

CARPENTIER'S STORY.

How He Got His Title to the Water Front.

Oakland's Case Against the Railroad.

The Central Pacific's Reason for Making a Terminus of Oakland.

William R. Davis, Oakland's ex-Mayor, who is managing that city's fight against the Southern Pacific Company of Kentucky, for the possession of the Oakland water front, was jubilant yesterday. He had General Horace W. Carpentier on the stand, before Commissioner Heacock, as a witness. Not only that, but Carpentier was a witness for the railroad, which fact will give Mr. Davis and his conferees such freedom in cross-examination that they hope to worm out of him the whole story of the long series of speculations by which their municipality was robbed of its birth-right with the bait of the proverbial mess of pottage.

"The railroad people have been maneuvering for a long time to get us to summon Mr. Carpentier as a witness," said Mr. Davis yesterday. "Had they succeeded we would have been sorely hampered. We would have had to confine our efforts to getting the story from him by direct questions. But we did not fall in with their plans and they were at last forced to summon him themselves. This gives us the opportunity, in cross-examination, to lay bare everything that has any connection with the case, and the public may be sure we will embrace it."

When the case was called yesterday morning shortly after 10 o'clock, Harvey S. Brown was on hand to represent the Southern Pacific Company. For Oakland there appeared William R. Davis and William Lair Hill, while later H. A. Powell dropped in, accompanied by Richard Snell, who represented the City Council. The Oakland and local newspapers were all represented, but there were few spectators.

Mr. Carpentier was a little late and it was not till ten minutes past 10 o'clock that he was sworn. But after that he did not leave the witness chair till nearly 12:30. In answer to Attorney Brown's first questions he stated that his name was Horace W. Carpentier. He was a lawyer residing in the city of New York, and was 69 years of age. These questions were allowed to pass without objections, but to every succeeding question put touching his "title" to the Oakland water front, Attorney Davis, for Oakland, objected on the ground that as the city had no right to convey the water front to private ownership, such a title was void and hence any question regarding it would of necessity be "immaterial, irrelevant and incompetent, utterly misleading and possessing no real relationship to the case under consideration."

After the first preliminary questions Brown read from the complaint of the plaintiffs the copy of the ordinance giving Carpentier control of the front and alleging that upon that was based his entire title. Then he asked:

"Is that document your only source of title?"

Then commenced Davis' objections, which lasted all day, he only pausing for a sufficient time to give Brown an opportunity to ask a new question. Mr. Davis objected to the question because the granters had no right to convey the water front to any one. Besides the ordinance was not and did not purport to be the deed of the town. It did not bear the town's signature and the corporate seal, but the signature of Amadee Marier, the president of the Trustees, and his private seal. After many more questions had been recorded Carpentier was allowed to answer. The question was repeated. He replied laconically:

"It isn't."

"From what sources besides the document just read did you derive your title?" asked Mr. Brown.

To his usual objection Mr. Davis added that sources of titles were through conveyances and papers. Hence Mr. Carpentier's was not so good evidence on the matter as the papers would be. In fact, his would be no evidence at all, as it would only be his judgment of the title which it was the court's duty to decide. Then Carpentier answered.

The sources were numerous. There were acts of the Legislature giving the Council power to act. There were several ordinances of the city of Oakland. Certain sales had been confirmed and leases made, and he had turned over a percentage of his gate receipts regularly to the city for which he had been given receipts.

After much questioning by Attorney Brown and objecting on the lines given above by Attorney Davis, Carpentier said in substance of the documents he referred to:

"I have a certified copy of the first ordinance passed by the Trustees giving me control of the water front. I think I have copies of most of the others among my papers in this city."

"What did you ever do on the property now in dispute?"

"I built wharves on it and held possession for thirty years. The first wharf was built in 1852."

After describing the wharf first built he stated that he had also built houses for the accommodation of the employes whom he had to protect his wharf and collect the charges. These men also attended to repairs, paid out the charges, and if there was anything over paid it to him. After being reminded of the fact he said that the wharf was closed by gates built for the convenience of the wharfinger in controlling the wharf.

"Please describe the land at the time the wharf was built," was Mr. Brown's next request.

"It was entirely covered by the overflow of the tides. Most of it was flooded when the tide was low, but the depth was very slight. At extreme low tide the light-draft ferry boats found it difficult to approach even at the southern end of the wharf, and were often grounded."

"What communication was there between San Francisco and Oakland in 1852, 1853 and 1854?"

"There were ferry boats, which went up San Antonio estuary. The bar at the mouth of the estuary was almost impossible of passage at the middle and low tide, and one night I had to get off the ferry and wade ashore."

"Are you familiar with the Oakland water front?"

"I am in a general way."

"What was it worth in 1852?"

Davis objected to this question on the ground that the attorney was taking it for granted that the front was capable of barter or sale, and the question was passed. The next questions were with regard to building the first wharf. Mr. Carpentier said:

"It cost about \$10,000, and was built as part of my agreement with the city."

In speaking of the values of Oakland property in 1852 he said: "Yes, I am familiar with the encinal land of Temescal. I am not an expert on land values. I remember, however, that two months before the sale of the water front to me the Peraltas sold the encinal for \$10,000."

When asked what acts of dominion he had exercised over the water front Carpentier answered:

"I built other wharves and constructed buildings. I leased portions of the property. I built several bridges, and held in various ways actual possession of the

property in dispute. In addition I paid the State, city and county taxes for many years."

"Have you any of the leases now?"

Carpentier drew a paper from his pocket and threw it to the lawyer, saying: "This is all I have here."

"Was your wharf, a projection of Broadway street, built by consent of the city?"

"While I was in possession it was not a public street."

Continuing Carpentier said in answer to questions:

"I received moneys from the wharf as soon as it was built. The city had no interest whatever in the property. My interests continued till 1876, and I did not dedicate any part of it as a public highway by any act or acts previous to that time."

Having established these points satisfactorily, Attorney Brown next turned his attention to the relations existing between Carpentier and the railroad.

"Why did the railroad go to Oakland?"

"It was induced to come by specific propositions which I made. Governor Stanford was opposed to building through Oakland."

"Where did they first intend to go?"

"They first intended going by way of Ravenswood. I received that information from Governor Stanford."

"What induced the railroad to go into the city of Oakland?"

To this Mr. Davis objected as being "gigantically immaterial." But Mr. Brown assured him that before the case was over he would find it was very material, and Carpentier answered. After stating that the question was really too broad to be answered in a hurried way, he said:

"When the railroad proposition had taken form I made an offer to Stanford to try to induce him to build to Oakland. He did not want to make Oakland a terminus and repulsed the offer. I then talked with William G. Shaw, now a Senator from San Francisco. He was a particular friend of Stanford, and when I offered a half of the front to the railroad, through him, to induce Stanford to build to Oakland my proposition was accepted on consideration that I should make all necessary settlements with the city. Lloyd Lewis also assisted materially. We were opposed by John B. Felton, who blustered a good deal, but that was all. Dr. Merritt also offered considerable opposition. Stanford would not listen to coming to Oakland for a long time. When he did agree it was only on the understanding that I was to have my title secured by the city. Then representatives of the railroad and myself went to the Legislature to get certain necessary acts passed."

The witness then told of paying 3 per cent of wharf collections to the city instead of the 2 per cent his contract called for, and having receipts therefor. He was directed to look up all official papers he had concerning the case, and a recess was taken for lunch.

At 2 o'clock Mr. Carpentier again took the stand, and after a decided objection on the part of Attorney Davis presented as testimony a copy of the ordinance of 1852 conveying the water front to him for a term of thirty-seven years, which was certified to by F. G. Shattuck, who described himself as clerk of the Board of Trustees. A question as to whether Shattuck was really the clerk at that time was put to Carpentier, but he was not allowed to answer.

Davis objected to the introduction of the copy of the ordinance on the ground that there was no proof presented to show that F. G. Shattuck was such a person that the commissioner could take cognizance of his statement, especially as it has only a private wafer attached for a seal. There was no proof presented that Shattuck was the clerk of the Board of Trustees at that or any time, and no proof that the Board of Trustees had a right to make such a certification or had passed such an ordinance. He called attention to the fact that the ordinance had not been signed by the town or city of Oakland. Neither had it ever been delivered to the grantee nor recorded. Besides it was stipulated in the ordinance that Carpenter was to build a wharf at the foot of D or E streets within twenty months. Although this time extended over a year, yet Carpentier had not filed a written contract to perform the stipulated work, and hence the contract was void. As a further reason it was stated that the Legislature in 1852 had passed a bill ordering that the lands in question be held for the common benefit and hence it was inalienable by the corporation to any private ownership or any ownership whatever. Again, it was beyond the powers of the town of Oakland to convey land covered and uncovered daily by the tide of the bay of San Francisco.

The objection was taken down, and when Carpentier had testified to the genuineness of Shattuck's signature the paper was read and presented as exhibit A.

Its introduction as an exhibit was objected to as being a copy of a document which had no legal force, since it purported to grant the exclusive right of collecting rents along the water front to one H. W. Carpentier.

The objection was noted and the rest of the afternoon was spent in reading and presenting as testimony certain papers which were left with the commissioner as exhibits.

Exhibit B was a copy of the ordinance of the Board of Trustees approving the wharf at the foot of Broadway. Exhibit C was another copy of an ordinance approving the G-street wharf. Exhibit D was a copy of a lease of a wharf. Exhibits E and F were copies of leases of seventy-five feet of the water front near Broadway.

By the time these had been entered it was 4:30 o'clock and the court adjourned till 11 A. M. to-day.