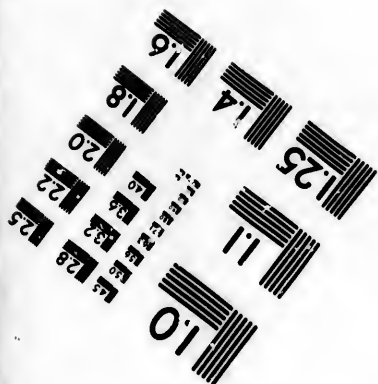
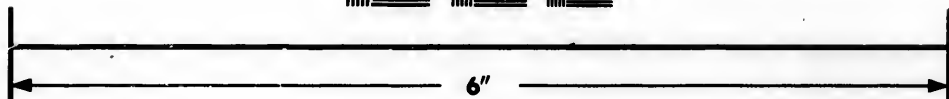
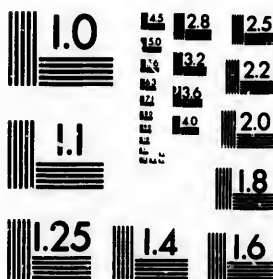


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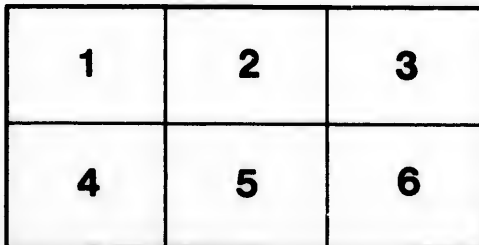
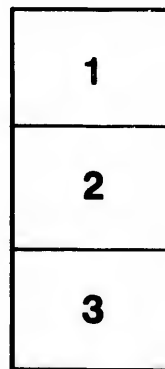
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ANSWER AND REMONSTRANCE

OF THE

**American Telegraph Company**

TO THE

MEMORIAL

OF THE

**Magnetic Telegraph Company,**

AND THE

**NEW ENGLAND UNION TELEGRAPH COMPANY.**

APRIL 20, 1858.



## ANSWER AND REMONSTRANCE.

---

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED.

The answer and remonstrance of the American Telegraph Company, to the "Memorial" of the Magnetic Telegraph Company, and the New England Union Telegraph Company, and the supplement thereto, which memorial bears date, March 10th, 1858, and is signed by Amos Kendall and others, Committee, &c., respectfully represents :

That said memorial prays for the passage "of a general law " which shall prevent combinations between citizens or companies " in the United States, and monopolists or companies out of the " United States, for the purpose of oppressing Telegraph Companies and monopolizing the business of telegraphing in the United " States, and shall enable all telegraph lines in the United States " to form connections with all telegraph lines approaching their " borders, on terms of perfect equality."

Your remonstrants find it difficult to believe that Congress could, in any event, be induced seriously to contemplate the passage of such a law, striking as it would, without cause, at the ordinary business arrangements of companies acting under, and amenable to the laws of the States or Governments by which they are created ; and as your remonstrants believe, interfering unnecessarily, to embarrass communication with other countries, to discourage enterprise, and to give to one the fruits of the labor and expenditure of another.



Your remonstrants beg leave to submit the following reasons against the passage of such a law.

It is asked for by *two* only of the *ten* or *twelve* leading Telegraph Companies of the United States.

The grievance complained of is, that the pecuniary interests of these two companies are not to be benefited to the extent they had anticipated, in the event of the successful completion of the Atlantic Telegraph; while it is a fact that the memorialists, though repeatedly invited, have refused to contribute any part of the capital required for such Atlantic Telegraph, but on the contrary have opposed the enterprise before Congress, and through the public presses under their control, as well covertly as openly.

The injustice of such a law will be apparent when it is considered that parties, who by the expenditure of millions in an undertaking of the greatest hazard, should establish communication from the political or commercial capital of the United States to Europe, would find themselves compelled, in the event of success, to turn over at the frontier an equal share of the business to those who had incurred no risk, who might be wholly irresponsible, and who could perform the service only in a most inferior manner, without forfeiting their claim to equal consideration with the best.

It is worthy of consideration also whether a Telegraph Company receiving important dispatches in a foreign country for transmission to Washington, or to New-York, and transferring them at the frontier to another, in whose hands they should be delayed, altered, or lost, would not be held responsible for the damage resulting from such delay, error or loss, and be themselves without remedy.

And if it be proper that telegraph lines crossing the boundary of the United States should be compelled to transfer at that point to other parties a portion or all of the dispatches which are destined for places in the United States, it would appear to be within the province of each State through which telegraph lines may run, to make a like provision relative to all lines approaching their borders.

If such a law be proper in relation to telegraph lines, it would

be equally so if applied to railroad, steamboat, express and transportation companies.

The law sought by the memorialists is designed solely for *their* benefit, *all* of the other leading telegraph companies of this continent being entirely satisfied with their arrangements for connection with the Atlantic line.

It would, therefore, though professing to be general in its character, have the most obnoxious features of special legislation.

Although the memorialists profess to be prompted only by a desire to share in the business coming over the Atlantic line, they ask for a law which would equally embarrass communication with Canada or the other British Provinces, or with Cuba or Mexico.

The law sought for would interfere with contracts that have been in force for many years between Telegraph Companies, the propriety of which has never been called in question, and for some of which valuable considerations have been given.

Your remonstrants do not comprehend why such a law should be made applicable to telegraph lines approaching the *borders* of the United States, any more than to those which are wholly within the United States; and yet the memorialists admit in said memorial that they have "combined together for mutual defence for thirty years, and made contracts of the same duration with other parties."

The business of telegraphing has hitherto been left to private enterprise, and to the regulation of the several States; can it now be transferred constitutionally to the jurisdiction of the General Government? A provision of the Constitution confers upon Congress the authority "to regulate commerce with foreign nations and among the several States." Does the word "commerce," for which the memorialists have strangely substituted the terms "trade and intercourse," apply to telegraphing?

But if, in the wisdom of Congress, it should be determined that they have the power, under this or any other provision of the Constitution to legislate upon this subject, your remonstrants respectfully submit that no sufficient cause for the exercise of this power

has been shown ; and that the effect of such an application of it as the memorialists seek, would not only be of no benefit to the community at large, but an absolute injury to their interests.

Having presented some of the considerations opposed to the passage of such a law as is sought in the prayer of the memorialists, your remonstrants beg leave to reply to the more prominent charges and representations of said memorial, omitting, however, to notice much that is irrelevant, but to all of which they declare their ability to present a complete answer.

The principal charge of the memorialists is that your remonstrants have entered into a combination with the New-York, Newfoundland and London Telegraph Company, and the Atlantic Telegraph Company, and have made arrangements, the object of which is to use the power anticipated from the control over the Trans-Atlantic correspondence, for the injury, and if practicable, the destruction of the lines of the memorialists.

Your remonstrants aver, and are prepared to prove, that the only ground whatever for the charge of combination, above-mentioned, is the fact, that having the only lines extending east from Boston and to Nova Scotia, your remonstrants have entered into contract with the Newfoundland Telegraph Company for an interchange of messages ; and upon condition of receiving from said Newfoundland Company all of the dispatches it may have for transmission westwardly, your remonstrants have agreed to forward dispatches between Nova Scotia and New-York at rates sixty-five per cent. lower, the difference in distance being taken into account, than those charged upon the lines owned by the memorialists between Washington and Boston.

No other contract or understanding whatever exists, or has ever existed, between your remonstrants and either the Newfoundland or Atlantic Companies.

The contract above-mentioned is precisely similar to those which have been for many years almost universal between the telegraph lines in the United States, and is much less a " combination " than that admitted in said memorial to exist between the memorialists

themselves, wherein they have "combined together for mutual protection for thirty years, and have made contracts of the same duration, for connection with other lines."

Such exclusive connection has existed for more than ten years past, between the two companies uniting in said memorial.

Previous to any arrangement being made between the Newfoundland and the American Companies, an agreement was entered into conditionally by the former with one of the memorialists, the New England Union Telegraph Company, in which it was agreed that an exclusive connection should exist between those companies for twenty years, with the further obnoxious provision—

*(Extract from the contract, dated May 9, 1855,)*

"That the Newfoundland Company shall exert themselves, to connect with the New England Union Line, at Boston, so that all business from and to Europe shall come first to, or start last from New-York, over the lines of the New England Union Company."

By this arrangement, all messages coming from Europe for Boston, or any other place east of New-York, were first to be transmitted to New-York, and thence returned to the place of their destination—thus securing to the New England Union Company double tolls; and in like manner, every message from Boston or other places in New England, destined for Europe, was to be first sent to New-York, and thence forwarded to Europe. This agreement was cancelled by notice which the Newfoundland Company had reserved the right to give. If this contract had continued in force, it is not probable the New England Union Company would have made any complaints of the impropriety of exclusive connection with the Newfoundland Company; and the Magnetic Company, the other memorialist, between whom and the New England Union Company an exclusive combination exists, and who would, therefore, have enjoyed a portion of the advantages, appeared to see no objection to such connection.

Said Magnetic Company has always maintained its right to connect with such lines as it pleased, and at this time refuses to re-

turn to the Washington and New-York "House" line any messages from the Washington and New Orleans line which is under its control.

They have also for many years refused to accede to the demand of the Baltimore and Wheeling line, that dispatches from Washington, or points south thereof, destined for Cincinnati, Louisville, St. Louis, and other points, should be forwarded from Baltimore by that line; and have connected exclusively for the West with lines leading from Philadelphia, via Pittsburgh—although the former was the most direct route, and, as its proprietors claimed, was entitled to such business by the terms of the conveyance of patent received from Prof. Morse through the gentleman who stands at the head of the memorialists.

The gentleman most prominent among the memorialists in behalf of the New England Union Telegraph Company—who owns more than one-half of its stock, and who formerly owned most of the line between Boston, Mass., and Portland, Maine, then the only line between those points—took the responsibility, for purposes of his own, of refusing to allow the transmission over said line of any messages whatever coming from, or destined to pass over, the lines in the Province of Nova Scotia; and continued in this high-handed manner to embarrass communication with that Province, until other parties, to whom your remonstrants have succeeded, bought said line of him on his own terms.

As further evidence that the complaints of the memorialists are not founded in the sincere belief that the arrangements of your remonstrants for connection with the Newfoundland Company, or with companies in the United States, are of an improper character, your remonstrants charge that the memorialists have themselves perseveringly sought to effect *perpetual* arrangements more stringent in their character than those which are made the ground of their complaint.

In July last, at the invitation of the gentleman first among the memorialists, a meeting of ten of the principal Telegraph Companies of the United States was held, and a proposition was then sub-

mitted *by him*, which contained, among other provisions, the following:—

“The several companies, parties hereto, bind themselves to each other to connect exclusively, as far as practicable, with the lines of such existing companies as may become parties to this agreement, and in no event to connect with any new line which may be gotten up in opposition to, or to the obvious injury of any existing line.”

“This agreement shall take effect as soon as ratified by any three of the companies, and shall be perpetual.”

Your remonstrants were present at said meeting, and were invited to join in this agreement. Their lines extended then, as they now do, to the Province of Nova Scotia. Had they acceded to the proposition, the memorialists would have been content; but any parties who might hereafter have extended lines to the frontier, would have had the very same ground of complaint against the memorialists, that they now claim to have against your remonstrants.

The patriotism and solicitude of the memorialists are only excited when they regard their pecuniary interests as likely to be affected.

At the time of the meeting above-mentioned, and directly thereafter, it became evident to your remonstrants, that unless they would accede to terms dictated by the memorialists, their design was to effect a combination in opposition to your remonstrants, and to certain Western and Southwestern companies. As the proposition above quoted shows, the agreement was to be binding upon the companies signing it, as soon as *any three* should ratify it.

For twelve years the memorialists have made every effort to prevent competition in the business of telegraphing, and have enjoyed the protection of a patent which has been in force eighteen years; and, having been notoriously wanting in the spirit of progress, they now ask for legislation which would compel the enterprising to share with them the well-earned reward of their risk and expenditures. And this they presume to ask, when they have not only

declined to participate in the hazard and outlay of the enterprise, but have endeavored, by ceaseless opposition, to embarrass its progress.

It is not denied by your remonstrants that all of the companies represented at the meeting in July, excepting only the memorialists, have united in an agreement for their mutual benefit, and for the more prompt interchange of business, but without increasing rates, or otherwise combining to the disadvantage of the public.

And your remonstrants respectfully represent that, as they believe, none of the arrangements made by them in any way violate the legal or moral rights of any parties; and they aver that no parties have more readily entered into such arrangements than the memorialists who now ask at your hands legislation for their protection.

Your remonstrants deny that they have, either alone or in combination with others, endeavored to force the memorialists to surrender their property; and aver that they have had no desire to bring about a connection with the lines of the memorialists for any other purpose than that, in the legitimate and proper extension of their own lines, they might avoid a collision of interests with the memorialists, and, at the same time, have lines extending to Washington, in order to facilitate communication from their other lines; to adopt improved systems of telegraphing, more rapid and more perfect; and to reduce the rates between New-York and Washington, now higher than in any other part of America, in order that their other lines might be benefited and their patrons better served.

For this end they have repeatedly sought to effect an amicable arrangement with the memorialists.

In November last your remonstrants proposed to lease the property of the Magnetic Company for ten years, paying to them an annual rent equal to thirty per cent. upon the cost of new property, superior in every respect to theirs, and covering the same routes; but the offer was rejected.

Subsequently negotiations were opened between the memorialists and your remonstrants, for the purpose of doing away with the

prospective antagonism, by a union of interests ; and on the 23d of December last the following memorandum was agreed upon :—

“Memorandum of an understanding between the Magnetic, American, and New England Union Telegraph Companies, subject to ratification.

“Let each of the three furnish to the other two a statement of the proportions of a given amount of stock—say, for example, \$1,200,000—which they think it right for them to claim in a consolidated company, with the statistics of their receipts and expenses, and every fact on which their claim is based, with proofs.

“Let each appoint a committee of one, with full power to consider and adjust the amount to be assigned to each.

“If the committees cannot unanimously agree, each company to select a disinterested person, and the unanimous decision of the three shall be final. No person to be selected as an arbiter who is objected to by either of the companies.

(Signed.)

“For the American Company,

“PETER COOPER, *President.*

“For the Magnetic Company,

“AMOS KENDALL.

“For the N. E. Union Company,

“JOHN McKESSON.

“NEW-YORK, *Dec. 23d, 1857.*”

Three days afterwards, your remonstrants, by one of their directors, sent the following communication to the representative of the Magnetic Company :—

“NEW-YORK, *Dec. 26th, 1857.*

“HON. AMOS KENDALL :

“DEAR SIR :—Permit me to hand you enclosed a copy of the memorandum of the 23d inst., and a letter addressed to Wm. M. Swain, Esq., President, &c., which I send to you, as we understand Mr. Swain is absent at the south.”

[The letter referred to was open, and contained an official copy of a resolution of the directors of the American Company, ap-



pointing one of their number a committee, in accordance with the above memorandum.]

"I am engaged in the preparation of the schedule to be furnished to the other two companies, and shall be pleased to receive theirs at their convenience.

"As the committee, on the part of this company, to meet with like committees from the others, I shall be prepared to meet them at any time they may agree upon."

The Secretary of the American Company received in reply the following:—

"WASHINGTON, *Dec. 30th*, 1857.

"DEAR SIR:—I deem it my duty, in courtesy to your company, to inform you that letters received this day from Mr. McKesson, render the accession of the New England Union Company to the provisional articles recently agreed upon by Mr. Cooper, Mr. McKesson and myself, entirely hopeless.

"Sincerely regretting that our labors have not led to a pacific result, I must consider the project of the union of the three companies at an end—at least for the present.

"Very respectfully,

"Your ob't servant,

"AMOS KENDALL."

It will, therefore, be evident that the representations of the memorialists to the effect that your remonstrants have sought to oppress them, are unfounded; and that, on the contrary, the memorialists have had every opportunity to participate in any advantages your remonstrants may have secured, but have of their own choice declined so to do.

Your remonstrants respectfully represent, that they are not aware that the memorialists have any prescriptive right to the telegraphing business between Washington and New-York, and therefore do not feel the force of the complaint of the memorialists that they are to be deprived of their local business; although your remonstrants admit, that if such local business should be

materially reduced, the Magnetic Company could scarcely expect to make dividends of twenty-four per cent. per annum, as they have done in past years, upon the cash capital actually paid in.

They will experience from your remonstrants none but open and fair competition; and if their adherence to old systems of telegraphing, or their prudence or want of enterprise, shall prevent them from sowing in new fields, your remonstrants see no reason that they should be permitted to reap harvests therein.

Your remonstrants further respectfully deny that the Atlantic, Newfoundland and American Companies are one in interest, or that they have ever been one and were separated for any purpose whatever; though it is not denied that some of the stockholders in the American Company are also owners in the others.

A large majority in numbers and in interest, in each of the companies, has no interest in either of the others.

It is respectfully submitted, therefore, that the solicitude manifested by the memorialists, lest one of the companies charged should hold more than its just share of benefits, is needless.

While your remonstrants might with propriety leave the foreign companies complained of, to answer to the authorities by whom they were created and are governed, yet they are unwilling that a misrepresentation of those companies here, should be made the ground of unfriendly legislation by Congress.

In 1853, a company obtained a charter from the Province of Newfoundland, for the purpose of enabling them to erect telegraph lines therein, and to connect them with the continent of America. This company having been compelled, after the expenditure of a large amount, to discontinue the work from want of means, applied to the parties now composing the New-York, Newfoundland and London Telegraph Company, and induced them to purchase the rights acquired under said charter, to pay about \$70,000 to cancel the indebtedness then existing, and to undertake the completion of the enterprise.

Incessantly since 1854, and in the face of the greatest discour-

agements, said Newfoundland Company has energetically pushed forward the undertaking.

Their lines through the Province of Newfoundland and the Island of Cape Breton, were constructed with great difficulty, and at an expense unavoidably exceeding, as your remonstrants are prepared to show, by more than tenfold, the cost of lines of like extent in the United States.

In 1855 their effort to lay a cable across the Gulf of St. Lawrence was unsuccessful. A second cable was procured and laid in the following year.

They have already expended more than \$800,000, and have realized no return from their investment ; but, on the contrary, the line is now worked at a loss.

In 1856 the Atlantic Company was formed in England, through the earnest efforts of one of the Directors of the Newfoundland Company, who manifested his confidence in the enterprise by incurring individual responsibility for more than \$400,000 of its stock.

This stock he offered *at cost* to any parties in America, but not a share was taken by the memorialists, who now demand that the Government shall secure to them advantages likely to result from the risks incurred alone by some among your remonstrants. and others, with whom they are charged to be improperly confederating.

Your remonstrants beg leave to say that the Director above referred to has, in addition to the sacrifice of his own valuable private business, paid for and still holds no less than \$130,000 of the stock of the Atlantic Company, making his individual outlay, including his investment in the Newfoundland Company, to exceed \$300,000 ; no part of which is as yet productive.

After the sacrifices he has made, and the risks he has taken to secure the success of this most important undertaking of the age, the fate of which is still uncertain, it is most unjust that he should be assailed, as he is in said memorial, and that unworthy insinua-

tions of mercenary motives should be thrown out in regard to him, when he so richly merits distinguished honor.

His *individual* investment in the hazardous experiment of establishing telegraphic communication between the continent of America and Ireland, is greater than the actual cost of the whole of the lines owned by the memorialists.

Your remonstrants respectfully submit that the representations of the memorialists, that inordinate gains are to be reaped by individuals from the Atlantic line, are based wholly on *estimates of probable* profits, and form no good reason for legislation likely to embarrass the enterprise, at a time when the result is uncertain, especially as the governments have reserved the right to regulate the tariff of rates.

Your remonstrants are aware of the great benefits conferred upon the enterprise of the Atlantic telegraph by the governments of Great Britain and the United States, in permitting the use of vessels of their navies to assist in the great work; but neither government has been called on to contribute anything further towards the cost of the work; and the annual sum which they have agreed to pay for the transmission of their dispatches does not begin to accrue until the line is in successful operation. And so soon as the enterprise yields a return of six per cent. to the company, the amount which each government is bound to pay is limited to fifty thousand dollars per annum.

The Atlantic Company has, as yet, received no appropriation of money in aid of its undertaking, from any source.

Shares of the Atlantic Company which cost the subscribers £1,000 each, have been freely offered as low as £500, and many of the original shares are now upon the market at a price far below their cost.

It is not known to your remonstrants that any underwriter of responsibility in the world will insure upon the next attempt to lay the cable.

Your remonstrants beg leave further to state, that while indi-

viduals among their number have made great exertions to secure the successful completion of the Atlantic line, there have been parties, encouraged, as your remonstrants believe, by the memorialists, who have sought first from the Legislature of the State of New-York, and subsequently from the Provincial Parliament of Canada, a charter for a rival Atlantic line.

Your remonstrants do not deny, that, under these circumstances, and the impossibility of obtaining the necessary capital without some such arrangement, the Newfoundland and Atlantic Companies did obtain from Eastern States and Provinces, assurances, which were cheerfully granted, that they should enjoy alone for a specified period, the right of connecting an ocean line to the coast, in order that their investment might be saved from utter destruction, if haply a successful issue should crown the Atlantic enterprise.

To this extent only are the Companies named open to the charge of *monopoly* so prominently set forth in said memorial.

Your remonstrants respectfully submit that it is not unreasonable that a work of such vast cost as the Atlantic Telegraph, being wholly of an experimental character, should receive at least as much encouragement as an *invention* for which patents are granted. The memorialists are in the enjoyment of a patent which has been made to cover a period of twenty-one years.

The lines of the memorialists extend eastwardly, only to Boston, and were erected many years ago, with no reference whatever to a connection with Europe.

Having hazarded nothing in the experiment of the Atlantic line, or in the costly constructions of the Newfoundland Company, but, on the contrary, having opposed the former to the limit of their power, the memorialists now demand, for *their protection*, that they shall be permitted to share in the prospective benefits of these undertakings.

Confidently believing that Congress will regard the general considerations first presented, to which others equally forcible might

be added, as in themselves amply sufficient to require the denial of the prayer of the memorial, your remonstrants respectfully submit that the peculiar circumstances of the case afford important additional reasons in opposition to the desired enactment.

*April 20, 1858.*

PETER COOPER,  
WILSON G. HUNT,  
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