

REPORT

OF

E. MANNING, COMMISSIONER

OF THE

Des Moines River Improvement,

TO HIS EXCELLENCY,

R. P. LOWE, GOVERNOR OF IOWA.

DES MOINES, IOWA:

JOHN TEESDALE, STATE PRINTER.

1859.

REPORT

F. MANNING, COMMISSIONER

OF THE

Des Moines River Improvement

TO THE GOVERNOR

R. P. LOWE, GOVERNOR OF IOWA

DES MOINES, IOWA

PRINTED BY J. H. HARRIS, DES MOINES, IOWA

1859

COMMISSIONER'S REPORT.

DES MOINES RIVER IMPROVEMENT.

OFFICE COM. D. R. IMP'T. }
KEOSAUQUA, IOWA, Jan. 1, 1859. }

HIS EXCELLENCY

R. P. LOWE,

GOV. STATE OF IOWA:—

In obedience to the requirements of the law, I herewith submit my report, showing the condition standing and state of finances of the Office of the Des Moines River Improvement so far as the same is connected with this Office and under my control.

The account accompanying this report, marked "A," exhibits the state of finances as therein set forth, and the Vouchers referred thereto, number from 1 to 18 inclusive, show the disbursements of monies that have come into my hands since the passage of an Act by the General Assembly of March 22, 1858.

Under said act you will be advised that the D. N. & R. R. Co. were required to pay to the Commissioner of the D. R. Improvement, or order, the sum of Twenty Thousand Dollars, which sum when paid in money or liabilities existing against the D. R. Improvement, was a condition named and stipulated to be paid by said D. N. & R. R. Co., as before stated.

A part of said amount was paid in money, to-wit: \$12,605 60 and a part was paid to C. O. HALSTEAD, viz: \$7394,40 on certificates of indebtedness which are vouchers and made part of this Report, which sums above stated amount to \$20,000,00.

I beg leave to state that since the passage of said act of the General Assembly of March 22, 1858, in relation to the D. M. R. Improvement, the further progress of the work was made contingent on the further certifying of Lands by the General Government to the State of Iowa, on her claim under the act of Aug. 8, 1846.

The work upon the D. R. Improvement is also required to be done by the K. F. D. M. & M. R. R. Co, thereby superceding the agency heretofore confided to the Commissioner of the D. R. Improvement.

There has been no work performed upon the D. R. Improvement since the 1st of Jan., 1858, except Lock Repairs.

The Locks necessarily must be kept in repair and in working order to enable boats to navigate the River. The sudden failure of the "Gates" at Croton Lock, made it imperative on the Commissioners to let the job of repairs immediately, in order to obviate obstructing the navigation of the River.

I contracted the work to P. H. P. SCOTT, and agreed to pay actual cost for said work. The work was performed with dispatch and has been found by Engineer's Report to be good and substantial work.

The "Lock Gates" at Bonaparte had become weak and dilapidated, and under the best counsel I was able to obtain, I was induced to rebuild said "Gates," in order to protect and preserve navigation in the River. I therefore accordingly let the work of rebuilding, hanging and completing two sets Gates at this point, to MESSRS. MEEK & SONS, and agreed that they should have out of the D. M. Improvement Fund, the sum of One Thousand Dollars, as fast as lands were certified by the General Government to the State of Iowa, for the Improvement of the Des Moines River.

The Gates at Bentonsport Lock I am informed are wearing out and need rebuilding also. In order therefore to insure unobstructed navigation, I gave JAMES A. BROWN a License or Permit to rebuild said Lock Gates, which are to be done in a good and substantial manner, for the sum of \$1000, payable out of Lands hereafter certified by the General Government to the State.

The work at Keosauqua Lock and Dam has remained suspended since the D. N. & R. R. Co. discontinued the work and settled with the State.

Owing to the fact that the materials were prepared at this point for completing the Lock Gates, and the same were in a state of progress that required immediate attention to preserve and carry out the work as contemplated, I made an agreement with J. J. KINNERSLY, authorising him to protect said work, and finish and complete said Lock Gates, immediately, with a view to preserving the material and at the same time carrying out as far as possible the original intention of improving the navigation of the River.

The consideration for the work agreed upon, is set forth in an article of agreement executed by myself as Commissioner of said Improvement, of the one part, and J. J. KINNERSLY of the other part.

Payment for same is made contingent upon the obtaining of more Lands from the General Government.

JONAS HOUGHTON, } The plaintiff in this case brings his suit in
vs. } the District Court of Van Buren County.
COM. D. R. IMP'T. } Iowa, for the sum of \$50,000.

The case was examined and submitted to Arbitration and was finally compromised by the parties. The Gov. and J. C. KNAPI assisting as counsel for the State, agreed that the plaintiff should have judgment in his favor for the sum of \$3500.00, which is a final settlement for plaintiff's claims against D. M. R. Improvement.

A Lease has also been executed to said JONAS HOUGHTON, entitling him to Water Power at the Plymouth Lock and Dam, when the Dam is completed by the State, and in the event of the State abandoning said work, then it is provided that said HOUGHTON may have the materials already furnished at that point to be used by him in finishing said work, with a view of realizing said Water Power.

A copy of said Lease is hereto annexed marked —

Bangs Brothers & Co. }
 vs. }
 The Com'r D. M. R. Imp't. }

A suit was brought in the District Court of the United States at Burlington, Iowa, claiming of defendant the sum of two hundred and fifty thousand dollars, as will more fully appear by copy of notice hereto attached, marked B. Also see Exhibit "C." Said cause has been compromised and settled, as will appear by copy of agreement herewith annexed, marked—; and also copy of voucher herewith annexed, showing that said Bangs Bro's & Co. have received of the Commissioner the sum of six thousand dollars, which, together with a certificate to be issued to them by the present officers of the D. M. R. Imp't, for the sum of \$3049.02, which said certificate, when thus made and delivered to the plaintiffs, Bangs Bro's & Co., or to their legal representatives, operates as a quietus and full discharge of this suit.

Said certificate is payable or dischargeable out of the D. M. R. Imp't funds, hereafter, with 8 per cent interest thereon from the 20th day of January, 1859.

The last mentioned cause with Messrs. Bangs Bro's & Co. had been pending, in the shape of a claim, for several years. The original contract was entered into with Com'r Van Antwerp; but every attempt at an adjustment hitherto, with former Commissioners had failed. It will be seen that the plaintiffs' claim for a quarter of a million of dollars was of itself a sufficient justification to delay its adjustment—at least until more equitable terms could be obtained.

In the present adjustment, your Commissioner conducted the negotiation mainly, and brought about its final settlement, by setting apart at once, at the earliest moment he received the funds, the sum sufficient to liquidate the outstanding bonds bearing 8 per cent interest. The parties interested were, therefore, at once notified that redemption was desired, on the part of the State, of all unliquidated bonds against the Improvement. This act, I regard, evidenced the fact that the State was ready for an equitable adjustment of all just claims.

Pending the negotiations, your Commissioner advised with Judge Mason, Judge Knapp, C. C. Nourse, Gen. Van Antwerp and Gov. Lowe.

Gov. Lowe, as Agent for the State, examined the cause, and defended the State very ably, and to the utmost of his ability, and the result of said adjustment is before stated.

Isaac P. Grey }
 vs. }
 Edwin Manning, Com'r D. M. R. Imp't. }

This action is brought in District Court of Lee County. Said cause is now pending—plaintiffs claiming \$1500.00 damages for lumber lost in high water, and other damages, &c., &c.

Adam Hine, of Keokuk, Iowa, was authorized and permitted to contract and put in a sett of Lock Gates at the Croton Lock on D. M. R. Imp't, and the actual cost in money disbursed by him for that purpose, provided said Gates were constructed by the first day of April, 1859, should be reimbursed to him out of any lands hereafter certified to the State for the Improvement of the D. M. River, together with interest on the same.

Your Commissioner reports that he has made the best possible disposition of the funds committed to his care. First, it was applied in liquidating indebtedness bearing 8 per cent interest.

The last bonds discharged, held by Bangs Bro's & Co., were never demanded, except in connection with their large claim, which will serve to explain the reason the payment was deferred until a final adjustment was obtained.

All the outstanding certificates and bonds connected with the D. M. R. Imp't are now believed to have been redeemed and cancelled.

The monies disbursed by your Commissioner, as herein set forth, has been with a view to promote the best interests of the Improvement, and maintain the rights of the State in all controverted claims against the D. M. R. Improvement.

Your Commissioner furthermore regards that his disbursements, as herein submitted and shown, are in conformity with the letter and spirit of the laws governing this department.

Your Commissioner, therefore, begs leave to submit that he has acted in good faith, and with his best judgment, in all matters pertaining to his trust, and now comes and asks your examination, approval, and discharge from further responsibility in the premises. Very respectfully yours,

E. MANNING,
 Com'r D. M. R. Improvement.

DES MOINES RIVER IMPROVEMENT,

In account with E. MANNING, *Commissioner.*

1856		
Dec. 1,	Expenses to Ottumwa examining acc'ts, and work on line,	\$8,10
Dec. 6,	Expenses to Farmington and St. Francisville,	6,50
Dec. 12,	Expenses to Iowa City, two weeks, self and team, and Games' Express and R. R. Fare,	80,75
1857		
Jan. 10,	Expenses to Keokuk to examine Engineer's acc't,	10,50
Feb. 5,	Expenses on trip to Burlington one week with team,	23,50
Mar. 1,	Expenses to Bentonsport and Bonaparte to examine Locks, &c.,	2,00
Mar. 10,	Cash paid Wesley Walker on expenses to Iowa City,	10,00
Mar. 24,	Cash expenses to Burlington, self and team,	19,50
Apr. 31,	Cash expenses to Burlington, Ellsroad's bill for keeping horses,	16,00
June 10,	Expenses to Keokuk, self and Nourse,	12,50
July 10,	Expenses to Keokuk, self and Nourse,	20,00
July 20,	Expenses to Burlington for Nourse on trial of cause in Supreme Court,	20,00
	Expenses to Bonaparte, self and Nourse,	3,00
July 25,	Expenses to Burlington and Keokuk on trial of cause in Supreme Court,	15,00
Sep. 20,	Expenses of trip to New York and Washington City, on business of the Grant with Department,	300,00
Dec.	Expenses on trip to Des Moines and back to Eddyville, four weeks with team,	100,00
1858		
Feb'y,	Expenses at the "Capital" attending the Settlement with the D. N. & R. R. Co.,	100,00

Sept.	No. 1,	Conable & Smyth's bill of M. Cable,	175,00
June 17		Cash paid Wm. Miles for repairing capstan after flood,	9,00
Mar. 6	No. 2,	Daniel Shaffer acc't repairing and attending Lock at Bonaparte,	32,00
June 28	No. 3,	Bill at Bonaparte store for Iron,	9,30
	No. 5,	Kinsmans & Gardiner's bill for repairing Lock gates at Bentonsport, March, 1857,	98,50
	No. 4,	Bill of Iron of E. M. at Bonaparte store dated Feb. 7, March and April, 1857,	23,15
July 1	No. 6,	J. C. Lockwood's acc't 1 qu'rs salary,	250,00
July 15	No. 7,	C. C. Nourse on acc't his services in suit with D. N. & R. R. Co.,	600,00
July 15	No. 8,	Paid James F. Wilson on acc't his salary and expenses as Ass't Com. D. R. Improvement,	450,00
July 26	No. 7,	Paid C. C. Nourse on acc't,	50,00
July 26	No. 8,	Paid James F. Wilson balance his acc't	60,75
July 26	No. 9,	Paid Wm. G. Clarke balance of acc't,	165,77
Aug. 20	No. 10,	Paid Ralph P. Lowe his Attorney Fee in suit with D. N. & R. R. Co.,	100,00
Nov. 23	No. 11,	O. H. P. Scott his acc't for putting in new gates at Croton Lock,	1094,89
Nov. 25	No. 12,	Cha's H. Irving his acc't per Receipt	181,15
	No. 13,	Office rent two years at 100,00, Commissioner's salary from 17th Nov. 1856, to 1st of Feb., 1857 at \$1000 per annum,	200,00
		Same from 1st Feb., '57, to 1st Jan. '59, 23 mo's at \$1200 per annum,	202,00
Dec. 29,		Expenses to Farmington on Arbitration	2300,00
	No. 15,	J. C. Knapp's Att'y Fee before Arbitrators in case of Jonas Houghton against Com. D. R. Improvement,	6,25
Dec. 29	No. 14,	Paid Chas. Mason Counsel Fee,	100,00
		Expenses to Keokuk,	50,00
	No. 16,	Paid C. C. Nourse his bill Expenses to Iowa City to attend suit with D. N. & R. R. Co.,	5,00
			40,00

No. 17, James A. Brown's acc't,	279,00
No. 18, Cash paid on settlement with Bangs Brothers & Co., canceled 10 certificates of D. M. R. Imp't indebtedness issued in \$500,00 certificates, numbered from 1 to 10 inclusive to Bangs Brothers & Co., dated Nov. 1, 1851.	6000,00
	<u>\$13241,12</u>

CONTRA—CR.

1858.

July 1, By balance Draft made on D. N. & R. R. Co., paid in cash to Ira Smith & Co., New York, to wit: amt. on Draft,	\$20,000,00
Off. amt. of 13 certificates Impt. Indebtedness and coupons paid to C. O. Halstead,	7394,40
Bal. paid by D. N. & R. R. Co. on Com's order,	12,605,60
By cash refunded by William Miles,	9,00
By cash deposited by J. P. Grey, Dec. 27, 1856, on acc't rent Water Power and Croton,	50,00
Cash of Wells, Chiddeston & Co., Dec. 31, 1856, on acc't rent Water Power at Croton,	100,00
Cash by Wells, Shurek & Grey per Wells, on acc't rent Water Power at Croton,	150,00
Cash collected by W. H. Manning on Com's order on acc't Water Power at Croton,	81,00
	<u>\$12995,60</u>
Balance due,	245,52
	<u>\$13,241,12</u>

B.

ANSON BANGS, Eli T. Bangs, Myron Bangs, survivors of the late firm, Partners doing business under the name and style of *Bangs Brothers & Co.*,

vs.

Edwin Manning, Commissioner of the Des Moines River Improvement.

In the District Court of the United States, in and for the district of Iowa, Southern Division under the Circuit Court Jurisdiction of said Court, — May term, 1859.

ANSON Bangs, Eli T. Bangs and Myron Bangs, surviving Partners of the late firm of *Bangs Brothers & Co.*, and citizens and residents of the State of New York, complain against Edwin Manning Commissioner of the Des Moines River Improvement, a citizen of Van Buren county and the State of Iowa:

FOR THAT WHEREAS, On the ninth (9) day of August, A. D. 1851, the said plaintiff's under the firm, name and style of "*Bangs Brothers & Co.*" entered into an agreement in writing under the seals of the respective parties, with Ver Placnk Van Antwerp Commissioner of the Des Moines River Improvement, and George Gillaspie Register of the Des Moines River Improvement, the said Van Antwerp and the said Gillaspie being then and there authorized to make, enter into, and execute said Contract under the laws of the State of Iowa, and as officers of said State, and which said Contract was duly approved by the Governor of said State of Iowa, of which Contract a printed Copy, designated by parenthesis and marked exhibit "A" is hereto attached and made a part of this Declaration, as though herein, at this place inserted.

Plaintiffs aver that under said Contract, Plaintiffs went on and acted, and performed the same in accordance with the covenants therein contained.

And Plaintiffs aver that the former Contractors at Croton, Bentonsport and Bonaparte, did elect and decide to go on and carry out, and perform, the Contracts previously made between

each of them and the Commissioner and Register of said Improvement, or the Board of Public Works, as is provided in Section four (4) of said Contract.

And Plaintiffs aver that on the first day of October, 1851, Plaintiffs paid, to said Register of said Improvement, under said Contract, the sum of Five Thousand Dollars, for the purpose of paying said Contractors at Croton, Bentonsport and Bonaparte, for work actually done by said Contractors, at their Contract prices between the date of this Contract and the first day of October, 1851; And that Plaintiffs in August 1851 delivered to Guy Wells, chief engineer, five hundred barrels of Water Lime, of great value—to-wit: of the value of One Thousand Dollars, which was then and there received under, and was used and applied upon said Contracts.

And Plaintiffs further aver, that on or about the first day of November, 1851, Plaintiffs furnished and delivered, under said contracts, two sets of Lock Gate irons of great value, to wit: the value of one thousand dollars; which were then and there received by said Engineer, as part performance of said contracts.

Plaintiffs further aver, that said contract, *Exhibit "A,"* embraced the improvement of the Des Moines River for a distance of about two hundred miles, which said improvement was mostly to be made by Locks and Dams, and by these means to render the said river navigable by slack water; and that said improvement, if said plaintiffs had been permitted to go on and perform said contract, would have cost a large amount, to wit: the sum of one million and five hundred thousand dollars; and plaintiffs would have made and received large profits as the consideration and inducement of said contract on the part of plaintiffs, if plaintiffs had been permitted to execute and perform the same; and that plaintiffs would have received and been entitled to the difference between the actual cost of performing said contract by plaintiffs, and the price agreed upon in the contract aforesaid; which said difference in cost and contract price, would have amounted to a large sum, to wit: the sum of two hundred thousand dollars.

Plaintiffs further aver, that defendant, and the said Register of said improvement, and their successors in office, did not keep their said covenants in said agreement contained, but broke and viola-

ted the same, and refused and neglected to comply and perform their part of said contract, in this, to-wit:

First—The said Commissioner and Register refused and failed to have the estimate of the work done by the Contractors at Croton, Bentonsport and Bonaparte, on the first day of October, 1851, in accordance with said contract, or at any subsequent time.

Second—The said officers neglected and refused to pay over to said Contractors at Croton, Bentonsport and Bonaparte, the one half of the net proceeds of the sales of lands made during the progress of said work up to the first day of October, 1851, and each succeeding month thereafter, as stipulated in said contract.

Third—Said officers sold a large quantity of said lands in violation of said contract, for a much less price than is therein agreed, to wit: for \$1.25 per acre; to wit: three hundred thousand acres.

Fourth—Said officers refused to give to plaintiffs certificates of stock for the said sums of money, hereinbefore stated as advanced by plaintiffs in accordance with said contract, though often requested so to do or in manner to pay to plaintiffs the said sums advanced as above set forth, and there now remains due to plaintiffs the sum of, to wit: twenty thousand dollars, for said sums so advanced, with the twenty per cent added thereto, and the interest thereon.

Fifth—That said Commissioner and Register, so acting and violating their said contract, compelled plaintiffs to abandon the performance thereof; and did, on the eighteenth of February, 1852, declare that plaintiffs had forfeited said contract on their part; and prevented plaintiffs from carrying on and completing said Improvement under said contract, whereby plaintiffs suffered great damages, to wit: the sum of two hundred thousand dollars, in the loss of profits, which were the consideration and inducement of said contract on the part of plaintiffs, and which plaintiffs would have made and received had plaintiffs been permitted to perform said contract, and had not said officers, by violating the same, prevented the completion thereof.

Wherefore, plaintiffs say that defendants have violated said contract; by reason whereof, and the breach of said covenants, and a violation of said contract by defendant, plaintiffs have been

greatly injured and damaged, to-wit: in the sum of two hundred and fifty thousand dollars; for which they bring this their suit, and ask judgment for said damages, together with interest and costs.

ANSON BANGS,
ELI T. BANGS,
MYRON BANGS.

HALL, HARRINGTON & HALL, Plffs' Att'ys.

Præcipie. Bangs Brothers & Co.

vs.
Edwin Manning, Com-
missioner of the D. M.
R. Improvement.

In the District Court of
U. S., on the Circuit side of
said Court, exercising Cir-
cuit Court power.

The Clerk will please issue a summons in this case, returnable on 3d Monday of May, 1859. Cause of action—Covenant on contract of A. D. 1851, for improvement of Des Moines River. Damages, \$250,000.

HALL, HARRINGTON & HALL,
Attorneys for Plaintiff.

Filing. Filed, and summons issued,
November 8th, 1858.

J. C. BURNS, Clerk.
By A. J. MESSENGER, Deputy.

United States of America, }
District of Iowa, }
Southern Division. }

I hereby certify the foregoing to be a true and complete copy of a Declaration filed in my Office in the aforesaid entitled cause, except exhibit A, which is a printed copy of said Contract, and which commences with Page 11, and ends with Page 37, of said printed Contract.

Witness my hand and seal of said Court, Dec. 10, 1858,

A. J. MESSENGER, Dep. Clerk,
U. S. District Court,
Southern Division
of District of Iowa.

Fees, \$2.00.

(COPY.)

Exhibit C.

ANSON Bangs & Co. } In District Court of United
vs. } States, May Term, 1859.
Commissioner D. M. R. Imp't.

This suit is now Compromised and settled, upon the following terms, to-wit:—

The said Plaintiffs are to dismiss their suit at their own cost and give the Des Moines River Improvement a full discharge or release of all claims against the same and the Defendant is to pay to the Plaintiffs six thousand dollars, cash, upon the return and surrender of ten (10) Certificates of Indebtedness which he holds against the Defendant.

And the Defendant is further to issue and deliver to the said Plaintiffs a certificate of Indebtedness for the sum of three thousand and two hundred and eighty-seven 77-100 dollars, drawing 8 per cent interest from the 20th, day of January, 1859, upon the Lands of the Des Moines River Grant made by Congress on the 8th August, 1846, which remained unappropriated April 30th, 1859.

(Signed) RALPH P. LOWE, Gov.,
and Att'y for State.
ANSON BANGS, for
Bangs Brothers & Co.

Amount of Certificate due,	\$3287.77
Error discovered after settlement, which	
is to be deducted,	\$238.75

Leaving the amount	\$3049.02
due Messrs. Bangs Brothers & Co., to be paid by Certificate of	
Indebtedness as before stated.	

Dr.

Des Moines River Improvement,

To BANGS BROTHERS & Co.,

For amount due on 10 Certificates of Indebtedness, up to 20th January, 1859,	\$6,192,29
Amount paid for Water Lime,	\$570,00
Add 20 per cent interest, as per Contract,	114,00
" Int. as per Contract up to Jan. 20, 1859,	503,51
	<hr/>
Item on Interest of \$5,000 from Oct. 1, to Nov. 1, 1851,	1187,51
	<hr/>
Int. on said item to 20 March, 1857,	33,33
	<hr/>
Add 20 per cent on \$5,000 as per Contract	\$1,000,00
Int. to 20 March 1857,	552,94
Int. to Jan. 20, 1859.	235,03
Costs in Supreme Court,	70,00
	<hr/>
	1857,97
	<hr/>
	\$9287,77

Cr.

By cash Draft received of EDWIN MANNING late Com. D. M. Imp't. for six thousand dollars which is per and on account of above.

\$6000,00

\$3287,77

Error in computation of Interest off

238,75

Ballance due BANGS BROTHERS & Co, three thousand dollars and forty-nine 2-100 dollars.

\$3049,02

KEOKUK, April 30, 1859—Received of E. MANNING, Draft for six thousand dollars, on IRA SMITH & Co., of New York.

BANGS BROTHERS & CO.

By ANSON BANGS.

The above is a true copy of original.

E. MANNING.

REPORT OF

WM. C. DRAKE, COMMISSIONER,

OF THE

Des Moines River Improvement,

TO THE

GENERAL ASSEMBLY OF THE STATE OF IOWA;

DES MOINES, IOWA:

JOHN TEESDALE, STATE PRINTER.

1860.