

ANNUAL REPORT

OF THE

RIPARIAN COMMISSIONERS

OF THE

STATE OF NEW JERSEY,

For the Year 1897,

WITH ACCOMPANYING DOCUMENTS.

CAMDEN, N. J.:

SINNICKSON CHEW & SONS, PRINTERS, FRONT AND MARKET STS.

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Riparian Commissioners.

Gov. JOHN W. GRIGGS, <i>Chairman</i> ,	PATERSON, N. J.
WILLARD C. FISK, <i>Vice Chairman</i> ,	JERSEY CITY, N. J.
MILES ROSS,	NEW BRUNSWICK, N. J.
JOHN I. HOLT,	PATERSON, N. J.
WILLIAM CLOKE,	TRENTON, N. J.

Commissioner's Report.

To his Excellency John W. Griggs, Governor of New Jersey :

As required by law, the Riparian Commissioners beg leave to submit their report for the year ending October 31, 1897.

The receipts of the riparian fund from all sources for the year aggregate \$120,766.90, as follows :

Grants in fee,	\$21,718 35
Conversions of leases into grants in fee,	17,433 63
New leases,	24,956 00
Licenses,	625 00
Rentals on old leases,	55,218 02
Rentals on new leases,	815 90
Total,	\$120,766 90

As anticipated in our last annual report, the improved condition of business has increased the demand for riparian lands. The grants in fee during the year just closed aggregated \$9,350.90 in excess of those made during the preceding year. Inquiries are now pending before the Board that involve transactions of large magnitude.

During the past year the Commissioners continued the inspection of the State's riparian grounds, and have discovered thousands of dollars' worth of riparian property held by persons who had never purchased or leased it. Large wharves, bulkheads and other structures had been built on the State's property without right or compensation. These trespassers have been brought to book and the riparian fund will, in consequence, be enriched by many thousands of dollars. In many cases the occupation of the State's property was made in ignorance of the law. The Commissioners have, in all cases, been disposed to take this lenient view of the matter.

In 1895, the Legislature passed the following act :

New Jersey State Library

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WHEREAS, the Palisades, situate in this State are liable to be irreparably injured or destroyed, unless measures be adopted for preservation ; -

AND WHEREAS, by the insertion or imposition of proper and appropriate terms, conditions, restrictions and limitations in leases, grants and conveyances of the lands lying under water adjacent to or in front of the Palisades, the threatened injury or destruction thereof may in a great degree be averted ;

Be it enacted, by the Senate and General Assembly of the State of New Jersey, "That hereafter the Riparian Commissioners shall not make any lease, grant or conveyance of any lands lying under the waters of the Hudson river adjacent to or in front of the strip of land between the base of the Palisades and the lands under water, unless there be inserted in the lease, grant, or conveyance, such terms, conditions, restrictions and limitations as will, so far as possible, forever thereafter preserve unbroken the uniformity and continuity of the Palisades, and also as far as possible prevent the lands leased, granted or conveyed, from being in any way used or devoted to injurious or destructive work or operations against the Palisades, or in connection with or for the encouragement, aid or promotion of injurious or destructive work of any kind against the Palisades."

In pursuance of this act, the Commissioners have inserted the following clause in the two leases of land in front of the Palisades made since this law was passed :

"*And also provided,* that the lands under water hereby leased shall not be used by the said his heirs or assigns, for any use, occupation, purpose, work, business or trade, or in connection with or for the encouragement, aid or promotion of any use, purpose, occupation, work, business or trade, which shall be injurious to or destructive of the Palisades, or which shall break or destroy or impair the uniformity and continuity of the Palisades."

Two leases have been made under this act, of lands under

REPORT OF RIPARIAN COMMISSIONERS. 7

water in front of the Palisades—to Messrs. Brown and Fleming and John A. Treanor. Both have been declared forfeited by the Riparian Commissioners, on the ground that they were violating the above law and agreement. Neither party was blasting into and destroying or defacing the vertical wall of the Palisades, but were blasting and breaking up the talus lying between the cliff and the river.

The Riparian Commissioners hold, however, that this slope of verdure-clad broken rocks constitutes one of the principal charms of the Palisade scenery, and that the Legislature had its preservation from despoilment in mind when it enacted the law above quoted. Suits are therefore now pending against Brown and Fleming and Mr. Treanor, in the Court of Chancery, for the annulment of the leases. These suits are to be pressed by the Attorney General to a speedy conclusion. In order, however, that any obscurity or doubt as to the scope and meaning of the law may be removed, the Commissioners respectfully suggest that your Excellency recommend the Legislature to pass an act specifically including the slope as well as the escarpment in the inhibitory law. The Commissioners decided, over a year ago, by formal resolution, not to make any more grants or leases of the lands under water in front of the Palisades until this obscurity or doubt be removed. If the suggested law be passed, the Palisades will certainly be protected against further defacement so far as the State's ownership of riparian lands in front of them extends. This includes about five and a half miles, or one-half of the Palisades within the limits of this State.

In view of the threatened exhaustion of the natural oyster beds of this State and the destruction of the oyster industry, under the wasteful system that now prevails, it has been suggested that a comprehensive law be enacted, providing for the more provident use of these natural beds, and for the more systematic regulation of the oyster industry, and that the enforcement of the act and control of the business be devolved upon the Riparian Commissioners. The Commission that was appointed by the Legislature in 1894 "to examine into the

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difficulties existing among the oystermen of Maurice River Cove and Delaware Bay," made an exhaustive investigation of the whole subject and submitted a report embodying a number of practical suggestions. This report stated that :

"The extent and value of the oyster industry in Delaware bay is not generally appreciated by the citizens of this State. The bay is one of the natural homes of the oyster in this country. The territory within the bay where oysters will naturally grow, or can be profitably cultivated, is, roughly speaking, about two hundred square miles. Between five hundred and six hundred vessels, carrying crews from three to ten men each, are engaged in the business, and, as appears by the last census, the annual value of the oyster crop, including that of the western shore, is about \$2,000,000."

"The total value of the oyster crop of the State is now little, if any, short of \$3,000,000 per year."

The report further states that :

"About forty years ago the business was commenced of taking the young natural oysters and planting them upon the grounds in the deep waters of the bay, where they were left to grow until of marketable size. The places where the oysters were thus planted were marked off by stakes and the lands thus selected were situated under the waters of the bay in Maurice River Cove.

"The title to the lands thus appropriated to the cultivation of oysters was in the State, and they were taken without any legislative permission. By common consent of the persons engaged in this business, the staking out of the unoccupied lands in Maurice River cove, and the planting of oysters thereon, gave to the holder an exclusive right to the possession of the lands so appropriated, and the invasion of this right has always been vigorously resented.

"These staked out territories have been made the subject of transfer for valuable consideration. While no direct permission has been given by, or title received from, the State to the lands thus occupied, the courts have held valid conviction for larceny founded on the unauthorized taking of oysters from these lands,

REPORT OF RIPARIAN COMMISSIONERS. 9

and incidentally this exclusive right to possession has been recognized and confirmed in the various statutes affecting the oyster business. The territory thus set apart by common consent for the cultivation of oysters is in the vicinity of fifty square miles, or about thirty-two thousand acres in extent. These lands are held without compensation to the State, and no taxes are levied upon them or upon the oysters cultivated thereon.

"From the time the planting and cultivation of oysters commenced, the territory thus used for the purpose has been confined to that part of Delaware bay included in and adjacent to Maurice river cove, a locality where, generally speaking, oysters do not naturally propagate. The great body of the bay north of the cove, and extending for a distance of some thirty-five miles in length, and of an average width of between four and five miles, constitutes the natural oyster beds and grounds where the oysters spawn and grow without cultivation. It has been the custom to dredge upon this latter territory for the seed oysters used for planting in Maurice river cove."

The concluding parts of the report are as follows :

"The consensus of opinion is that no adequate measures have been adopted to protect the natural productiveness of the bay. The large number of vessels employed, the improved dredges in use and the lack of proper regulations as to size of the oysters taken have all combined to practically clean the bay of all natural growth, and in addition, owing to the absence of any law requiring the separation of the oysters from the shells in dredging, the beds themselves have in many instances been either destroyed or seriously injured. This removal and destruction of the beds results in the loss of the oyster spawn, as no material remains to which it can be attached. Last season at least one-half the oysters planted were purchased outside the State, and this season the result will be much worse.

"From the testimony received and the investigations made the Commission find that a majority of the persons in the business agree as to the following points :

"First. That unless some radical change is made in the laws the industry will be extinguished.

"Second. That State control of the oyster lands, under proper regulations as to their use, is desirable.

"Third. That the dredging for natural oysters in the bay should be prohibited, either in whole or in part, for a period of years.

"Fourth. That a 'rough cull' law should be enacted, that is, a law requiring the dredger to separate the oysters from the shells of the bed, and thus prevent the carrying away of the beds themselves.

"This Commission strongly recommends that the oyster lands in Maurice river cove and Delaware bay be placed under State control, as necessary to their preservation. Connecticut, Delaware, Maryland and Virginia, all States having large oyster interests, have adopted this policy, to the benefit and satisfaction of their citizens.

"A law should be enacted providing for the leasing by the State to private persons of lands to be used for the cultivation of oysters, and for which a small annual rent per acre should be charged. In thus taking control of lands for the cultivation of oysters, the State should respect the rights of the persons who now occupy staked-up grounds, and they should have the first right to leases for the same, and have the title to all oysters now placed thereon. All vessels engaged in the business should pay a tonnage tax to the State and receive licenses. Proper regulations for the use of the bay and for the protection of the natural oysters should be made, and should include the power to prohibit dredging on the natural oyster grounds for a time; the introduction of a 'rough cull' rule; provision for replenishing the oyster beds with shells at the State expense. Adequate means should be provided by guard boats to enforce the law and protect the bay. Severe penalties should be provided for violations of the law, and in case of offending vessels the licenses should be revoked. A reasonable rental and license fee will provide sufficient funds to properly protect the industry and enforce the law.

"In case the oyster lands are placed under State control, the Commission advise that the State acquire title, by condemnation or otherwise, to the lands covered by these riparian grants, to the end that all the oyster territory may be held by the State, and the use thereof regulated for the benefit of all its citizens."

Reports from the Shell Fish Commissioners of the States named in the above report (Connecticut, Delaware, Maryland and Virginia), and also of Rhode Island, show that the system of State supervision is not only productive of the most gratifying results to the oyster industry and highly satisfactory to the oystermen, but is more than self supporting so far as the State revenues are concerned.

The taxes, rentals and license fees more than pay for the policing and the cost of enforcing the laws, and also secure to the oystermen themselves far larger and more certain returns. The Riparian Commissioners could economically and efficiently exercise the necessary powers as Shell Fish Commissioners, under an act carrying into effect the suggestions above quoted. In the framing of such an act the persons engaged in the oyster industry itself should be taken into the fullest consultation.

Since last year the venerable Secretary and Engineer of the Riparian Commission, Mr. R. C. Bacot, has resigned from those positions, and Mr. J. C. Payne, who had for years served as his efficient assistant, was elected in his stead. The high estimation in which the Commissioners held Mr. Bacot, and their appreciation of the long and valuable service he has rendered the Commission and the State, are embodied in the testimonial adopted as a minute and printed in this report.

Detailed information in regard to the work of the Board during the year will be found in the report of the Secretary and Engineer.

Respectfully submitted,

WILLARD C. FISK,
MILES ROSS,
JOHN I. HOLT,
WILLIAM CLOKE.

Dated October 31, 1897.

ENGINEER'S REPORT.

To the Riparian Commissioners of the State of New Jersey :

GENTLEMEN: The following tabular statement shows the Grants in fee, Leases, and Licenses made by the Riparian Commission during the year ending October 31st, 1897, the names of the grantees or lessees, with the dates, localities and amounts paid or secured to be paid to the State:

Date of Grant. 1896.	Grantee.	County.	Amount.
July 9.	J. C. Fifield and others,	Cumberland,	\$90 00
Oct. 29.	A. M. Lambertson,	Monmouth,	450 00
Dec. 30.	Calvin Pardee,	Middlesex,	58c 00
1897.			
Jan. 28.	Port Reading R. R. Co,	Middlesex,	14,344 20
Mar. 25.	American Enamel Brick and Tile Co. Staniar & Laffey Wire Co.,	Middlesex,	100 00
	Joseph S. Lodge,	Hudson,	100 00
May 27.	The Passaic Boat Club,	Gloucester,	25 00
June 10.	Ursula Terhune,	Essex,	500 00
July 1.	Jane E. Boyle,	Bergen,	100 00
	Samuel B. Norcross,	Cape May,	311 65
July 29.	C. Howard Schermerhorn,	Burlington,	100 00
	The Paterson Parchment Paper Co. Amos L. Prescott and Charles O. Littlefield,	Cape May, Passaic,	100 00 294 00
Aug. 31.	William Shriver,	Passaic,	150 00
	Louie H. Ennis,	Cape May,	250 00
	Richard R. Sooy,	Monmouth,	331 50
	Raritan River R. R. Co.,	Cape May,	1,500 00
Sept. 16.	John Stephenson Company,	Middlesex,	200 00
	Alpha G. Kynett,	Union,	1,057 00
	Mary A. C. Cunningham,	Cape May,	300 00
	Harriet Hall, Gertrude Moore, et al.,	Cape May,	100 00
	Abel D. Scull,	Monmouth,	300 00
	Mary M. Parry,	Cape May,	100 00
Oct. 7.	Mary C. Barnett,	Burlington,	85 00
		Cape May,	250 00

\$21,718 35

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LICENSES.

Date of License.	County.	Amount.
1897.		
June 1. Newark Sand Dredging Co. (yearly),	Essex & Bergen,	\$500 00
July 1. Edward M. Haedrich,	Burlington,	25 00
Aug. 3. Raritan River Railroad,	Middlesex,	100 00
		<u>\$625 00</u>

NEW LEASES.

Date of Lease.	County.	Amount.
1896.		
Oct. 29. The Mutual Chemical Co.,	Hudson,	\$1,025 00
Frank M. Stratton,	Bergen,	600 00
H. E. Ficken and Wm. Knappman,	Middlesex,	1,500 00
Nov. 12. Estate William Currie,	Hudson,	935 00
27. Mary M. Ward,	Monmouth,	1,480 00
1897.		
July 1. N. Y. & N. J. Fireproofing Co.,	Monmouth,	600 00
Aug. 31. The American Lucol Co.,	Middlesex,	1,290 00
Sept. 16. Jane V. P. Wheeler,	Hudson,	7,345 00
James Brady,	Hudson,	1,260 50
Redmond D. Donnell,	Hudson,	5,875 00
John H. MacDonald,	Hudson,	3,045 50
		<u>\$24,956 00</u>

CONVERSION OF LEASES INTO GRANTS.

Date of Grant.	Grantee.	County.	Amount.
1896.			
Dec. 10. Henry Maurer & Son,	Middlesex,	\$12,225 00	
17. Mungo J. Currie,	Hudson,	1,515 00	
John D. Lankenau (Conversion of part of lease to Sea Grove Association of April 12, 1879),	Cape May,	150 00	
1897.			
Mar. 25. James Brady,	Hudson,	400 00	
Roxana and Absalom M. Hand (Conversion of lease to John Holmes Hand of May 6, 1882),	Cape May,	143 63	
April 29. Charles F. McKenna,		3,000 00	
		<u>\$17,433 63</u>	

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SUMMARY.

Grants in fee,	\$21,718 35
Leases converted into grants,	17,433 63
Licenses,	625 00
New leases,	24,956 00
Rentals on old leases,	55,218 02
Rentals on new leases,	815 90
Total,	<u>\$120,766 90</u>

The statement shows a marked advance in the amount of business done during the present year over that of the preceding year, and the sales have increased greatly in the latter part of the fiscal year, reflecting the general improvement in the commercial activity of the country.

ROUTINE WORK.

The routine business of the Commission carried on during the year consisted of the receipt of applications from shore-owners for riparian rights, and the hearing of parties interested in the same; the examination of the locality in which the lands applied for lie and the determination of the rate to be charged. Upon the acceptance by the applicant of the rate fixed, the preparation of the maps and descriptions defining by metes and bounds the lands under water to be conveyed, with the consideration to be paid or secured to be paid, and the examination of the title of the applicant attested by the certificate of the counsel of the Board, filed in the office of the Commission in each case; the preparation and execution of the instruments passed upon, with the delivery of the same to the applicants and the receipt and transmission to the State Treasurer of the consideration paid to the State; the recording at length in the books of the Commission all grants, leases and licenses made, and showing on the record maps of the office the location of the lands granted, with the dates of such grants, &c.

SPECIAL EXAMINATIONS.

Examinations of the tide waters of the State have been made, not only in the case of applications presented, but examinations extending over entire sections have been made by special committees of the Board. Among the localities examined is the Kill Von Kull, parts of Staten Island Sound, Sandy Hook bay, Shrewsbury river, Pleasure bay, parts of Barnegat bay, the waters around Atlantic City and the thoroughfares and bays to the north, the waters around Ocean City, both ocean and bay fronts, the Delaware river at Camden and at Burlington city, and Rancocas river and its branches. These examinations have disclosed a great many cases of encroachment on lands of the State, in some cases trifling in extent, but in many cases valuable lands of the State were being appropriated. In one section alone the persons so encroaching were obliged to secure the State's title, resulting in leases to the amount of \$17,500.00 being made. These visits of the Commission to the different tide waters of the State have resulted in increased interest and a more general recognition by riparian owners of the State's rights to lands flowed by tide waters.

PIER LINE EXTENSIONS.

During the year applications for the extension of the pier-head line on different tide waters of the State have been made to the Board.

As the business at points of commercial importance on tide waters of the State increases, and with the advent of vessels of increased length, both for passenger and freight traffic, greater facilities and accommodations in the way of piers become a vital necessity in order to retain and accommodate the growing business of a locality and prevent its being diverted to other States.

Perhaps the most important case of this kind was brought to the attention of the Board by the claim that two of the great transatlantic steamship lines berthing at Hoboken, on the Hud-

son river, The North German Lloyd and the Hamburg American, would by reason of the inadequate length of piers at their present berth on the Jersey shore be compelled to go to the New York side of the river. With a view to averting this serious blow to the interests of an important city of this State, the Board took the matter up and finding that the existing pier-head line was already as far out into the river as the limit fixed by the United States Government in 1892, on February 26th, 1897, made a formal application to Hon. Daniel S. Lamont, then Secretary of War, for the extension of the pier-head line to afford the desired relief. On March 10th, 1897, Henry M. Robert, Colonel Corps of Engineers U. S. A., President of the New York Harbor Line Board, informed the Riparian Commission that their application of February 26th had been referred to The Harbor Line Board for consideration and report, and that a public hearing in the matter would be held by said Board at the Army Building, New York City, on April 22d, 1897. At the above hearing the Riparian Commission was represented by the Counsel of the Board, Mr. George L. Record, and by the Engineer. The maps and data were presented, and Mr. Record made a strong and effective argument in favor of the extension, for on May 18, 1897, the Commission received from the Secretary of War formal notice that the application had been granted and accompanying the same with the official map showing the extension asked for.

Following the extension of the pier-head line by the Government, came applications to the Board from grantees and lessees affected for permission to extend their rights to said new pier line, and the matter was referred to the counsel of the Board for examination and report as to the extent of the rights of said grantees, and of the powers of the Commission in the premises.

On August 26th, 1897, counsel submitted his report and opinion, which was in effect that if the Riparian Commissioners accepted and adopted the new pier line fixed by the United States authorities, all of the grantees affected, except one, would have the right under the terms of their grants to extend their

piers to the new line without any further compensation to the State; further, that the Riparian Commission had the power to adopt the New Exterior Pier Line, but the Commission could not be compelled by the grantees to do so. Reference is made to the full text of the report and opinion, which will be found as an appendix to this report.

Under the direction of the Board, a map showing the new pier-head line was prepared by the Engineer, and on October 28th, 1897, the same was approved and adopted and ordered filed.

GRANTS TO QUIET TITLE.

Grants have been made during the year of lands formerly under tide water in the bed of streams now diverted and abandoned or filled up. One of these was in Gloucester county, where the course of Mantua creek had been changed, and one in the city of Hackensack, where the Hackensack creek had been abandoned and filled up; these grants are more important than they seem, for the Title Guarantee Companies refuse to certify to the title to lands, part of which were formerly flowed by tide water, unless the State's title is secured, and when such guarantees are needed, delays arise that are serious.

PRESERVATION OF THE PALISADES.

The matter of the preservation of the Palisades has received the attention of the Board during the year, and on March 25th, 1897, the lease of lands under water on the Hudson river, made to John A. Treanor, March 28th, 1895, was declared void for violation of the clause in relation to the Palisades.

No grants or leases of lands under water on the Hudson river, that can be used in connection with any work destructive of the Palisades, are now made by the Commission.

OYSTER QUESTION.

The attention of the Board has been called during the year

to the difficulties existing among the oystermen of Delaware bay. The matter has reached the courts, and a decision been handed down by the Court of Errors and Appeals.

In this connection, attention is called to the very complete and valuable exposition of the questions involved in the above controversy, contained in the report of the Commissioners, of which Mr. Willard C. Fisk was Chairman, appointed under joint resolution of the Legislature of New Jersey, May 2d, 1894, which report will be found as an appendix to the report of the Riparian Commissioners of 1894. The difficulties in 1894 resolved themselves into the question whether a grantee of the State had the exclusive right to plant and cultivate oysters on lands under water, granted by the State, lying within the territory set off by the Legislature as Natural Oyster Grounds.

The report of the Legislative Commission, above referred to, brought the situation down to May, 1894, when a large number of vessels appeared on the ground leased from the State by riparian owners, and practically denuded them of the cultivated oysters.

Suit was subsequently brought by one of the riparian grantees to recover the value of the oysters so taken, and a verdict in his favor given, but upon the case being carried to the Court of Errors and Appeals the judgment of the lower Court was reversed.

The following is the syllabus of the opinion:

SYLLABUS.

"1. The State may grant the exclusive use of its lands under water, but until such grant is made, the right to enter and fish upon it may be exercised by all the citizens of the State.

"2. A deed by the Riparian Commissioners, under the act of March 21, 1871, can be made to the owner of the ripa only, and where the deed expressly declares that the grantee is owner of the ripa, and that it shall be void if he is not such

owner, a citizen who is exercising the right of fishery upon the land granted, may, in a suit for trespass, challenge the fact that the grantee is owner of the ripa.

"3. The deed in this case gave the grantee the right to fill in, and otherwise improve the land under water, and to appropriate it to his own exclusive uses. Held: That until the grantee reclaimed the land, he acquired no exclusive right to it, except so far as might be necessary to enable him to make reclamation."

Upon this decision being rendered, the riparian grantees in Cumberland county appeared before the Riparian Commission, on July 28th, 1897, and requested that some form of confirmatory grant be made to them by the Commissioners, which would give them the exclusive right to plant and cultivate oysters on lands granted them by the State, within the territory named, and presented a formal application in the name of one of the grantees. This application and the questions involved were submitted to the counsel of the Board for a legal opinion, and on August 26th, 1897, the counsel submitted his opinion, which was to the effect that under the existing law the application could not be granted. Reference is made to the full text of the opinion, which will be found as an appendix to this report.

IMPROVEMENT OF OCEAN INLETS.

A matter of local importance but of interest to several points on the coast of the State has been brought to the attention of the Board; by the proposed improvement and maintenance of the Shark River Inlet. The preservation of these inlets at the different points on the coast, where they occur, becomes a matter of importance, not only from the profit and pleasure they bring to the locality affected, but become matters of vital importance from a sanitary point of view. Where these inlets close and the impounded waters become stagnant and polluted, the health of the surrounding community is menaced and valuable property interests are jeopardized.

The Legislature, on March 29th, 1897, passed an act authorizing counties to raise money for the purpose of improving inlets, and providing for the submission of plans adopted to the Riparian Commission for approval. The Board of Freeholders of Monmouth county caused plans for the improvement of Shark River Inlet to be prepared, and upon their adoption presented them to this Board for approval. After having several hearings, the plans were formally approved by the Riparian Commission on October 21st, 1897.

RESIGNATION OF ROBERT C. BACOT, ESQ.

On July 1st, 1897, Robert C. Bacot, Esq., who had been the Engineer of the Board since its inception, resigned, and in accepting his resignation the Board appointed a committee consisting of Commissioners Fisk and Cloke to draw up suitable resolutions expressive of the appreciation by the Board of Mr. Bacot's long and efficient service.

The office of Assistant Engineer was on the same day abolished, and the Assistant Engineer appointed to succeed Mr. Bacot, the duties of Secretary and Engineer being merged in one.

UNFINISHED BUSINESS.

A number of grants not included in the statement of the business of the year are now executed and awaiting acceptance by the grantees, and a great many cases of encroachments on lands of the State are in process of settlement and will be earnestly pressed to a conclusion.

Respectfully submitted,

JOHN C. PAYNE,
Secretary and Engineer.

October 31st, 1897.

FINANCIAL STATEMENT

Of Amounts Received and Paid by the Riparian Commissioners for Salaries of
Employees and Office Expenses of the Commission for the Year
ending October 31st, 1897.

1896.	DR.	
Oct. 3.	To balance in First National Bank,	\$40 91
Dec. 7.	" amount received from State Treasurer,	480 50
1897.		
Jan. 7.	" " " " "	482 50
Feb. 3.	" " " " "	480 50
Mar. 4.	" " " " "	493 62
April 1.	" " " " "	481 35
May 5.	" " " " "	491 80
June 3.	" " " " "	486 55
July 7.	" " " " "	500 74
Aug. 4.	" " " " "	406 62
Sept. 3.	" " " " "	399 75
Oct. 15.	" " " " "	404 47
Nov. 11.	" " " " "	723 67
		\$5,872 98

1897.	CR.	
Oct. 31.	To amount paid for salary of Engineer,	\$1,333 32
	" " " " Secretary and Engineer,	2,133 33
	" " " " General Counsel,	1,500 00

TO OFFICE AND INCIDENTAL EXPENSES.

To rent of offices,	400 00
" surveys, maps, printing, telephone rent, stationery, etc.,	465 42
" balance in First National Bank, Jersey City,	40 91
	\$5,872 98

JOHN C. PAYNE,
Secretary.

APPENDICES TO REPORT.

- A.* Memorial on the resignation of Robert C. Bacot, Esq.
 - B.* Report and opinion of George L. Record, Esq., counsel of the Board, on the question of the rights of grantees on the Hudson river.
 - C.* Report and opinion of George L. Record, Esq., counsel of the Board, on the rights of grantees on Delaware bay.
 - D.* Directions to applicants for Riparian rights.
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APPENDIX "A."

On July 1st, 1897, Robert C. Bacot resigned as Secretary and Engineer of the Riparian Commission, offices which he had held for over thirty years, and covering a period from the initiation of the riparian doctrine in this State, in the year 1864. A recital of Mr. Bacot's connection with the Riparian Commission is a history of the Commission itself from its inception, and the first enforcement of its riparian rights, down to the present time.

Robert Cochran Bacot is a descendant of the Huguenot families of Bacot-De Saussure, who settled in South Carolina about the year 1670, together with a large number of French families.

Mr. Bacot was born in Charleston, South Carolina, September 18, 1818. After receiving his education at the College of Charleston, he commenced the practice of his profession, that of a Civil Engineer, and was engaged in railroad explorations in New Hampshire, and subsequently in the Carolinas, Tennessee and Kentucky, surveying and laying out the contemplated extension of the South Carolina Railroad to the Ohio river.

He settled in Jersey City in the year 1838. In 1841 he married Mary Gilchrist, a sister of the late ex-Attorney General Robert Gilchrist. He was elected City Surveyor of Jersey City in 1840, and in 1861 published, by request of the corporation, a "Map of Jersey City." In 1857 he was elected Registrar, and soon afterward Chief Engineer and Superintendent of the Jersey City Water Works, which position he held until 1864, when he resigned to take charge of the examinations ordered to be made by the Legislature to determine the extent and value of its riparian lands.

He was a member of the State Assembly from Hudson county, representing the district composed of parts of Jersey City and Hoboken, during the sessions of 1857 and 1858. His report as chairman of the committee on the geological and topographical survey of the State led to the reconstruction of that department, and placed the work on its subsequent efficient basis.

In 1874-5 he was elected by the Board of Aldermen of Jersey City a member of the Board of Finance.

Mr. Bacot was employed as Engineer of the Commission appointed under an act entitled "An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State," approved April 11th, 1864. The Commission consisted of Jacob R. Wortendyke, Francis S. Lathrop, John L. N. Stratton, John Linn, James T. Crowell and James B. Dayton. This Commission submitted its report with accompanying maps and surveys to the Legislature February 1, 1865. The report of the Commission, together with the recommendations of its engineer, was subsequently approved by the Legislature. In 1869 the Commission was reorganized by the appointment of the following commission: Francis S. Lathrop, Peter Vredenburg, Charles S. Olden and Bennington F. Randolph, who employed Mr. Bacot as their Engineer and Augustus W. Cutler as their Secretary. Mr. Cutler acted as Secretary of the Commission until 1875, when he retired, and since that time Mr. Bacot has acted as Secretary and Engineer of the Riparian Commission until two years ago, when he was succeeded as Secretary by Mr. John C. Payne, who has for a number of years been the able coadjutor of Mr. Bacot as his Assistant Engineer. Since the formation of the Commission and including the grant by the State to the Pennsylvania Railroad Company of \$500,000, there has been realized for the State from grants and leases a total amount of about \$4,000,000.

The doctrine of ownership by the State of lands under water has existed as accepted English law from very ancient times. It first became agitated in this State about the year 1821. The

case of Arnold vs. Mundy (1 Halstead, 1), arose on a question as to the right of ownership of oysters planted under the waters of a navigable river below low water mark, and the doctrine of the State's ownership was there fully discussed and affirmed. The United States Circuit Court, in the case of Martin vs. Waddell (16 Pet., 367), also affirmed the doctrine, and in the year 1870 the Court of Errors and Appeals of this State finally determined the doctrine to its fullest extent in the case of Stevens vs. The Paterson and Newark Railroad Company (5 Vroom, 532). This case is a leading one upon the subject, and has been ratified and confirmed by many decisions since, both in this and other States, and also by the Supreme Court of the United States.

In spite, however, of the clear right of the State under the law, much hostility was exhibited by riparian owners and others to the assertion by the State of its ownership. In 1874 the Central Railroad Company of New Jersey, after preparing for an elaborate contest in the courts, finally acceded to the State's ownership and paid over \$300,000 into the treasury, and accepted the State's title for the lands under water in front of lands owned by it at various points throughout the State.

In the year 1876, Mr. Bacot called the attention of the Commission to the fact that the Hudson River Chemical and Dye Wood Company were filling in on lands of the State flowed by tide water, which were covered by a license granted by the freeholders under the Wharf Act of 1851.

Mr. Bacot raised the point that part of the land under water covered by the freeholders' license which had not been improved prior to the repeal of the Wharf Act in 1869, could not lawfully be reclaimed thereafter. Information was presented to the Chancellor to restrain the chemical company from continuing the filling in. Much opposition was raised by this action of the Board, and the chemical company prepared for a strong contest in the courts, considerable testimony being taken on both sides. The advice of the chemical company's eminent lawyers must, however, have been adverse to the contention of their clients, and the further defense of this suit, for the same

was discontinued shortly and the title of the State purchased by the company.

This case formed a valuable precedent for the Commission in all subsequent cases of a similar character.

Since 1880, there has been no attempt made on the part of any person or corporation to dispute the State's title and it has been universally accepted. During the years from 1864 to 1880, which period witnessed the assertion of the State's title to lands under water and the procedure of the Commission to regulate and dispose of the same to riparian owners, much delicate negotiation was required to bring this riparian policy of the State to a successful issue. That it has been so accomplished has been largely due to the high standing and qualifications of the various Commissioners who have been intrusted with the State's interests, numbering among them such men as Bennington F. Randolph, Peter Vredenburg, Charles S. Olden, Thomas McKeen and Amzi Dood, and the labors of these eminent Commissioners have been duly and faithfully seconded and executed by their Secretary and Engineer during his long term of service, covering a period of nearly thirty-four years.

Some exciting questions have arisen during that time in riparian matters, such as the contest with the Government on what is known as Fisher's Point Dyke, in the Delaware river, the building of which was opposed by the Commission, on the advice of Mr. Bacot, on the ground of threatened damage to shore owners of New Jersey and their riparian interests. Important decisions also have been made by the Commission in regard to the fixing of exterior and pier lines upon the shores of the State at many points where large commercial interests were involved, notably those of the Hudson river and New York bay and adjacent waters, also at Camden and at other populous parts of the State, the most difficult problem being that of New York bay and Hudson river.

In 1871 the Legislature granted to Jersey City a large tract of land under water, south of said city, and to be used as a Public Tide Water Basin. This grant was made by the Legislature upon the recommendation of the Riparian Commission,

the suggestion for the same having been made to the Commission by Mr. Bacot, as a concession to the city's demand for municipal ownership of its wharves, similar to the practice in New York City, whose water front had been granted to the city by the State. The city refused the gift and it lay dormant for many years, but latterly claim was made by the city under the act donating the same, and the gift was upheld and maintained after a litigation running for several years through the State and United States Courts.

The idea of having a large system of docks and warehouses in New York bay, in front of the Jersey shore, was an idea of Mr. Bacot's put forward at various times, and particularly so during the year of eighteen hundred and ninety-one. The scheme was a vast one, and although advocated by the Commission, was opposed by the United States Harbor Board, and has not been pushed since. Many eminent persons conversant with the system of warehouses and improvements in the vicinity of New York, have stated that the warehouses on the Brooklyn side will ultimately have to be abandoned, and that the warehouse business of the city of New York will mainly be transacted on the Jersey shore, by reason of the possibility of close connections between railroad and water transportation.

The fact that important problems like the above have been settled to the satisfaction of his employers and to the public generally, attests the skill and fidelity of the Commissioners' engineer in the various duties of his profession.

Mr. Bacot was appointed one of a commission of three in 1886 to mark out the true boundary lines between the States of New York and New Jersey in lands under water in Raritan bay, and the same commission was afterward, in 1888, continued and authorized to mark out the boundary between the same States in the Hudson river, bay of New York, Kill Von Kull, Arthur Kill or Staten Islands sounds. In these matters Mr. Bacot's knowledge of riparian matters was of much value to the State, and the final ratification by the two States of the findings of these Commissions succeeded in obtaining for the State of New Jersey her natural and ancient boundary line,

namely the middle of the Hudson river and New York bay, and also of the Staten Island sounds, which true boundary had formerly suffered encroachments under the claim of the State of New York to jurisdiction on police matters extending as far as the shore line on the Jersey side. The justice of New Jersey's claim in this matter was stoutly insisted upon by Mr. Bacot and the other New Jersey Commissioners, and after many protracted meetings of the Commissions, the claim of the State of New Jersey was finally acceded to.

Through all his varied public services Mr. Bacot has retained the public confidence and respect; his career has been eminently a useful one, and yet without other ambition than such as attaches to the faithful performance of those duties which have from time to time been assigned to him in the community in which his lot has been cast, and in which it is hoped many years of active usefulness will remain for him as the wise counsellor and public spirited citizen.

APPENDIX "B."

To the Board of Riparian Commissioners of the State of New Jersey:

GENTLEMEN: In response to the request of the Board for information concerning the grants and leases along the Hudson river, and the scope and extent of the rights of the said grantees, which are affected by the New Exterior Line adopted by the United States authorities, I hereby submit the following report and opinion:

The original Riparian Act passed in 1864 (Gen. Stat., page 2785), established a Board of Commissioners to obtain information in reference to certain lands of the State lying under the waters of the Hudson river.

The said Commissioners subsequently reported to the Legislature, and in 1869 another law was enacted (Gen. Stat., page 2786), by the terms of which the bulkhead and pier lines in the Hudson river, recommended by the report of the said Commissioners, were formally adopted and established, and it was made unlawful to reclaim or fill in or improve the lands under water beyond the said line.

By Section 4 of the said act of 1869, it was provided that in case any person or corporation who was a grantee or lessee by Legislative act should desire a conveyance from and in the name of the State, capable of being recorded and containing express covenants that the State will not give any grant or license or authority affecting lands under water in front of such lands, might receive from the Riparian Commissioners a grant or lease in the name and on behalf of the State at a certain annual rental or principal sum mentioned in the said act.

The said section contains the following words:

“Provided further, that said Commissioners shall in no case “grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on the said river and bay that may be hereafter established by legislative authority.”

By Section 8 of the Act of 1869, power was also given to the Commission to grant lands under water within the exterior lines and to make such grant by certificate or conveyance in the name of the State.

By a joint resolution passed March 17, 1870, (Gen. Stat. page), the Riparian Commissioners were authorized to capitalize annual payments on leases and make conveyance in fee simple, and they “may convey or lease to any exterior line hereafter to be fixed.”

By an act passed April 6, 1871, (P. L. 1871, page 113) after a recital that the grants and leases authorized by Section 4 of the Act of 1869, already referred to, had been found satisfactory and acceptable, by reason of the covenants contained therein, it was provided that the Commissioners might grant or lease land under water to any riparian owner; and the said act defines their powers in this language:

“And grant or lease in all cases, which in their discretion they shall think such grant or lease shall be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within said fourth section;” (meaning Section 4 of the Act of 1869). “And enter into the same covenants in the name of the State in all cases of grants and leases where they deem such covenants proper as authorized in grants and leases under said fourth section, and insert such other covenant clauses and conditions in said grants or leases as they shall think proper to require from the grantee or lessee, or ought to be made by the State.”

By the act of April 4, 1872, (Gen. Stat., page 2790) the Riparian Commissioners are empowered to change, fix and establish other pier and bulkhead lines than those then estab-

lished in the waters of the Hudson river, upon filing the proper map in the office of the Secretary of State.

By an act of March 27, 1874, (Gen. Stat., page 2791) general power is again given to the Commissioners, or any three of them, with the Governor concurring, to make grants or leases of the land under water to a riparian owner.

These provisions, it seems to me, vest in the Riparian Commissioners the power and authority in the name and on behalf of the State, to convey to the proper grantees all the rights of the State in the lands under water from high-water mark to the exterior line as established by all of the grants; and also such lands under water as may be included within any other exterior lines further out in the river, established after the making of the said grants. And they also authorize and empower the Commissioners to establish such new exterior lines from time to time in their discretion.

The provision of the fourth section of the act of 1869, above quoted, indicates that the grantee would take, by virtue of the statute, the right to the land under water included within any exterior lines established after the time of his grant, unless the conveyance of the Commissioners stated to the contrary. But, as a matter of fact, all of the grants, with the exception of one, made by the Commissioners on the Hudson river, have carried out this interpretation of the statute in express terms.

There have been made by the Commissioners twenty-eight grants or leases of land under water in the Hudson river, and in addition, two grants have been made directly by Legislative action, all of which front upon the new exterior line, as recently adopted by the United States authorities.

A list of these grants and leases is attached hereto. All of them made by the Riparian Commissioners, except one, contains a clause, granting to the grantee all the land lying between the exterior line for solid filling and the exterior line for piers, mentioned in the grant and in the new exterior lines for solid filling and for piers, respectively. Some conveyances restrict the use of the land between the original pier line and

the new pier line that may be established, to the use of piers alone.

I annex a statement showing the different forms in which this covenant on the part of the State has been expressed in the different grants by the State.

The form more frequently used than any other reads as follows:

“And if and when said exterior line shall be fixed at any other points or places further out into the said river, also any and all lands under water lying between the present exterior lines above-described and the new exterior lines that may be hereafter fixed, the same to be used for solid filling and for piers, respectively, agreeably to the terms of such extension.”

The grant to Wilcox Lard Refining Company, made November, 1890, contains a provision that the grantee must apply and pay for any additional land rendered available by the establishment of new exterior lines further out into the river.

I am therefore of the opinion that if the Riparian Commissioners accept and adopt the new exterior line fixed by the United States authorities, all of the grantees, except the one mentioned, will, by virtue of the grants already made to them, acquire the right to extend their piers to the said new line, without the payment of any further compensation to the State. The grantee who is the exception referred to cannot extend his piers or acquire any rights in the land under water between the old exterior line and the new one, except upon payment of such compensation as the Commissioners shall determine.

I am further of the opinion that the Riparian Commissioners have the power to adopt the new exterior line fixed by the United States Government, or to adopt any other line as the exterior line at any place between the old exterior line and the said new exterior line fixed by the United States authorities.

I am further of the opinion that the exercise of this power is within the discretion of the said Commissioners, and that they cannot be compelled by the said grantees to adopt the new exterior line fixed by the United States authorities, or any other line further out than the present exterior line. The

propriety and advisability of adopting the said new exterior line or any other line, is a question to be settled by the Commissioners, upon which I do not understand that my opinion is requested.

Respectfully submitted,
 GEORGE L. RECORD,
 Counsel.

APPENDIX "C."

To the Board of Riparian Commissioners of the State of New Jersey:

GENTLEMEN: In the matter of the application of Wm. W. Riley, of Newport, New Jersey, referred to me for an opinion, I have to report as follows:

Mr. Riley's application sets out that the Commissioners granted to him, under date of April 14th, 1892, certain lands under water in the Delaware bay, particularly described in the said grant; that the said applicant obtained the said grant for the purpose of devoting the lands thereby conveyed to the cultivation of oysters; that by a recent decision of the Court of Errors and Appeals, construing an exactly similar grant, it was held that this conveyance only carried the right to reclaim the lands granted, by filling in or otherwise improving the same, and when reclaimed or filled in, to use the lands for the grantee's private uses and purposes, and that the said grant did not carry or convey the right to use the land for the purpose of planting and growing oysters upon the same.

Mr. Riley therefore requests the Board to make him a new grant confirmatory of the said grant of April 14, 1892, conveying in addition to the rights thereby conveyed by the former grant all the rights of the State in and to the said land under water, without any restrictions.

Since the making of the said grant, and on May 15, 1894, an act was passed by the Legislature (Ripar. Laws, 1894, p.), in which it was provided that the Riparian Commissioners shall not have the right or power in the name of the State or otherwise, by deed, grant or lease, to give, grant or convey to any person or corporation the exclusive right or privilege to plant or take oysters from any part of Delaware bay.

I am of the opinion that this act prevents and renders it impossible for the Commission to grant the request contained in the said application. The Commissioners cannot do by indirection what they could not do directly and expressly. I am of opinion that whatever grant the Commissioners might make to the said Riley, affecting the lands in question, would be construed by the Court as though the said act of May 15, 1894, had been referred to in the said grant and the rights and privileges referred to in the said law had been expressly excepted out of the estate conveyed by the grant.

I respectfully recommend that any grant made to the said Riley, and for that matter to any other person, of the land in Delaware bay, should contain a condition referring to the said act of May 15, 1894, and expressly excepting out of the estate granted by the deed of the Commissioners the rights and privileges referred to in the said act.

Respectfully submitted,

GEORGE L. RECORD,
Counsel.

APPENDIX "D."

Directions for Applicants to the Riparian Commission of the State of New Jersey for the Lands under Water.

Applicants for lands of the State under tide-water will observe the following directions:

First. Furnish a description by metes and bounds of the lands owned by the applicant in front of which the lands applied for lie, accompanied by a survey and map of the same made by a competent surveyor, showing the exact frontage of said land on the shore at mean high-water mark, and the names of the owners of the adjoining lands.

Second. State whether the lands under water applied for are now or are hereafter to be used for commercial or other purposes, and if so, what; whether they have been improved in whole or in part; or are authorized to be improved under any grant or license protected by the provisions of the supplement of the Riparian act of March 31st, 1869; also, if any oyster land, fishery or privilege therefor is embraced within the limits of the land under water applied for.

Third. State whether a grant in fee-simple or a lease in perpetuity, with privilege to convert the same into a fee, is desired.

[NOTE.—For a grant in fee-simple, the principal sum is required to be paid. For a lease, a rental at the rate of seven per cent. per annum on the principal sum is payable semi-annually in advance to the State Treasurer.]

Fourth. An abstract of the title to the land owned by the applicant, prepared by a practitioner of the law of this State or by the Clerk of the county in which the land is situated, must be furnished with the application before the same will be considered by the Commissioners.

Blank forms for applications and all further information required will be furnished by John C. Payne, Secretary of the Commission. Office, Jersey City, N. J.