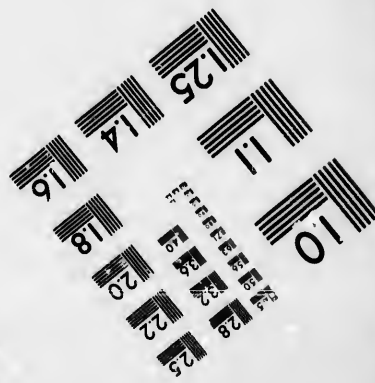
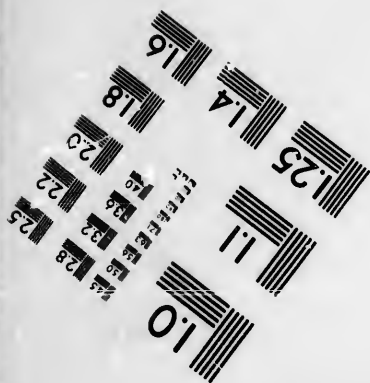
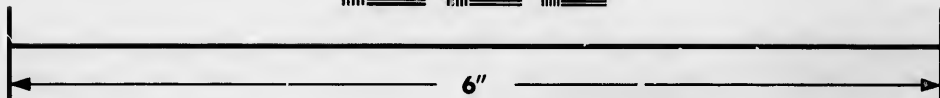
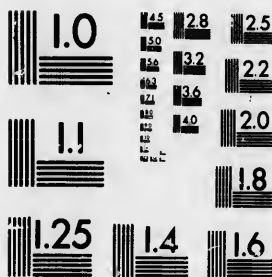


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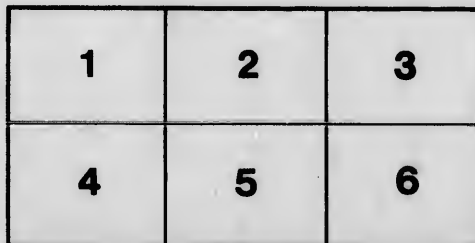
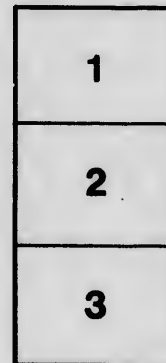
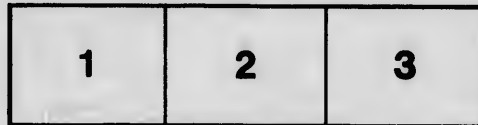
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State of New-York.

No. 99.

IN SENATE, MARCH 5, 1857.

REPORT

Of the committee on roads and bridges on the bill to incorporate the International Bridge Company.

Mr. Richardson from the committee on roads and bridges, to which was referred the bill entitled, "An act to incorporate the International Bridge Company," and sundry petitions for, and remonstrances against the passage of the same,

REPORTS:

That sundry petitions of residents, real estate owners and citizens of the State of New-York, are before the committee, praying for the passage of an act incorporating a company for the purpose of constructing a bridge across the Niagara river from the city of Buffalo to the Canada shore. These petitions are numerous signed. The petitioners express the belief that the public interests would be promoted by increasing the facility for travel and intercourse across the Niagara river, at or near the present termination of the Buffalo and Lake Huron railway, a point at which the friends of other railways about to be constructed in Upper Canada, are looking for facilities to cross the river with freight and travel into this State.

[Senate, No. 99.]

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Several petitions of inhabitants of the Province of Canada West, who feel a deep interest in the project of bridging Niagara river at or near Fort Erie, from the Canada shore to the city of Buffalo, ask the passage of an act to incorporate the International bridge company. These petitioners state that the opening of the Buffalo and Lake Huron railway, now in full operation from Fort Erie to Stratford, crossing the Great Western railway at Paris, and soon to be completed to Goderich on Lake Huron, thus securing a large trade over it, renders bridging the Niagara river, at or near the point indicated, of great importance to the producers along the line of that road, enabling them, by shipment through the Erie canal, to find a ready market in the city of New-York. They further state that a railway is projected from a point opposite Malden, there connecting with the Michigan Southern railroad, and thence running easterly near the north shore of Lake Erie, finding its eastern terminus near Fort Erie; and that another railway is soon to be built from Port Dalhousie on Lake Ontario, running southerly and terminating at the same point. And, they express full assurance that, in view of the reciprocity treaty and the existence of these railways affording present and prospective means for travel of passengers, and for transportation of freight in various directions, through the most fertile and prosperous portions of Canada West, some more ready way of intercommunication between the two countries, like the proposed bridge, is imperatively demanded; and thus giving the people of Canada increased facilities for disposing of their products, at the same time increasing the revenue of the State of New-York, would bind the two governments in the most intimate commercial relations.

In furtherance of the object of the petitioners, a bill has been referred to the committee, for the creation of a body corporate, by the name of the International bridge company, with power to associate with a like corporation in Canada, under grant of the Canadian Parliament, for constructing, maintaining and managing a bridge across the Niagara river from the city of Buffalo to some point near Fort Erie in Canada; the bridge to have two draws, one over Black Rock harbor, and the other over the main

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channel of the river near the Canadian shore; the draws to be of ample width to give free passage to all steamboats and other vessels navigating the river, and to be tended and moved by the company, so as not, unnecessarily, to hinder or delay their passage. From sundown until sunrise, during the season of lake navigation, suitable lights to be maintained upon the bridge to guide vessels and steamboats approaching the draws; and the company to be liable to pay to the owners of any steamboats or vessels, or of the cargoes thereof, all damages which they may sustain by reason of any neglect in respect to these provisions.

The capital stock is proposed at \$1,000,000, with privilege to increase it to \$2,000,000, to be divided into shares of \$100 each, and to be deemed personal property.

The board of directors are to consist of nine stockholders, to be annually chosen, and to appoint from their number a President, Vice President, Secretary and Treasurer, who may be required to give security as shall be prescribed in the bye-laws of the company.

The proposed act of incorporation names fifteen citizens of this State as commissioners to co-operate with commissioners appointed under a charter for like purposes by the Canadian Parliament, to open books and receive subscriptions to the capital stock; if more than the whole stock shall be subscribed, to distribute the same and apportion it among the subscribers as they shall deem most advantageous to the corporation; and then to give notice of the first meeting of the stockholders, to choose the first directors in the manner therein provided, and deliver over the subscriptions, money, books and papers to the directors so elected. The said commissioners are to locate and designate the site of the bridge, and the approaches thereto, and for such purpose, to cause such examinations and surveys to be made as may be necessary for the selection of the most advantageous site for the bridge and the approaches leading to and from the same.

Any railroad company, whose road has or shall have a terminus at, or run its trains to or from the city of Buffalo, or any point near Fort Erie, or in connection with any road having

such terminus, or running trains to or from Buffalo or any point near Fort Erie, may, with the consent of the persons owning a majority of its stock, loan its credit to the bridge company, or subscribe to and become the owner of its stock in like manner and with like rights as individuals.

The act vests the corporation with the usual and necessary powers to carry out its object and purposes, and prescribes the manner and proceedings by which title to real estate may be acquired, such as shall be necessary for the construction of the bridge, for its avenues and approaches, and for their maintenance and management.

The stockholders are to be liable to an amount equal to the amount of the capital stock held by them respectively, to the creditors of the company for all debts contracted by the directors or its agents for its use, until the whole amount thereof is paid in, and a certificate filed in the clerk's office of Erie county. If the directors contract debts for the company, exceeding in the aggregate the amount of the capital stock, they are to be personally liable for such excess.

The act provides for the proper management of the bridge, its use, as well for the passage of persons on foot, in carriages, or otherwise, as for railroad trains, and the regulation and collection of tolls ; for the recovery of damages for injuries to the property of the company, and for the punishment, by fine or imprisonment or both, of offences against its rights and franchises.

The bridge is to be commenced within five years, and completed within ten years from the passage of the act ; if not, then the company shall cease.

Several residents of the city of Buffalo represent that they are deeply interested in the question of bridging the Niagara river, and remonstrate against building any bridge above the foot of Squaw Island. They say if a bridge can be made to stand against the current, the storms and the ice of Lake Erie, it cannot be so constructed with a draw, or otherwise, as not to obstruct and almost entirely cut off navigation of the river ; that the current

between Squaw Island and the Lake is probably no where less than five miles per hour ; that the bottom is rock, either smooth or shelving down stream, so that vessels coming off the Lake with a gale or fresh breeze of wind could not anchor, nor with any prospect of safety pass a draw in that current, and would be equally unsafe with light and baffling winds, in which they lose their steerage way and frequently float down the river sideways. The river leaves the lake nearly at right angles to its general course, and to the course of the strong winds down the lake. Vessels coming down the river, as they frequently do for safety, get out of the influence of these winds soon after passing the upper ferry, and have good anchorage before they get to the foot of Squaw Island, so that they can safely come to anchor, and with much more safety pass a draw in a bridge located below that point. They further state that extensive mills and manufacturing establishments are situated upon and near Black Rock harbor, and that these will be greatly extended and increased. That a ship lock has been constructed in the draw between Squaw Island and the main shore, so that vessels can pass from the river around the foot of Squaw Island and approach most of the mills and factories ; and that any bridge or interruption to the navigation will most seriously damage their business and their interests. Therefore, their prayer is, that if a grant shall be given for a bridge across Niagara river, it shall be located below Squaw Island, from which point there can be the best and only practicable connection by railroad to all parts of the city of Buffalo.

Several citizens of Orleans county and vicinity remonstrate against bridging Niagara river at or near Black Rock or Fort Erie, that shall interfere in the least with free navigation from Lake Erie into and out of the river. An immense lake commerce has grown up since the construction of the Erie canal, which has exceeded the estimates of the ablest commercial men and has received the fostering care of the general and State Governments. Large expenditures have been made at the city of Buffalo in the construction of piers, light houses, sea walls, &c., to protect and shelter the great and growing trade and com-

merce of the Lakes at Buffalo ; where, have also been constructed the Ohio basin of ten acres in surface with twelve feet depth of water, docks, a ship canal connecting the basin with Buffalo creek, also over three miles of canal in the city connecting the basin with the Erie canal, and a break water pier forming the Erie basin—all claimed to be inadequate for the convenience and protection of the growing commerce at the port of Buffalo.

To make the harbor more accessible in stress of weather, the general government has lately constructed and completed a light house upon Horse-Shoe reef, about two miles from the Buffalo light house towards the Canada shore, which aids in guiding vessels into the river with safety in the severest gales and the darkest weather. The channel from that light house to the Canada shore is over one and a half miles wide.

The remonstrants attempt to illustrate the impracticability of bridging the Niagara river at the point indicated, and claim that the bridge would not be half built before those now asking for it would pray the Legislature for appropriations to build more break-waters to give a harbor of refuge to navigators, or the commerce of the lake would seek other channels, and the Erie canal be abandoned west of Syracuse.

Other citizens of the State remonstrate, alleging that the construction of a bridge from Black Rock to the Canada shore would destroy the navigation of Niagara river. They assign several reasons why this should not be done.

The treaty stipulations between the United States and England and its dependencies forbid the obstruction of international navigable waters, as the bridge would be.

It would be unjust to the village of Tonawanda and its growing commercial importance, which the bridge, would destroy.

It would be unjust to the towns growing up on the banks of the Niagara below the proposed bridge, whose trade it would cut off.

It would be unjust to the village of Niagara Falls and its contemplated improvements, hydraulic canals, and the proposed extension of the navigation of Niagara river to that place.

It would be unjust to the young and prosperous village of Niagara city, and other villages on the lower Niagara, which look forward to the final construction of a ship canal around the falls of Niagara as a fixed fact.

In 1853, the Legislature of this State granted a charter for the construction of a ship canal around the falls of Niagara. In its construction nearly half the States are more or less interested, whose commerce now choke the Welland canal beyond its capacity, causing delay and loss to a trade which now sends during the season of navigation through the Welland canal more than 600 vessels a month, a large portion of which are American vessels, with a larger tonnage than enters the port of Buffalo. Efforts are being made to obtain aid that will insure the commencement of the ship canal within the period prescribed by the charter, and its completion within five years thereafter; at which time, should the increase of trade, seeking a market through the upper and lower lakes, continue as for years past, there would be more than a thousand vessels a month, during the navigable season, to pass through the Niagara ship canal, while the business of the Welland canal would be maintained without diminution.

Residents on the east side of the Niagara river remonstrate against the passage of any law authorizing the building of a bridge which shall interfere with the navigation of the river above the Great Falls. They represent as follows:

This noble river is navigable for the largest class of lake vessels and steamers down to within two miles of the Great Falls, a distance of more than twenty miles, to which point they frequently descend with cargoes. It is constantly and extensively navigated down to the village of Tonawanda, a distance of twelve miles, where a large amount of freight has its transit between lake vessels and canal boats, as well as railroad cars.

The current of this rapid, where it is proposed to erect this bridge, has a velocity of about six miles an hour, but the depth

of water being at least twenty feet, and the channel being wide, the navigation is perfectly reliable and ample for steamers with the largest loaded vessels in tow.

The entrance to the river from the lake, is nearly a half a mile in width, and now that a lighthouse has been erected on the Horse-Shoe reef, is entirely safe and practicable with good pilotage, in all weathers and at all times, and is the only safe channel of refuge for vessels in severe storms at this end of Lake Erie. The peril to which a vessel would be exposed entering the river at right under such circumstances, in passing through the narrow opening of a draw bridge at its head, need not be enlarged on.

A drawbridge across a navigable river under circumstances the most favorable, and in the absence of any current, is a serious interruption to navigation. Here it is manifest that such a structure would utterly destroy navigation; the obstruction in the river of the piers alone would materially accelerate the current, thus rendering its ascent more difficult; superadded to this would be the danger of a vessel sheering against the piers, exposing her to almost certain destruction, and the bridge to serious injury, as in a recent case at Rock Island, with the difference only that in this case the danger would be greater.

In view of the injury, and certain destruction which such a bridge would inflict on the navigation of the river, they insist that the Legislature has no power to authorize its erection. The Niagara where navigable is an international public highway, free and open to the citizens and subjects of the United States and Great Britain, by express treaty between the two governments. As authority for this allegation, reference is made to the 3d article of Jay's treaty, so called, of the 19th November, 1794. This treaty is by the Constitution of the United States, the supreme law of the land. By it, the whole subject is beyond the reach of State authority and jurisdiction, and that the first step in reaching the object of building this bridge must be a new treaty with England.

As before stated there is now a natural navigation for lake vessels down to within two miles of the Falls. The only

obstruction to the navigation down to the village itself, and to within 100 rods of the first break in the rapids is a narrow reef, through which measures are now in progress by a private company for making a channel. This improvement it is confidently believed will shortly be made at a moderate cost. When made it will be of inestimable importance and value, as it will enable vessels from the remotest points on the great lakes, laden with iron, coal, copper, wheat and other articles, to deliver their cargoes at this point, where a hydraulic canal around the Falls, furnishing the largest and most reliable water power in the world, is now nearly half finished (costing in all less than \$200,000) and is expected to be completed in a few months, a large force being now employed on the work.

Citizens of the State of Ohio, and of Detroit in the State of Michigan, and of Chicago in the State of Illinois, and of Sheboygan in the State of Wisconsin, also remonstrate for like reasons, and view the creation of the proposed bridge as a measure of injustice, as a scheme of local rapacity, at the expense of ancient natural rights, not demanded by public convenience or necessity. It will destroy the navigation of Niagara river, by ruining it as a harbor, and tend to force appropriations to keep up an artificial harbor at a point less than two miles from a natural one, which has no superior for safety, capacity, and ease of access.

The Senate and House of Representatives of the State of Michigan have passed joint resolutions, relative to bridging Niagara river; which declare: That all navigable frontier waters between the United States and the British Provinces are international public highways, the free and open use of which is secured by express treaty to the citizens of the United States and the subjects of Great Britain; that no power exists in any State of this Union to obstruct the navigation of these waters by bridges or otherwise. That the Legislature view with alarm the introduction of a bill in the Legislature of the State of New-York authorizing the construction of a bridge across the Niagara river at or near Buffalo, destroying the safest harbor of refuge at the foot of Lake Erie, and remonstrate and protest against

such obstruction to a navigation in which the State of Michigan with other States bordering on the North-Western lakes have a common and inalienable right.

Such is the substance and tenor of the remonstrances.

In addition to the views and reasons presented in the remonstrances, the following suggestions are offered and urged in their behalf against the project of bridging Niagara river above the great falls, at the point indicated.

The bridge, if ever built with any prospect of permanence, must be constructed in the shallow part of the river where the bottom is rock and the current rapid, moving at the rate of six to seven miles an hour. The breadth of the river at its narrowest part is about two thousand feet. The piers, placed two hundred feet apart, there would be nine of them and two abutments; if each be fifty feet wide, the width assumed by an English engineer, the piers would occupy and obstruct four hundred and fifty feet, nearly one-fourth of the river, which would not only accelerate the current but concentrate at the openings probably one-half the fall of the entire rapids, rendering the ascent of vessels through the draw next to impossible, without great hazard, and, it is claimed, there would be a partial damming of the river, sensibly raising the lake itself.

It is claimed, if the bridge should be erected at the point indicated, with an open draw of 150 feet, a sail vessel entering the river with a light breeze dead aft, the moment she reached the current, its velocity being greater than that of the wind, she would be at once becalmed; and having no steerage way she would broach to and pass down the rapids with her broadside to the current. Her condition nearing the bridge under such circumstances would be perilous. Her anchor would be of no avail, for the bottom is a smooth rock shelving down stream. Also, should a vessel ascending the current under canvas, pass up through the draw, after clearing it, some twenty rods the wind lulls or changes she would immediately drop astern, and would be in danger of going foul of the bridge, her anchor being of no avail, as above stated. It is further claimed as follows:

“But suppose the site of the bridge higher up stream, where the river is nearly a mile wide, but where the ship channel is narrower by far than at any other point—for this is one of the localities contemplated, and is, indeed, favored probably more than any other. In addition to the suggestions above made in regard to the current, which are all applicable here, for although its velocity is less, (being now about five miles an hour,) the obstructions caused by the more numerous piers would, of course, increase it, and in a greater ratio, too: this site is subject to another fatal objection. It is at the very head of the river, where a heavy sea always rolls in, in severe gales. It is believed no sane ship master, however good a pilot, would venture to pass the draw in such weather, even in broad day light. In a dark night the very idea would be madness.”

The question is put, if the navigation of the river would be impaired by the bridge, does not the treaty referred to prohibit its erection? If not prohibited by the treaty, and the grant should be given, would it not be a precedent of such high authority that it would be followed by another State whose boundary is in part a navigable river between the United States and Canada? Two very important and prosperous railways terminate at opposite points on the Detroit river. Other railways are in progress which will have opposite termini at the head of the St. Clair river where Lake Huron ends.

A bridge at these points for railway purposes may be deemed by Canada and the State of Michigan desirable. The right to navigate the Detroit and St. Clair rivers rests on no other writ-law than the treaty cited, and if the principle be now affirmed that a draw bridge in a strong current, like that of the Niagara at its head, is no obstruction to navigation within the meaning of the treaty, the bridging of those two rivers, will be certain to take place. The current at the head of the St. Clair is nearly as strong as that at the head of the Niagara. At Detroit it is less than three miles an hour.

The remonstrants also claim that only frontier navigable waters, before the Reciprocity Treaty of 5th June 1854, were open to a common navigation, guaranteed alike to the subjects of Great

Britain and citizens of the United States. With regard to this common navigating right of the two countries, reference is made to the diplomatic arrangement made by Mr. Rush on the part of the United States, and by Mr. Bagot on the part of Great Britain, in 1818, ratified by both Governments, for limiting the naval force each power should be allowed to maintain on these same navigable frontier waters, viz: two vessels to each party, each vessel to be 100 tons burden, and each to carry one 18 pounder. It is claimed that this arrangement shows that this common frontier navigating right has been recognized by the two Governments for another purpose than that of commerce merely, to wit: for the regulation of naval armaments in time of peace. In time of war each party regulates for itself.

They present another point, deemed by them of great importance and weight, to show that the Legislature has no power to bridge the frontier navigable waters of Niagara river; and that the object of the project can only be reached by a new treaty between the United States and Great Britain.

The boundary line of jurisdiction between the two countries is, of course, the centre of the river. That has been defined and fixed by commissioners under the treaty referred to, as well as the treaty of Ghent of 24th December, 1814. But the navigating right in the whole river, including branches formed by the interposition of islands, is common to the citizens and subjects of both countries, and is not at all limited by the mere line of jurisdiction. That is to say, the right of a British subject to navigate a channel wholly this side of the line of jurisdiction is as full as that of an American citizen to navigate it; and the converse of the proposition is equally undeniable. The fact is doubtless familiar to all, that the ship channel entrance to the Detroit river, is wholly within British jurisdiction, and that American shipping navigate it by right under this same treaty. It is insisted that a State Legislature cannot take from a British subject this right, and if it be replied that reciprocal legislation by the Canadian Parliament, in the form of the proposed bill meets the difficulty, they answer that they have a species of international legislation in respect to rights arising under a treaty

between parties paramount alone and exclusively competent to establish and regulate them. This international, or rather inter-state and colonial legislation aims at the formation of a compact, which compact can only legitimately result from the exercise of a treaty-making power, and a treaty New-York and Canada cannot make, that power being here exclusively in the Federal government, and in Canada in the British crown.

The position taken by the friends of the bridge, that not only private rights may be made subservient to great public objects, under a just rule of compensation, but that even public franchises resting on immemorial usage and positive law, may, under certain circumstances, be subject to modification or partial deprivation where paramount interests, affecting the great body of the people, and necessary to develop a wide spread and benign system of public policy, are in question, the remonstrants deem doubtful; for the reason that the exercise of such power almost invariably carries with it a violation of immutable constitutional principles. On the sacred maintenance of these principles rests the only security, as they claim, of the weak against the aggressions of the strong; and this is regarded as their position in view of the meditated measure of bridging Niagara river at the point contemplated. They say there is no such high necessity for the bridge—it is a mere local affair to increase the trade of Buffalo; that the great body of the community are indifferent to it, except so far as its erection would involve a violation of treaties and of time consecrated rights and franchises.

It is further represented to the committee by a prominent citizen of western New-York, that a bridge cannot be built across the river at any point between the Falls and the head of Grand Island, without seriously obstructing the navigation of the river; and that between that point and the Lake, it would destroy the navigation, for commercial uses. And, Niagara River being an international commercial highway, in which the citizens of the United States and the subjects of Great Britain have vested rights of navigation, guaranteed by their respective Governments, the State of New-York has no power to interfere with those navigating rights. The Legislature, by grant, recommendation, or

consent, should not allow this channel of commerce to be in the least obstructed—because, to receive the commerce of the lakes into the Erie canal at the foot of Lake Erie, it is necessary to have a harbor of refuge, into which, in stress of weather, lake crafts can enter with safety. The Niagara river being the only harbor of that description at that point, in order to make it a safe harbor in the night, and even in dark weather, the Government of Great Britain has, at the solicitation of the commercial interests of the lakes, ceded to the Government of the United States a reef of rock, known as Horse-shoe reef, at the entrance of the river, upon which the Government of the United States have erected a light house, which was completed last October, making it safe for vessels to come to the foot of the lake with safety, in all weather. Besides, the State of New-York has at the port of Buffalo made large expenditures of money, at the expense of the canal revenues, as is alleged, in the construction of the Erie basin and a break water, which has driven commerce from the Erie canal into other channels to market, in consequence of the increased danger in making the port in rough weather. The State has also built a ship lock at the Black Rock dam, of sufficient capacity to pass any vessel from the river below the rapids up into Black Rock harbor on a level with the lake. Vessels in a storm, bound to the port of Buffalo can now seek the river in safety; and after the storm, they can, if the wind is adverse, pass through the lock and be towed by a steam tug at small expense to the port of Buffalo, or drop down the river to Tonawanda; at which place there are now over one mile of docks, elevators, and warehouses, contiguous to the Erie canal, affording easy and cheap transshipment of any amount of property. This is the remonstrants' case.

It is claimed and urged by the friends and advocates of the proposed bridge, in answer to the objection raised that the obstruction of the river by piers would very much accelerate the current and seriously embarrass the free navigation thereof; that the acceleration of the current would be but slight, as at the point indicated, near the head of Bird Island pier, the river is nearly a mile in width, and that the displacement of water by the

piers, would but slightly increase the velocity of the current, which at this point is between three and four miles per hour; nor would the introduction of piers seriously obstruct the navigation, as the navigable channel at this point is not to exceed 300 feet in width, with an average depth of about 17 feet, while the balance of the stream is shoal water, varying from 3 to 9 feet in depth. With this width of stream, it seems no damming of the river could occur from the introduction of the necessary piers for the construction of the bridge.

Respecting a sail vessel entering the river with a light breeze dead aft, when reaching the current, its velocity being greater than that of the wind, she will be becalmed and broach to, and pass down the river broadside to the stream; it is asserted, by way of answer, that a vessel in passing down the river gathers steerage way by her own weight, and by means of her rudder would have no difficulty in keeping head to, and would readily pass the draw in the main channel. It is apparent that the water next the piers on either side of the draw, would be somewhat hastened in its flow, while in the middle of the span it would be less. This would of itself render passing through the draw easily and safely done.

To the question or suggestion what would be the result with a vessel sailing up the stream, having passed the bridge some 20 rods, and the wind should lull, would she drop astern and go foul of the bridge; it is answered, she could be steered when head to the current, and have no difficulty in keeping in it; and she would have good anchorage at any point above Birds Island pier; and this would afford a safeguard in any emergency.

As to the point made, that at the proposed site of the bridge a heavy sea rolls in severe gales, it is replied that below the upper reef there is very little sea; and there is good anchorage for about three-fourths of a mile above that point, in the British channel, where vessels have laid at anchor in all weather. This was the harbor of Fort Erie, where vessels shipped and reshipped property prior to construction of the Welland canal.

An experienced and extensive navigator on the lakes says that during thirty years experience, he has only in one instance, having had his canvas stripped by the winds, deemed it safer to run down the river than to attempt to make the Buffalo harbor.

The harbor at Buffalo is now of sufficient capacity to move the tonnage of the lakes. With respect to what is said about the harbor filling up, and will soon have to be abandoned, it is deemed only necessary to say that all artificial harbors require occasionally to be dredged, which is not a serious objection; and it is known to every navigator of the lakes that Buffalo harbor is not only as accessible but as commodious as the majority of harbors on the lakes.

To the objection made against the construction of the bridge, on account of vessels passing down the river in the night, it is stated, by way of answer, that a vessel scarcely ever passes down the river in the night. Should it be necessary for any cause, the lights to be kept upon both ends of the draw would be of great service, and a help instead of a detriment in affording to the navigator a suitable guide to enable him to keep the vessel in the channel of the river. And it is represented a small part of the navigators of the lakes are at all familiar with the navigable channel of this river.

At this stage of the examination of this case, two additional documents are presented to the committee, in opposition to the project of bridging the Niagara river.

The one is a report made by Commander Bigelow of the United States navy, bearing date May 20, 1849, in conformity with instructions, respecting the location of the light house or light boat authorized by act of Congress, approved March 30, 1849, to mark the entrance of Niagara river.

Commander Bigelow reported, 1st. With regard to the necessity of such a light. The harbor of Buffalo, then the only shelter in that vicinity, did not afford sufficient accommodation for the numerous vessels navigating the upper lakes, a large proportion of which received and delivered cargoes at that port.

The inconvenience had long been felt, and increased with the rapidly increasing commerce of the west. Vessels, encountering the severe gales of Lake Erie, within a distance of 20 or 40 miles above Buffalo, had no alternative but to attempt to make that harbor. He states, to effect that, it was necessary to lay close around the head of the southern pier, a difficult manœuvre in a gale, many vessels falling to leeward of the lower or northern pier, stranded on the beach. Those which let go their anchors as soon as under lee of the southern pier, if so fortunate as to have held on, generally found themselves in contact with other vessels which had preceded them. Much damage and loss of property had been sustained, and would continue to occur until additional harbor room should be afforded. He was of the opinion, that this consideration alone, without any reference to the claims of the citizens of Black Rock and Tonawanda to have facilities, enjoyed at other points, extended to them, demanded the establishment of the proposed light. To render such light useful to navigation, and enable those, desiring to seek a shelter in smooth water below the rapids at Black Rock, to make it in safety, the establishment of a beacon light on the Black Rock pier was also necessary.

2d. As to the erection of a light house on shore in preference to building on a rock in the water, Commander Bigelow reported: The main channel of the river being on the Canada side, no light on the main land on this side would be of any use: The nearest point above water in the territory of the United States being the southern pier of Buffalo harbor, already having a light. The question was thus narrowed down to a choice between a light boat and the erection of a light house on the Horse-shoe reef. He recommended the latter, as of far greater practical utility to navigation, and on the score of economy.

The Horse-shoe reef is situated on the east side of the channel of the river, at the distance of about three-fourths of a mile from the Canada shore, and consists of solid lime stone rock, and is 1,089 feet long with an average breadth of 120 feet and within a line of sounding of 8 to 9 feet; in some places only $2\frac{1}{2}$ and 3 feet, but the average depth is about 6 feet at the stage of the water during a calm. The current runs over it N. $\frac{1}{2}$ E. at the

rate of a mile per hour. Both the current and depth are affected by the winds, being increased by southern winds and decreased by winds from the north.

Mr. Bigelow made suggestions with reference to the construction of the light house, and an estimate of the probable cost of the work. He considers a beacon light on Black Rock pier essential to render the main light of practical use; the beacon light to stand on the pier, at the distance of 218 rods above the Custom house at Black Rock ferry.

Commander Bigelow concluded his report as follows :

“ There is ample width and depth to render it perfectly safe after passing the Horse-shoe reef to run direct for the beacon, and I have no doubt, should these lights be established, that great use will be made of this channel, and that much property and perhaps many lives would be saved by it. The buoys to mark the channel from Horse-shoe reef to Bird island, for which an appropriation has been made by Congress, are not required for that purpose ; but three of them could be placed to advantage to mark the sand spits which make out at the head of Grand, Snake, and Strawberry islands.”

The other document is a Protocol signed at London, the 9th. of December 1850, by Abbot Lawrence for the United States, and by Lord Palmerston for Great Britain ; by which so much of Horse-shoe reef as may be necessary for the site of the light-house, is ceded to the United States, on condition of the erection of such light-house and the maintenance of a light therein, by the Government of the United States ; and provided no fortification be erected on the said reef. The object was to enable the United States to erect the light-house for the purpose of rendering safe and secure a common international navigation for the benefit of the citizens of the United States and the subjects of Great Britain, and affording a safe harbor of refuge in the Niagara river. And it is claimed that this Protocol fully confirms the proposition urged, that the navigable portions of the waters, dividing the United States from Canada, are open to the common use of the two countries, in virtue of existing treaty

stipulations. And it is also claimed that a bridge located at or near the head of the river would nullify the effect of this Protocol and render the maintenance of the light-house wholly unnecessary and superfluous.

The light-house on Horse-shoe reef is now built in accordance with the suggestions of Commander Bigelow ; and the lantern is in its place. With the aid of a beacon-light on the shore about a mile and a half below, the river is thus made a safe and reliable refuge for vessels.

The Secretary of War, in answer to Senator Seward's resolution, has reported in favor of the expediency of a hydrographic survey of the Niagara river, with the view of obtaining reliable official information respecting the navigability of the river for the largest class of lake vessels and steamers, from Lake Erie down to within about two miles of the great falls.

The mayor and corporation of Brantford, Canada West, though subjects of a foreign power, are emboldened, as they say, by "the common origin of our people, the similarity of our governments, and, more than all, the uniform courtesy that the inhabitants of this Province have received from your State," to petition and urge upon the Legislature their wishes for the passage of an "Act incorporating The International Bridge Company," with powers to construct the proposed bridge, in conjunction with a company to be chartered by the Provincial Parliament of Canada, with like powers and purposes—a project of vital importance to the interests of both countries. They believe in the entire feasibility of the measure, and that a bridge can be so constructed as not to impede the navigation of the river.

The Province of Upper Canada by its geographical position, is closely connected in commercial interest with this State. Much of its advancement, the increase of its population and the development of its resources are owing to the internal improvements of this State, which stimulated and increased the emigration that has peopled that Province, as well as the Western States, and which has opened to them the markets of the Atlantic cities, and through them the markets of the world, for the products of their soil and forests.

It is represented to the committee, that the inhabitants of Canada "are large purchasers of the manufactured goods of the United States; that through the influence of the Reciprocity Treaty, the trade between the two countries has been vastly increased; that the natural point for the delivery of the products of the Western Canada, that portion situated between Lake Erie, Lake Ontario and Lake Huron, is at Buffalo, where the produce can be sent to the eastern markets by the Erie canal, or by the railroads leading from that point."

To accomodate this growing trade, of great importance to both countries, "The Buffalo and Lake Huron railway is being built and now nearly completed, running from Fort Erie opposite Buffalo, to Goderich on Lake Huron, a distance of 160 miles. This railway connects with the Great Western railway at Paris, leading West to the Detroit river, opposite the city of Detroit, and East to Hamilton and the Niagara river. It also connects with the Grand Trunk railway at Stafford, leading to Toronto, Kingston and Montreal. At Goderich it will connect with lines of steamers running to Lake Michigan and Lake Superior, bringing to this State the mineral wealth of that region.

It is further represented to the committee, that the Southern Canada Railway is surveyed and will soon be under contract, running from Niagara river at Fort Erie, to the Detroit river, a distance of 220 miles, there to intersect with the Michigan Southern and Michigan Central rail roads—giving greater facilities not only to Canada, but to the Western States, for travel and commerce. It is also proposed to construct a railway from Fort Erie to Niagara Falls and one from Fort Erie to Port Dalahousie on Lake Ontario.

That the inhabitants of Canada will for all time have to depend upon the coal fields of the United States for their supply of coal for fuel, for manufacturing purposes and for making gas for their towns and cities; that the completion of the Buffalo and Pittsburgh railroad and the proposed extension of the Genesee Valley canal leading to the coal field of Pennsylvania, will make Buffalo the market from which their supplies will be drawn; and that

there is much difficulty in crossing the Niagara river from Fort Erie to Buffalo, the river at that point being very rapid, and at certain seasons of the year much obstructed by ice, making the crossing dangerous and at all times expensive, thereby obstructing the passage of traffic, a free intercourse between the two countries, and greatly interfering with the usefulness of the lines of railways and canals terminating at its banks on either side—these considerations, are urged with considerable reason and force, as favoring and demanding the grant and construction of a bridge from Buffalo to the Canada shore.

This bridge constructed and in operation, and the Canada railways, which have been mentioned, running as they all do through the finest agricultural country on the continent, and connecting with other important communications, would open up to the State of New-York a trade and commerce, by all of them terminating at Fort Erie, which can scarcely be estimated. The two countries, heretofore to a considerable extent, strangers to an international commercial intercourse, would become bound together by the closest and most prosperous business relations.

This project of bridging Niagara river, one of the broadest navigable rivers of the State, over which two distinct nations have equal rights, is of great local and national importance. It required and has received a careful examination at the hands of the committee.

The importance of such a bridge, in a local view, to the city of Buffalo, claims for it a favorable consideration, and should receive the sanction of the Legislature, unless the general interests of the State would thereby suffer, or that the State has not the constitutional power or sovereign right to give the grant. The city of Buffalo contains a population in round numbers of 90,000 inhabitants, with an assessed valuation of property of \$35,000,000. It is one of the greatest grain depots in the world, and rates as one of the first inland cities in the country in point of commercial importance. The bridge would furnish a convenient and never failing means of communication with the large and fertile portion of the province of Canada upon the shores of Lake Erie, finding

for its products their most natural market at the city of Buffalo. Under the present disadvantages the Canadian trade is by no means small—amounting annually to at least \$3,000,000. The effect of the Reciprocity Treaty is noticed in the increase of that trade. That effect has as yet scarcely begun. With adequate facilities, its future influence upon the business of the State, and especially upon the trade and commerce of the city of New-York, cannot now be estimated. At present a large portion of this traffic is diverted to other channels for want of more convenient means of communication; and, it is sound policy and wise economy, to favor every project which will afford additional facilities to so important a branch of the business and commerce of the State.

The location of Buffalo is well adapted to afford facilities of intercommunication between this State and the western States and Canada. In this view, the proposed bridge becomes a matter of public interest and State importance. Buffalo is the point for the principal transshipment of freight to the Erie canal. It is for the interest of the State that articles of freight as arrive-by rail from the west and from Canada, seeking means of transportation by water, should be able to reach the canal at this point, thereby saving to the State the largest amount of tolls. This locality is now and must remain one of the great central points of railroad communications. It is the termini of the New-York central railroad, connecting with Albany and New-York, of the Buffalo and New-York city railroad, connecting with New-York by the New-York and Erie railroad, of the Buffalo and Corning railroad, which, now nearly completed, will furnish another direct route to New-York, and the proposed Buffalo and Pittsburg railroad, already commenced, which will open the coal regions of western Pennsylvania, and bring from that direction the trade and travel of that important section of country. These, in connection with the Canada routes terminating at Fort Erie opposite Buffalo, when accommodated with the facilities of the proposed bridge, will pour their tide of travel and trade into our State, all tending, as to a common center, to the city of New-York, the great commercial emporium of the country.

The Niagara river is navigable, to some extent, for some ten miles to Tonawanda on the American side, and some eighteen miles to Chippewa on the Canadian side. But such is the rapidity of the current that only steam vessels can be used to any advantage for the entire distance. Sail vessels, to a limited extent, proceed as far as Tonawanda, but, are obliged as a general thing, to be towed up the river, the current being in some places more than six miles an hour.

The committee have been furnished by the collector of the port of Tonawanda with a statement of the arrivals at that port during the year 1856, of steamers, vessels and lake crafts, by way of Niagara river from Lake Erie. The number of such arrivals at the port of Tonawanda during the season of navigation 1856, were as follows, to wit:

Steamers reported at Tonawanda custom house,	47
Propellers do do do 	56
Barks do do do 	9
Brigs do do do 	6
Schooners do do do 	59
Scows do do do 	73
Vessels of various kinds, reported at Buffalo, and then proceeded to Tonawanda to discharge part of their cargoes, ..	20
Making a total of.....	270

The arrivals at Chippewa during the same time were four schooners, with a total tonnage of only 411 tons.

There were, therefore, 274 passages down the river, and the same number, probably, up the river, making a total of 548 passages during the year, through the draw of a bridge across the river at or near the point indicated, averaging only $2\frac{1}{4}$ passages a day during the season of navigation. It will readily be seen that there is little or nothing in the present commerce upon this river which cannot be fully accommodated by the proper construction and management of suitable draws in the proposed bridge; and provision is made therefor in the bill which is reported and submitted to the Legislature.

It should also be remembered that, on the average, one-third of the year the foot of Lake Erie is closed with ice, and navigation entirely suspended.

At the indicated site of the proposed bridge, the bottom of the river is a solid rock, and no bars can form around or below the pier. The rapidity of the current there is such that ice never accumulates at that point—the river there is always open—consequently, no obstruction from that cause need be apprehended to the construction of the bridge. The project is feasible.

Is there any controlling objection to the exercise of the power of the State, in giving authority to bridge the Niagara river as is proposed in the bill submitted, provided it can be done without materially impeding the navigation of the river? Will the erection of such a bridge materially endanger or injure any public interest, or seriously invade any private right? Will its advantages exceed any detriment which may be caused by it? These are questions pertinent to the subject and worthy of notice, upon the facts spread out in this report. A favorable hearing and consideration are invoked upon principles of public policy and a regard to the public welfare, as well as in behalf of local advantages resulting to the city of Buffalo.

The great object to be attained is the furnishing of facilities for railroad transits and communication, for the public convenience and interest, and, if paramount in importance, it should not be denied, even if it endangered some interest solely concerned in the navigation of the river. It has been well said: "a public policy, that is controlled and limited by the clamor of individual or local interests, would be narrow indeed; few acts of public legislation are unattended by injury to some individual interests, but that has not hitherto been regarded as a sufficient objection to the passage of laws pertaining to interests of a public character." It is no objection that the measure is likely to benefit railroad companies, and the city of Buffalo. The railroad interests and the interests of the city of Buffalo are identified with the interests of the public; they cannot exist in opposition to each other. It is too late to oppose and defeat a public measure, or a private measure of a public character and interest, be-

cause it may tend to the extension of railroad facilities. The public travel and commerce of the country, beyond or near the limits of navigable waters, can be made convenient and successful only by the facilities which railways afford. Hundreds of millions of dollars have been invested, in this country, in the construction and equipment of railroads. The public have enjoyed, will continue to enjoy, the great benefits of the investment, in the impetus given to all business intercourse, and in the facilities afforded for the extension of trade and the development of the resources of the whole country. This interest has grown and will increase in proportion to the necessity which created it. It is eminently entitled to be viewed with favor by the Legislature, affording it all proper facilities, because, all the diversified interests of business, all the operations of commerce, and the very foundations of our prosperity, depend, in a great degree, upon the continued success which shall attend such works of internal improvement.

Now, the committee are of the opinion, that a draw-bridge over the Niagara river at or near the site indicated, can be so constructed and managed that it will not materially obstruct the navigation of the river. It can be done by the modes of structure, which modern improvements in the art of bridge building, stimulated by the exigencies of modern commerce, have suggested and matured. A lawful, feasible bridge, over navigable waters like Niagara river, one which will not so obstruct navigation as to destroy navigating rights, is a physical possibility—a thing within the reach of human intelligence and the compass of human power.

Grants from the Legislature of this State and from the Provincial Parliament of Canada, authorizing the erection of the bridge in question, would not, in the opinion of the committee, be an intrusion on the federal domain; as was claimed in the Passenger Case, (7 How. 283,) and the Pilot Case, (12 How. 299.) Reference is made to that part of the opinion of the Court which says: "Now the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some impera-

tively demanding a single uniform rule, operating equally on the commerce of the United States in every port ; and some, like the subject now in question, as imperatively demanding that diversity which can alone meet the local necessities of navigation.

Either absolutely to affirm or deny that the nature of the power requires exclusive legislation by Congress, is to lose sight of the nature of the subjects of this power, and to assert concerning them all, what is really applicable to but a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." That class of cases is distinguishable from, and the general question there discussed does not arise in the question of State jurisdiction and power, involved in the present application to authorize the erection of a bridge to accomodate the urgent and constantly increasing necessities of New-York and Canada travel and commerce. The subject of jurisdiction on which the Legislature is called to act is not national ; and the authority to be exercised belongs to that mass of power not even tendered to the Federal Government, but reserved to the several States. The subject of jurisdiction, the bridge, the public necessity for it, the possibility of so constructing it as not materially to injure navigation—all are matters to be determined by the Legislature of the State ; as much so as any question relating to highways, ferries, canals, or any other branch of internal police of the State. Over a bridge called for by the necessities of a State, and designed to facilitate its own internal commerce, Congress has no primary jurisdiction—and, no jurisdiction whatever, save such as may be necessary to carry out the powers given to Congress by the Federal Constitution.

It will not be denied but that a draw-bridge over navigable waters always impedes navigation to some extent. But, it does not follow, necessarily, that any interference with the right of navigation, however slight, is a violation of the Constitution. A coasting license, under the regulation of commerce by Congress, gives no absolute right to traverse navigable waters without any hindrances except those which nature interposes in the

pathway of a vessel. The local right of crossing such waters by means of draw-bridges, or of ferries, is equally legitimate and lawful with the navigating right. Both are rights, necessary to the general welfare and prosperity of the country. Though they can seldom, if ever, be exercised without conflicting to some extent, yet both are to be preserved if they can be adjusted on equitable principles. But, where these rights are so conflicting and incompatible that no adjustment is possible, the one derived under the law of Congress is paramount, and the other must yield. The conflict and incompatibility must amount to gross and palpable inconsistency, to substantial and irreconcilable discord, to deadly hostility. The State cannot and should not be deprived of this attribute of sovereignty, on any extreme theory, or that its exercise may occasion some inconvenience to navigation, or subject to slight additional delays, or impose the necessity of increased vigilance and care, or require an abandonment of an accustomed track or place of business. The adjustment of these rights must be sought and made in the light of a wise appreciation of the demands of all kinds of commerce, whether State or National, and in the spirit of a comprehensive equity, with a determination to impose no restrictions upon the authority of the State beyond such as will fairly satisfy the demands of actual and existing national legislation. The question is whether the acts of Congress relating to coasting licenses, which is said to be the only existing national legislation on the subject respecting navigation, were designed to destroy the local right of crossing navigable waters by means of draw-bridges. This right has been exercised by the States, with the entire acquiescence of the General Government for more than half a century.

The committee quote from the opinion of Chief Justice Savage (15 Wendell, page 133.) "By a free navigation must not be understood a navigation free from such partial obstructions and impediments as the best interests of society may render necessary. For example, a vessel arrives at the port of New-York from a foreign port; Congress has exclusive power to regulate commerce with foreign nations; the vessel arrived has sailed

under the authority of Congress, but she is met at the quarantine ground, not by a bridge with a draw which she may pass in half an hour, but by a mandate from the State authority, stating in substance, that the conveniences or necessities of the people of the port require that she shall remain at quarantine, one, ten, or twenty days, according to circumstances. Is such a detention unconstitutional? The contrary has been adjudged, as far as that point could be adjudicated in the case of *Gibbons v. Ogden*. I have already stated that the general government and the State government, between them, possess the sovereign power, and the sovereign power may doubtless build bridges where necessary. It has been correctly said that the federal Constitution is a grant of power, while the State Constitutions are limitations of power. There is in our State Constitution no limitation of power to build bridges, and there is in the federal Constitution no grant of such a power. There can be no question, therefore, that the State Legislature has the power to build bridges where they shall be necessary for the convenience of its citizens. The right must be exercised, however, so as not to interfere with the right to regulate and control the navigation of navigable streams. Both governments have rights which they may exercise over and upon navigable waters; and it is the duty of both so to exercise their several portions of the sovereign power, that the greatest good may result to the citizens at large. It is the duty of the general government to adopt such measures that commerce and navigation shall not be improperly obstructed, and it is the duty of the State government to afford all the facilities of intercourse which the good of the citizens requires."

Mr. Justice McLean, a United States Judge, in the case of *Palmer v. The Commissioners of Cuyahoga Co.*, (3 McLean R., 226,) used this language: "A dam may be thrown over a river, provided a lock is so constructed as to permit boats to pass, with little or no delay, and without charge. A temporary delay, such as passing a lock, cannot be considered an obstruction." In a subsequent part of the opinion it is added: "A draw-bridge across a navigable water is not an obstruction; the obstruction would be but momentary, to raise the draw; and such a work

may be very important to the general intercourse of the community. No doubt is entertained, therefore, as to the power of the State to erect such a bridge."

The same general principles are sustained in the final judgment and opinion of the United States Supreme Court in the Wheeling bridge case, (13 How., 518,) and by several cases in our own courts, which it is unnecessary to mention.

From what has been said, these propositions appear sound to the committee :

1. A bridge with a sufficient draw, which shall be opened, free of expense, to vessels navigating navigable waters, while it affords accommodations necessary for that intercourse which is consistent with the interests of the community, it does not impede navigation in any essential degree, so as to conflict with the powers granted to the general government, to regulate commerce, is lawful.

2. When the public interests and convenience demand the erection of such a bridge over a navigable stream, the interests of individuals or of a particular locality should be regarded as subservient to the general welfare; and however great the individual interest may be, it must be submitted to for the public benefit.

3. A State, by virtue of its sovereignty, may exercise certain rights over navigable rivers, subject, however, to the paramount power in Congress to regulate commerce as provided in the Constitution of the United States. These powers are not concurrent, but separate and independent of each other; and in regard to the exercise of this power by a State, there is no other limit than the boundaries of the federal power.

4. The grant of authority to construct a draw-bridge across navigable waters, so as not materially to impede navigation, is one of those general powers possessed by a State for the public convenience and welfare, and may be exercised, provided it does not infringe on the federal powers.

5. The duty of the government is quite as imperative to protect and regulate the road across as up and down the channels of navigable rivers; and it is a well settled doctrine of law that the privilege of navigating the river is not paramount to, but only co-equal with the privilege of crossing it. It has been well said :

“ Commerce in its infancy, is of necessity chiefly confined to the channels of water courses. Weakness, poverty, or the absence of art or science, are unable in the earlier stages of society, to supply more eligible or efficient modes for its prosecution, or to overcome the difficulties attendant on transportation off the water. Hence we see the rude essays of commerce commencing with the raft, the canoe or the batteau; but as wealth and population, science and art advance, we trace her operations to the magnificent ship or steamboat, each adapted to its proper theatre. Does not this very progress and the advantages which are their concomitants, glaringly expose the folly and injustice of all attempts at the restriction of commerce to particular localities, or to particular interests or means of circulation? All her operations to be confined to a passage up and down the channels of water courses, impracticable for navigation for protracted periods, and whose capacity is always dependent on the contributions of the clouds. *Aviditas cali aut nimius imber.* Would not such a narrow policy be a proclamation to commerce, inhibiting her advancement; and to the hundreds of thousands situated without her permitted track, that the wealth, the luxuries and comforts of civilization and improvements, if to be enjoyed by them at all, are to be obtained only at far greater expense and labor and in an inferior degree than they are enjoyed by more favored classes? These positions are strikingly illustrated by the experience of our own times, and indeed of a very brief space. Thus, notwithstanding the high improvement in navigation by steam and by sails, which seems to have carried it to its greatest perfection, we see the railroad in situations where no deficiency of water and no artificial or natural obstruction to vessels exist, or are complained of, stretching its parallel course with the track of the vessel, tying together as it

were in close contiguity and connecting in habit and sympathy and interest, remote sections of our extended country, which for any aid that the navigation on our rivers could afford, must ever remain morally and physically remote. The obvious superiority of the railroad, from its unequaled speed, its greater safety, its exemption from dependence upon wind or on depth of water, but above all its power of linking together the distant and extended regions interposed between the rivers of the country, spaces which navigation never can approach, must give it a decided preference in many respects to every other commercial facility, and cause it to penetrate longitudinally and latitudinally, *longe et late*, the entire surface of the country."

This case presents another question of much importance and considerable seriousness, not entirely free from doubt and difficulty, which, is become the duty of the committee to consider, and submit such views in regard thereto, as its magnitude demands.

The question is, has a State Legislature jurisdictional power to authorize the construction of a bridge which shall in the least interfere with navigating rights in the free and unobstructed navigation of frontier waters, which divide our Territory from the British Provinces in North America, common to the citizens of the United States and the subjects of Great Britain, under treaties between the two Governments? It is claimed that the grant for and erection of a bridge over Niagara river, as proposed, would be inconsistent with the treaty stipulations between the United States and Great Britain, by which the unobstructed navigation of that river was and is guaranteed to each other. The position is, the Legislature of a State cannot grant a charter for bridging any such river, and nothing short of the joint consent of the United States and the Imperial Government can remove the legal and constitutional obstacle.

Can this doctrine be well sustained by authority and upon principle?

Citizens of this State and of several of the Western States, who have remonstrated against bridging Niagara river, allege that

that river where navigable, is an international public highway, free and open to the citizens of the United States and the subjects of Great Britain by express treaty. As authority for the allegation, they refer to the 3d article of Jay's treaty, so called, of the 19th November 1794 ; which is by the Constitution of the United States the supreme law of the land, and places the whole subject beyond the reach of State authority and jurisdiction ; and that the first step in securing the object of building the bridge must be a new treaty with Great Britain.

The Legislature of the State of Michigan, in its late session, passed joint resolutions relative to the bridging of the Niagara river ; in and by which that State has declared that all navigable frontier waters between the United States and the British Provinces are international public highways, the free and open use of which is secured by express treaty to the citizens of the United States and the subjects of Great Britain ; and that no power exists in any State of this Union to obstruct the navigation of those waters by bridges or otherwise ; and the Legislature of Michigan remonstrate and protest against any such obstruction to a navigation in which that State with the other States bordering on the North-western Lakes have a common and inalienable right.

The treaty, to which reference is made, is the treaty of Amity, Commerce and Navigation, between the two Governments, made at London, the 19th of November 1794. One object of it is stated to be, " To regulate the commerce and navigation between their respective countries, territories and people in such a manner as to render the same reciprocally beneficial and satisfactory. The 1st article establishes Peace. The 2d article provides for the withdrawal of British troops from the United States, and declares the privileges allowed to settlers and traders.

Then the 3d article regulates the commercial intercourse between the two parties on the continent of America, the subjects of Great Britain and the citizens of the United States, freely to pass and repass by land or inland navigation into the respective

territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But this article does not extend to the admission of vessels of the United States into the sea-ports, harbors, bays or creeks in the British territories; nor into such parts of the rivers in such territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under regulations to prevent the possibility of fraud in that respect; nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The Mississippi river, according to the treaty of peace, to be entirely open to both parties; and that all the ports and places on its eastern side, to which of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places in Great Britain. The article goes on to provide regulations in regard to the importation of goods, &c., the levy of entry duties, and to tolls or rates of ferriage, and also in regard to the carriage of goods, &c., over any of the portages or carrying places on either side. Then it concludes as follows: "As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed, that the respective governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein."

The liberty of commerce and navigation between the British European dominions and the territories of the United States, established by the 14th article of the treaty, was limited by the 28th article to twelve years from the day on which the ratification of the treaty was exchanged.

In an explanatory article, of the 4th of May 1796, it was explicitly agreed and declared—that no stipulation in any treaty subsequently concluded by either of the contracting parties with any other state or nation, or with any Indian tribe, should be understood to derogate in any manner from the rights of free intercourse and commerce, secured by the said 3d article of the treaty of amity, commerce and navigation, to the subjects of Great Britain and to the citizens of the United States ; but that all such persons shall remain at full liberty freely to pass and repass by land or inland navigation, into the respective territories and countries of the contracting parties, on either side of the boundary line, and freely to carry on trade and commerce with each other, according to the stipulations of the said 3d article of said treaty.

By the 4th article of the Reciprocity Treaty with Great Britain, of the 5th of June 1854, it is agreed that the citizens and inhabitants of the United States shall have the right to navigate the river St. Lawrence and the canals in Canada, used as the means of communicating between the great lakes and the Atlantic ocean, with their vessels, boats and crafts, as fully and freely as the subjects of Great Britain ; subject only to the same tolls and other assessments as are now and may hereafter be exacted of British subjects ; the British government retaining the right of suspending this privilege on giving due notice thereof to the government of the United States. If at any time the British government should exercise that right, the government of the United States can suspend the operation of the 3rd article of the treaty, which admits into each country, free of duty, certain articles being the growth and produce of the British provinces, or of the United States, in so far as the province of Canada is affected thereby, for so long as the suspension of the free navigation of the river St. Lawrence, or the canals may continue. And further that British subjects shall have the right freely to navigate lake Michigan with their vessels, boats and crafts, so long as the privilege of navigating the river of St. Lawrence, secured to American citizens as above, shall continue ; and the government of the United States engages to urge upon the State

governments, to secure to the British subjects the use of the several State canals, on terms of equality with the inhabitants of the United States.

So far as the committee are informed, or have been able to ascertain, these are the treaty stipulations between the two governments, bearing on the subject of bridging Niagara river as proposed by the petitioners.

The opponents to the bridge insist that an enactment by the Legislature of this State, incorporating a company with power to associate with any other persons, company, association, or corporation in Canada, for the construction and management of a bridge across the Niagara river, as proposed, would be in such conflict with the treaty making power and the Constitution of the United States and the power of Congress, that it would be unconstitutional and void.

The Constitution of the United States, gives the power to make treaties to the President, by and with the advice and consent of the Senate. Congress has power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes; and to make all laws necessary and proper to carry into execution this power so to regulate commerce. And the Constitution provides for the limitation of the powers of the States, declaring, among other things, that no State shall enter into any treaty, alliance, or confederation; nor, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people; and the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. And, it is declared, that this Constitution, and the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land.

Such are the Constitutional provisions having relation to the subject of bridging Niagara river.

As having some influence on the construction which should be given to the Constitution, reference may be usefully made to the political situation of the States, anterior to its formation. They were then sovereign, independent, and connected with each other only by a league. When these allied sovereigns converted their league into a government, "and their Congress of Ambassadors, deputed to deliberate on their common concerns, and to recommend measures of general utility, into a Legislature, empowered to enact laws on the most interesting subjects, the whole character in which the States appear, underwent a change, the extent of which must be determined by a fair consideration of the instrument, by which that change was effected."

It will be a safe rule for construing the extent of the powers granted by the people to their government to follow the natural sense of the words used and the language of the instrument which confers them, taken in connection with the purposes for which they were conferred. The enlightened patriots who framed the Constitution, and the people who adopted it, must be understood to have employed words in that sense, and to have intended what they have said.

Of the power given to Congress to regulate commerce as conferred by the Constitution, the committee would submit that the power of regulating commerce, extends to the regulation of navigation. Commerce, as used in the Constitution, is something more than mere traffic, buying and selling, or the interchange of commodities. While it is traffic, it is also intercourse and navigation regulated and carried on with foreign nations, among the several States, and with the Indian tribes.

The committee are of the opinion that Congress has the exclusive power, under the Constitution to regulate commerce as above defined. Another commercial power is that which the federal government exercises in its sovereign and legislative capacity. It has regulated commerce on the navigable rivers of the United States, so far as navigation by vessels and steamboats are concerned, and ports of delivery have been established. There is no common law in regard to regulations of navigation. These must be adopted to the peculiar circumstances of a coun-

try, and the facilities which exist for traffic. In this respect, the legislation of Congress is the only mode of regulating commerce known to the Constitution.

The committee are also of the opinion, that under the commercial power Congress may declare what shall constitute an obstruction or nuisance, by a general regulation, and provide for its abatement by indictment or information through the Attorney General. But it is equally clear and sound, that, under this power, or the power to establish post roads, Congress cannot construct a bridge over a navigable water. This belongs to the local or State authority, within which the work is to be done; but this authority must be so exercised as not, materially, to conflict with the paramount power of Congress to regulate commerce. If Congress can construct a bridge over a navigable river, under the power to regulate commerce or to establish post roads, on the same principle it may make turnpike roads or railroads throughout the entire country. The latter power, in the opinion of eminent jurists, becomes exhausted in the designation of roads for carrying the mails; and the former power also becomes exhausted by the regulation of commerce upon the high seas, and upon our lakes and rivers. This doctrine was held by Mr. Justice McLean in the Rock Island Bridge case.

If being declared by the Constitution of the United States that the President shall have power, by and with the advice and consent of the Senate, to make treaties; and that no State shall enter into any treaty, it is clear, of which there can be no question or doubt whatever, that the States have no treaty making power. Even, with the consent of Congress, a State cannot exercise that power. It is an absolute inhibition to the several States.

It is equally clear and certain that no State can enter into any alliance or confederation. Alliance means union by treaty; confederation means alliance by league or stipulation. These belong to the treaty making power, and may be deemed considered under that head, so far as the presentation of the views of the committee may be concerned.

The limitation that no State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power, is a qualified one: meaning, that with the consent of Congress, a State may enter into agreements and compacts with other States, or with foreign powers, or both. This also implies that such an agreement or such a compact, is, in its nature and extent, less national than an alliance or a confederation, and pertains primarily, to State jurisdiction and sovereignty; but, having more or less relation to general interests and public rights, the power is to be exercised with the consent of Congress.

If a grant for the incorporation of the proposed bridge company should be considered in the nature or purview of such an agreement or compact, as the Constitution contemplates and limits the States from entering into only with the consent of Congress, it would be no insuperable objection, in the opinion of the committee, to the exercise of the authority by the Legislature. The consent of Congress to the grant could, as effectively for the removal of any constitutional difficulty or question, be obtained after its passage, as if had and obtained before the enactment. But, the committee submit, that so far as the jurisdiction of the State extends over the frontier waters of the Niagara river, and it is co-extensive with that of the United States, excepting the regulation of commerce and the exercise of other powers delegated to Congress, the grant of authority to bridge the navigable waters of that river is not an agreement or compact with a foreign power. It would be no more such an agreement or compact with a foreign power, than was the enactment of the Legislature of 1846, incorporating the Niagara Falls ferry association, for the purpose of establishing and maintaining a steamboat ferry across the Niagara river. A bridge is a substitute for a ferry. It would be no more such an agreement or compact with a foreign power than was the passage of "An act to incorporate the Niagara Falls International bridge company," by the Legislature of that year, with power to construct or to associate with any other persons, company or association, for the construction, maintaining and managing of a bridge across the

Niagara river at or near Niagara Falls. The bridge was, according to the grant, constructed, and has been and is managed and used for the passage of foot passengers, carriages, teams and railroad trains. No question has ever been raised, or at least maintained, that the construction, management, or use of said bridge, was or is in conflict with the Constitution or Laws of the United States, or with any treaty between Great Britain and the United States, or any stipulation in any such treaty.

The only difference between the Niagara Falls bridge and the proposed bridge is, that the river at the site of the former is not navigable on account of its rapid current, while at the proposed site of the latter it is navigable.

If the proposed bridge would be, *per se*, in conflict with the treaty making power, or with any treaty between Great Britain and the United States, or with any stipulation in any such treaty, or with any provision of the U. S. Constitution, then the Niagara Falls International bridge company must be in such conflict, and therefore unconstitutional; no consent of Congress having been obtained thereto, to the knowledge or belief of the committee. In that view the navigability of the river would be immaterial. It cannot well be that any one will attempt to maintain that position; it would be to maintain the absurd doctrine that commercial facilities, of common advantage to both governments, can be inconsistent and incompatible with, and repugnant and hostile to a treaty which had and has for its object, in the establishment of peace, the regulation of commerce in such a manner as to render it reciprocally beneficial.

Therefore, the conflict, if any, must arise from an obstruction to or interruption of navigation. The obstruction or interruption must be something more than fanciful, imaginary, or slight; more than some inconvenience to those navigating the river; it must be real, substantial and irreparable. It would not be enough that the bridge would subject them to slight additional delays, or impose on them the necessity of increased vigilance, or greater care, or even require them to abandon an accustomed track or place of business; for the same commercial rules and principles, hereinbefore laid down and sustained by authority,

must necessarily apply to the navigation of Niagara river. As there is nothing in the treaties between Great Britain and the United States, which either enlarges or lessens the commercial power, or navigating rights common to all navigable waters, whether frontier or inland.

Finally, it is apparent that the proposed bridge, if properly constructed and well managed, at or near the site indicated, would facilitate the commercial intercourse of the subjects of Great Britain in the Provinces of Canada, and the citizens of the United States, and greatly aid them to pass and repass, at that point, into the territories and countries of the two governments; while, it would not materially impede them in the navigation of the river, and not at all hinder or prevent them to carry on trade and commerce with each other. And, such a bridge would directly, and greatly tend to render, in an eminent degree, the local advantages of each party common to both, and thereby promote a disposition favorable to friendship and good neighborhood. This is the spirit and the purpose of the treaty, which is in harmony with the object of the bridge. Both are consistent and compatible with each other.

It is equally true, that the bridge would give facilities to aid in carrying out the objects and purposes of the reciprocity treaty.

A measure, which affords commercial facilities in aid of, and in harmony with a treaty, cannot be said to conflict with it.

In view of the whole case, believing that the public interests require the construction of the proposed bridge, and that it will not materially obstruct the navigation of the river, or interfere with vested rights, the committee submit for the consideration of the Legislature the bill herewith reported, entitled "an act to incorporate the International Bridge Company."

All which is respectfully submitted.

E. J. RICHARDSON,
Chairman.

