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HARLAEM RIVER;

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ITS USE PREVIOUS TO AND SINCE

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THE REVOLUTIONARY WAR,

AND SUGGESTIONS RELATIVE TO

Present Contemplated Improvement.



NEW YORK :

PRINTED BY J. D. TORREY, 13 SPRUCE STREET,

1857.



4.5.16 Feb.

HARLAEM RIVER.

An *Historical Compilation* from *authenticated documents* relative to this River, showing the extreme difficulties and expenses that individuals have been put to, to prevent it from being *artificially and illegally destroyed*, which has been partially accomplished up to the present date, when its actual use is beginning now to illustrate its true value ; and hereafter we hope it will have plenty of supporters, not only to prevent further depredations, but to remove the *outrages* that still in a small degree exist ; and such steps may be taken to carry out the artificial improvements which have been suggested and set forth from time to time by long-sighted and wise men for the last half century. This work is prepared for the use of those who feel an interest in the subject. The original documents, from which this is compiled (such as are not already *legislative* and *legal records*,) are in the possession of L. G. Morris, of Mount Fordham, Westchester County, who will vouch for their being original papers.

MOUNT FORDHAM, *December*, 1856.

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MEETING

OF THE

CITIZENS OF THE COUNTY OF WESTCHESTER,

IN RELATION TO

CROSSING THE HARLEM RIVER WITH THE CROTON AQUEDUCT, BY INVERTED SYPHONS.

At a numerous meeting of the citizen landholders of the County of Westchester, held at the house of Christopher Walton, on the Manor of Fordham, on Saturday, the third of March, 1838, at three o'clock in the afternoon, pursuant to previous notice, ROBERT MORRIS, senior, was called to the chair, and PETER VALENTINE and AUGUSTUS HEUSTACE were appointed secretaries. The object of the meeting having been explained, it was

Resolved, That Nicholas Berrian, Gouverneur Morris, Peter Briggs, Peter Lawrence, and Samuel Mapes, be a committee to prepare and report to the meeting a proper memorial to be presented to the Legislature of this State, in relation to the contemplated obstruction of the navigation of the Harlem River by the aqueduct from the Croton River to the City of New York. Said committee, after having retired, Gouverneur Morris reported the annexed memorial, which, having been read, upon motion, it was unanimously adopted. And it was

Resolved, That the said memorial be signed by the chairman and secretaries of this meeting, and by each of the citizens of Westchester county present.

It was *Resolved*, That Thomas C. Taylor, Gouverneur Morris, and William H. Morris, be a committee to ascertain the best method of proceeding to remove the obstructions caused to the navigation of the Harlem River by Macomb's Dam, Cole's Bridge, &c., with power to call a meeting of the County of Westchester, at such time and place as they may designate, and report their proceedings.

It was *Resolved*, That a copy of the memorial be circulated, that the citizens of the county of Westchester, who are not present, may have an opportunity to sign the same.

It was *Resolved*, That Lewis G. Morris be appointed by this meeting to go to the City of Albany to present said memorial to the Legislature of this State, and also to further the passage of a law in pursuance of said memorial.

It was *Resolved*, That a copy of the memorial and the proceedings of this meeting be sent to the Water Commissioners of the City of New York.

It was *Resolved*, That Andrew Fendley and Christopher Walton be a committee to attend to the publishing of the memorial and proceedings of this meeting, in as many of the papers published in the County of Westchester and City of New York as they may think necessary.

It was *Resolved*, That the proceedings of this meeting be signed by the chairman and secretaries thereof.

Upon motion, the meeting adjourned.

ROBERT MORRIS, Sen., *Chairman.*

AUGUSTUS HEUSTACE, }
PETER VALENTINE, } *Secretaries.*

REMONSTRANCE.

To the Legislature of the State of New York:

Your memorialists, inhabitants of the county of Westchester, owners and occupants of farms therein, and many of us the owners and occupants of farms descended to us from our ancestors long previous to the revolutionary war, respectfully represent :

That we have lately learned that the Water Commissioners, appointed under the act for supplying the City of New York with pure and wholesome water, have determined to carry the water across Harlem River by inverted syphons over a low bridge built over an embankment of stone from the Westchester side, filling up the natural channel of the river, with only one archway on the New York side, of 80 feet in width and 50 feet in height, when the water is now only about four feet deep at low water, instead of by the previously approved method of an aqueduct bridge 128 feet above the tide, with arches of eighty feet span, dispersed across the entire width of the river.

The reason assigned for this alteration of the original plan is, that the aqueduct bridge will cost the City of New York \$935,745; the inverted syphon, \$426,027, making \$509,718, the difference in the cost to the City of New York.

Against this alteration from the original plan, your memorialists remonstrate, because the low bridge would be injurious to the property of your memorialists in this, that it would permanently destroy the navigation of the Harlem River. The

Harlem River is an arm of the sea ; in it the tide ebbs and flows ; it is an estuary of the East River ; its width varies from 150 to 400 yards—and its depth, up to Kingsbridge, varies from 8 to 2 fathoms ; it runs into the Spuytendevil Creek, and by that is connected with the Hudson River. By it the Hudson and East Rivers are connected, and the Island of New York formed. The distance from the East River by the line of the Harlem River and Spuytendevil Creek, is six miles. The Harlem River (before the artificial obstructions of Macomb's dam and Cole's bridge) was navigated by schooners, sloops, and other vessels, to a dock near Kingsbridge, called Berrian's landing, and many of your memorialists, and the ancestors of others of your memorialists, used the Harlem River to convey their produce to market.

Your memorialists further show unto your honorable body, that various surveys have been made of the Harlem River and Spuytendevil Creek at the instance of the Corporation of the City of New York, with the view of opening through them a navigation for large vessels from the North to the East Rivers. These surveys have been made by eminent engineers, who have reported such navigation could be effected at a cost of not over \$100,000.

Your memorialists further show unto your honorable body, that by the laws authorizing the construction of the Cole's bridge and Macomb's dam, each said bridge is obliged to have a good and sufficient draw to admit the passage of boats and vessels ; and to keep and provide suitable persons to attend the same, so that no unnecessary delay may be occasioned to those desirous to pass through. It is true that neither of these bridges have been constructed and kept in a manner as not to interrupt the navigation of the Harlem River ; but it is equally true, in the estimation of your memorialists, that any of your memorialists may compel said bridges so to be altered as not to interrupt said navigation ; and that, in conformity with the said opinion, the inhabitants of the town of Westchester, at their last annual meeting, appropriated \$300 for rebuilding the dock at old Berrian landing-place—intending to compel said bridges to repair and build their draws, so as to restore the ancient navigation of the Harlem River.

Your memorialists therefore respectfully contend, that the Water Commissioners cannot legally make any erection across said Harlem River, which will interfere with your memorialists' vested right to navigate the said Harlem River, or which will tend to prevent feasible and important improvements of said navigation.

Your memorialists further represent to your honorable body, that by none of the acts of your honorable body, in relation

to supplying the City of New York with pure and wholesome water, is there any express authority given to cross the Harlem River with an aqueduct ; still your memorialists are free to admit that the authority to bring the waters of the Croton river to the City of New York implies, of necessity, the right to erect over the Harlem River works sufficient to carry the water across it.

This *implied* right, however, does not extend further than to authorize them to do it with the least possible injury to the rights of others. As the manner of crossing the river is not designated in the act, they will not be permitted to look only to what it will cost them, but they must be governed by what will be least injurious to your memorialists. By the present proposed manner of crossing the Harlem River, vessels with masts over 50 feet under no circumstances can pass under the aqueduct ; and, the channel being filled, vessels of but small draft of water can pass under it. The whole force of the river being concentrated in a channel of 80 feet at every stage of the tide except slack water, the force of the tide through the space will be such as to prevent navigation, rendering it dangerous. Your honorable body will perceive—if the Harlem River is restored to its original navigable situation, to which your memorialists intend restoring it—how valuable the adjoining shores must become to their owners for mechanical and manufacturing purposes, and for docks from which to transmit produce to market.

Should the contemplated improvement of connecting the navigation of the Hudson with that of the East River be effected, both shores of the Harlem must become a city, occupied by mechanics of different denominations ; by lumber yards, ship yards, storehouses, and every description of occupation which will resort to a safe harbor, with a safe and immediate water communication with the City of New York.

Your memorialists further show unto your honorable body, that during the time the surveys were made through the lands of your memorialists for the course of the aqueduct, and also during the investigation by the commissioners appointed to estimate the damage to many of your memorialists, by the course and construction of said aqueduct, your memorialists were led to believe, and did believe, said aqueduct was to cross the Harlem River over a high bridge with many arches, so as not in the least to interfere with the navigation of said river.

Your memorialists further show to your honorable body, that said commissioners, in estimating the damage to your memorialists, and your memorialists in accepting the damage

awarded to them, did not take into consideration damage resulting from any obstruction to the navigation of the Harlem River.

Your memorialists insist that it would be inequitable in the extreme, for the purpose of saving to the taxable inhabitants of the City of New York the payment of \$509,718 to be divided among them—that some of your memorialists should be compelled to lose the large amounts of difference of value of their lands and farms, being bounded upon a navigable stream, or being placed upon water, interrupted as would be the Harlem River with the contemplated bridge and syphons. To many of your memorialists the damage would be to the amount of thousands; whereas to none of the inhabitants of the City of New York could the high bridge add in cost over a few dollars, and that, too, where all the benefit of the work is for the citizens of New York, and no benefit to any of your memorialists.

Your memorialists therefore ask your honorable body to amend the laws in relation to supplying the City of New York with pure and wholesome water, so as to compel the commissioners to adopt some plan to cross the Harlem River with their aqueduct, which will not interfere with the navigation of said river.

Robert Morris, sen.
 Peter Valentine,
 William H. Morris,
 John Cromwell,
 Lewis Morris (by attorney),
 Peter Lawrence,
 Dennis Valentine,
 Andrew Findlay,
 William Bathgate, jr.,
 John Bussing, jr.,
 L. G. Morris,
 Abraham Valentine,
 William Johnson, jr.,
 Gouverneur Morris,
 Christopher Walton,
 James Johnston,
 John D. Poold,
 Jacob Archer, and one hundred others.

Augustus Heustace,
 Benjamin McVickar,
 Edward B. Briggs,
 Heman Le Roy Newbold,
 Henry M. Morris,
 Frederick Briggs,
 Nicholas Berien,
 Samuel Mapes,
 George F. Briggs,
 Henry Coggswell,
 Samuel Wake,
 T. W. Ludlow (by his attorney),
 Peter Briggs,
 John Johnston,
 Benjamin Valentine,
 James Williams,
 Henry B. E. Wood,

INSTRUCTIONS
TO
MR. LEWIS G. MOORIS,
FROM
ROBERT MORRIS, AND OTHERS.

NEW YORK, *September 8th*, 1838.

MR. LEWIS G. MORRIS :

Sir,—We, the undersigned, hereby authorize you to proceed to the removal of a nuisance in Harlem River, occasioned by the sinking of Macomb's dam. Our opinion is, that it will only be necessary to take out one pier; we, however, leave this matter entirely to your discretion. We recommend the employment of a strong force of men and scows, that the work may be promptly effected, and to the end of obviating opposition. The expenses are, of course, to be sustained by the undersigned parties.

We are, respectfully,

Your obedient servants,

ROBERT MORRIS,
CHARLES HENRY HALL,
LEWIS MORRIS.

P. procuration.

Samuel Ward,
Francis C. Grey,
Wm. Beach Lawrence,
J. G. Pierson,
Thomas W. Ludlow.

} L. G. MORRIS.

GOUVERNEUR MORRIS.
J. and M. DYCKMAN.

QUESTIONS

PROPOSED BY

LEWIS G. MORRIS TO COUNSEL,

*In relation to the Manner of Procedure, to Abate the Nuisance
of Macomb's Dam.*



1. Should the vessel I employ to pass through Macomb's dam belong to a State other than the State of New York ?

2. Should she be a vessel of the size of vessels navigating the Harlem River previously to the erection of the Macomb's dam ?

3. Should the persons to assist in removing the obstruction come from on board the vessels to be used, or may they come from the adjoining shores ?

4. May I throw the timbers and plank of the obstruction into the river ? or must I preserve them on the adjoining shore ?

5. May the vessel be loaded with manure, instead of coals ?

6. As it will be necessary to employ men and scows for a number of days after the bridge is torn down, to take away stone, which will obstruct the passage of boats at low water, what must I do, in case the men, or any of them, should be arrested as trespassers, which would impede the work ?

LEGAL OPINION
IN RELATION TO
MACOMB'S DAM, AND THE BRIDGE ON IT.

Upon examining the act authorizing Robert Macomb to make this dam, it requires that there should be a means of passing for vessels, such as usually have navigated Harlem River. Vessels with standing masts have been used so to navigate, and they, too, of considerable burden. The dam, therefore, does not conform to the license given by the act; and as the Harlem River is a tide-water, and therefore a highway, the illegal erection in it is a common nuisance, and as such may be abated by any citizens needing or wishing to use the passage. This, independently of any questions growing out of the exclusive right of Congress to regulate commerce, under the Constitution of the United States.

We are therefore of opinion that Macomb's dam is a common nuisance, and may be removed from obstructing the navigation by the gentlemen of the neighborhood and their assistants.

In answer to the several questions proposed by Mr. Morris, we would reply :

1. That it is not essential that the vessel opening the navigation should belong to another State; but it is desirable, with the view of being able to raise the constitutional question, as well as to try the common law right.

2. That it is desirable that the vessel should be of the size previously navigating the Harlem River.

3. That the persons assisting in the removal of the obstructions should come from on board the vessels used, and seeking a passage.

4. While it would be, for some reasons, desirable to leave the timber there, yet it is not essential; and the reasons for a removal of it are of more weight, and it should be removed.

5. That, for the reason stated in the first answer, some coals from New Jersey or Pennsylvania might well form part of the cargo; but this is not essential.

6. In case any of the men are arrested, they should be forthwith bailed; but I know of no right to arrest them, unless a riot should arise in which they should take part.

DANIEL LORD, Jr.
J. PRESCOTT HALL,
ROBERT H. MORRIS,
ABEL T. ANDERSON.

September 10, 1838.

INDEMNITY TO MR. MORRIS.

SEPTEMBER 10, 1838.

MR. LEWIS G. MORRIS :

Sir,—Being interested in the removal of the obstruction to the navigation of the Harlem River by Macomb's dam, we request you to take measures to open that navigation, by removing one or two of the bents of the bridge, and one or more of the piers, to their foundation, if you find necessary, for opening the navigation. We recommend the employment of such a number of persons as to accomplish the removal and opening with despatch, and without opposition.

We shall, of course, expect to bear with you any expenses, and to indemnify you—uniting with you in your measures, which we leave to your good discretion.

GOUVERNEUR MORRIS,
WILLIAM H. MORRIS,
W. B. LAWRENCE, for self ;
SAM'L WARD & J. GREEN PEARSON.

INDEMNITY TO SQUIRE MARSHALL,

FROM C. H. HALL AND L. G. MORRIS.

We, the undersigned, agree to indemnify Squire Marshall for any damage that may arise to his schooner *Superior*, in passing through the Draw of the Bridge called Coles'.

HARLEM, August 31st, 1838.

CHAS. HENRY HALL,
L. G. MORRIS.

A DEMAND

TO GET THROUGH MACOMB'S DAM AND COLES' BRIDGE,

BY SCHOONER SUPERIOR—CAPTAIN MARSHALL.

1838.

HARLEM RIVER, *on Board Schooner* }
Superior, August 30th, 1838. }

Captain Squire Marshall attempted to pass through the draw of Coles' bridge at half-past 10 o'clock P. M., and got fast in the draw at 20 minutes before 12 o'clock P. M., at or nearly low water; depth of water under the draw 4 feet, depth at the stern of schooner, 12 feet; persons on board, Gouv'r Morris, Lewis G. Morris, Washington Majory, James Gear, and Henry Weed; persons detained with their teams on the bridge, in consequence of the sloop's stoppage, John Butler, West Farms, James Archer, Milesquare, Edward B. Briggs, Eaton Edwards, E. C., John Harris Curtis, New Rochelle, Walter Turnbull, E. C., Benj'n Archer, Isaac Gott, J. A. Flemming, C. E. Flemming, 94 Grand Street, N. Y., 2 Sisters.

The schooner could not get through the draw until 20 minutes before 5 A. M. on the 31st of August, 1838.

Schooner Superior, Capt. Marshall, applied to Mr. Feeks to pass above Macomb's dam with a load of brick for the Croton aqueduct, and the answer which Mr. Feeks gave him was that he could not let him through, and that they all knew he could not. In the presence of Gouv'r Morris, Lewis G. Morris, Washington Majory, James Gear, Henry Weed, Thomas H. Smith, at half-past 6 o'clock on the morning of the 31st of August, 1838.

City and County of New York, ss.

Lewis G. Morris, of Fordham, being duly sworn, says, the preceding memorandum contains a true statement of facts, and said memorandum was made by him in his own hand writing, at the dates therein mentioned.

L. G. MORRIS.

Sworn this 13th day of January, }
1857, before me, }

WALTER EDWARDS, *Notary Public.*

On information being taken to the Coles' Bridge Co., they immediately sent a very strong force of mechanics to remove the obstructions under the bridge and put a new draw of modern structure.

A DEMAND

ON MACOMB'S DAM.

SEPTEMBER 8TH, 1838.

I, this 8th day of September, 1838, at a quarter past 9 ~~A~~ M., offered my sail boat at Macomb's Dam, with Robert Morris, Lewis Morris, Daniel Lord, Jr., Prescott Hall, Charles H. Hall, Jr., and myself, and demanded of Mr. Feeks assistance in putting us through the dam, which he declined.

L. G. MORRIS.

STATE OF NEW YORK.

No. 190.

IN ASSEMBLY,

FEBRUARY 11, 1839.

REPORT

*Of the Select Committee on several Petitions relative to the
Navigation of the Harlem River.*

Mr. Bruen, from the select committee, to whom was referred the memorial of Richard Riker, president of the Harlem River Canal Company; also a petition from the supervisors and board of trustees and other inhabitants of the county of Westchester, which relate to the navigation of the Harlem river; and also a petition from a great number of the citizens of New York city on the same subject,

REPORTS:

That your committee are informed and believe that the Harlem river is an arm or inlet of the sea, connecting Long Island sound with the Hudson river. And that before artificial obstructions were interposed, the tide ebbed and flowed through this channel, and afforded free ingress and egress to vessels of every description. The committee have appended to this report several affidavits which have been presented to them to establish these facts.

On the 26th day of February, 1833, an act was passed by the Legislature entitled, "An act for the appointment of commissioners in relation to supplying the city of New York with

pure and wholesome water," which authorized the said commissioners to construct an aqueduct across the Harlem river, to carry the waters of the Croton river to the city of New York; and the said commissioners were required therein to report annually to the common council of the said city. In accordance to said requirement, a report was made on the 12th day of November, 1833, in which the said commissioners refer to and approve of a report of their chief engineer, David B. Douglass. The said chief engineer describes the mode by which the said water is to be carried across the Harlem river, in the following words: "The river is to be crossed by an aqueduct bridge of 18 chains, or 1,188 feet in length, and consisting of nine plain semicircular arches; the height, to the water line of the aqueduct, will be 126 feet." This plan will not, as the memorialists say, and the committee believe, materially interfere with the navigation of the said river. Subsequent to the report referred to (and with which was submitted a plan and profile of the proposed work), the said water commissioners, as is represented in said memorial, which is hereto annexed, have determined to make material alterations in said plan of the aqueduct, and design making a stone wall or dam across the channel of the said river, at a point where it is 300 feet wide, and more than 20 feet deep. By this proceeding, a space or span of one or more arches, will leave only one hundred and twenty feet of said river free from obstruction, and this on the margin of the stream where there is but two feet water at low tide. Thus the vast volume of water that ebbs and flows through this wide and deep channel, will be confined to so small a space as to render the river almost, if not entirely, useless for the purposes of navigation.

The common council of the city of New York have no power to control the action of the water commissioners, and therefore the memorialists have applied to this Legislature for protection and relief.

The committee, having satisfied themselves of the propriety and justice of the remedy sought by the petitioners, have prepared a bill, which they ask leave to submit, and which is intended to confine the action of the said water commissioners to the evident intent and meaning of the law under which they hold their appointment.

DOCUMENTS.

I, Andrew Corsa, of the town of Westchester, aged seventy-six years and upwards, say, that during my lifetime, I have lived in said town, and that before the construction of Harlem and Macomb's bridges, I had lumber brought by vessels up Harlem river for all the purposes of building several buildings, which materials were landed at Berrian's landing place. And I further state, that all the produce was conveyed to the market of New York by Harlem river, and that it was a common thoroughfare for the transportation of produce from the Manor of Fordham to New York; that I heard of no difficulty as to depth of water for schooners, sloops, and petti-angers, which were used in those days.

ANDREW CORSA.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Garrett Garrison, of the town of Yonkers, in the county of Westchester, saith: I am the age of seventy-five years at June next; that I have been acquainted with Harlem river about fifty years, and have seen pettiangers navigating said river as far up as the New King's or Farmer's bridge, and that I have been a passenger on board the above-described vessels repeatedly. And I further state, that I think and believe that there is water enough for vessels of sixty tons as far up as said bridge.

his

GARRETT X GARRISON.

mark.

Signed in presence of Peter Valentine.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Charles Hadley, of the town of Westchester, am about seventy-five years of age, and have been acquainted with Harlem river my lifetime; and that before the construction of Macomb's dam I knew the said river to be navigated by sloops,

schooners, and pettiaugers, up to the bridge opposite the Jacob Vermilylea farm, near King's bridge.

CHARLES HADLEY.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Dennis Valentine, of the town of Westchester, am seventy-two years of age; have lived in said town on the farm which I now own, adjoining Harlem river, since I was seven years old; and that I saw in the revolutionary war lumber and materials for building barracks for the continental army, which barracks were situate on the farm I now own, and several farms adjacent bordering on the said Harlem river, and that such lumber was brought by Albany sloops, and that after the British had taken possession of this part of the country; and that they were supplied with provisions brought by vessels of the former description; and that quantities of stone have been freighted from quarries adjoining said river; and has commonly known vessels to navigate the Harlem river for the purpose of carrying produce since the revolutionary war, and previous to the construction of Macomb's dam, as far up as Berrian's landing and above.

DENNIS VALENTINE.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Townsend Poole, of the town and county of Westchester, aged sixty-nine years and upwards, have lived on a farm adjoining Harlem river, of which I now own part thereof; that I have in that time seen said river navigated by sloops and pettiaugers, freighting lumber, stone, &c.; and that lumber, rails, and posts, were brought by vessels of the above description to my father's farm.

TOWNSEND POOLE.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, John Devoe, of the town and county of Westchester, aged sixty years and upwards, have lived from childhood on the banks and adjoining Harlem river, and have seen vessels freighting lumber, stone, &c., up and down said river; have employed a pettiauger in bringing lumber for my building; and lumber was brought from New York for my brother's

purpose in the same manner before the construction of Macomb's dam.

JOHN DEVOE.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Nicholas Berrien, of the town of Westchester, aged seventy years and upwards, have been a resident and owner of a farm bordering on Harlem river, until the year 1835; have seen Harlem river navigated by pettiaugers and sloops from the time of the revolutionary war until near about the time of the construction of Macomb's dam; that I have sailed a sloop from Berrien's landing, and that I have seen sloops and pettiaugers freighted with various kinds of produce and building materials, navigating said river; and that I never knew of any difficulty arising from want of depth of water.

NICHOLAS BERRIEN.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

I, Frederick Corsa, of the town of Westchester, aged seventy-five years and upwards, have lived in Westchester my lifetime, and during any knowledge have known Harlem river, and known it to be navigated by sloops and pettiaugers, freighted with lumber, stones, produce, &c., previous to the erection of Macomb's dam.

his
FREDERIC ✕ CORSA
mark.

Witnessed by Peter Valentine.

Sworn and subscribed to, this 6th day }
of March, 1838, before me. }

PETER VALENTINE, *Commissioner of Deeds.*

City and County of New York, ss.

George C. Schæffer, of said city, civil engineer, being duly affirmed, doth depose and say, that in the year 1836, he, the deponent, was employed by the corporation of the city of New York, in his capacity of civil engineer, to make an examination and survey of Harlem river; that the deponent did accordingly make such examination and survey; made his report thereof, with full and accurate maps of the same, which report, survey, and maps, are now in the street commissioner's office, in the city of New York.

The deponent further saith, that he is well acquainted with

the bed and channel of said river in all its parts, having thus examined the same ; that said river is a navigable river, in which the tide ebbs and flows throughout its whole extent, from its commencement at the East river and Sound, to its junction with Spuytendevil creek, which last creek is in fact a continuation of the same, flowing into the Hudson river at about twelve miles distant from the city hall of the city of New York, which said last mentioned creek is also a navigable stream ; that said Harlem river is from 600 to about 400 feet wide from shore to shore, and from its commencement on the East river to its junction with Spuytendevil creek, about six miles in length ; that said river is much impaired by large deposits of mud formed therein, and by sundry artificial obstructions, all of which might be modified and removed ; but that notwithstanding such deposite, there is a good and sufficient channel-way in said river, running through its extent, of the width of from 400 feet at Harlem bridge, to 150 feet at the upper end, and only decreasing to 100 feet at or near the junction with Spuytendevil creek, and of a depth about 30 feet at Harlem bridge, to 13 feet, except near said Kingsbridge, where it is about 6 or 7 feet at low tide ; and that vessels of about one hundred tons can at all times navigate said river with ease and safety.

The deponent further saith, that the tide ordinarily rises between 5 and 6 feet in said river, and when high winds prevail from the east, the influx is much increased, and, with greater velocity, causing the water to rise much higher, so that in some cases, while deponent was making his said survey of said river, places ordinarily dry at high tides were rapidly covered with water to the depth of 2 feet, or thereabouts.

The deponent further saith, that he is well acquainted with the place where it is proposed to carry the Croton aqueduct across said Harlem river, and hath also examined the printed plan, with the maps of the bridge to support iron pipes, proposed to be built on said river, and for which, as the deponent is informed, the water commissioners have made a contract ; and this deponent doth verily believe, from his knowledge of said river, and from his examination of said plan, that the building of such bridge to support iron pipes in the manner proposed, will destroy said river for all the general navigable purposes for which it can be used, inasmuch as,

1st. The whole tide current must necessarily be forced through an opening of 120 feet, which space, in the opinion of the deponent, is utterly insufficient for the purpose, and must cause through such opening, so violent a current, that the said bridge would be impassable, either against the current or with

the current, at all times except within a few minutes after slack water.

2d. That such opening being proposed to be over the flat or deposite, on the New York side of the river, a new channel-way must be formed, (the natural channel being dammed up and filled in by the embankment of said bridge,) by the removal of said deposit, which, as deponent is informed and believes, is proposed to be done by loosening the same, and allowing it to flow off and settle in other parts of said river ; and the deponent doth verily belive, that by such process, such deposite will form a bar on either side such opening, and in other parts of said river form and create shoals where there is now deep water.

3d. That inasmuch as it is proposed to allow an arch of only 65 feet in height at the centre, vessels having masts and spars of about 50 feet in height and under, only, can by the most dexterous management, pass under the same with safety, even at slack water ; and that thus the navigation of said river would be at said point and above, entirely destroyed, except for small boats, and that even with them, there would be constant sources of danger, and that vessels which can and would use the same in its natural state, would be debarred therefrom.

The deponent further saith, that if the embankment on which said low bridge is proposed to be raised, be built and thrown across said river, it cannot, under any circumstances, be entirely removed, and can be partially removed so as to restore the navigation only at a very great expense.

GEORGE C. SCHAEFFER.

Affirmed to, this 19th day of }
January, 1839, before me, }

J. H. M'COUN, *Commissioner of Deeds.*

City and County of New York, ss.

John C. Morgan, of Jersey City, State of New Jersey, being duly sworn, doth depose and say, that on the 9th of September last, he, the deponent, was on board of the pettiAuger *Non-paniel*, of about thirty tons burthen, on a voyage from Jersey City, in the said State of New Jersey, to Morris', near Berrien's landing, in Harlem river, in the county of Westchester, and State of New York ; that said vessel had on board as cargo, a quantity of coal and other articles, to be delivered, and which was actually delivered at said landing—that said vessel was, as deponent believes, regularly navigated under the laws of the United States. Deponent further saith, that he had the principal charge of said vessel on said voyage, the master thereof not then being on board said vessel ; that said vessel passed

through Macomb's dam, on the said Harlem river, on the night of the 14th of September, delivered her cargo according to the bill of lading thereof, and returned on the 16th of said month. Deponent further saith, that he has been since, at different times, on Harlem river aforesaid, and is well acquainted with its character and general fitness for the purposes of navigation; that said river is a navigable river, in which the tide ebbs and flows about five feet in perpendicular height; that said river is at least 650 feet wide upon the average, having a good channel-way of about 20 feet deep, from its junction with the East river to Berrien's landing, at least, easily navigated, and of about 300 feet in width; and that the deponent has seen different vessels upon the said river, in the ordinary course of trade, of such size and dimensions as would, by the laws of the United States, require a regular license.

Deponent further saith, that he is well acquainted with the place where it is proposed to carry the Croton aqueduct across said river, and hath also seen the spot proposed to be allowed as an opening for the passage of vessels through the same; that such place is south of Berrien's landing, and between such landing and the city of New York, and is upon a mud flat, having in it not more than two feet of water at low tide, the channel being proposed to be filled in with stone; that in the opinion of this deponent, formed from his knowledge of the river, such aqueduct, by restricting the water, must create such a rush of water through such opening, that no vessel can ever pass the same, except at slack water, and that by the removal of the deposite now in such place and its vicinity, shoals and bars will be created in said river, and in the channel thereof, and more especially in the upper part thereof towards Berrien's landing, in such manner as greatly to injure if not destroy the same for the purpose of navigation.

The deponent further saith, that he measured the mast of a vessel of fifteen tons, lying in Harlem river, and that such mast, with its top-mast, was 78 feet in height, from the bottom of the vessel—that ordinarily a vessel of thirty tons has a mast between 70 and 80 feet high, and North river sloops of about 100 tons, masts of over 100 feet high.

JOHN C. MORGAN.

Sworn this 31st day of December, }
1838, before me, }

F. S. KINNEY, *Sup. Court Com.*

Calvin Stoddart and William Williams, at present of Norwich, State of Connecticut, being duly sworn, doth depose and say, that in October and November last, they were engaged

in the sailing and management of the steam-boat Thames, to wit, the said Stoddart as master thereof, and the said Williams as engineer thereof; that said vessel was employed under charge of the deponents, in October and November last, in navigating Harlem river, and in that time made sundry trips from the railroad bridge, at the village of Harlem, to Fordham bridge, near King's bridge, thus passing through Macomb's dam. And deponents further say, that they are well acquainted with said river, and the channel thereof, in all their parts; that the same is a good navigable river in all its parts, easy of navigation, and having sufficient depth of water at all times, and tides for vessels of 100 tons, except near King's bridge.

Deponents further say, that they are well acquainted with the place in said river where it is proposed to carry the Croton aqueduct across the same; that they are informed and believe that it is proposed to allow an opening through said aqueduct of one hundred and twenty feet in width, and of sixty feet in height, for the passage of boats and vessels through the same, which opening is to be not over the channel-way but over the shoals or flats on the New York side of the river.

The deponents say, that from their knowledge of the river, and also from their experience in the actual navigation thereof in and on board of said steam-boat Thames, they do verily believe that no boat or vessel of any kind, whether steam-boat or other vessel, will ever be able to pass through such opening except only at slack water, inasmuch as from the restriction of the tide flowing into said river, the current running through such opening will be so rapid and voluminous as in fact to make an impassable cataract through such opening. The deponents further say, that they are the better satisfied with this opinion, inasmuch as they were unable to force said steam-boat through Macomb's dam, except only at high tide, and that at all other times such dam was impassable from the rapidity of the current. Deponents further say, that they are informed and believe, that the openings at Macomb's dam are in all about two hundred and twenty feet.

These deponents further say, that they have seen the place where such opening is proposed to be left, marked out by a buoy, that at low tide there is not more than two feet water over the place, and that this is kept in by Macomb's dam; that the place is unfavorable for the formation of a new channel, being on the outer side of a curve; and that if a new channel be formed there, the sediment and other matter now deposited there, if removed by the force of the current, must lodge in other parts of said river, and in the opinion of these

deponents, materially injure, if not destroy, the same for the general purposes of navigation ; that said steam-boat Thames is a licensed vessel, navigating under the laws of the United States, and belongs to the State of Connecticut, and further saith not.

CALVIN STODDARD.
WM. WILLIAMS.

STATE OF CONNECTICUT, }
County of New London, } *ss.*

On this 12th day of January, A. D. 1839, at Norwich, in said county of New London, before me personally appeared Calvin Stoddard, one of the deponents named in the foregoing affidavit, and the said Calvin Stoddard subscribed the said affidavit in my presence, and made oath to the truth of the same. Before me,

JABEZ W. HUNTINGTON, *a Judge of the
Superior Court of the State of Conn.*

STATE OF CONNECTICUT, }
County of New London, } *ss.*

I, James Stedman, clerk of the Superior Court within and for the county of New London and State of Connecticut, do hereby certify, that Jabez W. Huntington, whose name is subscribed to the foregoing certificate, is a Judge of the Superior Court of the State of Connecticut ; that said court is in existence under the laws of said State, and that the signature of said Judge to the foregoing certificate is in the proper hand writing of said Judge.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this fifteenth day of January, A. D. 1839.

JAMES STEDMAN, *Clerk.*

City and County of New York, ss.

Samuel Coon, of said city, being duly sworn, doth depose and say, that he is master of the schooner Eclipse, of New York, of thirty-six tons ; that said vessel is duly licensed at the custom-house in New York ; that said vessel has been engaged in trade and commerce between the city of New York and Nichols' dock, near King's bridge, and other places on Harlem river, in the months of September, October and November last ; that said river is a navigable river, having sufficient water for vessels of a large class, as usually employed in the Hudson river ; that deponent is well acquainted with the channel-bed of said river, and with the place where it is proposed to carry the Croton aqueduct across the same ; and

has seen the place marked out where it is proposed to leave an opening through the same, for the passage of vessels; that in the opinion of deponent, as master of a vessel, and from his experience in and about the coasting trade, and the several rivers, creeks, harbors, and sounds, about New York and its vicinity, he is satisfied that the aqueduct as proposed to be built, with an opening of only 120 feet, will destroy the said river for all navigable purposes, and more especially above such aqueduct, by creating bars and shoals in the channel and other parts thereof, from the mud deposite, now on the spot and its vicinity; that such aqueduct must necessarily so restrict the waters of said river as to create a violent current through such opening, and that such aqueduct will be impassable for boats and vessels, except at slack water. Deponent further saith, that the masts, with the topmasts, of said schooner, are seventy-five feet from the bottom of the vessel. Deponent further saith, that he hath beat up and down said river when empty and when loaded.

his
 SAMUEL X COON.
 mark.

Sworn this 31st day of Decem- }
 ber, 1838, before me, }

JAMES AGNEW, *Commissioner of Deeds.*

City and County of New York, ss.

Simon Hillyer and Thomas R. Tindall, both of Jersey City, State of New Jersey, being duly sworn, do depose and say, that they were on board the Nonpareil on a voyage from Jersey City to Morris' dock, near Berrien's landing, in Harlem river, county of Westchester, and State of New York, in the month of September last; that said vessel arrived on the 15th at said dock, discharged her cargo and returned on the 16th; that said vessel is of about thirty tons burthen, and has standing masts and spars. Deponents further say, that they are acquainted with the channel and bed of said Harlem river, and that the same is of sufficient capacity and depth for vessels of a large burthen. Deponents further say, that they are acquainted with the place where it is proposed to carry the Croton aqueduct over the river, and have also seen the plan of the low bridge; that in their opinion, from their experience in navigating the several rivers in and about New York and New Jersey, such low bridge will effectually destroy said Harlem river for all useful navigating purposes, by the formation of bars and shoals above and below such low bridge, and altering and impairing the natural channel thereof; and further, that it

would be impossible to pass a vessel through the opening proposed to be left in said low bridge, at any time except at slack water, with anything like safety.

And the said Tindall, for himself saith, that he is well acquainted with Spuytendevil creek from the North river to King's bridge, that the same is navigable for vessels of from eighty to one hundred tons at high water, and would be so at all tides, were the shoal at the mouth of the same cleared out.

SIMON HILLYER,
THOS. R. TINDALL.

Sworn this 2d day of January, }
1839, before me, }

JAMES AGNEW, *Commissioner of Deeds.*

Extracts from an act entitled "An act for the appointment of commissioners in relation to supplying the city of New York with pure and wholesome water," passed February 26, 1833.

§ 1. The Governor shall nominate, and with the consent of the Senate, shall appoint five persons, to be known as the water commissioners of the city of New York, who shall be citizens and inhabitants of the said city.

§ 2. It shall be the duty of the said commissioners to examine and consider all matters relative to supplying the city of New York with a sufficient quantity of pure and wholesome water for the use of its inhabitants, and the amount of money necessary to effect that object.

§ 4. The said commissioners shall make a report of their proceedings under this act, which shall contain their opinions as to the best plan of furnishing the city of New York with a sufficient supply of pure and wholesome water, and an estimate of the expense of carrying such plan into effect; also, the reasons and calculations upon which such opinion and estimate may be founded; and generally all such information connected with the object of their appointment, as they may deem important.

§ 5. The said commissioners shall present a copy of the said report to the common council of the city of New York, on or before the first day of November of the year one thousand eight hundred and thirty-three; and their said report shall be made and presented by them to the Legislature on or before the second Monday of January of the year one thousand eight hundred and thirty-four.

Extracts from the "Report of the commissioners under an act of the Legislature of this State, passed February 26th, 1833, relative to the supplying the city of New York with pure and wholesome water.—November, 1833."

"To the honorable the common council of the city of New York :

"The commissioners, appointed pursuant to an act of the Legislature of this State, entitled "An act for the appointment of commissioners in relation to supplying the city of New York with pure and wholesome water," passed 26th February, 1833, and in obedience to the directions of said act,

"Respectfully report :

"That viewing the subject as the commissioners do, of the utmost importance to the city and State of New York, they have bestowed all that reflection and attention to its details which their limited time and capacity would admit."

* * * * *

"It is with great pleasure that the commissioners are enabled to present to the common council a full and ample report from Mr. Douglass, with a map and profile of the country in which the rivers, lakes, ponds and springs are situated, capable of supplying this city with an abundance of as pure and wholesome water as any country can boast of.

"The following abridgment of the report alluded to will present a brief view of the conclusions arrived at by the engineer :

"Two routes are proposed for bringing the waters of the Croton and its tributaries to the city of New York, which are termed by the engineer the *Inland, or Saw-Mill River Route*, and the *Hudson River Route*.

First, the Inland, or Saw-Mill River Route.

(After detailing the course of the aqueduct through Westchester county, the report proceeds,)

"From this the route passes on the Harlem river without any material obstruction to the work, either by deep cutting or high embankments. The river is to be crossed by an aqueduct bridge of eighteen chains, or eleven hundred and eighty-eight feet in length, and consisting of nine plain semi-circular arches ; the height to the water line of the aqueduct will be 126 feet."

Second, The Hudson River Route.

"The Harlem river is to be crossed by both routes, in the same manner to the receiving reservoir, between the Ninth and Tenth Avenues, and 133d and 137th streets, on the island of New York."

Extract from the report of D. B. Douglass, Esq. referred to in the commissioners' report :

“The crossing at Harlem is proposed to be effected by means of an aqueduct bridge eighteen chains, or eleven hundred and eighty-eight feet long, from abutment to abutment, and consisting of nine plain semi-circular arches. The portion in which it is located on the map, is the narrowest at the height of the grade line, which the ground admits of, and is furnished with natural abutments of solid rock on both sides of the river. The river itself, including a small margin of low ground, is about six hundred feet wide, and on this distance, (comprising five or six of the piers,) the height of the structure, from water line to water line, would be 126 feet, exclusive of hydraulic foundations, which would be from ten to twenty-five feet more. Our structure adapted to these dimensions would of course be a work of considerable labor and expense, but by no means of paramount difficulty in either of these respects. Many bridges of much greater magnitude, both in length and height, have been erected in other countries for the same object, from which we are enabled to derive certain data for all our calculations.—The aqueduct bridge of Lisbon for example, of which a fragment is exhibited in the annexed drawing, No. 5, consists of thirty-five arches, some of them more than 100 feet span and 230 feet high. The modern aqueduct bridge of Caserta, near Naples, (see fragment No. 6,) is upwards of 1,600 feet long by 178 feet high, and consists of about 90 arches in three tiers. The aqueduct of Spoleto, (No. 7,) consists of ten arches, somewhat narrower than ours, but in height upwards of 300 feet; and the iron canal aqueduct of Pontcyclyte, in Wales, (No. 8,) is 960 feet long and rests upon eighteen piers of brick, some of which are 120 feet in height. Numerous other examples of a like kind might be quoted, but it may suffice for the present to name two only, in addition to those already mentioned, viz: the great aqueduct at Maintenon, in France, of six hundred and sixty-six arches, projected by Vauban, and partly built, being three and a quarter miles in length, and of various heights, from 50 to 220 feet. And lastly, the recently constructed aqueduct of Lucca, of one thousand arches.

“With such examples of enterprise and skill before us. many of them undertaken for objects far less important than that of supplying the city of New York with water, we may certainly look upon the design of the Harlem aqueduct without fear.”

Extract from a Report of the Committee on Roads and Canals of the Board of Aldermen, (Document No. 88,) April 23, 1838.

“In his (the chief engineer, Mr. Jervis,) opinion, as expressed to the committee, ‘if the navigation of the river is to be preserved, no modification of the low bridge would answer.’ The low bridge was submitted without reference to the navigation, and the high bridge only would allow masted vessels to pass through.”

M E M O R I A L

TO THE

HONORABLE THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK,

IN LEGISLATURE CONVENED.

The memorial of the undersigned, supervisor and board of trustees of the town of Westchester, in the county of Westchester, and of other inhabitants of the said county,

Respectfully Represents :

That, in pursuance of an act of the Legislature of the State of New York, passed 26th February, 1833, certain persons were appointed commissioners to make preliminary investigations as to the best means of supplying the city of New York with pure and wholesome water; that the said commissioners reported a plan, which was approved of, in the manner required in the said act, and which contemplated the introduction of the water from the Croton river into the city of New York for the purpose aforesaid; that according to the said plan, the Harlem river was to be crossed by an aqueduct bridge of 18 chains or 1,188 feet in length, and consisting of nine semi-circular arches; the height of the water line of the aqueduct to be 126 feet; that this plan, your memorialists are informed and believe, would not essentially interfere with the navigation of the said river; and that, therefore, no opposition to the said plan was made by your memorialists; that in consequence of this

plan, and for the purpose of carrying the principle thereof into effect, the Legislature of this State passed, on the 2d of May, 1834, an act entitled "An act to provide for supplying the city of New York with pure and wholesome water;" and have subsequently enacted laws supplementary thereto.

Your memorialists would, however, respectfully represent to your honorable bodies, that the commissioners appointed in pursuance of the acts aforesaid, have entered into contracts with sundry persons for the purpose of bringing the Croton aqueduct over the Harlem river by means of a solid impassable dam, which closes up the entire channel of the said river. They would here state, that the said river, at the place of the crossing of the said aqueduct, is 620 feet wide, and that the channel is 300 feet wide, and from 20 to 25 feet in depth; that it is intended to divert the whole water of the said river from the channel thereof, and to cause it to flow through an archway 120 feet wide, and 65 feet high over the flats, where the water is only from 1 to 2 feet in depth at low water; that the obstructions proposed to be placed in the said river would utterly destroy the navigation thereof, by the currents that will be created therein, and by the impossibility of the vessels, which would be usually employed thereon, and whose masts range from 80 to 100 feet in height, navigating the same.

Your memorialists further represent, that the Harlem river is an arm of the sea, which was at all times navigable from the East river to an ancient public landing place of the town of Westchester, about a mile and a half above the proposed crossing of the Croton aqueduct, by sloops, schooners and other vessels, till the illegal obstruction of the same some years since, by a dam erected by one Robert Macomb, and that it is connected by means of the Spuytendevil creek, which is also a navigable stream, with the Hudson river; that since the abatement of the said dam as a public nuisance, the said river has been used for the transportation of the various supplies required by the inhabitants on its borders, and for the sending to the city of New York the stone from the valuable quarries on the shores of the said river; that during a portion of the last season, a steam-boat for the conveyance of passengers, regularly plied on the Harlem river, and which if hereafter continued, would be a source of great accommodation to your memorialists as well as to other inhabitants of Westchester, and of the northern parts of the city and county of New York.

Your memorialists would here add, that for the purpose of more fully availing themselves of the advantages offered by the navigation of the Harlem river, the inhabitants of the town of Westchester, in town meeting convened, have directed

that Berrien's landing, the public landing place above mentioned, should be improved, and have appropriated therefor the sum deemed necessary to construct the appropriate docks.

Your memorialists would further represent, that they have ever looked to the progressive increase of the trade of the city of New York, and of the consequent demand of the shores of the Harlem river for the accommodation of the navigation employed therein, as a legitimate source of profit to the proprietors in the neighborhood of the said river, of which it is now proposed to deprive them, without making any compensation therefor.

They would earnestly call the attention of your honorable bodies to the fact, that in the preservation of the Harlem river for the purposes of navigation, the whole State, as well as the city of New York and your memorialists, is interested, inasmuch as this river furnishes the only adequate accommodation for the lumber trade from the interior, and for the indefinite amount of tonnage from the lakes and canals, which the enlightened system of internal improvements now in progress, will call into existence.

Your memorialists would, therefore, pray for the passage of an act, defining and limiting the authority of the water commissioners of the city of New York, so as to compel them to bring the aqueduct over the Harlem river, in the manner set forth in the report above referred to, that is to say, by a bridge of at least 126 feet in height, to the water line of the aqueduct, and having sufficient openings to admit the passage of vessels of the draft of water, which the present channel of the said river will now permit to pass, or in such a manner as not to interfere with the navigation of the said river.

And your memorialists, as in duty bound, will ever pray, &c.

Israel H. Watson, Supervisor,
 Peter Valentine, Trustee,
 Robert R. Morris, Trustee of
 the town of Westchester.
 Israel H. Watson, Trustee,
 L. G. Morris, "
 Frederick Ryer, "
 Josiah Briggs, "
 Robert Morris,
 Daniel Mapes,
 John Valentine,
 J. M. Conklin,
 James Corsa,

John Butler,
 John Butler, Jr.,
 William Archer,
 Charles Berrien,
 Matthias Warner,
 Augustus Van Cortlandt.
 Aaron Vark,
 Samp. Simons,
 Abm. Valentine,
 James Bashford,
 Osborn Sherwood,
 George B. Rockwell,
 Anthony Archer,

Andrew Corsa,
Nicholas Berrien,
Jacob Berrien,
Cornelius Berrien,
Peter Lawrence,
Christopher Walton,
Isaac Poole,
Josiah Valentine,
H. H. Lawrence,
Wm. Johnston, Jr.
James Berrien,
James Hart,
John Schuyler,

William W. Kerr,
Garrey B. Norton,
Joseph Moore,
Thaddeus Rockwell,
Jonathan Ward,
Robert H. Ludlow,
Obed S. Paddock,
Francis Kain,
John Townsend,
Minott Mitchell,
Stephen Ward,
Amos F. Hatfield.

IN CHANCERY:

BEFORE THE VICE CHANCELLOR OF THE FIRST CIRCUIT.

WILLIAM RENWICK,

vs.

LEWIS G. MORRIS, GOUVERNEUR MORRIS,
Morris, Charles Henry Hall, William
Beach, Lawrence Crane, Abel T. An-
derson, Vine A. Starr, John Howard,
George Danah, L. George, Dan'l Han-
nington and James Clisby, impleaded
with F. Clauvaw, Richard Riker, and
James R. Whiting.

The joint and several answer of

defendants to a bill of complaint of Wm. Renwick, complainant,

These defendants now and at all times hereafter saving and reserving to themselves all, and all manner of benefit and advantages of exception to the manifold errors, uncertainties, imperfections and insufficiencies in the said complainants, said Bill of Complaint contained, for answer thereunto, or unto so much and such parts thereof as they, these defendants, are advised, is material for them to make answer unto, they, these defendants answering say, that they have no knowledge, neither have they been informed except by the complainant's Bill of Complaint, that the Mayor, Aldermen, and Commonalty

of the City of New York, on the 22d day of December, 1800, or on any other day or year by Indenture, a copy of which is annexed to said Bill of Complaint, or by any other Indenture for the consideration for that purpose, specified in said bill, or for any other, a different consideration granted; bargained and released to Alexander Macomb—then of the City of New York—now deceased, his heirs and assigns forever of the premises described and set forth in said Bill of Complaint, and in schedule A thereunto annexed, and said defendants neither admit or deny the same, but leave the complainant to make such proof thereof as he may be advised. And these defendants further answering say, they have no knowledge, neither have they been informed, except by the complainant's Bill of Complaint, that after the alleged execution of the deed or grant from the Mayor, Aldermen, and Commonalty of the City of New York to the said Alexander Macomb, that he, the said Alexander, did at great or any other expense, cause to be erected a certain mill upon the said water lot. The defendants neither admit or deny the same, and leave the complainant to make such proof thereof as he may be advised.

These defendants further answering admit, that there is a mill now erected upon the premises described in the said Bill of Complaint, and the schedule A thereunto annexed, but they are ignorant who erected or caused the same to be erected; and they aver and charge that there is not and has not been for ten years past, any passage fifteen feet in width through or by which boats or craft at any time could pass freely or without interruption. The said defendants further answering say, they have no knowledge, neither have they been informed, except by the complainant's Bill of Complaint, that said Alexander Macomb was indebted to Samuel Corp, John F. Ellis and Gabriel Shaw, then of the City of New York, in the sum of ten thousand dollars, or in any other sum, and that he with Jane his wife, on the 19th day of November, A. D. 1800, or on any other day or year, executed and delivered to the said Corp, Ellis and Shaw to secure the said sum \$10,000, or any other sum, a mortgage upon the said premises described in said Bill of Complaint; said defendants neither admit or deny the same, and leave the said complainant to make such proof thereof as he may be advised.

These defendants further answering say, they have no knowledge, neither have they been informed, except by the complainant's Bill of Complaint, that said Corp, Ellis and Shaw, on or about the year 1810, or at any other time, foreclosed the said mortgage; and they neither admit or deny the same, and

leave the said complainant to make such proof thereof as he may be advised.

These defendants further answering say, they have no knowledge, neither have they been informed, except by the complainant's Bill of Complaint, of the proceedings in chancery mentioned in said bill, of the sale of the right, title and interest of the said Alexander Macomb and Jane his wife, to the said premises, of the purchase of the said premises by the said Robert Macomb; of the conveyance of the said premises by Thomas Cooper, Esq., Master in Chancery, to the said Robert Macomb, of the said deed and the record thereof; they neither admit or deny the same, and leave the said complainant to make such proof thereof as he may be advised.

These defendants further answering admit, that they have been informed and believe that Robert Macomb was in the possession of the said mill and premises, claiming them to be his own. These defendants further answering say, they have no knowledge, neither have they been informed, except by complainant's Bill of Complaint, that Robert Macomb entered into possession of said premises by virtue of the Deed from Thomas Cooper, Master in Chancery; they neither admit or deny the same, and leave the complainant to make proof thereof.

The defendants further answering say, they have been advised and believe and charge the truth to be that the said Robert Macomb and the said Alexander Macomb, or either of them, never had any legal title to or legal interest in the premises upon which the said mill is erected, nor had the Mayor, Aldermen, and Commonalty any legal right or power to grant any such title.

These defendants further answering say, they have been informed and believe and therefore admit that on the 8th day of April, 1813, the Legislature of the State of New York passed an Act entitled "An act authorizing a dam to be built across Harlem river," a copy of which is hereunto annexed marked A, which said act these defendants make a part of this their answer.

These defendants further answering say, they have been informed and believe and admit that the Corporation of the City of New York did give their consent to the said Robert Macomb to build a dam across the Harlem river; these defendants having no knowledge or information of the extent, times and conditions of said grant or authority, leave the complainant to prove the same as he may be advised.

These defendants further answering say, they are informed and believe and admit that the said Robert Macomb proceeded to erect and did erect a dam across the Harlem river from Bussing's point to Divo's point.

These defendants further answering deny, that said dam was erected according to the provisions of the said act. These defendants deny that the said Robert, his executors, administrators or assigns, or any of them caused a lock to be built in said dam, or any gate, apron, or other contrivance so as to admit the passage of boats and vessels accustomed to navigate the said river, or that any such lock, gate, apron, or contrivance has ever existed; and they deny that said Robert Macomb, his executors, administrators or assigns, or any of them provided a suitable person to attend the same as is falsely stated and set forth in the complainant's Bill of Complaint. These defendants further answering say, they have no knowledge neither have they received any information, except by the complainant's Bill of Complaint, that the said mill so alleged to have been erected by the said Alexander Macomb was greatly enhanced in value, and the water-power of said mill greatly increased by reason of the erection of said dam. They neither admit or deny the same, and leave the complainant to make proof thereof.

These defendants further answering expressly charge the truth to be that the said mill and water-power have not been used as a mill, or for the purpose of a mill, or been in operation for at least the last twelve years. These defendants further answering admit, that after its construction said dam was used as a bridge, which is the only use to which it has been appropriated for at least the last twelve years, and these said defendants further charge the truth to be that said dam was built across a navigable river, and connects a public road in the county of New York, with the county of Westchester;—and these said defendants charge the truth to be that about the time said dam was built, a road was opened leading from the said dam in the county of Westchester to the public road in said county, about three quarters of a mile from said dam, and that by means of the road so opened and of the bridge over said dam, the public road in the county of New York was connected with the public road in the county of Westchester;—and these defendants further answering, are informed and believe and state the truth to be, that the said road so constructed was opened and made by private individuals, and that said road never has been recorded or sanctioned as a public road by the authorities of the town or county of Westchester; and these defendants further answering say, that said Robert Macomb and his assigns, without any lawful grant or title, have claimed a toll for passing over said bridge from such as passed over said roads and crossed said river, and they submit upon these facts, which are all facts known to them, whether

the said bridge be legally a public bridge or not. These defendants, further answering, say they have no knowledge, neither have they been informed, that said dam was originally intended to be used as a public bridge, and they leave the complainant to make proof thereof as he may be advised.

These defendants, further answering, say, if such was the original intention, that said Robert Macomb fraudulently concealed such intention. These defendants, further answering, deny that the use of the said dam for a bridge was one of the chief reasons for the passage of the said act, as is untruly stated in said Bill of Complaint; but on the contrary, as these defendants have been informed, and believe and charge the truth to be, there is not and never has been any grant to, or rights, or authority, on the part of the said Robert Macomb, his heirs or assigns, or on the part of any other person or persons, to erect or keep a bridge across said dam, for his or their profit and benefit by way of toll, or by means of any toll to be taken therefor, or in relation thereto, or to the passage thereof. These defendants, further answering, admit the truth to be that by means of the bridge on said dam, the intercourse between the city of New York and that part of the county of Westchester, which is nearer to Macomb's dam than to Kingsbridge and to Harlem, or to Coles' bridge, was greatly promoted, and an easy and convenient passage for the inhabitants of such part of Westchester county was procured. These defendants, further answering, say that such inhabitants are few in number, and that the distance of country thus connected is very limited, and that the main travel from the county of Westchester to and from the city of New York and through the county of Westchester is by Harlem or Coles' bridge, or by Kingsbridge.

These defendants, further answering, expressly charge the truth to be that the said bridge has been in bad and dangerous order for many years, so much so that upon one occasion one of the reaches between the butments fell in with cattle, and lately many horses have broken through with their feet, and the said bridge is so out of order by reason of decayed beams and decayed and worn out plank, as to cause it to be dangerous to cross the said bridge with horses and wagons.

These defendants, further answering, say, they do not know and are not informed whether great tolls have been received from said bridge by the owners thereof, and leave the complainant to make proof thereof; but they deny that any grant of the franchise of taking toll upon or for crossing over the said bridge ever existed.

These defendants, further answering, say, they have been

informed by persons tending the bridge, and so believe the truth to be, that the tolls received did not pay for the trouble of attending the toll gate until lately and within the past year.

These defendants, further answering, say, they have been informed and believe, and charge the truth to be, that the pretended owners of said dam and bridge have rented the same, together with the house and grounds attached thereto, at a small annual rent, and that the tenant thereof has received to his own use the tolls collected from said bridge.

These defendants, further answering, say they have no knowledge nor are they informed except by the Bill of Complaint of the said complainant, that the Mayor, Aldermen and Commonalty of the City of New York, on the 6th of August, 1816, or on any other day or year, conveyed to Robert Macomb, his heirs and assigns, by deed, a copy of which is annexed to said bill and marked C, the premises for that purpose set forth and described in the complainant's Bill of Complaint, they neither admit or deny the same, and leave the complainant to make proof thereof as he may be advised.

These defendants further answering, say they have no knowledge, nor have they been informed, except by the complainant's Bill of Complaint, that on or about the thirteenth (13th) of March, 1818, James L. Bell, then Sheriff of the city and county of New York, by virtue of a writ of fieri facias, issued out of and under the seal of the Supreme Court of Judicature of the State of New York, upon a judgment recorded in said Court on the 28th day of October, 1817, by the President and Directors of the Manhattan Company against the said Robert Macomb, sold and struck off to Samuel Jones, junior, and Daniel D. Tompkins, they being the highest bidders for the same; they neither admit or deny the same, and leave the complainant to make such proof thereof as he may be advised to make.

These defendants further answering, say they have no knowledge, neither have they been informed, except by complainant's Bill of Complaint, that complainant had become lawfully possessed by assignment of the rights acquired by said bidders, and that the said premises were on the 9th day of March, 1831, conveyed by Elisha W. King and Oliver M. Lownders, the executors of the last Will and Testament of the said James L. Bell to the complainant as per covenant, a copy of which is annexed to complainant's Bill of Complaint marked D; they neither admit or deny the same, and leave the complainant to make proof thereof as he may be advised.

These defendants further answering say, they have been informed and believe and admit that James L. Bell, previously to the 9th day of March, 1831, departed this life.

These defendants further answering say, they have no knowledge or information, except by complainant's Bill of Complaint, that said Bell made a last Will and Testament; that he appointed Elisha W. King and Oliver M. Lownders his executors; or that said Elisha and Oliver were duly appointed executors by the surrogate of the city and county of New York; they neither admit or deny the same, and leave the complainant to make proof thereof as he may be advised.

These defendants further answering say, they have been informed and believe and charge the truth to be that one Duncan P. Campbell is now litigating with the said complainant the title to the said dam and appurtenances.

These defendants further answering say, they are advised and believe and so charge the truth to be, that said complainant hath no legal title to said dam and appurtenances, and leaves the complainant to make proof of his title to said premises as he may be advised.

These defendants further answering say, they have been informed and believe and therefore admit, that said complainant has by his tenants been in the possession of the said dam and bridge, so far as taking tolls and maintaining a toll gate for crossing said bridge constitute such possession.

These defendants expressly charge the truth to be, that the said mill has for at least the last twelve years been vacant, unoccupied, and for that time and for no time therein has been in the actual possession of the said complainant, nor has it been in the actual possession of any one.

These defendants further answering say, they have no knowledge nor are they so informed, except by the complainant's Bill of Complaint, and they do not believe, and therefore deny that the said complainant has received great tolls for passing over the said bridge, and they submit that he is not in law entitled to any tolls for the crossing of the bridge.

These defendants further answering say, it is true and they therefore admit, that for several years past and for at least ten years last past, the gates of the said dam have been taken off; but they deny that thereby a free and uninterrupted passage under the arches of the said dam hath been left for boats and vessels accustomed to navigate said river.

These defendants deny that there are any arches in said dam, but aver that said dam is constructed as is hereinafter specified.

These defendants further answering charge the truth to be, that the Harlem river is a navigable river—an arm of the sea—running from the East river, between the Island of New York and Barn and Randell Islands, and between the counties of

Westchester and New York, until it intersects a branch of the Spuyten Duyvel creek about six miles from the mouth of the Harlem river; that the tide ebbs and flows the whole course of said river; that the usual rise of the tide is from four to six feet; that said Harlem river varies in width from its mouth to its junction as above stated, from half a mile to 300 feet; and its depth from its mouth to said junction varies from 13 fathoms to $1\frac{1}{2}$ fathoms at low tide, the shallowest part being at the junction of the said river with Spuyten Duyvel creek; that the dam erected by Robert Macomb and _____ claimed by the said complainant, is about three miles below where said river intersects Spuyten Duyvel creek, and $2\frac{1}{2}$ miles below an ancient public landing-place for unloading vessels in Westchester county, called Berrien's landing, and the depth of the river above said dam varies from 3 fathoms to $1\frac{1}{2}$ fathom at low water.

These defendants further answering say, they have been informed and believe and charge the truth to be, that before and until the time when the said dam was so erected by the said Robert Macomb, the said Harlem river was navigated by sloops, schooners and pettiaugers of the size, tonnage and description of sloops, schooners and pettiaugers at that time navigating the North river; and that such sloops, schooners and pettiaugers navigated the whole distance of said Harlem river from its mouth at the East river past the place where the said dam is erected to the farmers' bridge at or near the junction of said river with Spuyten Duyvel creek.

And these defendants further answering say, they are informed and believe and charge the truth to be, that before the said dam was erected the vessels accustomed to navigate the said river, were sloops, schooners and pettiaugers of the description herein before mentioned.

And these defendants further answering say, they are informed and believe and charge the truth to be, that before the said dam was erected, the flats in said river above said dam annually produced great quantities of sedge valuable to the owners of premises adjoining.

These defendants further answering charge the truth to be, that the said dam erected by the said Robert Macomb, is built across the channel of said river, which said channel is 300 feet wide and from 3 to 4 fathoms deep; that said dam is built with fine stone piers from 35 to 38 feet distant from each other; each pier about twenty feet square, and the top of said piers are about ten feet above low water line; that the whole distance across said river, between said piers is filled in with stone up to low water mark; there is constructed in said dam,

no gate, lock, draw-apron or other contrivance to admit the passage of boats and vessels accustomed to navigate said stream at the time said dam was built.

These defendants further answering charge the truth to be, that said dam is so constructed as to force and cause the water of said river to rise and overflow the salt meadows and other grounds lying between the said dam and King's Bridge, and cause the tide and water to continue and remain on said meadows and grounds longer than the same would otherwise have done.

These defendants further answering charge the truth to be, that all times of tide, except high and low water, the water passes between said piers with so great a torrent, that vessels or boats could not stem the same even were they not obstructed by the stone so thrown into the channel as aforesaid or by the bridge hereinafter described.

These defendants further answering say, there is no arch-way to said dam, and charge the truth to be, that a bridge is built across said dam by laying timbers to reach from pier to pier, and upon these timbers are laid plank, so that between the piers the bridge is about 10 feet above low water line, and is without any draw and has been so for many years.

These defendants further answering say, that the meadows and grounds above the dam are damaged and injured by the said dam, and the said Robert Macomb, his heirs and assigns have never made whole the parties injured, for the loss and damage sustained as aforesaid, nor made to them any compensation in this behalf.

These defendants further answering charge the truth to be, that the said Robert Macomb or his assigns have not, for at least 12 years past, provided a suitable person to attend a lock in said dam, but on the contrary, there has been no lock, draw or passage-way, nor any person to attend the same.

These defendants further answering say, they have been informed and believe and charge the truth to be, that when the said Robert Macomb erected the said dam, he built across said dam on the Westchester side a contrivance of six feet ten inches wide at one end, and seven feet wide at the other, which said contrivance was subsequently and for more than twelve years since filled in with stone by the said Robert Macomb, and has so continued ever since, and is wholly impassable, and there is no other lock, draw, apron or contrivance for a free passage.

These defendants further answering say, they have been informed and believe that immediately after said contrivance was finished, a market boat was presented with her produce

to pass said contrivance, and that after being detained for some several hours, they succeeded in passing through said contrivance ; that ever after when said boat or others went to New York with produce, they were obliged to and did unload said boats above the dam and hauled them over the bridge and again loaded them.

These defendants further answering charge the truth to be, that by reason of the said dam as actually erected and subsequently maintained, the usual and ordinary navigation of said river, as before used, was entirely destroyed.

These defendants further answering say, that after the gates were taken off of said dam, in certain stages of the tide, persons in boats did pass under said bridge and above the dam ; but these defendants expressly charge the truth to be, that such passage was always attended with great danger, and they are informed and believe and so charge the truth to be, that several human lives have been lost, and upon different occasions in attempting to make such passages under the bridge and over said dam, and there hath been no passage for vessels other than small undecked boats or skiffs.

These defendants further answering charge the truth to be, that said dam was not so constructed as to cause the water to flow freely off, but on the contrary thereof it caused the water to overflow lands which were not before overflowed and destroyed the sedge which before grew on the said flats.

These defendants further answering charge the truth to be, and aver that said dam is a common nuisance, and they submit that it is just and legal as these defendants have been informed and believe, for any person injured or incommoded by said nuisance to abate the same.

These defendants further answering charge the truth to be, that the defendants Charles Henry Hall, Lewis Morris, Lewis G. Morris and William H. Morris, occupy lands running down to and bounded by said Harlem river, that the lands occupied by said Lewis, Lewis G. and William H. are in the county of Westchester, and those by the said Charles H. in the county of New York.

These defendants further say that the obstruction of the navigation of the said river is of great pecuniary detriment to the said last mentioned defendants, and otherwise of great inconvenience to them by obstructing the passage of boats and vessels bringing manure and produce along the side river.

These defendants further answering say, the said Lewis G. Morris of his own knowledge, and the said other defendants upon the information of said Lewis G., which information they believe to be true, that before taking down part of the bridge

and dam hereinafter mentioned, he, the said Lewis G. Morris frequently applied at the said dam to pass said dam with a small sail boat and with a sloop, the boat and sloop being of a class of vessels smaller than those of the description which, before said dam was erected, usually navigated said river; and that he, the said Lewis G. Morris was answered by the keeper of said bridge that there was no means to pass said dam, and that he, said Lewis G. knew there was none.

These defendants further answering say, the said Lewis G. Morris from his own knowledge and the other defendants from information derived from said Lewis G. Morris, which information they believe to be true, that said Lewis G. Morris caused application to be made to the complainant, desiring that he, said complainant would cause a draw to be made in said dam and bridge to pass vessels usually navigating said river before said dam was erected; to which said complainant in substance replied that he would not make a draw in said dam and bridge, that he intended to make a rail-way over said bridge to pass over small skiffs from the one side of the dam to the other, and that he would make no other lock or passage, neither would he permit any person to make any other lock or passage, and that he had plenty of money to spend in law with any person who should attempt to make any other lock or passage through said dam and bridge, and he would spend money in law with any such person.

These defendants further answering

upon their own knowledge, and the said

upon the information and belief say, that after passage through said dam with boats and vessels usually navigating said river before said dam was erected had been refused, and after said complainant had so refused, as aforesaid, to make a lock or draw through said dam for the passage of vessels usually navigating said river before said dam was erected, and after he had so declared he would not permit any other person to make a draw through said dam and bridge, and after the said defendants had advised with counsel learned in the law upon the subject, and received advice that said dam being a public

nuisance, any person might legally abate it. A citizen of the State of New Jersey with a vessel of the smaller size of vessels accustomed to navigate said river before said dam was erected, with coal to be delivered to the defendant Lewis G. Morris for the use of his dwelling, at a dock above said dam, came up said river for the purpose of delivering said coal, that these defendants,

to enable the said vessel to pass through said dam and bridge, did in pursuance of such advice so received from their said counsel, on the night of the 14th September quietly and in a peaceable manner commence taking down a part of said dam and bridge, and did take up sufficient thereof to let said vessel pass through, and said vessel did pass through.

That these defendants commenced taking said bridge and dam down at night in order to avoid collecting idle spectators, and to avoid any illegal interference with the just and legal proceedings of the said defendants, to remove the said public nuisance.

And these defendants further answering admit, that on the 21st, 22d and 24th days of September last past, the defendants

under the employment and directions of the said defendant Lewis G. Morris, continued to work at taking up the said bridge and dam for the purpose of enabling boats and vessels of the description of those which usually navigated said river before said dam was erected, to pass through said dam and to restore the navigation of said river, and to reduce the waters of said river to their natural state.

These defendants further answering say, at the time the injunction issued in this cause was served upon them, they had only succeeded in taking out stone sufficient to deepen the passage therein to the depth of four and a half feet water through said dam at high water, which is not sufficient to enable vessels of the description that navigated said river before said dam was erected, to pass the same, and is insufficient to destroy the strong current which obstructs the navigation.

These defendants further answering say, that in removing said nuisance these defendants were not actuated by any intention to injure the said complainant or any other person, but intended only to abate said nuisance.

And these defendants further answering, expressly deny that they did or intended to take down any more of said dam and bridge than was necessary to abate the nuisance and to insure the free passage of boats and vessels, of the description of vessels that usually navigated said river before the said dam was erected, and to give a free passage of the waters so as to break the strong torrent which said dam occasioned.

These defendants further answering say, that they have no recollection of saying that the said complainant had no property in said dam, and they therefore neither admit or deny the same, but leave the complainant to make such proof thereof as he may be advised.

These defendants admit that they have said that said dam was a public nuisance, and that they would abate it. These defendants have no knowledge neither have they been informed, except by the complainant's Bill of Complaint, which information they do not believe, and they therefore deny that complainant had made a contract with a certain Eden S. Webster to rent said mill to the said Eden for four years, at \$1800 per annum, and leave complainant to prove the same.

These defendants have no knowledge and have not been informed, except by complainant's Bill of Complaint, which they don't believe; and they therefore deny the same, that said complainant has been prevented renting his said mill by means of these defendants having said said dam is a nuisance, and that these defendants would abate the same, and they leave complainant to make proof thereof.

These defendants say, it is untrue that Richard F. Carman and James R. Whiting had anything to do with taking away said nuisance, or that they or either of them consented or knew that it was to be done, or advised it to be done.

These defendants further answering state the truth to be, that Spuyten Duyvel creek runs from its junction with Harlem river near King's bridge to the Hudson river; that said creek, as defendants have been informed and believe, before the erection of the said mill by the said Alexander Macomb, stated in complainant's Bill of Complaint, was navigated with sloops and smaller vessels from Hudson river up to King's bridge, and it is now navigated by such vessels up to said mill.

These defendants further answering say, that the tide ebbs and flows in said Spuyten Duyvel creek up to King's bridge and beyond it into the Harlem river.

And these defendants further answering say, that said mill so erected by the said Alexander Macomb is built nearly across said creek, and stops the present navigation of the same, contrary to his grant and covenant.

These defendants further answering say, there is not nor has there been a passage or way along the course of said creek fifteen feet wide, kept clear, open, and unencumbered, so that all small boats and crafts can freely and without obstruction pass and repass the same.

These defendants further answering say, they are informed and believe and charge the truth to be, that said Robert Macomb, his heirs or assigns, had no right or authority to erect, nor has the said complainant any right or authority to continue said dam across Harlem river; that said Alexander Macomb, his heirs and assigns, had no right or authority to erect, nor has said complainant right or authority to continue said mill across said Spuyten Duyvel creek.

These defendants further answering say, they are advised and believe and declare the truth to be, that the Corporation of the City of New York had no authority or right to grant to the said Robert Macomb any power or authority to erect said dam across said Harlem river; nor had the said Corporation the authority or right to grant to the said Alexander Macomb the power or authority to obstruct and destroy the navigation of Spuyten Duyvel creek.

And these defendants further answering declare the truth to be, that said Harlem river is a navigable river, an arm of the sea, a public high-way, and they are advised and believe and charge the truth to be, that the Legislature of the State of New York has no power or authority to obstruct the same, or to grant to others; and they submit and insist that by the acts of the Legislature in this behalf, the State of New York hath not intended so to do, nor hath it done the same.

And these defendants submit and aver, that except in the interruption of tolls demanded and taken without legal grant, the complainant hath not sustained any immediate or other damage, as his dam hath long since ceased to be used for any purpose connected with any mill, whereas some of these defendants in the obstruction of the navigation of the said river, and the easy, cheap and convenient transportation of manure, fuel and produce on the same, are sustaining daily and constant damage.

And these defendants deny all and all manner of unlawful confederation and conspiracy charged in the said bill, without that, that any other matter or thing not herein and hereby well and sufficiently answered or avoided, confessed or denied, is true.

All which matter and things these defendants are ready to aver, prove and maintain, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

STATE OF NEW YORK, }
City and County of New York, } ss.

On this 15th day of October, A. D., 1838, before me personally appeared Lewis G. Morris, one of the above named defendants, who being by me duly sworn, deposed and said, that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

STATE OF NEW YORK, }
City and County of New York, } ss.

On this 15th day of October, A. D., 1838, before me personally appeared Gouverneur Morris, one of the above named defendants, who being by me duly sworn, deposed and said, that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

STATE OF NEW YORK, }
County of Westchester, } ss.

On this 16th day of October, A. D., 1838, before me personally appeared Joseph Crane, Vine A. Starr, William H. Morris, Stephen L. George, Lewis Morris, defendants in the

above cause, each and every of whom being by me duly sworn, did depose and say, that he had heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

STATE OF NEW YORK, }
City and County of New York, } ss.

On this 17th day of October, before me appeared personally James Clisby, George Danah, defendants in the above suit, each of whom being by me duly sworn, did depose and say, that he had heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

SCHEDULE A, TO ANSWER.

An act authorizing a dam to be built across Harlem river; passed April 8th, 1813.

I. Be it enacted by the people of the State of New York, represented in Senate and Assembly, that it shall and may be lawful for Robert Macomb, of the City of New York, his heirs and assigns, first obtaining the consent of the Mayor, Aldermen, and Commonalty of the City of New York thereto, to build, construct, make and maintain a dam across the Harlem river, from Bussing's point in the Ninth Ward of the said City, to Devoe's point in the town of Westchester, in the county of Westchester, which said dam may be constructed with a foundation and abutments of stone and earth, or other durable materials, leaving in the centre or other part thereof a sufficient space for the water to pass freely through, on which space may be constructed flood gates or other contrivances needful to contain the waters of said river, so however that such dam

shall not be built, constructed or made at or below the place where the bridge authorized to be erected and built by the Harlem Bridge Company, from Bussing's point aforesaid to Devoe's point aforesaid, shall be erected and built without the consent of the said company ; provided always, that the said dam shall not be so constructed as to force or cause the water of the said river to rise and overflow the salt meadows or other grounds lying between the said dam and King's bridge, or any part thereof, or cause the tide or other water to continue or remain on said meadows or grounds longer than the same otherwise would have done ; and provided further, that if any damage or injury whatever shall accrue to the meadows or other grounds aforesaid in consequence of the building of said dam, the said Robert Macomb, his heirs and assigns, shall indemnify and make whole the party or parties injured, for the loss or damage sustained by him or them as aforesaid.

II. And be it further enacted, that the said dam shall be so made and built as to admit the passage of boats and vessels accustomed to navigate the same, by means of a good and sufficient gate, lock, apron, or other contrivance ; and the said Robert Macomb, his heirs and assigns, at his or their own expense, shall keep and provide a suitable person to attend the same, so that no unnecessary delay may happen to those who may have occasion to pass the same with boats or vessels as aforesaid.

III. And be it further enacted, that the said Robert Macomb, his heirs and assigns, at his or their own expense, shall at all times keep in good and sufficient repair the said dam, and in case the said gate, lock or other contrivance whereby or through which boats are to pass, as aforesaid, shall not be kept in sufficient repair and condition, or if the said Robert Macomb, his heirs and assigns, do not at all times keep a suitable person to attend the same, or if any delay should happen to any person who may have occasion to pass the same with boats or vessels as aforesaid, through the default of the said Robert Macomb, his heirs or assigns, or their agents, or servants, he or they shall forfeit for every neglect the sum of five dollars, to be recovered with costs of suit by the party injured.

IV. And be it further enacted, that the said Robert Macomb, his heirs and assigns, forever, shall hold, have and enjoy the sole right and privilege of using and employing the waters so dammed for milling and other purposes ; provided that the

assent of the Mayor, Aldermen, and Commonalty of the City of New York to the building and constructing the said dam, hereinbefore mentioned, as herein aforesaid, be first obtained by the said Robert Macomb, his heirs or assigns, before he or they shall be authorized to build or construct the same; provided also that nothing in this act contained shall be construed to affect, injure or impair any rights, property, or privileges which may be now vested by law and subsisting in John B. Coles, or any person or persons claiming under him, or in the Harlem Bridge Company.

IN CHANCERY:

BEFORE THE VICE CHANCELLOR.

WILLIAM RENWICK,

vs.

LEWIS MORRIS & al.

COPY ORDER.

D. E. WHEELER,

Sol^r.

At a Court of Chancery held for the State of New York, at the City of New York, on the twentieth day of December, one thousand eight hundred and thirty-eight :

Present,

WILLIAM T. McCOUN, Vice Chancellor of the First Circuit.

WILLIAM RENWICK,

vs.

LEWIS G. MORRIS & al.

Motion having been made on the part of Lewis Morris, Lewis G. Morris, Gouverneur Morris, William H. Morris, Joseph Crane, Vine A. Starr, George Darrah, and James Clisby, eight of the defendants in the above cause, upon the com-

plainant's Bill and Replication, and the answer of the said defendants for the dissolution of the injunction granted in this cause, or for such other or further order as should be deemed just ; and Counsel having been heard on the part of the complainant and the said defendants, it is ordered and adjudged that said injunction be modified ; and it is hereby modified in such manner as not to enjoin or restrain the defendants in said cause, their counsellors, solicitors, attorneys, servants, and agents, them and each of them, from removing the stone in the Harlem river, between two of the piers or abutments of the bridge or dam mentioned in said injunction, where the plank of the bridge have been already removed, to the width of 38 feet, so as to admit the free passage of vessels, boats, and other craft through said bridge or dam.

(COPY.)

JOHN WALWORTH,

Clerk.

HARLEM RIVER CANAL COMPANY.

1836.

AN ACT TO INCORPORATE THE HARLEM RIVER CANAL COMPANY

PASSED APRIL 16TH, 1827.

WITH AN AMENDMENT, PASSED MAY 13TH, 1836.

Be it enacted by the People of the State of New York, represented in Senate and Assembly :

1. That Peter Embury, Richard Riker, and such other persons as now are, or hereafter may be associated with them, be, and they hereby are constituted and created a body corporate and politic, in fact and in name, by the name of "the Harlem River Canal Company," and by that name, they and their successors and assigns shall and may have continual succession, and may sue and be sued, defend and be defended, in all manner of suits and actions, in all courts and places whatsoever, and that they and their successors may have a common seal, and may change and alter the same at pleasure ; and also, that they and their successors, by the same name and style, shall be in law capable of purchasing, holding and conveying any estate, real or personal, for the use of the said corporation : *Provided*, That the real estate so to be holden, shall be such as the said company shall purchase and obtain by voluntary transfer, to be used in and about the construction of the said canal, and the works connected therewith.

2. *And be it further enacted*, That the stock, property and affairs of the said corporation shall be managed by thirteen directors, to be elected from the stockholders, (one of whom to be president) who shall hold their offices for one year, and until others shall be elected in their stead ; and that the directors of the said company, after the term of the first board thereof shall have expired, shall be elected on the fourth Monday of April in each and every year, at such time of the day, and at such place, as the directors for the time being may appoint ; and public notice shall be given by the said directors,

not less than fourteen days previous to the time of holding the said election, in at least two of the public newspapers printed in the city of New York; and the said election shall be held under the inspection of three stockholders, not being directors, to be appointed by the board of directors; and such election shall be by ballot, and by a plurality of votes of the stockholders present, or their proxies, allowing one vote for every share of stock; and if it shall happen at any election that two or more persons have an equal number of votes, so that no choice shall have been made as to such person or persons, then the said stockholders, herein before authorized to vote at such election, shall proceed by ballot a second time, and by a plurality of votes determine which of the said persons so having an equal number of votes, shall be the director or directors, so as to complete the whole number of twelve; and the said directors, as soon as may be after the election, shall proceed to elect by ballot one of their number, to be their President; and if any vacancy shall be occasioned in the board, by resignation, death, or otherwise, the same shall be filled for the remainder of the year in which it may happen, by such person or persons as the remainder of the directors for the time being, or the major part of them, shall appoint; that Richard Riker, Benjamin Bailey, Elisha W. King, Charles H. Hall, John Watts, William R. Smith, Alexander Hamilton, William P. Hawes, Henry D. Sewall, William S. Smith, Stephen Richards, Aaron Sergeant, and William W. Todd, shall be the first directors, and shall hold their offices until the fourth Monday of April, in the year of our Lord one thousand eight hundred and twenty-eight, and until others shall be chosen; and that the major part of said directors shall form a board for the transaction of business.

3. *And be it further enacted*, That if at any time it should happen, that an election of directors should not be made on the day when, pursuant to this act, it ought to have been made, the said corporation shall not for that cause, or for any non-user, be deemed to be dissolved, but that it shall and may be lawful, on any other day, to hold an election of directors.

4. *And be it further enacted*, That the said corporation shall have full right, power and authority to cut, construct and make a canal, in the twelfth ward of the city of New York, from Spitendeuvel creek to Harlem river, from and to such points and places as the said directors shall deem most expedient and advantageous; and such number of basins, connected therewith, as may be necessary; and to improve the

navigation of Harlem river, so as to afford to vessels, boats and other freighting craft, which shall traverse the land, canal and river, a secure and easy navigation from the said Spiten-deuvel creek to and along the Harlem river into the East river ; and it shall also be lawful for the said corporation to invest such sums as they may deem expedient, in the building, purchase and employment of steam or other freighting boats, to be used in navigating the said canal and Harlem river, and the waters adjacent, and therewith connected ; and also to purchase, build or hire houses, factories, ware-houses, wharves and other necessary buildings for the use of said corporation, and to sell or lease the whole or any part of the above mentioned property as they may think conducive to the interests of the said incorporation ; *Provided*, That the said company shall not take any land against the consent of the owner or owners, and shall not break ground in the excavation of the said canal or canals, or basins, without the approbation of the corporation of the city of New York, first had and obtained under their corporate seal.

5. *And be it further enacted*, That the capital stock of the said company shall be five hundred thousand dollars, to be divided into shares of fifty dollars each ; and that it shall be lawful for the directors to call and demand from the stockholders respectively, all such sums of money by them subscribed, at such time and in such proportion, as they shall see fit ; and that Richard Riker, Elisha W. King and Charles H. Hall shall be commissioners, for opening books and receiving subscriptions to said stock ; and shall give thirty days notice of the time and place of holding such subscription ; and that in case of the death or refusal to act, of any or either of the said commissioners, that the directors for the time being, shall and may appoint any one or more persons, as commissioners to supply the vacancy or vacancies occasioned by such death or refusal to act as aforesaid ; and that if any stockholder or stockholders, so subscribing, shall neglect to make such payment as the said directors, on public notice of thirty days, may call for and demand, for ten days after the same ought to have been paid, the shares of the said stockholders, so neglecting, and all previous payments by them made, may be forfeited to the use and benefit of the said corporation hereby created.

6. *And be it further enacted*, That the directors for the time being, shall have power to make such by-laws, rules and regulations as shall appear needful and proper, touching the

management and disposition of the stock, property, estate and effects of the said corporation, the rate and manner of collecting tolls and fares, with power to appoint such and so many officers, clerks and servants for carrying on the business of the said corporation, and such allowances and salaries as to them shall seem meet and proper.

7. *And be it further enacted*, That if any person or persons shall wilfully do or cause to be done any act whatsoever, whereby the said canal, basins and works, or any matter or thing appertaining to the same, shall be impaired or injured, the person or persons so offending shall forfeit and pay to the said company treble the amount of damages sustained by means of such offence or injury, to be recovered by said company, with costs of suit, and by action of debt, in the supreme court of judicature of this State, which action shall, in every instance, be considered transitory in its nature, and may be triable in any county of this State.

8. *And be it further enacted*, That it shall not be lawful for the said corporation to employ any part of its capital in banking, nor shall it issue any bond, bill, note of credit, check, draft, or other obligation for the purpose of loaning the same; nor shall it use any power not expressly granted by this act, or any power not necessary to effect the object of the incorporation; and that any violation of this section shall be deemed a forfeiture of the privileges and rights of such corporation.

9. *And be it further enacted*, That the stock of said corporation shall be deemed and considered personal estate, and shall be assignable and transferable, and that no transfer of such stock shall be valid until the same shall have been duly assigned and transferred in and upon a book to be kept for that purpose, by the president of said corporation, which book shall be closed ten days previous to every election, and no transfer of stock shall entitle the person to election, unless the same shall have been transferred at least ten days previous to any such election.

10. *And be it further enacted*, That this act shall be deemed a public act; and shall be benignly and favorably construed for all the purposes therein declared and expressed, in all courts and places whatsoever.

11. *And be it further enacted*, That the term of two years from the passing of this act be, and it is hereby allowed for

constructing said canal, and no more; and should said canal not be made within said period, then this act shall be deemed to have expired, and to be void to all intents and purposes.

12. *And be it further enacted*, That the stockholders shall jointly and severally be liable for the debts and demands against the said company, to the amount of the stock held by each stockholder; *Provided*, That no suit shall be brought against any stockholder or stockholders until 30 days after such debt or demand shall have been demanded from the said corporation.

13. *And be it further enacted*, That the Legislature may at any time, alter or amend this act.

A N A C T

TO AMEND AND EXTEND THE ACT ENTITLED

“AN ACT TO INCORPORATE THE HARLEM RIVER CANAL COMPANY.”

PASSED APRIL 16TH, 1827.

Passed May 13th, 1836.

The People of the State of New York represented in Senate and Assembly, do enact as follows :

§ 1. The act entitled “An act to incorporate the Harlem River Canal Company,” passed 16th April, 1827, is hereby revived and continued and the time limited by said act for constructing said canal shall be extended to the term of five years from the passing of this act.

§ 2. Charles Henry Hall, Francis Fickett, Richard Riker, William Beach Lawrence, Lewis Morris, James R. Whiting, J. Green Pearson, Isaac Adriaance, Jonathan B. Hall, Joseph G. Swift, Benson McGowan, Benjamin F. Carman, and Joseph E. Bloomfield, shall be the first directors, and shall hold their offices until the fourth Monday in April one thousand eight hundred and thirty-seven, and until others shall be chosen.

§ 3. The company are hereby authorized to extend their capital to the sum of seven hundred and fifty thousand dollars.

§ 4. Section twelfth of the former act is hereby repealed ; but the said corporation shall not purchase, hold, or possess docks, wharves, ware-houses, or any other real estate exceeding in amount the sum of two hundred thousand dollars.

§ 5. Every thing in the act hereby revived, inconsistent with the provisions of this act, is hereby repealed.

§ 6. But persons residing upon, or owning lands bounded upon Harlem river, or Spitendeuvel creek, shall at all times have the liberty of passing through the locks or works of said company, with their ordinary farm boats, to and from New York market, or pleasure boats, free from toll or other charges.

§ 7. This corporation shall continue for fifty years, and the Legislature may at any time alter and amend this act.

STATE OF NEW YORK, }
Secretary's Office. }

I have compared the preceding with an original act of the Legislature on file in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original.

ARCH'D CAMPBELL,

Deputy Secretary.

Albany, May 13, 1836.

R E P O R T

OF THE

SPECIAL COMMITTEE,

ON THE

PREAMBLE AND RESOLUTIONS

RELATIVE TO BUILDING A

BRIDGE TO SUPPORT IRON PIPES

ACROSS HARLEM RIVER.

PRESENTED BY A. T. ANDERSON,

CHAIRMAN.

LAI D ON THE TABLE, AND FOUR TIMES THE USUAL NUMBER
ORDERED PRINTED.

*not of regular
of chairman*

DOCUMENT No. 7.

BOARD OF ASSISTANT ALDERMEN.

NOVEMBER 26TH, 1838.

Report of the Special Committee, on the Preamble and Resolutions relative to building a bridge to support iron pipes across Harlem river. Presented by A. T. Anderson, chairman. Laid on the table, and four times the usual number ordered printed.

J. NEWHOUSE, Clerk.

The Special Committee, to whom was referred the annexed preamble and resolutions, relative to crossing Harlem river by a bridge to support iron pipes, beg leave

RESPECTFULLY TO REPORT,—

That a collision with the Water Commissioners would be a matter of much and serious regret, and as the preamble and resolutions evidently contemplate such a result, your Committee have examined the subject with no little anxiety.

To the Water Commissioners your Committee cannot ascribe any other motive, in the contemplated erection of the low bridge, than an honest desire to procure for the City a supply of pure and wholesome water, upon terms most beneficial to the public, and in the opinion of your Committee, they deserve the best thanks of the community for the zeal, energy, and skill with which they have thus far prosecuted the work. But it is not unreasonable to suppose that elevated conceptions of the grandeur of the enterprise, and a noble anxiety to carry it to a successful termination, may for the time throw lesser objects so far in the shade, that their real importance may be lost sight of, and thus though a great work may be accomplished, it may be accomplished at a great and unnecessary sacrifice.

It may further be considered, that though the Board of Water Commissioners is composed of our fellow citizens, it is a Board appointed by State authority, having a specific duty of its own—to introduce water into the City upon a specific plan. Modes of smoothing the way, by which the work may be effected at a less expense—questions of expediency—and larger questions looking to futurity—to the growing wants of the community—and the preservation and development of the great natural resources, so richly scattered around us by the hand of Providence, are no part of their duty.

If this be so, there should be some guardianship over such rights and interests as may thus be lost sight of; and if the Common Council have not that guardianship, within the limits of its jurisdiction, and more especially in relation to the navigable waters surrounding the island, the strange policy would be presented of the citizens of New York giving up to the will of the State authorities, one of the great means of her prosperity, for permission to supply themselves with pure water, at an enormous cost, from their own funds, and upon ample remuneration to each and every one who may suffer damage by the work.

The question presented by the preamble and resolutions is, whether the navigation of Harlem river shall or shall not be preserved; and in order that it may be fairly understood, and as many of the members cannot be expected to be familiar with the proceedings in relation to carrying the aqueduct across Harlem river, your Committee have deemed it proper to give a short history of the most important.

The first in order is the act of the Legislature, passed May 2d, 1834, authorizing the construction of the work.

It provides, as mentioned in the preamble, that Commissioners should be appointed—adopt a plan, and report this plan to the Common Council, with estimates of expense, and their reasons for adopting it—that if the Common Council should approve the plan it should be submitted to the people, and if a majority were found to be in favor of the “measure,” the Common Council were authorized to raise the funds, and to direct the Commissioners to proceed with the work.

Your Committee take occasion here to correct what they believe to be a misapprehension as to what, under the act, was submitted to the people. The phraseology of the act is, in the opinion of your Committee, clear and conclusive: the *plan* is to be *adopted* by the Commissioners, and *approved* by the Common Council—and if a majority of the people were in favor of the *measure* the work was to proceed. The

measure, and not the *plan*, was therefore passed upon—the simple question only, *yes* or *no*—*water*, or *no water*. The *plan* itself is a different matter. The very approval of the measure by the people made this plan, fixed and settled law, to be carried into execution by the Common Council and the Commissioners, as ministerial officers, with only such *immaterial alterations* as were necessary.

Your Committee are therefore of opinion, that a material alteration in the plan can be made only with the consent of the Legislature, and that such alteration need not be submitted to the people.

On the 16th of February, 1836, and after the period prescribed by the act, the Commissioners reported to the Common Council the *plan* adopted by them, and which was approved by the Common Council. The report is an able and satisfactory document, and well merits the encomiums passed upon it by the Committee who recommended its approval.

After discussing various plans submitted to them, the Commissioners select for comment the two made by Major Douglass and Doctor Martineau, making a synopsis of each, and then give their own “Plan of introducing the water,” selected from the plans of these two gentlemen.

In reference to Harlem river, the Commissioners say—“The river to be crossed by inverted syphons of wrought iron pipes, of 8 feet diameter, formed in the manner that steam boilers are.” (Doc. 44, 1835, p. 366.)

This “Plan for introducing the water,” under that specific head, occupies not more than half a page of the report, and if it be *the plan* required by the act of the Legislature, the Commissioners and the Common Council have most assuredly failed in their duty, in not presenting something in detail,—something in which, if “alterations” were made, the proper authorities might judge whether those alterations were or were not “immaterial and necessary.” Your Committee have therefore looked into other parts of the report for the specifications and particulars of the plan for crossing the river by inverted syphons of wrought iron pipes.

In page 362, the Commissioners state the estimated amounts of each engineer, for “crossing Harlem river by aqueduct, “and by wrought iron pipes or inverted syphons, as to cost.

“ Estimated by J. Martineau, for wrought iron pipes, - - - - -	\$187,737 62
“ Estimated by D. B. Douglass, by high arches and aqueduct, - - - - -	415,650 00
“ Difference in favor of inverted syphon, -	\$227,912 38

After some observations on the liability to rust, as between wrought iron and cast iron, the Commissioners proceed,—
 “The difference in the cost of crossing the river by a pipe of
 “the dimensions alluded to, compared with that of an aque-
 “duct, is so considerable that, in the opinion of the Commis-
 “sioners, it ought to be adopted, unless there should appear
 “more serious objections to the plan than any they have as
 “yet heard.”

If any thing is to be gathered from this, it is, that the plan of Major Douglass was rejected, and that of Mr. Martineau adopted.

In page 352, the Commissioners give a synopsis of Mr. Martineau's plan, but your Committee prefer to give the plan itself, in Mr. Martineau's own words, from his report, appended to the report of the Commissioners, page 501.

“A massive embankment, composed in great part of wrought
 “stone, sloping below the water $1\frac{1}{2}$ to 1, or at an angle of 34
 “degrees above the water,—the exterior stone work is to be
 “laid into a compact slope wall, carried up at an angle of 45
 “degrees to a line thirty feet above tide. The embankment
 “to be divided into two portions, by placing an arch of sixty
 “feet span *in the channel-way*, semi-elliptical in form, *to*
 “*keep open the navigation, and allow a free reflux of the tide.*”
 “The embankment is estimated to be thirty feet wide on
 “top, and may answer the twofold purpose of a *roadway*
 “*across the river*, and foundation for inverted syphon.”

Your Committee are of opinion that the plan, as presented in detail by Mr. Martineau, is the only plan by which the Commissioners are at present authorized to cross the river. The plan itself, from the want of sufficient height in the arch above tide water, your Committee consider open to insuperable objections. The elevation of the arch to such height as would allow vessels with standing masts and spars to pass under, would certainly be a “necessary” alteration, but how far “immaterial” your Committee are not prepared to say.

The next document to which the Committee ask the attention of the Board, is Doc. 55, the semi-annual report of the Commissioners, from the 1st of July to the 1st of December, 1837, inclusive.

The mode of crossing the river is discussed at large.—In page 369 the Commissioners, in presenting a synopsis of the report of Mr. Jarvis, the present Chief Engineer, observe—
 “The plan of carrying the water across Harlem river by an
 “inverted syphon is next considered. It is proposed to erect
 “a semi-circular arch of 80 feet span, resting on abutment
 “piers. The total height of the arch, from the level of flood

“ tide, to the underside of it, will be 50 feet. This arch is to be placed on the *New York side of the river*, and will form a sufficient channel-way for navigation.”

The Engineer himself, in his report, appended to the report of the Commissioners, (p. 397,) gives the detail.

“ The plan of carrying the aqueduct across, by means of iron pipes, *resting on a stone bridge*, has the following general characteristics. A semi-circular arch of 80 feet span, resting on abutment piers, which are raised 10 feet above flood tide, making the total height from the level of flood tide to the underside of the arch fifty feet, is placed next the *southern shore* of the river, to form a channel-way for the same. At present the channel is about *one hundred and fifty feet from this shore*, but the situation is favorable, and the tide current will very shortly cut a new channel when it is *restricted* to a passage through this arch, and form as good a channel as the present, for any purposes, *should it ever be wanted*. From the north abutment of this arch to the north shore of the river, it is proposed to make an *embankment of stone*, to support the foundation wall of the aqueduct.”

This last is the bridge proposed by the Commissioners to be built, except that the width of the arch is increased to 120 feet, and its height to 65 feet.

Your Committee will here observe that the river, at this point, is over 600 feet wide—the channel-way about 300 feet wide and 20 feet deep,—and bounded on both sides by what are commonly called the mud flats—at low tide there is about one foot of water on these flats, kept in by McCombs’ dam,—in other parts of the river these flats are constantly walked upon with ease. The arch proposed to be built by the Commissioners is over these mud flats, while the channel-way is to be filled in by a solid embankment of loose stone, and this embankment to be carried nearly 500 feet to the Westchester shore.

Is this the plan proposed by Mr. Martineau, and adopted and approved by the Commissioners and the Common Council, or an “*immaterial and necessary alteration*” of the same?

It is not necessary for the present purposes to enter into a minute comparison, but so far as the bed of the river is concerned, the one proposes a span of 60 feet in the *channel-way*, and the other, one of double that width *over the mud flats*, and to fill up the channel-way by a solid dam.—It is therefore the opinion of your Committee that the low bridge, as proposed now to be built, is not the one adopted, and approved, as required by the act of the Legislature.

This report was referred to the Committees on Roads and Canals, five out of six of whom reported against the plan, and one made a minority report, (Doc. 88, 89,) and here, for the first time, the question of preserving the navigation of the river becomes prominent.

The necessity for its preservation is urged with great ability by the majority, and discloses the startling admission made by the present Engineer, the author of the plan, that "*if the navigation of the river is to be preserved, no modification of the low bridge would answer. The low bridge was submitted without reference to the navigation, and the high bridge only would allow vessels to pass through.*"

The minority report on the contrary, boldly contends at length, that "the navigation of the river has not been considered worth preserving, until recently," and, as it seems to your Committee, not worth preserving at all.

On the 14th of May the Commissioners addressed a communication (Doc. 2,) to the Common Council, in answer to the the majority report, well sustaining the observation of the Chief Engineer, that "the low bridge was submitted without reference to the navigation." They admit that if certain improvements are made in the river and its outlet, large sloops of 90 or 100 tons, with masts of 80 feet in height, would not be able to pass, and they sagaciously observe that, "in such case, these large vessels may come from the North River as far as the bridge, and also from the East River to the bridge," but for what purpose your committee are unable to divine, except to exchange salutes and go back again.

But there is one remark in that document, coming from the quarter from which it does, that well deserves the serious attention of the Board.

In page 29, in their attempt to show it to be quite problematical whether the Harlem river will ever be made navigable for any but small vessels, they state in relation to the channel, that it is full of sinuosities and curves, (which your committee know to be far from the literal fact,) and that "to make it straight is impossible, and to deepen it will be attended with great expense."

It has just been observed that the Commissioners propose to fill in or dam up the natural channel, and construct their arch over the mud flats, against the land, that these flats are consistent enough to walk upon. Is it not reasonable to suppose that the chips, stones, and rubbish which must unavoidably be deposited on the spot, will make this mud flat much more consistent, and thus finish up a solid dam from shore to shore? If, then, to deepen a channel be attended with great expense,

what will be the expense of making a new one, with all these obstructions to remove? And if it be impossible to make a crooked channel straight, can it be within the Herculean powers of these Commissioners to make a straight channel *crooked*?

But, says the Chief Engineer, the tide current will shortly cut a new channel, when restricted to a passage through this arch. This may be so, but if it does, it will be by the irresistible power of a cataract, and not by an easy and natural flow of the water.

To show this, your committee will state a few facts.—The quantity of water, the flow and re-flow of which is to be provided for, is that quantity only which is thrown in by the rise of the tide; the channel itself is never empty, and of course never flows out, though it is constantly changing, and be the channel under the arch or elsewhere,—nor does it make any difference for this purpose whether the channel be filled with water or anything else,—IT IS ALWAYS FILLED. The tide rises five feet upon the average, (and in spring tides, and during the prevalence of easterly winds, which back the water in from the Sound, much higher.)

Now the openings at McCombs' dam are about 220 feet—100 feet more than the Commissioners propose to allow, and yet this obstruction is only passable at slack water, and then only for a few minutes—at all other times it is a foaming cataract. To your committee it appears to be as clear as the sun at noon-day, that the paltry opening of 120 feet must form a "tide current" under the arch, not only bidding defiance to all attempts to pass it, but probably sufficient, in time, to destroy the work itself.

Have the commissioners, or the common council, or the Legislature itself, the right thus to obstruct the navigation of this river?

On this point your committee will observe, that in the reports of the engineers and commissioners, there seems to prevail a mistiness of idea as to what a navigable river is. They seem to confound the *use* which may be made of a river, or *navigation*, with the river itself.

A NAVIGABLE RIVER is where the tide ebbs and flows, and it makes no difference whether even a canoe has ever floated on its waters, it is still a NAVIGABLE RIVER, and bound by laws which do not apply to fresh-water streams. ON NAVIGABLE RIVERS, the riparian proprietors own to high-water mark, while on rivers not navigable, they own to the middle of the stream. Since the adoption of the Federal Constitution, all property

on navigable rivers, whether held by States or individuals, is subject to "A FREE AND UNINTERRUPTED PASSAGE OF ALL THE CITIZENS OF THE UNITED STATES,"—and it has accordingly been the peculiar province of the Federal Government—THE PEOPLE OF THE UNITED STATES—to clear out and otherwise improve the navigable waters of the several States.

If this be good law, the Legislature itself had no right to make any grant which would interfere with the navigation of the river—nor has the Legislature made any such grant: the river is not mentioned in the Act, and the commissioners have been compelled to ask the opinion of counsel, whether they had any right at all, even by implication, to cross the river.

This opinion (appended to the Report) advises soundly and logically, (as might be expected from the high quarter from which it comes,) that the commissioners have such right under the Act, but by some misapprehension, or more probably, misstatement of facts, supposes a collision with the powers of the Harlem River Canal Company, and endeavors to settle the difficulty. Your committee can see no difficulty in the case. The Legislature chartered the company, among other things, to improve the navigation of Harlem river—and by another act allowed the city of New York to bring the Croton water into the city by an aqueduct, which must necessarily cross that river. But does this imply that the aqueduct must DESTROY the river? Had that been the consequence, the Legislature could not, and would not, have made any such grant. The acts are consistent with each other, and the acts especially chartering, amending, and reviving the Harlem River Canal Company, are full and conclusive evidence to your committee, that the Legislature never thought of the possibility of destroying the river, under the Water Act.

From these proceedings, the Board will perceive that the question of preserving the navigation has become a matter of debate as to its expediency, with the Water Commissioners. THIS IS LEGISLATION. Where, in the act, do they find the question referred to them? What right have they to decide whether the navigation of this river shall be or shall not be preserved,—a question which is not in the power of the common council, or even of the State Legislature, to entertain? The commissioners are mere ministerial officers,—the navigable waters of the United States are free to all citizens of the United States, and least of all have mere ministerial officers the right to say whether they shall be kept free.

Your committee will dismiss this part of the subject with the remark that, as they are informed, and believe, that sound

expositor of constitutional law, the State of Virginia, has never allowed a bridge to be built over her navigable waters without the consent of Congress,—an authority of some little weight, your committee would suppose, against the legal opinions of the five Water Commissioners of the city of New York.

Your committee will next ask the attention of the Board to the economy of the low bridge.

The work, down to Harlem river, has been constructed upon a magnificent scale—perfect and complete—a monument for ages: but here, for the first time, we become startled at the expense,—it has now outgrown the whole original estimate, and we are just at Harlem river, with a tremendous valley before us,—a high bridge will cost a million, and syphons or a low bridge but half the sum. Could not this discovery have been made to apply to the heights and valleys of Westchester, and the heights and valleys of New York, long since? But we are unfortunately alarmed at the expense at the very place in which we have the least right to economize—where, if anywhere, we are most liable to throw away millions of the people's money, by a system of temporary expedients, and where the work, the pride of the city, can be best displayed in its grandeur.

Your committee have been informed upon high authority, that the sufficiency of the work is doubtful, and without pretending to the skill of engineers, they say for themselves, that they cannot believe that an embankment of loose stone, upon a mud flat twenty feet deep, can afford a very solid support for the pressure of an immense body of water, running at an angle of forty-five degrees, and therefore accord in the opinion.

If, then, your Committee are correct in their views, that this low bridge will, in the first place, destroy the navigation of the river, and in the second place, will be insufficient for the purpose, some items must be added to the estimates, which are not to be found in the reports—some of which may be as follows:

A compensation to the owners of the land on each side of the river, for miles, and to some distance back, for the deterioration of their land, and some idea of which may be formed from the fact that the Commissioners themselves have paid at the rate of \$1000 per acre for land on the river, and \$5 and \$600 for land at a small distance from it. This deterioration is estimated by competent judges, on oath, at one half the value.

A compensation to the proprietors of McCombs' dam, for an

invasion of their "vested rights," which the Commissioners liberally allow to exist, by their communication of May 14, but which they have as yet taken no steps to pay for,—nor with (it is hoped,) the consent of this Board, ever will,—the dam being as illegal, in the opinion of your committee, as the dam proposed to be built by the Commissioners.

Constant repairs of the embankment of loose stone, to be thrown into the river, and on a mud bank of twenty feet deep.

The continual employment of mud scows, to scoop out the deposit caused by the restricted passage under the archway—protracted litigation, and in case of defeat, the removal of the whole work at an immense sacrifice. Some of these items, your committee admit to be contingent, but there is enough of solid truth in them to allow a very large addition to any estimates as yet presented, and quite enough to characterize the measure as against the principles of a wise economy.

Your committee are therefore of opinion, that the low bridge, as proposed to be built by the Commissioners, is not the plan "adopted and ratified" under the act of the Legislature—is against the paramount law of the land, and inexpedient in itself.

It will be remembered that by Doc. 55 the Commissioners distinctly presented to the common council the question of high bridge, or low bridge, and that this Board, with great unanimity, recommended the high bridge. The Board of Aldermen, however, "Resolved that this common council will not interfere with the powers and duties of said Commissioners, by instructing them in what manner they shall carry the aqueduct across Harlem river," adding a strong request that the navigation of the river should not be destroyed or materially injured.

Your committee cannot discover how a mere opinion of the Common Council, (for their instruction could not amount to more,) even fortified by an ordinance, on this "vexed question," as the Commissioners term it, given at the request of the Commissioners, can be an interference with their legitimate powers and duties. But neither that Board nor this, together forming the Common Council, have expressed any opinion as to their OWN POWERS AND DUTIES, when the Commissioners are found to be violating THEIRS. Thus far, the Common Council stands uncommitted—it would be treason to the public to be otherwise.

Your committee have heard it suggested that the Board of Commissioners are constituted an independent body, and that

the Common Council is bound to pay the money on the contracts, as the work is performed without control or question—a somewhat startling proposition, where legislative powers and ten millions of money are concerned.

Your committee freely admit that the Common Council, as well as the Commissioners, are bound by the act of the Legislature, and by the plan adopted and ratified, as fixed and settled law, and wherever THIS PLAN is carried out by the Commissioners, the Common Council is bound to pay for the work—but, if your committee understand the act of the Legislature, the Common Council is bound to WITHHOLD the money whenever THIS PLAN IS NOT CARRIED OUT by the Commissioners. The Common Council cannot be the mere purse-bearer of the Commissioners, to deal out as they may require, whether their proceedings be according to law or against it.

By the 11th section of the act, the moneys to be raised by virtue of the same, are to be expended in carrying out the plan adopted and ratified: the law of the State is imperative on the Common Council, as well as on the Commissioners—but if the Commissioners pursue a different plan than that adopted, who is to judge of the proper application of the money? Surely those who are responsible—and they are the Common Council, the representatives of the people who pay the money. The responsibility of the Commissioners, except for fraud, is an idle tale—they are under none. If there be no power in the Common Council to see to the proper application of the money, there is a responsibility without the means of meeting it—an anomaly in legislation.

But not only is the Common Council by the act bound to see that these moneys are properly applied, but the act has provided the means by which the duty can be met.

By the 24th section, all moneys to be paid for land, and upon contracts, must be paid by the Comptroller, upon the draft of the Commissioners, which draft must be authorized by the Common Council—and, by the 25th section, these payments by the Comptroller are to be reported by him every six months, and the accounts of the Commissioners and of the Comptroller are to be examined by the Finance Committee of the Board of Aldermen.

To your committee the system, as provided by the act, contains checks, and allows a supervisory power sufficient to meet all contingencies.

The practice, however, is different: by several ordinances, the Commissioners are allowed to draw directly upon the Comptroller—and thus this large expenditure is made, without

a single item ever passing before the Common Council, until it be too late to remedy an error, if there be one.

Your committee recommend that the practice be altered, so that all drafts of the Commissioners be presented to the Common Council, directly, who shall order the Comptroller to pay them, if found to be in accordance with the law.

Your committee offer the following summary of the results to which they have arrived :

1st. That the plan, as detailed in the report of February 16, 1836, is fixed and settled law, and cannot be altered, except the alteration be "immaterial and necessary."

2d. That the low bridge, as detailed by Mr. Martineau, in that report, is the mode of crossing Harlem river adopted by the Commissioners and the Common Council.

3d. That the low bridge proposed by Mr. Jarvis, and for which the Commissioners have advertised for proposals, is not the plan adopted.

4th. That both plans are objectionable, inasmuch as they destroy the navigation of the river.

5th. That there is no power short of an act of Congress, which can authorize an interference with the navigation of Harlem river—the river being an arm of the sea, and the sovereignty being vested in the people of the United States.

6th. That great doubts exist, as to the sufficiency of a low bridge for the purposes of the aqueduct ; and if these doubts should be correct—for this reason—and because the obstruction of the navigation is illegal, the city will be involved in large additional expenditures not mentioned in any estimate.

7th. That by the act of the Legislature, the Common Council is bound to see to the proper application of the moneys raised on the water loans—and in effect prohibited from making any payment except for work done in conformity with the plan adopted and ratified.

For these reasons, your committee think that the first resolution should be adopted in effect—but as any separate action of either Board of the Common Council is to be deprecated,

they recommend the following as a substitute for all the resolutions :—

1st. *Resolved*, That the common council is not authorized by law to allow the water commissioners to draw upon the comptroller of the city of New York, for any sum in favor of, and to be paid to any contractor, “ for building the bridge to support iron pipes,” recommended by said commissioners, in their semi-annual report, from the 1st of July to 30th of December, 1837, inclusive,” the same not being the plan adopted and ratified.

2d. *Resolved*, That the commissioners be requested to prepare such a plan for carrying the Croton Aqueduct across Harlem river, as will allow vessels having standing masts and spars of 90 feet and upwards in height, to pass through,— and having openings of at least 300 feet in the whole, one of which openings shall be in the channel-way, of at least 60 feet in width—to preserve the navigation, and allow an easy flux and reflux of the tide.

3d. *Resolved*, That when such plan shall be so made, and approved by the common council, the common council will take all proper measures to have the same legally confirmed, by application to the Legislature or otherwise.

4th. *Resolved*, That the clerk of the common council serve a copy of these resolutions on the Water Commissioners.

ABEL T. ANDERSON, Ch'n, } *Special*
DAVID GRAHAM, JR., }
NATHANIEL JARVIS, JR., } *Committee.*

PREAMBLE AND RESOLUTIONS.

Whereas, by the act of the Legislature, entitled "An Act to provide for supplying the city of New York with pure and wholesome water," the water commissioners were required to report to the common council, on or before the first day of January, in the year one thousand eight hundred and thirty-six, among other things, "a full statement and description of the plan adopted by them." And it was further provided, that in case the plan so adopted by the commissioners shall be approved by the common council, the same should be submitted to the people at the next charter election.

And whereas, a plan was adopted by the commissioners, approved by the common council, and submitted to the people, a majority of whom were found to be in favor of the measure; and the commissioners have proceeded with the work at the expense of the city of New York, and with the moneys provided by the Common Council, under and by virtue of said act.

And whereas, said act further provides, that "the moneys to be raised by virtue of this act shall be applied and expended to and for the purpose of supplying the city of New York with pure and wholesome water, ACCORDING TO THE PLAN SO ADOPTED AND RATIFIED, with such IMMATERIAL alterations as may be NECESSARY, and by and under the directions of the said commissioners."

And whereas, the water commissioners have advertised for proposals to build "THE BRIDGE TO SUPPORT IRON PIPES ACROSS HARLEM RIVER," commonly known as the low bridge, which plan is not THE PLAN SO ADOPTED AND RATIFIED, as provided in and by said act, nor an "immaterial" and "necessary" alteration thereof.

And whereas, in the opinion of a majority of the members of this Board, the low bridge, as proposed to be built

by the commissioners, would be an obstruction to the free right of the people of the United States to navigate said river, and therefore contrary to law, and, by the formation of bars and shoals, might injure the bed of the river so much as to require large expenditures in clearing out the same; and inasmuch as, in the words of the Chief Engineer,—“if the navigation of the river is to be preserved, no modification of the low bridge would answer;”—and in other respects said low bridge is against the principles of a wise economy:—

Resolved, That this Board will not assent to any resolution authorizing the commissioners to draw upon the comptroller of the city of New York for any sum, “in favor of, and to be paid to any contractor “for the building of such low bridge.”

Resolved, That the clerk of this Board serve a copy of this preamble and resolutions upon the Water Commissioners, and publish the same officially in the daily papers.

Notwithstanding the foregoing able Report of the Board of Assistant Aldermen, the Board of Aldermen voted it down, and sustained the Water Commissioners in their *Low Bridge*. We then parried off the blow by the following Advertisement:—

HARLÆM LOW BRIDGE.

WARNING TO MASONS AND BUILDERS.

TO MASONS, BUILDERS, AND CONTRACTORS.

THE Water Commissioners for the City of New York, having advertised for proposals for building "the bridge to support iron pipes across Harlæm River," which we are informed is the low bridge :—

We, the subscribers, owners of land adjoining the Harlæm River, and in the vicinity thereof, and interested in keeping the navigation of said river unobstructed, to prevent innocent contractors from being injured by an agreement to erect said bridge for the Water Commissioners :—

Do give this public notice, that we will use every means the law will justify to prevent any and all persons obstructing the water at the natural channel of said river, so as to prevent a free and uninterrupted passage through said channel of vessels with masts and spars of the usual and proper height and dimensions of vessels of the draft of water said channel will now permit to pass.

ISAAC DYCKMAN,
MICHAEL DYCKMAN,
AARON POST,
SAMUEL THOMSON,,
SAMUEL RYER,
EDWARD CROWELL,
D. S. DAVIS,
CASPER BOWERS,
ISAAC ADRIANCE,
R. RIKER,

JOHN A. HAVEN,
WM. BRADHURST,
GURDON BUCK,
RICHARD F. CARMAN,
ROBT. BOGARDUS,
CHARLES HENRY HALL,
J. R. WHITING,
AUGUSTUS VAN CORTLANDT,
MICHAEL VARIAN,
JAMES CORSA,
JOSIAH BRIGGS,
WILLIAM ARCHER,
WILLIAM H. MORRIS,
LEWIS MORRIS,
ROBERT MORRIS,
GOUVERNEUR MORRIS,
RICHARD L. MORRIS,
WILLIAM BEACH LAWRENCE,
J. GREEN PEARSON,
PETER VALENTINE,
JOHN CROMWELL,
JOHN BUSSING, JR.,
JOHN CORSA,
PETER BRIGGS,
CHRISTOPHER WALTON,
ANDREW CORSE,
JAMES V. C. MORRIS,
A. F. VAN CORTLANDT,
LEWIS G. MORRIS,
GERARD MORRIS,
S. WARD, by his Attorney.

C H A R T E R
O F
S T E A M B O A T T H A M E S ,

T O
L. G. M O R R I S .

1838.

THIS AGREEMENT, made and entered into this 20th day of October, in the year of our Lord 1838, by and between Elijah A. Bill, of Norwich, in the county of New London, of the one part, and Lewis G. Morris, of Westchester county, in the State of New York, of the other part, witnesseth :—

That said party of the first part has agreed, and by these presents does hereby agree, to let to said party of the second part, his steamboat called the *Thames*, to run on Harlem River by day, in the State of New York, according to the direction of the party of the second part, for the space of one month; said time to commence from the departure of the boat from Norwich, on Tuesday, the 23d inst., for Harlem River.

It is understood and agreed by the parties hereto, that said party of the first part is to man said boat, and defray all expenses of running her during the time aforesaid, except her fuel and wharfage, which are to be paid for and supplied by the party of the second part. If the boat gets out of order, from any defect in her machinery, or otherwise, from ordinary usage, the time thus lost is to be deducted from the amount of time which goes to make up the one month of thirty days as aforesaid. If the boat is obliged to lie by in consequence of the particular perils of the route in Harlem River, the time thus lost is to be reckoned a part of the thirty days.

The boat is to be considered as delivered to the party of the first part on the expiration of the thirty days as aforesaid, at Harlem River.

Said party of the second part is to pay twelve dollars and fifty cents per day for the use of said boat during the time aforesaid, to be paid to the party of the first part, as follows : Fifty dollars on the execution of this instrument, one half the whole amount on the arrival of the boat at Harlem River, and the residue at the expiration of the thirty days as aforesaid.

In witness whereof, we have hereto set our hands and seals, and also to a duplicate of like term and date, the day and year aforesaid.

ELIJAH A. BILL. [L. s.]

L. G. MORRIS. [L. s.]

In presence of

A. C. LIPPITT.

L. F. S. FOSTER.

FORM OF INVITATION

TO

EXCURSION ON HARLEM RIVER,

FROM

HARLEM RIVER CANAL COMPANY.

1838.

HARLEM RIVER NAVIGATION.



SIR :—

The honor of your company is respectfully solicited to take an Excursion with the HARLEM RIVER CANAL COMPANY, in the Steamboat *Thames*, on THURSDAY, the 15th of November, to view the said River from the Harlem Rail Road, to Spuytendeuvil Creek.

The Steamer will leave the wharf at the termination of the Rail Road, at 12 o'clock.—A Cold Collation will be prepared on board.

A Car for the invited guests will be provided at the Rail Road Depot, No. 77 Bowery, at 11 o'clock.

R. RIKER,

President.

This form of invitation was extended, (and very generally accepted,) by the Water Commissioners and their Engineer, the Mayor and Common Council of the City of New York, Judges of Courts, Members of the State Legislature elect,

and other influential men of that day ; and we were fortunate enough to get several excursions of the kind, very fully attended ; by which means we explained on the spot the location of the *Low Bridge*, and its supposed effect upon the River, &c.

Preparatory to a defeat, should one await us at the State Legislature and litigations, we took the following steps to commence a suit in the Court of the United States.

SUBSCRIPTIONS

TO

SUSTAIN A SUIT IN COURT (U. S.),

*Brought by MR. GRAY vs. WATER COMMISSIONERS, relative to
Harlem River.*

NOVEMBER, 1838.

WHEREAS, Francis C. Gray, of Massachusetts, is about instituting a suit in the Circuit Court of the United States for the Southern District of New York, for the purpose of restraining and preventing the Water Commissioners of the city of New York from injuring or destroying the navigation of the Harlem River, by the construction or erection of an aqueduct over said river, in such manner as to interfere with the use thereof:—

And whereas, the restraining or preventing the Water Commissioners from injuring and destroying the said river is a matter of common interest to all the owners or proprietors of the land adjacent thereto:—

Now, therefore, in consideration of the premises, we the subscribers, owners of property on the Harlem River, and in the neighborhood thereof, do hereby covenant and agree to and with the said Francis C. Gray to pay to Lewis G. Morris, of Westchester, whenever applied to by him, the portion of the expenses of the said suit, which may be justly chargeable to us, according to the proportion which our respective subscriptions bear to the whole amount of the said expenses; and in case any of the subscribers should neglect or refuse to pay his subscription, we agree that the said deficiency shall be chargeable in the proportions aforesaid on the residue of the subscribers, so that the said Francis C. Gray shall be saved

and indemnified from the expenses of the said suit beyond the proportion which would be chargeable on him according to the amount set opposite his name.

Given under our hands and seals, this 22d day of October, 1838.

CHARLES HENRY HALL, One Thousand Dollars. [L. s.]

W. B. LAWRENCE, for self, }
SAMUEL WARD, and } One Thousand Dollars. [L. s.]
J. G. PEARSON, }

ROBT. BOGARDUS. [L. s.]

LEWIS MORRIS, \$300. [L. s.]

ISAAC ADRIANCE, \$200. [L. s.]

Having succeeded in the Legislature, the above suit was never commenced, and of course the money not called for.

SUBSCRIPTION LIST

FOR

CARRYING ON LAW SUIT.

Subscription to endeavor to preserve the Navigation of the Harlem River.

WE, the undersigned, hereby agree to subscribe and pay over to the following Trustees the sum or sums of money placed opposite to our names, for the purpose of being expended in the prosecution of a suit or suits at law, having for the end the securing the navigation of the Harlem River, now obstructed by bridges, as well as the repelling the erection or building of an aqueduct contemplated by the Water Commissioners, that may injure the navigation of the river aforesaid.

And we hereby appoint the following persons our trustees and agents for the collection and expenditure of whatever money may be collected for the above purpose, viz. :—William Beach Lawrence, Lewis G. Morris, Charles Henry Hall, and Col. Lewis Morris. All money unexpended must be returned, *pro rata*.

NAMES.	AMOUNT, AND WHEN PAYABLE.		TOTAL.
	Cash.	On demand	
W. B. Lawrence, by his attorney, L. G. Morris	100	100	200
T. W. Ludlow, by his att'y, L. G. Morris	25	25	50
L. G. Morris, for self	25	25	50
Colonel Lewis Morris	50	50	100
Charles Henry Hall	100	100	200
Abraham Valentine	25	25	50
Samuel Thompson	30		30
Amount carried over	355	325	680

Subscription List continued.

NAMES.	AMOUNT, AND WHEN PAYABLE.		TOTAL.
	Cash.	On demand	
Amount brought over	355	325	680
R. F. Carman	30		30
J. and M. Dyckman	25	25	50
Peter Valentine	10	5	15
Gouverneur Morris	50	50	100
F. C. Gray, by his att'y, L. G. Morris ..	25	25	50
William H. Morris	50	50	100
Gouverneur M. Wilkins	25		25
Perkins Nichols		25	25
Robert Bogardus	50		50
John Butler	5	5	10
Jared W. Morris	25		25
John H. Dyckman	10		10
Isaac Adriance	25		25
John J. Myer	10	10	20
Peter Myer	10	8	18
Abraham B. Bussing	10	8	18
Dennis Valentine	10		10
John Valentine	5		5
Peter Briggs	5		5
W. B. Lawrence	75		75
T. W. Ludlow	100		100
Jeremiah Frie			5
Cash			1
John Bussing, Sr.			2
			<u>\$1,454</u>

SUBSCRIPTION LIST.

S T E A M E R T H A M E S .

WE, the undersigned, interested in the Harlem River, and approving of the measures which have been taken, hereby agree to subscribe and pay to Lewis G. Morris the sum or sums placed opposite to our names, to provide and run a steamboat on said river.

NAMES.	CASH.	TOTAL.
W. B. Lawrence, . . .	Two hundred dollars,	200 00
G. Morris, . . .	Fifty dollars,	50 00
Charles Henry Hall, . . .	Two hundred dollars,	200 00
J. and M. Dyckman, . . .	Twenty-five dollars,	25 00
Francis C. Gray, (by W. B. L.)	Fifty dollars,	50 00
Colonel Lewis Morris, . . .	Fifty dollars,	50 00
Jared W. Morris, . . .	Fifty dollars,	50 00
Thomas W. Ludlow, . . .	Fifty dollars,	50 00
R. Bogardus, . . .	Twenty-five dollars,	25 00
Abraham Valentine, . . .	Ten dollars,	10 00
Thomas Fisher, . . .	Five dollars,	5 00
John H. Dyckman, . . .	Ten dollars,	10 00
		\$725 00

between the Hudson river and Long Island Sound, by the way of Harlem river and Spuytendevil creek, it will at the same time make available a water front, (adapted to all the purposes of commerce,) of more than 6 miles in extent, the value of which must be immense to the city.

For the better examination of the subject, by the committee, and to enable them to communicate more intelligibly the

R E P O R T

OF THE

COMMITTEE ON ROADS AND CANALS,

[OF WHICH MR. WILLIAMS IS CHAIRMAN,]

UPON THE

RESOLUTION OFFERED BY HIM,

*Relative to removal of obstructions to the free navigation of the
Harlem River, and Spuytendevil Creek, for Sloops,
Steamboats, and other Vessels.*

DOCUMENT No. 126.

1838.

DOCUMENT No. 126.

BOARD OF ASSISTANT ALDERMEN.

JANUARY 22ND, 1838.

Report of the Committee on Roads and Canals, in favor of removing the obstructions to the free navigation of the Harlem River and Spuytendevil Creek, for sloops, steamboats, and other vessels. Presented by Mr. Williams. Laid on the table, and double the usual number ordered printed.

J. NEWHOUSE, Clerk.

THE Committee on Roads and Canals, to whom was referred the resolution of inquiry, as to the practicability, expediency, and probable expense, of removing the obstructions to the navigation of Harlem river and Spuytendevil creek—

RESPECTFULLY REPORT,—

That they have endeavored to give the subject submitted to them that careful consideration which its importance demands;—important, because, in addition to the proposition of creating a free communication for steamboats and other vessels between the Hudson river and Long Island Sound, by the way of Harlem river and Spuytendevil creek, it will at the same time make available a water front, (adapted to all the purposes of commerce,) of more than 6 miles in extent, the value of which must be immense to the city.

For the better examination of the subject, by the committee, and to enable them to communicate more intelligibly the

results of the same to the Board, they have taken it up in the order presented by the resolution.

1st. As to its practicability. The fact is familiar to very many, that before the interposition of artificial obstructions in the Harlem river, that this arm of the sea was navigable for sloops, schooners, and other vessels, as far as the old Kings-bridge, and was constantly used by the same, and (as your committee believe,) but for those artificial obstructions, it could, and would be used now in as much greater degree, as our wants and capabilities have increased since we have been debarred therefrom.

At the termination of the upper section, near the site of the old Kings-bridge, the first natural barriers present themselves, to ascertain the extent of which, as well as the general condition of the whole river, a survey was directed to be made, by order of the common council. G. C. Schaeffer, Esq., city surveyor and civil engineer, was selected to perform the duty, by the street commissioner, which he has discharged with great labor and fidelity, as will appear in the perusal of his elaborate report hereunto appended, as well as by the examination of his maps accompanying the same, which are deposited in the street commissioner's office.

In addition to the very numerous soundings made, as indicated on the maps, a trigonometrical survey of the whole ground was effected, embracing the Westchester shores.

Your committee have also had the advantage of consulting a survey made by that distinguished civil engineer, Major McNeil, and also estimates of expense, as made by Benjamin Wright. The perusal of these documents has been useful, inasmuch as they have tended to confirm the accuracy of Mr. Schaeffer's work.

By referring to the report of the surveyor, it will be found that great deposits are constantly taking place in the bed of the river, and are retained there, by means of McCombs' Dam; notwithstanding this, he unhesitatingly states, that by making a canal across the fast ground, between the river and Spuytendevil creek, and some slight dredging, a uniform channel, of eight, nine, or ten feet at low water can be obtained—sufficient for steamboat and sloop navigation.

That this river will be restored to its original depth by the proposed work, from the force of the current, is the general opinion of all who have considered the subject;—besides, if not so, when we add to the soundings, as they are now represented on the maps, (being at low tide,) the increased height which will be given by flood tide, we shall have a navigation of fourteen, fifteen, and sixteen feet; a draught of water am-

ply sufficient to float, not only ordinary steamboats, but also, such lake boats as will find their way to our city through the enlarged Erie canal.

As your committee think the surveys have demonstrated the natural capabilities of the river, they will proceed to examine the obstructions, which exist between it and the Spuytendevil creek, the removal of which will be necessary to make it available to our increasing wants.

The points deemed most expedient to make the communication, is at Nichols' canal; which was cut for milling purposes. This will be effected by a short canal, and will require a cutting of about 800 feet, through marble rock. The present canal, as just referred to, by being widened and deepened, will facilitate the work and diminish the expense; the course of the Spuytendevil creek can be then taken for a short distance, when, by a cut through salt marshes, and a little dredging of the remainder of the channel to the Hudson river, the work of overcoming natural obstructions will be completed.

In contemplating the smallness of the difficulties to be overcome, and the magnitude of the advantages to be gained by overcoming them, we are not only astonished that the city authorities should have slumbered so long over the interests of the public in this matter; but that they have even permitted additional barriers to be erected, which, as your committee believe, are inconsistent with our laws and institutions.

Of this character is McCombs' Dam. The effect of this dam upon the channel of the river has already been alluded to, the injurious extent of which, will be perceived by reading the accompanying report of the surveyor—this will require to be overcome.

Should no effectual claim be interposed for water rights, inconsistent with the use of the river for navigation, the piers of the dam, at an expenditure of \$10,000 might be so altered and a draw so arranged as to admit the free passage of vessels, while the dam is preserved as a bridge and adapted to all the practical purposes for which it is now used.

If, however, any claim adverse to this course be advanced, and which would, if admitted, perpetuate obstructions to the navigation beyond what an ordinary bridge does occasion, it may be well to inquire if they can be legally maintained; and if they are valid, in what mode these private pretensions, that would interfere with the public convenience, are to be disposed of.

The dam was erected by virtue of an act of the Legislature of the State of New York, passed April 8th, 1813, authorizing Robert McComb, his heirs and assigns, to build, con-

struct, and maintain a dam across the Harlem river from Bussing's point, &c.

The 2d section of the act of the Legislature requires that the said dam shall be so made and built as to admit the passage of boats and vessels, accustomed to navigate the same, by means of a good and sufficient gate, lock apron, or other contrivance, and that R. M., his heirs and assigns, at his or their own expense, shall keep and provide a suitable person to attend to the same, so that no unnecessary delay may happen to those who may have occasion to pass through the same, with their boats or vessels as aforesaid.

The 4th section gives the said R. M., his heirs and assigns, forever, the sole right and privilege of using and employing the waters so dammed for milling purposes, subject only to the previous consent of the corporation, and the vested rights of the Harlem Bridge Company.

From the information obtained by the committee, it would appear that the dam was never erected in such a way as to comply with the terms of the law. Previous to its being built, not only were the market boats of the owners of the adjacent property in the daily habit of passing to and from the city, but large sloops, and other vessels, went for stone to the public dock on the Westchester side, near Fordham bridge.

At no period since its erection, as far as can be ascertained, could sloops and the other vessels in question pass through, as no suitable provision was connected with it conformably to the requisitions of the act making the grant.

Under this statement of facts, it would appear that the dam has no legal existence, and should the proprietors refuse to acquiesce in the removal of obstructions, they retaining the dam as a bridge, it may be expedient to abate it as a public nuisance, which your committee are advised is the appropriate remedy.

Again, should it ever be asserted that the provisions of the act have been complied with, any claim founded on it that would interrupt the navigation, would be clearly void ; of such a nature would be any right of using the river for milling purposes, if by so doing the channel should become affected in such a way as to injure or destroy the trade, which would otherwise be conducted on it. It is an established principle of law in the country whence we derive our institutions, that no privilege acquired by individuals can be so construed as to obstruct the right of navigation, which every one is entitled to on the arms of the sea and other tide waters ; and though the erection of bridges by State legislation over rivers and other streams is recognized with us by long ac-

quiescence, yet they must always be so constructed as not to interfere with the right of navigation, which, under the Constitution, is secured to all the citizens of the United States.

But, in the third place, should the Corporation be of opinion that there are legal rights possessed by the grantees of the State, which should be acquired by the public, it would be competent for them, under the authority of the State, to take them by valuation. The franchises of chartered companies are liable, in common with other property, to be taken for the use of the community, on making due compensation, as in other cases.

As to the land through which the canal will pass, it is understood that the proprietors will cede it to the Corporation for the purposes in question.

The practicability of the work having been made apparent to the minds of the committee, together with the facilities with which it may be accomplished, the next inquiry will be, the expediency of the undertaking.

The position in which the city of New York stands, as the great commercial emporium of the United States, is derived both from her local advantages, as well as her relative position.

When it is borne in mind how much art, industry, and enterprise may accomplish, in contending against natural disadvantages, the inquiry presents itself, whether we are doing all that may secure to us the benefits of which we are possessed, and whether our more enterprising neighbors are not in the active exertion of their energies, to draw from us to themselves the sources of our wealth and prosperity.

In the beginning of the present century, our sister city, Philadelphia, was our superior as a commercial mart, and although, by our position, we have not only equalled, but far surpassed her, it is not to be denied that this advantage is to be retained only by a continued vigilance.

To close our eyes, and be inattentive to the noble efforts that Pennsylvania is making in the cause of internal improvement, would be to neglect our interest and our duty. If there exists any doubt that she may regain her former relative position, with regard to us, there are none who will deny that the result of her efforts will be to divert from our city the trade of the Great West, unless they are met by corresponding works of our own.

That New York will be attentive to her interest, we have too much pride to doubt. To what prosperity she may grow, imagination dares scarcely conjecture.

To bring into the compass of this Report statistical statements, from which our future increase may legitimately be deduced, is considered to be unnecessary. This subject was fully discussed in the able and elaborate report of the Committee on Wharves, &c., of the Board of Aldermen, of the last year. The provision which is therein demonstrated to be necessary to make, for the accommodation of our commerce, is fairly presented to view. The important bearing the subject under consideration has upon this point, it will be our endeavor to set forth.

The advantages that would flow from making our island city circumnavigable, and establishing a direct communication for steamboats and other vessels, between the East and North rivers, are so apparent, that no argument is required to impress them on the understanding. The simple fact of bringing into use a beautiful and healthy region, for country residences, and affording a delightful and cheap aquatic excursion to a numerous class of our citizens, is worthy of attention. Higher considerations than these, however, are what the committee feel renders it imperative upon them to endeavor to secure to our use this important part of our domain.

The northern border of our island would be made available for the establishment of numerous manufactories. These are springing up in every direction around us, and some of the most valuable, beyond the boundaries of our State. When it is recollected that New York City is the point where their raw material is principally derived, and the great mart where their manufactured articles are disposed of, the inquiry forcibly presents itself,—Why is this so? If they can build those thriving villages in situations where land is dearer than on our island, and depend on us for support, it can only be necessary to put our domain in an accessible condition, to secure to ourselves all these advantages.

Before the improved condition of the Third Avenue, it will be recollected that Harlem was almost inaccessible during certain months of the year, whilst now it is within forty minutes' drive of the most dense part of our city. What has been the result? This place, from containing a few scattered houses, not vying with our third or fourth rate country villages, is rapidly becoming settled, and will soon be covered with warehouses, manufactories, and dwellings.

Here the value of a single lot is now more than, but a few years ago, was the price for acres, and the small outlay of the Corporation has been amply repaid by the increased return on

former taxes. This case but adds another proof to the many, of the vast and vital importance to communities, of creating and maintaining ample thoroughfares.

The restoring and improving of the navigation of the Harlem river will stand pre-eminent among these.

The interference of our internal commerce with the larger vessels engaged in foreign trade, is daily experienced as a source of great and increasing embarrassment at our wharves.

That our coastwise and foreign tonnage will, in the lapse of no remote period, occupy all our available water front, in the East and North rivers, is an opinion held by those who are not deemed over sanguine in their calculations. The tonnage of our canals, and great inland seas, increases faster even than these. The ample accommodation for the latter class of vessels alone, renders the securing of the Harlem river and Spuytendevil creek so important to our city.

Here, for the distance of more than six miles, many quarries and basins be constructed for all our river and lake craft, and, if it is found necessary, for larger vessels to lay here or to repair; in the section of the river between Harlem bridge and McCombs' dam the water is sufficiently deep to float a ship of the line.

For the construction of wharves of the most permanent character, ample materials are to be found in the immense quarries upon the river's banks, where, too, was derived much of the best qualities of our building stone, before access thereto was cut off by McCombs' dam.

By establishing the proposed communication, a depot will be made for those boats which now stop at Albany and Troy. They may come here direct without any transshipment of their cargoes; we should offer them every inducement to come here, and the facility of ample and cheap accommodation. This city must not be inattentive to the fact that there is a line of rail-roads being constructed to make a direct communication between the cities of Albany and Boston; to counteract the effect of this, the construction of the New York and Albany Rail-Road will greatly contribute. The construction of that, as well as other rail-roads, to our city, which will most certainly be accomplished, give interest to the proposed work. The termination of the Harlem Rail-Road alone, on the Hudson River, at a point where the water is thirty feet deep, will create an important and valuable depot.

In considering the subject, it is gratifying to find that this work, instead of interfering with the interest of any other

portion of our city, will but add to the value and importance of the whole.

The indentations and coves in the Harlem River will afford the most desirable positions for timber basins, whence a source of revenue may also be derived. The rapidity of communication by the Harlem Rail-Road brings it within as short a distance, as to time, of the lower part of the city, as is the basin erected at 42d street, which cost the Corporation the sum of \$70,000, an amount nearly adequate to cover the whole expense of opening the Harlem river.

The insufficiency of the present timber basin, for the uses of the trade, is already a subject of complaint. There are positions in the course of the Harlem river, that would give all the accommodation to that branch of business that will be required, without interfering in the least with any of the other purposes designed. This alone would justify all the expenses that might be incurred.

By referring to Williams's Annual Register for 1836, it will be seen that the descending tonnage of the Erie Canal was augmented 127,000 tons, by the increase of lumber alone.

The number of boats navigating the canal in 1834, according to the Comptroller's Register, was 2,585; in 1835, 2,914; in 1836, 3,167. The tonnage of the boats is not registered—the tonnage of the ascending cargoes, in 1836, was 133,796 tons; of the descending, 696,347—in all, 830,143 tons.

The committee will not present any further statistical details, but refer for fuller information to the document before alluded to. (Doc. No. 80, Vol. III.—Documents of Board of Aldermen for 1835–36.) The facts and arguments so well argued in that report, will apply in their full force to the present subject, without any of the objections.

In considering the third stage of the inquiries, as to the probable expense in making their estimates, the committee have labored to get the most accurate information, and have sought for the most economical plan, without diminishing the utility of the work. They are perfectly confident that the work can be accomplished with the sum they state in the estimate, without including the sale of stone, which will again be referred to.

These estimates are as follows :—

For draining channel west side of Spuytendev creek, five feet at low water, 80 feet wide, and 2,000 feet long,	\$8,000
17,00 feet cutting through salt marsh, average 10 feet deep and 80 feet wide, west side of Spuytendev creek,	13,600
19,000 yards of rock excavation above low-water mark, at 75 cents per yard,	14,250
12,000 yards of rock excavation below low-water, at \$2 per yard,	24,000
Salt marsh excavation at Harlem river, 600 feet long by 80 feet wide and 10 feet deep,	4,800
On several bridges across King's bridge road,	3,000
For removing two piers of McCombs' dam and draw- bridge,	10,000
	<hr/>
	\$77,650
10 per cent. contingencies,	7,765
	<hr/>
Total,	<u>85,415</u>

The above estimate, your committee are sure, will cover all the expense ; though it may be proper to state, it will be materially diminished by the sale of the stone excavated. At this very time, persons are employed quarrying building stone contiguous to the proposed canal, for which, as they stated to the committee, they receive \$1 50 per load for the best quality, delivered at a neighboring dock, and for a smaller size 75 cents per load. Allowing that it should sell for half the above price, it would more than cover any possible contingent expense that might occur in the progress of the work.

Your committee cannot close this subject, without urging the Board to immediate action upon it. It is demanded at your hands as a highway, it is required as a depot for commerce, it will be a source of perpetual enrichment to the treasury by its revenue. It will bestow honor upon the Common Council that shall accomplish it. It will be no perishable work ; but once make the communication, and then, whilst the Hudson rolls its waves, the Harlem river will heave upon its surface a portion of your wealth and prosperity.

The following resolution is respectfully submitted :—

Resolved, That the necessary measures be taken to remove the obstructions to the navigation of the Harlem river and Spuytendevil creek, in conformity with the suggestions of the preceding Report, the cession of the land required for the canal and marsh excavation being first obtained from its owners; and that the sum of 86,000 dollars be appropriated for the work, to be expended under the direction of the Committees on Roads and Canals and Street Commissioner.

A. V. WILLIAMS, } *Committee on*
J. WESTERVELT, } *Roads and*
JOSEPH P. BARNES, } *Canals.*

R E P O R T

OF

GEORGE C. SCHAEFFER,

ON THE

SUBJECT OF IMPROVING THE NAVIGATION OF THE HARLEM
RIVER.

*To the Honorable the Common Council of the City of New
York.*

IN compliance with a resolution of your honorable body, directing a survey of Harlem River, with a view of ascertaining its capabilities as a navigable channel, and in obedience to directions given by the Street Commissioner, this Report is respectfully submitted.

The undersigned was requested to direct his attention to that portion of the river between Harlem and Fordham bridges, and crossing by the small canal at the mill of Perkins Nichols, Esq., directly to the North river—avoiding the curves of the Spyt den Duyvel creek.

A full and accurate trigonometrical survey of the ground was made in the first place, and this proved to be a work of no small magnitude; the impracticable nature of the ground during a large part of the distance, greatly retarded the operations in many places; merely passing from one station to another with the instruments, occupied most of the time, and it was frequently difficult to find a place level enough to stand the tripod upon, in situations where it became necessary to take an observation. When it is recollected that the hills, or rather rocks, rise to an exceedingly great height

a very short distance from the water's edge, these difficulties will not be wondered at.

The soundings were taken to the number of several thousand, and this work, always tedious, was often entirely interrupted by the violence of the winds; during the same day, the party often suffered from extremes of heat and cold. During all these observations, constant reference was had to the height of the tide, and they have all been reduced to lowest water; from this cause, but a very small part, of the number actually taken, appears on the map.

The effect of the wind in raising the water, after the tide had risen to its greatest height, was often a cause of serious inconvenience. In one instance, before assistance could be given to one of the party, standing with the instrument upon a tongue of land, usually dry at high water, he was immersed to a very unpleasant depth. From these surveys, the accompanying maps have been carefully made; the details of the trigonometrical measurements have not been inserted, as they give no information of general use, and serve only to incumber and confuse the maps.

The scale adopted has been one hundred feet to the inch, and the streets and avenues have been given from the authority of the map of John Randall, Esq., now deposited in the office of the Street Commissioner. It has been found most useful to mark only the lines of high water and of the channel. The flats are designated by a darker shade; these are partially or entirely bare at low water; this depends upon the winds; they are covered with eel grass, and visible distinctly at all times.

For convenience of handling, and from the varying nature of the ground, the maps denote four sections.

First Section.—This portion of the river is included between Harlem bridge and McCombs' dam, and is very direct in its course, which is very nearly north and south. But one irregularity occurs—this is in the line of 141st street; it is occasioned by a shoal in the middle of the channel, and is of much less consequence than would seem from a hasty inspection of the map. The channel appears to be deep, and of sufficient width on either side of it.

The remainder of this section is direct, and having a deep and wide channel, the middle sounding denotes from 20 to 30 feet of water at low tide, and averaging 20 feet for a width of from 300 to 400 feet.

Along the whole of this section extensive filling is going on, in some places in correspondence with the adopted grade

of the city, and in others to suit the convenience of proprietors.

From the manner in which this is conducted, an immense quantity of earth is washed into the river, and will in some places cause a great accumulation upon the shoals, and if not upon them, in the East River, and in our docks and slips. The plan pursued by some gentlemen, of erecting protecting dykes, is desirable, and this or a bulkhead should in all cases be erected previous to filling in.

The city regulations, as far as determined, extend nearly to the edge of the flats. Morrisiniæ creek comes in at the upper end of this section; to this there are two entrances, the principal one being rather narrow and crooked, but having a considerable depth of water; while the other is broad and shallow, losing itself among detached portions of sedge, denoting a recent accumulation of deposit. The whole creek is evidently a receiving basin for most of the wash for this part of the river.

Immediately below the dam there occurs an elevation and depression of the bottom, caused by the action of the water tumbling over the dam and scooping out the mud, which is deposited immediately below, in a corresponding elevation.

McCombs' dam itself is the chief obstacle to the navigation, both by the interruption caused by its position, and by reason of its effect upon the bottom of the channel of the whole river. This will be treated of in another place.

The dam is constructed in a very substantial manner as far as the foundations are concerned; they are of massive rock, firmly disposed.

Section Second.—This section extends from McCombs' dam to Dyckman's meadows. Unlike the last, it is embraced by high and steep hills. On the Westchester side the descent is more gradual, and less rock appears on the surface; on the New York side the height of two or three hundred feet is attained in many places, at nearly the same horizontal distance from the water's edge; while the greater part of the surface is rock, or a thin stratum of soil covering the rock.

This conformation of the ground has a much more serious effect upon the channel than casual observation would lead us to imagine.

Immense quantities of earth are washed from these steep and elevated rocks, and being confined by the dam, remain in this and the upper section of the river. Examples of this operation are continually to be met with; and in some instances are found slips of trees, earth and soil, arrested in

their course, and gaining a new position over some projecting rock, where parts of the original soil from above remain with the trees and bushes in full life, while others have descended to the water.

The depth of the gorge through which the river passes increases the effect of winds in certain directions, and thus produces considerable changes in the channel.

The soundings in this and the third section are reduced to low water; with the dams removed, this is about two feet lower than the present low-water mark within the dam.

From the dam to the cove on the Westchester side the channel is broad and deep, its course inclining more to the east.

Near the bridge the deepest soundings are about 13 feet, while near the cove they are increased to 20 feet: showing, as might be expected, a large deposit above the dam.

The little creek near the dam, and in a line of the 8th Avenue, has been filled in to a very great extent, and it is not improbable that a very large percentage of this earth has found its way to the bottom of the channel.

The appearance of the marsh in detached portions is another evidence of great accumulation from this or some other cause.

Immediately above the cove is the place selected for the crossing of the Croton Aqueduct; the line of this work crosses the channel at the point where it is narrowest, the width not exceeding 160 feet.

Any structure upon arches must diminish this width to less than 100 feet; this will materially affect the channel, by increasing the velocity of the water. A suspension bridge might be erected that would not in the slightest degree interfere with the navigation, while this would afford the best crossing for a bridge for general travel; the two might be combined with advantage.

Above this cove the channel has a few trifling irregularities, and is not quite so wide as below; the middle soundings denote from 15 to 17 feet.

At the foot of 179th street is a projecting rock forming a very good dock, approaching nearly to the deep water. A projecting point on the other side makes this the narrowest part of the river from bank to bank.

At the upper end of this section a middle ground occurs, with the main channel on the east, and a false channel on the west; there is also a small shoal off the point of this middle ground. The false channel has not a depth of water

much greater than the shoal, but is distinguished from it by having no eel grass.

This whole conformation is caused by the influx of Shearman's creek; its waters flowing in and out close to the bluff rocks, have cleared the small channel, while the deposit and wash have found the shoal.

Third Section.—From Dyckman's meadows to Fordham bridge. The banks of the river throughout this section differ entirely in character from those of the second, and nearly resemble those of the first section. The high ground recedes on both sides, the low shores being at some distance apart, with a number of islets and intervening marshes. The lower part of this section has a direct and deep channel of thirteen to seventeen feet, and one hundred and fifty feet wide. At the mouth of Shearman's creek a depth of twenty feet is found.

In the upper portion of this section occur the only natural difficulties to the free navigation of the river. The channel is exceedingly crooked, in one place crossing the river nearly at right angles to its course. The greatest depth in this part is from 6 to 10 feet; the width gradually contracts to 100 feet. Near to the canal deep places occur isolated from the channel, and nearly as deep as the channel itself. These are evidences of great deposits, as they have evidently once been portions of the main watercourse, and have since been closed by the mud, the depth within these remaining nearly the same as before. One of these, between the island of ——— marsh and the New York shore, with but little excavation, would afford a very direct channel to the canal.

It is to be observed, that as the channel becomes narrower, its banks are more and more steep, in some places nearly perpendicular on one side.

The sharp turns in this section, as well as much of the deposit in the bottom, will undoubtedly be removed by opening the dams. In fact, with some excavation, this can be made as serviceable as any part of the river.

Fourth Section.—Crossing from Harlem to Hudson River, turning from Harlem River, the most advantageous line for crossing is the canal used for mill purposes, and mentioned above.

The width at present is nearly 30 feet in some places, and the whole is dry, or nearly so, at low water. The length of excavation through the first ground is less than 800 feet, and

a large portion may be solid rock, but the sale of marble and limestone removed will very much diminish the cost.

After leaving the canal, advantage may be taken of a bend in Spyt den Duyvel creek, with a slight excavation through the marsh, to gain a very direct channel to a point of projecting rock on the Westchester side. The marsh has been bored at this place, and found to be soft at a distance of 25 or 30 feet from the point of rock. The rods used not being over 16 feet long, it is not known to what depth the soft grounds extend; but they went down the whole length easily in all places that were sounded. The width across this piece of marsh is from 250 to 300 feet, depending upon the direction taken.

After crossing this marsh, the channel of Spyt den Duyvel creek can be used, or a direct course through the flats.

The creek has a depth of 5 to 8 feet water, and the bottom being entirely of mud, excavation can be made to any desirable depth; the remainder of the basin is bare, or nearly so, at low water.

From the foregoing description of the ground, and from careful examination of the maps, it will be seen that Harlem River affords a channel far more eligible for the purposes of navigation than has generally been imagined.

The chief, and, in fact, the only difficulties, are caused by the immense quantities of earth washed into the bed of the river, and retained there by the dams. As far as any information can be obtained in regard to the former channel, it tends to show an enormous deposition of earth in certain parts. At one rock near Harlem bridge, a remarkable change has taken place. Individuals in the vicinity say that from this rock, when fishing, they have thrown their line into 14 feet water, while at the present time the mud is barely covered at high water.

To any one acquainted with the banks of this stream, this will not appear extraordinary. The causes have been mentioned above.

If no other information had been obtained by this survey, the subscriber considers that the time has been profitably employed.

To devise means for preventing any further accumulation of this nature, should be the first study of your honorable body—whether the original views in respect to the employment of Harlem River as a navigable channel, are carried into execution or not.

A large portion of the earth must be continually finding its way into the East River, and be finally deposited in our docks

and slips. It would be proper to prevent any filling in before a sufficient bulkhead or dyke has been erected ; and the rigid enforcement of such a law would have a very great effect in preventing much unnecessary waste of earth in the filling, as well as preventing improper accumulations in the channel.

From the remarks upon the third and fourth sections, and from an examination of the maps, it will be found that, with a canal across the fast ground, and with a little deepening of the channel, a uniform depth of 8, 9, or 10 feet at low water can be obtained. This is sufficient for all purposes of steamboat and sloop navigation.

The lower part of Harlem River having a much greater depth, will be found very useful as a basin for vessels of the largest class, much larger than will ever have occasion to pass through the upper part of the river, while the depth at this part will be sufficient for all vessels entering from the Hudson River.

It may here be remarked, that a depth sufficient even for vessels of a much larger class might be obtained through the river and canal, though it is doubtful whether the casual entrance of such vessels would warrant the increased expenses.

No mention has been made of locks, as it will be found that the delays occurring from such an impediment would more than counterbalance the advantages gained from a slight increase of depth, while the mud will still be accumulating.

In fact, the abovementioned depth of 8, 9, or 10 feet, will give, at high water, 14, 15, or 16 feet ; quite sufficient for all vessels having constant occasion to pass through the river.

The first operation necessary to an improvement of the navigation, will be the removal of McCombs' dam. This has already been mentioned as firmly founded, and will require some trouble in clearing, though not more than two or three of the piers need be removed. One draw-bridge would be required at this place—perhaps two. The modern improvements in these bridges are such, that they can be used with but little interruption to the travel of the bridge or of the river.

There is no doubt that the removal of the dam would cause an immediate clearing of many of the shallow places in the channel, as well as some of the sharp turns and projections in the shores.

At Harlem bridge another draw-bridge should be constructed ; one is in use at present, but it is doubtful whether the bridge is substantial enough for one of suitable dimensions. One who has noticed the vibration caused in this bridge by the passage of the large blocks of Westchester marble drawn by

teams of oxen, will be able to form more correct notions, than in merely riding over it in an ordinary vehicle.

In the upper part of the river several tide gates may be found useful; though this depends upon the direction and size of the canal.

One at Fordham bridge to shut out the upper part of Spyt den Duyvel creek and Yonker's river, and one at each crossing of the creek, while a great water power might still be retained by a judicious management of the part of the river above Fordham bridge.

Some protection might likewise be found necessary to the sides of the canal passing through the marsh.

The subscriber has confined himself, as directed, to a general survey and examination of the capabilities of the river. No estimate of the expenses could be made, calculated to give general information, as the course of the cross-cut depends entirely upon the width and depth given to it. This being a subject for the further consideration of your honorable body, it would be a task of but little trouble to form a full and accurate estimate upon any proposed form and size of a canal.

All of which is respectfully submitted.

GEORGE C. SCHAEFFER,

Civil Engineer and City Surveyor.

A N A C T

PRESCRIBING THE MANNER IN WHICH THE CROTON AQUEDUCT
shall pass THE HARLEM RIVER.

PASSED MAY 3D, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :—

The Water Commissioners of the City of New York shall construct an aqueduct over Harlem River with arches and piers. The arches in the channel of said river shall be at least eighty feet span, and not less than one hundred feet from the usual high-water mark of the river to the under side of the arches at the crown ; or they may carry the water across said river by a tunnel under the channel of the river, the top of which tunnel shall not be above the present bed of the said channel.

STATE OF NEW YORK, }
Secretary's Office. }

I have compared the preceding with an original law of this State, deposited in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original.

JOHN C. SPENCER,

Secretary of State.

ALBANY, *May 3, 1839.*

At the time the above law was passed, the Low Bridge was under contract, and the work progressing. The Commissioners were obliged to break up the contract, which cost the city a very large sum to do, and then advertised for building the High Bridge.

LETTER TO SAMUEL STEVENS.

[COPY.]

FORDHAM, WESTCHESTER COUNTY, }
NEW YORK. }

To

SAMUEL STEVENS, Esq.,

*President of the Board of Water Commissioners
of the City of New York.*

DEAR SIR :—

Some time since, I, among others, addressed a letter to the Board of Water Commissioners, relative to the manner in which you gentlemen are obstructing Harlem River.

I now am deputed by my associates to call your attention again to that letter, and solicit from you an answer, as we are anxiously waiting.

I am, Sir, yours,

With much respect and esteem,

LEWIS G. MORRIS.

Per

R. W. EDGAR.

REPLY OF SAMUEL STEVENS,

PRESIDENT.

NEW YORK WATER COMMISSIONERS' OFFICE, }
September 30th, 1841. }

GENTLEMEN :—

Your communication of the 21st inst., asking for information in relation to the closing of Harlem River, was duly received, and laid before the Board of Water Commissioners.

In answer, I am directed to reply, that the erection of the High Bridge will of necessity interrupt the use of the Harlem River by vessels, for probably the next and two succeeding years; and we know of no way that this interruption can be prevented, excepting at great expense, while the Harlem Bridge is being erected.

Respectfully, your ob't serv't,

SAMUEL STEVENS,

President.

To

Messrs. LEWIS G. MORRIS,

and others,

Westchester County.

COPY OF A
LETTER FROM L. G. MORRIS

TO

ROBERT SCHUYLER,

PRESIDENT NEW YORK AND HARLEM RAIL ROAD COMPANY.

1852.

ALBANY, *March 12th*, 1852.

ROBERT SCHUYLER, Esq.,

President New York and

Harlem Rail Road Company.

DEAR SIR :—

As you are informed of an application now pending before this Legislature to cross the Harlem River with a bridge by the New Rochelle and New York Road, which bill will be reported, to give the Company the privilege, by and with the consent of the Common Council of the City of New York, at any place that they (the Common Council) may consent, southwest of your bridge. One of our greatest difficulties in the way of obtaining the proper consideration of the Legislature as protectors of the navigation, is the manner your Company are now crossing that stream—on a temporary bridge, made for another object, which it is generally believed does not properly secure the safety and wants of the two very important roads into one great city; when, at the same time, you do not at all properly provide for the navigation facilities, as your draw is all on one side of the channel, which prevents a vessel from the power of taking advantage of working herself either way, to pass expeditiously through. The bridge being a covered one also, prevents the wind from lending its aid to promote

the convenience of the navigation to enter and leave your draw. 3d. The width of your draw is not sufficient (were it in the proper place) to warrant the easy passage of vessels loaded with lumber.

The three above objections are practicable ones, the inconvenience of which I, as well as many others, have been subjected to, by actual damage.

The above objections are some of the strongest reasons given to show if the stream is already so obstructed, and nothing done to alter it, although an Act has been obtained, why should they be required to do anything better. You, therefore, are occupying the position as regards us, which the *Macombs' Dam* did when we were protecting ourselves against the Corporation and *Low Bridge* across the Harlem River.

The expense and trouble which we were put to in that case, in abating that nuisance, I hope you, gentlemen, will not put us to in your case. The laws and privileges you possess to endeavor to correct the *public nuisance* which now exists, it would be presuming in me to inform you of; but inasmuch as there are circumstances connected with the manner of obtaining them, I should like to be put on record properly before your present Board. Your Legislative Act of 1840 for crossing the river was obtained almost as a post-script to the Act; the advertisement for it did not declare the object, neither did the title of the Act; and it had passed one House, and got in the Senate, before we, as protectors of the navigation, knew anything about it. I then wished to amend it in such a way as to secure to us the proper requirements. I was solicited by Mr. Gouverneur Morris to withdraw my opposition, or any amendments, as the session was so near its close, that the Bill would be positively lost by going back to the House to concur in the amendments, and he promised me to have it so arranged by the positive location and requirements, that my asked for protection should be granted; which above explanation, if you desire it, I would like you to call on Mr. Morris to make.

Subsequent to which, and since you have been the President of the Company, I have conferred with you by letter and personal interviews, wishing to be consulted when you made any new arrangements as to crossing the river, which I think I received encouragement I should be; but in the winter of 1849 I was obliged to go to the Havana, and I find on that winter there was an Act passed, giving you the privilege to build an Iron Bridge, with certain provisions, &c., as to structure, &c., &c., with a draw of but 40 feet, and that

not defined, in lieu of the one you had a right to build in 1840 ; but as you have located, paid for, and occupied, being in full possession, use, and enjoyment of the right obtained in 1840, I take it for granted the Iron Bridge is to be in lieu of the structure now existing.

I felt confident, under the previous interviews on that *subject* between Mr. Gouv. Morris and the several Presidents of that Company, you being one, that whenever you moved in the matter, I would have been consulted. We therefore respectfully solicit your attention as a Company to the fact, that your present structure is not sufficient to afford such uses of the river as its capacity, wants, and requirements demand.

We solicit your earliest attention to correct the grievances set forth, as far as navigation is concerned.

I remain, dear Sir, yours,

With great respect,

L. G. MORRIS.

REPLY OF ROBERT SCHUYLER.

1852.

OFFICE OF NEW YORK AND HARLEM R. R. Co., }
New York, March 19, 1852. }

LEWIS G. MORRIS, Esq.:—

Your favor of 12th inst. reached me in due course, and was laid before the Board of Directors this day. I am instructed to inform you in reply, that it is the intention of the Harlem Rail Road Company, as soon as the interests of the Company render it expedient and proper, to build another Bridge to take the place of the present structure, when every attention will be given to affording "to the uses of the River" such accommodations "as its capacity, wants, and requirements demand."

I beg you to notice, that I make no remarks as to the statements of your letter as to the rights and liabilities of the Harlem Rail Road Company and others; as to which, I have but little information, and can neither admit or deny any of your positions.

Yours respectfully,

ROBERT SCHUYLER,

President New York and Harlem Rail Road Co.

(ALBANY.)

REMONSTRANCE

FROM

LANDOWNERS, OF **2120** ACRES,

AGAINST

BRIDGING HARLEM RIVER BY THE NEW YORK AND NEW ROCHELLE RAIL ROAD COMPANY.

1852.

To the Legislature of the State of New York.

Your memorialists, landowners in the county of Westchester, respectfully represent,—

That we are informed and believe, that an application is now pending before your Honorable Body, by an organization called “The New York and New Rochelle Rail Road Company,” in which they ask the privilege to bridge the Harlem River at the 1st or 2d Avenue. We respectfully remonstrate against the same, for the following reasons :—

1st. The Harlem River being an arm, or inlet of the sea, flowing up between the island of New York and the county of Westchester, a distance of about 6 miles, averaging about 600 feet in width, with a channel varying from 100 to 300 feet in width, and in depth, at low water, from 30 to 12 feet; with a rise and fall of the tide of from 4 to 6 feet, which capacity and dimensions by nature renders it accessible by vessels of almost any size, and its peculiar location, such as to afford most desirable unloading places for all kinds of pro-

ducts, seeking a market in the great city of New York ; and the time is not ten years off, when both sides of its shores will be occupied for above purposes. The rights and privileges of this water equally belong to any of the States in the Union as they do to the State of New York. The States of Maine and Georgia have as good a right to seek these shores for an easy, safe, and cheap landing, to dispose of their productions, in our great city, as we, who own, and live on the very shores of it. It is *true*, State Legislatures do exercise the right, when the emergency is *very great*, to grant the privilege to bridge streams of similar character ; but whenever that is done, it must so be done as not *materially to impair the navigation* for STATE PURPOSES ; but if a vessel comes along from another State, seeking passage in accordance with the capacity of the stream, and the State draw is not large enough, she has the right to abate it as a public nuisance. These decisions have been sustained so frequently, it is useless for us to quote them.

The State has now exercised her legislative power on the 3D AND 4TH AVENUES, for objects of VERY GREAT NECESSITIES, and now this Company asks a third incumbrance on the water. We say, that the two now existing do impair the navigation, and if the third is put, it will MATERIALLY IMPAIR, and that we think the Legislature has not the right so to do.

Your memorialists will now respectfully call your attention to the object for which this MATERIALLY IMPAIRING the navigation, is called for. It is for the sole object of a Rail Road from the town of New Rochelle, in the county of Westchester, eleven miles from Harlem River. At the present time, and for the last two years, a Rail Road has been in full and successful operation, from New Rochelle, to and from the city of New York ; and the whole territory of *county* which this road is to pass through, is but eleven miles long, and on an average width of five miles, between the line of a rail road and the Sound. You can therefore see, with the exception of a very few persons, who have very fine retired spots on the extreme points of land jutting out into the Sound, that three-fourths of the population have a very convenient access to and from the city of New York, or to any other section of country they may wish to take the present rail road for ; the NORTH, WEST, or EAST ; and many of the present appliances will be nearer a depot on the New Haven or Harlem Rail Road, (although this new railroad may go through their own land,) than they would be to a depot on their own road. We most respectfully suggest, and urge upon you, that the object

is too small to warrant your consenting to let them put a bridge over a stream which at that place is 600 feet wide, with a channel of 300 feet; depth of water in said channel, 27 feet. There is also the river Bronx, the West and East Chester creeks, to be bridged by this road, all of which streams are on a small scale, the same as we have described the Harlem; and there are now flourishing villages at their extreme points of navigation, which, by the erection of bridges, it will materially injure.

Your memorialists would further call your attention to another great encumbrance, and damage, which will grow out of passing a rail road through this small strip of *county*, which is now occupied by country seats for gentlemen's residences; and one great object in their locating themselves there, was, to be able to be retired, and at the same time have good roads, which they have individually, as well as by town taxes, spent large sums of money to perfect; so as to enjoy the privilege of riding and driving for pleasure, as well as necessity. This contemplated rail road will cross all the roads running north and south, and run in close contact with the east and west roads, so as to endanger and spoil the pleasure of the drives and rides; also cut and mutilate many of our splendid and expensive places, which have already been improved with reference to quiet and domestic usefulness.

All of these inconveniences we think should not be created, when the great wants of the public are already so well provided for, by those great thoroughfares already in operation. We therefore as in duty bound, will ever pray that your Honorable Body will reject the application of the New York and New Rochelle Rail Road Company, for the bridges asked for.

L. G. MORRIS, owner of.....	170 acres.
THOMAS W. LUDLOW, by Attorney.....	65 "
F. C. GRAY, Esq., by Attorney.....	83 "
HENRY MORRIS, for himself and brother, GERARD W. MORRIS.....	100 "
GOUVERNEUR MORRIS.....	500 "
WILLIAM W. FOX.....	200 "
PHILIP DATER.....	70 "
GEORGE S. FOX.....	60 "
W. H. MUNN.....	7 "

ABEL T. ANDERSON	60 acres.
G. P. CUSHMANN	35 "
WM. DENISON	80 "
EDWARD G. FAILE	100 "
WILLIAM H. MORRIS	400 "
LEWIS MORRIS, by H. M. MORRIS, power of Attor- ney	200 "
	<hr/>
Total	2130 acres.

The whole project of a NEW YORK AND NEW ROCHELLE RAIL ROAD, proving so perfectly useless and impracticable to accomplish, the whole idea was given up, and the Company or Corporation was publicly disbanded.

ARNOLD MASON'S AFFIDAVIT

AS TO

NINE YEARS' EXPERIENCE ON HARLEM RIVER.

1852.

Oneida County, ss.

ARNOLD MASON, being duly sworn, saith as follows :—

I was one of the contractors who built the Aqueduct Bridge across the Harlem River, for the Water Commissioners of the City of New York. I resided near it, on the Westchester County side, from some time in 1839, for more than nine years. I was the contractor who had the principal charge of the work on the contract. We were at work on the construction of the Aqueduct Bridge about nine years and a quarter. During all that time, I employed a vast amount of navigation on the Harlem river. The number of tons employed I am unable to state : it was immensely large, and was composed of stone, lime, cement, lumber, coal, provisions, clothing, and all sorts of stores. The vessels engaged in the business were from New York, Connecticut, Maine, South Carolina, Pennsylvania, New Jersey. There must have been a great many thousand cargoes, but I cannot, away from my memoranda, give a near estimate of the number.

The natural capacity of Harlem river, were it free from artificial obstructions, is sufficient for the convenient and expeditious navigation, at low water, of vessels of almost any size. The artificial obstructions in the river produced a great deal of inconvenience to me and my partners in our work. Very frequently, the two draws in the river would delay a vessel for a tide, and sometimes two tides ; and I have no doubt that, if another bridge should be built across the river,

with the most convenient draw that could be constructed, it would be extremely difficult to procure vessels to freight upon it, unless at a considerable increase of the ordinary price. The detentions at the draws, frequently a delay of a tide at each, would compel the owners of shipping to charge such high prices, that the employer could not afford to pay it.

ARNOLD MASON.

Sworn before me, this 2d day }
of April, 1852. }

W. R. ANTHONY,

Justice of the Peace.

WILLIAM H. COLWELL'S AFFIDAVIT

AS TO

EIGHT HUNDRED CARGOES

WITHIN THE LAST YEAR.

 1852.

WILLIAM H. COLWELL, of Harlem, being sworn, says, that he is a lumber merchant, doing business on the Harlem River, between the 2d and 3d Avenues; that during the last year there have been at least eight hundred cargoes of different kinds of merchandise discharged above the proposed rail road bridge at 2d Avenue, and that business on said river has been, and is, increasing at the rate of fifty per cent. a year; that it is very difficult to induce captains of vessels to engage to carry cargoes through a draw-bridge, unless extra pay is allowed, and in many cases they refuse to go at all. Vessels drawing twelve feet of water may arrive and depart at any time of the tide, and discharge their cargoes at the docks between the 2d and 5th Avenues. And said deponent is clearly of opinion, that if the New York and New Rochelle Rail Road Company are authorized and do build a bridge over said Harlem River, at the northern extremity of the 2d Avenue, or anywhere below the present bridge, it will seriously affect the navigation of said river, which is, as above stated, by no means unimportant.

WM. H. COLWELL.

Sworn before me, this 31st }
 March, 1852. }

L. D. HOLSTEIN,

Commissioner of Deeds.

STATEMENT

OF

CAPTAINS OF SEVEN VESSELS,

THIS DAY ON HARLEM RIVER.

MARCH 29TH, 1852.

WE, the undersigned, sailing masters, captains, and mates of vessels navigating on Harlem River, do certify that the draw-bridges across said river are very serious obstructions to the navigation thereof, and are the causes of much delay and damage to us and to those for whom we freight, compelling us, when there are blowing "strong head winds," to wait, when, if there were no draw-bridges, we could clear immediately; and if another draw-bridge, ever so well constructed, were made across said river at the end of the 2d Avenue, it would so add to present incumbrances as almost entirely to prevent us attempting its navigation, except such additional prices for freighting were paid us as to be beyond the reach of any employer.

JAMES M. DAYTON,

Of Sloop "Citizen," now discharging a load of lumber 43 feet wide.

CHAUNCEY BATES.

ASAHEL W. GILBERT,

Captain Sloop "General Ward."

JOHN ERRICKSON,

Schooner "Henry Lea," 160 tons.

WILLIAM H. FOOTE,

Sloop "James North."

WILLIAM W. FOSTER,

Schooner "William Pope."

JAMES VALENTINE,

Sloop "Belle."

All of the above named vessels are now loading or unloading at the wharves on the Harlem River. I have commanded a vessel navigating Harlem River for the past eight or nine years, and found the draws a serious detriment to the navigation, frequently losing more time to get through the draw than required to make the passage from the *outside* to the Battery.

JAMES VALENTINE.

S T A T E M E N T

O F

W I L L I A M S . C A R M A N ,

A S T O

T W E N T Y - F I V E C A R G O E S .

1852.

HARLEM, *March 24th*, 1852.

LEWIS G. MORRIS, Esq.,

DEAR SIR :—

This may certify, that I am engaged in the coal and wood business at Harlem, and have had steam and sailing vessels and barges to Harlem Dock on the 3d Avenue and 130th Street, amounting to about twenty-five single trips within the past year.

Respectfully yours, &c.,

WILLIAM S. CARMAN.

STATEMENT

OF

J. W. WATSON,

AS TO

ONE HUNDRED AND FORTY-NINE CARGOES.

 1852.

I certify, that there have one hundred and forty-nine vessels discharged their cargoes at the pier foot of 130th Street, East River, adjoining Harlem Bridge, for the three quarters ending February 1st, 1852, as follows :—

Wood,.....	11
Coal,	46
Brick,.....	24
Flagging,.....	11
Lumber,.....	34
Miscellaneous,	23

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J. W. WATSON,

*Lessee.*HARLEM, *March 24th*, 1852.

EXTRACT FROM MAYOR WOOD'S COMMUNICATION

TRANSMITTED TO

The Common Council of the City of New York,

FEBRUARY 4TH, 1856.

IMPROVEMENTS ON THIS ISLAND.

This city comprehends the whole Island, every acre of which has been surveyed and marked out into streets and parks. Near fifty years ago, the necessity of setting apart every foot of it for the occupation of the millions of inhabitants who were to possess and enjoy it, was so apparent that measures were taken for that purpose by the appointment of a Commission of intelligent men to perform the work. The day for the fulfilment of these anticipations is near at hand. The laying out of the Central Park—the almost entire union of Harlaem and Manhattanville—the rapid increase of Yorkville—the connection made by actual settling of the city proper, and what was once the village of Bloomingdale—have left, indeed, but few rural spots untouched by city life, in resident population. The complete and entire consolidation of the people of New York into one compact community, which will, in its habitations, stretch from the Battery, on the south, to Harlaem River and Spuyten Duyvel, on the north, and from river to river on the east and west, is not as far distant in the future as the day is in the past which contemplated the mighty growth and power of this metropolis, by laying out and preparing the streets and avenues for its reception and provision. We should not be so far behind our ancestors. They have given us the ground and marked out the lines, leaving to this generation, when required, the performance of the actual work.

Heretofore the southern and middle sections have been deemed the only portions of the island susceptible of immediate occupation, and to which we were to look for present set-

ting. In my opinion, no inconsiderable population will be added from the northern part, and that the Harlaem River will soon become the great business mart, to which river craft, barges, tow-boats and canal-boats, will arrive, and where all bulky produce, such as lumber, coal, flour and grain will necessarily be discharged. This little stream must, from its position, become of much value to this city. The obstacles which have so long prevented its navigation are almost entirely artificial and easily removed at little cost, the most prominent of which, that at Kingsbridge, is already provided for. By an Act of the Legislature, at its last session, a drawbridge was authorized to be erected at this point, so as to permit the passage of vessels, which, with the removal of the old dam, and other slight improvements, will leave this little but important river open to domestic commerce, and will offer a great saving of distance to the smaller craft, *en route* to and from places on the Hudson, East Rivers, and Long Island Sound. The improvement of this stream was brought to the attention of the Common Council several years ago, and an able report made thereon, showing the necessity and practicability of rendering it navigable. The survey made about the same time by G. C. Schaeffer, Esq., City Surveyor and Civil Engineer, (Doc. 126, Proceedings Board of Assistent Aldermen, 1838,) established this fact beyond any question. The Harlaem River is capable, with very little outlay, of being made of great service to our domestic commerce, and long before the city has reached any approximation to the maximum of its population, it will become indispensable, and its banks on either side will be entirely occupied with depots, wharves, and store-houses. The river fronts on the Hudson and the East Rivers, will be then entirely occupied by shipping and foreign commerce; the domestic commerce necessarily excluded, and only admitted so far as it may be necessary by means of lighters, etc., to load and discharge from the shipping.

Already enterprising and far-seeing capitalists have contemplated some such change by erecting many permanent works of value in the vicinity of Harlaem River. It is not therefore improbable that a population to be gathered by these means, at that end of the island, will rear there a large community, who will press from the north downward to meet that, now rapidly forcing itself upwards from the southern extremity, and thus consummate the entire consolidation of the inhabitants of New York the sooner.

SUPREME COURT.

RENWICK

vs.

MORRIS.

ERROR TO THE SUPERIOR COURT OF THE CITY OF NEW YORK.

Renwick sued Morris in the Court below in trespass, for tearing away a part of the plaintiff's dam over the Harlaem River, a navigable stream. The dam was built under an Act passed April 8th, 1813. The Act authorized Robert Macomb to build the dam; and, at the time of the alleged trespass, it had stood more than twenty years. The right to the dam had been acquired by the plaintiff. The second section of the Act provided, that the dam should be so constructed as to admit the passage of boats and vessels accustomed to navigate the river; and the third section imposed a penalty of \$5 on Macomb, his heirs, or assigns, for every obstruction or delay in the passage of such boats or vessels, caused by his or their default. There was evidence that, ever since the erection of the dam, boats commonly used in the navigation of the river had frequently been obstructed in their passage through the dam; that at high tide it was impossible for them to get through; and that there was no draw or contrivance in the dam by which vessels with masts could pass.

In September, 1839, the defendant, with others, removed the dam between three abutments, and took away one abutment. The Court below charged the jury—1. That, the river appearing to be navigable, the dam was a public nuisance if not built and maintained according to the law authorizing its erection; 2. That if the jury should find it to be a public nuisance, then the defendant had a right to abate it by his own act, notwithstanding the length of time which had elapsed

since its erection; 3. That in doing so, the defendant had a right to remove so much of the dam as was necessary to make a safe and convenient passage for all vessels at any time of tide which had been accustomed to navigate the river; 4. That if, in opening the passage, the defendant removed more of the dam than was necessary, or did any unnecessary injury to the same, he would then be a trespasser *pro tanto*. The plaintiff's counsel excepted to the charge. The jury found a verdict for the defendant, and, after judgment, the plaintiff sued out a writ of error.

J. BLUNT, for the plaintiff in error, cited *The King v. Montague*, (4 Barn. & Cress., 598, 602;) *The People v. Platt*, (17 John., 195;) *The King v. Smith*, (4 Esp. N. P. R., 111;) *The King v. Bond*, (2 T. R., 767;) *The King v. Rogers*, (4 Burr., 2523;) *Commonwealth v. Chapin*, (5 Pick. R., 199;) *Weld v. Hornby*, (7 East., 195.)

S. BEARDSLEY, for the defendant in error.

By the Court, COWEN, J. The Harlaem River being navigable, Macomb and his assigns would, independently of the statute, have been guilty of a public nuisance in building the dam. The only effect of the statute was to vest a power in him and his assigns to build and maintain the dam in the manner prescribed by the Legislature. It follows, that any excess or irregularity in the exercise of that power, by which the navigation became obstructed, was, *pro tanto*, a public nuisance. Were it not for the age of the dam, and the imposition of a penalty by the third section of the Act, it is not denied that such excess or irregularity might be corrected by abatement, subject to the limitations mentioned by the Court below in their charge to the jury. I have looked into the cases cited for the plaintiff in error, and they give no countenance to the idea that, because a public nuisance may have been continued more than twenty years, the remedy by abatement is therefore gone. It is very well settled that lapse of time will not bar a prosecution for a public nuisance; (1 Russ. on Cr., 274, Am. Ed. of 1836; *Folke v. Chad*, 3 Dong., 340, 343;) and I am aware of no case denying that the remedy by abatement is in all respects concurrent with that by indictment. (See *Coates v. New York*, 7 Cowen, 558, 604. *Mills v. Hale*, 9 Wend. 315.)

Nor does the imposition of a penalty by the statute take away the right of abatement. Nothing is better settled, as a general rule, than that the addition of a penalty by statute, for a common law offence, is merely cumulative; and that without negative words, such statute detracts nothing from the remedies formerly allowed by law. (*Dwar. on Stat.*, 678, 679.)

The case of *Commonwealth v. Chapin*, (5 Pick., 199,) relied on for the plaintiff in error, went on peculiar grounds and has no application to the case before us. In *The Commonwealth v. Ruggles*, (10 Mass. Rep., 391-3,) though the statute declaring the offence to be a public nuisance, itself prescribed a summary remedy, yet SCWALL, J., said this was merely cumulative, and that an indictment would lie notwithstanding. (Dwar. on Stat., 680, S. P.) Here it is not necessary to go so far in order to sustain the charge of the Court below.

Judgment affirmed.

3 Hill's Rep. p. 621-4.)

SUPERIOR COURT.

WILLIAM RENWICK,

vs.

LEWIS G. MORRIS.

Bill of Exceptions.

Afterwards, that is to say, at the Superior Court, in and for the City and County of New York, at the City Hall in the City of New York, on the 28th day of October, in the year 1840, before the Honorable Thomas J. Oakley, one of the Justices of the Superior Court, in and for the City and County of New York, aforesaid, the issue so joined between the said parties, aforesaid, came on to be tried by a jury of the body of the said City and County of New York, for that purpose duly empannelled.

At which day came as well the said William Renwick as the said Lewis G. Morris, by their respective attornies, aforesaid, and the jurors of the jury aforesaid, empannelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue. And upon the trial of the issue, the counsel, learned in the law, for the said plaintiff, to maintain and prove the said issue, on his part produced a deed executed by Elisha W. King and Oliver M. Lowndes, executors of James L. Bell, late Sheriff of the City and County of New York, deceased, to the said plaintiff, William Renwick.

This deed was founded upon a judgment against Robert Macomb, entered in the Supreme Court in October term, 1817. The judgment, execution, sale and deed, were admitted by the defendant's counsel, and that the grantors were executors of said James L. Bell, late Sheriff, was also admitted, and the said deed was thereupon by consent read in evidence.

The plaintiff's counsel then called as a witness

CHARLES FEEKS, who testified, that he occupied the toll-house of the plaintiff to the bridge of what is called Macomb's Dam. The following receipts are for money paid to the plain-

tiff by the witness for the rent of the said bridge and toll-gate. Considers the plaintiff the owner of the dam. Witness had at the time of defendant's pulling down part of the bridge, occupied it under the plaintiff 1 year and 11 months.

(It was here admitted that the defendant, with others, on the night of the 14th of September, 1839, pulled down part of the bridge and dam, and again on the 21st, 22nd and 24th, pulled away more of the said dam.)

Witness saw them commencing to tear away the bridge; there were from 50 to 100 persons, and the defendant was one of the principal actors. One of them told me that he would throw me over, and I did not interfere. I asked them what they intended to do? Some of them said they intended to do all things right.

Being cross-examined, witness stated that he had no lease; hired the house and lot; the bridge was included in the hiring. I hired it from year to year. I took it from May to May. There were certain tolls received. Witness was to keep the bridge and road in repair, and I applied the money I took for tolls to keep it in repair. I had nothing to do with the dam. The bridge was on the abutments, which were of stone, and rested on the dam. The dam extended between the abutments up to low water mark—they removed the dam between three abutments, and took away one abutment. Where these abutments were the tide ebbs and flows.

The counsel for the plaintiff then produced and read in evidence the Act of the Legislature of the State of New York, passed April 8th, 1813, entitled An Act authorizing a Dam to be built across the Harlaem River.

Also, a grant of the Corporation of the City of New York, of the 10th of January, 1814, which said act and grant it is agreed are to be considered as part of the Bill of Exceptions, and may be read and referred to on the argument.

The witness being further examined, on the part of the plaintiff, testified that in the year 1838, one vessel presented herself for passing—it was a steamboat.

Being cross-examined, the witness testified that there was no lock, draw, or contrivance in the dam and bridge by which vessels with masts could pass. Boats could pass through between the abutments, but not at all times of the tide. The whole width of the river, between the abutments of the bridge, was occupied with a solid stone dam up to about low water mark. Between the abutments of the bridge, from the top of the dam to the under side of the bridge, there was a space of 8 or 10 feet, and at ordinary high tide there was a distance of 4 to 5 feet between the surface of the water and the under side

of the bridge. Has known, at very high tides, the water to be within two feet of the bridge. The bridge was built on abutments—there was no difficulty in removing the loose stone between the abutments without taking away the planking of the bridge

The counsel for the plaintiff here rested.

The counsel for the defendant, to maintain and prove the issue on his part, then called as a witness

ANDREW CORSA, who being duly sworn, testified that he resided in Fordham, four or five miles from the dam. Berrien's Landing is above the dam two miles. Has known Harlem River since he was a boy. It is navigable to Kingsbridge, and for sloops and pettiaugers, &c., as far as Berrien's Landing. Witness built a house in 1785. Sloops, schooners and pettiaugers were accustomed to navigate the river up to the time of the erection of the dam. Witness lives one mile and a half above the dam; after it was built they could not pass; they had to bring up things by land. The defendant lives on the river about a mile or more above the dam, and on the east side.

Being cross-examined, he says, he has seen Berrien's sloop often in the river, but not within 30, and cannot say he has within 40 years. Does not know whether he ever saw any other sloop there since the Revolution. Has seen pettiaugers there since then several times. Cannot say whether he has seen any pettiaugers there for 40 years. Is 77 years old.

The counsel for the defendant then called DENNIS VALENTINE, who being duly sworn, testified that he was 73 years old, and has resided near the Harlem River for his whole life. Before the dam was erected, Albany sloops used to come up the Harlem River two miles above where the dam now is, with head winds, beating up. These sloops were up during the Revolutionary war, while the armies lay there, to bring them flour and provisions, and lumber to build barracks. I cannot tell the number of sloops that came up.

There were a number of vessels came up after the Revolutionary war. Has known them to come up after the Harlem Bridge was built, and before the dam was erected; they came up after stone; they were rough vessels, like scows—had masts, but dont know whether the masts were stationary or shipped. After the Revolution stone was brought from the stone quarry at Foole's, about one mile above the dam. Since 1800 there have been none but small market vessels come up the river. I piloted up since the war.

Being cross-examined, witness testified that he cannot say that he has seen vessels in the river during the last 40 years;

was within half a mile of the bank, and could see the river easily. There was a bridge, without a draw, across the river, about 200 yards east of Kingsbridge, built by the farmers.

The counsel for the defendant then called as a witness,

NICHOLAS BERRIEN, who being duly sworn, testified that he was 72 years old. Has known Harlem River for more than 50 years. A vessel called the Lady, and another called the Sally—one would carry 6 cords of wood, and the other 7 cords. I piloted one of them for some years from Berrien's Landing, which is about two miles above where the dam now is. Another vessel, which drew more than 7 feet water, came ashore to Berrien's Landing, and brought a barn frame for witness' neighbor. There was also a pettiauger, with masts, trading in crockery, which used to come up where the dam now is. Witness' father who resided above where the dam is, used to send his hay to market by water. After the dam was built the only way we could pass was with small boats without masts, and only at certain stages of the tide, by passing under the bridge and over the dam. This was dangerous. Four persons were drowned in passing under the bridge; I sat upon the inquest of two of them; the current under the bridge is very rapid. I know nothing about those being drowned but what I heard. The barn frames were brought up right after the Revolution to replace barns that had been burnt for fuel during the war. The vessels that came up for stone were the Lady and Sally, and another not so large. The Lady and Sally were the vessels that took down my father's hay. I know one vessel that navigated there after the Lady and Sally, but that was more than 40 years ago. The vessel that took up the barn frame was larger than the others—it drew better than 7 feet water, and he beat her down the river with a head wind at low water. Used to see other vessels after the Lady and Sally ceased coming up. The time when witness acted as pilot on board the Lady and Sally was when witness was young—he was not 25. Has seen no vessel in the river since 1800, except the steamboat last year. At low water not even row-boats could pass.

Being cross-examined, witness testified that in some places the channel is two hundred yards wide, and is over one hundred yards in all places up to the landing. Never made a survey of the river; has been up one thousand times, and has drawn a seine in the river. There is no part of the river where the channel is not more than thirty yards wide. From Berrien to Morris' Landing it is from thirteen to twenty feet; cannot say whether at low or high water; cannot say whether he has seen a vessel there since 1790. There has been an excitement

within two years in the neighborhood about the navigation of the river, and some warmth shown.

The counsel for the defendant then called JOHN CORSA, who being duly sworn, testified that he is little more than forty years of age, and has known the Harlem River as long as he knows anything. A vessel of about twenty tons, with standing mast, sloop rigged, came up the Harlem River above where the dam is, yearly; she came every year above the dam, until she was stopped by the dam; she traded for rags and old iron; she was a flat bottom; I dont know how much water she drew. I lived on the farm I now occupy for ten years before the dam was erected. We followed with our market boats until the erecting of the dam broke it up. I came there with my market boat once after the bridge was erected, 1817; it was a skiff. There were two gates at the bridge, one on the lower side, and one on the upper side, to let boats through. I went to John Smith who kept the dam, and we went and tried to raise the gates, but they had got cramped and were out of order, so we could not raise them. We then took my skiff and carried it over the dam. Knows the mill near Kingsbridge; it is ten or twelve years since it has done any thing. Would think the rapid under the bridge as bad as that at Hell Gate. There were four persons drowned there at one time. Between the top of the dam and the under part of the bridge is about ten feet. The dam is higher than low water mark; the tide rises from four to six, and sometimes seven feet; the bridge is not safe. When the dam was first built, there was a place intended to let boats pass through, about six or seven feet wide, which was planked over and formed part of the bridge, with a gate at each end of it, which was intended to let a boat pass through, by raising one of the gates and letting the boat pass under that part of the bridge, then shut that gate, and open the other, and let the boat pass out. This flume was on the east side; there never was any construction which would let a vessel with masts pass through the dam; the flume has been filled up with stone within a year or two before the dam was taken up by the defendants. Market boats used to pass up and down till the dam was built, since which we are obliged to sell our boats and abandon the river, and since the boats could not pass. The average depth of water at Berrien's Landing at low water would be eighteen to twenty-three feet; the bridge is made of sleepers.

Being cross-examined, witness testified, that it was impossible for boats to pass through the flume at low water. The water on the lower side of the flume was below the bottom of the flume.

There has been considerable excitement ever since the dam was built. As to any new or particular excitement, I have no knowledge. I was not engaged in taking up the dam.

The counsel for the defendant then called as a witness,

STEPHEN WARD, who being duly sworn, testified that he is fifty-seven years old, and has been acquainted with the Harlem River for his whole life. Saw a vessel within about two years of the time the dam was built. A vessel (a sloop) of about eighteen or twenty tons, came up the river above where the dam was erected, and traded with the inhabitants for rags and old iron.

In 1810, witness built a boat; it was an open boat, with masts that shipped, which I used to go to market with. After the dam was built, I passed and répassed, sometimes through the lock, and sometimes by unloading and going over the dam. I could not pass the dam at half-tide; the dam was built entirely across the stream, higher than low water mark; the dam the whole distance, was about the same height.

The counsel for the defendant then called as a witness,

CHRISTOPHER WALTON, who, being duly sworn, testified that he had seen the stone of the dam out of water at low tide. I walked across the whole river on the stones, dry-footed, at low tide.

The counsel for the defendant then called as a witness,

WILLIAM WILLIAMS, who, being duly sworn, testified that after a passage was made through the dam by the defendant, witness navigated the Harlem River with a steamboat above the dam; and as the dam now is, vessels at all times of the tide cannot go through, because the tide runs so strong. Navigated the stream up to the famous bridge, about two and a half miles above the dam, for one month, making three trips a day. The dam was generally out of water at low water. I saw vessels with standing masts navigating the stream far above the dam, of about forty tons burthen.

The counsel for the plaintiff then called again

CHARLES FEEKS, who testified that the distance from one abutment to the other is thirty-eight feet; the abutment is about ten feet. The gates were lying on the shore in 1837, and not put on when witness was there.

The counsel for the defendant then called as a witness,

——— ROBERTS, who, being duly sworn, testified that he is a contractor for the bridge for the Croton Aqueduct, and transports materials up the Harlem River; cannot tell the width of the channel. The vessels employed by witness are from twenty to one hundred tons. We have twenty in employ; they sometimes beat up; there is about eight feet at high water;

the present passage between the abutments is no more than a needful space ; it is frequently difficult to pass, and our vessels strike ; we have been obliged to take out stone from the bottom in the passages. We cannot get a vessel through at any time but high tide, from want of depth of water ; immediately above and below the dam the water is twenty feet.

Being cross-examined, witness testified that the water is not sufficiently deep ; our vessels sometimes strike against Morris' bridge.

CHARLES FEEKS, being again called by the counsel for the plaintiff, testified that the defendant removed about eighty feet of the dam, broke up the face of the two other abutments, besides the central abutment.

The counsel for the defendant then called as a witness,

—— MINERE, who, being duly sworn, testified that he was in the employ of Roberts, and was employed to take out stone of Macomb's dam, where the water was not deep enough. The width is not enough. The piers are all standing.

Being cross-examined, witness testified that he never went through a drawbridge in a sloop.

The counsel for the plaintiff then called as a witness,

—— ANDERSON, who, being duly sworn, testified that he is an engineer ; that the draws for sloops are from thirty to forty-five feet wide ; the ordinary width is from thirty to thirty-eight feet for vessels of one hundred tons.

Being cross-examined, witness testified, that the draw is not sufficiently wide for the flow of water. The width of the draw by me spoken of, is of bridges with a free flow of water under them. In case of a dam, the opening must be wider in consequence of the increase of the current ; that in such a case the above width is not sufficient ; it would require extraordinary care to work through ; knows the dam in question. For a convenient passage through that I should require a space open from sixty to eighty feet.

The parties here rested.

Thereupon the Judge charged the jury as follows :

1st. That the Harlem River appearing to be a navigable river, the dam in question, obstructing the navigation of it, was a public nuisance, if it was not built and maintained according to the law authorizing its erection.

2nd. That if the jury should find that it was a public nuisance, then the defendant had a right to abate it by his own act, notwithstanding the length of time which had elapsed from its erection.

3d. That in doing so, the defendant had a right to remove so much of the dam as was necessary to make a safe and con-

venient passage for all vessels at any time of tide, which had been accustomed to navigate the river.

4th. That if, in opening such passage, the defendant removed more of the dam than was necessary, or did any unnecessary injury to the same, he would then be a trespasser *pro tanto*.

And with these instructions as to the law, left the case to jury upon the evidence.

The plaintiff's counsel excepted to the charge. The jury found their verdict for the defendant.

And afterwards, in the term of January, 1841, in the same Court, the said exceptions so taken to the charge of the said Justice, came on to be argued before all the Justices of the said Court; and thereupon, the same being argued by counsel, were, after advisement, in the term of February, 1841, overruled, and the motion thereon for a new trial denied. To which decision of the said Court the counsel for the said plaintiff then and there excepted. And inasmuch as the matters and proceedings aforesaid do not appear by the record of the verdict aforesaid, the counsel for the said plaintiff did, upon the rendering of the judgment aforesaid, request the said Justices to set their hands and seals to this Bill of Exceptions, according to the form of the statute, &c. And thereupon the said Justices have hereunto set their hands and seals, this eighteenth day of February, in the year 1841.

(Signed)

S. JONES, [L. S.]

THOS. J. OAKLEY, [L. S.]

DANIEL B. TALLMADGE, [L. S.]

NEW YORK SUPERIOR COURT.

I, Charles A. Clinton, Clerk of the Superior Court of the City of New York, do hereby certify that the foregoing Bill of Exceptions was signed and sealed by Samuel Jones, Esquire, Chief Justice of the Superior Court of the City of New York, and Thomas J. Oakley and Daniel B. Tallmadge, Esquires, Associate Justices of the said Court.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at the
[L. S.] City Hall of the said City of New York, this eleventh day of April, A. D., 1842.

C. A. CLINTON,
Clerk.

And afterwards, that is to say, on the first Monday of May, A. D., 1842, before the Justices of the said Supreme Court, at the City Hall, in the City of New York, comes the said William Renwick, by A. N. Gouverneur, his attorney, and says, that in the record and proceedings aforesaid, and in giving judgment aforesaid, there is manifest error in this, to wit, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said defendant, against the said plaintiff; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff, and against the said defendant; and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings, may be reversed, and altogether held for nought, and that he may be restored to all things which he

has lost by occasion of said judgment. And thereupon, the said Lewis G. Morris, by David E. Wheeler, his attorney, comes and says, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said Supreme Court, before the Justices thereof, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the said judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. But because the said Court of the people, before the Justices thereof, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the Justices thereof, at the Academy in the City of Utica, on the first Monday of July next; for that the said Court of the people, before the Justices thereof, now here, are not yet advised thereof, &c. At which last mentioned day, before the Justices aforesaid, at the place aforesaid, come the parties aforesaid, by their attorneys aforesaid. And because the said Court, before the Justices aforesaid, now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the Justices aforesaid, until the third Monday of October next, at the Court House, in the City of Rochester, to hear the judgment of the said Court thereupon; for that the said Court, before the Justices aforesaid, now here, are not yet advised thereof, &c. At which day before the Justices of the Supreme Court of Judicature of the People of the State of New York, at the Court House, in the City of Rochester, come the parties aforesaid, by their attorneys aforesaid; whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said plaintiff aforesaid above for error assigned, being seen, and by the said Supreme Court of the People, before the aforesaid Justices thereof, now here, fully understood, and mature deliberation being thereupon had, it appears to the said Court of the People, before the aforesaid Justices thereof, now here, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid.

Therefore it is considered, that the judgment aforesaid in form aforesaid given, be in all things affirmed, and stand in full force and effect; the several matters above for error assigned in anywise notwithstanding.

And it is further considered, that the said Lewis G. Morris do recover against the said William Renwick, as well his judgment or damages aforesaid (amounting to three hundred and sixty-four dollars and fifty-eight cents, \$364.58,) as also seven

ty dollars and fifteen cents adjudged to him, the said Lewis G. Morris, by the Supreme Court of the same People, before the aforesaid Justices thereof, now here, according to the statute in such case made and provided, for his damages, costs and charges, which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on the pretence of the prosecution of the said writ of error; which said judgment, damages, costs and charges, in the whole, amount to four hundred and thirty-four dollars and seventy-three cents; and that the said Lewis G. Morris have execution thereof, &c. And the said William Renwick, in mercy, &c.

Judgment signed this 25th day of November, in the year one thousand eight hundred and forty-two.

W. P. HALLETT.

Afterwards, to wit, on the 9th day of November, in the year of our Lord one thousand eight hundred and forty-two, before the President of the Senate, the Senators and Chancellor of the State of New York, in the Court for the trial of Impeachments and the Correction of Errors, at the Capitol in the City of Albany, comes the said plaintiff in error, by Jonathan Miller, his attorney, and says, that the record and proceedings aforesaid, and also in giving the judgment of affirmance aforesaid, there is manifest error in this, to wit, that it appears that the judgment aforesaid was given for the said defendant in error, against the said plaintiff in error; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error, against the said defendant in error. And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

For proceedings in Barb

And hereupon the said Lewis G. Morris, defendant in error, by David E. Wheeler, his attorney, freely comes here into Court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said Court for the trial of Impeachments and the Correction of Errors, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

OPINION OF THE SUPREME COURT.

COWEN, *Justice*.—The Harlem River being navigable, Maccomb and his assigns would, independently of the statute, have been guilty of a public nuisance in building the dam. The only effect of the statute was to vest a power in him and his assigns to build and maintain the dam in the manner prescribed by the Legislature. It follows that any excess or irregularity in the exercise of that power, by which the navigation became obstructed, was, *pro tanto*, a public nuisance. Were it not for the age of the dam, and the imposition of a penalty by the third section of the act, it is not denied that such excess or irregularity might be corrected by abatement, subject to the limitations mentioned by the Court below, in their charge to the jury. I have looked into the cases cited for the plaintiff in error, and they give no countenance to the idea that because a public nuisance may have been continued more than twenty years, the remedy by abatement is therefore gone. It is very well settled, that lapse of time will not bar a prosecution for a public nuisance, (1 Russ. on Cr., 274, Am. ed. of 1836; Folkes vs. Chad., 3 Doug., 343;) and I am aware of no case denying that the remedy by abatement is in all respects concurrent with that by indictment. (See Coates vs. New York, 7 Cowen, 558, 604. Mills vs. Hull, 9 Wend., 315.)

Nor does the imposition of a penalty by the statute take away the right of abatement. Nothing is better settled, as a general rule, than that the addition of a penalty by statute, for a common law offence, is merely cumulative, and that without

negative words, such statute detracts nothing from the remedies formerly allowed by law, (Dwar. on Stat., 678, 679.) The case of Commonwealth vs. Chapin, (5 Pick., 199,) went on peculiar grounds, and has no application to the case before us. In the Commonwealth vs. Ruggles, (10 Mass. Rep., 391-3,) though the statute declaring the offence to be a public nuisance, itself prescribed a summary remedy: yet Sewall, J., said this was merely cumulative, and that an indictment would lie, notwithstanding, (Dwar. on Stat., 600, S. P.) Here it is not necessary to go so far, in order to sustain the charge of the Court below.

Judgment affirmed.

Court of Errors

RENWICK vs. MORRIS.

7 Hill 575. 6. 7.

When an act was passed giving a person the right of erecting and maintaining a dam in a navigable river, and the dam was so built as to obstruct the navigation beyond what the act authorized; *held*, a public nuisance, and liable to abatement *pro tanto* by any one, though it had stood for more than twenty years.

The right of abating or indicting a public nuisance is not affected by a statute imposing a penalty for the offence, unless negative words are added evincing an intent to exclude common law remedies.

When a new offence is created by statute, and a penalty provided for it, no other punishment can be imposed. *Per* Walworth, Chancellor.

So where a new right is given by statute, and a remedy provided for the violation of it, the party is confined to this remedy. *Per* Walworth, Chancellor.

On error from the Supreme Court, when the judgment of the Superior Court of the City of New York was affirmed. For a statement of the facts, and the opinion of the Supreme Court, see 3d Hill. 621, *et seq.*

J. Blunt and B. F. Butler for the plaintiff in error. 1st. The plaintiff's dam was constructed under the act of April 8, 1813, (3 Laws of N. Y., Web. & Skin. ed., p. 161,) and could not be abated except by legal process. (*Crenshaw vs. The Slate River Company*, 6 Rand. Rep., 145.) 2nd. A penalty was provided by the act for obstructing the navigation, and therefore the remedy by abatement could not be resorted to. (*Commonwealth vs. Chapin*, 5 Pick., 199.) 3d. When a right

or claim to use a dam has been enjoyed or exercised without interruption, for twenty years, under a statute, individuals cannot abate it except by legal process. (*The King vs. Montague*, 4 Barn. & Cress., 598, 602; *The People vs. Platt*, 17 Johns. Rep., 195; *The King vs. Smith*, 4 Esp. N. P. Rep., 111; *The King vs. Bond*, 2 T. R., 767; *The King vs. Rogers*, 4 Burr., 2523.)

D. Lord, Jun., for the defendant in error, cited and commented on *Thompson vs. The People*, (23 Wend., 537,) *Mills vs. Haw*, (9 Id., 315,) *Weld vs. Hornby*, (7 East., 195,) *Hart vs. The Mayor of Albany*, (9 Wend., 571, 577; 3 Paige, 213, S. C.,) *Wetmore vs. Tracy*, (14 Wend., 250, 254.)¹

THE CHANCELLOR. The Harlem river was an arm of the sea, and a public navigable river; and it was a public nuisance to obstruct the navigation thereof without authority of law. The act of the legislature did not authorize the obstruction of the navigation of the river in the manner in which it was done by the dam in question. The length of time which this public nuisance had been continued did not legalize it; for every continuation of the obstruction was of itself an offence. (*Mills vs. Haw*, 9 Wend Rep., 315.) In the case of *The King vs. Montague*, (4 Barn. & Cress., 598,) the question arose between a public road and a navigable passage; and as the public road had existed so long that it was impossible to show that the navigable stream existed at the time the public road was made, the court presumed that the right of navigation had been extinguished in favor of the conflicting public right of the road. But the decision of the Court of King's Bench in the case of *Folkes vs. Chad*, (3 Doug. Rep., 340,) shows that twenty years' continuance of a nuisance is not a bar to an indictment to abate it; and if so, any individual may abate it as a public nuisance.

When a new offence is created, and a penalty is given for it, or a new right is given, and specific relief given for the violation of such right, the punishment or remedy is confined to that given by statute. (See *Stafford vs. Ingersoll*, 3 Hill., 38, 41, 2.) But giving a superadded penalty for the erection or continuance of a nuisance does not prevent the common law right of the public to have it indicted and removed as a nuisance; nor does it prevent its being abated in the usual way by individuals, at the peril of showing that it was a nuisance, and that they did no unnecessary injury in removing it.

Here the questions of fact were all properly submitted to

the jury, who have found for the defendant upon every point which was material to his defence.

I think the judgment should therefore be affirmed.

Senators Porter and Lott also delivered opinions in favor of affirming the judgment of the Supreme Court, and

On the question being put, " Shall this judgment be reversed ?" all the members present who heard the argument, twenty-three in number, voted for affirming.

Judgment affirmed.

To the Editor of the Westchester Gazette.

IMPROVEMENT OF THE HARLEM RIVER.

MR. EDITOR : In your paper of the 17th January, 1857, is an article by E. F. T., of Brooklyn, relating to the improvement of the Harlem River, wherein he discussed the importance and practicability of "*filling up*" instead of improving its navigation, and in that manner to facilitate the annexation of the lower end of Westchester County to the City of New York—to lay out some fine parks, squares, &c.

In this article I don't propose to discuss the possibility, the vastness or enormous expenses attendant upon its accomplishment, but merely as to the policy of such a movement, as to the advantages or disadvantages to accrue therefrom to the State and City of New York—and if even in a national point of view, it were not adverse to a good system of public economy.

We have now a natural channel connecting one of the noblest rivers of this continent to an arm of the great Atlantic, which at no great Herculean labor can be made, not only navigable for ordinary river craft, but might be made the repository of the shipping of our Commercial Emporium—a grand depot for the vast produce of the Great West, which at the present time is crowded in an indiscriminate chaotic mass of incongruous matter, in the shape of Western corn, flour, pork and whiskey,—of sugar, pitch, molasses, raisins and tobacco, from the South,—coal, iron, wood, stone and bricks, from the interior,—copper, furs, fish and peltry, from the North ; and fish, lumber, calicos, shoes and "*Yankee Notions*," from the East ; without taking in account the immense imports from foreign countries, which increase in importance and extent every year, has all to be landed, and stored at this small focus, the Southern extremity of the "*little tongue of land*," known as *Manhattan Island*,—the whole length of shipping water-line not exceeding six miles in extent ; thereby obstructing the navigation of those waters and endangering the safety of property and even life, and also concentrating in the hands of a few individuals the monopoly of water privileges : whereas were the waters of the Harlem River made not only navigable

for ordinary river craft, but so improved as to make it an *entrepot* for the Northern, Western and interior agricultural produce as well as mechanical productions, it would be a vast relief to the lower part of the city, beside enhancing the value of *up town* property as well as that of Westchester, not only on the borders of the river, but for miles inland. Whereas by the "filling up" system there would be but a few more lots added at an enormous cost, to the over supply (at least for the present) of the sort of property now in the market, without in the least improving the value of landed property on either shores of the river.

Should, however, the Harlem River be made navigable, and so improved as to be capable of receiving our commercial navy, it would in a great measure tend to relieve the now over-crowded "Down Town" business portion of the city, without in the least deteriorating the value of property or in any way crippling commerce in that locality. It would diffuse through the surrounding country all the advantages incidental to the proximity of a great commercial mart; not only would the surrounding towns, or even counties, participate in these improvements, but the revenues of the State would feel the enlivening influence of the greatly growing commerce of its metropolis.

It is only by such an improvement that we can expect to retain the ascendancy over other large cities of the adjoining States with regard to the traffic in the agricultural productions of the rich and fertile West and North, which, unless there are more accessible means of trans-shipment provided than there are at present, will, in a very few years, be diverted to some more available locality.

PUBLICOLA.

Tremont, January, 1857.

N. B.—To give the valley of the Harlem River an equal grade with the adjacent country from Third Avenue to Kingsbridge, it would require the removal of about ninety millions of yards of earth, at a cost of at least thirty million dollars. And for all this outlay there would not be more than five hundred acres of "terra firma" than there is at present, between Westchester County and the City of New York, which would have to sell for about \$60,000 per acre to pay first cost.

PUBLICOLA.

Expenditures.

DR. *Steamboat Thames in Account with*

1838.

Oct. 20.	To Paid E. A. Bill on acc't of Charter at Norwich, New London Co., Conn.	\$50 00
" 23.	Traveling expenses to Norwich and home in three days	11 33
" 23.	Expenses in city for hack hire, &c., getting a cargo of wood and spiles	2 19
" 25.	Pilot from Hurlgate to Harlem	2 00
" 25.	Traveling expense in Harlem and New York	2 44
" 26.	Cortny Hall, captain of sloop "Star," of New Jersey, for 15½ cords of wood, at \$4 50	69 75
" 26.	Freight of above	10 00
" 26.	" " 50 spiles	2 00
" 26.	Expense on acc't of McComb's Dam. ...	5 00
" 26.	Pilot for Cortny Hall	5 00
" 26.	Sundries	25
" 27.	Do	25
" 29.	For postage	13
" 29.	Cash to Captain Stoddard, on acc't of charter of Thames	137 50
Nov. 1.	Expense for self and men for three days	1 24
" 3.	For painting a sign on stage	2 50
" 5.	Rae for labor on river, building wharves, &c	43 50
" 5.	Horse keep, &c., at Stammers	2 50
" 15.	Schooner Eclipse, for two days remaining above dam on acc't of Excursion.	10 00
" 16.	For 11½ cords of wood, at \$5 50	58 27
" 16.	Freight of above to sloop Mary	16 87
" 16.	Wm. Weeks, for staking out the channel and building wharfs	13 50
		<hr/>
		\$446 22

Lewis G. Morris.

CR.

1838.				
Nov. 5.	“	Rec'd from C. H. Hall.....	100	00
“ 13.	“	“ “ “ Capt. Stoddard, on acc't of earnings of boat.....	30	00
“ 21.	“	“ “ “ Capt. Stoddard, on acc't of earnings of boat.....	10	94
			<hr/>	
			\$140	94

R. *Steamboat Thames in Account with*
1838.

		Amount brought over.....	\$446 22
Oct. 16.	To	Paid for 50 spiles for building dock..	25 00
" 16.	"	E. Kemp, stage driver.....	10 00
" 17.	"	in full for charter.....	191 19
" 17.	"	for wood to return with.....	6 00
" 26.	"	schooner Eclipse for distributing spiles and wood.....	5 00
" 26.	"	my traveling expenses.....	2 50
Nov. 20.	"	" ".....	1 00
" 28.	"	" " 2 days.....	1 25
Dec. 4.	"	H. C. Rant for wood.....	25 00
" 5.	"	for lumber for building wharfs, &c.	53 92
" 7.	"	E. Kemp, in full for driving stage	18 25
" 7.	"	traveling expense.....	1 00
" 7.	"	for use of a boat as tender to the Thames.....	3 00
" 7.	"	for horse hire.....	24 00
" 11.	"	Huestis for horse keep, boarding, driver, &c.....	53 68
" 13.	"	traveling expense.....	75
1839.			
Jan. 6.	"	Dodge, at King's Bridge.....	1 00
" 7.	"	Steamboat Bell.....	63
" 7.	"	Thomas Fisher in full for stage hire.....	33 00
" 7.	"	J. Platt & Son, in full for horse feed, nails, &c.....	19 56
" 25.	"	Downing, for refreshments.....	66 00
" 25.	"	for advertising in sundry papers..	47 06
Feb. 15.	"	M. Rae, for services at landing place at King's Bridge.....	2 86

Amount carried to General Harlem River account,
page 154, as at this date I intend uniting the
two accounts.....\$1037 87

Lewis G. Morris.

CR.

1838.

				Amount brought forward.....	\$140 94
Nov.	21.	By	amount received of Gen. R. Bogardus		25 00
"	23.	"	" " " " J. & M. Dyckman		25 00
"	23.	"	" " " " Ab'm. Valentine.		10 00
"	30.	"	" " " " J. W. Morris & Brothers.....		50 00
Dec.	2.	"	" " " " F. C. Gray.....		50 00
"	2.	"	" " " " Wm. B. Lawrence		200 00
"	2.	"	" " " " T. W. Ludlow..		50 00
"	2.	"	" " " " Thomas Fisher..		5 00
"	7.	"	" " " " J. M. Dyckman..		10 00
"	7.	"	" " " " Kemp, stage driver, for fare received between Harlem and Mc- Comb's Dam..		4 73
"	7.	"	" " " " Col. Lewis Morris		50 00
"	10.	"	" " " " Huestis for 3¼ cords of wood, which was left..		21 12

1839.

Jan'y	2.	"	" " " " Gouveneur Morris		50 00
"	18.	"	" " " " Lewis G. Morris for one cord of wood.....		6 50
"	25.	"	" " " " Wm. B. Lawrence		100 00
"	25.	"	" " " " J. Randall, when the boat was running, as a subscription...		5 00

By amount to Harlem River account, page 155... \$803 29

DR. *Harlem River, and Suit with Renwick,*
1838.

Aug. 17,	To	Traveling Expenses relative to S. B., at Verplanck's Point.....	\$1 37
" 21.	"	Traveling Expenses relative to S. B., at Verplanck's Point.....	1 50
" 21.	"	Paid A. T. Anderson counsel fee....	50 00
" 21.	"	" R. H. Morris ".....	50 00
" 21.	"	" Daniel Lord, Jr. ".....	50 00
" 31.	"	Cash spent in attempting Cole's Bridge and McComb's Dam.....	2 81
Sep. 1.	"	Expenses in City, relative to Steam Boat.....	1 18
" 3.	"	Traveling Expenses.....	1 25
" 8.	"	" " Steam Boat....	1 38
" 10.	"	Paid Randall for delivering a cargo of brick at McComb's Dam, for the purpose of testing Cole's Bridge and the dam.....	8 81
" 13.	"	Expenses for the last four days in New York, Poughkeepsie, Jersey City, &c., in trying to get steamboat and vessels with coal.....	14 11
" 15.	"	Paid 63 men as wages for assistance in abating a nuisance and putting the Nonpareil over McComb's Dam.	63 88
" "	"	" J. & C. Morgan, freight, hire of men, supplies, &c., as per bill....	88 00
" "	"	Cash for Sundries.....	1 36
" 17.	"	Hack hire, and traveling expenses for 2 days.....	4 63
" 18 & 19.	To	Paid sundry traveling expenses	2 38
" 21, 24, 25, 29.		Traveling expenses.....	11 41
Oct. 2.	"	" Mr. Crane, for removing stone in in Dam.....	50 00
" "	"	" Expense and horse hire, for 2 days.....	4 25
" 13.	"	" do do ".....	3 50
" 16.	"	" Crane for removing stone.....	35 00

In account with L. G. Morris,

CR.

1838.

Aug.	By	Recd.	of	Saml. Thompson	on	Subscription		
				List	.....		\$30	00
"	"	"	of	T. W. Ludlow	do	.....	25	00
"	"	"	"	L. G. Morris	.....		25	00
"	"	"	"	J. & M. Dyckman	.....		25	00
"	"	"	"	Wm. B. Lawrence	.....	100	00	
"	"	"	"	Gouveneur Morris	.....		50	00
"	"	"	"	Abraham Valentine	.....		25	00
Oct. 16	"	"	"	Col. Lewis Morris	.....		50	00
							<u>\$330</u>	00

DR. *Harlem River, and Suit with Renwick,*
1838.

		Amount brought over	\$446 82
Oct 16,	To Cash,	paid for copying part of answer in Chancery and Commissioner's fee	2 38
" 17.	" "	Expense for one day and night in Harlem and Morrisania horse hire, &c., for McSeaman and self, in obtaining signatures to answer	7 72
" "	" "	Expense in City on the 16th instant	1 36
" 23.	" "	Traveling Expenses, horse keep, &c.	2 19
" 29.	" "	For Grapling Irons and Rake	43 38
Nov. 1.	" "	Traveling Expenses	1 25
" 5.	" "	For lithographing answer in Chancery suit	44 40
" 16.	" "	Jos. Crane in full, in full for work and in full for removing stone in Dam	28 00
Nov. 21.	" "	My expenses	1 25
28 & 30.	" "	"	1 75
Dec. 4.	" "	Sundry expenses	2 50
" 5.	" "	Randall, for a pilot which brought the sloop load of brick to test the Harlem Bridge, and McComb's Dam	2 00
" 7.	" "	My expenses	1 00
" 12.	" "	D. B. Ogden, as fee	50 00
" 13.	" "	Expenses, two days	1 50
			<hr/>
			\$637 50

In Account with L. G. Morris,

CR.

1838.

Oct. 17,	By	Amount brought forward	.....	\$330 00
Nov. "	"	Received of General Bogadus	.....	50 00
" 20.	"	" " P. Valentine	.....	10 00
" 30.	"	" " John Butler	.....	5 00
" "	"	" " W. H. Morris	.....	100 00
" "	"	" " Jarard W. Morris	.....	25 00
Dec. 2.	"	" " F. C. Gray	.....	25 00
" 7.	"	" " J. Dyckman	.....	10 00
" 20.	"	" " G. M. Wilkins	.....	25 00

1839.

" 26.	"	" " R. F. Carman	.....	30 00
Jan. 8.	"	" " J. & M. Dyckman	.....	25 00
" "	"	" " John Myer	.....	10 00
" "	"	" " Peter Myer	.....	10 00
" "	"	" " A. B. Bussing	.....	10 00
" 10.	"	" " D. Valentine	.....	10 00
" 25.	"	" " Isaac Adriance	.....	25 00
Feb. 12.	"	" " W. B. Lawrence	.....	75 00
" 16.	"	" " John Butler	.....	5 00
" "	"	" " T. W. Ludlow	.....	100 00

 \$880 00

Dr.		<i>Harlem River and Suit with Renwick,</i>	
1838.		Amount brought over	\$637 50
Dec. 26.	To	Cash, paid hack hire and money spent to get the affidavits of Williams and Stoddard.	2 50
" 28.	"	" " expense in city	1 00
1839.			
Jan'y 2.	"	" " Commissioner's fees	38
" 7.	"	" " sundry expenses	1 25
" 9.	"	" " toll and sundries	75
" 10.	"	" " for use of scow and spile driver	15 00
" 10.	"	" " sundry exp. for last 3 days	2 12
" 14.	"	" " 1½ day's work for man and team	3 75
" 15.	"	" " sundries for last three days	63
" 22.	"	" " exp'nses for last three days	1 50
Feb'y 12.	"	" " expense of trip to Albany.	61 61
" 12.	"	" " blacksmith, for work at McComb's Dam	7 37
" 12.	"	" " H. P. Loomis, for work at the Dam	11 44
" 16.	To	Amount of acc't known as Steamboat Thames, and now united with this ac't	1037 87
" 16.	"	Cash, paid postage	37
" 23.	"	" " "	18
" 25.	"	" " expenses	1 50
" 25.	"	" " timber for building crane.	5 00
" 25.	"	" " the Messrs. Morgans of Jersey City, on the 13th November last, for ser- vices rendered as per ac't	24 86
" 25.	"	" " on the 13th November, as per bill, for printing...	25 25
March 18.	"	" " for one bbl. pitch \$2 00, 25 bbls. coke \$3 12	5 12
" 18.	"	" " expense of getting same	1 00

 1847 95

In Account with L. G. Morris.

CR.

1838.

		Amount brought over...	\$880 00
Feb'y	16.	By Amount of acc't known as Steamboat Thames' acc't, and now united with this account.....	803 29
May	4.	" Received of Wm. B. Lawrence.....	35 00
June	7.	" " " Gouveneur Morris a re- ceipt for money paid to S. M. Stillwell, on the 9th of May last, at Albany.....	350 00
"	7.	" " " F. C. Gray.....	100 00
"	29.	" " " Peter Valentine, some time since.....	10 00
July	3.	" " " Wm. B. Lawrence as fol- lows, as paid by him for Cham- paign in Nov..... \$ 32 00	
		To D. B. Ogden, Sept. 16, 1838.....	50 00
		To D. B. Ogden, January 11, 1839.....	100 00
		To J. P. Hall, Jan. 25, 1829.....	250 00
		Printing.....	33 00
			<hr/> 465 00
"	3.	" Received of C. H. Hall, Esq., on this acc't as follows :	
		Paid for dinner at Hendrick's	\$155 00
		Paid to J. P. Hall, for the purpose of retaining Sam'l Stevens, Esq., at Albany.....	100 00
		Allowed for scow.....	50 00
			<hr/> 305 00
			<hr/> \$2948 29

DR.		<i>Harlem River, McComb's Dam and Suit with</i>		
1839.		Amount brought over		\$1847 95
March	18.	To	Cash, sent S. M. Stillwell on the 16th of Feb'y last as a retainer at Al'by	50 00
"	23.	"	Cash, p'd for printing in W.C. papers	5 00
"	23.	"	" " Platt, in full for hinges, &c	1 25
April	2.	"	" " H. Ward, for securing timber	50
"	6.	"	" " " sundry expense \$1 50, and labor of team and man \$2 75	4 25
"	10.	"	" " " three men for assisting on the river	2 25
"	26.	"	" " " exp. for self at Albany ..	53 26
May	4.	"	" " " " " "	35 00
"	4.	"	" " " R. H. Morris, Esq., as p't of the fee at Albany...	50 00
"	7.	"	" " " for carpenters' work at McComb's Dam	23 00
June	5.	"	" " " Feeks, in full of toll....	4 06
"	7.	"	" " " S. M. Stillwell as fee...	350 00
"	7.	"	" " " Jno Weeks, Jr., for la- bor at Dam	64 00
"	7.	"	" " " Wm. Weeks, " "	68 37
"	7.	"	" " " Wm. Roe, " "	6 00
"	7.	"	" " " T. Rowland, " "	42 81
"	7.	"	" " " Expended by L. G. Morris, in Jan'y and Feb'y, 1838, for the expenses of advertising in W. C. Co. papers, and a trip to Albany relative to H. River	76 31
"	14.	"	" Cash, paid Raynolds on acc't Mc- Comb's Dam	4 38
"	22.	"	" Cash, paid John Poole for carrying witness	12 50
"	24.	"	" Cash, paid expense of witness in city	9 75

 \$2710 64

Renwick, in Account with L. G. Morris.

Cr.

1839.

		Amount brought over	\$2948 29
July		By Received of Ab'm Valentine on acc't of subscription	25 00
Sept. 27.	"	Rec'd of Barker Bussing in full for Sub.	8 00
Nov. 30.	"	" " Ch's Dickenson	10 00
" 30.	"	" " John Bussing, Jr.	1 00
			<hr/>
			\$2992 29

Dr. *Harlem River, McCombs Dam and Suit*

1839.

			Amount brought over	\$2710 64
July 3.	To	amount	paid by Wm. B. Lawrence, as per credit side	465 00
" 6.	"	"	" Lawrence, the lumber man at Harlem, for materials used at the Dam	9 25
" 6.	"	"	" C. H. Hall, as the credit side of this account will show	305 00
Aug. 20.	"	"	" R. H. Morris, on ac- count of services at Albany, in May last	50 00
Sep. 20.	For	expenses	of witness in suit	8 90
" 27.	"	"	" for Timber for Van Cortlandt's Mill, for McComb's Dam	5 97
Dec. 6.	"	"	" Wm. B. Jenkins, for one ensign, and signs for steamer Thames, which ensign and signs were burned Kings Bridge Ho- tel	23 00
1840.				
Oct. 22.	"	"	" for two subpoenas and sending, expenses in town suit, which did not come off	3 00
" 22.	"	"	" Daniel Lord, Jr., on account	50 00
" 28.	"	"	" Witness' expenses	11 25
Amount carried over				3642 01

With Renwick, in account with L. G. Morris CR.

1840.

			Amount brought over	\$2992 29
	By	Received of	Peter Briggs	5 00
	"	"	Wm. Archer	5 00
	"	"	C. Berrian	5 00
Feb. 7.	"	"	F. C. Gray	48 70
Mar. 20.	"	"	Peter Valentine	5 00
"	"	"	S. D. Archer	10 00
				<hr/>
				\$3070 99

DR.		<i>Harlem River, McCombs Dam and Suit</i>	
1840.		Amount brought over	\$3642 01
Oct. 28.	To	Amount paid Jackson Pool, for three days carrying witnesses to and from the City Hall	\$12 00
1845.			
Apl. 8.	To	Amount paid Daniel Lord, Jr., at Albany, in full for his argument before the Court of Errors	200 00
" 8.	"	Sundry expenses paid by me for my own traveling fees, &c., for the last several years, ac. not kept, supposed to be at least	100 00
		In 1851 and 1852, L. G. Morris attended our State Legislature to resist the passage of a bill to bridge the Harlem River, at Second Avenue, by the New York & New Rochelle Rail Road Co., all of which expense was borne by said Morris, which amounted to about	500 00
		And in August 1857, said Morris pays the expense of printing this compilation	200 00
			<hr/>
			\$4654 01

To Balance in favor of L. G. Morris, over and above his previous subscriptions

\$1023 48

With Renwick, in ac. with L. G. Morris, CR.

1840.

	Amount brought over	\$3070 99
June 24.	By Received of Mrs. M. A. Lorillard in full of her subscription...	200 00
Oct. 22.	“ “ of F. C. Gray	70 25
Dec. 30.	“ “ “ Wm. H. Morris	100 00
1842.	“ “ “ W. B. Lawrence	189 29
	By Balance in favor of L. G. Morris	1023 48
		\$4654 01



