislature of 1899 (*P L 1899, p 506*) By this act, the commission thereby constituted was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within the lands of the State of New Jersey under the tidal waters of the Delaware Bay and Maurice River Cove" In stating their powers the act provides

> "The State Oyster Commission shall have power and are hereby directed, as hereinafter provided, to lease to applicants therefor, any of the lands of the State under the tidal waters of the Delaware bay and Maurice river cove, south of the line * * * * to be exclusively used and enjoyed by such lessees for the taking, planting and cultivating of oysters"

Section 14 provides further

> "All moneys due for ground rentals, license fees, or otherwise made collectible under the provisions of this act, shall be received and collected by the oyster superintendent, for the sole use of the State of New Jersey, as public moneys belonging to the State, and shall be accounted for and paid over as such in manner hereinafter provided'

This act was amended in 1901 (*P L 1901, p 307*), but the parts quoted were not changed, in 1902 (*P L 1902, p 62*) the operations of this commission were extended to certain lands under tidal waters in Raritan bay, therein particularly specified These limits in Raritan bay were further extended in 1905 (*P L 1905, p 482*)

The next commission to be constituted was the Ocean County Oyster Commission (*P L 1902, p 170*) Like its prototype, this commission was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within lands of the State of New Jersey under the tidal waters of the county of Ocean" The commission was empowered "to lease to applicants therefor any of the lands of the State under the tidal waters of the county of Ocean, not set apart as public clam grounds"

The provision with reference to the payment of all income into the general State treasury coincides with the similar provison in the act creating the Delaware Bay Commission

This act was amended in 1903 (*P L 1903, p 638*) and in 1905 (*P L 1905, pp 249, 337*), without, however, changing the clauses quoted or referred to

The last commission to be created was the Atlantic County Oyster Commission (*P L 1905, p 145*) In the language of the prior acts, this commission was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within lands of the State of New Jersey under the tidal waters of the county of Atlantic" The commission was given power "to lease to applicants therefor any of the lands of the State

under the tidal waters of the county of Atlantic not set apart as public clam grounds, * * * * and provided further, that nothing in this act shall be construed to give said commissioners any jurisdiction or control over any lands to which the riparian grant has been made by the Riparian Commissioners of this State"

This act contains the same provision with reference to the payment of all income arising under the act into the general treasury of the State

It is to be noted that the act constituting the Atlantic County Oyster Commission contains a proviso which does not appear in either of the two acts previously mentioned This indicates that the controversy over the jurisdictions of the Oyster Commissions and the Riparian Commission had, at the time of the passage of the last act, attracted the attention of the Legislature, and that it was their purpose, by this proviso, to exclude from the jurisdiction of the Oyster Commission of Atlantic County any land which had previously been leased or granted by the Riparian Commission, and, by implication, to include within the jurisdiction of that Oyster Commission all lands lying under tide water in Atlantic County not so previously granted or leased

This is a clear indication of what, in my judgment, is the resulting and present division of jurisdiction By later and inconsistent legislation, certain lands lying under water have been removed from the jurisdiction of the Riparian Commission and put under the exclusive regulation and control of the respective Oyster Commissions for particular purposes The Riparian Commission has no power, therefore, to exercise any domination over any of the lands transferred to any or all of the Oyster Commissions since the time when each of those creative acts became effective in its particular section Over those lands which lie within the limits prescribed by these acts the Oyster Commissions have full and sole control for the purposes and with the limitation prescribed for each commission by the act creating it This does not transfer to the Oyster Commissions any of the powers of the Riparian Commission, but leaves them supreme within their specified boundaries for the purposes of their creation

One feature of these acts rests upon a misconception, and, therefore, is invalid in each instance The income from all riparian lands was, prior to the creation of the present Oyster Commissions, permanently appropriated to the school fund It was not within the power of the Legislature, therefore, to alter

this appropriation, and by changing the management of some portion of the riparian lands of the State, divert the income therefrom into the general treasury and away from the school fund The trustee may be changed, but not the beneficiary This section, however invalid in itself, does not so remove an essential feature of these acts as to cause them all to fall with it The necessary incidents to operation and realization of the purpose and object of the Oyster Commission Acts still remain in each, without the objectionable section Therefore, the objectionable section may be stricken out and the several acts still stand as valid and effective

But these acts should be promptly amended to relieve this situation, and to provide for the payment of the income arising from these riparian lands by the Oyster Commissions into the school fund

The sixth question is, "What is the effect of any grant made by the Riparian Commissioners to the owners of uplands in the bays and in the tributaries of the bays in the oyster districts of this State, where the State has appropriated money for the seeding of those lands with oysters, and where the Oyster Commissioners, under those laws, have leased the lands to independent oyster men, under valid leases running for a year, during which the land was conveyed by the Riparian Commissioners?"

This question is answered by the discussion of the matters presented by the preceding question When the Oyster Commissions acquired jurisdiction in their several districts the Riparian Commissioners lost their jurisdiction therein, since the right to lease cannot be resident in two bodies at the same time with power in one to reverse and render nugatory the grants of the other at will And by inconsistent and subsequent legislation, as has been said, exclusive regulation and control was vested in the later constituted Oyster Commission Therefore, grants made by the Riparian Commissioners, under the circumstances stated in the question, are ultra vires and void, and the grantees took nothing thereby

The seventh question is asked to the effect of grants made by the Riparian Commission of lands lying under water opposite the foot of streets and highways, with or without notice to the municipality

A review of the judicial decisions of the State and Federal courts will show that it is almost impossible to draft an answer to this question which will have an absolute application to every state of facts that may arise, or which will be in complete accordance with the decisions of the courts, in view of the present conflict between the State and Federal decisions I believe the earliest decision in the State of New Jersey, directly dealing with this question, to be *Mayor of Jersey City* v *Morris Canal and Banking Co , 12 N J E ,* in which, at page 558, the Court said

> "The doctrine, that when the shore owner, through whose lands a street comes to the shore, fills in in front of his land, and also in front of the terminus of the street, the public is entitled to the extension of the street as if the land filled in were an alluvion, is the reasonable doctrine and in strict accordance with principle"

But the facts in this case were peculiar, and therefore, to be carefully scrutinized before this decision is to be accepted as a general authority Perhaps the most widely-discussed and cited case on this subject is *Hoboken Land and Improvement Co* v *Hoboken, 36 N J L 540* This was an action of ejectment to recover a strip of land within the lines of Fourth street, in the city of Hoboken, between River street and the line of low-water mark in the Hudson river, as it was when the suit was commenced In 1804 Colonel John Stevens filed what was known as the Loss Map of the new city of Hoboken, by which a dedication was effected of Fourth street extending to ordinary high water on a course running at a right angle with the river

Defendants were incorpoated in February, 1838, and empowered to fill up, possess and enjoy all land covered with water fronting and adjoining land that might be owned by them Subsequently, the defendants became the owners of the entire tract covered by the map, except such parts as had been previously conveyed, and subsequent to this conveyance the company, under the powers in their charter, filled in a considerable distance beyond the line of high water as it existed when the Loss Map was made

The opinion of the Court was pronounced by Mr Justice Depue, starting with the conclusion that this location of Fourth street demonstrated conclusively that its purpose was to provide a means of access for the public to the navigable waters Justice Depue cited the case above referred to, as well as *Newark Company* v *Mayor of Newark, 2 McCarter 64,* and went on to say

> "In my judgment, these cases declare the law correctly on this subject The essence of the gift is the means of access to the public waters of the river, the advantage of which induced the growth of a city, by reason of its adjacency and connection with the important navigable waters of the Hudson, which gave a peculiar commercial value to the lots put in the market by the dedication, which can only be preserved by maintaining unbroken the connection of the streets with the navigable river Any obstructions of that access would not only derogate from the effect of the gift, but would also be a public nuisance"

Another branch of this same dispute was before the United States Circuit Court in the case of *Hoboken* v *Pennsylvania Railroad Company, 124 U S 656*

The opinion in this case was pronounced by Justice Stanley Matthews He refers to the decision of the United States Court of Errors and Appeals in the case of *Hoboken Land and Improvement Co* v *Hoboken,* and defines the terms and scope of that judgment He lays stress upon the fact that for the first time the Riparian Act of 1869 is injected into the case, under the provisions of which act the State of New Jersey had, as he found defined and certified in the findings of fact, for a valuable consideration, conveyed to the Hoboken Land and Improvement Company, by deeds and conveyances properly executed, or to its assigns, the premises claimed in the several suits against the defendants other than the Pennsylvania Railroad Company He says

> "In the examination of the effect to be given to the Riparian Laws of the State of New Jersey by the Act of April 11, 1864, in connection with the supplementary Act of March 31, 1869, it is to be borne in mind that the lands below high-water mark, constituting the shores and submerged lands of the navigable waters of the State, were, according to its laws, the property of the State as sovereign Over these lands it had absolute and exclusive domination, including the right to appropriate them to such uses as might best serve its views of the public interest, subject to the power conferred by the Constitution upon Congress to regulate foreign and interstate commerce * * * The intent of this legislation is, therefore, manifest to treat

the title and interest of the State in these shore lands as a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes * * * The title acquired by such a grantee, therefore, differs in every respect from that of a riparian owner to the alluvial accretions made by the changes in a shifting stream which constitutes the boundary of his possessions The latter comes to him by virtue of his title to land bounded by a stream, and belongs to him because it is within the description of his original grant, but the title under the New Jersey grants is not only of a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary * * * In other words, under these grants, the land conveyed is held by the grantees on the same terms on which all other lands are held by private persons under absolute titles, and every previous right of the State of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished, except such sovereign rights as the State may lawfully exercise over all other private property"

This decision has great force and bearing upon the courts of this State for the reason that it was the first interpretation of the Riparian Acts of 1864 and 1869, and has practically determined the force and effect of that legislation and grants made thereunder, to which the courts of this State would be obliged to give at least most respectful consideration

That this is true is shown by *Elizabeth* v *Central R R Co*, *53 N J L p 491* This was an opinion by DIXON, *J*, in which the question was, again as to the extension of a highway over a high-water mark existing at the time of the dedication to another high-water mark fixed by artificial reclamation The attention of the court was directed to the two cases previously cited (the Hoboken Land case and the case of *Hoboken* v *The Pennsylvania Railroad Company* in the United States Courts) and Justice DIXON pointed out the basis for each decision

In the first case he said

> "The Court of Errors and Appeals decided that legislative authority granted to individuals or corporations to fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining lands owned by them, will not extinguish the public right of access to

navigable waters by a street on the lands of such owners, which by dedication terminated at the high-water line, but such street will run to the water over the lands reclaimed under such authority * * * The Supreme Court of the United States decided that grants made by the State of New Jersey, under our general Riparian Act, secure to the grantees the whole beneficial interest and estate in the property described, for their exclusive use for the purposes expressed in the grants, and include every right of use or occupancy on the part of the public, transferring to the grantees or extinguishing every previous right of the State, whether proprietary or sovereign, except such sovereign rights as the State may lawfully exercise over all other private property * * * The distinction between the subjects on which these judgments were rendered is obvious In the first case, the party claiming to have extinguished the public right of access to the water over the highway had a mere license to fill in and enjoy undefined land under water as a riparian owner, and the license was deemed subject to the implied limitation that the licensee should acquire against the State no greater rights in the land reclaimed than he had in the ripa in front of which the reclamation took place But in the later case, the claimant, was the grantee of all the rights of the State in specified lands under water, founding its title upon express words of conveyance, the reasonable force of which excluded the reservation implied against the licensee"

The decision in this case was that the facts stated proved the existence of a public highway extending to the waters of Arthur Kill, and that on November 12, 1874, the State of New Jersey granted to the Central Railroad Company the land below the original high-water line in front of the highway, with all the rights of the State therein, and that the highway did not thereafter extend below the original high-water line over land artificially reclaimed

See also *Ocean City* v *Shriver, 64 N J L 550*

It seems from this review that each case in all probability would stand or fall upon its own peculiar statement of fact, the tendency of the courts being, as I conceive it, to interpret the riparian grant from the State to extinguish any efforts on the

part of the owner of the ripa to subject the State's land lying under water to a public easement or servitude This view would not apply to any change in the high-water line arising by accretion or alluvion Nor would it apply to a case where a dedication had been made by the owner of the ripa also the holder of a riparian grant from the State, issued prior to the dedication But the situation is further complicated by a more recent decision of the United States Court *Ill Central R R Co* v *Illinois, 146 U S 387* This opinion seemingly reverses the case of *Hoboken* v *Pennsylvania R R Co*, previously referred to, upon the theory that the public lands of the State were held by the State by virtue of its sovereignty in trust for the public This trust is one which cannot be alienated except in certain instances of parcels used for the improvement of the interest held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining, that abdication of the general control of the State over the lands under navigable waters of the State in any harbor or bay or sea or lake, is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public

The effect of this decision is to further complicate the situation and render more impossible any accurate forecaste of judicial decision upon the law in reference to any particular state of facts, nevertheless, I incline to the opinion that the courts of this State would follow, with reference to the varying states of facts, the decisions above referred to (*Hoboken* v *Hoboken Land and Improvement Co*, the decision of the United States courts in *Hoboken* v *Pennsylvania R R Co*, as applied, interpreted and extinguished in the case of *Elizabeth* v *New Jersey Central R R Co*), the effect of which I have already pointed out

The matter of notice to the municipality is purely a matter of regulation, not necessarily a matter of right Assuming the present regulations to be valid, they require that the owner of the upland be given six months' notice before his adjoining land under water can be elsewhere granted, and under this regulation the municipality would be properly entitled to this notice

The eighth question is disposed of by the opinion previously expressed as to the powers of the present Riparian Commission

In presenting this opinion to you I regret that it is impossible to safely make catagorical answers to certain of the questions proposed, but to do so would be almost impossible and apt to be misleading I have, therefore, contented myself with a full expression of the authorities upon which any opinion must be based, and stated as clearly as possible my judgment thereon

Very truly yours,

NELSON B GASKILL,
Asst Atty-General