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**CORRESPONDENCE**

OF

**THE WATERING COMMITTEE**

WITH THE

**SCHUYLKILL NAVIGATION COMPANY,**

IN RELATION TO

**The Fair Mount Water Works:**

TOGETHER WITH

*The Reports of the Watering Committee*

**TO COUNCILS,**

Made Dec'r. 11, 1832, and Feb'y. 11, 1833.

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*PHILADELPHIA:*

PRINTED BY LYDIA R. BAILEY,

NO. 26 NORTH FIFTH STREET.

1833.

*In Select Council, December 13, 1832.*

*Resolved,* That the Watering Committee be, and they hereby are, authorized and empowered to take all such measures as they may deem expedient, to secure and protect the possession and interests of the City in the Locks, Canal, and other property at Fair Mount—to prevent injury to the same—and to seek redress for any encroachments which may have been already, or may hereafter be made thereon.

*Common Council concurred.*

*Extract from the Minutes.*

ARCHIBALD RANDALL,  
*Clerk of Select Council.*

JOHN P. WETHERILL, Esq.

# REPORT

OF

## THE WATERING COMMITTEE,

&c., &c.,

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*To the Select and Common Councils  
of the City of Philadelphia:—*

The Watering Committee respectfully report—

That the annexed documents will exhibit a state of things which renders an appeal to Councils expedient: and the Committee respectfully ask for such instructions as the case requires.

Shortly before the election of the present Councils, a letter was addressed to the then Chairman of the Watering Committee, (William J. Duane, Esq.) by the President of the Schuylkill Navigation Company, which is annexed, dated October 2d, 1832.

After the present organization of the Committee, a reply was sent to the above, by the Chairman, dated the 15th November 1832.

To this the President of the Schuylkill Navigation Company answered, by his letter dated November 27, 1832.

An interview took place in consequence of the suggestions contained in this last letter. But the persons respectively representing the different interests, finding that a difference of opinion existed between them, which discussion was not likely to reconcile, separated without coming to any conclusion, and agreed to consider each other mutually free to adopt such course as might be directed by their several constituents.

The Committee then called for the opinion of the City Solicitor, upon the points of controversy which are likely to arise between the City and the Navigation Company, and it was promptly communicated in writing, and is annexed.

It appears that the Navigation Company are actually engaged in constructing works, of which the effect will be to appropriate to their use a larger supply of water than by the existing contracts they are entitled to. Measures appear thus to be called for, which will at the same time protect the important interests of the City, and put to rest questions which (whatever may be their merits) cannot fail to be injurious as long as they remain undetermined. For the character of these measures, and the general course which ought to be adopted, the Committee beg leave respectfully to refer themselves to the wisdom of Councils.

JOHN P. WETHERILL,

*Chairman of the Watering Committee.*

Attest. SAMUEL W. RUSH, *Register.*

*December 11, 1832.*

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#### AGREEMENT.

I do hereby engage and agree, under the directions of the Watering Committee, or their agent, to attend to the locks and other works connected therewith, situated on the west side of Schuylkill opposite the Fair Mount water works, and in all cases use my best exertions in opening and shutting the said lock-gates with care and expedition, whenever required by the masters of boats or other persons passing with rafts or any other kind of articles; and also engage to keep the canal and locks clear from impediments of fishing boats, filth, or any other thing not privileged by the laws of the Schuylkill Navigation Company, and will also use my best exertions to keep in order, and protect the walls and other parts of said works, from being injured by persons trespassing on said grounds, and further agree, that in case I shall not give full satisfaction in the performance of the duties as above mentioned, to remove forthwith, whenever required by the Watering Committee or their agent, from the premises, and give full and peaceable possession of the same, which I engage to keep in good order while under my charge.

It being understood that in consideration for the above duties to be promptly performed by me, that the said Watering Committee or their agent shall pay to me, as a full compensation,

twelve dollars per month, during the period of time that I shall remain in the employ of the said Watering Committee.

*Signed and sealed this second day of*

*November, eighteen hundred and twenty-five.*

JOHN GOTWALT. (SEAL.)

Witnesses present.

JOHN RUSSELL.

JOSEPH BOSLER.

FREDERICK GRAFF, (SEAL.)

*in behalf of the Watering Committee.*

I furthermore agree to enter into the book of account to be prepared for me, all sums received for the toll for boats passing through said locks which are entitled to pay, and to give a regular account of the same monthly, to the Treasurer of the Schuylkill Navigation Company, whose receipts for the payment of the same shall be exhibited to the Watering Committee or their agent, for inspection, at all times if required.

JOHN GOTWALT. (SEAL.)

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*Office of the Schuylkill Navigation Company,  
Philadelphia, February 4, 1832.*

DEAR SIR,

The board of managers deem it necessary to the public accommodation, that additional wickets should be put into the lock gates at Fair Mount, upon a plan which I pointed out to Mr. Graff. As it is necessary this should be done before the navigation opens on 1st March next, may I beg the favour of your early direction in the matter.

I am desired also to mention, that the lower end of the lock, and the head of the outlet canal, are very much choked with a deposite of mud or other materials, and that this also should be taken out before 1st March.

In calling your attention to this matter, I beg leave to mention that it is under the provisions of the agreement of 14th June, 1824.

I am, very respectfully,

Dear Sir, your obedient servant,

JOSEPH S. LEWIS, *President.*

WILLIAM J. DUANE, Esq.

*Chairman of the Watering Committee of Philadelphia.*

DEAR SIR,

Your letter has been submitted to the Watering Committee; and, although it is their duty and desire to observe scrupulously the faith of the City with your Company, they entertain a doubt whether the City is bound to do any "additional" work, such as you mention. The agreement specified what the City was to *make*, the Company accepted what was *made* as an execution of the agreement, and the City seems to be bound only to keep in order what was *made* and accepted. To make "additional" wickets, the Committee doubt their obligation; and will thank you to consider the question yourself. If your Company insist on the obligation on the City to make "additional" work, the matter shall be forthwith submitted to the decision of Councils.

Respectfully, yours,

W. J. DUANE, *Chairman.*

*February 16, 1832.*

JOSEPH S. LEWIS, Esq. *President, &c.*

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*Office of the Schuylkill Navigation Company,  
Philadelphia, February 17, 1832.*

WILLIAM J. DUANE, Esq.

*Chairman of the Watering Committee.*

DEAR SIR,

Your favour of to-day is received. My note of 4th instant had reference to another object beside the new wickets, namely, the clearing out of the upper part of the lower canal, and part of the lock, much impeded by sand or other deposite.

Will you do me the favour to furnish me with an answer on this head, previous to my submitting to the board your letter just received.

The board meet to-morrow at nine o'clock.

I am, very respectfully,

Your obedient servant,

JOSEPH S. LEWIS, *President.*

*Office of the Schuylkill Navigation Company,  
Philadelphia, October 2, 1832.*

WILLIAM J. DUANE, Esq.

*Chairman of the Watering Committee.*

DEAR SIR,

The very great increase of the trade on the Schuylkill, has rendered it indispensable to add to the facilities of the navigation by additional locks, which have already been applied in eight places.

At no place, however, has any improvement been so obviously required as at Fair Mount, in consequence of which the Board have deemed it necessary forthwith to build an additional lock there, between the old locks and the bank.

In doing this, it will be necessary to remove the present lock-tender's house, and measures are taking to erect another of larger dimensions in lieu of it.

When the original agreement was made with the City, it was stipulated that the locks should be so built as to allow a depth of three feet at all times. In every part of the old locks plenty of water is to be found, except at the outlet lock, where, although there are three feet of water on the mitre sill, it is not, in the present state of the coal trade so important to the City of Philadelphia, found to be enough. The Board wish, therefore, that this lock should be deepened at least one foot, but they are by no means of opinion that the City is bound to do this, under our agreement of 14th June, 1824.

The clashing of jurisdiction in the management of the works at Fair Mount, has suggested a consideration whether a different arrangement cannot be made, and upon this head they will be happy to confer with you at such early period as may suit your convenience.

I am, very respectfully,

Your obedient servant,

(Signed)

JOSEPH S. LEWIS, *President.*



*Office of the Watering Committee,  
City Hall, October 16, 1832.*

DEAR SIR,

At the last meeting of the Committee, Messrs. Toland, Lewis, and Gowen, were appointed a Committee, in conjunction with John K. Kane, Esq. City Solicitor, and Mr. Graff:

To consider the enclosed communication from Joseph S. Lewis, Esq. President of the Schuylkill Navigation Company, and to examine the agreements between the City and the said Schuylkill Navigation Company, to ascertain the rights and privileges of the City in relation to the locks, &c. opposite Fair Mount; and also to meet the Managers of the said Company, to hear their suggestions and offers in relation to the enclosed communication, and to report to the Committee.

Very respectfully,

Your obedient servant,

SAMUEL W. RUSH, *Register.*

HENRY TOLAND, ESQ.

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*Office of the Schuylkill Navigation Company,  
Philadelphia, October 24, 1832.*

DEAR SIR,

On the 2d instant I had the honour to address a note to Mr. Duane, the former Chairman of the Watering Committee, to which no reply has been received, doubtless owing to the change of the Committee.

As, however, the papers have probably been transferred to you, I take the liberty of calling your attention to my note:

And am, respectfully,

Your obedient servant,

JOSEPH S. LEWIS, *President.*

J. PRICE WETHERILL, ESQ.

*Chairman of the Watering Committee of Philadelphia.*

*Office of the Schuylkill Navigation Company,  
Philadelphia, October 31, 1832.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

DEAR SIR,

Your favour of 25th instant has been received, mentioning that a Committee had been appointed to meet a Committee of this Board, in reference to my letter of 2d instant.

Dr. Preston and myself, on behalf of this Board, will be happy to meet your Committee at this office, at as early a day as will suit them—of which be pleased to inform me.

I am, respectfully,

Your friend,

JOSEPH S. LEWIS, *President.*

SIR,

Your letter of October 2d was received by Mr. Duane immediately before he ceased to be a member of the City Councils, and it is of course only since the new organization of these bodies that it has been placed before the present Committee. It has met their early attention, and I am instructed to acknowledge its receipt, and reply to the suggestions it contains.

It is very possible that both the Schuylkill Navigation Company, and the City of Philadelphia, may derive advantage from a change in the arrangements now subsisting between them. The City certainly has not reaped the benefit which was anticipated from the last contract: and the Watering Committee will be prepared at any time to communicate the terms on which they will recommend a modification to the Councils. If they should be able to meet the views of the Schuylkill Navigation Company, by granting facilities to the increasing coal trade,—corresponding facilities will be expected, to meet the increasing demand for water power arising from the rapid growth of the City and the neighbouring districts.

I am directed to say that the Committee cannot consent, without further explanation, to an additional lock at Fair Mount, between the old locks and the bank, which your Board deem it ne-

cessary to build forthwith. It is very possible that you may satisfy the Committee that such an arrangement is compatible with the interests of the City. But having been put "in possession of the locks and canal at Fair Mount, and of the toll-house and ground thereto adjacent and annexed," with a corresponding control over them, certainly not less than that which the Company enjoys, the City is believed to have rights which would be invaded if you should proceed without its previous assent. I do not mean to impute an intention to proceed without such assent, but as your letter might bear a construction by which the rights of the City would be compromised, it was deemed proper to make this suggestion distinctly, in order that all misapprehension may be avoided. If you will at any time communicate the alterations which the Company desires, they shall be submitted to the City Councils ; and we will in return apprise you of the changes which we deem important to the interests we represent. But I beg leave to repeat, that until these modifications are mutually approved and adopted, neither the one party nor the other is at liberty to vary in any respect the existing state of things.

(Signed) JOHN P. WETHERILL, *Chairman.*

JOSEPH S. LEWIS, Esq.

November 15, 1832.

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*Philadelphia, November 27, 1832.*

JOHN PRICE WETHERILL, Esq.

*Chairman of the Watering Committee.*

SIR,

Your letter of the 15th instant has been laid before the Managers of the Schuylkill Navigation Company, who instruct me to make the following reply.—The Board do not suppose that their right to use the water and water power of the river for the purposes of navigation to the extent they may deem necessary, is subject to any question, nor that the alterations in the use of it at Fair Mount, are such as makes it proper for them to communicate those alterations to the City Councils for their approbation. They are not aware that the management of the locks and canal at Fair Mount is to be classed among the rights of the City, but

rather that it is a duty which, in relief of the Navigation Company, the City covenanted to perform.

This Company and the City have hitherto acted in perfect harmony with each other, and it is not thought that any interruption of the harmony is either necessary or expedient; and if in a personal interview between the Committees of both, a frank communication can be made of the changes which you deem important to the interests of the City, it is highly probable that this Company may be able to extend to the City the desired accommodation, and they will be happy to do so if they can. The improvements now in progress are indispensable to the growing use of the navigation, in which the City has so great an interest; and the Company, it is believed, have not entered upon these improvements, until the public convenience most manifestly called for them. The present locks are wholly insufficient for the trade.

I am, very respectfully,

Your obedient servant,

(Signed)

JOSEPH S. LEWIS, *President.*

Our Committee propose to meet your Committee to-morrow (Wednesday) evening, at 7 o'clock, at our office.

(Signed)

J. S. L.

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*Office of the Solicitor, Philadelphia, Dec. 3d, 1832.*

The Watering Committee have submitted to me the agreements, made between the City of Philadelphia and the Schuylkill Navigation Company, on the 3d of June 1819, on the 20th of July 1820, and on the 14th of June 1824; and they require me to express an opinion as to the rights and obligations of the parties.

By the first of these instruments, the City engaged to construct such a dam at Fair Mount as would raise the water of the Schuylkill to a certain height, and always to keep it in repair; to complete a canal and locks of given dimensions and character, under the Company's inspection, and in such manner as should be approved by them, to accommodate the navigation at the dam; to provide ground for a toll-house near the locks, and to

deliver the canal, locks, and ground for the toll-house, into the possession of the Navigation Company, on or before the 1st of January 1822, to be their property for ever. The City also engaged to pay for all damages which might be occasioned by the construction of these works, and the expenses of any suits which might in consequence of them be brought against the Company. The right was secured to the Navigation Company of drawing off from the dam as much water as *they might deem* necessary for the purpose of the navigation, and the City was authorized, for the purposes of the public works, to use the remainder of the water, under a limitation that it should never reduce the level below the top of the dam. In this agreement it was carefully expressed, that nothing contained in it should "be understood to affect or impair the exclusive authority and control over the canal and locks, and the exclusive possession and ownership thereof, by the Navigation Company."

The agreement of the 20th of July, 1820, authorized the City to raise the dam eighteen inches above the line before fixed, but in other respects left the agreement of the 3d of June, 1819, unchanged.

The agreement of the 14th of June, 1824, recites the former agreements—that the City has constructed the dam, locks, and canal, and that the Navigation Company have accepted the locks and canal, and have received the stipulated ground for their toll-house—and that the parties have come to a new arrangement in regard to the water power of the dam at Fair Mount; it being intended that the City, for the consideration afterwards mentioned, shall have the full, absolute, and uncontroled use and enjoyment of all the water power at the dam, except so much as may be necessary for the navigation of the river, without any other restriction or reservation, and shall also have charge of the locks and canal, under the superintendence of the Navigation Company.

The Navigation Company, then, in consideration of \$26,000, covenant that the City shall have the whole water and water power of the Schuylkill at Fair Mount, that shall remain after drawing off from the dam so much as shall be necessary for the navigation of the said river, canal, and locks, without any other

reservation whatsoever, or any restriction contained in former agreements ; and in formal words, they sell to the City all such remaining water power ; but they declare it to be the true meaning of the parties, that the City shall have only such use of the water, as, with the use thereof for the purpose of the navigation aforesaid, will not reduce it below the level of the dam. The agreement then witnesses, that the locks, canal, and ground for the toll-house, have been placed in the possession of the Navigation Company, and the Company make certain covenants, relating to the tolls chargeable at Fair Mount, and for the preservation of the purity of the water. A covenant between the parties follows, that the City “shall and will have and take charge of the locks and canal at Fair Mount, and cause the same to be well and faithfully attended, and kept in good order and repair for ever at its own expense,” and the proper tolls collected ; reserving to the Navigation Company the right of superintending both the collection of the tolls and the management of the canal and locks, and authorizing them, at the City’s expense, to remove any obstructions, and make any repairs, which the City shall, after reasonable notice, have neglected, and to fasten up the gates or openings used by the City for drawing off the water, in case at any time the head shall be reduced below the level of the dam. In conclusion, the Navigation Company covenant to put the City forthwith in possession of the locks, canal, toll-house, and ground adjacent at Fair Mount, so that it may enter upon the execution of its covenants.

It is understood, that in pursuance of the covenants of this last agreement, the City was, immediately after the 14th of June 1824, placed in possession of the locks, canal, toll-house, and ground adjacent—and that it has remained in possession of them ever since.

After a careful examination of the subject, I am of opinion,

1. That the City is entitled to the use of all the water of the Fair Mount dam, except so much as may be required for the navigation of the river Schuylkill, and of the canal and locks constructed by the City under the agreement of 1819 ; provided that by such use the water is not reduced below the level of the dam ;—and as a consequence,

2. That the Navigation Company is not entitled to the use of the water at Fair Mount, for supplying any other canal or locks than those so constructed.

3. That the City is lawfully in possession of the said canal and locks, and of the toll house and ground adjacent:—and that it has charge of them for the purpose as well of protecting its own interests, as of performing its covenants with the Company.

4. That the Navigation Company has the right of so using the canal, locks, toll-house, and ground adjacent, as may be convenient and proper for the purposes of the navigation ; but,

5. That the Navigation Company, except in the case of a neglect by the City, after reasonable notice, to make repairs or remove obstructions, has no right to alter the condition of the locks, canal, toll-house, and ground adjacent thereto, at Fair Mount.

(Signed)

J. K. KANE.

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MR. JOHN GOTWALT,

DEAR SIR,

The navigation will be closed on the 20th December, at which time it is determined to go on without delay, in forming the new passage to the new locks, in doing which, our house, in which you now reside, will have to be removed immediately. I think it most friendly to make this communication, so that you may remove in due season, and therefore mention the 22d December, instant, as the latest period you can occupy the premises.

Your friend,

JOSEPH S. LEWIS,

*President of the Schuylkill Navigation Company.*  
December 8th, 1832.

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SIR,

In my note of November 15th, you were informed of the views taken by the Watering Committee of the intention which you had stated to exist on the part of the Schuylkill Navigation Company, to construct an additional lock at Fair Mount. These views have since been fortified and confirmed by the official opi-

nion of the City Solicitor. Under these circumstances, it would have been satisfactory to the Committee, if the operations of the Company had been suspended until the relative legal rights in question could have been placed beyond the reach of controversy. But as you are now actually proceeding in the contemplated work, which we deem altogether unauthorized, contrary to the spirit and letter of subsisting contracts, and calculated greatly to interfere with the interests of the City if it should be persisted in, I am directed to give you formal notice to desist.

The steps already taken by the Company are regarded by the Committee as a clear invasion of the rights confided to their care—as such they are protested against in their earliest stage—and the further prosecution of them will be decidedly opposed, as it is now unequivocally objected to.

Yours, respectfully,

JOHN P. WETHERILL,

*Chairman of the Watering Committee.*

JOSEPH S. LEWIS, Esq.

*President of the Schuylkill Navigation Company.*

*December 8th, 1832.*

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MR. JOHN GOTWALT,

DEAR SIR,

Until you shall have received instructions from the Watering Committee, or their agent, to remove from the premises which you now occupy, you are hereby requested to hold possession of the same, and continue to perform the duties required of you according to the agreement made between Frederick Graff, in behalf of the Watering Committee, and yourself, dated 2d day of November 1825.

Very respectfully,

FREDERICK GRAFF,

*Agent in behalf of the Watering Committee.*

*Philadelphia, December 10th, 1832.*

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SIR,

Since writing my note of Saturday, I have received yours to Mr. John Gotwalt, and have laid it before the Watering Com-



mittee. I am instructed to say that they unite in regarding your call upon the gate keeper as altogether unauthorized, and that he will be directed not to comply with it.

The whole affair being of more than usual importance, the Watering Committee will lose no time in submitting it to the Councils for their especial instructions.

Respectfully,

JOHN P. WETHERILL, *Chairman.*

JOSEPH S. LEWIS, Esq.

*President of the Schuylkill Navigation Company.*

*December 11th, 1832.*

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*Philadelphia, December 13, 1832.*

MR. JOHN GOTWALT,

SIR,

I repeat my request to you, which is, that until you shall receive other instructions from the Watering Committee, or their agent, that you will continue as formerly to perform your duties of attending to the locks, and remaining with your family in the house in which you now live, according to your agreement. Should any letters be handed to you, or any verbal propositions be made on the subject of your removing from where you now reside, (except by the Watering Committee, or their agent,) you will please communicate the same to me immediately. Meantime I flatter myself that you will strictly comply with my request.

Yours, respectfully,

FREDERICK GRAFF,

*For and in behalf of the Watering Committee.*

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MR. JOHN GOTWALT,

SIR,

The Watering Committee have been furnished with the note received by you from the President of the Schuylkill Navigation Company, and with a copy of Mr. Graff's note to you of the 10th of December. I am instructed to say, that the Watering Committee entirely approve of the course taken by Mr.

Graff, and do not admit that the President of the Navigation Company has any authority or right whatever to require your removal from the premises which you occupy. Your contract was made with Mr. Graff, representing the City of Philadelphia, and you are requested not to give possession to any person except its representatives. Any further communications which you may receive on this subject, you will immediately forward to Mr. Graff, and be governed by the instructions of the Watering Committee through him.

EPHRAIM HAINES,  
*Chairman, Pro Tem.*

*December 14th, 1832.*

SIR,

I am instructed by the Watering Committee, to remonstrate earnestly against the course which the agents of the Schuylkill Navigation Company are pursuing at the Fair Mount canal. We do not suspect the sincerity of your conviction as to the rights of the Company, and we will ask a return of the same confidence in the sincerity of ours as to the rights of the City. The questions between us must at last be settled by judicial authority, and we are perfectly willing to meet and abide by such a determination. Mutual respect for each other, and for the laws, would (we trusted) have prevented a resort to measures of force in the meantime. Yet you have taken the law into your own hands, and are proceeding as if the points in controversy had been yielded by the City, or adjusted by competent authority. The irregularity of this must be apparent, on reflection, to yourselves. Should you persist, after our repeated notices to the contrary, we shall be compelled, however reluctantly, to oppose your measures on the ground.

Yours, respectfully,

(Signed)

JOHN P. WETHERILL,  
*Chairman of the Watering Committee.*

J. S. LEWIS, Esq.

*December 29th, 1832.*

*Office of the Schuylkill Navigation Company,  
Philadelphia, December 31, 1832.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

SIR,

I received late on Saturday evening, your note of 29th instant, which I shall lose no time in laying before the Board.

Yours, respectfully,

JOSEPH S. LEWIS, *President.*

*Office of the Schuylkill Navigation Company,  
Philadelphia, January 1, 1833.*

SIR,

Your note of the 29th ult. has been laid before the Board of Managers of the Schuylkill Navigation Company, and they have directed me to make the following reply. You do but justice to the Board in giving them credit for the sincerity of their conviction as to the rights of the company. This conviction is not the result of their unaided judgment. Besides examining the matter themselves, with great attention, they have submitted it to counsel, by whom they are advised that their rights are not subject to doubt. While, therefore, the Board most readily reciprocate the fullest confidence in the sincerity of the respectable gentlemen who compose the Watering Committee, they cannot but feel that their duty is to be measured, in relation to themselves, by their own conviction of their rights, sustained as before stated, by professional advice they confide in, and that they would justly incur censure if they should permit themselves to be prevented from doing what the public accommodation most manifestly requires, by an intimation that legal or other resistance will be offered to them. They have not undertaken the present work until they were convinced that it was necessary. They cannot suspend it, without causing a delay, of perhaps a whole season. If they should be stopped by legal measures, it will be their duty to submit. If an overpowering force should be employed against them (as seems to be hinted) they will have no choice. In either case they will be justified to the Company and to the public, and besides, the Company will have

the means of seeking redress, which might perhaps be waived by a voluntary submission. Their recourse will be against the City for damages.

The Board are not aware, however, that any such extremity is necessary. They are sure it is not desirable; and as an evidence that they are disposed, (however confident in their rights) to avoid any unpleasant collision, they propose that a conference be held between the counsel on both sides, in order that if they cannot agree in opinion upon the merits, they may arrange some mode of bringing the points in controversy to an early decision. In the meantime, they expect to be permitted to go on, the rights of the City being reserved by the protest of the Committee so as to receive no prejudice, until the final adjudication.

Yours, respectfully,

JOSEPH S. LEWIS, *President.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

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*Fair Mount, January 3d, 1833.*

MR. FREDERICK GRAFF,

DEAR FRIEND,

The Schuylkill Navigation men have commenced digging close by the steps at the house I live in. I think it necessary for you to come out and view for yourself.

Your friend,

JOHN GOTWALT.

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LAWRENCE LEWIS, Esq.

DEAR SIR,

You will observe by the note above received, quarter before ten o'clock this morning, that the Navigation Company have commenced depredations immediately at the foot of the steps of the toll house. As Mr. Wetherill is out of town, will you please say what shall be done.

Very respectfully,

In haste,

FREDERICK GRAFF.

10 o'clock, January 3d, 1833.

SIR,

My absence from town delayed the receipt of your letter of the 1st of January, which I have now the pleasure to acknowledge. The object of the Watering Committee is merely to perform a public duty in which they have no personal interest except that which is common to many, and perhaps all of the members of your Board. In the discharge of this duty, they cheerfully receive any suggestion which may tend to bring "the points in controversy to an early decision." And they have accordingly instructed the City Solicitor to unite with the Counsel of the Navigation Company, in preparing a *case* for the opinion of the Court, or in any other feasible mode of procuring an opinion which will be binding on all parties. The present session of the Supreme Court will no doubt afford an opportunity for the argument in the course of a few days: as I understand it is the practice of the Judges, to give to cases of public concern, which require it, an early hearing.

Permit me to urge anew the strong conviction which is felt by the Watering Committee, that while our controversies are, (as in a country of laws they necessarily must be), submitted to the tribunals of justice for determination, it would be manifestly irregular in the Company to proceed in a course of violence, which assumes the power while the right is undecided.

Yours very respectfully,

(Signed) JOHN P. WETHERILL, *Chairman.*

JOSEPH S. LEWIS, Esq.

*January 12, 1833.*

GENTLEMEN,

The gates belonging to the chamber locks to the canal opposite to Fair Mount, were put in at the cost of the City, in 1825; they now require repairs, having become much broken at the belt pieces, against which the bows of the boats strike.

In order to prevent injury to those parts of the gates most exposed, I take leave to recommend that strong cast iron facings be screwed on them to secure their future safety.

As the gates must be repaired for the early spring trade, I await the instructions of the Committee on this subject.

Mr. Erdman, who made the gates, will repair them under the directions of the Superintendent, provided the repairs as proposed shall be approved by the Committee.

Very respectfully,

FREDERICK GRAFF.

Jan. 12, 1833.

*The Gentlemen of the Watering Committee.*

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 15th, 1833.*

SIR,

Your favour of the 12th inst. I had the pleasure to receive late on Saturday evening.

It shall have immediate attention, but a short delay will be caused by the departure yesterday morning of Messrs. Sergeant and Binney for Washington.

Yours, very respectfully,

JOSEPH S. LEWIS, *President.*

JOHN P. WETHERILL, Esq.

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 19, 1833.*

SIR,

I am directed by the Board to reply to your communication of the 12th instant, as follows:

Adverting first to the latter part of your note, the Board desire me to say that they are not aware of having, in any respect, proceeded "in a course of violence," or of having intimated an intention to do so. They have, on the contrary, acted peacefully, in the way of their duty, observing at all times the most careful respect for the City authorities, and deprecating the use of force, which, as heretofore intimated, they understood to be intended to be employed against them. In this understanding, nothing has yet been said to convince them they were in error. Your last note seems rather by its silence to admit they were right in their construction of your former communication, and were justified in the notice they gave of what they considered to be the legal consequences of force employed on the part of the City.

In the next place, they have to remark, that there is a material part of the last note addressed to the Watering Committee, to which they do not perceive that you have made any reply. They will restate it now, because they deem it essential to the right performance of the duty of the Board, that the basis they have proposed should be assented to, before they proceed further. Referring, then, to that note, they now repeat their proposal, as a preliminary, that the Company are not to be in any manner obstructed in the prosecution of their work, until a decision. For greater precision, they add, that it is indispensable that the possession of the toll house should be given up, as the work in its immediate neighbourhood will necessarily endanger the house, and its tenants, if any there should be. Besides, the ground the house stands upon must be occupied by the Company.

This basis being assented to, (without prejudice to the rights of the City, which may be reserved in the fullest manner,) they will be ready to enter into arrangements for the earliest possible decision of the questions between the City and the Company. If they had not great confidence in the legal rights of the Company, (and they certainly have the greatest,) still they should have no thought of attempting either to evade or to resist a legal determination, being desirous to have an authentic decision to inform them authoritatively, and desirous also to conform to it when made.

They again suggest, that our counsel confer upon and make the needful arrangements.

I am, very respectfully,

Your obedient servant,

JOSEPH S. LEWIS, *President.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

DEAR SIR,

The absence of Mr. Erdman from the City has prevented the repairs being made to the lock gates opposite to Fair Mount.

Mr. Erdman promised the Superintendent, previous to his leaving the City, that immediately after his return the work should be attended to.

On Friday last some person or persons unknown to the Superintendent, opened the guard gates at the locks opposite Fair Mount. This morning the Superintendent found the gates still open. Heretofore it has been the usual custom, that so soon as the navigation trade for the season was finished, for the gate keeper to have the guard lock gates closed for the winter, in order to prevent all accidents by inundations or otherwise.

Those gates having been opened without the gate keeper's consent, although under his charge, induces the Superintendent to recommend to the Committee, that he be authorized to have those gates shut and chained fast, in order to prevent accidents by a sudden rise of the river. Should the water freeze in the lock when the gates are open, serious injury may be done to the works, as they then could not be shut.

Very respectfully,

FREDERICK GRAFF.

January 21, 1833.

SIR,

It is very possible that we may differ in the meaning to be imputed to the word "violence." We deem it to consist in the invasion of another's legal possessions, and the prostration of his house, and forcing his tenant from the ground occupied by him. Such we understand to be the design made known to us in several of your communications. Referring for the present to the last received, we find not merely danger threatened to "the house and its tenants," but an unqualified determination that "the ground the house stands upon must be occupied by the Company." These are declarations in which there is nothing equivocal. The English language contains no terms more clearly indicative of an unbending determination to commit acts of disturbance on an unquestioned possession, in disregard of the wishes of its occupants. A fulfilment of such a threat would amount to



violence. Indeed, without wishing to dispute about words, we cannot but regard the course pursued by you for several weeks as one of force and violence. To its continuance in the manner threatened, you have been informed that resistance would be opposed; and the information is now repeated. It surely cannot be necessary to exhibit to the public these corporations in the attitude of personal combatants. We have offered to submit the whole matter to an immediate decision, and have stated our belief that the result can be reached, if both parties consent, before the Supreme Court now in session. It seems you decline any arrangement for a decision, except on terms which would involve the actual abandonment of every thing claimed by the City. We are asked to agree that the supply of water now secured should be relinquished, and all the evils apprehended from it be actually sustained, and then to trust to some undefined measure of redress, if we can show that wrong has been suffered. The usual mode of conducting a negotiation or reference, is to permit the subject of controversy to remain unchanged until its termination. If your necessities are really pressing, it is not our fault that they were not anticipated, or earlier provided for. Should we acquiesce in the proposed surrender of our alleged rights, the mischief might be irreparable. We do not mean to foretell the issue of the controversy. But for its determination we rely both upon possession and agreement.—While you advance the argument that would at the best take advantage of your own wrong in asserting that the agreement was beyond the scope of your authority. A few days would probably be sufficient to reach a decision in *the way which we propose*. If you have any substitute equally effectual, we are not tenacious of this. But we learn from you merely, that on our absolute surrender at present, you “will be ready to enter into arrangements for the earliest possible decision of the question,” &c. Then if no arrangements be suggested of a nature perfectly satisfactory to you, the City is still to be at your mercy for an indefinite period.

To bring the controversy, if possible, to a point that is substantial, the City Solicitor will submit to your counsel a case for the opinion of the Court. Of course it will be open to mutual

modifications, such as justice and a reciprocal regard to each others rights may require.

Respectfully,

(Signed)

JOHN P. WETHERILL, *Chairman.*

JOSEPH S. LEWIS, Esq.

January 22, 1833.

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 24, 1833.*

SIR,

Enclosed I hand you a copy of Resolutions adopted by the Board this day, and I hereby give you notice accordingly, as in the said Resolutions expressed—and beg the favour of a speedy reply.

Very respectfully,

Your obedient servant,

THOMAS HARPER, *Treasurer and Secretary.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 24, 1833.*

Whereas it is deemed necessary for the navigation of the river Schuylkill, that another lock and canal should be made at the Fair Mount dam, and for this purpose it is necessary to remove the lock house at that dam from its present position, therefore,

*Resolved*, by the President, Managers and Company of the Schuylkill Navigation Company, that the Mayor, Aldermen and Citizens of Philadelphia, be and they are hereby discharged from the present care and attendance of the locks at Fair Mount, and the collection of tolls thereat; and that the said Mayor, Aldermen and Citizens of Philadelphia, be and they are hereby required forthwith to deliver up the possession of the house, office and land occupied by them in the care, attendance and collection aforesaid, according to the provisions of the 10th Section of the Act of the 10th April, 1826.

*Resolved*, That the preceding Resolution be communicated to

the Mayor of the City of Philadelphia, and also to the Watering Committee of the City Councils; and that notice be given to them, that unless possession shall be given to this Company according to the same, the Company will proceed as in the said section is directed.

By order of the Board of Managers,

THOMAS HARPER, *Treasurer and Secretary.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

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SIR,

Your communication of this day is received. You have been already fully apprized of the views of the Watering Committee, and it seems to them a needless repetition now to say, that the proceedings contemplated by your Board are decidedly objected to, and can not be allowed.

Yours, respectfully,

(Signed) JOHN P. WETHERILL,

*Chairman of the Watering Committee.*

THOMAS HARPER, Esq.

January 24, 1833.

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 26, 1833.*

GENTLEMEN,

By order of the Board, I enclose to you a copy of two Resolutions, and a notice, a copy of which has this day been served upon John Gotwalt.

In making this communication, the Board are governed by a desire to observe the same courtesy and respect for the authorities of the City, which they hope has marked all their conduct. Whatever differences may arise, they wish the City at all times to be informed, and in the most respectful manner, of every proceeding of theirs which may be supposed to have any bearing upon the questions between them, under any possible view of the case. In the present instance, being well assured of their right, they have no motive for the present communication, but

to evince the continued wish to observe this respect and courtesy.

I beg at the same time to confirm and repeat the notice to the City in my note of the 24th, and the Resolutions enclosed therein.

By order of the Board,

THOMAS HARPER, *Treasurer and Secretary.*

To JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 26, 1833.*

*Resolved,* That John Gotwalt be and he hereby is discharged from his employment as a lock keeper and toll collector at the Fair Mount locks.

*Resolved,* That notice be given to the said John Gotwalt of his discharge, and that he be required forthwith to deliver up the possession of the house, office and land occupied by him as lock keeper and toll collector as aforesaid, according to the provisions of the 10th Section of the Act of the 10th April, 1826; and in case of neglect or default, that he be proceeded against, as in the said section is directed.

By order of the Board of Managers,

THOMAS HARPER, *Treasurer and Secretary.*

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*Office of the Schuylkill Navigation Company,  
Philadelphia, January 26, 1833.*

MR. JOHN GOTWALT,

SIR,

Enclosed you will find a copy of two Resolutions adopted by the President and Managers on the 26th instant.

In obedience to the second of those Resolutions, I now give you notice that you are required forthwith to deliver up to Michael Towers, the possession of the house, office and land, occupied by you as lock keeper and toll collector at the Fair Mount locks, and that in case of neglect or default, you will be proceeded against, as by the said section is directed.

By order of the Board,

THOMAS HARPER, *Treasurer and Secretary.*

MR. FREDERICK GRAFF,

DEAR SIR,

The constable has been here, with directions to move out immediately, and to take possession without delay, so that I can't stay against them all.

Your friend,

JOHN GOTWALT.

February 4, 1833.

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*Office of the Schuylkill Navigation Company,  
Philadelphia, February 5, 1833.*

DEAR SIR,

Your communication of the 31st January, enclosing a statement of a case, was duly received.

This statement has been submitted to the counsel of the Company, and you will be informed of the decision of the Company as soon as they can have the advice of their counsel.

I am, respectfully,

Your obedient servant,

JOSEPH S. LEWIS, *President.*

EDWARD OLMSTED, Esq.

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(A.)

MR. JOHN GOTWALT,

I wish you to put away all your former instructions, and be guided by this *letter*.

If any magistrate or constable calls on you and demands you to give up the house you now occupy, say to him that you will not unless instructed so to do by the Watering Committee of the Fair Mount Water Works, as it was by them you were placed there, and without their express orders you have determined not to leave it. Be determined, and hold possession if you can until the Watering Committee can find out the magistrate who prosecutes, in order that they may have a hearing on the subject.

Yours, truly,

FREDERICK GRAFF.

Monday, February 4, 1833.

Let me know the name of the magistrate, and where he lives, as soon as you can ascertain it.

To any magistrate or constable who may be employed by the Schuylkill Navigation Company to take possession of the toll house at the canal opposite to Fair Mount—

GENTLEMEN, OR SIR,

Before you attempt to displace Mr. John Gotwalt from the toll house at the canal opposite to Fair Mount, I am instructed to inform you that the said property is in possession of the Mayor, Aldermen, and Citizens of Philadelphia, who hold it as theirs under special agreements.

Mr. Gotwalt being the gate keeper of the said canal, and employed and paid by the city, the orders under which you act cannot have effect upon him, or the said property.

I therefore warn you to desist from making encroachments, with a request that all matters of proceedings by you be set aside, until the Mayor, Aldermen, and Citizens of Philadelphia shall be permitted to have a hearing before the magistrate who may be employed in this case, which will be duly attended to by the City authority, so soon as the magistrate shall be known.

As the City has much at issue, it is expected that this important matter will not be hastily forced, particularly as the laws of the Schuylkill Navigation Company have no control or bearing on the said toll house, or on the removal of the toll gate keeper, who was placed on said premises by the said Mayor, Aldermen, and Citizens of Philadelphia.

By order,

FREDERICK GRAFF.

*Monday, February 4, 1833.*

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Joseph Faulkner, of the district of Spring Garden, in the county of Philadelphia, being duly sworn according to law, doth depose and say, that he is employed by the City, at the Fair Mount Water Works, in part to take charge of the Works, &c. : that he has been so employed for the last six years. That on the 23d of January 1833, the guard lock gates were found open in the morning: that Deponent and John Gotwalt the gate keeper, employed by the City, at the guard lock gates, by direction of Mr. Frede-

rick Graff, the Superintendent of Fair Mount Works, fastened the guard lock gates by placing an iron chain around the gate posts, and secured the same by padlocks. On the same day about noon, John Dunlap and Thomas Brown, two individuals in the employ of the Schuylkill Navigation Company, cut the chain and let it fall into the canal, and then opened the gates.

That on the 4th day of February, Deponent and John Gotwalt were in the toll house (said Gotwalt having lived in the toll house for the last eight years as toll keeper): that between nine and ten o'clock in the morning, Joseph S. Lewis Esq., President of the Schuylkill Navigation Company, a constable, by name William Simpson, John Towers, and Michael Towers, and about fifteen or twenty individuals, all of whom were in the employ of the Schuylkill Navigation Company, entered the toll house; the constable walked around a counter to John Gotwalt, showed him a warrant, and told him to deliver up possession of the house. Gotwalt showed a letter (a copy of which is annexed, marked A) to Mr. Lewis, who, after having read it, threw it on the counter, and told the constable to proceed to execute his warrant. Gotwalt then desired time to remove his things. This Mr. Lewis refused, and told him to deliver up possession immediately, that if he gave him time, a day's time to move his things, somebody else might obtain possession and give him more trouble. Gotwalt then commenced moving his furniture out of the house, and went out himself. Deponent still kept possession of the house by remaining in it. Between four and five o'clock in the afternoon, Mr. Graff and Mr. Olmsted came out to the toll house and entered it. Mr. Graff told Deponent to keep possession of the house, until he and Mr. O. could see the magistrate who issued the warrant; Messrs. Graff and Olmsted then left the house. Immediately, Mr. Lewis urged Deponent to leave the house, and said if he did not do so peaceably, he would be put out forcibly. Deponent said he considered he was doing his duty by keeping possession of the house, and that he would not go out unless forced. Mr. Lewis then told the constable to put Deponent out, who put his hand on Deponent's shoulder and gently pushed him out of the house. At this moment there were in the house, be-

sides the constable, Mr. Lewis and about half a dozen men, in the employment of the Company.

Sworn and subscribed before me, an Alderman for the City of Philadelphia, the 6th day of February, 1833, and that the annexed document is the one referred to in the deposition.

G. BARTRAM, *Alderman.*

JOSEPH FAULKNER.

*Office of the Schuylkill Navigation Company,  
Philadelphia, February 2, 1833.*

There has been paid into this Office by the lock keepers of the Fair Mount locks, the following tolls, viz:

Amount collected by Henry H. Rodenbaugh, from 27th April to 29th September 1825,	- - -	\$ 100	47
Amount collected by John Gotwalt, from 1st October 1825, to 4th January 1833,	- - -	2,961	21
		<u>\$ 3,061</u>	<u>68</u>

THOMAS HARPER, *Treasurer and Secretary.*

*Expenses in repairs made to canal, locks, toll house, &c., opposite to Fair Mount, since the contract of June, 1824.*

Paid Robert Walker, September 11, 1824, for cleansing 1053 yards mud out of the canal,	- - -	\$ 399	06
Frederick Erdman, building bridges, repairs to toll house, and lock gates, December 8, 1824,	- - -	346	96
D. Fisher, painting lock gates, bridges, toll house, &c., December, 1824,	- - - - -	90	00
Levis Passmore, for lock gate stuff, March, 1825,	- - - - -	469	00
F. Erdman, two pair lock gates, and repairs to sills, &c., May 7, 1825,	- - - - -	540	00
Iron work and wickets, prepared by the city,	- - - - -	300	00
W. L. Norris, building guard walls to canal and locks, December 15, 1825,	- - - - -	100	00
Amount carried forward,	- - - - -	<u>\$ 2,245</u>	<u>02</u>



Amount brought forward, . . . . .	\$ 2,245	02
F. Erdman, railing along canal banks, June 1, 1826, . . . . .	235	00
John Mingle & Son, iron work to the guard lock, April, 1827, . . . . .	103	93
F. Erdman, for guard gates and repairs, May 30, 1827, . . . . .	328	93
Do. rebuilding ice-breaker, west side of Schuyl- kill, November 6, 1829, . . . . .	207	00
Do. repairs to lock gates—repairs to toll house and building fence, October 1, 1830, . . . . .	106	92
P. Henri, painting gates, toll house, bridges, &c., . . . . .	70	00
John Lamsback, keeping lock gates, began March, 1823, per time book, and up to 1833, 10 years, at 144 dollars, . . . . .	1,440	00
	<hr/>	
	\$ 4,736	80
Add lumber, nails, &c., for all the above work, . . . . .	400	20
	<hr/>	
	\$ 5,137	00

FREDERICK GRAFF,

January 25, 1833.

*Office of the Schuylkill Navigation Company,  
Philadelphia, February 14, 1833.*

SIR,

We duly received, as heretofore acknowledged, your letter of the 22d January, and on the 31st of that month, the Solicitor of the City handed to us a project of a case to be stated for the opinion of the Supreme Court. The absence of our counsel has deprived us, till within a day or two, of the opportunity of consulting with them.

We regretted from the time of receiving your letter, and we still regret, that upon a question of mere right, upon which we had taken all pains to inform ourselves, and upon which too we had studied to observe the utmost respect for all the authorities of the City, there should have been manifested so determined a disposition to characterize our conduct as unauthorized and out-

rageous. We regretted, and we still regret, that conduct and language which between equals would be deemed unexceptionable, should be marked on the part of the Committee as "indicative of an unbending determination to commit acts of disturbance on an unquestioned possession, in disregard of the wishes of its occupants," and that we should be charged with using "a threat," the fulfilment of which "would amount to violence," as well as with many other wrongs which it is unnecessary to state in detail, as they will be readily observed on a perusal of the letter.

To such imputations, we decline to make any reply, being desirous still to go on in peace, and to continue to observe the same respect towards the City authorities, which we have hitherto observed. We are willing to acknowledge the inequality of our condition in a contest with the representatives of the people of this great City. They have a power over public opinion and public feeling, with which we should in vain endeavour to contend, and we have had occasion to perceive, with painful anxiety, that irresponsible volunteers have already come to their aid in the newspapers, and by unfounded anonymous accusations, have sought to inflame the public indignation against this Company, as daring invaders of the City's rights.

To such charges, wherever they may appear, we have nothing to reply, but that in every step we have taken, we have proceeded according to law, and under the authority of law; and if this be offensive or deserving of reproach, it must be because, for some reason that we are unacquainted with, this Company, in this case, is not entitled to the protection and aid of the law. Such an allegation we are sure the Watering Committee would not seriously countenance, and certainly, this Company would not submit to. But the Company cannot deem it auspicious to a just decision of their rights, that at the moment when arrangements are under consideration for a legal adjudication, means should be employed, tending to prejudice the public mind, and deprive them of a fair hearing.

The Company deem it but just to say, and they wish the Councils should be distinctly informed, that they do not admit

that the measures they contemplate, (founded in their clear legal rights,) are calculated in any degree to injure the City.

It has been stated, and perhaps many have believed, that the lock they propose to construct, will endanger the supply of water to the City. A very simple calculation will show that such apprehensions are entirely unfounded. The mean of several calculations made some years ago, of the quantity of water passing over the dam in the driest season, is about 500,000,000 gallons, in twenty-four hours. The quantity required for the proposed lock would, at the utmost, mathematically estimated, allowing ten boats an hour, be about 8,400,000 gallons, or less than two per cent. Practically it would not be more than half that quantity. Again, the quantity used upon one of the wheels, is 45,000,000 gallons, in twenty-four hours. The quantity for the lock, would be but one fifth of what is there used upon one wheel. No serious fears can be entertained, from so limited an use of the water confessed to be surplus by all former calculations. If it should be intimated, that the Company may hereafter insist upon constructing other locks, so as finally to interfere with the supply of the City, we need only answer, that it will be time enough to guard against this danger, when there shall be reason to apprehend that it is approaching.

We might add, as a further answer to this unfounded suggestion of fear, that by raising the dam one foot higher, there can be an addition made of not less than one sixth to the power on the wheels, whenever such additional power may be wanted, and this Company have already expressed their willingness, on reasonable terms, to facilitate such a provision for the supply of the public wants. Such an increase would counterbalance the demand of ten locks.

In addition to what has been stated, by way of obviating unfounded fears, we beg to recall your attention to the real interest the City has in the measures we are pursuing. We have deemed it our duty to do what we could to prevent the trade from being diverted from its destination to the City. We suppose this to have been the general wish and the intention of the Company's charter. For that purpose the locks at Fair Mount were made free. But what signify free locks, if they are not

sufficient, as it must be admitted is now the case. The trade will find a deposite above the dam. The City front will be deserted, and (which is still worse) all the impurities from the boats assembled on the east bank of the river, will be thrown into the river above the dam, and pass immediately into the water from which the City is to be supplied. We think it very plain, that such a course, while it would be little detrimental, in comparison, to the Company, would be inexpressibly injurious to the City ; yet this is what is now actually taking place.

It is a matter of public notoriety, that boats loaded with coal or produce have frequently, during the past season, been kept waiting for their turn to pass the locks, sometimes as long as ten or twelve hours. Such a delay, every one will perceive, cannot be endured. And therefore the present inadequacy of the works at Fair Mount, will in a short time have the same effect as if there were no outlet at all at that point. A boat or two may pass occasionally, but the general arrangements will not be suffered to depend upon any thing so precarious as the chance of being able to get through without a ruinous detention. If it could so happen (as they certainly think it cannot) that the Company might be limited, as is contended by the Watering Committee, they would of course submit to the necessity imposed upon them, but not without endeavouring first to make it apparent, that the injurious consequences which would follow, were not of their seeking, but were produced by the coercion of the authorities of the City, against the wishes of the Company. Circumstanced as they are, with a conviction that they have the power to furnish the required facilities, they would be justly held censurable if they did not furnish them. Under this sense of their duties, as well as the sense they have of their rights, it will not be deemed unreasonable in them to have come to the determination, that if the navigation is to be stopped above the Fair Mount locks, either by legal or illegal means, it shall be plainly seen that it is owing to no fault of theirs. They have increased the facilities throughout the rest of the line, and they are willing, if permitted, to do so at Fair Mount, being persuaded that any diminution of the channel there, will finally have the same effect as a total obstruction.

It is still the earnest desire of the Company to cultivate the most friendly relations with the City authorities. They desire, too, if there should remain a difference of opinion, requiring judicial interposition, to have an early decision. The terms upon which they formerly offered to concur in stating a case, have not been acceded to, and in that respect they are now under no obligation. Still, they are disposed to facilitate a decision, because it is wished by the Watering Committee. They have therefore instructed their counsel to endeavour to concur with the counsel of the City in stating a case, and they hope that this will be received as a new proof of their deference for the wishes of the Committee.

With respect to the case already handed by the Solicitor of the City to this Company, the Company is advised that it is in several particulars defective, and if it be necessary either to accept or reject it altogether, I am directed to say that the Company cannot accept it. If, however, this Company shall be informed that the matter may be submitted to the counsel of the respective parties to arrange in the usual way, the counsel of this Company, as before stated, are already instructed to facilitate to the utmost the preparation of a case for the decision of the question.

Yours, respectfully,

JOSEPH S. LEWIS, *President.*

JOHN P. WETHERILL, Esq.

*Chairman of the Watering Committee.*

February 18, 1833.

SIR,

I am instructed by the Watering Committee to acknowledge the receipt of your letter of the 14th instant, in reply to mine of January 22d. I beg leave also to inform you, that a report has been made to "Councils" of the actual state of the controversy with your Company, and they will of course direct whatever measures are hereafter to be pursued. That communication became necessary, as we had in vain attempted to bring the dispute to an amicable termination, and you had, in disregard of our earnest remonstrances, taken forcible possession of the

ground. Whether you "have proceeded according to law, and under the authority of law," is (fortunately) for neither of the parties to decide. We are as strongly impressed with the reverse, as you can possibly be with the position itself. And we cannot accede to the justice of your remarks, which would deny to us the privilege even of complaining to you of what the City has suffered at your hands. In the inferences to be drawn from your proceedings, we may, and as it seems we do, differ widely. But as to the facts themselves, there can be no difference between us. The wrong complained of is, that preferring your judgments, and postponing ours, you have taken from the City a control over the property at Fair Mount, which it has enjoyed uninterruptedly since the year 1824 ; and that you have done this without the sanction of any higher authority than that of parties to the controversy.

"Between equals," we have always been taught to believe that mutual deference was due : and all we asked was, that before the important change contemplated by you should be effected in our relations, either mutual consent should be obtained, or the sanction of a judicial decision should be procured. Aspiring thus, on our part, only to be placed on equal grounds, *you* appear to have discovered some "inequality of condition," which has enabled you to dispense, both with the previous consent of the City, and the sanction proposed. Not satisfied with this, we fear you smile at our tame submission, when you characterize as "the representatives of this great City," those who yielded possession to your numbers, and confiding in the laws for redress, declined opposing force to force. We regret to find in your letter an allusion to newspaper publications, and we utterly disclaim any connexion with them.

We are not sorry that you have afforded us an opportunity to correct an important error on your part, and if your measures are in any degree to be ascribed to it, we regret that the opportunity for correction did not occur at an earlier moment. You wish the Councils to be informed that you do not admit that the measures you contemplate are calculated in any degree to injure the City. It will be easy to convince you, that the injury is serious, extensive, and alarming. A belief to the contrary is owing

entirely to the erroneous *data* which you have assumed. You state that "the mean of several calculations made some years ago of the quantity of water passing over the dam in the driest season, is about 500,000,000 gallons in 24 hours." Instead of this, it has been ascertained that only 162,681,418 gallons flowed over the dam in 24 hours, when an actual measurement took place, and the depth of the water at the top line of the dam was  $\frac{7}{8}$ ths of an inch only. This quantity is insufficient to work six wheels and pumps, (the buildings at Fair Mount are designed for *eight*,) without any allowance of water for purposes of navigation. The relative accuracy of these estimates can at any time be ascertained. The calculations you refer to as to the flow of water in the Schuylkill, were presumptive only. No better proof of this need be adduced, than the fact that the Company have, during the last year, built a dam across a ravine at the head of the river, in order to collect the water of a small stream, and to catch rain water, to supply their works when the river fails. And the canal at Reading, built on elevated ground, almost expressly for mill power, is about to be abandoned, having been found, when applied to use, barely sufficient for canal purposes, although the gateways had been prepared to supply many mills.

Now we will examine the quantity of water required to pass 150 boats through the present locks at Fair Mount in 22 hours out of each 24, allowing two hours a day for unforeseen delay.

The locks at Fair Mount, on the west side of Schuylkill, measure each 80 feet long, 17 feet wide, and 6 feet 6 inches lift. Each lock contains 8840 cubic feet, equal to 54,302 gallons, ale measure.

On the 5th of November last, 95 boats passed the locks in 14 hours, being nearly 7 boats an hour, or a passage of each boat in less than 9 minutes, which is as fast as is practicable with one gate keeper. The custom has been, when the trade is brisk, to let down 4 boats in succession, and then 4 boats up in like manner. Boats descending take one lock of water each. Boats ascending take two locks of water each: or 8 boats thus passed will require 12 locks of water. One hundred and fifty boats passing in 22 hours of each day, will consume 200 locks of water of

54,302 gallons each, making a daily consumption of 10,860,400 gallons.

This was the greatest quantity of water which it was calculated the Navigation Company would require, when the surplus water was purchased by the City in 1824.

Since that time, the weighing lock has been built, which will consume, in the passage of 90 boats a day,	Galls.	4,887,180
To which add the quantity for the lock now building,	-	-
		<u>10,860,400</u>

And the City loses more than the agreement allows,	-	-
	Galls.	<u>15,747,580</u>

This is more than sufficient for half the power required to drive one wheel. The wheels are calculated, *at an extreme*, to use each per day of 24 hours, 28,000,000 gallons.

In the months of August, September, and October last, two-thirds of the top surface of the dam was dry, and there was not water enough in the river to drive six wheels and pumps, without drawing down the water below the top line of the dam. On such occasion, the gates at the City works must be closed. A diminution of water, therefore, occasioned by the increased demand of the Company for their locks, will render the City water works unfit for use. It will be recollected, that during the months referred to, the water in the river is always at its lowest ebb, and at the same time the demands of the City, even in healthy seasons, are the greatest. A return of the epidemic, which during a part of the last season prevailed, and is believed to have been assuaged by a free distribution of water in the City and Districts, would be attended with consequences too mournful to be contemplated without alarm.

Of the evils to arise to the City from the course pursued by your Company, there cannot exist the smallest doubt. When we calmly reflect, on both sides, that they are, in the most favourable aspect you can present, the result of errors on the part of the Company in their calculations of the extent of navigation which might at a future day exist, we cannot but feel, that the interests of the City have been sacrificed to the convenience of the Schuylkill Navigation Company.



Your last letter will be submitted to Councils, together with the other documents connected with this controversy. It will be for them to judge of your concluding observations as to the case handed by the Solicitor of the City. For ourselves, we confess we are unable to perceive what object can now be gained by a submission to the Supreme Court, which, under other circumstances, we ardently desired, and strongly and repeatedly urged. The City was at that time in possession of the locks. It had control of the supply of water for the Company. This possession and control it was desirous to retain; and when you expressed a determination to take them away, we requested an opportunity to seek a judicial decision. Our reasonable request was practically refused. We have lost whatever was valuable to our constituents in the controversy, and you have gained it without the intervention of an argument or a judicial decision.

Very respectfully, yours,

(Signed)

JOHN P. WETHERILL,

*Chairman of the Watering Committee.*

JOSEPH S. LEWIS, Esq.

*President of the Schuylkill Navigation Company.*

# REPORT.

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*To the Select and Common Councils of the City of Philadelphia.*

The Members of "The Watering Committee" respectfully report—

That in pursuance of the resolution passed by the City Councils on the 13th of December 1832, the Committee adopted measures without delay, to preserve the possession of the canal and locks at Fair Mount, and to prevent encroachments upon them. The superintendent of the water works, by whom the contract had originally been made with the gate keeper, was desired to give such instructions to that person, as would keep him fully informed of the authority by which he held his place, and would at the same time prevent a premature abandonment of it. Mr. Graff accordingly renewed his directions to the gate keeper, and also placed another individual on the premises, with a view to obviate surprise, should any sudden attempt be made to injure the property. The Watering Committee at the same time communicated to the gate keeper their own views of the irregularity of the notice which he had received from the President of the Schuylkill Navigation Company, requiring his removal from the premises, and desired him not to give possession to any person except the representatives of the City. They also proceeded to remonstrate with the Schuylkill Navigation Company, as to the course which their agents were pursuing; to complain that they had taken the law into their own hands; and to state the obligation which was felt to oppose the measures of the Company on the ground. The communication thus made on the 29th of December 1832, was replied to on the 1st of January 1833. This reply contained a proposition that a conference should be held

between the counsel on both sides, in order that if they could not agree in opinion upon the merits, they might arrange some mode of bringing the points in controversy to an early decision. Although this proposal was accompanied by an intimation that the Company expected to be permitted to go on with their works, notwithstanding the negotiation, yet as it afforded some prospect of an adjustment, becoming parties of the character of those concerned, it was gladly met and responded to by the Committee. It will be observed, that this was the very first moment that the urgent and repeated calls of the Watering Committee for a substitution of a legal, impartial, and authoritative tribunal, for the mere will of the Company, had appeared to make the least impression. It will also be observed, that the Company, when at last this suggestion was made by their President, had nearly completed the work which would deprive the City of its possession altogether. On the 3d of January, the gate keeper apprized Mr. Graff that they were digging close by the steps of the house. Unwilling, however, to forego the smallest chance of a proper settlement, the Committee acceded to what they supposed was intended by the Company, and informed them that the City Solicitor had been instructed to unite with the counsel of the Company in preparing a *case* for the decision of the Supreme Court, or in any other feasible mode of procuring an opinion which would be binding on all parties.

The Court was actually in session. The judges, it is believed, would not have refused to listen to an application which might have brought the whole controversy to a close, in a period shorter than that which usually elapsed between the communications passing from one party to the other. But no opportunity was afforded for either refusal or assent. On the 19th of January, the Company reply to the ready acquiescence of the City authorities in their own proposal to make arrangements to bring the points in controversy to an early decision. No notice whatever is taken, in this very circumspect reply, of the distinct offer which had been made to the Company to carry the whole matter directly to the Supreme Court. A vague allusion indeed is made to a future readiness, which they will reach—a readiness, however, so indefinite, that it could not be regarded as making

any useful or practicable progress towards the object in view, even if it had been unaccompanied by conditions which involved a surrender of every thing which the Watering Committee, under the especial instructions of the City Councils, expressed in their resolution of December 13th., were bound to maintain. The conditions were as inadmissible as the result of admitting them would have been unsatisfactory. They were now stated to be, *as a preliminary*, that the possession of the house should be given up, and that the ground it stands upon must be occupied by the Company.

Pausing for a moment on these conditions, we would ask what would remain to be decided if thus much should be surrendered? The questions between the Company and the City were already perfectly well understood. They had been distinctly stated and publicly proclaimed, through the medium of the opinion of the City Solicitor on the one side, and of the letter of the President of the Company to their counsel on the other. The former declares, "that the Navigation Company, except in the case of a neglect by the City, after reasonable notice, to make repairs or remove obstructions, has no right to alter the condition of the locks, canal, toll house, and ground adjacent thereto, at Fair Mount." The latter inquires, "whether the Navigation Company had not a right, if they see fit, to remove the lock keeper from the present toll house at the Fair Mount dam, and to remove that house also, if necessary to the prosecution of another canal and lock?" It is not our present purpose to discuss the relative merits of the professional opinions which were received. Suffice it, that they exhibited the points of controversy: and that these points were exactly what the Company required, peremptorily, should be yielded absolutely and entirely by the City, before any arrangements whatever could be made for discussion upon them. Need we ask, of what avail would have been discussion upon abstract rights, the whole benefit of which was passed away? It would have been altogether incompatible with the alleged rights of the City, to give up the house and premises, which were in its undoubted occupancy, and under its unquestioned control. Whether the Company could take this possession, was the very matter submitted by them to counsel; and if

they should take it, they had nothing more to ask. The controversy therefore was to be practicably determined as a preliminary; and when thus the whole evil dreaded by the City should be accomplished, and the whole end and aim of the Company gained, what was to follow? That the proposed *case* should be submitted to the Supreme Court! We have said that it would have been more than useless to proceed under such circumstances to the argument, which, otherwise situated, we had so ardently desired. But the Company did not even promise the satisfaction of such an opportunity, to learn that the views of the Committee had been correct; and although the Committee should have sacrificed the whole practical good, for the sake of ascertaining the abstract right, they might have been disappointed at last, if the Company should not chance to concur in the mode by which the question—valueless as it would have become—should be tried. To this effect the Committee replied to the Company; adding, that to bring the controversy, if possible, to a point which was substantial, the Solicitor of the City would submit to the counsel of the Company, a *case* for the opinion of the Court, which should be open to mutual modifications, such as justice and a reciprocal regard to each others rights might require. A case was accordingly prepared, and communicated to the Company. Its receipt has been acknowledged, but it has neither been accepted, modified, objected to, nor returned.

While the negotiations thus referred to were in progress, recourse was had, by the Company, to means of obtaining possession, under the provisions of an Act of Assembly, which this Committee cannot believe to have been designed by the Legislature for such an object. An Act was passed on the tenth of April 1826, "To protect the public in the full benefit and enjoyment of the works constructed for the purposes of inland navigation." The tenth section of this act provides, "that if any agent, toll collector, lock keeper, superintendent, or other person, employed upon any part of an artificial navigation, &c., and occupying any house, office, building, or land, belonging thereto, shall be discharged from his employment by the managers thereof, or any one duly authorized by them, and shall not deliver up the possession of such house, office, building, or lands,

together with all the books, papers, and other matters and things, belonging to such artificial navigation, within seven days next after such discharge shall be given to him, or left at such house, office, or building, &c., it shall be lawful for any justice of the peace of the county, &c., and he is hereby required, on affidavit being made before him, setting forth particularly the grievance complained of, and the property retained, by warrant under his hand and seal to order any constable or other peace officer, with such assistants as may be necessary, to enter such house, office, or building, or upon such land, in the day time, and remove the persons who shall be found therein, together with the goods and chattels, out of such house, &c., and take possession of all the books, papers, matters, and things, enumerated in such warrant, belonging to the said navigation, and to deliver possession of the same to the new appointed agent, toll collector, lock keeper, superintendent, or other person, employed to receive the same."

Notice was given by the Navigation Company, to the gate keeper appointed by the City, employed by the City, paid by the City, residing in a house in the possession of the City, under this Act, and on the 4th of February, the President of the Company, a constable, and about fifteen or twenty persons, all in the employ of the Company, entered the toll house. After full explanation had been given to them of the nature of the tenure by which the City held the property, they compelled the gate keeper to remove his furniture, and forced the other individual, placed there by the Committee, to leave the house; and they have since torn it down, and removed even its materials from the spot.

The City has thus lost a possession secured to it by a solemn agreement with the Company, which has now forcibly taken it away. The Committee did not feel themselves justified in opposing force to force, when they understood, as they did by the notice to the gate keeper, that the proceeding was to be conducted at least by colour of legal authority. They owe it to themselves, however, to state, that they had no knowledge whatever of the magistrate to whom application was to be made, or they would have endeavoured to prevent what they cannot but consider an abuse of process, and a misapplication of the provisions of the law. They caused an appeal to be made to him, when

they learned what had been done;—but it was too late to prevent the evil: the warrant had been issued and executed; and he declined to interpose.

Although the Schuylkill Navigation Company have on this occasion acted upon their own mere authority, and in defiance and despite of the remonstrances, reasonings, and opposition of the City of Philadelphia, by its official agents, they do not seem always to have regarded themselves as clothed with such absolute power, or even to have contemplated any independent control over the premises at Fair Mount. In February 1832, the President of the Company applied to the Chairman of the Watering Committee, stating the necessity, for public accommodation, that additional wickets should be put into the lock gates, upon a plan which he had pointed out to Mr. Graff, and begging the favour of the early *direction* of the Chairman of the Watering Committee in the matter. The Watering Committee, in reply, assumed grounds altogether inconsistent with the present paramount power asserted by the Company, and their right to do so has never, until the present controversy arose, been (that we know) denied or doubted. The Chairman expressing what he conceived to be the duty, as it was the desire, of the Watering Committee, to observe scrupulously the faith of the City with the Company, declined to do additional work to what had been accepted by the Company as made in full execution of the agreement. The reply, it should seem, was satisfactory; for neither was the obligation of the City to do the thing desired, nor the right of the Company to take it into their own hands, insisted on. Indeed, during the late correspondence, the Company, in their letter of January 1, 1833, intimated an expectation that they would be *permitted* to go on, during the contemplated arrangements for an adjustment between the counsel.

The Committee will not here complain of any want of respect on the part of the Company, for themselves, or the opinions which they or the regular professional functionary of the City entertained and expressed. They will not even stop to inquire whether the extraordinary measure of force was or was not justifiable, pending a negotiation, which, if entered into with a mutual spirit of accommodation, might and would have averted

it. They will merely say, on this particular branch of the subject, that the alleged necessity for precipitate measures of force, without the usual preliminary of settling the right, was certainly to be ascribed solely to the Company, who might have given earlier notice of their desires and designs, and thus rendered practicable a decision in season. The object of the Committee in making this special report, is to inform the Councils of the actual condition of the interests of the City, as connected with the supply of water for its inhabitants; obtained, and as was heretofore believed, secured, at an expense which nothing but its inestimable value could have justified.

1. Thus, the control and superintendence of the canal and locks are no longer in the hands of the City authorities. Nothing exists, therefore, to prevent waste, mismanagement, and consequent loss of water, to an extent which may deprive the City of its whole supply; it being only that which is not permitted to pass through the locks, which finds its way into the City reservoir, and is thence conducted to the houses of the inhabitants.

2. Should there be no *waste* of water, the power assumed by the Company to *use* it at their mere pleasure, may as effectually deprive the City of all its supply. The additional canal and set of locks now constructing, may be but the forerunner of others hereafter to be made, until all the waters of the Schuylkill shall be made tributary to the increased demand of the Company.

3. The agreement of 14th June 1824, between the City and the Company, has become practically a dead letter; and the sum of twenty six thousand dollars, paid by the City, in good faith, according to its terms, is worse than thrown away.

JOHN P. WETHERILL,  
*Chairman of the Watering Committee.*

Attest.—SAMUEL W. RUSH, *Register.*

*February 11th, 1833.*