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MR. HUBBARD'S ARGUMENT

BEFORE THE

JOINT SPECIAL COMMITTEE

OF THE

MASSACHUSETTS LEGISLATURE,

ON THE

WATER QUESTION.

B. Att. 259

ARGUMENT

ON BEHALF OF

JOSEPH TILDEN and OTHERS, Remonstrants,

ON THE HEARING OF THE

Petition of the Mayor of the City of Boston,

ON BEHALF OF THE CITY COUNCIL,

FOR A GRANT OF THE REQUISITE POWERS TO CONSTRUCT AN AQUEDUCT
FROM LONG POND TO THE CITY,

BEFORE A

JOINT SPECIAL COMMITTEE

OF THE

MASSACHUSETTS LEGISLATURE.

MARCH VI. MDCCCXLV.

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BY WILLIAM J. HUBBARD, ESQ.

COUNSEL FOR THE REMONSTRANTS.  
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BOSTON:

PRESS OF T. R. MARVIN, 24 CONGRESS ST.

1845.

MASSACHUSETTS LEGISLATURE.

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BEFORE THE JOINT SPECIAL COMMITTEE ON THE PETITION OF THE MAYOR  
OF THE CITY OF BOSTON FOR A GRANT OF THE REQUISITE POWERS TO  
CONSTRUCT AN AQUEDUCT FROM LONG POND TO THE CITY.  
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THURSDAY, MARCH 6th, 1845,
IN THE SENATE CHAMBER.

MR. HUBBARD addressed the committee in substance as follows—

Mr. Chairman, and Gentlemen of the Committee :

The questions involved in the petition upon which the committee are called to pass are of no ordinary magnitude. The object sought to be accomplished is one not only of deep interest to Boston as a municipal corporation—but individual citizens, the great mass of the people, have a deep interest, if a plan is to be adopted for the introduction of pure water into the city, that it should be executed in a wise and prudent manner, and that no burdens should be imposed upon them beyond what the exigency of the case renders necessary.

Other towns and their inhabitants who are to be affected by the execution of the plan proposed by the petitioners, have a deep interest in the result of the investigations of the committee, and the decision of the Legislature—that their rights of property should be protected—and that they should not needlessly be deprived of advantages which they now enjoy.

If the prayer of the petition is granted, and the proposed project is executed, it is apprehended by certain remonstrants—towns and individuals, that their rights will be encroached upon, and that loss and damage will be sustained by them for which adequate compensation cannot be made.

Another class of remonstrants, citizens of Boston, apprehend, if the prayer of the petition is granted, and the project is executed in the manner proposed, it will involve a needlessly large expenditure of money, bring upon the city a heavy debt, and subject them and coming generations to an onerous taxation to pay the annual interest on the debt, which will not for many years, if ever, be met by the income from water rents.

I appear to enforce the views of a portion of this latter class of remonstrants, who have subscribed the memorial, which has been referred to the committee under the title of "the Remonstrance of JOSEPH TILDEN and others."

The former class of remonstrants, it has been said, are entitled to a respectful consideration, but the learned counsel for the petitioners has told us, that we, the citizens of Boston, appearing here as remonstrants, are not to be heard with favor.

We do not ask it as *a favor* to be heard, neither do we ask *to be heard with favor*, but we claim to be heard as *a matter of right*.

It has been said by counsel that "the petition is very simple in its character," that "there is nothing startling or novel in its character to account for the delays and opposition which it has encountered, and for the array now made against it." "The city come as beggars asking the smallest boon the Commonwealth can give."

That it may be seen how simple is the character of this petition, and how small the boon which is asked of the Commonwealth, it is necessary to consider what is really sought for—to analyze this simple petition.

The Mayor on behalf of the City Council prays that the city may be authorized,

First—To construct an aqueduct from Long Pond and to take and hold the said pond and the waters flowing into and from the same, and also any other ponds and streams within the distance of five miles of said pond for the purpose of furnishing a supply of water to the inhabitants of the city.

Secondly—In case the city should not deem it advisable to take the waters of Long Pond, that they may be authorized to take the waters of Sudbury River, or so much as may be necessary to supply the city, and in case the waters of Long Pond should be taken, but the quantity should be found insufficient,

that the city may take from the surplus or waste water of Sudbury River such quantity as it may be found expedient to divert into Long Pond and said aqueduct.

Thirdly—To take land along the line of the aqueduct necessary for the construction of the same, and for reservoirs, gates, water ways, drains, water courses, &c.

And the petition concludes with the prayer that "*such powers may be granted to the city of Boston as shall be requisite in the premises.*"

But what are the *requisite powers* which the Mayor asks may be granted to the city? They are of two classes.

First—Power to take lands belonging to citizens of other towns without their consent, and against their will—to destroy their mill privileges—to divert streams from their natural courses—and as a necessary consequence, to render nearly valueless large amounts of property, the profitable improvement of which depends upon the continuance of the manufacturing establishments erected on those streams and privileges.

The learned counsel for the city in his opening argument seems to have assumed that this is the only power which need be granted. He has not adverted to or hinted at the fact, that any other powers need be granted to the city.

If the power already named be granted, as a necessary consequence, provision must be made for compensation to the mill-owners whose privileges are destroyed or injured, and to the farmers and other land owners whose property is taken, although *indirect and consequential* damages to a great extent will be suffered by the town of Framingham and other towns for which no provision can be made.

To enable the city to make this compensation, there must be conferred upon the municipal authorities either expressly or by implication,

Secondly—New powers of taxation to raise the money necessary for these objects, or authority to procure it on a loan, for the repayment of which not only the corporate property of the city will be pledged, but a lien will be fixed on the private property of every citizen.

If the city as a municipal corporation already have power to raise money by tax, or to borrow it for the construction of an aqueduct, why, with their immense wealth of which the committee have been told—possessing as has been said one

third of the taxable property of the Commonwealth—why has the accomplishment of a work of such pressing necessity been so long delayed—why is it that the object “has been abandoned in despair,” what cause was there that the city should be “disappointed and wearied out?”

With property which the counsel represent to be equal in value to one half that of all the rest of the Commonwealth, could not the *seven thousand men*, who it is said come here “begging for a cup of pure water”—readily supply these wants, by buying the insignificant mill privileges in the town of Framingham and on the Concord River—and purchasing the water rights necessary to enable them to accomplish their project. No—thanks to the enlightened legislation of our fathers, the powers of taxation vested in the municipal corporations of the Commonwealth are strictly defined and limited, and no where are they intrusted with an arbitrary power of taxation.

By the act which established the town of Boston, as a city, (1821 c. 110 s. 1.) it is enacted that “the city shall have, exercise and enjoy all the rights, immunities, powers and privileges, and shall be subject to all the duties and obligations incumbent upon and appertaining to said town as a municipal corporation,” and, excepting that it is provided that these powers shall be exercised by the Mayor, Aldermen and Common Council, these powers are no greater than those possessed by every other town in the Commonwealth, save only where special powers are given by particular statutes; and no special power is given to Boston by any statute to build an aqueduct.

What then are the powers of towns under the general laws of the Commonwealth as to granting or raising money? And they can borrow money only for similar purposes.

Have they the power to raise money to build an aqueduct as is proposed?

The Rev. Stat. ch. 15, s. 12. define the powers of towns—

“Towns shall have power to grant and raise such sums of money as they shall judge necessary for the following purposes.

“For the support of town schools,

“For the support and maintenance of the poor,

“For burial grounds, and

“For all other necessary charges arising within the same.”

Substantially the same as Stat. 1785, c. 75.

The powers of towns under these general provisions have

been the subject of judicial investigation, and sundry decisions of the Supreme Court have been had thereon. And the result of these decisions is, that towns have not power to raise money except for the purposes specified in the statute, and under the general clause, "other necessary charges," for purposes necessary to the exercise of some corporate power, or the enjoyment of some corporate right or the performance of some corporate duty as established by law or long usage, not though the object to be accomplished may be one seemingly of the highest importance, or even of extreme necessity.

In *Stetson vs. Kempton et al.* 13 Mass. Rep. 272, it was held that towns have no power to raise money in time of *war or hostile invasion*, to give additional wages to the militia and for other purposes of defence.

The town of Fairhaven laid a tax for these purposes during the last war; the enemy were on the coast, had made an attempt to land, and were laying waste dwellings and property in neighboring towns. Fairhaven was greatly and imminently exposed to their ravages, and in the opinion of the town it was necessary to raise and expend money for the immediate defence of the inhabitants. Here was as strong and urgent a case as that of the *seven thousand men*, who in the fancy sketch of the counsel have been arrayed before the Committee, begging for a cup of water. Chief Justice Parker, in delivering the opinion of the court, says, "The right of towns to raise or grant money so as to bind the property of inhabitants is certainly derived from statutes. Their corporate powers depend upon legislative charter or grant, or upon prescription where they may have exercised the powers anciently, without any particular act of incorporation. But in all cases the powers of towns are defined by Stat. 1785, c. 75.

"The phrase *necessary charges* is indeed general, but the very generality of the expression shows that it must have a reasonable limitation. For no one will suppose that under this form of expression every tax would be legal which the town should choose to sanction." *

* The Statutes of the State of Maine defining the powers of towns are similar to those of Massachusetts. The nature and extent of these powers has been the subject of judicial construction in that State. Their Supreme Court recognize and adopt the doctrines laid down by the Supreme Court of Massachusetts. See *Bussey vs. Gilmore*, 3 Greenleaf's Rep. 191. *Hooper vs. Emery*, 14 Maine Rep. 375.

In the case of *Willard vs. the Inhabitants of Newburyport*, 12 Pick. 227—Shaw, Ch. J. commenting on the preceding case, says, “Among other things it is stated that the erection of public buildings for the accommodation of the inhabitants, such as town houses and market houses may also be a proper charge, and may come within the fair meaning of the term necessary; for these may be essential to the comfort and convenience of the citizens,” and adds, “I presume from the general reasoning of the court in that case, the court itself would hardly be prepared to say that towns might lay taxes, and assess money for the accomplishment of all objects *essential to the comfort and convenience* of the citizens.” And in *Spaulding vs. the Inhabitants of Lowell*, 23 Pick. 76, the same learned Judge, commenting on the clause *necessary charges* in the statute, says, “But the court are not at all prepared to say that under this term other necessary charges coupled with the previous clause, *such sums as they shall judge necessary*, it was intended to authorize towns to raise and appropriate money for general objects, or that it was intended to constitute a new substantial power of taxation. It would be letting in all the mischiefs arising from *an unlimited and arbitrary power of a majority to bind a minority to an unlimited extent*. On the contrary, we think it referred to other provisions of law and well established usage to ascertain what the objects of town charges are, and to provide that towns might raise money for any purposes thus determined. But to bring any particular subject within the description of necessary town charges, it must appear to be money *necessary to the execution of some corporate power, or the enjoyment of some corporate right, or the performance of some corporate duty, as established by law or long usage.*”

The object which the petitioners are seeking to accomplish is not one which, by virtue of any provisions of general law, or long established usage, the towns of this Commonwealth are authorized to undertake.

The fact that the city contains *one seventh* of the population of the Commonwealth, or that the aggregate property of individual citizens is equal to one half the property of all the rest of the inhabitants of the Commonwealth, does not enlarge or extend their powers of taxation for municipal purposes, to objects for which other towns of the Commonwealth cannot by law raise money.

But it has been said, that we are a minority in this matter, and that the legislature are not to sit as "referees between majorities and minorities"—and we have more than once been told, somewhat *triumphantly*, not to say *tauntingly*, that we should have discussed the questions now before the committee at Faneuil Hall and at the polls.

When this great majority is so often pressed upon the attention of the committee, we beg that the facts may be borne in mind, that the whole number of voters in the city of Boston exceeds *nineteen thousand*, and that the whole number of votes in favor of the Long Pond project, was less than *sixty-three hundred*.

When cities or towns, city councils or selectmen, undertake to act—or vote—or express opinions on subjects in regard to which they have no authority, by virtue of the powers vested in them as municipal bodies, to bind the city or town, such act or vote cannot be considered as the corporate action of the city or town; it has no binding effect on the minority, nor are they in any way concluded thereby, nor are the minority estopped to protest against the measure, whether discussed and voted on by the city council, or by a council of *one hundred and fifty* or *fifteen hundred* in Faneuil Hall,* or by a mass meeting on Boston Common. When a minority are to be bound by any measures, to authorize which, the majority pray the Legislature that new powers may be conferred upon their municipal authorities, and when that minority respectfully remonstrate against conferring the power sought, it is no answer to the remonstrance of such minority—nor any argument in support of the claims of the petitioners, to say—"The Legislature are not referees between majorities and minorities." "Go to Faneuil Hall and discuss the question." "Go to the polls."

But how is this majority made up? *Six thousand* voters say that they are in favor of bringing water into the city from Long Pond; over *two thousand* declare their opposition to the measure—and *eleven thousand* express no opinion on the subject.

* MR. BRIMMER, the late mayor, who presided at the meetings at Faneuil Hall, at which the water question was discussed, testified, that they were very thinly attended considering the importance of the question; that there might have been from 1,000 to 1,500 persons present at the last meeting, and from 150 to 200 at the six previous meetings.

Thus stands the case with the voters of Boston. This is the character of the boasted majority on this question.

In the position taken by us, that new powers of taxation must be conferred upon the municipal authorities, to enable them to execute the purposed undertaking, we are sustained by the opinion of one of the learned counsel now advocating the proposed measure, given when called upon to advise the city authorities and acting under the sanction of official responsibility as their legal adviser.* The powers spoken of by the city solicitor manifestly have reference to powers of taxation, power to raise money for this purpose. His opinion was not needed to inform the mayor or the city council, that the city had not power to take the land of people in the country, their ponds and water courses—and to destroy their mill privileges without their consent and against their will—unless specially authorized so to do by new powers conferred by the Legislature.

The petitioners then in seeking the *requisite powers* to accomplish the object proposed by them, not only ask the Legislature to exercise *the right of eminent domain*, by authorizing them to take private property for an alleged public use, but they also ask that *additional powers* may be conferred upon the municipal authorities of the city, *to raise money for a purpose for which by the general laws of the Commonwealth municipal corporations are not now empowered to raise money.*

When the city government petition the Legislature for the grant of such enlarged powers, the power *to exercise the right of eminent domain* and the power *to raise money for a purpose not now authorized by law*, the Legislature will require it to be fully and clearly proved—that a plain case—a strong case of

*Annexed to a report of the committee on the introduction of pure water, made to the city council, Jan. 29th, 1838, is the following letter :

City Solicitor's Office, Jan. 22d, 1838.

Hon. Samuel A. Eliot, Mayor,

Sir,—I have received your letter communicating a vote of the city council, in which an inquiry is made “whether or not it will be necessary to apply to the legislature for additional powers to enable the city to construct works on either plan proposed by the commissioners or some other source.”

In answer to this question, I am of opinion that under the municipal powers now granted to the city by the charter, the city has not authority to provide for the introduction of pure water in the manner which is understood to be in contemplation by the city government, and therefore that it would be necessary for that purpose to obtain further powers from the legislature.

I am Sir,

Your ob't. servant,

JOHN PICKERING, City Solicitor.

urgent necessity exists requiring that the powers prayed for should be granted.

If a large majority of all the voters in the city should come and pray that such additional powers may be conferred upon the city government, the Legislature will not the less guard and protect the rights and interests of the minority.

Much more will the Legislature require plenary proof, that urgent necessity exists for the grant of such powers, if they are claimed on the ground of a popular vote, where *less than one third the legal voters of the city* have by their ballots expressed an opinion in favor of the proposed measure.

And when the Legislature are asked to confer such additional powers for the accomplishment of a single specified object, it is the duty of the parties seeking to have such power conferred, to establish by conclusive proof, that a necessity exists for the accomplishment of the proposed object, to the extent claimed by them—that the manner in which they seek to accomplish it is wise and proper—and that no burdens beyond what the exigency requires will be thereby imposed on those who deny the necessity of the measure.

The same stringent evidence will be required in regard to the exercise of the right of eminent domain.

In other words, I submit, that the Legislature will grant new powers of taxation, and exercise the right of eminent domain *to such extent only* as the exigency of the case proved absolutely requires.

It is not enough for the petitioners to show that some necessity exists, and then claim that powers shall be conferred upon them to an indefinite extent to provide for that necessity in such way as they shall see fit. They must satisfy the Legislature that the mode of providing for the exigency proposed by them is a wise one—and that in its execution there is no further encroachment on the rights of others than is absolutely necessary.

It is incumbent on the petitioners in this case to establish four propositions before they can reasonably ask the Legislature to confer upon them the *requisite powers* to carry their proposed plan into execution.

1. That there is not at present an adequate supply of pure water within the city to meet *the actual necessities* of the inhabitants.

2. That these *actual necessities* cannot be supplied otherwise than by the exercise of additional powers to be conferred upon the city as a corporation, or upon its municipal officers, and by the resources of the city as a municipal corporation.

3. That the actual necessities of the city are so great as to require the exercise of the powers which the Legislature are asked to confer upon the city, and to the extent sought for, and the expenditure of so large a sum of money as will attend the execution of the proposed plan.

4. That the proposed plan will in the best and *wisest* manner accomplish the purpose for which it is designed.

The learned counsel for the petitioners assumed, that they had made out their whole case upon showing what had been the action of the citizens of Boston and their municipal authorities during the last twenty years, and especially their doings the past year.

This position though very simple in its character, as much so certainly as the character of the petition itself, is certainly entitled to the merit of originality. If it be admitted as a general proposition, that all petitioners best know their own wants and the proper mode of providing for them, the committee on Railways and Canals and the other committees of the Legislature might be spared an immensity of labor, and *short sessions* of the Legislature, which have been thought so highly desirable, would speedily be attained.

But the peculiar nature of the subject, it is contended, renders this species of evidence in the present case conclusive. It is said, "A man knows when he is thirsty, and when he avers such to be the fact, no one can gainsay his declaration."

But this argument may be enlarged, the principle admits of a more extended application; "a man knows when he is hungry," "a man knows when he is suffering from cold," and when he asserts that he is in danger of perishing from want of food, or necessary clothing, "who can gainsay the truth of his declaration."

Suppose "*the seven thousand men*" whom the imagination of the learned counsel has summoned before the committee, as witnesses in their own case, begging for a cup of cold water, should set forth their need of *food, or clothing, or fuel*, and should by their ballots declare themselves to be in favor of

“procuring a supply of any one of these necessaries of life at the expense of the city, on the condition that those of the inhabitants who may elect to take and use the same, shall be required to pay therefor such reasonable tax as shall hereafter be fixed and established by a Board of Commissioners that shall be created.”

Would the Legislature regard such a declaration as evidence of the necessity or wisdom of making provision for the want thus set forth in the manner proposed, though the conclusion of the *seven thousand voters*, might have been formed after an agitation of the subject for *twenty years*, or even for a longer period? The committee or the Legislature probably would not hesitate long in coming to a decision.

Take another case; a man knows whether he is poor, he may declare that he wants the *needful* wherewith to procure all the other *necessaries* of life; “who can gainsay the truth of his declaration?” Suppose a goodly number of the voters of Boston suffering from such a want should come to the conclusion, that it was owing to the depressed state of business in the city—that means should be adopted to increase the facilities of business—and in a general meeting of citizens should by a large majority of votes decide it to be expedient—that new channels of intercourse should be opened with foreign lands or with distant parts of the Union, for the purpose of increasing the facilities of business for the people of Boston—and should lay out plans for accomplishing these objects—and declare it to be their opinion that these plans should be carried into execution at the expense of the Commonwealth or of the city—would the Legislature accede to the proposition, that they knew what they wanted, or that their decision in the matter was evidence either of the necessity or wisdom of adopting the measures proposed by them.

The cases which I have supposed are not altogether fictions of the imagination.

Let us see what light the history of the action of the citizens of Boston in “*general meeting assembled*” affords to establish the position, that their “*sic volo*” is conclusive or even *prima facie* evidence of the wisdom or necessity of any measure which they may declare it expedient for the Commonwealth to adopt, or that the city as a municipal corporation should have power to adopt.

At a general meeting of the inhabitants of Boston assembled in Faneuil Hall in February 1829, two resolutions were adopted.

First—That it was expedient that the Commonwealth should construct a Rail Road from Boston to the western line of the State—and also another from Boston to Pawtucket, near Providence.

Secondly—If the Legislature deem it inexpedient to construct said roads wholly at the expense of the State, that the City Government be authorized to apply to the Legislature for an act to enable cities, towns, bodies corporate or individuals to subscribe to such portion of the stock as may not be taken by the State on such terms and conditions as may be deemed expedient.

On the first Resolution the ballots were, 3138 yeas, 24 nays.

On the second Resolution, 3041 “ 59 “

Here the proportion of votes in favor of the measure was much greater than upon the matter now submitted to the consideration of the Legislature—being on the first resolution in the ratio of 130 yeas to 1 nay, and on the second resolution being 50 yeas to 1 nay.

But notwithstanding this very decided expression of the citizens of Boston and of their judgment as to the proper manner of providing for their wants, the Legislature did not bow to the judgment of the people.

The people of Boston, however, were by no means discouraged. In the year 1830 another general meeting of the citizens was held—at which it was voted to petition the Legislature for leave to subscribe \$1,000,000 to a Rail Road to the West.

The whole number of ballots was . . . 2498

1966 yeas—532 nays—2498

There was some abatement of zeal during the year, but the majority was to the minority more than 4 to 1—greater still than in the present case.

The petition was presented in due time to the Legislature, and there were one or more remonstrances of citizens of Boston, all which were referred in the house to a special committee, at the head of which was an able jurist, HON. WILLIAM BAYLIES, who submitted a report, which is among the printed documents of the House of Representatives, for the years 1830—1831,

No. 54. In this report the reasoning of the Supreme Court in *Stetson vs. Kempton* before cited, is quoted, and relied upon by the committee to sustain their conclusion, that the rights of minorities should be protected against the arbitrary power of majorities.

The committee recommended that the petitioners should have leave to withdraw their petition, and their report was accepted, the Legislature in those days not judging that the necessity or wisdom of the proposed measure was established even by so decided a vote of the citizens of Boston.

That conclusion was a sound and wise one—that the action of the citizens of Boston and the declaration of their wishes or opinions, is entitled to no more weight as evidence of the necessity or wisdom of any measure, than the actions or declarations of any other set of men, in regard to any object which they desire to accomplish.

Upon the evidence which has been adduced by the petitioners in the present case, in reply to the evidence offered by the remonstrants, it is admitted, and indeed the remonstrants whom I represent in their memorial admit, that in some sections of the city, the supply of water from natural sources is inadequate to meet the actual necessities of the inhabitants, and to this extent I admit that the *first* of the four propositions is established.

But admitting a necessity to exist, it does not follow that the *second proposition* is established, viz :

“That this necessity cannot be supplied otherwise than by the exercise of additional powers to be conferred upon the city as a corporation, or upon its municipal officers, and by the resources of the city as a municipal corporation.”

The views of the Memorialists whom I represent are thus set forth in their memorial.

“Your Memorialists also represent, that while they admit that the wants of certain parts of the peninsular portion of the city require the introduction of a copious supply of pure soft water,—they feel a confident assurance that those wants can be adequately supplied by a private corporation, at a much smaller expenditure than it can be done by the city. And they have no doubt that if a charter should be granted with suitable provisions, the necessary funds would be speedily raised to construct an aqueduct, which with the one now in operation, will

be amply adequate to supply the existing wants of the city and its increasing wants for many years to come. Your Memorialists therefore deem it an impolitic and wasteful expenditure of money to introduce a colossal aqueduct, whose magnificent provisions are to suffice for the city when its inhabitants shall number 300,000, when a comparatively small expenditure will furnish an aqueduct which, with the supply of water now enjoyed, will abundantly meet the wants of the city for half a century—leaving a distant posterity to make some provision for their own wants.”

Is there any ground for their confident assurance that these wants can be adequately supplied by a private corporation?

Mayor Quincy, as chairman of the first committee ever appointed on the subject in a report made in 1825, says—“Your committee have reason to believe that capitalists may be found willing to join the city in carrying into effect such an undertaking, but whether an association of this kind ought to be formed, whether it ought to be left to private enterprise or be wholly effected at the expense of the city, are questions on which there is a diversity of opinion.”

Mayor Armstrong, as chairman of the committee on the subject of water in 1836, says, “a majority of the committee are of opinion that the city in its corporate capacity ought not to embark in this enterprise, but that it should be left to individuals alone, or individuals in connection with the city.”

In that year the Boston Hydraulic Company was incorporated, with power to introduce water into the city, and for that purpose to take any ponds or lands covered with water, situated northward of Charles River and within twelve miles of the city, but the act was to be void unless assented to by the city council. Upon the report of Mayor Armstrong just cited, recommending such action, the assent of the city council was given. And as Mr. Eddy has testified—he procured several subscriptions to the stock, and one enterprising and liberal citizen agreed to take all the stock which should not be taken up by other subscribers.

But the success of this enterprise was defeated by the action of a general meeting of the inhabitants in the month of August in the same year, who voted that it was expedient that the work should be undertaken by the city. Capitalists were not willing to embark in such an undertaking, with the prospect of encountering the competition of the city as a corporation.

The same fear of competition with the city has doubtless operated to deter capitalists since that time from embarking in the enterprise, but a cessation of any action on the part of the city for some years, induced renewed action on the part of private individuals in 1843, and a charter was obtained establishing a company to introduce the water of Spot Pond ; but the provision making stockholders individually liable for all the debts of the corporation, prevented subscriptions to the stock, and at the present session a bill has passed the Senate removing this liability, which, if it becomes a law, will doubtless insure the speedy filling up of the subscription for the whole stock.

The remonstrants think there are decided advantages in having the water introduced by a private corporation. They believe it will be done more economically than by the city—the city will incur no risk of loss—those who want water will alone pay for it ; and if it proves a profitable undertaking, the city have the power to take it from the company by paying them a reasonable compensation ; and if the city should decline taking it, the citizens will be safe against imposition or extortion on the part of the company, by the provision in their charter authorizing the Legislature to regulate the prices of water.

But if the committee should, notwithstanding the objections of the remonstrants, come to the conclusion, that the *actual necessities* of the city cannot be adequately supplied otherwise than by additional powers to be conferred upon the city as a corporation, or upon its municipal officers and by the resources of the city as a municipal corporation,

We then come to the consideration of the *third* proposition—Are the actual necessities of the city so great as to require the exercise of the powers which the Legislature are asked to confer upon the city and to the extent sought for ; and the expenditure of so large a sum of money as will attend the execution of the proposed plan ?

If water is to be brought into the city at the public expense, instead of by private enterprise, we say in the language of some of the petitioners to the City Council in 1838, who now appear as remonstrants against the proposed plan, and whose former opinions are now quoted against their present arguments, " Let the thing be done, and done as soon as by any exertion

consistent with *prudence and reasonable economy* is practicable.”

But we say that the necessities of the city have been greatly overrated and exaggerated by the ardent imaginations of those who have become warmly enlisted in the present movement.

Let us look at the evidence on this subject.

And first of what nature are the necessities, to supply which, the right of eminent domain may with propriety be exercised by the Legislature, and authority given to the city government to incur a debt or to tax the citizens.

We contend that the wants to be supplied should be only *natural*, not *artificial* wants, the wants for domestic uses, in contradistinction to economical and manufacturing uses for which the city commissioners in their several estimates provide a liberal supply.

The counsel for the petitioners in his opening, when speaking of the simple character of the petition and the unpretending claims of the petitioners, spoke of the want to be supplied, “as being not an artificial want, but a want common to all,” although afterwards, in a subsequent part of his remarks, one of the arguments in favor of the proposed measure was, that “it would advance the value of the real estate belonging to the city.”

The chairman of the committee of *twelve* appointed by the meeting at Fanueil Hall, in a question proposed by him to one of the late Mayors, when testifying, and the late Mayor, Mr. Brimmer, in his testimony, intimated one of the wants for which it was deemed important to make provision, viz., to provide the means of carrying water by pipes without any mechanical effort to all parts of our dwelling houses.

The remonstrants contend that the wants to be supplied should be, as stated by the counsel for the petitioners, “not artificial wants,” not the wants of the wealthy for the means of luxurious enjoyment, not wants for manufacturing purposes, nor for the uses of the arts.

The means of cleansing the streets as necessary to health, and protection against the ravages of fire may properly be considered, but not so with reference to “economical and manufacturing purposes,” as they are styled by the city commissioners.

If the application were for authority to construct an aqueduct for the purpose of supplying this latter class of wants—would the application be entertained by the Legislature for a moment? Certainly not.

A familiar principle of law well settled by numerous decisions of the courts is applicable to this question. No person has the right by the erection of a new dam upon a stream of water, to injure the water power already enjoyed and improved by another on the same stream, however much the new establishment to be erected may exceed in importance that operated by the power at the old privilege. Much less can the right be claimed to divert the course of a stream of water from established mill privileges to create a new and artificial power for other individuals, though it may be sought in the name of a great city. Would the Legislature grant power to divert the waters of the Merrimack from the city of Lowell to the city of Boston to supply such wants; and if not from the city of Lowell, shall the smaller town of Framingham be deprived of its water power to supply the manufacturing and economical wants of the city of Boston.

If then the want of water for manufacturing purposes, for the use of distilleries, breweries, and the various uses of the arts, does not constitute a necessity or exigency which would, *per se*, justify the Legislature in granting the powers sought, neither can such a want constitute an element in the computation by which the necessities of the city are to be estimated.

Yet these wants are included in the computation of the commissioners, which results in the conclusion that the amount of supply needed will equal $28\frac{1}{2}$ gallons per day for every man, woman and child in the city; and the immediate supply to be provided according to this ratio of computation is to suffice for a population of 250,000. Surely such an estimate of the wants to be supplied may not unjustly be characterized as greatly exaggerated.

If then the necessity of supply is limited to wants for domestic purposes, for security of health and protection against fire, what is the extent of the necessity.

It has not been of long duration. The inhabitants of the old town of Boston do not appear to have been aware of the existence of such necessity. There is no evidence of any acts

or doings of the town indicating their sense of suffering. The town always had the reputation of being cleanly and healthy, and though the people have long had the reputation of being full of notions, it was not one among these notions, that they were suffering for want of good pure water. When the subject of supplying the city with water was investigated by a committee of the Legislature in 1839, several physicians were produced by the *petitioners*. They all testified to the fact that Boston was a healthy place, more so even than Philadelphia, with all the advantages for the preservation of health afforded by its famous aqueduct.

It seems that it was not until after Boston was established as a city, that its inhabitants began to be aware of the destitution under which they were suffering—and of the deleterious qualities of their daily drink.

The incorporation of the aqueduct corporation in 1795 has been alluded to as furnishing evidence of a long existing want of an adequate supply of water. No evidence has been produced tending to show that any such cause led to the establishment of this company. The fact is notorious that it was a mere private speculation—and a most disastrous one to its projectors; and so far as its history proves any thing, it is that the undertaking was wholly uncalled for by the public wants. By a communication from one of the directors addressed to an officer of the city government, in reply to certain queries, and to be found among the printed city documents of the year 1838, it appears that no dividend was made for the first ten years after the work was commenced, and that the average dividend for 30 years subsequent to 1807 when the first dividend was made, was a fraction less than *four per centum* per annum on the original cost of the shares.

But it is said, the course of action of the citizens and of the city government on the subject for the last 20 years affords evidence of the pressing nature of the existing necessity.

A review of the history of this action would lead to the conclusion that the necessity could not be very urgent.

The city government was organized in 1821; the first action on the subject was not until nearly four years afterwards, in May, 1825. Pursuant to the recommendation of Mayor Quincy, Daniel Treadwell, Esq., was appointed commissioner to exam-

ine and report what sources could be resorted to, and the mode and expense of procuring a supply. He made his report which in 1826 was referred to a committee of the city council with authority to make further surveys, but they do not appear to have taken any further steps. In February 1827 the petition of the Messrs. Odiorne on the subject of supplying the city with water was referred to a committee who reported in November 1827 that it was inexpedient to take any measures on the subject. The subject appears to have slept during the years 1828 1829, 1830, and 1831, till January 1832, when the city council so far awoke to a sense of the importance of the subject as to appoint a committee to look into the matter, who after deliberating on the then existing exigency for the whole year, on the 31st of December reported that the further consideration of the subject be referred to the next city council. In January 1833 the subject was referred to a committee, and in March of the same year it was ordered that the Mayor be authorized and requested to apply to the Legislature for an act authorizing the city council to take all such measures as they should judge expedient for the purpose of bringing soft water into the city by aqueduct. The Mayor accordingly petitioned the Legislature on the 19th of the same month and on the 21st the petition was referred to the next general court. In 1834 a communication of the Mayor upon the subject of water was referred to a committee upon whose report authority was given to cause further surveys to be made, and Col. Loammi Baldwin was appointed commissioner who made an elaborate report, which the committee on the subject considered so complete, that they reported, "that there was no reason to suppose that it would ever be necessary for the city council to go to further expenses for the purpose of procuring surveys." But the city government of that year and of the year 1835 either did not consider the report to be of so satisfactory a character, or concluded that the public exigency was not so great as to require immediate action. In 1836 a charter was granted to the Boston Hydraulic Company, a private corporation, and the committee of the city council being of opinion that it was most expedient that the work should be undertaken by private enterprise, the assent of the city council was granted to the charter ; but in August of the same year, at a general meeting of the citizens, it was voted to be expedient

for the city in its corporate capacity to undertake the project, and the city council was requested to apply to the Legislature for the needful authority. The city government of that year, there being no subsequent session of the Legislature, could not of course make the application for the necessary powers as requested by the vote of the citizens, but as preparatory to future action, a further survey was made by R. H. Eddy, Esq., civil engineer, whose report recommended Spot Pond as a source for supplying the immediate wants of the city, looking to Mystic Pond as an auxiliary source, when the capacity of the former should become inadequate for the supply of the increasing wants of the city. In 1837 a third commission was appointed composed of Messrs. Daniel Treadwell, James F. Baldwin, and Nathan Hale, which resulted in the recommendation by two of the commissioners, Messrs. Treadwell and Hale, of the two sources indicated by Mr. Eddy in 1836, while Mr. Baldwin gave the preference to Long Pond.

In 1839, application was made to the Legislature for the necessary power to undertake the work, a protracted investigation was had before a joint committee of the Legislature, but there was not sufficient time to complete the necessary inquiries, and the Legislature notwithstanding all that had been done by the city, came to the conclusion that further light was needed, and a resolve was passed, providing for the appointment by the Governor and Council of three commissioners to ascertain and report to the next general court, all the facts and information which they might deem material in relation to the several plans proposed.* The Mayor of the city in a report, City Doc. 1839, No. 19, communicating to the City Council the action of the Legislature, expressed great dissatisfaction with the result, and recommended the adoption of the following Resolve,

“Resolved, That it is inexpedient for the city to apply to

* The following is a copy of the Resolve referred to.

Resolve concerning the introduction of soft water into Boston.

RESOLVED, That the Governor of the Commonwealth, with the advice of the Council, is hereby authorized, on the application of the city of Boston, to appoint three Commissioners, who shall, at the expense of said city, after having given such notice to all parties interested as they shall think reasonable, ascertain and report to the next general Court all the facts and information which they may deem material in relation to the several plans proposed by said city for the introduction of soft water into Boston; and the bearing of the same upon the interests of all persons and corporations which may be affected thereby.

the Executive of the Commonwealth for the appointment of Commissioners, under the resolve of the Legislature of the ninth of April last, to examine the subject of the introduction of soft water into Boston."

In this recommendation the city government concurred.

But in the same year, Mayor Eliot, as chairman of the committee on water, City Doc. No. 25, recommended to the city to take immediate measures for the introduction of water from SPOT POND, the supply of which combined with that from JAMAICA POND, the committee thought would be amply adequate to supply the wants of the city for many years to come. The estimate in his report of the amount of supply needed, seems much more reasonable than that of the commissioners—and his conclusion is, that a supply equal to 14 gallons, less than half that assumed by the commissioners, for each inhabitant, "would be a sufficient and liberal allowance, animals, steam engines and contingencies included, according to the habits of the place."

The city council did not adopt the recommendation of the committee. In the following year, Mr. Chapman, on his accession to the mayoralty, in his inaugural address, speaking of the introduction into the city of a supply of pure water, says, "It is an enterprise which if undertaken by the city, must involve a very considerable outlay, and it cannot but be admitted that some doubts may reasonably be entertained as to its pecuniary results, for at least a considerable period of time. It seems to me, therefore, that no prudent government would enter upon it, unless with the *heartly concurrence of a large majority of its own members, and of the citizens generally*. Notwithstanding the views which I have heretofore expressed in another branch of the government, and with less knowledge upon the subject, *I now feel satisfied from subsequent observation that the public mind is not yet ready to sanction the undertaking by the city government.*"

In this judgment of Mayor Chapman, the City Council, as well as the citizens of Boston, seem to have concurred; all action on the subject was suspended during the three years of his administration, except that in one year a committee on water was appointed who did nothing—nor was anything done

during the first year of Mr. Brimmer's administration. The doings of the year 1844 will be noticed presently.

The conclusion to be deduced from this review of the history of Boston, and of the action of the city government and of the citizens, seems to be, that for near two centuries, there was no want of an adequate supply of water from natural sources within the peninsula, that by reason of the increase of the city, and the erection of buildings on the flats, on the borders of the city reclaimed from the sea, a want to some extent began to be felt some twenty years ago, on those new lands, where good water could not be so easily obtained. And in other parts, the neglect to sink wells and to build cisterns may have led to some complaint of want of water. But the action of the citizens and of the city government, since the subject first began to be agitated, fails to show a want great in extent or degree.

Though there has been at times some excitement and action, yet the long intervals of total inaction during this period indicate that the want has by no means amounted to a pressing exigency. There is also much positive testimony to show that in various sections of the city there is an ample supply of good pure water to be obtained from natural sources.

The committee will have in their hands the printed minutes of testimony on this point taken before the Legislative committee in 1839, wherein are the statements of many highly respectable citizens of Boston, showing the fact, that in divers sections of the city, an abundant supply of good water may be obtained from wells; some of these witnesses declared themselves so well satisfied with their present means of supply, that they would not take water from an aqueduct, if it should be brought into the city.

Several witnesses have testified before the committee at the present hearing, among the number, Messrs. Armstrong and Chapman, former Mayors, both of whom, while members of the city government, had investigated the subject. The former testified that he had *never* thought a *supply for the whole city necessary*, the latter that he considered the statements in regard to the wants of the city *greatly exaggerated*. Mr. Jonathan Preston, a member of the late Board of Aldermen, also stated his opinion to be that the wants of the city do not require the introduction of so great a quantity of water as is contemplated

in the proposed plan. Messrs. Nath'l. Goddard, Isaac Livermore, Joseph Balch, Charles W. Cartwright, Benj. Adams, and Benj. P. Richardson, testified to their knowledge of copious supplies in sections of the city within the peninsula, with which they were acquainted, and Mr. Noah Brooks who has been a resident of South Boston 27 years, testified to the fact that South Boston is abundantly supplied with water, that springs abound near the shore, and water is easily procured there for the supply of shipping in the harbor. Mr. William Wright also for several years a resident in South Boston gave similar testimony, and so far as the votes of the inhabitants of South Boston can be considered as evidence, they confirm this statement.*

Three witnesses who were called on the part of the petitioners to rebut the testimony of the remonstrants, Mr. Brimmer, late Mayor, Messrs. Thomas B. Curtis and George W. Cram, testified that in their opinion the want was very general. Mr. Brimmer regarded the "votes of the citizens as great evidence of want." He admitted that around Beacon, Copp's and Fort Hills, there was a good supply of water, but stated these hills to be exceptions, that the supply on the lower lands was deficient, specifying Mill Pond Lands, South Cove and Broad Street. [It should be noted that these sections of the city are all built on *made land*.] He also stated that it became necessary last summer (a remarkably dry season) to deepen the well in the cellar of the Court House, and gave it as his opinion that there was a great want of water to protect the city against the ravages of fire. Mr. Curtis stated his opinion to be that the want of water is urgent, for domestic purposes, and to guard against fire, that it is pressing on the rich and the poor, he spoke also of the want for supplying the shipping, and from the number of vessels which cleared at the custom house last year, estimated the cost of supplying them to be \$35,000. He had heard of only one instance in which any person living south of Essex Street who took the water from the present Aqueduct Company, had failed of obtaining a supply. Mr. Brimmer had no knowledge of any case in that section or on the South Cove:

* The vote in South Boston stood—

For a supply from Long Pond,	119 yeas, 363 nays.
For a supply from Long Pond or other sources,	58 " 449 "

Mr. Curtis was unable to mention more than five instances in which wells had failed within his knowledge. He spoke of his knowledge of a scarcity of water at the North End, as derived from seeing many persons coming to a pump in Bartlett street and to a pump on one of the wharves, also of having seen people in Broad street *barefooted* crowding round wells. There has been no evidence that good water could not be easily obtained by sinking other wells in the neighborhood of the pump and wells referred to, and as to the Broad street people, they might perhaps go *barefooted* after water if they were supplied with it from an aqueduct, even though it should be given them without cost. And in respect to the cost of supplying the shipping, it appears by the testimony of Mr. Jotham B. Munroe, one of the boatmen by whom the shipping in the harbor are supplied, that the gross receipts of all the boatmen, from all the vessels that have been supplied in Boston and Charlestown for the last *five years*, has been less than \$38,000. The theory of Mr. Curtis in regard to the shipping is materially modified by the facts in the case, and if a similar abatement is made from his theory in regard to the city at large, the destitution is reduced to a comparatively small exigency.

Mr. Cram testified strongly on the subject of destitution, and has given an account of some 269 families which he found in Wards 10 and 11 and in South Boston which were not supplied with water. In Dedham and Suffolk streets he traced 43 families dependent upon one well, and also mentioned one town pump in Washington street which supplied a great many families. He also told the committee of divers families in South Boston destitute of the means of supply on the premises occupied by them, and where they got their water. One fact is apparent from his testimony, that the wells which he has mentioned must furnish a copious supply of water to meet the wants of so many families, and there is no evidence that if other wells were sunk in the same neighborhood, they would not furnish an equally abundant supply. It also appeared on the cross examination of Mr. Cram, that many of the families which he visited, were among the most destitute part of our Irish population, herded together, in some instances, a *dozen* families in one tenement, and in one instance over *twenty* families in one building. It is not to be denied that in many in-

stances owners of real estate neglect to dig wells on their premises for the accommodation of their tenants, and particularly when they erect tenements for the accommodation of the poorer classes ; and it is much to be feared that few of this class of landlords, if water were introduced by the city, would be any more liberal in furnishing their tenants with the means of procuring a supply from the aqueduct.

The result of the testimony on the part of the petitioners, when carefully analysed, as I conceive, goes to establish the position taken by the remonstrants, that the destitution is not universal, but limited in its extent, and that in many cases where a want of water is complained of, it is caused by a neglect to resort to the use of the proper means to obtain a supply.

If then the necessities of the city are not universal, but limited in extent, it is an important question what amount of supply from foreign sources by artificial means is actually needed ; for if new powers of taxation are to be given to the municipal authorities, and authority to exercise the right of eminent domain, they should be given to no greater extent than the necessities of the case actually require.

I have already attempted to show that the plan proposed by the Commissioners in 1844, which the petitioners ask for authority to carry into execution, is based upon a greatly exaggerated estimate of the amount of supply needed, both in respect to the nature of the wants for which provision ought to be made, and the amount of supply which will be needed to meet those wants. They look not only to a supply of the present wants upon their principles of computation, but propose that provision shall be made immediately for the wants of the city half a century hence, when, as they calculate, the population of the city, including South Boston and East Boston, will be 250,000 ; and this supply they think should be 7,000,000 gallons.

I contend that the proper course to be pursued is that suggested by Mayor Chapman in his testimony, which is similar to that recommended by the Water Committee of 1839, in the report made by Mayor Eliot, viz : to provide for existing wants, and growing wants within a reasonable time, and by a plan which shall be capable of enlargement, to meet the growing wants of the city in the distant future.

The plan proposed by the commissioners, and which is the basis of the action contemplated in the petition, assumes that the future increase of the population of the city is to be in the same ratio that it has been in the past. This assumption, I contend, is manifestly erroneous. That the business population will hereafter increase in as great, if not in a greater ratio than it has done, is highly probable; but it is obvious that the peninsula can accommodate only a limited number of inhabitants, and its capacity of furnishing further accommodations is rapidly diminishing. One fact also, is of great importance to be considered in this connection—that dwelling-houses and also houses of worship in those sections, contiguous to the business part of the city are rapidly disappearing, and their places are occupied by stores and warehouses. So rapidly have these changes to meet the growing want of accommodation for the business of the city, already proceeded, that the number of polls in Ward Four has actually diminished since the year 1840, and in contiguous wards the increase bears no proportion to the increase in other sections of the city. This view of the subject is clearly exhibited in Mayor Eliot's report of 1839, before referred to.*

Taking this view of the wants of the city which I have endeavored to establish, I contend that the evidence before the committee shows that other sources of supply are decidedly preferable to that which the petitioners pray that they may be authorized to adopt.

It has been said on the part of the petitioners, "that the Legislature cannot know whether Long Pond is the best source of supply without an interminable inquiry."

* The following is an extract from that Report, to be found in City Doc. of 1839, No. 25.

"In looking at the increase of the city in the last thirty years, and observing that it has more than doubled in that period, it seems a natural thought which is entertained by many persons, that the prospects of increasing business render it probable that the growth of the population for the next thirty years will be at least equal. The Committee have no doubt that so far as the business population of the city is concerned, the calculation is not without foundation, and that thirty years hence there may very probably be a population of more than 160,000, the centre of whose business will be the centre of the city. But the inconvenience of putting so large a population within the municipal territory will be so great, that a very considerable proportion of it will probably be induced to plant themselves in the adjoining towns, and real estate in Chelsea, Charlestown, Cambridge, Brighton, Brookline, Roxbury and Dorchester will come in for a share of the business growth of the capital. It is not therefore an irrational supposition that the process of doubling will go on therefore rather more slowly; and that the attractions of the neighboring towns in the forms of pure air, pure water, ample room and moderate rents will retard the accumulation of 80,000 more inhabitants in the city itself, till a few years later."

I contend that it is incumbent on them to establish the fact, that the proposed plan is the proper one, before they can reasonably ask the Legislature to confer upon the city government additional powers of taxation, and the other requisite powers to accomplish their object.

It is not incumbent on the remonstrants to show which is the best plan; they think there is more than one to be preferred to the Long Pond project, and the city authorities should not be authorized to embark in so great an undertaking, until the propriety of the proposed plan is made fully to appear.

I shall endeavor to establish from the evidence before the committee, that an adequate supply of water of good quality, may be procured at less expense—from nearer sources, thereby proportionably diminishing the chances of accident and injury to the structure—and by a mode of construction—iron pipes—insuring greater certainty and less liability to accident.

I shall ask the attention of the committee to only two plans, which, as securing these advantages, are entitled to preference.

First. Taking Spot Pond as a primary source of supply, with Mystic Pond as auxiliary, when it shall become necessary from the increasing wants of the city.

Second. Resorting to Charles River as the sole source of supply.

And the principal sources of evidence will be the reports of the several commissions which have heretofore been appointed by the city government to investigate the subject. I shall not weary the committee by presenting a statement in detail of the views of the several commissioners, as to the sources of supply—the modes of construction and the expense—but shall content myself with directing their attention to prominent facts and general results.

There have been only four commissions instituted to investigate this subject—the commission of 1844 being appointed for the sole purpose of estimating the expense of bringing water from Long Pond.

1. Daniel Treadwell, Esq., was appointed in 1825, under the administration of Mr. Quincy.

One remarkable fact is to be noticed in regard to his report, as well as those of all the subsequent commissioners, that in considering the amount of supply needed, they estimate for the

whole city, without making any allowance for the supply already furnished by the Aqueduct Corporation from Jamaica Pond.

Mr. Treadwell estimated that the maximum amount then needed to supply all the inhabitants, "including the ordinary demands by the trades, for watering cattle, streets, &c., together with the loss by leaks, allowing every family to use the water," would be 1,180,000 gallons; and "making a necessary provision for the increase of the city within a few years, the supply ought not to be less than 1,600,000 gallons."

Stating that there were "several places within the neighborhood of Boston, from which 1,600,000 gallons of water or more might be obtained daily;" he adds, "Two which appear to possess advantages above all others have been examined, and a route from them surveyed, with sufficient minuteness, to estimate the magnitude and cost of works which will be required to bring the estimated supply from them. These places are Charles River, above the falls at Watertown, and Spot Pond in Stoneham."

2. Col. Loammi Baldwin was appointed in 1834 when Gen. Lyman was Mayor.

He made an elaborate report, giving an account of the aqueducts of ancient and modern Rome, and in other parts of Europe, and of some of the most important aqueducts in this country. He also enumerated and gave some account of the various sources of supply from which water might be procured for the city, and in conclusion says,

"From a consideration of all the sources I have examined in the vicinity of Boston, as before stated, the most eligible are those of Farm and Shakum Ponds in Framingham, together with incidental ones dependent upon them and Long Pond, in Natick, and the mode of bringing water to the town is by an aqueduct, without the use of pipes, to the nearest point of sufficient height to allow it to flow through cast iron pipes to the highest land in the city."

3. R. H. Eddy, Esq., was appointed in 1836, when Mr. Armstrong was mayor.

He recommended Spot Pond and Mystic Pond combined, as the permanent sources of supply, first introducing the water of Spot Pond alone, and using this as the sole source until the

wants of the city should render necessary a resort to Mystic Pond; the water of the latter to be then used to supply the lower levels of the city while Spot Pond should furnish a supply for the higher levels.

4. In 1837, Mr. Eliot being mayor, Daniel Treadwell, James F. Baldwin and Nathan Hale, Esquires, were appointed commissioners to make further investigations.

Two of the commissioners, Messrs. Treadwell and Hale, confirmed the views of Mr. Eddy, recommending Spot and Mystic Ponds as the source of supply, the latter to be resorted to, when needful, but proposing to introduce the water by a different route from that indicated by Mr. Eddy.

Mr. Baldwin dissented from his associates as to the source of supply, and in his report for the first time the preference is given to Long Pond as the sole source of supply.

One of the most prominent reasons why he dissented from the plan proposed by the majority of the commissioners, was that he objected to the plan of pumping up water by steam power in whole or in part for the supply of the city.

The commissioners unite in making estimates of the cost of supply by the two modes which I have named, and also for bringing a supply from Charles River.

In 1838, Messrs. Treadwell and Hale, "in compliance with the order of the City Council, *having carefully revised their report of November 22, 1837,*" submitted the result of that revision to the city government. They reconsidered the opinion expressed in their former report "in regard to the probability of the quantity of water assigned as the standard, namely, *twenty-eight and a half gallons* to each inhabitant, being required," and having exhibited a statement of the amount of supply furnished to the cities of London, Philadelphia, Edinburgh, Glasgow, Greenock, Manchester and Liverpool, showing the average of the whole to be *fourteen and a half gallons* a day to an inhabitant, they came to the very rational conclusion that it "is highly probable that a supply of *sixteen gallons* a day to each inhabitant, more than equal to the average of the four largest quantities delivered in the above named cities, will be sufficient for the inhabitants for the next ten years." Upon a review of the whole matter they state in conclusion that for two reasons "*a considerable saving of expenditure* at least for a number of

years, if not permanently, and the placing of the work *on the ground of the greatest attainable certainty*, the majority of the commissioners feel bound to adhere to the opinion expressed in their former report, in favor of adopting the system of works relying upon Spot and Mystic Ponds as the sources of supply."

Mr. Baldwin dissented from this opinion as he did from that of his associates in their original report.

Let me ask the attention of the committee to a brief consideration of the evidence furnished by these reports, in regard to the purity and quantity of the water to be obtained by the modes of supply which I have suggested.

PURITY.

Spot Pond. The water from this source is fully shown by the concurrent testimony of all the commissioners, as well as by the results of chemical analysis, to be superior to every other, on account of its transparency, freedom from color, and the absence to an unusual degree of foreign matter.

Mystic Pond. The commissioners in their report of 1837, p. 14, say, "The water of this Pond is somewhat less transparent and more colored than that of Spot or Long Ponds—while the chemical analysis shows it to contain a very minute portion of foreign matter, *being more pure than Long Pond*, and less pure than Spot Pond. It may be taken therefore as of *sufficiently good quality for all the purposes of life.*" Messrs. Treadwell and Hale, p. 62 of report of 1837, in their reply to the objections of Mr. Baldwin, say, "we need not repeat that the analysis shows the water (of Mystic Pond) to be more pure than that of Long Pond, which receives in the dry season the drainage from an extensive swamp or meadow."

Mr. Eddy, in his report of 1836, p. 16, giving the result of an analysis by Dr. Jackson, and comparing it with the Croton water of New York, says, "In the same quantities of *Mystic Pond and Croton River*, the former contains *but one half* the foreign matter of the latter.

Charles River. Dr. Jackson, giving the results of his examination in 1834, (which is appended to Col. Loammi Baldwin's Report,) of what he supposed to be nine specimens of Lake Water, the sources being unknown to him, thus speaks of the specimen, which proved to be Charles River water. "It is clear,

transparent and colorless, has a few flocculi—no animalculi. Specific gravity, 1.0005. 5000 grs. evaporated to dryness, leave 0.1 gr. vegetable matter." He says the water of eight of the nine specimens is sufficiently pure for the ordinary uses of life, and speaking of the specimens from Charles River and four other sources, says, "They are preferable and nearly pure, the quantity of vegetable matter contained, being extremely minute, sensible only to delicate tests."

Mr. Hayes in his statement appended to the report of the commissioners of 1837—giving the results of his analysis of six specimens of water, submitted to him for examination by Mr. Baldwin,—says of Charles River water, "It is nearly colorless, has no perceptible odor, is more brisk and sparkling than either of the specimens—3.32 lbs. result from the evaporation of 100,000 lbs. at 212° F. this weight is reduced by heating to 1.80 lbs."

QUANTITY.

Spot Pond. Mr. Treadwell, in his report having estimated that the amount of supply needed would be 1,600,000 gallons daily—comes to the conclusion, p. 10, "That a sufficient supply of water for the city may be brought from Spot Pond in common and even in dry seasons." His object seems to have been not to ascertain the maximum capacity of the pond, but only to satisfy himself that the needed supply could be obtained from this source.

Mr. Eddy, in his report in 1836, pp. 9, 10, reviewing the estimate of Mr. Treadwell and giving the results of his own examination and inquiries, calculates that the daily supply from the pond would be 2,718,531 gallons. By the erection of a dam as proposed by him, he thinks 60 acres may be added to the pond, and the supply be thereby increased 429,633 gallons per day, which with the quantity already named equals 3,148,164 gallons—and he comes to the following conclusion, "Therefore I shall feel safe in estimating this pond capable of supplying on the average from 2,500,000 to 3,000,000 gallons per day.

The commissioners of 1837, took what they considered the most effectual measures, by a series of observations, to ascertain the capacity of this pond. A full account of their observations and mode of estimating the supply is appended to their report

—in regard to the results of which they say, “By this it will be seen that we are of opinion that Spot Pond may be relied upon to furnish an average of 2,100,000 gallons a day—that the discharge may be taken as never falling below 1,600,000 gallons,—and may never be expected to exceed 2,600,000 gallons a day.”

In the report of a majority of the commissioners made in 1838, in which they revise their former estimates, having continued their observations on Spot Pond with the apparatus described in their former report, and fearing that their estimate of the former year was too large, they come to this conclusion, p. 7, “A majority of the commissioners confidently infer that Spot Pond may be relied upon for an average supply of 1,700,000 gallons a day.”

Some attempt has been made at the present hearing to raise a doubt in the minds of the committee, whether reliance can be placed upon the result of the observations and examinations of the various commissioners who have been appointed by the city to investigate this question, and who have devoted much time to the subject; the commissioners of 1837 having given their estimate as the result of a series of careful observations, gauging the daily discharge of the pond, and comparing the results of frequent examinations during the period of a whole year.

The late Mayor Mr. Brimmer, and Mr. George Darracot have been called, to give the result of a visit made by them to the pond in September last, and from the observations made by them at that time, and the information communicated to them by one individual, they came to the conclusion from the low state of the water, that the pond could not be relied upon as a source of supply for the city, although their informant told them that the water had been allowed to run to waste during the season, a fact abundantly established by other evidence before the committee.

If such evidence, however respectable may be the witnesses, is to outweigh the deliberate opinion of commissioners selected as men peculiarly qualified to judge, who have devoted months to the investigation of the subject, then certainly the City Council have greatly erred in employing scientific men at no small expense to make such investigations. They might much better have appointed a *viewing committee* of their own body,

to take a ride to Stoneham, some pleasant summer's day, and then decide the question of the capacity of Spot Pond, upon their report of what they had seen and heard.

Mystic Pond. Of the ample capacity of this pond to furnish an adequate supply, there seems to be no question.

Mr. Eddy in his report, p. 9, estimates the supply from this source as "equivalent to 12,960,000 gallons per day," and says there "can be no question as to the ability of Mystic Pond to supply any quantity our city may ever require."

The majority of the commissioners of 1837, in their supplemental report in 1838, say, "We have not thought it necessary to guage the flow of water from Mystic Pond. We have, however, examined it during the season, and have no doubt that the supply will be ample for a population *vastly* greater than that of Boston, and *much greater* than that which can be derived from Long Pond."

In the report of 1837, and from this part Mr. Baldwin does not dissent, the commissioners say, "We have examined the outlet at various times during the summer, and have found the flow from it constant and abundant when not interrupted by the rise of Mystic river, which at spring tides flows back into the Pond. This would require to be cut off by a dam thrown across the outlet of the pond. Were means adopted for saving the water which flows into the Mystic, we have reason to believe that a sufficient supply for the present century may be obtained from it."

Charles River. Mr. Treadwell in his report, p. 5, says, "The water of Charles River is at all times abundant for the supply of the city."

The commissioners of 1837, say, "For the quantity of water furnished by this river, it may be considered as abundant for the supply of the city, for more than the present century, as it seems to be well ascertained that the flow by the Waltham Mills, is equal to forty cubic feet a second constantly in the driest seasons."

So far then as regards the quantity of water, there can be no doubt, on the evidence, that Mystic Pond or Charles River, either of them alone would afford more than an adequate supply. As in one of the plans which I have indicated, it is proposed to combine the resources of Spot and Mystic Ponds, even if there

were doubt as to the amount of supply to be obtained from Spot Pond, it could only affect the question, how soon we must resort to Mystic Pond as an auxiliary.

Having thus considered the evidence showing the quality and quantity of the water to be derived from the sources to which I have referred as preferable to that, on which alone it is proposed by the petitioners that the city of Boston shall rely, I now proceed to consider the evidence before the committee, to establish the position that a resort to these sources is entitled to preference over the Long Pond project on the score of economy. In discussing this question, I propose to consider only the expense of bringing the water into the city, as the cost of distribution by either of the proposed modes, will be substantially the same.

EXPENSE OF PROCURING A SUPPLY FROM SPOT POND AND MYSTIC POND COMBINED.

Mr. Eddy's Plan.

He proposes to bring the water of Spot Pond by iron pipes to a reservoir to be constructed on Bunker Hill at sufficient altitude to supply the most elevated parts of the city.

The cost of this work, to supply 1,700,000 gallons per day, he estimates at	\$388,747 76
The water of Mystic Pond to be brought by a brick conduit to Bunker Hill, and there pumped by steam power into a reservoir at a less altitude, to supply the lower levels of the city—estimated expense,	218,130 00
Cost of two steam engines and appurtenances, and amt. of capital at 5 per cent. to defray expense of pumping 2,500,000 gallons per day, as by estimate of Commissioners of 1837,	306,160 00
Total cost of supply of over 4,000,000 gallons per day,	\$913,037 76
To bring the water from Long Pond, according to the Report of the Commissioners of 1844, will cost	1,374,442 13
Difference,	\$461,404 37

I have made no deductions from the estimate of Mr. Eddy for the reduction in the prices of iron and lead, nor from expense of fuel as estimated by the commissioners in 1837, though the price of fuel has diminished, and the duty which steam engines can be made to perform, as appears by a recent work of Mr. Wickstead on the Cornish engine, is now more than fifty per cent. greater than was estimated by the commissioners.

Plan of the majority of the Commissioners of 1837.

They recommended Spot and Mystic Ponds as the sources of supply, but proposed a route varying from that of Mr. Eddy. They considered that only one steam engine would be needed at present to pump the waters of Mystic Pond, and estimate the whole expense at

	\$714,933 00
To which add capital, to produce, at 5 per cent., \$2,890	
per annum, estimated to be the annual expense of	
pumping,	57,800 00
Total cost,	772,733 00
Expense of Long Pond project,	1,374,442 13
	<hr/>
Difference,	\$601,709 13

Mayor Eliot's Plan.

This plan, and the facts and reasoning by which it is sustained, are set forth in a Report made by Mr. Eliot as Chairman of the Committee of Water, in September, 1839, City Doc. No. 25.

As the report will be in the hands of committee, I will not weary them by recapitulating the facts and reasoning which it so ably presents, and which strongly establish the conclusions of the committee, "that 14 gallons a day to each individual would be a sufficient and liberal allowance, animals, steam engines and contingencies included, according to the habits of the place;" that Spot and Jamaica Ponds combined might be relied upon to furnish a supply, "which would be enough for the probable wants of the probable population for many years to come, with a surplus of 320,000 gallons a day, to make up for any errors in the calculations of the committee;" that a work to bring the waters of Spot Pond to the city, "sufficient for all practicable purposes, could be constructed for a sum not exceeding \$550,000, or at the outside, \$575,000; and that the two ponds, with the pipes all laid as far as the city, and one of them actually distributing water, would cost \$650,000."

A resolve accompanying the report, instructing the Mayor to apply to the Legislature for leave to introduce the water of Spot Pond, was passed in the Common Council, as testified by Mr. Chapman by a majority of one vote, but afterwards reconsidered.

Charles River Plan.

An able discussion of the advantages of this plan, by John H. Wilkins, Esq., for several years a member of the Common Council, has been published and extensively circulated. I will merely give the result of his computations of expense, prepared with much care from data contained in the Report of the Commissioners of 1837 in their estimate of the expense of introducing water from this source.

In Mr. Wilkins's estimate he provides for the delivery of the water at Corey's Hill, the place selected for a reservoir by the Commissioners of 1837 and 1844, and he also includes the cost of two engines for pumping, and a capital, the interest of which at five per cent., shall defray the annual expense of working and repairing one engine, each engine being capable of delivering three millions of gallons daily.

The total amount, making the proper abatements for reduction in the price of materials, and adding 12 per cent. for contingencies, is,	\$471,028 00
The cost of Long Pond water delivered at the same point, as estimated by the Commissioners, is,	906,949 00
Difference,	<u>\$435,921 00</u>

But the great objection which will be raised to either of the plans proposed will probably be, that the amount of supply which they will furnish, is far less than that contemplated in the Long Pond project.

The facts and considerations which have already been presented to the committee, in regard to the amount of supply actually needed, and which are stated in detail in the luminous report made by Mr. Eliot in 1839, it seems to me furnish a sufficient answer to this objection.

The experience of Philadelphia and of New York amply shows, that upon the first introduction of water by an aqueduct, the number of water takers is comparatively small, and that the increase is gradual. And unless the proportion in Boston shall greatly exceed what the experience of other cities would lead us to anticipate, the supply by either of the modes which I have indicated, would be amply sufficient to meet the demand for many years to come. And as the demand increases, the works can be extended to provide the additional supply which may become necessary.

Each of the plans indicated has two important features, which entitle it to a decided preference over the Long Pond project.

First. The greatest distance in either plan from the source of supply to the reservoir, is only about half that from Long Pond to the proposed reservoir.

Second. In each of the proposed plans it is contemplated to substitute iron pipes in the place of a brick conduit.

Whatever mode of construction is adopted, it is obvious that the liability to accident and the expense of repairs, will be diminished in the same ratio with the distance.

And as to the advantages of iron pipes, the evidence conclusively shows that when it is practicable to use them, they are greatly to be preferred to a brick conduit. There is much evidence on this point in the appendix to the Report of 1837,

and in the supplemental Report of a majority of the commissioners in 1838. City Doc. 1838, No. 33, p. 16, they say, "We believe, if any thing can be relied upon for carrying water from one point to another, it is an iron pipe. Experience for more than half a century in Enrope, and for many years in this country, attests its excellence. We may therefore consider it as *perfectly safe*."

But the reasons in favor of either of the proposed modes are entitled to additional weight when contrasted with the objections which exist to the Long Pond project. I therefore ask the attention of the committee to a consideration of some of these objections.

OBJECTIONS TO THE LONG POND PROJECT.

Expense. This point has already been partially considered, in comparing the cost of the other plans with the cost of this, as estimated by the commissioners of 1844. But there is great reason to fear that this estimate will by no means cover the expense, should the work be undertaken. The history of the Croton Aqueduct furnishes an instructive lesson on this subject. That also is a work of masonry. "The cost of the work as estimated by the Water Commissioners, including the cost of the city mains and conduits, was \$5,412,336 72." "The whole cost of the work, exclusive of the pipes in the city below the distributing reservoir is about \$9,000,000. Adding to this the cost of the pipes and arrangements for distributing the water in the city, *will make the total cost of supplying the city of New York with water, about \$12,000,000.*" See Tower's Illustrations of the Croton Aqueduct, pp. 67 and 121. In one important item, viz, land damages and water rights, the New York commissioners erred very widely in their estimates, but probably not more so than have our commissioners of 1844, if they did as much. This item of damages for water rights is put down at \$100,000, by our commissioners; but Mr. Jackson, one of their number, who has probably had as much experience in settling such claims as any man in the Commonwealth, in his testimony before the committee, stated that he would *not* guaranty to pay them for *half a million of dollars*. For what sum he *would* undertake to guaranty their payment he did not state. If the city should have occasion to settle the claims of

Mr. Knight for destruction of his mill privilege—of the proprietors of the mills on Sudbury River, if its waters are taken as proposed in the petition—of the Middlesex Canal—of the mill owners at Billerica—of Mr. Whipple on the Concord River at Lowell—of the proprietors of mills at Massasoit Falls—and at Belvidere village on the same river—they will probably find Mr. Jackson's individual opinion as to the extent of their liabilities, to approximate much nearer the actual result than the Report of the commissioners.

But on this point we are met with some rather startling propositions, advanced by the counsel for the petitioners. It has been said, "If it be a reckless expenditure, the Legislature have nothing to do with it." "The treasury of Boston is to pay the expense." It may be that the members of the Legislature, personally, have nothing to do with it; but the remonstrants in this case, who as citizens of Boston, must suffer if the city is rashly involved in a reckless expenditure of money, have something to do with this matter. We have a right to ask, and we do respectfully claim the protection of the Legislature; and if we are a minority, we pray that the majority, who by their counsel advance such principles, may not be invested with an arbitrary power of taxation over us.

Mode of Construction. It is somewhat remarkable that the commissioners should recommend the construction of an aqueduct of a form which has never yet been adopted for such a purpose—a structure of brick, of an oval form, five feet in width, and six feet four inches in height, and broader in the lower section than the upper, the brick work to be only eight inches in thickness, the whole to be laid through cuttings of earth or rock as the case may be, and over several large embankments, with no provision for any foundations of masonry to support it, not even a bed of concrete to be laid beneath the structure on the natural or artificial level over which it passes.

The commissioners may well say, when comparing their proposed plan of structure, with that adopted for the Croton Aqueduct, "The works proposed, for bringing the water of Long Pond to this city, will require no construction bearing any comparison for magnitude or cost with those of the Croton Aqueduct," and the opinion is very extensively entertained, that they might with equal propriety have added, that they will bear no compari-

son *for safety, permanency or durability*. The question naturally suggests itself, Is there no mode of structure to be found among the numerous aqueducts in Europe and in this country, that have stood the test of experience, which the commissioners deemed it safe to recommend for the aqueduct from Long Pond? It will be recollected that Mr. Hale, one of the commissioners, testified that he had never seen or known of an aqueduct constructed on the plan proposed. It certainly forms a striking contrast to the Croton Aqueduct, which is laid on a bed of concrete, the sides of the lower section being protected and sustained by walls of stone masonry some two feet thick.

Did not the character of the commissioners preclude such a suspicion, it would be difficult to resist the impression, that one prominent object was to prepare as low an estimate as possible, to induce the city to embark in the undertaking, with the expectation that the work, when once commenced, must be carried on and completed in a thorough manner, at whatever cost.

There is another remarkable feature of the plan proposed by the commissioners, well calculated to excite doubt whether sufficient care and skill have been exercised in its adoption. It is proposed to construct a reservoir containing only 7,000,000 gallons—one day's supply—with three reservoirs in the city of smaller dimensions, the capacity of which is not given, and a fourth if a suitable site can be obtained. It is not to be presumed that their united capacities will exceed that of the reservoir on Corey's Hill.

It will hardly be claimed for the proposed Aqueduct, that it will be more secure or less likely to need examination and repairs than the Croton Aqueduct, yet it has already been found necessary to draw off the water from that aqueduct, and the reservoirs in the city of New York received no supply from the Croton River for *twelve* days. What would be the condition of the city of Boston, if for the purpose of repairs of the proposed aqueduct, or for any other cause the supply from Long Pond should be discontinued for a like period of time?

If, as anticipated by the commissioners, the whole population of Boston should become water-takers—and as a probable consequence give up the use of their wells and cisterns, and neglect to keep them in repair—upon the happening of such a contingency, we should witness scenes of suffering and distress for

want of water far surpassing any known in the present, or recorded in the past history of our city.

But there are objections of a more general character, aside from those affecting merely the citizens of Boston, which cannot fail to receive the consideration of the committee. I refer to those damages termed indirect and consequential which will ensue to the town of Framingham and the inhabitants of Billerica and Medford, who have remonstrated against the granting the prayer of the petitioners, and also the injury and loss which will ensue to the public, if by reason of the diversion of the waters of Long Pond, the Middlesex Canal should be rendered useless.

It has been assumed by the counsel for the petitioners, that because, by the rules of law, compensation cannot be provided for indirect and consequential damages, they should not be regarded by the committee.

But I contend that this fact presents a strong reason why they should be considered, and the right of eminent domain should not be exercised where such consequences ensue, if the exigency can be otherwise provided for.

The present case is not analagous to the granting of rail-roads, whereby travel is diverted from pre-existing turnpikes, and as a consequence towns and villages which formerly were great thoroughfares or centres of business cease to be such.

In those cases the damage is *in fact* as well as *technically* indirect and consequential, caused not by a direct taking of property or privileges from the corporations damnified and giving them to others. But in the present case the damages to be suffered will be caused by a direct act of taking from these towns that which is now the source of their prosperity, diverting the waters of their ponds and streams and bestowing them on the City of Boston.

The public it may be contended will suffer no serious inconvenience or injury from the discontinuation of the Middlesex Canal, as it will perhaps be said that the freight formerly transported on it is now more beneficially transported on the rail-roads. The facts set forth in the remonstrances of the inhabitants of Billerica and Medford as well as the testimony of Mr. Eddy, the agent of the Canal, show that such is not the case. And although the amount of transportation is now greatly diminished,

yet the continuance of the Canal serves to regulate the charges for freight on the rail-roads, which would doubtless be at once not a little advanced if the competition of the Canal should cease. And although the proprietors may not object to its discontinuance, if they are paid its value by the city, the public have an interest in its continuance, which it is the duty of the Legislature to protect.

I contend that this question of consequential damages to towns and to the public is one which ought not to be lightly regarded by the committee, or by the Legislature, in coming to a decision upon the application of the petitioners; and that justice demands, before the authority sought is granted, that the petitioners should fully and clearly prove,

A case of extreme exigency.

That this exigency can be provided for in no other way, and, That the exigency to be met is so great as plainly and palpably to outweigh all the indirect and consequential damages which will be caused to others.

But the ground taken by the counsel for the petitioners, seems to assume, that all these considerations are but the small dust of the balance, when weighed against the vote and the declared wishes, of the City Council and of the citizens of Boston.

As to the necessity of the proposed measure it has been said—“The mere statement of the fact by the people themselves, is under the circumstances proof of the fact.” “*Seven thousand men have said they want water, and are willing to pay for it.*”

The votes of the citizens say nothing about *necessity*, nor that *they will take the water and pay for it*, but only that they are in favor of having it brought for the use of those who choose to pay for it.*

* The following are the four propositions submitted to the citizens upon which their ballots were given.

First proposition.—Are you in favor of procuring a supply of *Water* for the Inhabitants of the City of Boston, to be brought, at the expense of the City, from Long Pond in Natick and Framingham, or from any of the sources adjacent thereto, on the condition that those of the Inhabitants who may elect to take and use the same, shall be required to pay for the water such reasonable tax as shall hereafter be fixed and established by a Board of Water Commissioners that shall be created?

Second proposition.—Do you hereby vote to instruct the City Council to apply to the Legislature, in behalf of the City, for the grant of a suitable charter to carry into effect the object expressed in the first proposition? And do you hereby vote to instruct the Senators and Representatives elect, of the City of Boston, to exert their influence at the ensuing session of the Legislature, to obtain a just and liberal charter for the object as above set forth?

Third proposition.—Are you in favor of procuring a supply of *Water* for the

Then *as to the mode of construction* it has been said, "who can gainsay the right of the city to judge—if the object is necessary, those who seek to obtain it, may obtain it in their own way, if at their own expense."

If it were to be at the expense of those *seeking*, I grant the soundness of the proposition. But the seekers in this case are seeking to execute this work not at their own expense solely, but to charge the remonstrants also with a portion of it.

I have already endeavored to establish the position that in this case, the votes of the citizens of Boston and of a majority of the city council have no binding effect upon the minority. If this position is established the proposition assumed on behalf of the petitioners falls to the ground, and these votes are to be regarded only as the expression of an opinion by the individuals who voted in favor of the measure; and the weight to be given to these opinions depends upon the character of the individuals—their capacity to judge on the subject-matter—their means of information—and the evidence that their decision was formed after due investigation and deliberation.

But I deny that the City Council have expressed any deliberate opinion in favor of the proposed measure, and I contend that the fact is otherwise.

Mr. Hubbard, here read extracts from the records of the mayor and aldermen and of the common council, and also from the record of the doings of the citizens in general meeting assembled, and then resumed—

It appears from these extracts that the first action on the subject in the year 1844, was on the 22d of July, when a joint committee was appointed "to consider and report what measures if any should be adopted to procure an abundant supply of pure soft water for the use of the city," and in the latter part of the

Inhabitants of the City of Boston, to be brought, at the expense of the City, from any sources which may hereafter be decided by the City Council to be the best, on condition that those of the Inhabitants who may elect to take and use the same, shall be required to pay for the water such reasonable tax as shall hereafter be fixed and established by a Board of Water Commissioners that shall be created?

Fourth proposition.—Do you hereby vote to advise the City Council to apply to the Legislature in behalf of the City, for the grant of a suitable charter to carry into effect the object expressed in the third proposition? and do you hereby vote to instruct the Senators and Representatives elect, of the City of Boston, to exert their influence at the ensuing session of the Legislature, to obtain a just and liberal charter for the object as above set forth?

month the Common Council adjourned over the dog-days to meet again on the 12th of September.

On the 29th of July the petition of Walter Channing and others was presented requesting that a meeting of the citizens might be called in Faneuil Hall "for the object of elaborate discussion ; to the end of fixing and ascertaining the state of public sentiment on the subject of obtaining a supply of pure water from Long Pond in Framingham, for the use of the city," which petition was referred to a committee, who on the 26th of August reported favorably, and it was ordered that a warrant issue for a meeting to be held on the 3rd of September.

On the 22d of August a special meeting of the Common Council was called by the Mayor, at which a report was presented by the committee appointed a month previous, and orders were passed authorizing the committee to appoint three commissioners to report on the best mode and the expense of bringing water from Long Pond.

On the 26th of August, these orders were concurred in by the Mayor and Aldermen, but on the 2nd of September, this Board passed the following important explanatory Resolve,

Resolved, That this Board, in concurring, at the last meeting, with the Common Council in the passage of certain orders, directing the Committee "on the introduction of pure soft water" to appoint three commissioners, to report on the best mode and expense of bringing the water of Long Pond into the city, did not intend to express any opinion as to the expediency of supplying the city with water from that source, nor to preclude examination of other ponds hereafter ; but only to declare their consent and wish that Long Pond, as one of the prominent sources of supply, should, at this time, *be thoroughly examined*, and the cost of bringing its water into the city carefully estimated by responsible and competent persons, in order that the City Government may have all the facts before them in relation to it, for their future judgment upon the whole subject matter.

On the 14th of November, the Committee made a report to the Common Council, communicating the Report and Estimates of the commissioners appointed by them—and recommended the adoption of certain resolves.

On the 21st of November, the Common Council proceeded to the consideration of the report of the committee, and the first resolve recommended by them was adopted, as follows,

Resolved, That it is expedient for the City to begin and complete the necessary works for the introduction of a supply of pure water.

At the same meeting an order was passed for printing and circulating among the citizens, 7,000 copies of the report of the commissioners of 1844, an attempt made to amend by adding "also the commissioners' reports of 1836 and 1837," failed; the order was however amended in the Board of Aldermen on the 25th of November, by providing also for the printing and circulation of the report of the commissioners of 1837, in which amendment the Common Council concurred on the 26th of November.

The report of 1844, was printed and circulated before the citizens voted on the propositions submitted to them, BUT THE REPORT OF 1837 WAS NOT CIRCULATED UNTIL AFTER THE VOTE HAD BEEN TAKEN.

On the 26th of November, the Common Council resumed the consideration of the resolves, reported by the committee on the 14th of November.

The second resolve was as follows,

Resolved, That it is expedient to draw the supply from Long Pond, in the manner recommended by the Commissioners appointed under the order of August 26, 1844.

The following amendment was inserted in lieu thereof,

Resolved, That it is expedient that the following question be submitted to the legal voters on the 2d Monday of December next, the citizens to vote in their respective wards, yea or nay, viz.

"Are you in favor of procuring a supply of water for the city, to be brought and distributed at the expense of the city from Long Pond, or such other sources as may hereafter be decided to be best—upon such terms and under such regulations as the City Council may direct."

The question on the adoption of the resolve as amended was taken by yeas and nays, and passed by 40 yeas to 4 nays.

All the remaining resolves were indefinitely postponed.

On the same evening at the meeting of citizens in Faneuil Hall, adjourned to this time, the first two of the four propositions on which the people subsequently voted, (see ante, p. 43,) were adopted, to be submitted to the people at the approaching municipal election, and on motion of Mr. Williams, it was

Voted, That in order to foster and promote the water project—a Committee of twelve be chosen by this meeting from the citizens at large, who shall have the general charge and direction of such measures as it may be expedient to take, and whose duty it shall be especially to co-operate with any committee or officers of the City Council,

who may be deputed by that body to urge the grant by the Legislature, of a suitable charter for the accomplishment of the object in contemplation.

Voted, That the Committee be nominated by the Chair, and Edward Brooks, Thomas B. Curtis, George Darracott, Nathaniel Greene, Charles Leighton, Wm. Stearns, George Savage, Thomas J. Lobdell, Charles A. Wells, Robert Cowden, Henry Williams, Wm. T. Eustis—were appointed.

On the 27th of November, the Mayor and Aldermen ordered a notice to be issued, calling on the citizens at the approaching municipal election to give in their ballots on the last two of the four propositions on which the vote was finally taken, (see ante p. 44.)

On the 3d of December, at the final meeting of the citizens at Faneuil Hall, the following votes were passed.

Voted, That a committee be chosen to wait on the Mayor and Aldermen, and respectfully request them to issue a notice to the citizens to be voted upon at the meeting on Monday next, in accordance with the resolutions adopted at the meeting of the citizens on Tuesday, the 26th ult.

The following gentlemen were chosen on said committee. Edward Brooks, George Darracott, William T. Eustis, Charles Leighton, James Clark and Charles A. Wells.

Voted, That the Water Committee chosen at the last meeting of the inhabitants, November 26th, be instructed to prepare and cause to be printed thousand copies of the two propositions adopted at said meeting, to be distributed at the polls on Monday next, to afford the voters of the city an opportunity of voting yea or nay upon them, to the end that the voice of the people may be fairly ascertained upon them agreeably to the fair and reasonable intent of the meeting which adopted them.

Voted, That the Water Committee, as set forth in the first vote, be instructed to petition the Legislature on behalf of the citizens for a charter, &c., with or without the co-operation of the City Council.

The foregoing votes were adopted in the event that the Mayor and Aldermen shall not issue their warrants for ward meetings to vote on Monday next upon the propositions adopted on the 26th.

The committee waited upon the Mayor and Aldermen pursuant to their instructions, and on the *fifth of December*, the Mayor and Aldermen yielding to the dictation of the Faneuil Hall meeting, and surrendering their own judgment, as to the proper form in which the questions should be submitted to the people, passed an order, that notice should be issued to the citi-

zens to give in their ballots at the municipal election on the 9th of December on the four propositions on which they finally voted.

On the 12th of December the Mayor communicated to the Common Council the result of the vote of the citizens, and on the 19th of December, the committee on water made a further report recommending the adoption of the following resolve and order.

Resolved, That it is expedient to procure a supply of water for the inhabitants of the City of Boston, to be brought, at the expense of the City, from Long Pond in Natick or Framingham, or from any of the sources adjacent thereto, on the condition that those of the inhabitants who may elect to take and use the same, shall be required to pay for the water such reasonable tax as shall hereafter be fixed and established by a Board of Water Commissioners that shall be appointed by the City Council.

Ordered, That the Mayor be instructed to make immediate application to the Legislature for the grant of such powers to the City, as may be necessary to carry the foregoing resolve into effect.

The resolve and order were passed in the Common Council, and on the 23d of December, the Mayor and Aldermen concurred by a vote of 6 yeas to 3 nays.

So far as relates to the Common Council, I ask—on this review of their action on the subject—is not the fact plainly apparent, that the Resolve finally passed by them in favor of the Long Pond project, is no indication that the judgment of the individual members of that body, approved the measure.

On the 26th of November they refuse to pass the Resolve reported by the committee, “that it is expedient to draw the supply from Long Pond,” and in lieu of it, by a vote of 40 to 4, adopt a resolve that it is expedient to submit to the citizens the question, whether they are in favor of procuring a supply “from Long Pond or such other sources as may hereafter be decided to be best.” On the 19th of December, only twenty-three days afterward, they decide “that it is expedient to procure a supply from Long Pond or any of the sources adjacent thereto.”

What new light had beamed upon the Common Council during this brief interval. It is palpably manifest that in adopting the last Resolution, they did not act upon the convic-

tions of their own judgment, but were carried away by the impulse of the popular excitement.

In regard to the Mayor and Aldermen—that they yielded to the same influence, is still more apparent. When they concurred in the order of the Common Council to authorize the appointment of commissioners to estimate the expense of bringing water from Long Pond, they deemed it necessary to enter a protest, lest any conclusion might be drawn from their action, that they were in favor of the Long Pond project.

But they also surrendered their own convictions in regard to the wisdom of the proposed measure, to the popular impulse. That they did so is not left to mere inference. Three of the six aldermen who voted in favor of the Resolution “that it is expedient to procure a supply of water from Long Pond,” have testified before the committee.

Alderman Preston testified, that he did not consider that so much water was needed, as the report of the commissioners proposes to introduce, that he thought further investigation necessary before deciding upon the source—and that he voted in the affirmative on the final question, because as a matter of courtesy, he did not think it proper to stand in the way of an application to the Legislature.

Alderman Crane testified that at the polls he voted against the Long Pond project. In the Board of Aldermen he voted in favor of petitioning, because the popular vote was so large, and therefore thought it right that the petition should be presented. That he has ever since repented of his vote in the Board, and subsequently moved a reconsideration.

Alderman Rogers testified that he was not in favor of the Long Pond project; that he thought further examination necessary; that he voted for it under the circumstances in which the city government was then placed, that the next city council might be free to act as they should think fit.

Upon this state of facts, I repeat the assertion, that the action of the City Council affords no evidence that a majority of the members of either board entertained the opinion that the proposed measure is either wise, proper, or necessary. They merely consented, as being the proper organs by which an application should be made to the Legislature, to become the channel of communication by which the wishes of those who

voted at the polls in favor of the measure should be made known.

So far then as any evidence in support of the proposed measure, is to be derived from any expression of opinion in its favor in the city of Boston, it must depend wholly upon the vote of the citizens. And I ask the committee to consider, what weight can be given to this vote under the circumstances.

Are the questions—whether the proposed plan is a wise one—whether an adequate supply cannot be more advantageously and economically obtained from other sources—proper questions to be decided by a popular vote? As a reason why the committee should not go into an investigation of these questions, it has been said “that they could not settle them without an interminable inquiry.”

What light have the citizens of Boston had to aid them in this inquiry upon which it would be so difficult for the committee to come to a decision. The only official document recently published and circulated was that of the commissioners of 1844, who were not called upon to make investigations in regard to any other other sources of supply, than Long Pond, and who in their report expressed no opinion of the merits of Long Pond as compared with other sources.

Four of the commissioners had been previously appointed, for the express purpose of examining the various sources of supply, and the reports of two of these commissions had been printed and circulated. The commission of 1837 consisted of three individuals, a majority of whom expressed a decided opinion in favor of Spot and Mystic Ponds, which opinion they adhered to with confidence when called upon by the city council to revise their opinions in the following year and only one of the individuals who has ever been a member of either of the commissions, has officially expressed an opinion in favor of resorting to Long Pond as the sole source of supply.

Had the former reports which some members of the common council wished to have placed in the hands of their fellow citizens, or had the report of 1837, which the city council ordered to be printed and circulated, been in their hands, before they acted on the question, the result might have been different. But it has been suggested that this report had been circulated in former years, and that the vote of the citizens, was given upon

a full knowledge of all the facts and arguments in the case. It is hardly to be presumed that one in five of the voters had in his possession a copy of the report of 1837 or perhaps knew that such a report had been made. It has appeared in evidence, that when the order was passed to have that report reprinted, it was with some difficulty that a member of the water committee could find a copy of the old edition to be placed in the hands of the printer, and finally procured a copy from a gentleman not a member of the committee. If members of the water committee were so poorly furnished with the means of knowing what had been done in past years, is it probable, that the citizens at large were better provided? Seven years had elapsed since the publication of the report of '37; during that period many new voters had come into the city, many young men, too young at that time to judge and decide on the subject, had acquired the rights of voters; during the preceding four years there had been no action by the citizens or by the city government on the subject. What then were the means possessed by the great body of the voters in the year 1844, and whence derived? It is obvious that full means of information could not have been possessed. Mr. Jackson, one of the commissioners of 1844, testified, that with all the information which has been spread before the public, he should not feel safe in deciding without further investigation to what source of supply it would be expedient to resort. And it is no disparagement to his fellow citizens to say, that he is at least as fully competent as a great majority of their number to form an opinion on this subject, if not more so.

The learned counsel for the petitioners states that there has been great diversity of opinion on the subject, and that the want of concentration of the public mind had been the cause of delay.

Such has doubtless been the case, and it is equally true that during the past year there has been no additional light thrown upon the subject, to enable the citizens to decide with intelligence on the question. True, some of our public prints have teemed with articles from the pens of the friends of the Long Pond project in favor of that measure, many of them containing highly colored and exaggerated statements of the wants of the city, and it was under the influence of such one-sided representations that many of the voters came to the polls, the official

documents being withheld from them, which the City Council had ordered should be placed in their hands.

But even with all the efforts which had been made to bias the public mind, the friends and guardians of the Long Pond Project, did not deem it safe to leave the decision of the question to the unaided intelligence and understanding of the people, when they were summoned to the polls to vote on the four propositions submitted to them by the Mayor and Aldermen—and the Faneuil Hall Committee of TWELVE, having “the general charge and *direction* of such measures as it may be expedient to take,” deemed it necessary to publish instructions to the people, directing them how to vote.*

I contend the course of action, during the past year, both of the citizens and of the city government is characterized by a hot haste and a want of due deliberation and thorough investigation, and affords no sufficient evidence that the public necessity or interests require that authority should be granted to carry the proposed plan into execution.

It has been suggested that the committee may think it proper

* The following is a copy of the Instructions published by the Committee of TWELVE, in the newspapers of the day.

To the true friends of the water project.

Fellow Citizens—You have spread before you the two propositions, which, after a discussion of several months in legal City Meetings, of the subject of “Procuring a supply of Water for Boston,” were adopted, to be voted upon at our approaching Municipal Election, with a view to ascertain, as far as practicable, the popular sentiment upon the subject—and, if found favorable to the project, to be used as a means of procuring a Charter for the object, from the Legislature.

You have also two other propositions, presented to you by the Board of Aldermen, on which you are called upon to cast your votes. You will perceive a wide difference between the propositions adopted by the City Meeting, and those which are presented to you by the Board of Aldermen. The former contemplates the adoption of the project reported upon by our Commissioners, Messrs. Jackson, Baldwin and Hale, and points to prompt action;—whilst the latter, in the opinion of your Committee, if adopted, will have no effect but to postpone an undertaking which has already been too long delayed.

Under these circumstances, fellow-citizens, your Committee—on whom, by your vote, was involved the duty of “the general charge and direction of such measures as it may be expedient to take,” and with a view of obtaining a fair expression of public opinion on the great and important enterprise in contemplation—feel that it is right and proper for them—and, indeed, is demanded by the case—that they should *prefer to the friends of the true project a word of advice, as to how they shall vote upon the two sets of propositions presented to you.* We say, then, in brief, if you want and mean to have the water from the best source, and in anything like a reasonable time, you should vote YEA on the first two propositions. And, unless you are willing to throw open the subject anew, to further discussion and renewed investigation—in short, to postpone the project indefinitely—you will vote NAY on the two last propositions.

Edward Brooks, Thomas B. Curtis, Geo. Darracott, Nathaniel Greene, Charles Leighton, Wm. Stearns, Geo. Savage, Thomas J. Lobdell, Charles A. Wells, Robert Cowdin, Henry Williams, Wm. T. Eustis, *Committee.*

to report a bill in accordance with the wishes of the petitioners, and leave it to the city hereafter to determine whether they will avail of the authority given them to execute the proposed project. I respectfully submit that such a course would not be in accordance with established legislative usage, and that the committee will not report a bill, unless the evidence submitted has been sufficient to satisfy their own judgments that the proposed measure is necessary and expedient and that the interests of the city will be advanced by its adoption.

If the necessity or expediency of the proposed plan is a subject of doubt in the minds of the committee, such a course would only lead to further delay if the bill should not be accepted by the citizens. The same consequences would follow if the committee should report that the petitioners have leave to withdraw. Delay is not desired by the Remonstrants. They wish to have this question, which is one of deep importance to the city, settled wisely, and as speedily as can be done in the exercise of proper prudence, deliberate judgment and sound discretion.

In view therefore of all the circumstances of the case I respectfully ask the committee to consider, whether any wiser course can be adopted than that pointed out in the Resolve of the Legislature passed in 1839, of which the city government in my humble judgment, very unwisely refused to avail themselves.

This course would be similar to that pursued by the State of New York, who did not give authority to the city of New York to commence their great work until explorations and surveys had been made under the authority of the State, though the exigencies of that city were far more urgent than are the necessities of the city of Boston.

The Legislature of 1839 by the resolve referred to, expressed the opinion that there was not sufficient evidence to enable them to decide upon the proper source of supply and the best mode of supplying the wants of the city, and they had all the light on the subject which the committee now have.

The report and recommendation of commissioners appointed under such circumstances, men of intelligence, science and skill, uncommitted to any particular project, would command

the confidence of the citizens, and in all probability lead to a satisfactory settlement of this long agitated question.

I submit the questions involved in this case to the judgment of the committee, trusting that they will give to the views which have been presented in behalf of the remonstrants, all the weight to which they are entitled, and that they will not come to a decision in favor of the prayer of the petitioners, unless they find the evidence to be such as would enable them, acting as citizens of Boston, to say that the proposed measure is one which it is *necessary, wise and expedient* for the citizens of Boston to adopt.

