

vacancy occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employes of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

THE PREVIOUS QUESTION.

MR. CONDON. Mr. President: I move the previous question upon the entire article.

Seconded by Messrs. Barton, Doyle, Grace, and Gorman.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

| | | |
|--------------|-------------------------|--------------------------|
| Ayers, | Herold, | Rhodes, |
| Barbour, | Herrington, | Ringgold, |
| Barry, | Holmes, | Schell, |
| Barton, | Howard, of Los Angeles, | Shafter, |
| Beerstecher, | Howard, of Mariposa, | Shurtleff, |
| Bell, | Huestis, | Smith, of 4th District, |
| Biggs, | Hughey, | Smith, of San Francisco, |
| Blackmer, | Hunter, | Soule, |
| Boggs, | Joyce, | Stedman, |
| Boucher, | Kenny, | Steele, |
| Brown, | Kleine, | Stevenson, |
| Burt, | Lampson, | Sweasey, |
| Condon, | Larkin, | Swenson, |
| Cross, | Larus, | Swing, |
| Davis, | Lavigne, | Thompson, |
| Dean, | Lindow, | Tully, |
| Dowling, | Martin, of Alameda, | Tuttle, |
| Doyle, | McCallum, | Vacquerel, |
| Edgerton, | McComas, | Van Dyke, |
| Estate, | McConnell, | Van Voorhies, |
| Evey, | McCoy, | Walker, of Tuolumne, |
| Farrell, | Moffat, | Waters, |
| Filcher, | Morsland, | Webster, |
| Freeman, | Morse, | Weller, |
| Freud, | Murphy, | Wellin, |
| Gorman, | Nason, | West, |
| Grace, | Nelson, | White, |
| Graves, | Neunaber, | Wickes, |
| Hale, | O'Donnell, | Wilson, of Tehama, |
| Harrison, | O'Sullivan, | Wyatt, |
| Heiskell, | Reddy, | Mr. President—93. |

NOES.

| | | |
|--------------------|------------|--------------------------|
| Andrews, | Harvey, | Porter, |
| Belcher, | Hilborn, | Prouty, |
| Caples, | Hitchcock, | Pulliam, |
| Cassery, | Inman, | Reed, |
| Chapman, | Jones, | Schomp, |
| Charles, | Kelley, | Shoemaker, |
| Crouch, | Keyes, | Stuart, |
| Dudley, of Solano, | Mansfield, | Tinnin, |
| Dunlap, | McFarland, | Turner, |
| Eagon, | McNutt, | Wilson, of 1st District, |
| Estey, | Mills, | Winans—35. |
| Hall, | Ohleyer, | |

Referred to the Committee on Revision and Adjustment.

HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

THE PRESIDENT. The next business in order is the consideration of the article on harbors, tide waters, and navigable streams, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —

HARBOR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or

other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same.

SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

MR. TINNIN. Mr. President: I offer an amendment to section two. THE SECRETARY read:

"Add to section two—'but nothing in this section shall in any manner impair the rights of the owners of any lands covered with water, who have title thereto under the State of California.'"

MR. TINNIN. The State of California has disposed of a large portion of these tide lands to individuals. Under this section these parties would have no right to fill them in.

MR. AYERS. I have no particular objection to the amendment, but it is not necessary. Whatever titles have passed cannot be disturbed.

MR. BARBOUR. Mr. President: I think the amendment is a very dangerous one. It might be construed to deny the right of eminent domain.

MR. WILSON, of First District. Mr. President: It seems to me that the amendment is a very proper one. This section details that no individual owning tide land shall be permitted to disturb or destroy the navigation of the water. If I had my way I would strike this out. I do not believe the State is in a position to deprive parties of the right to fill in their lands which the State has sold them.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. McCallum, Brown, Beerstecher, Herrington, and Walker of Tuolumne.

The roll was called, and the amendment rejected by the following vote:

AYES.

| | | |
|------------|------------------------|--------------------------|
| Belcher, | Huestis, | Schomp, |
| Biggs, | Inman, | Shafter, |
| Blackmer, | Johnson, | Shoemaker, |
| Boggs, | Jones, | Shurtleff, |
| Boucher, | Kelley, | Stevenson, |
| Brown, | Martin, of Santa Cruz, | Stuart, |
| Caples, | McConnell, | Swing, |
| Cassery, | McCoy, | Thompson, |
| Charles, | McFarland, | Tinnin, |
| Crouch, | McNutt, | Townsend, |
| Davis, | Mills, | Van Voorhies, |
| Estate, | Moreland, | Walker, of Tuolumne, |
| Graves, | Murphy, | Waters, |
| Hall, | Porter, | Wickes, |
| Harvey, | Prouty, | Wilson, of Tehama, |
| Hilborn, | Pulliam, | Wilson, of 1st District, |
| Hitchcock, | Rhodes, | Mr. President—52. |
| Holmes, | | |

NOES.

| | | |
|--------------------|-------------------------|--------------------------|
| Andrews, | Heiskell, | Ohleyer, |
| Ayers, | Herold, | O'Sullivan, |
| Barbour, | Herrington, | Reddy, |
| Barry, | Howard, of Los Angeles, | Reynolds, |
| Barton, | Howard, of Mariposa, | Ringgold, |
| Beerstecher, | Hughey, | Smith, of 4th District, |
| Bell, | Hunter, | Smith, of San Francisco, |
| Burt, | Joyce, | Soule, |
| Condon, | Kenny, | Stedman, |
| Cross, | Keyes, | Steele, |
| Dean, | Kleine, | Sweasey, |
| Dowling, | Lampson, | Swenson, |
| Doyle, | Larkin, | Tully, |
| Dudley, of Solano, | Larus, | Turner, |
| Dunlap, | Lavigne, | Tuttle, |
| Estey, | Lindow, | Vacquerel, |
| Evey, | Mansfield, | Van Dyke, |
| Farrell, | McCallum, | Webster, |
| Filcher, | McComas, | Weller, |
| Freud, | Moffat, | Wellin, |
| Garvey, | Morse, | West, |
| Gorman, | Nason, | White, |
| Grace, | Nelson, | Wyatt—71. |
| Harrison, | Neunaber, | |

MR. AYERS. Mr. President: I offer an amendment to section three. THE SECRETARY read:

"Add to section three: 'but sites for wharves, warehouses, or other necessary incidents to commerce, excepting on the waters of the Bay of San Francisco, may, upon application to the Board of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years, or less, under such regulations as may be prescribed by law.'"

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: These words were stricken out of that section before, and they ought to be restored, for without this provision this section loses nearly all its force. I was willing to give to the delegates from San Francisco their own choice as to the system of governing the waters of the Bay, and I consulted with them about it. Judge Hager suggested amendments which I incorporated, but when it came

fore the Convention it did not suit Judge Hager, and amidst confusion was stricken out. If this is not adopted it will be impossible for other counties to grant easements for wharves, warehouses, etc. In other counties than San Francisco we wish this matter placed in the hands of Supervisors, subject, as this amendment says, to legislative control, that the State will still have control. I cannot see any objection to an amendment.

REMARKS OF MR. ESTEE.

Mr. ESTEE. Mr. President: These tide lands were granted to the State by the General Government.

Mr. AYERS. They belong to the State by virtue of her sovereignty. Mr. ESTEE. Where the State got them does not make any particular difference. The State owns them. The lands are all under water a portion of the time, and a portion of them all the time. The lands are worth nothing unless appropriated. We propose to say here that they shall never be appropriated; that the State itself shall put the improvements on. The thing never would be done; never can be done, and the only result of the section would be to prohibit the State from deriving the benefit of its own property. The State never could sell it under this section. The State could do nothing with it under the sun. The most of the lands to-day that have been sold could not be sold to-day for what the State got for them. No man is going to put up any permanent improvements on a lease of twenty years. It is folly, and I vote that the section be stricken out.

REMARKS OF MR. WILSON.

Mr. WILSON, of First District. Mr. President: We are getting into a deep water here. The more a man studies the questions, as to what powers of the State are over the navigable tide waters of the State, and what the powers of the General Government are over the same waters, and who has the right to say whether they shall be filled in or remain as they are, the more he becomes convinced that they are intricate questions, involving, as they do, the relations between the State and the Federal Government. I have no hope that anything which I can do will move this Convention. They have just voted to confiscate vested rights; they have just voted that the people who hold title from the State to certain lands shall not have the use of those lands, and, therefore, when I undertake to talk upon this subject I have no hope to put it on. I speak simply to enter my protest against this invasion of vested right, and this wrong that is being perpetrated. Now, I have no time to enter into any argument upon the relations between the State and the General Government. I hope, therefore, that this whole section will be stricken out. The first section is provided for elsewhere, and the balance of the section is absolutely vicious.

Mr. SHAFER. Mr. President: Why were these tide lands purchased by parties? Because they wanted to control the frontage to navigable waters. I own some tide land. The State sold it to me for a very purpose. They took my money for the land. I paid them on a lease basis. The State sold it to me by metes and bounds, declaring it to be forever. Now, I have three hundred feet of bulkhead that I built, and it is proposed that every ship which comes along may run up and land, and take possession of that bulkhead and use it, and I am to have nothing to say. That I have no right to stop them because they are the State. That is moonshine. I would like to see the public try it. I will not give free navigation to the man who tries it on, if I happen to be there. [Laughter.] The State has made a contract with me. I have fulfilled my part of the contract, and am holding the land under the contract, and I am going to hold it let come what will. If the gentleman desires to prevent any further sales of tide lands, that is all right; but it is a mere question of public policy. I do not care to go over the matter again.

ADJOURNMENT.

Mr. STUART. I move we adjourn. Carried.

and, at five o'clock and fifteen minutes p. m., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND FIFTY-THIRD DAY.

SACRAMENTO, Thursday, February 27th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes a. m., President Hoge in the chair. The roll was called, and members found in attendance as follows:

PRESENT.

- | | |
|--------------------|-------------------------|
| Cross, | Grace, |
| Crouch, | Graves, |
| Davis, | Hager, |
| Dean, | Hall, |
| Dowling, | Harrison, |
| Doyle, | Harvey, |
| Dudley, of Solano, | Heiskell, |
| Eagon, | Herold, |
| Edgerton, | Horrington, |
| Estee, | Hitchcock, |
| Estey, | Holmes, |
| Evey, | Howard, of Los Angeles, |
| Farrell, | Howard, of Mariposa, |
| Filcher, | Huestis, |
| Freeman, | Hughes, |
| Freud, | Hunter, |
| Garvey, | Inman, |
| Gorman, | Johnson, |

- | | | |
|------------------------|--------------------------|--------------------------|
| Jones, | Nelson, | Stuart, |
| Joyce, | Naunaber, | Swensey, |
| Kelley, | O'Donnell, | Swenson, |
| Kenny, | Ohleyer, | Swing, |
| Keyes, | O'Sullivan, | Thompson, |
| Kleine, | Porter, | Tinnin, |
| Lampson, | Prouty, | Townsend, |
| Larkin, | Pulliam, | Tully, |
| Larue, | Reddy, | Turner, |
| Lavigne, | Reed, | Tuttle, |
| Lindow, | Reynolds, | Vaqueresl, |
| Mansfield, | Rhodes, | Van Dyke, |
| Martin, of Alameda, | Ringgold, | Van Voorhies, |
| Martin, of Santa Cruz, | Rolle, | Walker, of Tuolumne, |
| McCallum, | Schell, | Waters, |
| McComas, | Schomp, | Webster, |
| McConnell, | Shafter, | Weller, |
| McCoy, | Shoemaker, | Wellin, |
| McFarland, | Shurtleff, | West, |
| McNutt, | Smith, of Santa Clara, | Wickes, |
| Mills, | Smith, of 4th District, | White, |
| Moore, | Smith, of San Francisco, | Wilson, of Tehama, |
| Moreland, | Soule, | Wilson, of 1st District, |
| Morse, | Stelman, | Winans, |
| Murphy, | Steele, | Wyatt, |
| Nason, | Stevenson, | Mr. President. |

ABSENT.

- | | | |
|-------------------------|----------|-------------------|
| Barnes, | Fawcett, | Lewis, |
| Berry, | Finney, | Miller, |
| Boggs, | Glascok, | Noel, |
| Campbell, | Gregg, | Overton, |
| Cowden, | Hale, | Terry, |
| Dudley, of San Joaquin, | Hilborn, | Walker, of Marin. |
| Dunlap, | Laine, | |

THE JOURNAL.

Mr. BEERSTECHEER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved. So ordered.

RESOLUTION.

Mr. BEERSTECHEER. Mr. President: I send up a resolution. THE SECRETARY read:

WHEREAS, Wm. Galt, Porter, has paid to Wm. Lewis out of his private funds the sum of two dollars and fifty cents per week for eighteen weeks of the session of this Convention; and whereas, the services of said Wm. Lewis were needed as Rear Porter, and were unprovided for by this body; therefore, Resolved, That scrip to the amount of forty-five dollars be issued to said Wm. Galt in payment of his disbursements.

Referred to the Committee on Mileage and Contingent Expenses.

HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

THE PRESIDENT. The Convention will resume consideration of the article on harbors, tide waters, and navigable streams. The Secretary will read the amendment to section three, offered by the gentleman from Los Angeles, Mr. Ayers.

THE SECRETARY read: "Add to section three: 'But sites for wharves, warehouses or other necessary incidents to commerce, excepting in the waters of the bay of San Francisco, may, upon application to the Boards of Supervisors in the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years or less, under such regulations as may be prescribed by law.'" THE PRESIDENT. The first question is on the motion of the gentleman from San Francisco, Mr. Estee, to strike out section three.

REMARKS OF MR. HOWARD.

Mr. HOWARD, of Los Angeles. Mr. President: I trust that that section will not be stricken out. It seems to me that the debate upon this subject has taken a curious turn. It has been assumed that this article attempted to interfere with private rights. It is not liable to any such imputation. That the right of eminent domain may be exercised to provide for all necessary access to navigable waters is a proposition too well settled to admit of controversy. All the American cases agree in this, that the right of navigation cannot be obstructed, and that any man who takes a grant of tide land takes it subject to that condition, that the right of navigation shall be protected. There is, therefore, no pretense that this article can by any possibility affect private rights. Again, these parties who hold lands in deep water which they have filled in, hold it by virtue of the sovereignty of the State, and they hold it subject to the rights of navigation; and it is well settled in all the cases, English and American, that a structure which interferes with navigation is a public nuisance and may be abated. That was in substance the rule in the celebrated Wheeling case, where a bridge was said to interfere with the navigation of the Ohio River. But, sir, we have passed from that first section; and even if a lot were filled in to deep water, if it interfered with navigation so as to prevent access to navigable waters, under the right of eminent domain it could be condemned, the owner first being paid therefor a proper compensation. Therefore, I think it is not necessary to comment upon that section, because we have passed over it. We are now on the third section, which provides, as proposed to be amended:

"Sec. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; but sites

for wharves, warehouses, or other necessary incidents to commerce, excepting in the waters of the Bay of San Francisco, may, upon application to the Boards of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years or less, under such regulations as may be prescribed by law."

Now, sir, that section which is the only one before the Convention relates only to the manner in which the State shall dispose of its public property. That is the whole of it. Whether it is wise to grant this property out as we have been doing, in innumerable instances, so as to interfere with commerce, or whether we ought to lease it for terms of years so as to accommodate commerce and secure the interests of the public. Now, it must be apparent that these franchises if leased merely for a term of years, and the fees reserved to the State, that it can ultimately be a source of large revenue to the State, whereas if you grant them in the fee the State realizes nothing, and creates a monopoly of frontage which tends to destroy commerce. We have had an illustration of that in Los Angeles County. The Central Pacific Railroad Company having purchased the only two existing railroad outlets to the coast, they proceeded to buy up all the frontage of the bay of San Pablo, and have actually purchased it all up to a large extent, so that no other person, individual, or company can erect a wharf without their consent; the result of which is to enable one corporation to so fence in the ocean, as to monopolize the commerce of the ocean. I submit to this Convention that this is one of the abuses which it is our duty to correct. Therefore, it is, sir, that I think the third section as proposed is eminently necessary, eminently proper, and eminently judicious so far as the community interests of the State are concerned, and absolutely necessary so far as the protection of the commerce of the country is concerned in the prevention of a monopoly in a few hands. I trust, sir, that the policy which has heretofore existed of selling these lands in fee for a nominal consideration will be changed to one of leasing them for a term of years, which preserves the interests of the State and the rights and interests of commerce.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: The important question before the Convention, as I understand it, is a motion to strike out section three, and the amendment offered by Colonel Ayers of Los Angeles. Section three provides that tide lands within two miles of any incorporated city or town, fronting on waters used for the purposes of navigation, shall be withheld from grant or sale. The gentleman from Los Angeles proposes to modify that so that the State may grant, for a consideration, sites for wharves, warehouses, etc., for the period of twenty years. Now, sir, I assert that there is no necessity for such clause in the first place. The course of the Legislature in regard to this property has always been conservative. The Act of eighteen hundred and fifty-five withheld these lands from sale; and the Act of eighteen hundred and fifty-eight did the same. The first Act of eighteen hundred and sixty-one did the same. The Act of the following day provided for the disposition of these lands under the most guarded and conservative restrictions. The Act of eighteen hundred and sixty-eight provided for the sale of certain tide lands, and withheld from sale others; so that, so far as the course of the Legislature is concerned, it has always been in the line of the provision proposed in this article. Now, sir, I say it would be impolitic to adopt this plan. Take, for instance, Oakland—

MR. AYERS. Does the gentleman notice that the Bay of San Francisco is excepted?

MR. EDGERTON. But there are other bays on this coast. There are a great many other inlets and estuaries, and I am informed several of them are in the same condition. Are these mud-banks to lay there forever? Whereas, if they could be sold and filled in they would be covered with buildings, wharves, and warehouses. The arguments that would apply to Oakland will apply to fifteen or twenty other places. These mud-flats ought to be reclaimed and applied to the uses of commerce and buildings, wharves and warehouses erected where seagoing vessels can load and unload. It seems to me very unwise to put such a restriction as this in the Constitution. As to the other portions of the article, commented upon by General Howard, I do not care to argue it now.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: The amendment proposed by the gentleman from Los Angeles is even worse than I anticipated when I first heard it read. Now, there have been many sales of property, tide lands, in the Bay of San Francisco, and many rights acquired, and a large portion of that water front, or a great deal of the tide lands. If section three is amended as provided by that amendment it would result in this, that it would perpetuate forever all these water-right monopolies that exist there without any possibility of any competition whatever. The State, it is true, controls the water front around the City of San Francisco, but that is limited, as you will see, by looking at the map. This section provides that no more can be granted within two miles. The result would be, if that section should be adopted, that you will place in the organic law an inhibition against either leasing, or selling, or disposing of its rights along the Bay of San Francisco. Whether some provision may not be wisely made in an Act of the Legislature, is another proposition; but the idea of placing such an inhibition as that in the Constitution would be extraordinary, and contrary to the best judgment of this Convention. I am not addressing myself to the first and second sections. I speak only of the third. It will be merely perpetuating the great monopolies we know exist there. It will cut off all chance of competition. We want to have the thing open to commerce, and it is for that reason that I make my motion, and I think it will commend itself to the judgment of this Convention. The commerce of the Pacific coast comes into the Bay of San Francisco, and to put such

an inhibition in the Constitution would be extraordinary, and I hope it will not be done.

MR. WYATT. Does not this except the Bay of San Francisco?

MR. ESTEE. That is the very thing it should not do. It says that in the Bay of San Francisco you cannot even lease a piece of land.

MR. AYERS. They may be leased by the Board of Supervisors in San Francisco.

MR. ESTEE. That would not be the construction put upon it. It provides that on the Bay of San Francisco it cannot be leased, and it cannot be sold, and the State will have no control over it, and it will only perpetuate these monopolies that exist there.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The motion to strike out is the motion before the House, and I hope it will not prevail. The section under consideration, as I understand it, asserts a principle which is exactly in accordance with all that has been done in this Convention. It is to preserve the seashore of the State of California to free egress and ingress for purposes of commerce, and to protect that seashore from monopolies, of whatever character, sitting down there and levying toll upon the commerce of the world. The civil law system, in my opinion, is an improvement upon the common law system, or English system, which we have adopted in reference to the ownership of tide lands, and the tendency now is to retain within the control of the State this property. I maintain that that property never ought to be alienated from the State. It was a mistake that ever it was done, and it now ought to be put a stop to. The only question, then, is, how shall this property be used? I maintain that this provision, with some qualifications, which I will suggest, is the only proper method of regulation of this seashore; that is to say, by leasing the property for periods not beyond twenty years. I consider the amendment of the gentleman from Los Angeles, in reference to the Bay of San Francisco, to be erroneous. I consider it to be dangerous, from the construction which I can see may be placed upon it. A proper amendment would have been to have made the same rule that is made applicable to the Board of Supervisors apply to the Board of Harbor Commissioners. I hope that the amendment of the gentleman from Los Angeles will be voted down, and that the motion to strike out will also be voted down. The section may be imperfect as it stands now, but it can be corrected so as to obviate the objection I mention.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: This question of tide lands has been before the Legislature again and again. As we all know, a great many abuses have grown out of the management and sale of tide lands in this State. With regard to the City of San Francisco, an Act was passed authorizing the tide lands there to be sold at auction. It was a well guarded bill, and under it a great deal of money was realized by the State; but by an amendment to that Act the Commissioners in charge were authorized to compromise adverse claims, and to sell a large quantity, and then the mischief commenced. Under the authority of this amendment, the so-called Ellis grab, and others, were perpetrated. Now, take the City of Oakland, which has been referred to. At an early day a charter was granted to the City of Oakland, giving them a little strip of the water front. Some designing men came up afterwards to get a new charter for the City of Oakland; and they secured additional submerged land in the new charter. Again, when I happened to be in the Legislature, another party came up for a new charter, and they again extended the water front of Oakland so that it run up to Hunter's Point, on the San Francisco side, taking in Yerba Buena Island, part of Alcatraz, and the whole of the water front of San Francisco, giving it to those who held under the City of Oakland by a practice that they had resorted to to obtain from that city the whole of that water front. It was to inure to the benefit of those speculators who had divested the City of Oakland of her patrimony. The bill passed rapidly through the Assembly and came into the Senate; and it was there stated that it was a little local measure. I asked delay, and that night, in examining it, I found out what it was; that it was to give the water front of these two cities to those who had succeeded Oakland in the title that had been donated to her. Now, as I understand this section, it is intended to prevent that sort of thing; to prevent the Legislature from violating the Act of Congress under which California was admitted into the Union. It is intended to comply with the Act of Congress upon which we were admitted into the Union—that these navigable waters should remain open and free. Now, we do not know what the filling up of the harbors, or any portion of them, may result in. Engineers have told us that the filling in of the Bay of San Francisco has endangered the harbor of San Francisco, by forming bars and by deposits. I do not see any objection to the section as it stands. On the contrary, I see a great deal in it that recommends it to the Convention. In regard to the amendment offered by the gentleman from Los Angeles, it excepts San Francisco, and the same devilry that has been going on in the past may go on in the future.

MR. ESTEE. Can the Legislature control it at all if that is adopted?

MR. HAGER. It does not say that the Legislature shall not authorize wharves to be let for the purposes of commerce. The Legislature has the exclusive control, and there is nothing in this amendment to prevent it.

MR. EDGERTON. Does the gentleman not know that the filling up of these mud flats and the building of wharves and warehouses where ships may go to load and unload facilitates commerce?

MR. HAGER. The stealing of the mud flats in the City of Oakland was never done for the purpose of commerce at all. It was done for the personal gain of those individuals who have it now, who had it then, and will have it in all time, and as much more as they can possibly get to the exclusion of the general public.

REMARKS OF MR. AYERS.

Mr. AYERS. Mr. President: This debate has taken a wide and various range, one that I did not anticipate. Gentlemen have gone so far as even to say that this article, if engrafted upon the Constitution, will interfere with vested rights. How it can have any retroactive effect, all gentlemen have not told us, and I cannot see. The gentleman from Marin said, with reference to his land bordering on the bay, that under a certain article if he had a wharf or bulkhead on his tide lands that he would be compelled to give it up or give free access to it to whoever should ask. It is not so. The only way in which access can be had over his lands to navigable water, is in the usual way, and for a public use, and no other way, and that is the principle which underlies this Act. No access to these lands can be interfered with at all. That rule is laid down in all of the cases, and I refer especially to the case decided by Judge Anderson, in the thirty-second California Reports. Whatever rights may have been acquired by the purchasers of these lands from the State, must be held subservient to the greater rights of the public. This is a matter which has been decided in this State. I will ask the gentleman whether a public policy which has prevailed in this State with reference to public lands for the last twenty-five years, has been a good one? Whether it has not resulted, or nearly so, in the monopolizing of every advantage upon navigable water in this State, on the rivers, on the ocean, in the harbors, on the inlets, and on the estuaries. Why, sir, there is hardly a point in this State where wagon, or rail, and ship can meet which is not successfully held and owned by private individuals, and in which the public is excluded. The higher interest of the public is thereby disregarded, and the lesser interest of individuals and corporations has had full sway. If that has been the case in the past policy of the State in fee these lands to private individuals and corporations, I say, is it not right, is it not wise, for us now to reverse that policy and to withhold these lands from sale? The State will have control of them. Whatever the interests of commerce may require, the State will be able to give. I cannot see any force in the objections that have been made on this floor to the article, in whole or in part, and I think it would be a wise policy on the part of this Convention to adopt it with the amendment.

Messrs. Smith of Santa Clara, Larue, Shoemaker, Kelley, and Wyatt demanded the previous question, which was ordered by the Convention. Upon the motion to strike out section three, the ayes and noes were demanded by Messrs. Howard of Los Angeles, Brown, Doyle, Condon, and Larkin.

The roll was called, and the motion lost by the following vote:

AYES.

| | |
|---------------------|--------------------------|
| Larue, | Shoemaker, |
| Martin, of Alameda, | Shurtleff, |
| McConnell, | Stevenson, |
| McFarland, | Stuart, |
| McNutt, | Thompson, |
| Nason, | Townsend, |
| Porter, | Van Dyke, |
| Pulliam, | Van Voorhies, |
| Reed, | Walker, of Tuolumne, |
| Rhodes, | Webster, |
| Rolfe, | Wilson, of 1st District, |
| Schomp, | Winans, |
| Shafter, | Mr. President—40. |

NOES.

| | |
|-------------------------|--------------------------|
| Harrison, | O'Sullivan, |
| Heiskell, | Prouty, |
| Herrington, | Reynolds, |
| Holmes, | Ringgold, |
| Howard, of Los Angeles, | Schell, |
| Hughey, of Mariposa, | Smith, of Santa Clara, |
| Hunter, | Smith, of 4th District, |
| Johnson, | Smith, of San Francisco, |
| Joyce, | Soule, |
| Kelley, | Stedman, |
| Kenny, | Steele, |
| Lampson, | Sweasey, |
| Larkin, | Swenson, |
| Lavigne, | Swing, |
| Lindow, | Tinnin, |
| Mansfield, | Tully, |
| Martin, of Santa Cruz, | Turner, |
| McCallum, | Tuttle, |
| McComas, | Vaquerel, |
| Mills, | Waters, |
| Moffat, | Weller, |
| Moreland, | Wellin, |
| Murphy, | West, |
| Nelson, | White, |
| Neunaber, | Wickes, |
| O'Donnell, | Wilson, of Tehama, |
| | Wyatt—32. |

Upon the adoption of the amendment of Mr. Ayers, the ayes and noes were demanded by Messrs. Howard of Los Angeles, Ayers, West, and Brown.

The roll was called, and the amendment rejected by the following

AYES.

| | |
|--------------|----------|
| Barton, | Belcher, |
| Beerstecher, | Brown, |

Cassery,
Charles,
Cross,
Crouch,
Davis,
Ealey,
Evey,
Filcher,
Garvey,
Graves,
Hager,
Heiskell,
Herrington,

Holmes,
Howard, of Los Angeles,
Howard, of Mariposa,
Huestis,
Hughey,
Hunter,
Kelley,
Keyes,
Lampson,
Larkin,
Larue,
Mansfield,
McComas,
Mills,
Moffat,
Morse,
O'Sullivan,
Stevenson,
Tully,
Tuttle,
Weller,
West,
Wickes,
Wilson, of Tehama—43.

NOES.

Barbour,
Barry,
Bell,
Blackmer,
Boucher,
Burt,
Caples,
Chapman,
Condon,
Dean,
Eagon,
Edgerton,
Estee,
Farrell,
Freud,
Gorman,
Hall,
Harrison,
Harvey,
Hitchcock,
Inman,
Johnson,
Jones,
Joyce,
Kenny,
Kleine,

Lavigne,
Lindow,
Martin, of Santa Cruz,
McCallum,
McConnell,
McFarland,
McNutt,
Moreland,
Murphy,
Nason,
Nelson,
Neunaber,
O'Donnell,
Porter,
Prouty,
Pulliam,
Reed,
Rhodes,
Ringgold,
Rolle,
Schell,
Schomp,
Shafter,
Shoemaker,
Shurtleff,

Smith, of Santa Clara,
Smith, of 4th District,
Smith, of San Francisco,
Soule,
Stedman,
Stuart,
Sweasey,
Swenson,
Swing,
Thompson,
Tinnin,
Townsend,
Turner,
Vaquerel,
Van Dyke,
Van Voorhies,
Walker, of Tuolumne,
Waters,
Webster,
Wellin,
White,
Wilson, of 1st District,
Winans,
Wyatt,
Mr. President—76.

The article was adopted as a part of the Constitution by the following vote:

AYES.

| | | |
|--------------|-------------------------|--------------------------|
| Andrews, | Grace, | McComas, |
| Ayers, | Graves, | Moffat, |
| Barbour, | Hager, | Moreland, |
| Barry, | Harrison, | Nelson, |
| Barton, | Heiskell, | O'Sullivan, |
| Beerstecher, | Herrington, | Reynolds, |
| Bell, | Holmes, | Ringgold, |
| Brown, | Howard, of Los Angeles, | Smith, of Santa Clara, |
| Caples, | Howard, of Mariposa, | Smith, of 4th District, |
| Cassery, | Huestis, | Smith, of San Francisco, |
| Charles, | Hunter, | Soule, |
| Condon, | Johnson, | Stedman, |
| Cross, | Joyce, | Swenson, |
| Davis, | Kenny, | Tully, |
| Dean, | Keyes, | Tuttle, |
| Dowling, | Kleine, | Vaquerel, |
| Evey, | Lampson, | Wellin, |
| Farrall, | Larkin, | West, |
| Filcher, | Lindow, | White, |
| Freud, | Mansfield, | Wilson, of Tehama, |
| Gorman, | Martin, of Santa Cruz, | Wyatt—55. |
| | McCallum, | |

NOES.

| | | |
|--------------------|---------------------|--------------------------|
| Belcher, | Kelley, | Shoemaker, |
| Biggs, | Larue, | Shurtleff, |
| Blackmer, | Martin, of Alameda, | Stevenson, |
| Boucher, | McConnell, | Sweasey, |
| Burt, | McFarland, | Swing, |
| Chapman, | McNutt, | Thompson, |
| Crouch, | Mills, | Tinnin, |
| Dudley, of Solano, | Morse, | Townsend, |
| Eagon, | Murphy, | Turner, |
| Edgerton, | Nason, | Van Dyke, |
| Estee, | Ohleyer, | Van Voorhies, |
| Evey, | Porter, | Walker, of Tuolumne, |
| Freeman, | Prouty, | Waters, |
| Hall, | Pulliam, | Webster, |
| Harvey, | Reed, | Weller, |
| Hitchcock, | Rhodes, | Wickes, |
| Inman, | Rolle, | Wilson, of 1st District, |
| Jones, | Schomp, | Winans, |
| | Shafter, | Mr. President—57. |

The article was referred to the Committee on Revision and Adjustment.

RIGHT OF SUFFRAGE.

THE PRESIDENT. The next business in order is the article on the right of suffrage, which the Secretary will read:
THE SECRETARY read: