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Early Efforts to Locate the Capital of Washington Territory

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EARLY EFFORTS TO LOCATE THE CAPITAL OF WASHINGTON TERRITORY

Several political controversies began with the organization of the territorial government of Washington in 1854, grew in intensity with the passage of years, and did not end on the proclamation of statehood in 1889. Among such controversies was the fight for the location of the capital. In fact, contention over the location of the seat of territorial and state government did not cease until the completion of the capitol building in 1927. During the interval of seventy-three years many efforts were made to relocate the capital, and at some time in this period nearly every important city within the present boundaries of the state made plans or entertained hopes to become the capital. Possession of the seat of government would make a place in the sun for the city which could acquire and retain it. The records show how closely several cities came to winning it, and how one city had the prize within its grasp, only to lose it through a legal technicality.

In the territorial period, Steilacoom was one of the earliest and most ardent suitors for the capital, and was followed closely by Olympia, Vancouver, and Port Townsend. Steilacoom would have placed the capitol buildings near the town on the edge of the prairie. Olympia, the eventual victor, was prepared to supply a beautiful hill site overlooking the waters of Budd Inlet on Puget Sound. Vancouver promised a site near historic Fort Vancouver. Port Townsend selected a tract of "upland prairie" behind the town. Within the legislative halls spirited debates followed upon the proposals of the various sites as locations for the permanent capitol. While the arguments were often heated and bitter, on other occasions more facetious legislators proposed the location of the seat of government at some less promising village, such as Monticello or Skookum Chuck.

Some idea of the competitive interest displayed in the selection of the capital city is indicated by the localities still bearing the name Capitol Hill, a reflection of past hopes and
the promise of a free site as an inducement for the selection of the donor as the capital city. In later years North Yakima (now Yakima) and Seattle had their Capitol Hills. From the beginning of the fight, during both territorial and statehood periods, the free site was the usual inducement. Olympia was the first city to offer a free site, and her rivals followed her example. Later, Ellensburg offered some pasture land to the north of the city as a capitol site, Pasco offered a large tract, and Tacoma proposed the site of its present Wright Park. Walla Walla, Everett, and Centralia were also willing to grant sites, while Waitsburg and Kent were also mentioned as suitable capital cities.

I.

Isaac I. Stevens was appointed governor of the newly created territory of Washington on March 17, 1853. He immediately prepared to set forth on his long overland journey and wrote to several prominent citizens of the territory for information and advice on local affairs. He also requested Colonel J. Patton Anderson, the new United States marshal, to prepare a careful census of all persons, voters, and resources of the territory. The governor wrote:

"It will be well if practicable to procure all the information called for in the last decennial enumeration [1850]. At all events some general facts should not be lost sight of. Thus besides the number of families, houses etc. you ought to ascertain the exact resources of the Territory in mills, manufactures & mines in operation of all sorts in the Territory. This will have a bearing on the location of the seat of government and in estimating the probable progress of the Territory."  

It seems likely that the governor intended to establish the temporary seat of government on Puget Sound rather than upon the Columbia River, since much of the impetus to separation from Oregon Territory had come from the Sound settle-

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ments. But he did intend to be guided by the advice of local residents and officials and the results of the territorial census. What that advice was is not known specifically, but it is not unlikely that it was in favor of the Puget Sound area, and of Olympia in particular. Olympia was already the port of entry for the collection district of Puget Sound (1851) and home of the first territorial newspaper, the *Columbian* (1852). The census revealed that Thurston County, in which Olympia was situated, was the most populous of the Sound counties, although Clark County, in which the chief town was Vancouver, was more populous.

Soon after reaching Olympia, Governor Stevens issued a call for the election of members to the first session of the legislative assembly, to convene in Olympia on February 27, 1854. His action made Olympia the temporary seat of government, and here the justices of the supreme court and the other territorial officials assembled. The selection was temporary only, because by the provisions of the Organic Act authority was given to the first legislative assembly to locate the seat of government wherever it might decide, subject to a final decision of the people. The exact meaning of this sec-

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2 In the memorial of the convention at Cowlitz Landing, August 29, 1851, sent to Delegate Joseph Lane in Congress and asking for the organization of a separate territory north of the Columbia, it was asked that the seat of government of the proposed territory “be fixed as near the centre of the Territory North and South as convenience and circumstance will admit of.” Washington Historical Quarterly, XIII, 8 (January, 1922). The second separatist convention, at Monticello, November 25, 1852, had been promoted by the Olympia *Columbian*. For the relationship between these two conventions and the introduction by Lane of a bill to create the new territory, see Edmond S. Meany, “The Cowlitz Convention: Inception of Washington Territory,” ibid., 3-19.

3 The territory was found to contain 3,965 inhabitants, of whom 1,682 were voters. Washington (Territory) Legislative Assembly, House of Representatives, *Journal*, 1854, p. 185. The figures by counties were:

<table>
<thead>
<tr>
<th>Counties</th>
<th>Population</th>
<th>Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Island</td>
<td>195</td>
<td>80</td>
</tr>
<tr>
<td>Jefferson</td>
<td>189</td>
<td>68</td>
</tr>
<tr>
<td>King</td>
<td>170</td>
<td>111</td>
</tr>
<tr>
<td>Pierce</td>
<td>513</td>
<td>276</td>
</tr>
<tr>
<td>Thurston</td>
<td>996</td>
<td>381</td>
</tr>
<tr>
<td>Pacific</td>
<td>152</td>
<td>61</td>
</tr>
<tr>
<td>Lewis</td>
<td>616</td>
<td>239</td>
</tr>
<tr>
<td>Clark</td>
<td>1134</td>
<td>466</td>
</tr>
</tbody>
</table>


5 Act of March 2, 1853. Section 13 provides:

“'That the legislative assembly of the Territory of Washington shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by said legislative assembly. And the sum of five thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Washington, to be there applied by the Governor to the erection of suitable buildings at the seat of government.' *United States Statutes at Large*, X, 177-178.
tion of the act was not particularly clear, but, from the interpretation given to it by the territorial supreme court in 1861, it was regarded as a limitation upon the power of the legislature to fix permanently the seat of government.6

II.

Even before the beginning of the first legislative session, the controversy over the location of the capital loomed as one of major importance. Olympia had been selected by Governor Stevens as the temporary seat of government, but not without open expression of jealous dissatisfaction by rival communities. As the time drew near for the meeting of the legislature, it was feared that the legislators might split over the location of the territorial institutions. "The only thing to be feared," according to James W. Wiley, editor of the Olympia Pioneer and Democrat, "is that dreaded demon—sectional interest—local hostility." Wiley made a plea for harmony and recalled as a warning the errors experienced by Oregon in the controversy over the location of its capital a few years before.8

The settled portion of the territory of Washington is not so large, nor its interests so conflicting, but that places for the seat of government, penitentiary and university can all be located without doing violence to any

7 Pioneer and Democrat, February 11, 1854.
8 Despite Wiley’s plea, Washington Territory was to repeat rather closely the experience of Oregon. In 1851 the legislature of Oregon Territory had removed the capital from Oregon City, where it had been since 1844, to Salem. The removal was accomplished by an omnibus act which also located the penitentiary at Portland and the university at Corvallis, leaving Oregon City without any territorial institution. The legality of the measure was immediately questioned, and the removal question became a burning political issue. Two (a quorum) of the three territorial justices met in Oregon City for the term beginning in December, 1851. A challenge to the jurisdiction was made, and on December 3, Chief Justice Thomas Nelson and Associate Justice William Strong gave separate opinions holding that the location act was invalid. Justice O. C. Pratt, the third member of the territorial supreme court, who had repaired to Salem, sustained the act. Most of the legislature met in Salem, but one member of the council and four members of the house of representatives met at Oregon City. There, Columbia Lancaster, the one-man council, organized, seconded his own motions, and united with the rump house in addressing a joint memorial to Congress. Congress finally validated the removal act by joint resolution in 1852. In 1855 the capital was removed from Salem to Corvallis and returned to Salem, where it was fixed by popular vote in 1864. Hubert Howe Bancroft, History of Oregon, II (in his Works, XXX, San Francisco, 1888), 146-148, 160-164; Leslie M. Scott’s note, in Harvey W. Scott, History of the Oregon Country (6 vols., Cambridge, 1924), II, 312. The Oregon Seat of Government Case is not reported.
portion thereof; and if the approaching legislature deems it expedient to do so, and is willing to await the action of congress for appropriations for the erection of suitable and necessary public buildings, it can determine the question without injuriously compromising any particular section. . . .

The legislature, however, engaged upon the establishment of a code of laws and the organization of the territorial government, and did nothing of importance about the location of public buildings. The capital, penitentiary, and university problems could wait.

The second session of the legislative assembly opened December 4, 1854. The editor of the *Pioneer and Democrat* again referred to the possibility of divided opinion on the capital question:

Some questions will no doubt arise—(the location of the Capital, Penitentiary, University, &c.)—in which some fierce discussion and angry feelings may be provoked, but we shall have been mistaken in the character [of] our legislature if an ultimate quiet, peaceable, and general[ly] satisfactory disposition be not made of all the vexed questions with which that body may have to deal.

Before the end of the first two weeks of the session, the capital location bill had been passed by the Council, with only one opposing vote, but a stormy passage through the House was certain. At this time the editor of the *Pioneer and Democrat* again commented upon the capital problem in his usual manner, intended as a boost for the selection of Olympia for the capital:

We entertain the same opinion as was advanced through the columns of this paper at the commencement of the last legislature,—which was simply this: that the geographical location of this territory — the interest of all in different localities — and justice to all portions, require the location of the seat of government, as near as possible, at the geographical centre.

The treatment of the public buildings bills in the House was quite different from that accorded them in the Council. The evidence is not clear that the representatives had caucused to make plans to give the capital to Vancouver, but it is

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9 *Pioneer and Democrat*, February 11, 1854.
12 December 23, 1854.
clear that Vancouver had a strong lobby present. Certain representatives were openly favorable to Vancouver, and some of these evidently were not influenced by geographical considerations, while a few of them favored Vancouver to the apparent detriment of their own localities. There is some reason to believe that even at this time attempts at bargaining had been made. Seemingly of more importance than geographical considerations in locating the public buildings was the influence of the so-called Democratic "federal," "Stevens," or "Olympia" clique about which much was later to be said.

The capital location bill received its first reading in the House on December 15, 1854, and was made the order of the day for January 15, 1855, on motion of Charles C. Stiles (Clark County), who was leading the fight for Vancouver. On the next day (December 16, 1854), however, the vote to postpone further action until January 15 was reconsidered, and the bill was given a second reading. A series of unsuccessful motions was then offered, either to refer the bill to a select committee or to amend the bill so that the name of Edmund Sylvester, donor of the proposed ten-acre site in Olympia, be stricken from the bill and the words "located at Vancouver, the county seat of Clarke county," or, this move failing, the names of Judge Sidney S. Ford, Sr., or Frank Shaw be substituted. The bill was then continued on its second reading until Monday, December 18. On that day Stiles moved to refer it to a

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13 Edmund Sylvester (1821-1887) had settled in 1846 on Budd Inlet on land previously occupied by his partner, Levi Lathrop Smith (d. 1848), who had built a log cabin there, the first building on the site of the future town of Olympia, surveyed as a townsite in 1850. Sylvester's donation land claim was comprised in sections 14 and 23, T. 18 N., R. 2 W., and the ten acres he offered as a capitol site lay in section 23. The patent to his claim was issued May 3, 1860. Bancroft, History of Washington, Idaho, and Montana, 1845-1889 (Works, XXXI, San Francisco, 1890), 6, 9, 15-16; Charles Miles and O. B. Sperlin, eds., Building a State; Washington, 1889-1939 (Tacoma, 1940), 443; Laws of Washington, 1854-1855, p. 5.

Sylvester was donor not only of the tract upon which the temporary and permanent territorial capitals were built, but also of the land for the Masonic Hall, in which the legislative assemblies of 1854-1855 and 1855-1856 met while the temporary capitol was under construction. He also built the store building for the partners John Goldsbury Parker, Jr., and Henry V. Colter, expressmen and merchants, in which the first legislative session was held. It is said that when the news arrived in Olympia, while this building was under construction, of the creation of Washington Territory and the choice of Olympia as a temporary capital by Governor Stevens, Sylvester was induced to extend the store building to a second story and prepare it for use as a legislative hall. Olympia Daily Olympian, November 8, 1939, Washington Golden Jubilee section, p. 6.
select committee of seven, but the motion, as amended, was lost (10 to 11).\textsuperscript{16}

When Stiles proposed reference of the bill to a select committee, Frank Clark of Pierce County arose to discuss the motion. His remarks reflect both opposition to the “clique” and the attitude of Steilacoom upon the capital location question, and, inferentially, that town’s disappointment over the favor by which the supporters of Olympia were being enabled to promote its candidacy. Clark’s speech was particularly directed at the haste with which the capital location bill was being rushed through the House without thoughtful debate, and under such pressure as to amount, so he said, to the coercion of its members. Clark declared:

...Sir, it may be legitimate and proper for me [to] inquire of the gentlemen of this house what kind of legislation—what action is expected by the high souled, independent freemen of Washington territory—our constituents—from us their representatives upon questions like this of paramount importance to their interests, both private and public?

Do they not expect that questions of this character will receive at our hands a cool, careful and deliberate investigation? Is there any gentleman who has any reasons to offer whereby he will be able to appease their just indignation if we should be so listless as to act otherwise than deliberately? Is there ought upon the score of expediency to offer as an apology for a hair [sic] brained haste in this matter?

What deliberation, care and anxiety should the friends of this bill desire it to be met with in this House? Yes, what ought they to court? And why, sir, is it sought to coerce members of this house to vote upon this question blindfold as it were?

Then, questioning the suitableness of the proposed Olympia site overlooking Budd Inlet, he inquired as to why the friends of this location had not demonstrated its suitability to the House.

\textsuperscript{14} Judge Ford (1801-1866) resided at Ford’s Prairie, Lewis County. The motion was offered by Charles H. Spinning (Lewis).

\textsuperscript{15} Benjamin Franklin, or Frank, Shaw (1829-1908) had a donation land claim on the Sound in Thurston County, west of McAllister Creek. The motion was offered by Frank Clark (1834-1883), of Steilacoom (Pierce County), who served in the House from Pierce County, 1854-1857, and in the Council, from Pierce, and Pierce-Sawamish, 1859-1866, from Snohomish-Island-Whatcom, 1866-1867, and from Clark-Klickitat-Skamania-Yakima, 1873-1875. It will be observed that he supported Vancouver later rather than his own town of Steilacoom, and it is to be supposed that he expected in return Vancouver support for the Democratic nomination for Delegate to Congress in 1861. Clark was opposed to Stevens and the “Olympia clique” throughout this period.

\textsuperscript{16} For the legislative action in the House so far described, see House Journal, 1854-1855, pp. 29-32, 34-35.
So far as I am concerned, [Clark continued] before I can support the bill, I must be convinced that the interests of this territory will be advanced thereby. It is not enough that particular individuals or localities are benefited. . . . I cannot "for the life of me" see wherefore gentlemen upon this floor insist upon giving to this particular bill this railroad speed in its passage through this house.

And it is not a question suggesting itself to me alone. It has forced itself upon others, and has been the prominent topic of conversation for the last two days. In my rude way I will give you the answer, that after much thought, I have been able to decipher.

It is a zeal to advance the public interest which certain gentlemen no doubt honestly entertain—fanned by local feeling to its zenith, and provoked to veriest flame by the importunities of an ever-present if listless constituency.

But sir, if there be truth in rumor there are those who ascribe this extraordinary haste to a very different cause. Who with a knowing wink assure you that there is no use in discussing the merits of the bill, that the thing is a bird—the die is cast, and the question of location is a foregone matter . . . that not the capitol only but all the public buildings are already located and have been for the last ten days. . . .

Who, looking to the location of the capitol in this place as the certain realization of their golden dreams, and conscious of their mighty power wave the wand. Yes, [wave] the magic wand of power over their willing panders, [and] assert the boasted supremacy with which they claim to be invested and the thing is fixed.

But sir, I do not believe it—in my mind, in truth, they are mistaken. I turn with scorn, and indignantly disavow the truth of the degrading vaunt. I entertain too high an opinion of the honor of the members of this body to do otherwise than repel, and that hastily, the disgraceful insinuation. . . .

Now sir, the question is shall we give to the tongue of scandal by defeating this motion, a better opportunity still, to vilify and calumniate the action of this house?

Shall we give to an important question the consideration it demands? or shall we pass it blind?

I, for one, shall support the motion to refer [the bill to a select committee] and hope it may prevail.17

Was Clark sincere in questioning the suitability of the Olympia site? He lived close by, and surely knew the site well. It is more likely, however, that his challenge was prompted more by pique over the lack of support for the claims of Steilacoom, by jealousy over the strength of Olympia's proponents, or by sympathy for Vancouver, than by any concern about the unsuitability of the site offered by Sylvester. Clark's ar-

17 Speech quoted in the Pioneer and Democrat, December 23, 1854. The extracts above have been amended after the list of errata, ibid., December 30, 1854. Speeches in the legislature are rarely quoted in extenso in the press.
gument for advancing the best interests of the territory is not convincing. The inference is that while the location of the capital at Steilcoom would have advanced the interests of the territory, the location at Olympia, on the same body of water and only a few miles farther west, would not.

Stiles again proposed that the capital location bill be referred to a committee, this time of nine, and the motion was finally adopted after an amendment that this committee should report on Wednesday, December 20, 1854.\textsuperscript{18}

On Wednesday morning, Stiles, as chairman of the select committee, reported that upon an examination of the title of the Sylvester tract the committee had found it unfavorable, and asked for further time to select another site. The Vancouver proponents apparently controlled the committee, whose report expressed the personal view of its chairman as well. Clearly the Sylvester tract would be “unfavorable” to the Vancouver group. Crosbie of Clark County moved that the committee be instructed to select the most eligible spot for the location, which he probably hoped would be Vancouver, and be given until January 5, 1855, to report. R. L. Doyle, of Island and Whatcom counties, suggested an amendment requiring the committee to select a site “in the vicinity,” which, if adopted, would keep the capital near Olympia. The amendment was accepted and the motion carried. So the committee was given more time in which to locate a favorable capitol site “in the vicinity” of Olympia.\textsuperscript{19}

After an additional day had been granted in which to complete the report of the committee, the capital location bill, which would have named Olympia, came up for its second reading on January 6, 1855. Stiles again sought to amend it by striking out everything after the word “located,” and inserting “Vancouver, the county seat of Clarke county”; but again his motion failed. William Cock (Thurston), one of the

\textsuperscript{18} House Journal, 1854-1855, p. 35. Speaker Crosbie (Clark County) appointed Stiles (Clark), Abernethy (Cowlitz), Watkins (Chehalis-Sawamish), Timothy Heald (Jefferson-Clallam), William McCool (Skamania), John Briscoe (Pacific-Wahkiakum), Denny (King), William Hendrickson (Clark), and Charles F. White (Lewis) on the committee.

\textsuperscript{19} Ibid., 38-39.
sponsors of the proposed capitol site in Olympia, then moved the previous question so as to cut off debate, pending which motion Clark, who favored the Vancouver site, moved to table the bill, but his motion was lost. The previous question being again called, the Speaker ruled the motion out of order, whereupon Cock appealed to the House against the ruling, and the chair was not sustained. The previous question was then approved, and the bill locating the capital in Olympia was ordered to a third reading and passed.  

While the capital location was before the House that day, Arthur A. Denny of Seattle spoke in support of the claims of Olympia to the seat of government. He had previously recommended Olympia to Governor Stevens as the appropriate site of the temporary seat of government, and now felt he should speak in support of the plan to fix the capital there. Denny's remarks probably did much to draw opinion to the Olympia side. He said, in part:

Justice to all sections of the Territory required at our hands patient and careful investigation as to the proper place at which to locate the Territorial Capitol. Its location should be central, both as to its geographical position, as well as to its centre compared with our population. In my investigations of this question, I have arrived at the conclusion that Olympia is nearer the geographical centre than any other point that I have heard named during the discussion of this subject—and that it is also nearer the centre of our present population. . . . It is as easily accessible from all parts of the Territory as any place which has been named during the pendency of the question, or that could have been named. It is at the head of navigation at a point the farthest inland, accessible from all the counties north by all manner of water crafts, from the steamer down to the Indian canoe. It is in a direct line from the counties south to the counties north, of the Territory. . . . Then as to the particular location—the site is clearly eligible; the land selected is elevated and overlooks the placid waters of Puget Sound for many miles to the northward. The scenery is grand and imposing—to the north the Coast Range is seen looming up in the distance—Mount Olympus standing out in bold relief amidst the hundreds of less elevated peaks in the same vicinity. Indeed, Mr. Speaker, I know of no other place combining anything like the claims, all things considered, to the Territorial Capitol as does this immediate vicinity; hence I shall most willingly give my support to the bill under consideration. In doing so, I am influenced by no motives of a pecuniary character—I own no town lots or landed estate in Thurston county, and such is the poor estimate of my vote or influence, that I have

20 House Journal, 1854-1855, 49-51. The vote was eighteen to three. Those voting no were John Carson of Puyallup (Pierce-King) and Frank Clark and Samuel McCaw of Steilacoom (Pierce).
not had even the offer of an oyster supper from the good citizens of Olympia as an inducement for either.\textsuperscript{21}

The bill was returned to the Council, where it was passed unanimously on January 10, 1855, thus ending the first fight to locate the territorial capital.\textsuperscript{22}

Despite the fact that the legislative assembly of 1854-1855 had established the seat of government at Olympia, it was not until years later that the legislature was to assemble in a permanent territorial capitol. The first “capitol” had been the two-story building in the center of Olympia built for the expressmen Parker and Colter, which had been the only building in the town of sufficient size when the first session of the legislative assembly convened in February, 1854. At the second session, 1854-1855, the Masonic Hall was rented.\textsuperscript{23} In this building, two days after the passage of the capital location act a special message from Governor Stevens was read on January 12, 1855, relative to a capitol and the appropriation of $5,000 which had been voted by Congress to be “applied by the Governor to the erection of suitable buildings at the Seat of Government.” Since only a short time remained in which to utilize the appropriation before it reverted to the surplus funds in the United States Treasury, the governor suggested that the money be “applied to the erection of a temporary building on the grounds selected as a site for the permanent structure.” The temporary building would be available for territorial offices when the permanent capitol was completed. “The capitol of the territory,” Stevens declared, “should be adapted to its future growth as a model of architecture, [and] ought to leave nothing to be desired when our territory be-

\textsuperscript{21} \textit{Pioneer and Democrat}, January 13, 1855.

\textsuperscript{22} Council Journal, 1854-1855, p. 56; \textit{Laws of Washington}, 1854-1855, pp. 5-6. It should be noted that at the same session the penitentiary was located at or near Vancouver (\textit{Laws of Washington}, 1854-1855, p. 9), and the university at Seattle, with a branch on an equal footing at Boisfort Plains in Lewis County (\textit{ibid.}, 8).

Although this paper is concerned primarily with the location of the seat of government, that question always involved the location of the other public buildings and political bargaining to effect their distribution.

\textsuperscript{23} The Masonic Hall in Olympia was erected in 1854 by Olympia Lodge, No. 1, F. & A.M., organized December 11, 1852, and chartered as No. 5 of Oregon, June 13, 1853. See William H. Upton, “Historical Review of the Origin of Freemasonry in the State of Washington,” \textit{Masonic History of the Northwest . . .} (San Francisco [1902]), 353-354.
comes a State. It will require some years in its erection; and in the mean time a building will be needed for the assembly, and for public offices."

In response to the governor's message, the legislative assembly passed a joint resolution recommending Rudolph M. Walker, of Olympia, for appointment as a commissioner to act under the governor in superintending the improvements on the capitol site. This capitol was intended to be only temporary, and could not have been otherwise in view of the fact that only $5,000 had been made available in the Organic Act, and that out of this amount the cost of clearing and fencing the capitol site had to be met.

When the legislative assembly met in its third session, again held in the Masonic Hall—the second "capitol" of Washington Territory—Secretary Charles Henry Mason, then acting governor during Stevens' absence in the East, explained why the temporary capitol was not ready for occupancy in the annual message of December 3, 1855:

During the vacation of the Legislature, and as soon as a site for the Capitol could be cleared, the plan of construction was adopted, and a contract entered into for its erection. The building was fast reaching its completion when the Indian war broke out, taking from said building the artisans engaged, and preventing the possibility of securing others. Under these circumstances, a suspension of the work was ordered, and I have been compelled to employ, temporarily, the [Masonic] hall used by the Legislative Assembly at its last session. The architect and contractor of the capitol assure me, however, that the work will be finished shortly.

There was evidence in the assembly of 1855-1856 that the choice of Olympia as the seat of government was not acquiesced in by Steilacoom and Vancouver, and that antagonism still smoldered. An appropriation by Congress of funds for the permanent capitol, however, had to be awaited before any-

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27 An interesting instance of this antagonism is the consideration of a joint resolution introduced into the House on January 3, 1856, by C. H. Hale of Thurston County, relative to the clearing and fencing of the capitol grounds. After its first and second readings it was tabled on the motion of John W. Anderson of Lewis County. On January 9, Hale moved to take up his resolution, but withdrew his motion when Frank Clark of Pierce County moved to table it. On January
thing could be done toward its erection. That appropriation came March 3, 1857, when the sum of $30,000 was provided.28

III.

Governor Fayette McMullin in his message to the fifth legislative assembly, December 12, 1857, referred to the Congressional appropriation and invited the early attention of the legislators to the erection of the capitol.29 Their response was the act of January 5, 1858,30 providing for a board of three capitol commissioners named in the act, who should agree upon a plan for the capitol, issue proposals, and contract for its erection. The commissioners were to choose one of their number to serve as acting capitol commissioner, or supervisor of construction, who should give bond to the United States in the sum of $20,000, and report his accounts annually to the legislature. The commissioners were to serve for one year, while the governor might fill any vacancy which might occur until the next meeting of the legislature. The governor was made treasurer of the fund appropriated by Congress for the capitol. The legal machinery had now been set up for the use of

21 Anderson, for the committee on memorials, reported out the joint resolution with a recommendation of its passage. When the House considered this report, R. M. Walker (Thurston) moved to strike out the $10,000 provided for the capitol and to insert the figure of $100,000. Hale once more withdrew his joint resolution by moving to table it, which was done. Hale’s third attempt to get action on the joint resolution came on January 26. Walker again moved to amend it by inserting after the word “appropriation” the sum of $100,000 “for the purpose of erecting a permanent territorial Capitol,” but, pending the adoption of this amendment, Crosbie (Clark) moved to table the resolution, which the House refused to do by a vote of 13-14. Then Abiel Morrison (Pierce), influenced by the Steilacoom group, moved further to amend by adding “also $35,000 for the purpose of clearing the Puyallup river, and rendering it navigable for steamers.” This amendment was lost, but Walker’s amendment for $100,000 in lieu of $10,000 was carried, and the resolution, on motion of T. F. McElroy (Thurston), was ordered to its third reading the next day, January 28. When the bill then came up for its third reading, McElroy moved to amend the title so as to have it read “relative to an appropriation for Territorial capitol,” which Morrison moved further to amend by adding the words “at Steilacoom.” Morrison’s amendment was lost, and the question recurring upon McElroy’s amendment, the latter was adopted, but on final action the House refused to pass the resolution. House Journal, 1855-1856, pp. 80-81, 100, 146, 148, 182, 186.


24 The bill passed the House (24-3) with opposition only from Steilacoom: Frank S. Balch, Oliver P. Meeker, and Robert S. Moore, all of Pierce County. House Journal, 1857-1858, pp. 26, 37, 40, 45, 52, 54-56, 72-75, 78. It passed the Council (7-2) with Denny (King) and William H. Wallace (Pierce-Sawamish) voting no. Council Journal, 1857-1858, pp. 55-56.
the federal moneys provided for construction of a permanent territorial capitol.81

There were, nevertheless, further obstacles to its erection: the uncertainty of the title to the Sylvester tract donated as a capitol site, the dilatory tactics of the second acting capitol commissioner, and the vigorous and successful efforts in the legislature to take the seat of government away from Olympia, with the final word resting with the territorial supreme court and with the electorate expressed through a special vote.

The title to a portion—two acres—of the ten-acre capitol site donated by Edmund Sylvester was apparently cloudy. The legislative assembly of 1854-1855 enacted two measures which reflect this fact. The seat of government act of January 10, 1855, in which the Sylvester tract was named as its location, provided that within fifteen days the present owners or claimants must give a deed of release for the ten acres to the Territory of Washington without expense to the territory, which should be deemed satisfactory by a joint committee of both houses.82 The committee was divided in its opinion, and so two reports were received from it. It is not surprising that some doubt should be expressed then and later concerning the validity of the territory’s title to the site, but the division of opinion was not unaffected by feeling for or against Olympia. The majority report, reflecting Steilacoom and Vancouver,83 questioned the title; the report of the minority, reflecting Olympia and Monticello, expressed the contrary view:

... that the title of the Territory of Washington is as secure as any title can be under the present condition of the laws of Congress relating to lands in this territory, and [we] believe that the Territory of Washington is now in quiet and peaceful possession of the ten acres of land referred to, and that the deeds now received are a release and quit claim, ample and full of any claim which may be hereafter set up by the late claimants, or by any persons who may claim by, from or under them. ...84

81 Laws of Washington, 1857-1858, pp. 3-5. James Biles, Benjamin Harned, and Rodolph M. Walker were named as capitol commissioners. House Journal, 1857-1858, pp. 72-73. Harned was chosen by his colleagues as acting capitol commissioner.

82 Laws of Washington, 1854-1855, pp. 5-6.

83 Councilman Henry Miles (Cowlitz-Lewis-Pacific-Wahkiakum) and Representatives William H. Wallace (Pierce) and Timothy Heald (Jefferson-Clallam). For their report, see Council Journal, 1854-1855, appendix, 155.

84 Councilman Benjamin F. Yantis (Thurston) and Representative Alexander S. Abernethy (Cowlitz). For their report, quoted in part above, see ibid., appendix, 156-157.
The legislative assembly took the view of the minority and passed the supplementary act of January 29, 1855, which declared the act of January 10 in effect. The Sylvester tract was accepted as the capitol site, although no improvements were to be commenced on the two-acre portion in doubt until certain conditions had been complied with.\(^{35}\)

The uncertainty concerning the title to the capitol site continued for some years longer. On December 10, 1856, Arthur A. Denny had introduced a resolution into the Council asking for a report on the condition of the title.\(^{36}\) In the session of 1857-1858, when the bill providing for a commission to supervise the erection of the permanent capitol was being considered in the House, a minority report was submitted from the committee on public buildings and grounds questioning the validity of the territory's title. The report stated that offers of other tracts on either side of Budd Inlet had been made, suggested that additional land be procured for the site, and that a select committee be appointed to examine some other

\(^{35}\) Laws of Washington, 1854-1855, p. 6. For the legislative history of the joint committee and the consequent supplementary act, see Council Journal, 1854-1855, pp. 73, 125, 127; House Journal, 1854-1855, pp. 62-65, 124, 126-128. The bill was passed by the Council (7-2), with Miles (Cowlitz-Lewis-Pacific-Wahkiakum) and Terry (Pierce-King) voting no; it was passed by the House (14-7), with Briscoe (Pacific-Wahkiakum), Carson (Pierce-King), Clark, McCaw and Wallace (Pierce), Heald (Jefferson-Clallam), and Stiles (Clark) voting no.

The joint committee had received quit claim deeds to the capitol tract from Edmund Sylvester and Clara E. (Pottle) Sylvester, his wife, and from Edward J. Allen, attorney for Luman H. Calkins, then resident in Iowa. These deeds satisfied the minority of the committee, but some of the members felt that a confirmation of the act of his attorney should be obtained from Calkins. The committee therefore secured a bond signed by Calvin H. Hale and nine other approved sureties, conditioned for a quit claim deed to the territory on or before January 1, 1856. Council Journal, 1854-1855, p. 156. Calkins, formerly of Olympia, had bought and had duly recorded thirty acres of Sylvester's claim, including, apparently, two acres of the capitol site. On December 24, 1853, Calkins warned by public notice in the press against unauthorized timber cutting on his tract. He married aboard the ship Lucas and departed for the East that same day with his bride, leaving his interests in the hands of an attorney. Olympia Pioneer, December 24, 31, 1853. In 1855 Acting Capitol Commissioner Harned petitioned the probate court to effect the conveyance to the territory of all the interest of the estate of James K. Hurd of Olympia in lots 20 and 21. Hurd, who died October 22, 1857, had purchased land from Calkins, and had agreed in writing so to convey his interest in that portion affecting the capitol site. See the notice of petition in probate court in Pioneer and Democrat, March 12, 1858.

\(^{36}\) Council Journal, 1856-1857, p. 32.
None of these suggestions was acted upon by the House. The bill was amended, however, so that the act of January 5, 1858, while permitting the capitol commissioners to receive if need be an additional strip of land should the title to only eight acres or less of the capitol tract be proved to their satisfaction, provided that:

No part of the money appropriated by Congress [\$30,000] for the erection of the said capitol [sic] building shall be applied to that purpose, or to improving a site for the same, until the title of Washington Territory to at least ten acres of land, including that whereon the present [temporary] capitol stands, shall be pronounced valid by the Attorney General of the United States.88

This proviso meant more delay. It was not until January, 1860, that the Comptroller of the Treasury notified the governor that the Attorney General had certified the validity of title to the capitol site.89 Meanwhile, the desire of Vancouver to secure the seat of government gathered effective strength, aided by the disappointed advocates of Steilacoom.

In the fight to relocate the seat of government at Vancouver little was accomplished in the legislative session of 1858-1859. Representative Stiles of Clark County introduced a bill to relocate the capital of the territory at Boisfort Prairie, Lewis County, which was referred after the second reading

87 Henry C. Wilson (Kitsap), chairman, was the minority and submitted the report. The acts of January 10, 1855 (which describes the Sylvester tract), January 29, 1855, and January 5, 1858, mention only the Calkins claim as affecting a portion of the capitol site. Wilson, however, states that he had found recorded in the auditor's office of Thurston County deeds conveying one acre each to Charles C. Terry and W. A. Slaughter, both acres within the bounds of the ten-acre capitol tract. He does not state the date of the conveyance or which of the parties to the quit claims on behalf of the territory, Sylvester or Calkins, made these conveyances. Wilson also stated that there was a claim prior to Sylvester's vesting in the heirs of Levi L. Smith, who had died while in possession of the tract now claimed by Sylvester. House Journal, 1857-1858, pp. 54-56.

Although his fears were legally groundless, Sylvester himself was sufficiently apprehensive about the possibility that Smith's heirs might some day lay claim to the town site and disturb the title, that he was reticent about Smith's settlement on the point in 1846. Bancroft observed that Sylvester never mentioned Smith in an interview in 1878 concerning early Olympia, and gave the impression that he alone was there in 1846. The explanation for this reticence Bancroft found in Elwood Evans's "Historical Notes." Bancroft, History of Washington, Idaho, and Montana, 16 n.

88 Laws of Washington, 1857-1858, p. 5. The amendment was offered by Anderson (Lewis) and adopted by a vote of twenty-five to three. House Journal, 1857-1858, p. 74.

to the committee on public grounds and buildings, of which Edmund Sylvester of Olympia was chairman. It was indeed ironical that a bill to relocate the capital should fall into the hands of the donor of the site of the capitol then in use. The fate of the bill was obvious, a majority of the committee recommended indefinite postponement and its report was adopted by the House, thereby killing the bill for that session. Later, the legislature re-elected Biles, Harned, and Walker as capitol commissioners.

IV.

The session of 1859-1860 witnessed more bitterness and personal antipathy over the capital question than had thus far been seen, but in a measure it was only preparatory for the climactic struggle in the succeeding session of 1860-1861. A relocation bill was introduced into the House, December 13, 1859, by A. C. Short (Clark), passed the following day (19-9) and sent to the Council. The consideration of the measure

40 House Journal, 1858-1859, pp. 162, 170, 193, 195. The bill was introduced January 19, and postponed January 25, 1859. See also Pioneer and Democrat, January 28, 1859.


42 House Journal, 1859-1860, pp. 33, 38; Pioneer and Democrat, December 16, 1859. The representatives from the Sound (Whatcom, King, Pierce, Thurston, Sawamish [Mason], Kitsap, Jefferson, Island, and Clallam counties) divided eight to seven on the removal, with the votes against it coming from five of the six Thurston County representatives (B. L. Henness did not vote) and from the two representatives of Whatcom and Sawamish counties. The three representatives of Lewis and Chehalis counties voted for removal. The Columbia River representatives (Pacific, Wahkiakum, Cowlitz, Clark, Skamania, and Walla Walla) supported removal by a vote of eight to two, only the two representatives from Cowlitz and Wahkiakum opposing it. The strong opposition to Olympia from the northern Sound as well as from Steilacoom representatives was the basis for the Vancouver victory in the next session.

"Orion" in the Puget Sound Herald, December 16, 1859, declared that there was little doubt that Short's bill would be passed. The untrammeled Democrats in both houses were determined to use all honorable means to destroy the "obnoxious monocratic clique . . . around the present seat of government; a set of spoil-seeking and political intriguers, that have held, since the election [1857] of their God and master [Stevens] to a seat in Congress, absolute control over the political affairs of our Territory." "Orion" accused the clique of cutting off all honest Democrats from political preferment if they refused to worship at Stevens' shrine. It had given the penitentiary, an institution damning any city, to Vancouver in order to secure the capital for Olympia, and had offered the northern Sound the university, but as soon as King County returned a majority against the "venerable Isaac" away went "this venerable institution in one fell swoop"—a reference to the relocation of the university at Cowlitz Farm Prairie in 1858. The north had gained little from the capital, since the clique continued to block all claims for equitable representation in the legislature.

Stevens had been re-elected Delegate July 11, 1859, defeating William H. Wallace, Republican, who carried only Kitsap, King, and Pierce counties. Steilacoom Puget Sound Herald, August 19, 1859.
in the House had been relatively a routine matter, but in the Council the story was quite different.

The measure was read the first time in the Council on December 14, 1859, and advanced to a second reading the next day. A motion to pass to third reading having been defeated, further consideration of it was then postponed until January 5, 1860. The proponents of the bill in the Council had hoped to rush it through at once, but the friends of Olympia had become alarmed and their opposition stiffened. They now took the initiative and forced the bill toward the fate they felt sure awaited it.

Having been made the special order of the day, the bill came up for third reading January 6. The questions arose on the motion of James Biles of Thurston County that the bill be passed to the third reading, pending which these legislative manoeuvres took place:

Maxon moved to table the motion until January 25—lost (4-5). Clark moved to amend the bill by striking out “City of Vancouver” and inserting “Port Townsend”—lost (3-6). Maxon moved to amend the bill by striking out “Vancouver” and inserting “Monticello”—lost (4-5). Maxon moved again to lay the bill on the table—lost (4-5). Caples moved to amend the bill to read “This act to take effect and be in force from and after the first day of September, 1860: provided, that a majority of the voters voting at the next annual election shall vote in favor of such location”—lost (4-5). Biles moved that the bill be ordered to a third reading at once, but pending this motion, Maxon moved to adjourn. The motion to adjourn took precedence, but was lost (4-5). Maxon moved to refer the bill to the committee on public buildings and grounds—lost (4-5). Maxon moved to refer the bill to a select committee of three—lost (4-5). Maxon again moved to adjourn—lost

44 The Pioneer and Democrat, December 16, 1859, stated that Henry L. Caples (Clark) and President Hamilton J. G. Maxon (Clark-Skamania-Walla Walla) were for removal; William W. Miller (Thurston), James Biles (Thurston-Sawamish), and Samuel S. Woodard (Chehalis-Lewis) were opposed to removal; and Arthur A. Denny (King-Kitsap), A. R. Burbank (Cowlitz-Pacific-Wahkiakum), and Frank Clark (Pierce) were doubtful.
The question recurred to the motion of Biles to order a third reading—carried unanimously. The bill was then read a third time, and upon the question, "Shall the bill pass?" it was defeated (4-5). Thus the first attempt to relocate the seat of government at Vancouver failed.

It is interesting to note that by one motion the Vancouver proponents suggested Port Townsend as a substitute site, and by another motion Monticello, a little village at the mouth of the Cowlitz. Doubtless they were confident that neither town would be selected, but that their best action was thus to delay the final vote as long as possible.

The suggestion that a referendum vote of the electorate be taken is especially significant, for ten days later, January 16, James Leo Ferguson of Skamania County introduced a bill into the House authorizing the people of the territory to express at the next general election where they desired the territorial capital should be permanently located. Alexander S. Yantis (Thurston) objected to the proposed referendum. Yantis argued that the voters had not asked that the question be referred to them, and that reference of the question to the voters would prolong its settlement, perhaps interminably, and cause unnecessary delay in the erection of the capitol. He declared that he believed Olympia to be the proper place for the capital on the ground of population, ease of access, and geographical position. Despite these objections, the bill received favorable consideration in the House, but it was indefinitely postponed in the Council, February 1.

Two Puget Sound councilmen voted for removal: Denny (King-Kitsap) who had previously supported Olympia, and Clark (Pierce), its diehard opponent; and Caples (Clark) and President Maxon (Clark-Skamania-Walla Walla) supported it. One Columbia River councilman, Burbank (Cowlitz-Pacific-Wahkiakum), three Sound councilmen, Biles (Thurston-Sawamish), Miller (Thurston), and C. C. Phillips (Island-Whatcom-Jefferson-Clallam), and the councilman for Chehalis-Lewis, Woodard, voted against removal. Phillips was criticized as opposed to the interests of his constituents, and a public meeting was called in his district to consider his course in not voting for the removal of the capital to Port Townsend. Port Townsend Register, January 11, 1860; Puget Sound Herald, January 20, 1860; Pioneer and Democrat, January 27, 1860.

Yantis brought in a minority report from the committee on elections to which the bill had been referred. House Journal, 1859-1860, pp. 236-237.

Yantis, 262. Passed January 30, 1860, but the vote is not shown.

The vote was four to two: Biles, Burbank, Miller, and Woodard voting to postpone; Caples and President Maxon opposing postponement.
Governor Richard D. Gholson remarked of the temporary capitol in his message to the legislative assembly, December 7, 1859, that "the present edifice is unsuited for the business of legislation." But the prospects of erecting the permanent capitol soon were not bright. The delay caused by uncertain title of a portion of the site was seized upon by the opponents of Olympia to continue their drive to relocate the seat of government, or to delay action on the building further until a more opportune time for a favorable removal vote.

When it came time for the legislature to elect the capitol commissioners and other territorial officers in joint convention, January 25, 1860, the supporters of Olympia, who had succeeded in retaining the capital by a majority of one vote in the Council, compromised with their opponents by giving them the capitol commissioners in exchange for the public printer. Edward Furste, editor of the Olympia Washington Standard, was re-elected public printer. The commissioners elected, known to be opposed to erecting the capitol in Olympia, were Patrick A'Hern of Vancouver, George Gallagher of Steilacoom, and Captain Enoch S. Fowler of Port Townsend.


"Anthony" to the editor, Olympia, January 26, 1860, in Puget Sound Herald, February 3, 1860. "Anthony" declared the election of the commissioners was an anti-clique triumph. The capital was not a permanent fixture and the citizens of Olympia, especially the property-holders, were deeply mortified at the election. If the Olympia delegation, he asserted, had given the printing to the north or the south, as was just, they would surely have kept the capital. But, no, they wantonly refused this rightful claim to the printing and forfeited thereby the right to the capital.

George Gallagher wrote on July 31, 1860, that a compromise was tendered by members of the legislature to the Thurston County delegation: the erection of the capitol in Olympia in return for removing the printing from the Pioneer and Democrat, in order to get rid of the "odious" printer, Furste, who "had rendered himself obnoxious by his wholesale slanders and violent and unwarrantable political abuse." A portion at least of the Thurston County delegation rejected this "liberal" compromise and thereby sacrificed the interests of their own community by suffering the election of capitol commissioners, a majority of whom (that is, Gallagher and A'Hern) were averse to erecting the capitol. They rejected the compromise "for the sake of perpetuating a political dynasty which stinks in the nostrils of all honest men." Gallagher maintained that the legislature, failing in the attempt to remove the capital, had elected the capitol commissioners "with the express purpose of postponing the work upon the Capitol until the popular sentiment of the Territory could be expressed at another general election, and declared by the next Legislature." Puget Sound Herald, August 3, 1860.

Whether it acted perforce or by design, the "Olympia clique" probably believed that these men would carry out the terms of the law, and despite their individual bias proceed to build the capitol in Olympia when the funds should become available on approval of the title to the site by the Attorney General. The commissioners chose Gallagher as the acting capitol commissioner.

The climax of the capital location controversy occurred during the next legislative session in 1860-1861, when an act relocating the seat of government at Vancouver was actually passed. It will be well to examine in order three phases of the controversy: the struggle in the summer of 1860 between Gallagher and Acting Governor McGill, the bid for the seat of government by Port Townsend, and the legislative victory of the supporters of Vancouver.

V.

Soon after the close of the legislative session of 1859-1860 matters began to come to a head. The Comptroller of the Treasury notified Governor Gholson that the Attorney General had approved the title of the territory to the capitol site in Olympia, and in consequence an initial draft for $10,000 had been forwarded to Chief Justice O. B. McFadden of Washington Territory. The money was to be turned over to the governor upon his execution of a bond as disbursing agent of the capitol appropriation. On February 20, 1860, Judge McFadden informed the governor of his receipt of the draft and instructions concerning the bond for $20,000, the sureties to be approved by the judge.

Governor Gholson, however, declined to execute the bond until he received further instructions from Washington, D. C. He pointed out that the capitol commissioners had never taken any steps toward the erection of a capitol. In the session just concluded the House had passed by a two-to-one vote, and the Council had defeated by only one vote, the removal of the

56 McFadden to Gholson, Olympia, February 22, 1860, ibid., 114.
capital. The legislative assembly had just elected new capitol commissioners for the avowed purpose of preventing the expenditure of the fund for a capitol in Olympia, and Acting Capitol Commissioner Gallagher, himself, had informed the governor that they would take no steps to build there. In view of the division of local feeling and the attitude of the commissioners no public benefit would result from an immediate execution of the bond, nor any harm from postponing it. If the capitol commissioners should, contrary to their assertions, decide to go ahead with the work, the governor would, though reluctantly, execute the bond and release the money. Gholson observed a technical difficulty in the governor's relationship to the fund. The act of the territorial legislature (January 5, 1858) providing for a board of capitol commissioners, made the governor the treasurer only of the building fund, while the commissioners were to disburse it. The Treasury, on the other hand, was asking the governor to be bonded as the disbursing agent. Under the circumstances Gholson declined to assume responsibility for the "faithful disbursement" of the fund or for its safekeeping in an office in which there was not even a safe. Furthermore, the governor was about to return East for his family, so that accepting the trust now would raise the problem of relief from it during his absence from the territory. He wrote to Judge McFadden that he disagreed with those who insisted that he disregard the attitude of the commissioners and proceed at once with the work himself, and asked the Comptroller for advice. Clearly, Gholson had no desire to become involved in the bitter local controversy. In May, 1860, he left the territory for his home in Kentucky, having received a six months' leave of absence. Secretary Henry M. McGill became acting governor during Gholson's absence.

McGill was aligned with the "Olympia clique," and was not worried by the question of the governor's responsibility

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for the disbursement of the fund. He proceeded at once to file the necessary bond. Having received the money from Judge McFadden, McGill notified the capitol commissioners that the money was now available and that they should proceed with the construction plans.\textsuperscript{59} He forwarded the bond to the Comptroller and wrote him that he had notified the commissioners to proceed.\textsuperscript{60}

McGill’s prompt action, of course, was pleasing to the people of Olympia. The \textit{Pioneer and Democrat} approvingly commented:

The citizens of Washington Territory will be rejoiced to learn that in the person of Mr. McGill, we have a man who can comprehend his duty, and knowing it, is willing to perform it. This money has now been in the hands of two executives, by whom its expenditure has been delayed for over two years, upon subterfuges and quibbles not satisfactorily to be explained to our citizens. It is fortunate for us that the duty of expending this money has not devolved a third time upon a do-nothing. The secretary \textit{will do} something.\textsuperscript{61}

It was the hope of the “Olympia clique” to get the building started before the legislative session of 1860-1861 should begin, in December, 1860. McGill’s similar energy in respect to the penitentiary at Vancouver, for which funds had also arrived, may reflect in part the belief that once the penitentiary building was begun there, the drive by Vancouver for the capital site would be relaxed because Vancouver could hardly expect to have two important territorial institutions, and assuagement of the impatience in Vancouver over the delay in starting the penitentiary building would be to Olympia’s advantage. Because of this delay some persons in Vancouver were inclined to believe that they were being “hugely humbugged,” and they demanded to know if the penitentiary was “to be held back for capital to trade on this coming winter?”\textsuperscript{62}

Acting Capitol Commissioner Gallagher had no intention of proceeding with the construction of the capitol in Olympia, and began a contest with McGill, in which he employed argu-

\textsuperscript{59} McGill to George Gallagher, Acting Capitol Commissioner, July 3 and 16, 1860, Olympia, \textit{ibid.}, 80, 81, 117, 119.
\textsuperscript{60} McGill to Medill, Olympia, July 7 and 17, 1860, \textit{ibid.}, 118-119.
\textsuperscript{61} \textit{Pioneer and Democrat}, July 6, 1860.
\textsuperscript{62} \textit{Ibid.}, May 11, 1860.
ments against proceeding with the work, and reluctant and dilatory compliance with the acting governor’s requests until McGill removed him. On July 22, 1860, when the commissioners met with McGill in Olympia, Gallagher stated that he had been elected “not to go on” with the building of the capitol, because the legislature desired its postponement until the people had decided on its location. Consequently, Gallagher declared that he intended to do nothing further until the legislature met again. Later, Gallagher altered his position somewhat by stating that while he held to the same view of the matter, he would proceed with the initial steps if McGill believed that the delay would justify the appointment of another in Gallagher’s place. McGill replied that he intended to execute the laws faithfully without unnecessary delays and that Gallagher had promised in the interview to advertise immediately for proposals for the building, without having advanced such an explanation of his election and desire to postpone action. Gallagher again stated that he would go on with the work if McGill gave him the choice between that or resignation. He had made no other promises and was glad to have McGill assume responsibility in writing for compelling early action. Gallagher would “proceed with the work as rapidly as a due regard to the public interest, and an economical expenditure of the capitol fund appropriated by Congress will warrant.”

It was soon apparent that Gallagher’s view of the rate of progress consistent with the public interest was at variance with McGill’s. On July 30, Gallagher advertised in the press for proposals for clearing the capitol grounds, and for plans and specifications for the new capitol building from architects. Bids for the clearing of the grounds were to be opened September 29. Acting Governor McGill at once declared that the

68 Gallagher to McGill, Olympia, July 23, 1860, in House Journal, 1860-1861, pp. 82, 120; McGill to Gallagher, Olympia, August 11, 1860, ibid., 85.
64 Gallagher to McGill, Olympia, July 23, 1860, ibid., 82, 120.
65 McGill to Gallagher, Olympia, July 23, 1860, ibid., 82, 120.
66 Gallagher to McGill, Steilacoom, July 26, 1860, ibid., 83, 121. The Puget Sound Herald expressed the hope that no action would be taken without due deliberation, and criticized the haste, July 27, 1860.
67 Pioneer and Democrat, August 3, 1860.
two months' period for entertaining proposals was an unnecessary delay, that under this arrangement clearing would be during the rainy season and progress would be thus retarded. He requested that the time allowed to put in proposals be reduced to two weeks.\textsuperscript{68} Gallagher retorted that the period had been agreed upon as reasonable by Commissioner Fowler. If his fellow commissioners agreed that if it was in the public interest to change the period he would do so, but they were the only persons whose authority he recognized in the matter, and he had written for their opinion.\textsuperscript{69} McGill's answer was to notify Gallagher that the acting governor considered his office vacant and would appoint another commissioner, since in the light of Gallagher's statements the postponement of the clearing of the grounds was an unnecessary delay.\textsuperscript{70} McGill then appointed Rodolph M. Walker as acting capitol commissioner.\textsuperscript{71} Walker at once set about advertising for bids, awarded the contract for clearing the grounds, and the work was commenced.\textsuperscript{72}

This action of McGill drew the fire of the anti-Olympia press, which viewed his act as illegal. “Marvel,” in the Steilacoom Puget Sound Herald declared:

These unauthorized assumptions of power come with an ill grace from any person, and much more so from a stranger, recently exported from the political rubbish floating about Washington [D. C.]; and he will become conscious of it at no distant day. The people of this Territory, whatever may be their views of the location of the Capitol, must condemn his course and hold him responsible for this attempted violation of the law. The political wire-workers at the Capitol, who are generally known as the odious “Olympia clique,” have evidently had a hand in this matter. They seek by force to fix the Capitol at Olympia before the meeting of the next Legislature, and then that vexed question, which cost them so much popularity at home last winter, will be out of the way, and they then hope, by their skilfully formed plans and political trickery, to defeat any fair apportionment bill that may be offered, and likewise to secure for another year the public printing to that political jockey club who now conduct the Pioneer and Democrat. All this they expect to do without giving offense to Thurston County. The Ter-

\textsuperscript{68} McGill to Gallagher, Olympia, August 4, 1860, in House Journal, 1860-1861, pp. 83-84, 121-122.
\textsuperscript{69} Gallagher to McGill, Steilacoom, August 8, 1860, ibid., 84, 122.
\textsuperscript{70} McGill to Gallagher, Olympia, August 11, 1860, ibid., 84-85, 122-123.
\textsuperscript{71} McGill to Walker, Olympia, August 13, 1860, ibid., 123.
\textsuperscript{72} Pioneer and Democrat, August 17, 1860; Gallagher's report to the legislature, House Journal, 1860-1861, p. 77.
ritory at large will note all these manoeuvres; and while the "clique" sold out Thurston county last winter, in order to perpetuate the odious Pioneer dynasty, the people will see that the whole Territory is not sold next winter to carry out the nefarious scheme. . . . The course of policy pursued in this matter must be suicidal to the interests of Olympia, and I cannot believe that the honest and impartial friends of that town can either sustain the legality of the Governor's course or regard it as a step of policy for the town itself. . . .

It will be said that Olympia was afraid of the issue, and sought to forestall public sentiment by expending the appropriation before that sentiment could be ascertained. I venture the prediction that the Capitol will not be built the sooner of this insane movement, and that the newly-fledged Acting Capitol Commissioner, with his bogus commission in his pocket, who has felt the dignity of his position so much as to take action without consulting his colleagues, will go out of office without accomplishing anything, and even without pay, unless it be out of the Governor's private pocket.78

After consulting counsel, Gallagher applied for an injunction in the district court to restrain Walker from acting until quo warranto proceedings should be heard in the March term of court. It was understood that the decision upon the application for an injunction would virtually settle the whole question. Gallagher's case rested on the alleged lack of legal authority for the governor's removal of the acting capitol commissioner, since the act of January 5, 1858, provided only that the governor should fill a vacancy when one occurred in the board. Gallagher contended that the governor had no authority to create such a vacancy by removing a commissioner.74

Edward Furste, editor of the Pioneer and Democrat, at once assailed this application to the court. He attacked Gallagher's counsel, Selucius Garfield, Elwood Evans, and Frank Clark. Furste went so far as to assert that Evans had offered to bet that Gallagher would be found drunk within half an hour after his removal from office — a condition not unusual

78 "Marvel" to the editor, Steilacoom, August 18, 1860, in Puget Sound Herald, August 31, 1860. The Herald denounced in similar vein McGill's course of action and lamented that the people of remote territories had to endure the importation of strangers to exercise executive authority, strangers who need have no other qualifications if they had enough names of the true party stamp to recommend them for the post. Puget Sound Herald, December 20, 1860. The editor of the Port Townsend North-West remarked in its issue of September 27, 1860, that he supposed the governor's action was all right, but he could not see how it was done. "Justice," writing from the Columbia River, found nothing in the governor's message to the legislature to justify his act. Olympia Washington Standard, December 29, 1860.

with Gallagher the reader was to infer." Evans promptly denied he had said any such thing.© Gallagher's retort to Furste is a masterpiece of the personal invective not infrequent in the less trammeled and less tranquil press of pioneer days. He wrote to the editor of the Steilacoom Puget Sound Herald:

Sir: The last issue of the Pioneer and Democrat is full of low flung personal abuse and vindictiveness because I have seen fit to prosecute my rights in a court of justice, and not tamely submit to the petty tyranny of J. B. No. 2.© Its editor is also very ferocious upon those gentlemen who may have seen fit, in the pursuit of their profession, to prepare my papers and conduct my cause. Not having truth to make out his case, he resorts to falsehood—his usual weapon in a bad cause. . . . Whatever my habits are or may have been, I disclaim the habit of lying. I have not ruined my constitution, and brought upon myself premature decrepit old age, impotent, toothless and vindictive, by a series of beastly practices with the most degraded forms of Indian humanity.

I have not, by any evil or wrong course, brought myself to the necessity of selling my birthright of freedom for a mess of pottage, and then been compelled to do the dirty work of a set of taskmasters; acting as their scavenger at the sacrifice of all self-restraint. I have not acted the vampire, and sought to fatten myself upon the life-blood and reputation of the best men in the Territory. I have not exhausted the skill of physicians here, and gone to California seeking relief from the most loathsome of diseases, in order to protract a miserable existence to be devoted to the same disgusting vices. I have not slandered, vilified, traduced and abused honest and patriotic men for the purpose of upholding a corrupt political dynasty by fraud, deceit and falsehood. In short, I have neither written, edited, (by proxy) nor have been connected with the meanest, most unreliable, dirtiest and most contemptible sheet ever published in the United States, and miscalled a newspaper. The Pioneer's attack upon Mr. Evans is as base as the heart that conceived it, and as corrupt as the moral and physical system of the man who penned it, and will benefit neither the editor nor the town of Olympia. Mr. Garfield needs no defence. He will pursue the even tenor of his way, doing his duty without respect to persons or localities. His position is that of an attorney in the case, where I feel assured he will do his duty without fear, favor or affection, the Pioneer's fulminations to the contrary notwithstanding. Mr. Clark will hardly abandon the case at the behest of an impotent dwarf, who attempts to hurl abuse at men who loath and kick him out of their society. Mr. Clark will do his duty in the case as an attorney with that fidelity for which he is so noted.

If his "accidency," J. B. No. 2, and the Pioneer's pusillanimous puppy, are the only champions of the Capitol at Olympia, that town must

75 Pioneer and Democrat, August 24, 1860.
76 Evans to Gallagher, Olympia, August 25, 1860, in Puget Sound Herald, August 31, 1860.
77 McGill had been appointed secretary of Washington Territory by President James Buchanan, "his master," whose actions in regard to the free-soilers in Kansas Territory (1857) are denounced in "Marvel's" letter as those of a tyrant.
care but little for the location. And if the people of Olympia desire the Capitol in their midst, and the good will of the Territory at large, the sooner they arrest the folly of the one and the impotent ravings of the other, the better it will be for them. The acts of both are bringing the place into disrespect abroad, and creating a prejudice which will not soon be overcome.

Query—How can Christian men vote for a man to be public printer and conservator of public morals who is from year’s end to year’s end, and by day and by night, found in the saloons of Olympia playing cards for whisky? I give it up.78

Furste replied in a lengthy article headed “Personal,” in which he denied these slanderous assertions, and, after listing many things with which he could not be charged, closed the subject with the lines:

Slander meets no regard from noble minds;
Only the base believe, what the base utter.79

After the argument of the intermediate question, Chief Justice McFadden refused the injunction.80 Walker was free to go on with the work, and there was nothing further the gentleman from Steilacoom could do until the legislature met in December, when he made his report and animadverted against both the acting governor and the chief justice.81

Meanwhile, as the ax and fire were “making sad havoc among the timber on the site selected for the capitol building,”82 the Comptroller wrote to McGill approving of his bond, but stating that there was no immediate necessity of releasing the capitol and penitentiary funds in his possession except in the limited extent required for clearing the sites. He was to go no further until he received additional authorization from the Treasury Department. The departmental bureau of construction would supervise the plans for the buildings. McGill was requested therefore to furnish photographic views of the sites, topographic surveys, and information on building stone available in the vicinity, the kind of accommodations required

78 Puget Sound Herald, August 31, 1860.
79 Pioneer and Democrat, September 7, 1860.
80 For the opinion of Judge McFadden, see House Journal, 1860-1861, pp. 76-79; Pioneer and Democrat, September 21, 1860.
81 House Journal, 1860-1861, p. 75. Gallagher’s report and the relative correspondence was submitted to the legislature, pursuant to a resolution of the House, by both Gallagher and Acting Governor McGill. Ibid., 73-85, 112-127.
82 Pioneer and Democrat, September 7, 1860.
in each building, and the prices of building materials. Thus, the work was brought to a standstill both in Olympia on the capitol and in Vancouver on the penitentiary, neither had been started sufficiently to be fixed, and the possibilities for political trading in the legislature of 1860-1861 were still uninhibited.

VI.

Certain citizens of Port Townsend thought they saw in the struggle between Olympia and Vancouver for the capital a chance to obtain the seat of government for Port Townsend. The forthcoming contest in the legislature was bound to be sharp, and Port Townsend might win the capital in the event of a deadlock, provided that they could make a fair offer and could give definite assurance that it would be fulfilled.

A public meeting was held in Port Townsend on November 22, 1860, at the courthouse. At the request of the chairman, Major J. J. H. Van Bokkelen stated the purpose of the meeting and presented a resolution calling for the appointment of a committee to ascertain: what buildings in the town could be procured to accommodate the legislature, what facilities there were for boarding and lodging the legislators, and what proposition could be made to the legislature respecting the donation of a capitol site. The meeting then placed itself on record as unanimously in favor of removing the capital to Port Townsend.

At an adjourned meeting on November 26, the committee on arrangements reported that it had addressed circulars to various landholders, the Masonic Association, the county commissioners, and hotel keepers on the subject, and had received satisfactory replies from all. A capitol site would be donated

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88 Medill to McGill, Washington, D. C., August 22, 1860, House Journal, 1860-1861, pp. 123-124. McGill furnished in part the information requested, observing that there was no building stone near by the capitol site, but it could be obtained from Bellingham Bay, and recommending a two-story capitol building with a hall and two committee rooms for each house, and rooms for the presiding officers and sergeant-at-arms of each house, a room for the territorial library, and offices for the governor, secretary, surveyor general, United States marshal, district attorney, register, and receiver, with the necessary out offices. McGill to Medill, Olympia, October 26, November 10, 20, 1860, ibid., 125-127. Giles Ford, of Steilacoom, took the photographic views of the capitol site. Pioneer and Democrat, November 9, 1860.

of ten acres of upland prairie, on eight acres of which not fifteen trees were standing. The remaining two acres would be cleared as the capitol commissioners desired, without cost to the government. As an earnest of this offer there was attached to the report a bond executed by the property holders covering their faithful performance as the donors of the site, together with a certificate of title to the land included in the grant. The report also stated that the Masonic building and the courthouse were available for the free use of the legislature pending the completion of the capitol. As for lodgings, the Washington Hotel would furnish fifteen rooms, the Pioneer and United States hotels would each provide accommodations for fifty and board for any number, while apart from the hotels sixteen private rooms could be furnished.85

The offer of the citizens of Port Townsend seems to have been a fair one, definite, and made in apparent good faith. The legislature, however, accorded the offer but scant attention. No high-pressure campaign was used to induce the legislature to accept it, and no bitter antagonism followed its rejection. It is a singular coincidence that, while Port Townsend offered so much on this and other occasions, ultimately the town got none of the spoils of the political and legislative jockeying which later placed the various institutions in the leading towns of the territory and state.

Although he was present at the meeting of November 22, when the resolution was adopted pledging all persons present to support the location of the capital in Port Townsend, Colonel Paul K. Hubbs, Sr., its prominent citizen, attorney, and president of the territorial Council, secretly may not have favored the proposed action. When the legislature convened a few weeks later, he introduced the resolution into the Council as he had promised to do, but the record shows that other than to refer it to the proper committee, of which at least one member, General W. W. Miller of Olympia, the chairman, could hardly have been expected to be friendly toward it, Hubbs did nothing further to promote it.86 The record also shows that

86 Ibid., 45-53. The committee on public buildings and grounds was composed of Miller (Thurston) and Burbank (Cowlitz-Pacific-Wahkiakum), supporters of Olympia, and Caples (Clark) of Vancouver.
both Hubbs and the Port Townsend representative in the House, L. B. Hastings, voted against Port Townsend when the vote was taken to remove the capital to Vancouver. Speaking of this attitude, the editor of the Washington Standard in the issue of December 15, 1860, said:

By the report of the proceedings it will be seen that the members of the House and Council from Port Townsend voted to effect this change. At this we are surprised from the fact that we had understood they were specially instructed to vote against the removal of the Capitol to any other place than Port Townsend: and from the further fact that the venerable member of the Council from that place had volunteered the solemn assurance to several respectable gentlemen from different localities, that he should vote under no circumstances, to remove the Capitol, unless it could be located at Port Townsend.

In a "card" to his constituents Hubbs sought to soften the effect of this editorial criticism by asserting:

We have a great deal to do, or that should be done, in a very short session. I have not time to stop to refute erroneous newspaper or other reports as to what I have "said" "promised" &c, &c. Were I to do so, I should neglect your interests, which I desire to advance as far as my ability and humble endeavor will permit.87

The "special correspondent" in Olympia of the Port Townsend Register undertook to defend Hubbs for his stand on the capital question. The letter was written December 23, the day preceding the adjournment of the legislature for the holidays, and might have been intended to pave the way for a less critical reception of Hubbs at the hands of irate constituents. It is not unlikely that Hubbs himself was the author.88

Your Councilman opposed any and evere [sic] change of the Seat of Goverment, except a removal to Port Townsend, until the chances for Port Townsend became hopeless. A general change, or rather the permanent location of all the public buildings being proposed and the penitentiary (in all the States deemed next to the capital so far as relates to the money disbursements) being offered to Jefferson county, he gave a casting vote in the council for the bills, locating the Seat of Gov-

87 Port Townsend Register, December 19, 1860.
88 Hubbs, who had been state senator from Tuolumne County, California, in the legislatures of 1852 and 1853, was certainly familiar with the problem of a migratory state capital. The session of 1852 had met only a week in partly built Vallejo before adjourning to Sacramento. The session of 1853 spent a month in the still incomplete accommodations of Vallejo and removed to Benicia. Between 1850 and 1855 the California legislature had made seven removes. Bancroft, History of California, VI (Works, XXIII, San Francisco, 1888), 321-325, 473-475, 656-657, 674 n.
ernment [at Vancouver], the Penitentiary [at Port Townsend], the University [at Seattle] and the proposed new Land Office [at Port Townsend]. . . . Every member from Whatcom, Clal[la]m, Island, Jefferson, King, Pierce and Kitsap with one exception voted for the bills. . . .

California removed her seat of government seven times, and at no time did a removal effect [sic] or enter into party issues. The fact that all republicans in the house (8) voted against, and the only republican member of [the] council voted for the bills, may be named as evidence that the bills passed on their merits, without regard to parties or cliques. The location of the capital at Vancouver shuts out all complaint from the east of the mountains, where an effort was about to be made to establish a new territory; which if successful would leave the Sound country a dependent territory for a long space of time; whilst by keeping the Territory together, the rapid filling up of the eastern portion for mining and agriculture, will soon allow us to knock at the doors of Congress for admission as a State.80

Despite this exposition of the statesmanship inspiring Hubbs's vote on the capital relocation, the Port Townsend North-West joined the Olympia press in criticizing Hubbs and expressed keen disappointment at the loss of the capital by Port Townsend:

We confess to a painful surprise at the vote of the Councilman of this District. When instructed by his constituency to use all honorable means to procure its removal—if removed it was to be—to Port Townsend, Mr. Hubbs was present at the meeting, and expressed himself opposed to migratory capitols. He intimated that he should oppose the removal from its present location; but that, should it be removed, he would obey the instructions of his constituents.90

Although Colonel Hubbs had at least acquired the penitentiary for Port Townsend, its press expressed no pleasure. The general sentiment appears to have been that Port Townsend desired the capital for its own, but in any case it should remain on Puget Sound. The penitentiary, however, was not wanted at all. The North-West sarcastically remarked: "Our Councilman has been to the Legislature, and bought for his dear constituents, in exchange for the Capital, such a fitting institution, and so expressive of his appreciation of their remarkable character—a Penitentiary!"91

It cannot be said that Hubbs and other legislators from the northern Sound counties were not prompted by the most

80 Register, December 26, 1860.
90 North-West, December 27, 1860.
91 Ibid.
highminded motives, but it cannot now be easily explained why, since they voted for removal of the capital from Olympia, they did not vote for Port Townsend, unless some sort of political bargain had been struck. Hubbs, an able lawyer, was a man of much experience and had long been a public servant. He must surely have considered that attorneys from Olympia north along the Sound would be required to travel an additional 130 miles to present their business before the supreme court in Vancouver. He could not have been unaware of the argument that the territory’s lawyers would be crowded from practice before the court by the attorneys of Portland, and that a great lobby influence from Oregon would control legislation at Vancouver and govern federal appointments to posts in Washington Territory.92

He had probably heard much of the claims set forth by the special correspondent in a dispatch of December 12 to the Register that the “country east of the Cascades is filling up very fast, and will soon outnumber that of the west.”98 The editor of the Register rejected this as a reason for removing the capital to Vancouver:

We dissent then, and with much respect, from the opinion of our Olympia correspondent. . . . We do not approve the translation of the Capitol from Olympia to Vancouver and least so for the reason he advances. . . . By a parity of argumentation, the Capitol ought to be transferred thence to the Nez Perces border, because, (and it is by no means improbable on account of the extensive gold fields lately discovered) the population in that region may be augmented by several thousand more than the Walla Walla country or the Puget Sound section or than both combined. The absurdity of such an inference is obvious, and, therefore, the hypothesis on which is predicated the present change is untenable.94

Nevertheless, as Hubbs was probably aware, not all residents of Port Townsend and Jefferson County were in favor of removing the capital from Olympia, even if it were to be removed to Port Townsend, while others were agreeable to the relocation at Vancouver. Attorney Winfield Scott Ebey, of Ebey’s Landing, Whidbey Island, recorded in his journal December 19, that he would not prepare a petition to the repre-

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92 North-West, December 27, 1860.
93 Ibid., reprinted December 19, 1860, from an extra of December 14.
94 Ibid., December 19, 1860.
sentatives from the district asking for a return of the capital to Olympia, as Alonzo M. Poe had requested of him, because, Ebey wrote: "I believe that the people are generally very well pleased, particularly in Jefferson Co."

Realizing that there was little chance of winning the capital for Port Townsend because of the strong Vancouver lobby, and that by compromise Port Townsend could gain a portion of the spoils, which would be better than none, Hubbs and Hastings probably conferred with the representatives from the Columbia River area and agreed upon a trade. Arthur A. Denny, councilman from Seattle, also went into this conference with a plan to seek either the capital or the university for his city.

While Hubbs represented Port Townsend in the Council, he was after all, along with Denny and others, to a certain extent the representative of the Puget Sound area as a whole, so that in working out an agreement to give the university to Seattle and the penitentiary to Port Townsend in exchange for their support of Vancouver's claim to the capital, they were getting most of the spoils for the northern part of the Puget Sound country. In any case, the compromise or trade was agreed upon in advance of the legislative session of 1860-1861, and was carried out as planned when the legislature convened in December.

VII.

The organization of the legislative assembly and the appointment of committees was completed December 6, 1860. On December 11 the legislature passed the seat of government relocation bill, and the penitentiary relocation bill, and on De-

95 W. S. Ebey, Diary No. 6, I, 392. MS in Pacific Northwest Collection, University of Washington Library. Criticism of Hubbs was not without its humorous side. On the evening of December 14, during the legislative session, the young ladies of the Puget Sound Wesleyan Institute in Olympia held a program which several legislators attended. One of the "hits" of the evening which caused much merriment was the conundrum propounded to the audience: "Why is the seat of government of Washington Territory like a waggon?" "Because the Hubbs had to be turned before it could be moved." After the exercises, Colonel Hubbs was called upon for remarks, and "concluded by assuring the ladies that if they desired the wagon to go along smoothly they must not bear too hard upon the Hubbs." The Washington Standard, in reporting this witty exchange on December 22, suggested that if "the Hubbs were 'greased' something might be gained." See also the North-West, December 20, 1860.
The university relocation bill. Thus the legislative machine had worked quickly and well, and the capital had been removed from Olympia almost before its citizens were aware of what had happened.

It is significant that the capital relocation bill, the importance of which should have overshadowed all other legislation, had been passed by both houses without debate. Introduced as House Bill 13, it went sailing through the House and over to the Council, there to be passed within a few minutes. This was an unusual procedure even with bills of minor importance, but in the case of the capital relocation bill such haste is indeed startling. The explanation rests in the "trade" agreed upon before the meeting of the legislature.

The House journal reveals the following picture of the passage of the bill. Lewis Van Vleet (Clark), on leave introduced H. B. No. 13, entitled "An Act to Permanently Locate the Seat of Government of Washington Territory." The bill was read the first time. Van Vleet moved that the rules be suspended and the bill be read a second time now. Albert Pingree (Kitsap) moved to lay the bill on the table, but the motion was lost (13-16). The question then being on the original motion, it was carried, and the bill read a second time. Pingree moved that it be referred to its appropriate committee, but the motion was lost. John M. Chapman (Pierce) moved that the rules be further suspended, and that the bill be assigned for the third reading now. Upon which the previous question was called, the question being "Shall the main question now be put?" It was decided in the affirmative. The question then recurring on the original motion, it was carried, and the bill read a third time. David Phillips (Thurston) moved to postpone the bill indefinitely, but the motion was lost (12-17). Calvin H. Hale (Thurston) then moved to postpone further consideration of the bill until tomorrow, but the motion was lost. After this
defeat, the bill was finally passed (16-13) and sent to the Council.97

Its passage through that house was rapid indeed and the formal record of its passage (5-4) is appropriately succinct:

The bill was read the first time; and there being no objections, the bill was read the second time by title.

On motion of Mr. Caples, the rules were suspended, and the bill considered engrossed, given its third reading, and passed.98

Councilman Arthur A. Denny, of King, who had once voted to locate the capital at Olympia, voted for Vancouver. A champion of Seattle as capital from its beginning, he had been hopeful of doing something for the thriving village, and had even selected a site of ten acres on his homestead (near the present intersection of First Avenue and Pike Street) which he was prepared to donate for the capitol grounds. Seattle, however, had but a faint chance as against Olympia, Vancouver, or even Port Townsend, each of which was a larger town, yet Denny had been determined to try.

The Reverend Daniel Bagley, however, a recent arrival in Seattle and soon influential in its affairs, persuaded Denny to seek the university rather than the capital for Seattle. He had heard of Denny's plan to introduce a bill into the legislature of 1860-1861 to locate the capital at Seattle, but he convinced Denny that while the capital might be the more desirable acquisition for the present, the university would be the more desirable in the future, and would bring with it families and culture.99 Thus convinced, Denny took part in the compromise and supported Vancouver, while Seattle gained the university.

97 House Journal, 1860-1861, 57-58. Of the seventeen Puget Sound votes, nine were cast for the removal bill, and eight against it—the six Thurston County votes and only two others (Albert Pingree of Kitsap, and Franklin C. Purdy of Sawamish). Of the three Lewis-Chehalis votes, two were cast against removal, while the third seat was vacant because of a contest. The representatives of the Columbia River divided seven for the removal bill, and three (Pacific-Wahkiakum-Cowlitz) against it.


99 Victor J. Farrar, "History of the University," Washington Alumnus, XII, no. 2, p. 11 (October, 1920). The late Professor Edmond S. Meany was wont to tell this story as he had heard it from both Denny and Bagley.
Hubbs, president of the Council, cast his vote for Vancouver, as previously stated. In the Council, where the eight other members were equally divided on the issue, Hubbs's vote was decisive. Whether or not he breached his promise to support Olympia in the event he could not obtain the capital for Port Townsend is a debatable question, but he voted at least like the other members from the northern Puget Sound in both houses.

The press of the Puget Sound area, however divided with respect to Olympia, was unanimously in favor of a seat of government on the Sound. It was displeased with the action of the legislature in removing the capital to Vancouver on the Columbia, and now was united in supporting the geographical, historical, and legal claims of Olympia. The Port Townsend Register for December 19, 1860, remarked that:

If Vancouver be geographically a better location than Olympia, there would be a just pretext for the contemplated change; but in that respect it offers no advantage which Olympia has not, whilst the latter place to our mind is more convenient to the Representatives of the entire territory. . . .

If the concession of the Penitentiary to Port Townsend be intended as a douceur to our citizens in this direction, in order to conciliate their consent to the action of the legislature, we doubt if it will produce that effect. We have too high an estimate of our fellow-citizens around here to suppose that they would solicit any advantage to themselves at the expense of their brothers in Olympia.

It was the opinion of the editor of the Steilacoom Puget Sound Herald that there was no good reason to believe that the leaders in the removal scheme ever for a moment contemplated the permanent location of the capital in Vancouver, since they well knew that their action did not accord with the wishes of their constituents and was not in harmony with the right and justice which should attend the location of a seat of government. The people of Vancouver, or any other town in the territory, could not be blamed for seeking the capitol appropriation, a nice windfall for any community.

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100 Pioneer and Democrat, December 21, 1860; Register, December 19, 1860; North-West, December 27, 1860; Puget Sound Herald, November 14, 1861.
101 Puget Sound Herald, May 2, 1861, commenting on an editorial in the Vancouver Chronicle, April 18, 1861.
Vancouver in all its efforts to win the capital location had the support and aid of Portland, Oregon, across the Columbia. According to one historian, the people of Portland really directed the campaigns for removal. "They hoped, it was said, by transferring the capital to Vancouver, to give that town an impetus that would sometime make it a part of their own, or failing that, that everybody who came to business at the capital of Washington would bring business to the metropolis of Oregon."\(^{102}\)

The Olympia *Pioneer and Democrat* accused the legislators of playing politics, claimed that the three public buildings bills were tied together to insure the passage of all three, and that if the question of removal of the capital had been presented simply by itself, there would have been no change of location.\(^{103}\) Furthermore, the paper declared, the people were averse to the change, which was an accurate observation, since when the electorate did get a chance to vote on the question in 1861 the vote was overwhelmingly in favor of Olympia.

Frank Clark of Steilacoom had voted for Vancouver. While it might be supposed that he was simply continuing to vote against Olympia by this act, Ezra Meeker declared that Clark was trying really to "manufacture capital to carry him through the Vancouver [Democratic territorial] convention," but the fact that he was outbid there for the Democratic nomination for Congressional Delegate from the territory by Se- lucius Garfield testified to the distrust of the Clark County delegates for the Steilacoom man.\(^{104}\) Meeker, a Republican candidate for the Council from Pierce County, denied Clark's allegations that Meeker was pledged to Olympia for the removal of the capital thither and to the Olympia *Washington Standard* for the public printing. Meeker declared:

> I will say this . . . that I am opposed to the removal of the Capital to Columbia River; that I am opposed to making the Legislature simply a field for political advancement, either of party or private interest; and that I condemn the course of the members of the Legislature from this


\(^{103}\) *Pioneer and Democrat*, December 21, 1860.

\(^{104}\) *Puget Sound Herald*, July 4, 1861.
[Pierce] county in bartering the interests of the whole Sound for the advancement of party interest. I will tell those gentlemen that I have in my possession written statements from two responsible witnesses, — Messrs. U. G. Warbass and David L. Phillips105—that they were willing to exchange and compromise on the Capital question, to secure the public printing, and from letters shown me by Mr. J. H. Settle,106 from the editor of the Puget Sound Herald, that the requirement from that paper, before the printing would be given to it, was the unqualified support of the Garfield wing of the Democratic party. If mistaken, the editor of the Herald can correct me.108

Frank Clark probably recognized that the Puget Sound area would not permit the capital to remain on the Columbia River and that it would be removed from Vancouver. If Olympia was unable to prevent the removal of the seat of government to Vancouver, her chances of regaining it were weaker, while Steilacoom would have a better opportunity in the event of another relocation. Furthermore, Clark and other legislators did not share the belief of the Vancouver delegations that a popular referendum on the capital question would disclose an overwhelming preference for Vancouver. In several sessions representatives of Clark County had sought legislation permitting a popular vote on the capital question. They introduced a bill for this purpose into the legislature of 1860-1861, when it was passed.109 A referendum was to be taken in the July election, 1861. The Vancouver supporters felt certain of popular support—although as it turned out, they were woefully mistaken—and no doubt believed that a removal of the capital to Vancouver approved by the voters in referendum would clinch the matter for Vancouver, and a subsequent relocation would therefore be unlikely.

Other legislators felt that the people should have been asked to express themselves on the question in the first place, and that if they had there would have been no removal. It is

105 Dr. Warbass and Phillips were representatives from Thurston County in the legislature of 1860-1861.
106 John H. Settle was representative from Pierce County in the legislature of 1860-1861.
107 Charles Prosch.
108 Puget Sound Herald, July 4, 1861.
now impossible to say whether it was their expectation that the next legislature would repeal the relocation act if the people voted against the removal of the capital to Vancouver. Snowden takes the view that the members of the legislature, "or a majority of them at least, realized that they had exceeded their authority, and they hoped to get the approval of the people to confirm or strengthen their action, if not to excuse it."\textsuperscript{110}

In the closing minutes of the memorable session of 1860-1861, Representative J. T. Bowles of Clark County introduced a resolution complimenting George Gallagher for his efficient service as acting capitol commissioner. While Vancouver might well feel grateful to Gallagher, it was to his inactivity rather than to his diligence that thanks were due. The resolution threw the House into an uproar and was not recorded in the journal.\textsuperscript{111}

VIII.

In the months which followed the passage of the capital relocation bill, most newspapers took the view, and historians since have generally agreed, that the haste in which the bill was enacted was responsible for the omission of the date of passage and that part of the bill called the enacting clause.\textsuperscript{112}

It is difficult to believe, however, that haste was the sole cause of this important omission. The members of the Council especially were men of legislative experience, and the legislators interested in the passage of the bill would be likely to scrutinize the final draft for engrossment in proper form. The enacting clauses of the companion university and penitentiary bills were not omitted, and it is not unlikely that all three bills were drafted by the same persons and at the same time.

Some insinuations were made that the draft of the law had been tampered with by the public printer, who was also

\textsuperscript{110} Snowden, \textit{History of Washington}, IV, 163.
\textsuperscript{111} \textit{Washington Standard}, February 16, 1861.
\textsuperscript{112} The enacting clause consists of the set words, "Be it enacted by the Legislative Assembly of the Territory of Washington," and introduces the text of the statute. The formal language is sometimes referred to as the "style of laws." The purpose of the clause is to express the legislative authority and sanction under which the statute is enacted.
editor of the *Pioneer and Democrat*, or by some other Olympia citizens opposing the relocation, after the draft had been sent to his office to be included in the published session laws. Some support for this view is to be found in articles in the *Vancouver Chronicle* cited by the *Pioneer and Democrat* on March 22, 1861. The author, signing himself "A Norther," accused the public printer and the "Olympia clique" of deliberately attempting, in effect, to emasculate the law. He maintained that it was indeed strange that the printer's eye alone should be the first to discover that the act purporting to remove the capital to Vancouver was void.\(^{114}\) Lyman Shaffer, speaker of the House, expressed a similar opinion. The latter's statement provoked from the editor of the *Pioneer and Democrat*, March 22, 1861, a retort that the insinuation was silly.\(^{118}\) Then Johnson wrote the editor:

\(^{113}\) James Lodge printed the session laws of 1860-1861. He had succeeded Edward Furste as owner and editor of the *Pioneer and Democrat* on November 30, 1860. Although George Gallagher was elected public printer by this legislature in joint session January 12, 1861, on the thirty-first ballot, he failed to qualify and submitted his resignation January 16. Lodge was appointed by Acting Governor McGill on January 23 for a term of one year, beginning January 27, when Furste's term expired. The *Pioneer and Democrat* thus kept the public printing, to the chagrin of the enemies of the "Pioneer dynasty." But this triumph of the clique was its last; the election of a Republican President and the opening of the Civil War meant difficulties for the Democrats, especially the wing allied with the late Buchanan administration. The *Pioneer and Democrat* quietly expired May 31, 1861. In the legislature Thomas M. Reed, of Olympia, rather than Lodge had been the runner-up in the vote for public printer won by Gallagher. *House Journal*, 1860-1861, pp. 227-259, 286; *Pioneer and Democrat*, November 30, 1860, January 25, June 8, 1861; *Washington Standard*, February 2, 1861; *Puget Sound Herald*, February 7, 1861.

\(^{114}\) The *Pioneer and Democrat* accused Justice Strong of being the author of the two pseudonymous articles, declared he had lost public esteem by his active lobbying in favor of the capital removal bill the previous winter, and that he was losing esteem further by commenting in the press upon a question which might come up before him as a member of the supreme court. Justice Strong categorically denied the authorship of any articles on the legality of the capital removal act. He had not lobbied for it. He had always been and still was in favor of removing the capital to Vancouver, and he, as a judge, could express an opinion on the removal act as a matter affecting the public interests and not involving private rights. *Pioneer and Democrat*, March 29, 1861. For further criticism of Strong, see *Puget Sound Herald*, May 2, 1861. William Strong (1817-1887) was associate justice of the supreme court from 1858 to 1861, but was replaced by Justice Oliphant before the capital removal act came before the court in December, 1861.

\(^{118}\) In explanation of its refutation of this charge, the *Pioneer and Democrat* outlined the procedure in the recordation of the laws, in an effort to show that tampering with their texts would be impossible. The original acts, it was said, were first recorded literally in a large book before they were given to the printer. This effectually checked the printer from altering them. Next, they were given to the printer, and immediately after a form was struck off it was submitted to the official scrutiny of the territorial secretary, who then returned it approved. Hence, according to the editor of the *Pioneer and Democrat*, it would have been impossible for a single letter to have been altered without immediate detection.
In your issue of the 22nd inst., you say "The original act is [in] the hand-writing of Jasper W. Johnson, Esq., the assistant clerk of the House, and the Hon. Speaker should have known what he signed, instead of making a silly charge against us. The bill is exactly as he signed it."

Now, sir, though willing to answer for my own errors and misconduct, I would prefer not to be saddled with the sins of others. If the Capital Bill is a credit to its author, "honor to whom honor is due" would constrain me to state, that I neither wrote that bill, nor was I advised of its particular contents until after its introduction in the House; nor am I responsible for any of its virtues or defects. I acknowledge myself somewhat surprised that my name should be used to free members of the Legislature from that censure or credit which is justly due them.\(^{116}\)

A few weeks later Hubbs protested to the Pioneer and Democrat that he had been misrepresented in reference to the capital bill. He also wrote to the Vancouver Chronicle with regard to charges that the bill had been tampered with by Johnson. Hubbs was certain that the bill was enrolled by Johnson. James Lodge, editor of the Pioneer and Democrat, explained that the only reason for referring to the matter was "that a mean inuendo connected us indirectly with it."\(^{117}\)

The validity of the capital removal act without an enacting clause was a matter of doubt, which meant that the act was bound to be tested in the courts.\(^{118}\)

The prospect of a court test of the capital removal act,

\(^{116}\) Pioneer and Democrat, March 29, 1861.

\(^{117}\) Ibid., April 19, 1861.

\(^{118}\) H. L. Caples (1823-1910) of Clark County had, of course, voted for Vancouver. In later years, his son, Douglas Caples, penciled a note in the margin of that part of his father's diary dealing with the period: "My father always said there was a great deal of underhand work at this session."

A few weeks before his death, the late Glenn N. Ranck of Vancouver, in an interview with the author, related the story of the controversy as he had heard his father William Ranck (1829-1908) tell it: Vancouver opinion was very bitter, and generally held that the engrossing clerk of the legislature (Jasper W. Johnson), who was opposed to the bill, purposely left out the enacting clause, and members of the legislature agreed that the enacting clause was in the draft of the bill when it was passed. (Ranck was elected from Clark County to the Council in 1861. In anticipation of the legislature's meeting in Vancouver, he and Caples rented the Standard Theater, and for seven days opened sessions of the legislature until adjournment for lack of a quorum.) It was expressed to the author by Mr. George E. Blankenship of Olympia, as the opinion of his grandfather, B. F. Yantis, and local Olympia belief as well, that the bill had been tampered with somewhere along the way. He quoted his grandfather as saying that John Miller Murphy, editor of the Washington Standard, had told Yantis that he knew who had taken the enacting clause out of the law but would not disclose his name. In his Lights and Shades of Pioneer Life on Puget Sound (Olympia, Wash., 1923, pp. 41-42), Blankenship says: "The man that stole that enacting clause has gone to his final accounting. Whether he was condemned or wears a resplendent diadem is a matter of doubt."
the refusal of Acting Governor McGill to permit the removal of the territorial library to Vancouver, and the overwhelming vote for Olympia as the capital site in the referendum of July 8, 1861, resulted in considerable confusion and contention. For the new secretary and acting governor, Leander Jay S. Turney, who entered upon his duties on August 19, it seemed best to proceed cautiously at first, especially since he was a newcomer to the territory.\footnote{119} For the territorial supreme court and the legislature the problem was where they should meet in December—at Olympia or Vancouver?

The territorial librarian, James C. Head, was the first official faced with the problem of moving. He was required by law to remove his office and the library from Olympia to Vancouver, at the expense of the county or citizens of Clark County, between June 2 and August 1.\footnote{120} But McGill refused in June to permit the removal. A Vancouver delegation failed to get a ruling in the district court requiring the librarian to show cause why he should not remove the library. Another delegation waited upon Acting Governor Turney without success, for he replied that he would leave things as he found them in view of the considerations for refusal advanced by McGill and the evidences of “log-rolling” in the passage of the capital removal bill. Thus the books remained in Olympia.\footnote{121}

\footnote{119} William H. Wallace had been appointed governor by Lincoln in the summer of 1861, but upon his election as Delegate to Congress on July 8, he declined to qualify and left the territory for the East in August. Turney had been appointed secretary by Lincoln in July, and became acting governor as well.

\footnote{120} Laws of Washington, 1860-1861, p. 49; House Journal, 1860-1861, p. 415; Council Journal, 314. It was passed by both houses on December 11, 1860.

\footnote{121} McGill's formal reasons for refusal were that the instructions in the act of December 11, 1860, to remove the library to Vancouver specifically, were suspended by the act of January 30, 1861, authorizing the referendum, and thereby leaving the capital location undecided until the vote; and that McGill would not take action toward the removal of the public property until he heard from the Treasury Department, to which he had written for instructions May 1. Washington Standard, June 15, October 5, 1861; North-West, September 12, 1861; Turney to A. J. Lawrence and Louis Sohns, Olympia, September 9, 1861, in Secretary of Washington Territory, Letter Book (1859-1874), pp. 51-55, in Pacific Northwest Collection, University of Washington Library. Turney complicated the situation further by asking the Attorney General if he had the power to remove Librarian Head for being a “rabid” Democrat if not a Southern sympathizer. Turney to Edward Bates, Attorney General, Olympia, September 17, 1861, in Letter Book (1859-1874) 57-60; Titian J. Coffey, Assistant Attorney General, to Turney, Washington, D. C., October 24, 1861, in Letters and Documents relating to the Offices of Governor and Secretary of Washington Territory (1860-1864), in Pacific Northwest Collection, University of Washington Library.
Meanwhile, the voters expressed their opinions on the capital location by voting heavily for Olympia, July 8. Olympia received 1,239 votes out of a total recorded vote of 2,315, while Vancouver got only 639.122

To the request of the Vancouver committee of citizens who called to ask for the removal of the library and offices to Olympia that he disregard the referendum vote, and to Colonel Hubbs's suggestion that a special session be called, Turney had the same reply. The responsibility was not his but the legislature's. He replied to Hubbs: "The Legislature got itself and the people into the Existing trouble, and as far as I am concerned, it may work out its own Salvation."113

A majority of the members-elect of the House favored Olympia when it came time to meet. In the Council, however, there were several holdovers who if they had originally voted for Vancouver would be likely to regard it as the true capital, unless chagrin over nonfulfillment of certain pledges made to them of a Congressional nomination that spring "would justly overrule such obstinacy—and, it may be, thus defeat the object of their election by securing a quorum of the Council at Vancouver." The Port Townsend North-West observed further that it seemed certain that Colonel Hubbs, president of the Council in the session of 1860-1861, would have the quorum at either city he might decide, since the other councilmen were divided four to four.124

Several members-elect of the legislature from Puget Sound, particularly from Pierce County, early announced an intention to go to Vancouver and to act there with the Colum-

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122 The vote as officially proclaimed by Acting Governor McGill August 2, 1861, was: Olympia, 1,239, Vancouver, 639, Steilacoom, 253, Port Townsend, 72, Walla Walla, 67, Seattle, 22, Madison, 7, Rockland, 6, Cherbourg, 3, Port Madison, 2, Port Ludlow, 2, Coveland, 1, Jefferson, 1, and Forks of the Touchet, 1. Washington Standard, August 3, 17, 1861; North-West, August 22, 1861; Washington Reports, I, 122 n. There are minor discrepancies in the published votes, and the "total" vote of 2,315 is much less than the combined vote the same day for the three candidates for Congressional Delegate of 3,608. No votes on the capital are shown for King, Wahkiakum, Whatcom, Missoula, and Spokane counties, which polled a total 473 votes for Delegate. For the official returns in the vote for Delegate, see Puget Sound Herald, August 15, 1861.

123 Turney to Hubbs, Olympia, October 22, 1861, in Secretary of Washington Territory, Letter Book (1859-1874), pp. 72-73.

124 North-West, November 30, 1861.
bia River members. The editor of the *Puget Sound Herald* rebuked them in the issue of November 14, 1861:

> If there are any really so disposed,\(^{125}\) we sincerely trust they will reconsider such resolution. What a small minority can hope to accomplish in a bare quorum of numbers, three-fourths or more of whom are bitterly hostile to the best interests of this section, we cannot conceive. For merely a number sufficient to constitute a quorum to convene in Vancouver, and thus give the Columbia River delegations complete control of the body so assembled, would be simply adding folly to folly...

We are aware that several of our members feel themselves compromised to some extent, and under obligations, in order to be consistent and true to those who co-operated with them last winter, to follow up their action then with the evidence of their sincerity now. To such we say, however truthfully you might have pleaded ignorance of the sentiments and wishes of your constituents then, no such plea can be offered or received now; for you know that the question in the meantime has been freely discussed, and that nineteen in every twenty of those whom you represent disapprove of the removal of the Capital to Vancouver. Let this, then, be your justification, if any seek to reproach you for reversing your late action.

As to the hostility existing on the Sound to Olympia, *that* will never justify any delegations from this section in removing the Capital to Columbia River. The interests of the counties on Puget Sound are in a great measure identical, and antagonistic to those of Columbia River. Take from us the Capital, and you deprive us of the most important feature we possess—and for what? To spite Olympia. This is biting your nose off to spite your face, practically illustrated. Consummate your plans by permanently locating the Capital on Columbia River, and we question whether Olympia would be much more spited than other towns on the Sound. If the Capital must be removed, remove it to some other town on Puget Sound; if you cannot do that, let it remain where it is. Better let Olympia enjoy her possession of the Capital than bootlessly deprive her of it.

When the time came for the legislature to convene on December 2, 1861, “at the seat of government,” neither house had a quorum at Vancouver. The House achieved a quorum at Olympia on December 9, the Council had not. While awaiting the decision of the supreme court, which was given December 9, legislative groups of each house continued to meet and adjourn from day to day.

The Organic Act required the supreme court to sit at “the seat of government.” Where was the seat of government in

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\(^{125}\) Councilman Frank Clark and Representative John M. Chapman of Pierce County actually went to Vancouver. Both had voted in the previous legislative assembly for the relocation of the capital.
the autumn of 1861? Was it at Olympia or at Vancouver? Where would the supreme court convene? If it assembled in Olympia, and later decided that Vancouver was the legal seat of government, what effect would this have upon its decisions rendered while sitting in Olympia? The supreme court chose to open its term in Olympia, ignoring for the moment the act relocating the seat of government in Vancouver. When the first case was called, a challenge to the jurisdiction was immediately interposed, and since upon its resolution must rest the validity of the court’s jurisdiction in all cases then pending, the supreme court consented, with the agreement of all the parties concerned, to proceed with a hearing upon the validity of the capital relocation act. Its decision in this matter is known as the Seat of Government Case.

The argument upon the validity of the law consumed three full days, and the most prominent and brilliant lawyers of the territory participated. It is still regarded as one of the outstanding legal battles in Washington history. The argument for the validity of the law was presented by Selucius Garfield,126 Andrew J. Lawrence,127 former Justice F. A. Chenoweth,128 and Colonel Paul K. Hubbs, Sr.;129 Elwood Evans,130 and former Chief Justice Edward Lander131 contended for its repudiation. The supreme court then consisted of Christopher

126 Selucius Garfield (1822-1881), a brilliant orator, lately receiver of public moneys in the land office at Olympia, had defeated Stevens for the Democratic nomination for Delegate in 1861, but had lost the election to Colonel William H. Wallace, the Republican candidate.
127 Andrew Jackson Lawrence (1819-1900), of Vancouver.
128 Francis A. Chenoweth (1819-1899), of Island County, associate justice 1854-1858, appointed by President Pierce. Chenoweth was an opponent of Stevens after their clash in 1856, when Stevens had declared martial law and arrested Justice Lander and his clerk, Elwood Evans. Chenoweth had not been reappointed, probably because of Stevens’ influence. The Pioneer and Democrat accused him of consorting with the Republicans. In the legislature of 1859-1860, Chenoweth as representative of Island County voted for the removal of the capital from Olympia. As a constituent, however, he was alleged by Urban E. Hicks to have instructed Councilman C. C. Phillips of his district to vote against removal. When Chenoweth promptly denied having given such advice, Hicks retorted with affidavits from Phillips and a witness. Hicks alleged that Chenoweth had said he voted for removal solely for revenge, which he declared to be sweet. Pioneer and Democrat, January 27, February 3, March 16, 1860.
129 Paul K. Hubbs, Sr. (1800-1874), of Port Townsend.
130 Elwood Evans (1828-1898), of Olympia.
131 Edward Lander (1811-1907), of Olympia, chief justice 1853-1858, appointed by President Pierce.
C. Hewitt, chief justice, and Ethelbert P. Oliphant and James E. Wyche, associate justices. Public interest in the proceedings was very great.

Justice Oliphant, in delivering the opinion of the court December 9, 1861, referred to the question as both grave and important, “laden and freighted with high national, territorial and individual interests,” and argued by both sides with marked ability. The majority opinion, concurred in by the chief justice, held that the legislature had exceeded its powers in declaring that the seat of government should be and remain at Vancouver; that the relocation act had been made contingent upon the decision of the people, as expressed by their vote in the next general election; and that an act without an enacting clause and without a date was void. Justice Wyche, in an able dissenting opinion, which is not without strength and conviction, held that an enacting clause was not essential, especially where the act was published by authority, and where such a clause was not specifically required by the rules of the legislative body or by the organic law of the territory. It was Justice Wyche’s opinion that the court had no right to sit in Olympia, and that it should adjourn immediately to Vancouver.

The decision had declared void the act relocating the territorial capital at Vancouver, but could not of itself fix the seat of government permanently at Olympia. There it would remain only so long as the people desired. The court’s decision, although intensely disappointing, in no wise deprived the residents of Vancouver of the hope of a removal in the future. Meanwhile, the legislative assembly was legally required to meet in Olympia. The hold-outs in Vancouver and the members who had remained at home until the supreme court should

182 Christopher C. Hewitt (1809-1891), chief justice 1861-1869, appointed by President Lincoln.
183 Ethelbert Patterson Oliphant (1803-1884), associate justice 1861-1867, appointed by President Lincoln.
184 James E. Wyche (1828-1873), associate justice 1861-1870, appointed by President Lincoln.
186 Ibid., 124-133.
187 The right to relocate the seat of government was a power of the legislative assembly under the Organic Act.
clarify the matter now traveled to Olympia, so that the House was organized December 17, and the Council on December 18, and the business of legislation could now begin. Acting Governor Turney expressed himself to the legislators on the capital and penitentiary questions:

I also regard the acts of last winter, in relation to the Capital and Penitentiary, as very unfortunate. A careful consideration of all the facts inclines me to think wisdom and fairness require the relocation of the Capital, at the place the voters of the Territory may designate at the next general election. A law can be framed which will make such place the legal Capital. I do not make this suggestion to appease our Vancouver friends, for I think their action, since the decision of our Supreme Court, improper and in very bad taste, to say the least— I make it that this vexed question may be honorably and satisfactorily settled—settled to the satisfaction of the people.

A site having been selected and cleared, and the title thereto approved at Vancouver, and it being more central than Port Townsend, a due respect to the public interest and wishes requires the relocation of the Penitentiary at that place, and that too, without legislative trading.

The people of Vancouver had been bitterly disappointed to find that they had lost that which at first had seemed to be their prize. They were determined, nevertheless, to obtain their objective, and continued for several years in futile attempts at the passage of bills relocating the capital at Vancouver. In 1863, 1864, 1865, 1868, and 1871, removal bills to that effect were introduced into the legislature only to fail. In later years, other contenders displaced Vancouver: Ellensburg in 1883, and North Yakima, Waitsburg, and Walla Walla in 1888. Only immediately preceding statehood (1889) did the issue of the removal of the capital become really important.

In the period between 1861 and 1889 a number of unsuccessful schemes were devised to remove the capital from Olympia, but if public opinion was not united in approval of

Olympia, as the seat of territorial government, it was never strongly enough in favor of another town to effect a change. Legislators found from the experience of 1860-1861 that they must follow more closely the wishes of their constituents, especially in regard to a policy as delicate as relocating the seat of government. Most of the relocation proposals of this period were introduced by legislators in order to satisfy some local enthusiasm, and few commanded sufficient strength to pass even one chamber of the legislature. The capital controversy remained relatively dormant until revived by the hope of statehood.

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