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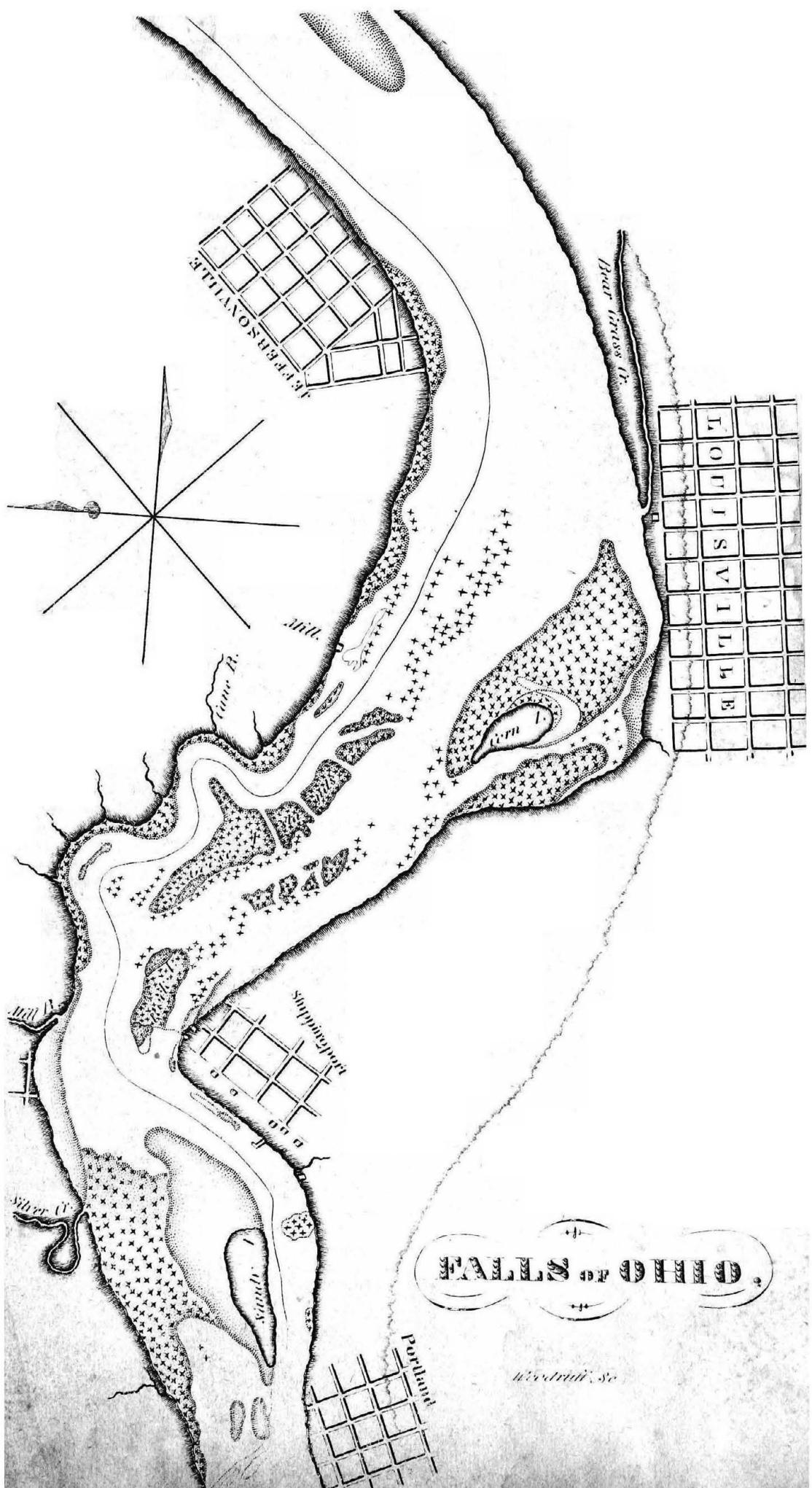
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This Book Was the Property of  
Thomas Abbott. Born Cheshire, Eng-  
land 26-1782. Came to Merrietta Ohio  
1796. Died May 11th 1860

A B Abbott  
306 Madison  
Merrietta Ohio



THE  
**WESTERN PILOT,**

CONTAINING

**CHARTS OF THE OHIO RIVER,**

AND OF THE

**MISSISSIPPI**

**FROM THE MOUTH OF THE MISSOURI TO THE GULF OF MEXICO,**

ACCOMPANIED WITH

**DIRECTIONS FOR NAVIGATING THE SAME,**

AND

**A DESCRIPTION OF THE TOWNS ON THEIR BANKS,  
TRIBUTARY STREAMS, &c.**

ALSO,

**A VARIETY OF MATTER INTERESTING TO ALL WHO ARE CONCERNED IN THE  
NAVIGATION OF THOSE RIVERS.**

—  
**BY SAMUEL CUMINGS.**  
—

**CINCINNATI:**

**MORGAN, LODGE AND FISHER, PRINTERS.**

**1825.**

**DISTRICT OF OHIO, Sct.**

**BE IT REMEMBERED:** That on the 25th day of June, in the year of our Lord one thousand eight hundred and twenty-five, and in the forty-ninth year of American Independence, Samuel Cumings, of said district, hath deposited in this office the title of a book, the right whereof he claims as author in the words following, to wit:

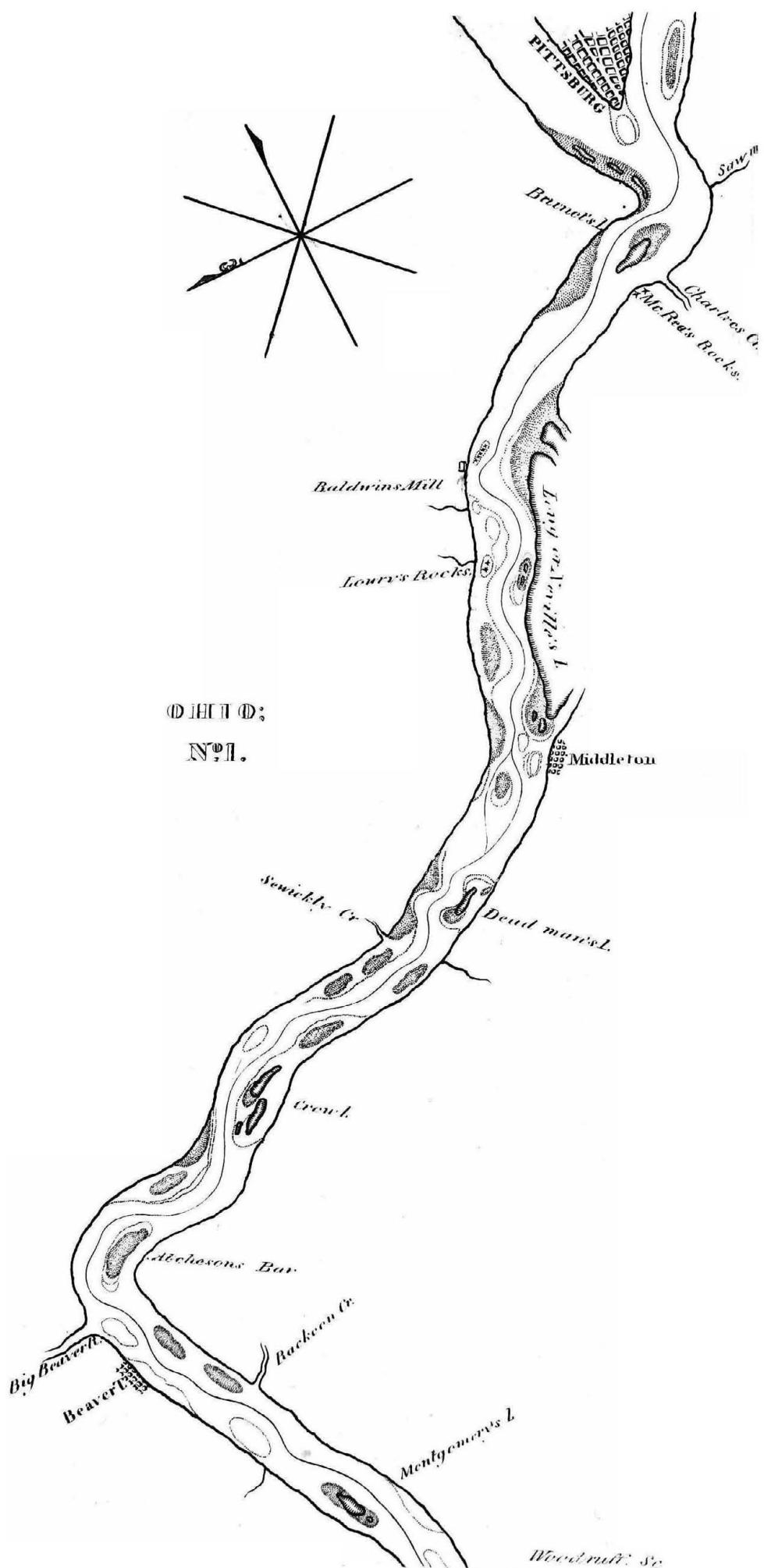
“The Western Pilot; containing charts of the Ohio River, and of the Mississippi from the mouth of the Missouri to the Gulf of Mexico, accompanied with directions for Navigating the same, and a description of the towns on their banks, tributary streams, &c. also a variety of matter interesting to all who are concerned in the navigation of those rivers, by Samuel Cumings.”

In conformity to the act of Congress of the United States of America entitled “an act for the encouragement of learning by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies during the times therein mentioned, and also of the act entitled “an act supplementary to an act entitled an act for the encouragement of learning, by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies during the times therein mentioned, and extending the benefit thereof to the arts of designing, engraving, and etching historical and other prints.”

Attest: **HARVEY D. EVANS,**  
**Clerk of said District**

## **ADVERTISEMENT.**

'THE surveys, preparatory to the construction of the charts, accompanying this treatise, were executed in the years 1819, 20, and 21. A resurvey of the whole was, however, effected in the years 1823 and 24, and particular care taken to correct for the various alterations which have taken place. The charts are projected on a uniform scale of four miles to the inch, lengthwise; but necessarily enlarged in breadth. The best landings, at low water, on the Mississippi, are particularly noticed on the charts, by a small diamond or square. The charts of the Mississippi are extended to the Gulf of Mexico, and the various outlets noticed, particularly the South West Pass, which was examined by the author during the summer of 1824.



THE  
**WESTERN PILOT.**

*Directions for Map No. 1.—Ohio River.*

FROM the landing at Pittsburgh, on the Monongahela side, keep near the right shore, and (at high water) pull directly out into the Allegheny current, which sets strong over to the left shore. At low water, when nearly up with the point, keep over to the left, towards O'Hara's glass works, which will carry you clear of the bar at the point, and of the Monongahela bar on the left.

**Brunot's Island.**

Channel to the right, and near the right shore round the head bar of the island, and then incline towards the island and pass near its foot, to avoid a bar on the right below.

**Neville's, or Long Island.**

Channel to the right. About three fourths of a mile above Neville's island keep to the right, to avoid the bar at its head, and pass pretty close to Baldwin's mill dam, and, when past it, close in to the right shore below, then turn short across for the island, and keep near the island shore until you approach a small sandy island, when you must keep to the right and pass betwixt the latter and Lowry's rock, which lies on the right, opposite. A quarter of a mile below the small sandy island, keep to the left round the head of Duff's bar, and near to Neville's island shore, until you are within a mile and a quarter of its foot, then turn quick to the right, and approach within fifty yards of the right shore, and when nearly up with Hog island, incline to the left, and keep one third of the river on your right, which will carry you clear of the bar at the foot of the island and the shore bar on the right. After passing Middletown bar, incline to the left.\*

**Dead Man's Island.**

Channel to the right. As you approach the island, keep well towards the right shore round the large bar at the head of the island, then keep to the left well over to the island, round a bar on the right, opposite the middle of the island; then turn to the right and run well in with the right shore, and when past the island keep out to the middle of the river. About a mile below Dead Man's island, keep nearest the left shore until you are a mile below Se-

\* I am informed that an artificial channel has been cut to the right of Woollery's trap—in that case it will be necessary to incline to the right after passing Middletown bar, and keep three fourths of the river on the left, until you are past Woollery's trap.

weekly creek, on the right, to avoid its bar at the mouth. Seweekly creek is about two miles below Dead Man's island. Two miles below Seweekly creek is Logtown bar on the left. Here you must keep over close to the right till you pass the ripple, then incline to the left.

### Crow Islands.

Channel to the right, near the head of the first island, then incline to the right; when nearly up with the foot of the second island keep to the left, and pass midway between the foot of the island and the right shore, then incline to the left. About three miles below Crow island is Atcheson's bar, near the middle of the river. Channel to the right.

### Big Beaver, on the right.

After you have passed Atcheson's bar above, keep to the left to avoid a large bar at the mouth of Big Beaver. If you wish to land at Beavertown, keep close to the foot of the bar last mentioned, and pull into an eddy below, and land opposite the warehouse. If you do not intend to land, keep near the left shore for three fourths of a mile below Beaver, then steer over towards the upper part of the town, and keep rather more than half the river on your left, which will carry you through betwixt the two bars opposite the town. The left hand bar extends but a very little below the town; that on the right nearly a mile and a half. After passing the former, incline towards the left shore for about a mile, then keep to the right, round the lower point of the latter, which here extends more than half across the river. From this the channel is nearly in the middle through the bars at Raccoon creek.

### Raccoon Creek, on the left.

### Montgomery's Island.

Channel to the left, and near the left shore at the head of the island, and incline over towards its foot.

## Directions for Map No. 2.—Ohio River.

### Phillis's Island.

Channel to the right. Keep close to the right shore round the head bar of the island, then cross over, and pass close to its foot, to avoid a bar on the right.

### Grape Island.

Channel to the left. Keep near the middle of the schute, which will carry you clear of the island bar, and the rocks on the left.

### Little Beaver Creek, on the right.

Nearly opposite to Little Beaver is Georgetown, on the left, a small town of Beaver county, Pennsylvania. Rather more than a mile below Georgetown, the state line crosses the Ohio, separating the state of Pennsylvania from Virginia on the one side, and Ohio on the other. Keep a little to the left towards the lower part of Georgetown, to clear the bar at the mouth of Little Beaver.

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6 28½

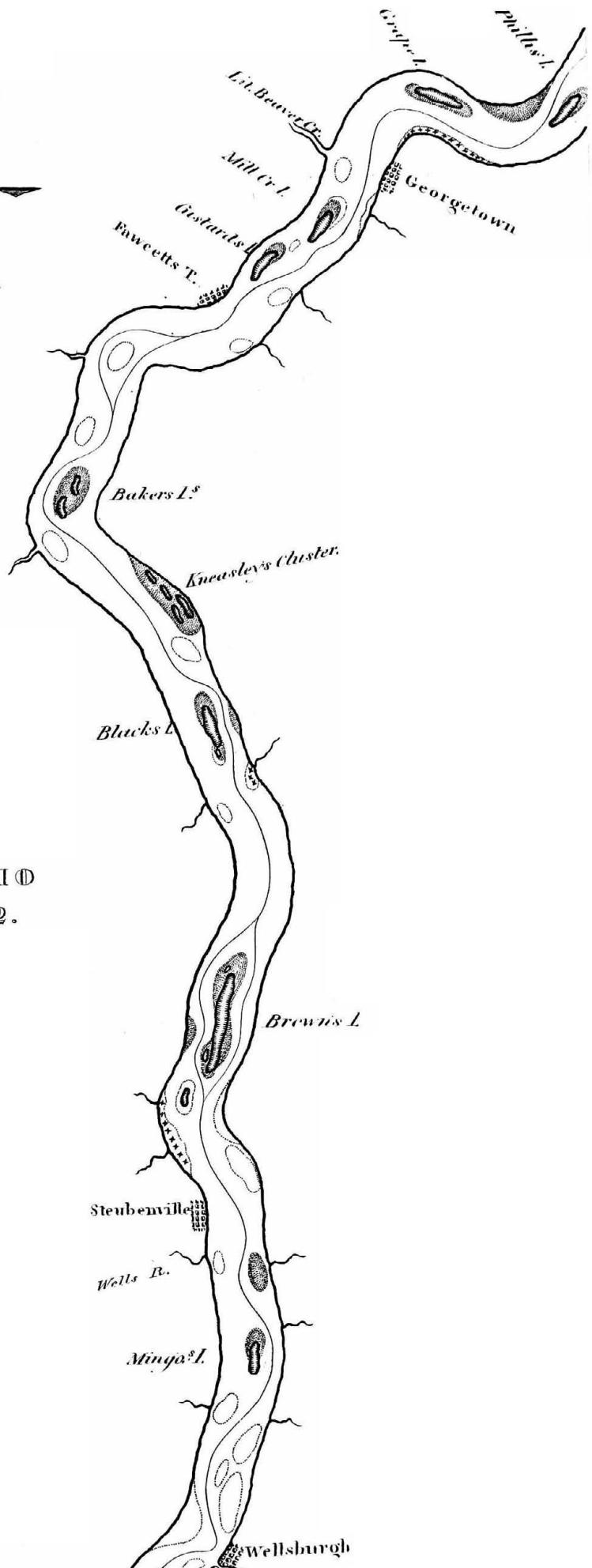
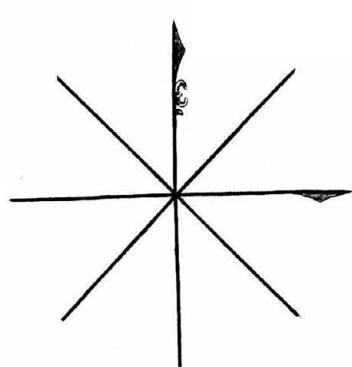
3½ 32

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3 37½

3 40½

2½ 43



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N° 2.



**Mill Creek Island.**

Channel to the left, and close to some snags near the left shore; and when round an ugly bar at the head of the island, incline to the right, and along the island shore; when you approach its foot keep to the left.

1½ 44½

**Custard's Island.**

Channel to the left, and near to the island at its foot.

**FAWCETSTOWN, on the right,**

About half a mile below Custard's island, is a post town of Columbiana county, Ohio. Two and a half miles below Fawcetstown, is a bar in the middle of the river. Channel either side—the left is preferable.

2½ 47

**Baker's Islands,**

Are two very small islands, connected by a large bar. Channel to the right, between the head bar of the island and a shore bar on the right. After passing the latter, run in pretty close to the right shore, near the sycamore trees; when past them, incline to the left, and pass near the foot of the island, to avoid Yellow creek bar on the right.

6 53

**Great Yellow Creek, on the right.****Kneistly's Cluster.**

Channel to the right, and near the middle, till you approach the centre of the cluster, then turn to the right, leaving the large break on your left; when past it, incline again to the left for three or four hundred yards, then incline more towards the right shore, and pass close to a rock which lies in the lower end of the schute.

2½ 55½

**Black's or Tomlinson's Island.**

Channel to the left. Keep near the left shore round the bar at the head of the island, then incline towards the island. After you have passed the bar at the foot of the island, (which has a small towhead on it,) keep towards the right, to avoid a hard break at the mouth of a small creek on the left. Half a mile below this is a small creek on the right, with a bar at its mouth; keep the middle of the river until you approach King's creek on the left, (about two miles above Brown's island,) keep to the right round its bar; and when a mile below, if you intend to go to the left of Brown's island, keep well over to the left shore round the bar at the head of the island, then run towards the island, and keep along its shore till you approach the bar which makes *from* the island, about half way down it; then steer across for the left shore, which keep near to until nearly up with the foot of the island, then keep to the right towards a small towhead which is on a bar below the island. There has been an artificial channel cut through between the towhead last mentioned, and Brown's island; consequently it is advisable, perhaps, at a very low stage of water, to take to the right of the latter: in which case, after you have passed the bar at the mouth of King's creek, incline still to the right, and keep near the right shore round the head bar of the island, and then incline towards the island, and keep near its shore until you have passed the bar at the mouth of Island creek on the right, opposite the middle of the island, then keep to the

right round a bar with a small towhead on it, which makes from the island above its foot; then keep to the left through the artificial channel, between the foot of the island and the small towhead below. From this keep rather more than half the river on your right, until you are past Wills's creek half a mile, then incline a little to the right, to avoid a bar below the left hand point.

**STEUBENVILLE, on the right.**

This is a pleasantly situated and flourishing town, and seat of justice, in Jefferson county, Ohio—celebrated for its numerous manufactories, particularly of woollens. There is a bar on the right, about three fourths of a mile below Steubenville, at the mouth of Wells's run; keep to the right after passing round this bar, to avoid a large bar on the left, below; then keep towards the left shore.

**Mingo Island.**

Channel to the left; and after you pass the island, incline towards the middle of the river. Rather more than a mile below Mingo island is Virginia Cross creek, on the left, and Indian Cross on the right, nearly opposite. The channel is near the middle of the river past them; then keep to the right, round the bar of Indian Short creek, and near to the right shore, (leaving Cox's bar on the left,) until you approach Wellsburgh; then turn out to the left, and pass pretty close to the town; and when up with the lower part of the town, turn quick to the right, and pass pretty close to the bar on the left, at the mouth of Buffaloe creek. Wellsburgh is a smart little town in Brooke county, Virginia—famed for building fine flat boats.

*Directions for Map No. 3.—Ohio River.*

**Beach Bottom Bar,**

Is nearly three miles below Wellsburgh. Channel to the right, and then incline over towards the left shore to avoid a bar on the right, below.

**WARRENTON, on the right,**

Is a post town in Jefferson county, Ohio, situated immediately above the mouth of Indian Short creek. Virginia Short creek is nearly opposite. There is a large bar at the mouth of Indian Short creek. Channel nearest the left shore until you pass the creek, then keep to the right.

**Pike's Island.**

Channel to the right.

**Twin Islands.**

Channel to the right of both. Keep near the right shore round the bar at the head of the first twin, then incline towards the island, to avoid the bar to the right, at the mouth of a small run opposite the middle of the island; then incline towards the right shore.—When nearly up with the foot of the second twin, incline to the left, to clear the bar at the mouth of Glenn's run; keep pretty

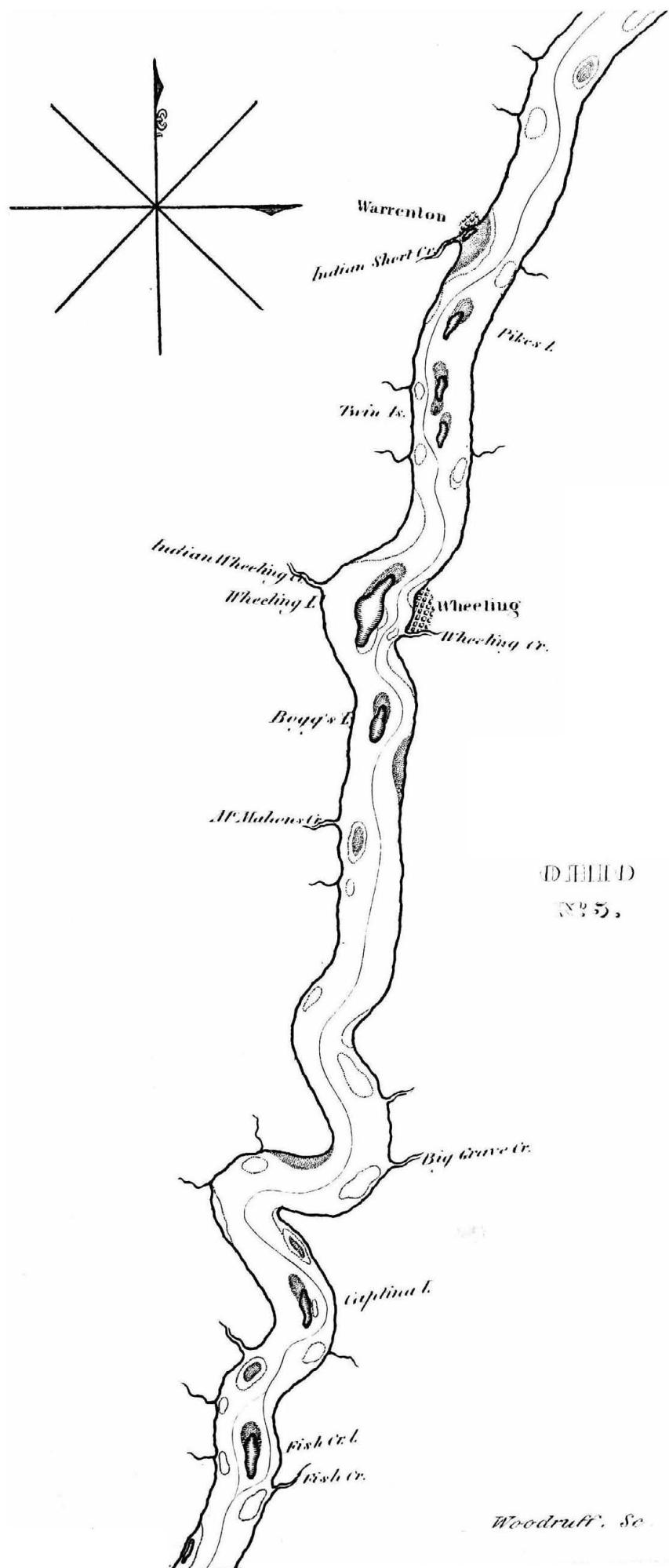
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2 $\frac{1}{2}$  72 $\frac{1}{2}$

10 82 $\frac{1}{2}$

3 $\frac{1}{2}$  86

1 $\frac{1}{2}$  87 $\frac{1}{2}$





close to it; and when past it, keep to the right to avoid Burlington bar on the left; when clear of the latter, incline over to the left shore.

### WHEELING, on the left.

This is a flourishing town, and seat of justice for Ohio county, Virginia. The United States turnpike crosses the Ohio at this place. Wheeling island is near the middle of the river, directly opposite the town. Channel to the left. Keep well over to the left shore past the head bar of Wheeling island; then keep to the right towards the island, to avoid a rocky bar on the left, opposite the head of the town; after passing it, turn in towards the lower part of the town, where is the best landing. If you do not intend to land, when you approach Wheeling creek turn out to the right round its bar, then incline again to the left, then to the right, and pass betwixt the bar on the right at the foot of the island, and the left hand bar; when past the latter, keep over towards the left hand shore.

### Bogg's Island.

Channel to the left, near the left shore at its head, then cross over towards the foot.

### M'Mahon's Creek, right side.

There is a large bar at its mouth. Keep well towards the left shore, and when past it incline to the right. About three miles below M'Mahon's creek, is the small town of Pultney, on the right. Channel nearest the left shore. When you approach the left hand point below Pultney, incline over to the right, and keep near the right shore, to avoid a large bar below the point, above Little Grave creek on the left. Continue nearest the right shore until nearly up with the right hand point opposite Big Grave creek.

### Big Grave Creek, on the left.

There is a large bar on the left below Big Grave creek. Keep well towards the right hand point above, and then pretty close to Big Grave bar, to avoid the bar below the right hand point. About two miles below Big Grave creek, the Ohio takes a very short turn to the left, and the current forces very strong on to the right shore below Pipe creek, where are some rocks. There is a bar on the left, half a mile below the point.

### Captina Island.

Channel either side. The right is generally preferable, but at very low water you will be obliged to take the left, and near to the left shore until nearly up with the foot of the island, then turn to the right, and pass near the foot, to avoid a hard bar on the left below.

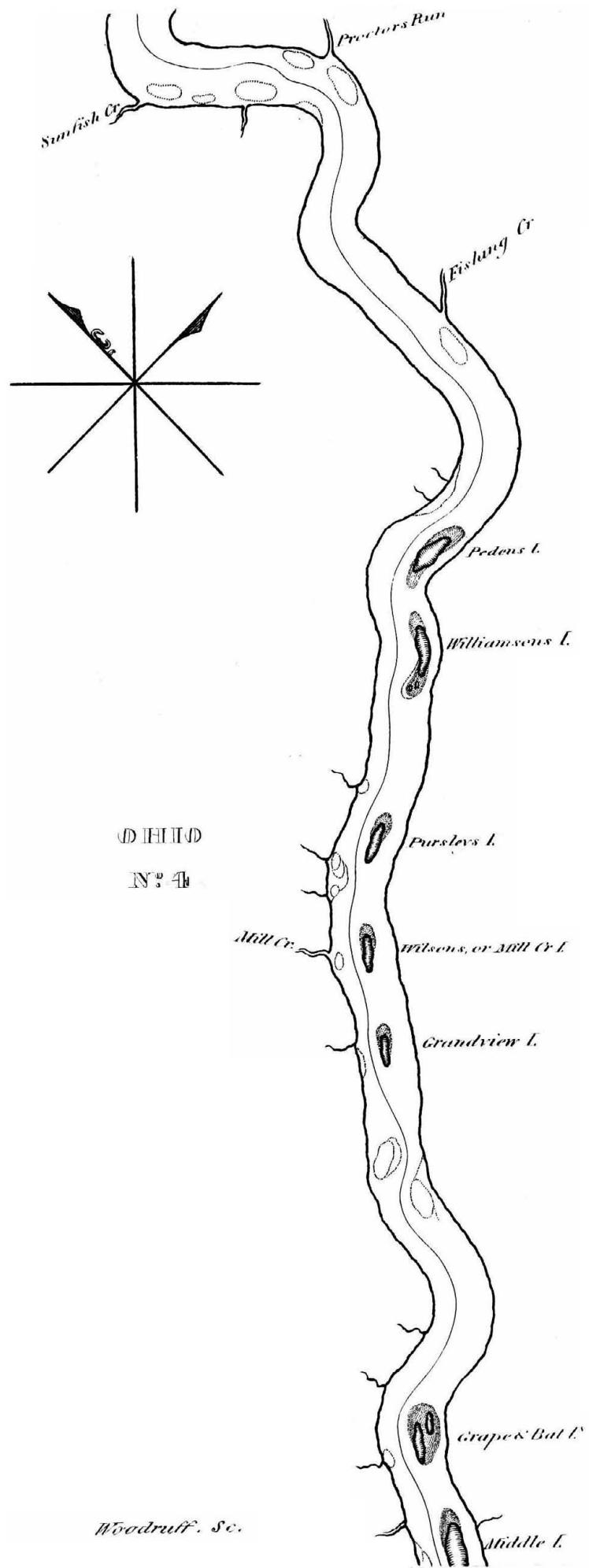
### Captina Creek, right side,

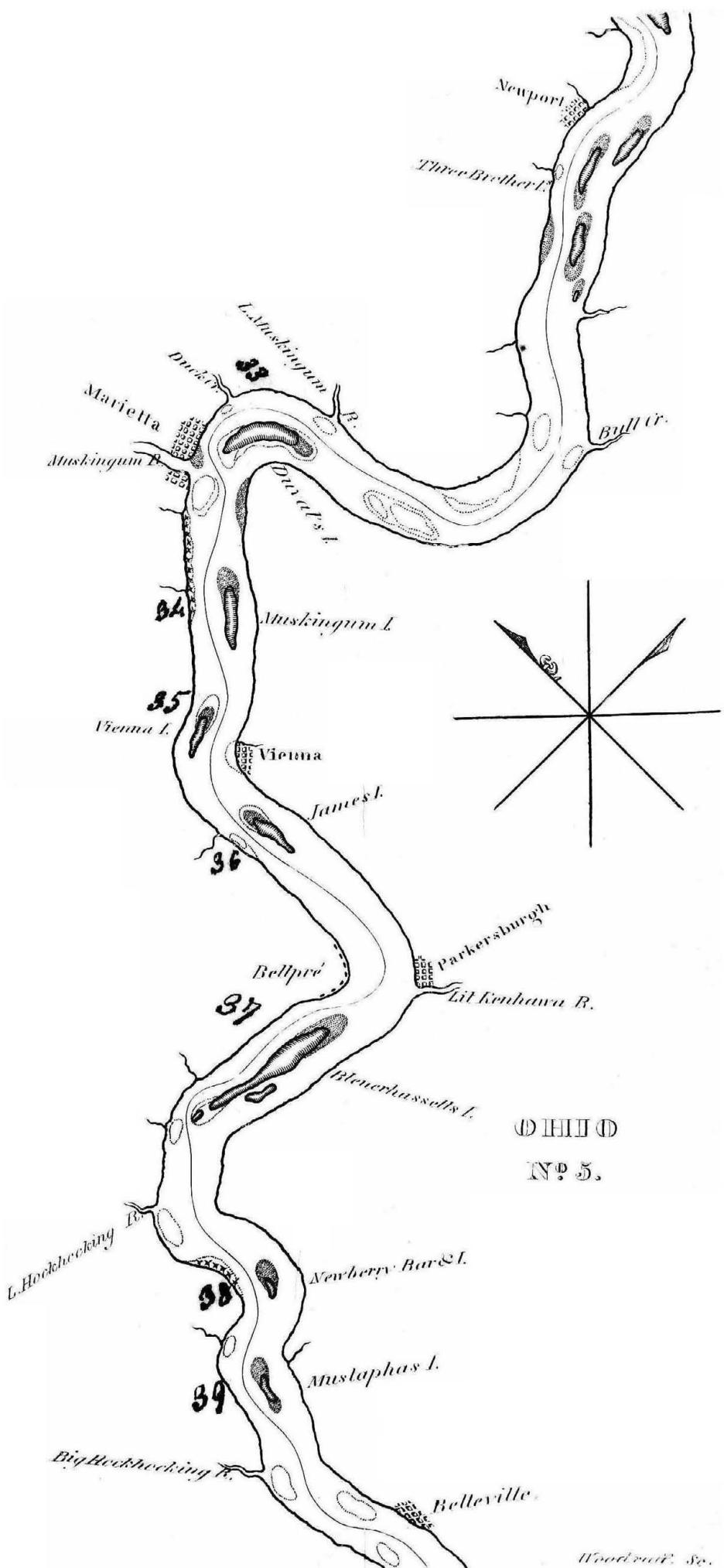
About a mile below the island: there is a large bar at its mouth; keep well towards the left shore past it, then incline towards the middle.

### Fish Creek Island.

Best channel on the left, and close to the island at its foot, to avoid a large bar on the left, at the mouth of Fish creek: after you have passed Fish creek bar incline to the left. About one and a half

miles below Fish creek is a bar on the right, with a small willow island on it, close to the right shore. Channel near the left shore.	2	114½
<b>Directions for Map No. 4.—Ohio River.</b>		
<b>Sunfish Creek, right side.</b> When you approach Sunfish creek keep to the left to avoid the bar at its mouth.	3½	118
<b>Opossum Creek on the right.</b> Channel near the left shore, then turn short to the right round its bar, and keep two thirds of the river on your left until you pass two large bars, one above and the other below Procter's Run, on the left.	2	120
<b>Fishing Creek, left side.</b> There is a large bar below the mouth of fishing creek; channel to the right, and near the right shore at first, then incline to the left near its foot.	7½	127½
<b>Peden's Island.</b> Channel right side, after passing Peden island you enter the long reach.	4½	132
<b>Williamson's Island</b> Channel to the right, and close in with the right shore at its foot, to clear the bar below.	2½	134½
<b>Pursley's Island.</b> Channel right side, and near the right shore at its head; incline towards its foot, to avoid a bar on the right, opposite.	4	138½
<b>Wilson's Island.</b> Channel right side. Incline towards the head of the island when you approach it, to avoid a rocky bar at the mouth of Mill creek, on the right.	2½	141
<b>Grandview Island.</b> Channel to the right; about three and a half miles below this island is a large bar on the right, here you must keep well over to the left shore, then turn short round the bar towards the right shore, leaving another bar on the left. This is called petticoat ripple. The right hand bar is seldom ever dry.	2	143
<b>Grape and Bat Islands.</b> Channel right side. Incline towards the foot of the island.	8½	151½
<b>Middle Island.</b> Channel right side. Keep nearest the right shore, round the head bar of the island, then incline towards the island, to avoid the bar on the right, below French creek.	2	153½





*Directions for Map No. 5.—Ohio River.***Three Brother Islands.**

Channel to the right of all of them, and close to the right shore at the foot of the 2d Brother. Opposite the 1st Brother is the town of Newport on the right, a post town of Washington county, Ohio; about one and a half miles below the third Brother is a bar on the left, with a small towhead on it, just above a creek.

**Bull Creek, on the left.**

There is a large bar on the right just above Bull creek, and a small bar on the left at its mouth. Keep nearest to the left a mile above Bull creek; turn a little out to the right when nearly up with its mouth, and then keep two thirds of the river on your right, for nearly three miles and a half: this will bring you up with the lower point of the first of Carpenter's bars, on the right; then steer quick over towards the right shore, leaving the large middle bar on your left. Keep near the right shore until nearly up with the little Muskingum, then incline a little to the left, to avoid some logs and snags at its mouth.

**Duval's Island.**

Channel right side. Duck creek empties in on the right, opposite Duval's island, there is a bar at its mouth, here you must incline toward the island, and when past the bar at its mouth, keep toward the right shore again.

**Muskingum River on the right.**

This is the largest river running its whole distance in the state. It rises in the southern borders of the Connecticut Western Reserve and flows in a remarkable winding, but generally southwardly direction, across Stark, Tuscarawas, Coshocton, Wayne, Richland, Knox, Licking, Muskingum, Morgan and Washington Counties, into the Ohio River at Marietta, by a mouth 250 yards wide.

**MARIETTA.**

Is a pleasantly situated town on the banks of the Ohio, at the mouth of the Muskingum River. It is a post town, and seat of justice for Washington County. From Marietta the channel is almost directly towards the left shore, at low water, between the bar at the foot of Duval's Island, and Muskingum bars on the right; keep to the right, round the latter, to avoid a small bar on the left.

**Muskingum Island.**

Channel to the right.

**Vienna, or Half-way Island.**

Channel to the left, opposite to Vienna island is a small creek on the left, with a bridge across it, and just below it is the small village of Vienna.

**James Island.**

Channel to the right. The channel past James island is rather difficult at a low stage of water, occasioned by a bar on the right shore, below a small run; keep nearest the island bar. The rich settlement of Vienna extends down to opposite this island..

4½ 158

7 165

6½ 171½

2½ 174

3 177

2½ 179½

2½ 182½

**Little Kenhaway river on the left.**

The handsome little town of Parkersburgh is situated immediately above the mouth of little Kenhaway, and the beautiful settlement of Bellepre on the right, opposite.

4 186

**Blannerhassett's Island.**

Channel right side. Keep well over to the right shore round the head bar of the island; this island is nearly three and a half miles in length; when you approach its foot, keep very close in to the right shore, round a bar at its foot, with a small towhead on it, then turn quick out to the left, near to the towhead, to avoid a small bar, on the right, below.

1½ 183

**Little Hockhocking, right side.**

Keep two thirds of the river on your right until you are past the bar at the mouth of L. Hockhocking, then incline to the right, to avoid a bar on the left.

5 193

**Newbery Bar, and Small Island.**

Channel to the right. Take care to avoid a hard rocky bar from the right shore above Newbery bar.

2½ 195

**Mustapha's Island.**

Channel to the right at a low stage of water, but the left is preferable at middling stage.

1½ 197

**Big Hockhocking river, right side.**

There is a low bar with snags on it at the mouth of big Hockhocking; the middle of the river will clear it, and then incline towards the right. Keep nearest the right for nearly three miles, until you approach the town of Belleville on the left, then keep short across for the upper part of the town, to avoid a large bar on the right. There is a large bar on the left above Belleville.

2 199

**Directions for Map No. 6.—Ohio River.****Belleville Island.**

Close to the left shore. Channel to the right, and near the right shore at its foot to avoid a bar below it.

4½ 203

**Shade River, right side.**

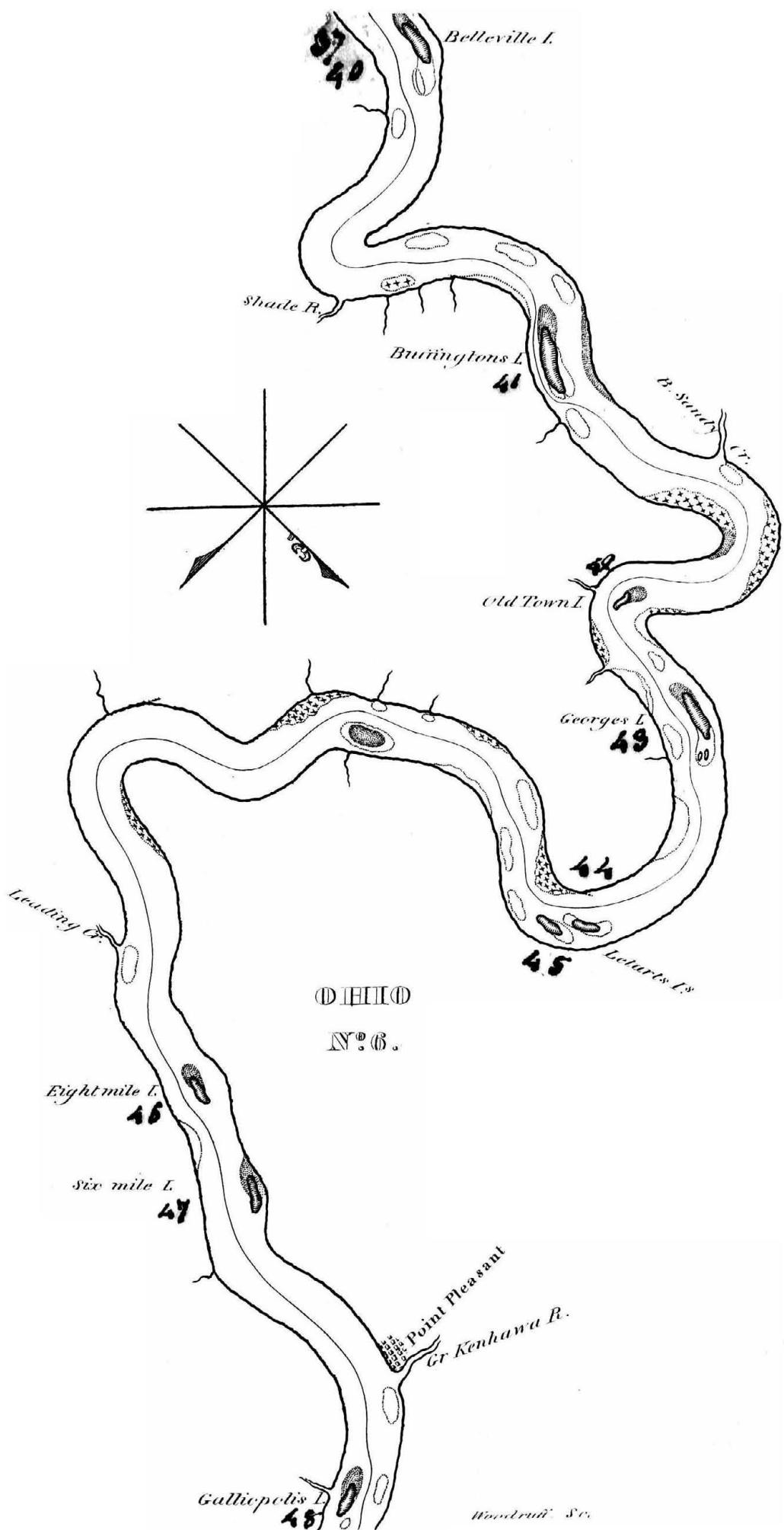
Here the Ohio takes a very sudden turn to the left, and the current forces very strong on to the right shore, which is very rocky. Keep well toward the left hand point; about a mile below Shade River is a rocky ledge on the right, and a bar on the left: channel between them, and near the middle of the river, and then incline toward the right shore, to avoid two bars on the left about two miles below.

5½ 209

**Buffington's Island.**

This island lies close into the right shore, below a right hand point; at low water the channel is to the right, although it is narrow and difficult: to take the right, keep in close to the right shore above, opposite the head bar of the island. This chute is full of logs, and snags; particularly at the upper end, and there is a large log

5½ 214





in the middle which must be avoided, and require great attention: keep near to the island at its foot, to avoid a hard break or rock on the right opposite, then cross out past its foot, to avoid a bar on the right below. At a moderate stage of water the left side is preferable. \*

### Big Sandy Creek, on the left.

There is a rocky bar on the right, above Sandy creek: keep nearest the left shore until you are three quarters of a mile below the creek; then keep over to the right, to avoid a rocky bar, or ledge, on the left, extending half across the river, and rather more than two miles along the left shore.

### Old Town Bar and small island.

Channel at low water on the right: the left is preferable at a middling stage of water. Old Town creek comes in on the right, opposite the foot of the island: half a mile below it there is a rocky ledge on the right. After you have passed old town island, keep near the middle of the river, which will carry you clear of the bar on the right, below the mouth of Banner's creek, and the bar on the left, opposite.

### George's Island, near the left shore.

Channel right side, between the head bar of the island, and a small bar on the right, opposite; after you have passed the head of the island incline to the left, and keep pretty near to the island, to avoid a bar on the right; as you approach the foot of the island incline to the right, and keep well in to the right shore round the bar at its foot, and then turn out to the left.

### Latarts Islands.

Channel to the right. Keep pretty close to the right shore round the bar at the foot of the first island, then turn short to the left, and run pretty close to the second island, then incline a little to the right, and keep one third of the river on the right through the ripple: then incline a little to the left. One mile below the ripple there is a bar on the right.

### Wolf's Bar.

Channel to the right. Keep to the left round the foot of the bar, to avoid an eddy on the right, below. West's creek comes in on the left, opposite the foot of the bar. About a mile below West's creek is a rocky bar on the right, which forms a ripple, called Sureas ripple; channel through, one third from the left shore.

### Leading Creek, on the right.

### Eight Mile Island.

Channel right side, and near the right shore round the head bar of the island, then turn out to the left past its foot.

### Six Mile Island, close to the left shore.

Channel to the right.

### Great Kenhawa River, on the left.

This river takes its rise in the state of North Carolina, and running in a generally north-western direction through the state of Virginia, empties into the Ohio through a mouth nearly two hun-

41 219

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11 250

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2½ 256

5½ 261½

dred yards wide. It is navigable about seventy-five miles, to its falls; below which are extensive salt works.

### POINT PLEASANT,

Immediately above the mouth of the Great Kenhawa, is the seat of justice of Mason county, Virginia. From Point Pleasant, incline over towards the right shore.

### Galliopolis Island.

Channel to the left, and near to the head bar of the island at first, and when up with the head of the island, incline to the left, to avoid a small bar near its foot: you may pass to the right of the latter, close to the foot of the island, at a middling stage of water; but not advisable, except you wish to land at the town.

24 263

### Directions for Map No. 7.—Ohio River.

#### GALLIOPOLIS, on the right.

This is a post town, and seat of justice for Gallia county, Ohio.

1 264

#### 49 Raccoon Island.

This is a very small island, on the lower extremity of a large bar. Channel to the left, and near the island at its foot. Raccoon creek comes in on the right, just below the island. This is a considerable creek, rising in the western part of Athens and eastern part of Hocking county, and is famous for its quarries of stone; from which are manufactured burr mill stones, said to be of a quality equal to the best French burrs.

64 271

#### Meridian, or Sixteen Mile Creek, left side.

9 280

#### Eighteen Mile Creek, right side.

2 282

#### Little Guyandot Creek, left side.

1 283

#### Green Bottom Ripple, in the bend.

3 286

Channel one third from the left shore at first, then incline a little to the right.

#### Federal Creek, right side.

34 289

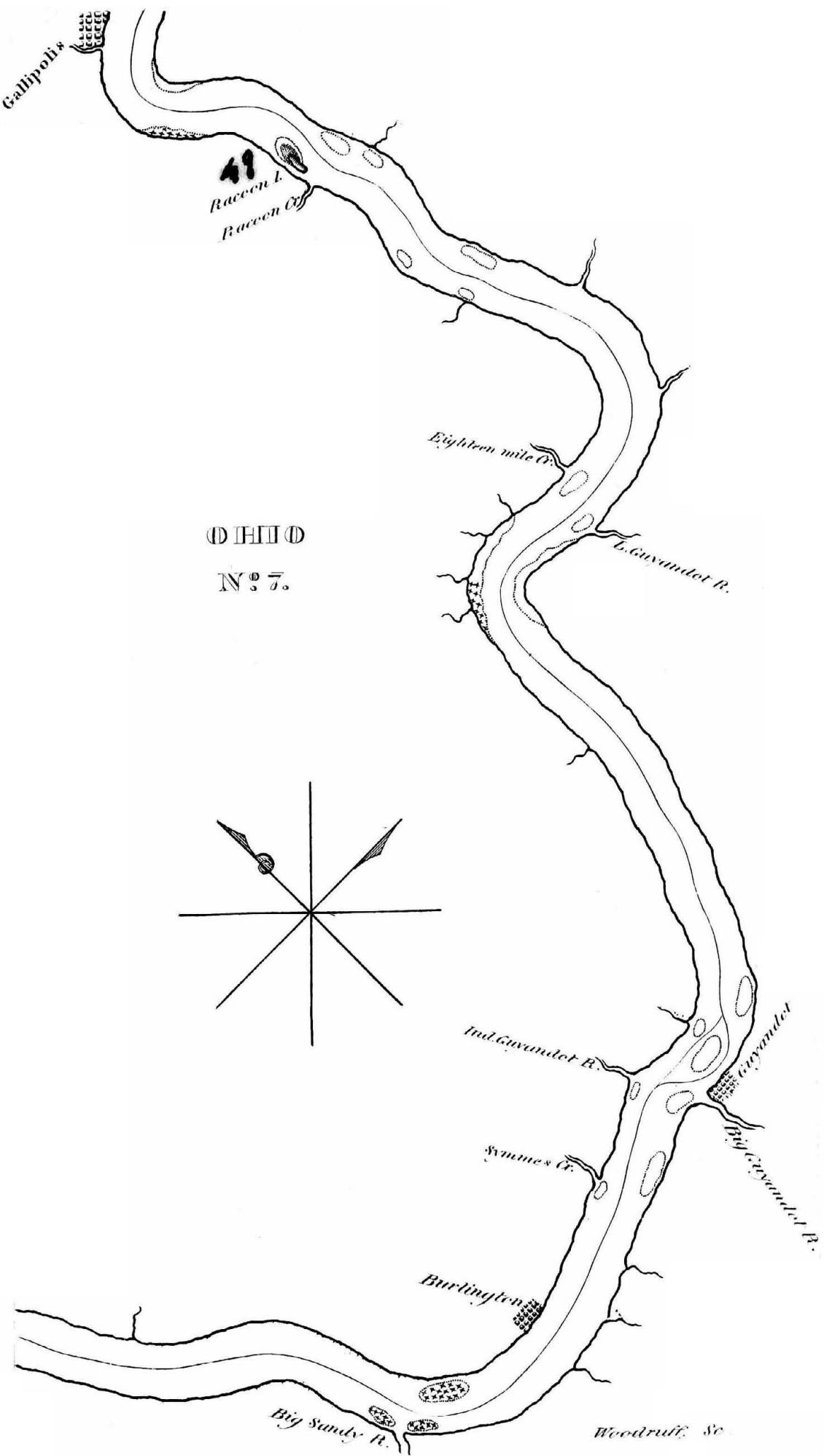
#### Nine Mile Creek, left side.

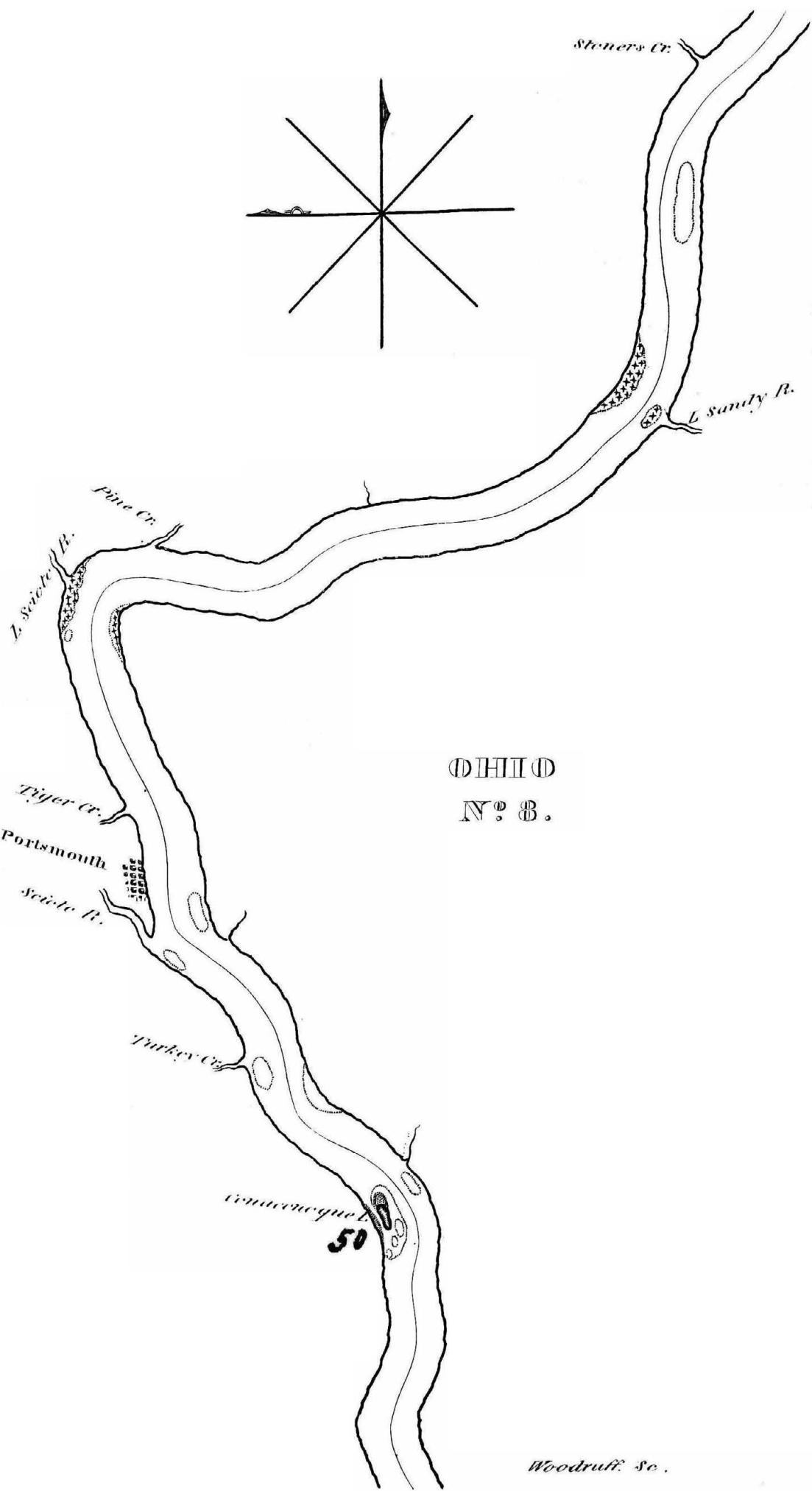
32 293

#### Big Guyandot River and Town, left side.

7 300

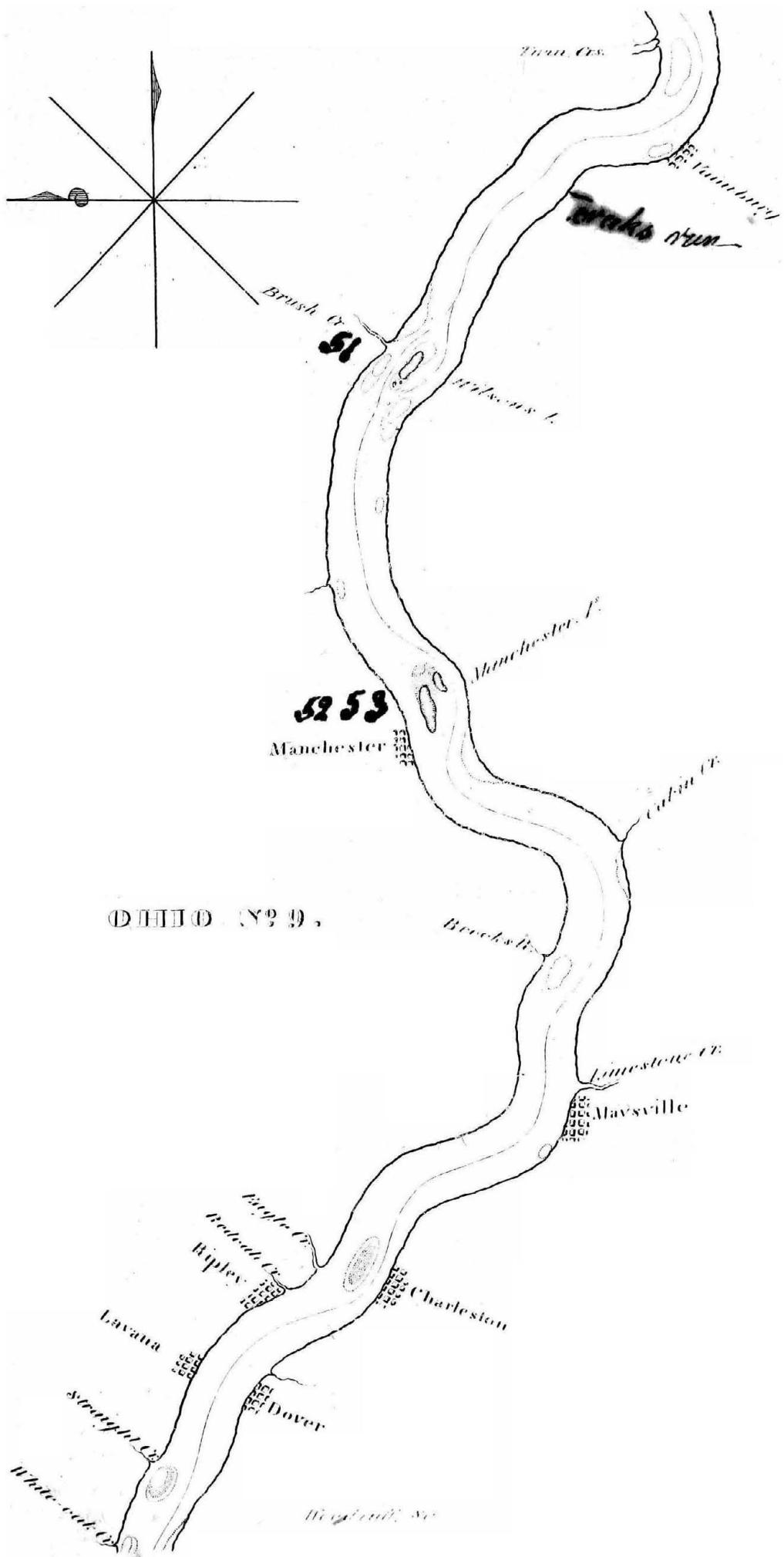
When you are up with Paddy's run, (about a mile above Guyandot, on the right,) steer quick over for the left shore, leaving a large bar on the right, just above town. When nearly up with the mouth of Big Guyandot, turn short over to the right, to about one third from the right shore above Indian Guyandot; then keep to the left round the bar at the mouth of the latter. Some prefer the right side of the large bar in the middle. To take the right, when nearly up with Paddy's run above, keep a little to the left round a small bar at its mouth, then incline towards the right shore, taking care to keep to the left round the bar at the mouth of Indian Guyandot.

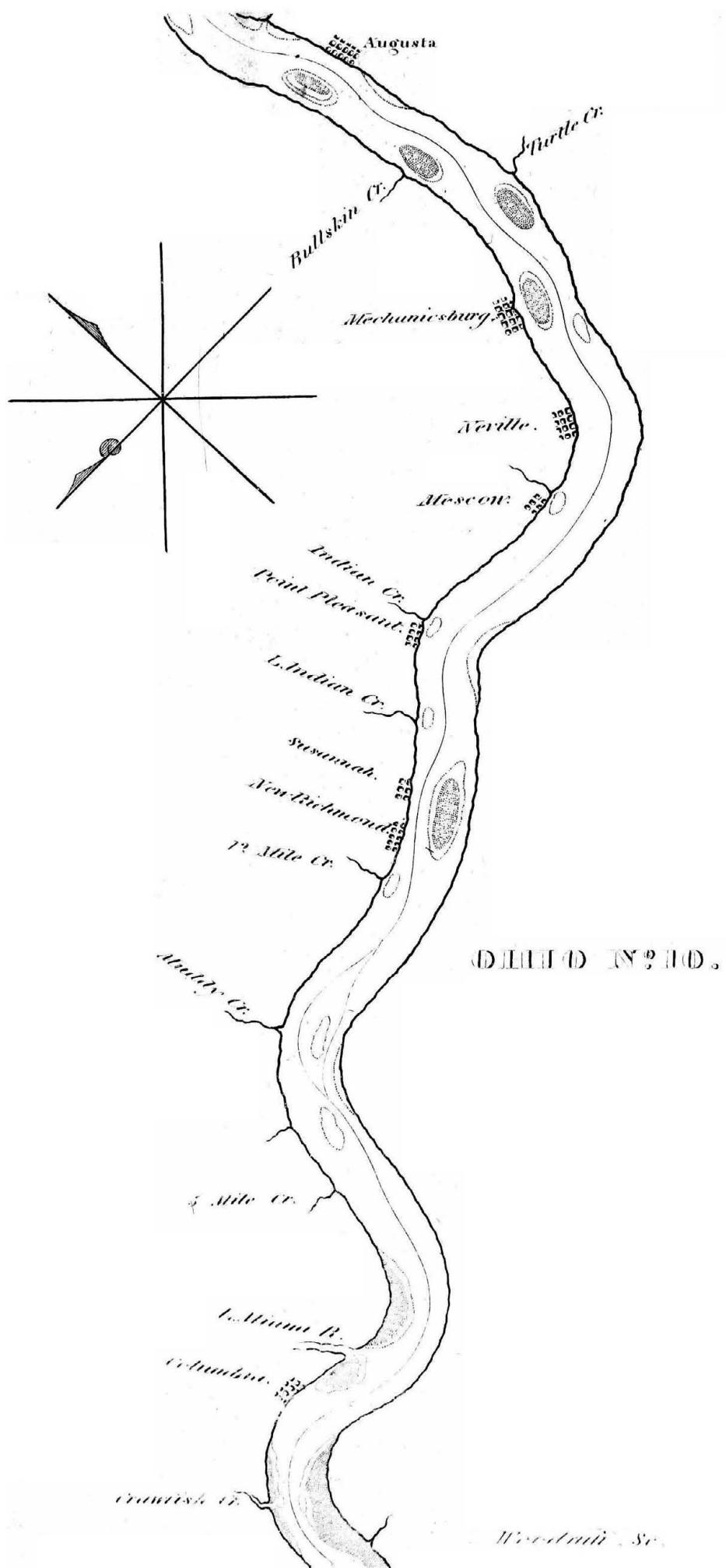




Symmes's Creek, on the right.	3	303
Buffaloe Creek, left side.	2	305
Ten Pole creek, left side.	1	306
Twelve Pole Creek, left side.	1	307
Burlington, on the right, Nearly opposite to Twelve Pole creek, is a post town, and seat of justice for Lawrence county, Ohio. It was laid out in the fall of 1817, and so called after Burlington in New Jersey, the native place of Captain Lawrence, for whom the county was named.		
Big Sandy River, on the left. This is a considerable stream, taking its rise near the head branch of Clinch river, and passes through a range of the Cumberland mountains. It is the dividing line between the states of Virginia and Kentucky. There is a bar on each side of the river at Big Sandy: channel in the middle.	4	311
<hr/>		
<i>Directions for Map No. 8.—Ohio River.</i>		
Stoner's Creek, right side.	10	321
Ferguson's Bar,		
Is about three miles below Stoner's creek. Channel nearest the right shore for about two miles, then incline towards the middle.		
Little Sandy River, on the left.	9	330
Channel near the middle of the river.		
Pine Creek, on the right.	10	340
Little Scioto river, on the right.	2 $\frac{1}{2}$	342 $\frac{1}{2}$
There is an ugly rocky bar on the right, commencing nearly a mile above the Little Scioto, and extending more than a mile below it. Channel one third from the left shore.		
Tyger's Creek, right side.	4 $\frac{1}{2}$	347
PORTSMOUTH, right side.		
This is a flourishing post town, and seat of justice for Scioto county, Ohio. It is advantageously situated for internal com- merce, on the eastern bank of Scioto river, nearly a mile above its junction with the Ohio. There is a bar on the left, opposite to Portsmouth, which throws the channel well to the right, past the town, and till you approach the mouth of Scioto, when you must keep to the left to avoid a snaggy bar below the mouth.		
Scioto River, on the right.	3 $\frac{1}{2}$	350
This is the second river in magnitude, of those flowing entirely within the state of Ohio. It takes its rise in a level country, in Hardin and Marion counties, and flows thence nearly south through Delaware, Franklin, Pickaway, Ross, Pike, and Scioto counties, after a comparative course of about one hundred and fifty miles, when it empties into the Ohio river between Portsmouth and Alex- andria, by a mouth one hundred and fifty yards wide.		

Turkey Creek, on the right.	4 $\frac{1}{2}$	355
There is a large snaggy bar at its mouth. Channel one third from the left shore.		
Conoconneque Creek, left side.	4 $\frac{1}{2}$	359 $\frac{1}{2}$
Small island, near the right shore, half a mile below, with a large bar at its head. Channel to the left, and near to the head bar of the island, on the right, until you are past the creek bar; then incline towards the left shore, to avoid a large bar below the foot of the island, on the right. After passing the bar at the foot of Conoconneque island, keep near the middle of the river until you approach Twin creeks.		
<hr/>		
<i>Directions for Map No. 9.—Ohio River.</i>		
Twin Creeks, on the right.	8	367 $\frac{1}{2}$
These are two small creeks, which empty into the Ohio within a few yards of each other. There is a large bar at their mouths, extending two thirds across the river. Channel near the left shore; then keep to the right past Salt creek, which is about a mile below, on the left. <i>crossing over a bar below salt creek channel.</i>		
Wilson's Island.	10 $\frac{1}{2}$	378
Best channel to the left; the right is rather deepest, but is a snaggy difficult channel, and never ought to be attempted except at very low water. If you take the left, keep to the right after passing the bar at its foot, to avoid a shoal on the left, below. Brush Creek empties into the Ohio opposite to this island on the right. If you take the right of Wilson's, (or as some call it, Brush creek Island) incline a little off from the right shore above to avoid a small bar on the right, then keep to the right, between the latter and the head bar of the island, and pretty close in to the right shore of the mouth of the creek; then keep a little to the left, and pass through a snaggy ugly channel nearest to the foot of the island.		
Manchester Island.	7 $\frac{1}{2}$	385 $\frac{1}{2}$
Channel to the left; these islands are connected by a large bar at their head at low water; keep well over to the left shore, opposite the head bar of the islands, and cross over passing the foot of the large island towards the right shore. The town of Manchester is on the right just below the islands: this is a post town of Adams county, Ohio.		
Cabin Creek, on the left.	5 $\frac{1}{2}$	391
Brook's Run, right side.	3	394
Below the mouth of Brook's run is a large snaggy bar; channel near the left shore.	3	397
Limestone Creek, on the left.		
<b>MAYSVILLE,</b>		
A very flourishing town of Mason county, Kentucky, is situated immediately below the mouth of Limestone creek.		





**Eagle Creek, on the right.**

There is a large bar in the middle of the river immediately above the mouth of Eagle creek, and directly opposite the town of Charleston, Ky. Channel to the left, and when past the bar incline over towards the right shore.

**RIPLEY, right side, 1 1-2 miles; just below the mouth of Red Oak Creek—Lavana, right side, 2 1-2 miles—Straight Creek, right side, 2 miles.**

There is a bar at the mouth of Straight creek: channel near the left shore until you are up with White Oak creek, on the right two miles below; then incline to the right.

6 403

6 409

***Directions for Map No. 10.—Ohio River.*****AUGUSTA, on the left,**

Below the mouth of Bracken creek. This is a very pleasantly situated town, and seat of justice for Bracken county, Ky. There is a large bar opposite to Augusta: channel to the left, and when you are past the town, keep to the right.

5 414

**Bullskin Creek, right side,**

A large bar at its mouth: channel near the left shore, and when you are past the bar keep to the right, to avoid the bar at the mouth of Turtle creek, on the left, about two miles below.

3½ 417½

**MECHANICKSBURGH, on the right.**

There is a large bar opposite Mechanicksburgh: channel to the left, and when past it, keep the middle of the river.

3 420½

**NEVILLE, right side.**

3 423½

**MOSCOW, right side.**

3 426½

**POINT PLEASANT, on the right.**

4 430½

**NEW RICHMOND, right side.**

4½ 435

This is a flourishing post town, of Clermont county, Ohio. There is a large bar on the left, above New Richmond, which throws the channel pretty close to the right shore, from 1½ miles above until you pass the town, then incline to the left, to avoid a small bar at the mouth of Twelve Mile creek.

**Muddy Creek, right side.**

5 440

There is a bar in the middle of the river, opposite to Muddy creek: best channel to the left. Two miles below this is another low bar in the middle of the river: channel either side.

**Little Miami, right side.**

8 448

This stream rises in the south-western corner of Madison county, and after running south-westerly more than seventy miles across Clark, Green, Warren, and Hamilton counties, joins the Ohio seven miles above Cincinnati. It is one of the best mill streams in the state. There is a large bar at the right hand point above the Little Miami, and an ugly snaggy bar below its mouth: channel

near the left shore, until you are nearly a mile below the Little Miami, then steer across for the red house at Columbia.

**Crawfish Creek, right side.**

Keep near the right shore, from Columbia until you approach Crawfish creek, then incline a little to the left until you are half a mile below its mouth, then keep near the right shore, to avoid a large bar on the left, commencing a little below Crawfish creek.

3 451

**Directions for Map No. 11.—Ohio River.**

**CINCINNATI, on the right.**

This is decidedly the greatest commercial town in the western country; and perhaps the largest inland town in the United States. It contains at present nearly 14000 inhabitants, and rapidly increasing. The contemplated canal to connect the waters of lake Erie with the Ohio River, which will without doubt commence the present summer, (a branch of which by the way of Mad River will center at this place,) will add much to the importance of Cincinnati in a commercial point of view. The city authorities, with much liberality, and great expense, have commenced an important improvement of the landing at the public ground between Main-street and Broadway, by levelling down the bank on a regular declivity from Front-street to the water's edge, and paving the whole: it will probably be finished the ensuing season; and what adds much to the facility of landing, is, a number of floating wharves moored along the shore. Licking River, a considerable stream of Kentucky, taking its rise near the head waters of Cumberland, and running a northwestwardly course about 200 miles, empties into the Ohio opposite Cincinnati. The handsome little towns of Newport and Covington, in Campbell county, Kentucky, are situated directly opposite Cincinnati; the one above, the other below the mouth of Licking River. Channel past Cincinnati one third from the right shore until you pass the Brewery, then steer short over towards the left, and pass pretty close to a snag or root, lying about one quarter from the left shore; after passing it 100 yards, incline gradually to the right, and pass Mill creek about the middle of the river, and then incline still towards the right shore; two miles below Mill Creek is a hard gravel bar, at the mouth of the run on the right, above Sedam's house: Channel in the middle of the river.

4½ 455½

**McCullom's bar.**

Channel close to the right shore.

5½ 461½

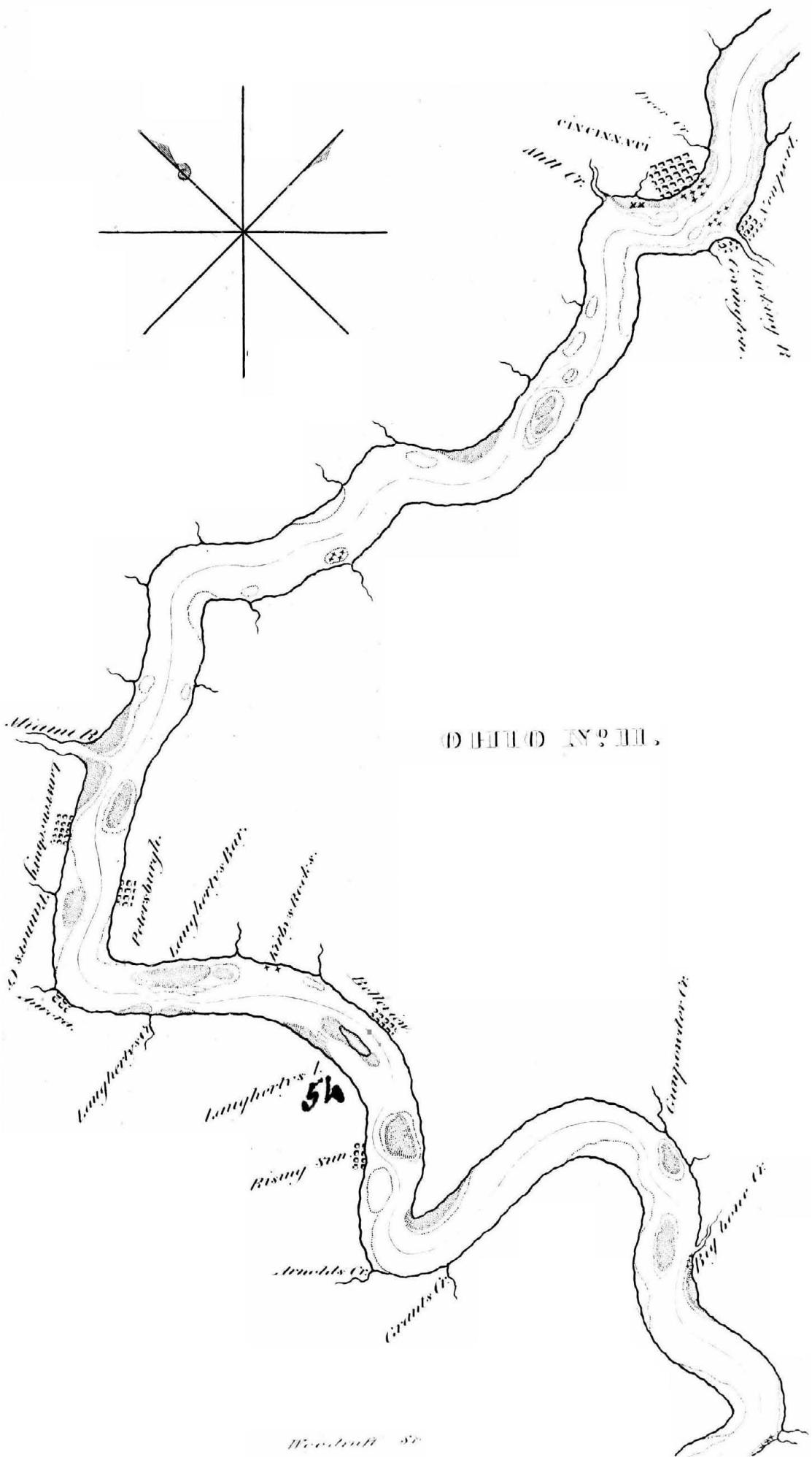
**North Bend, right side.**

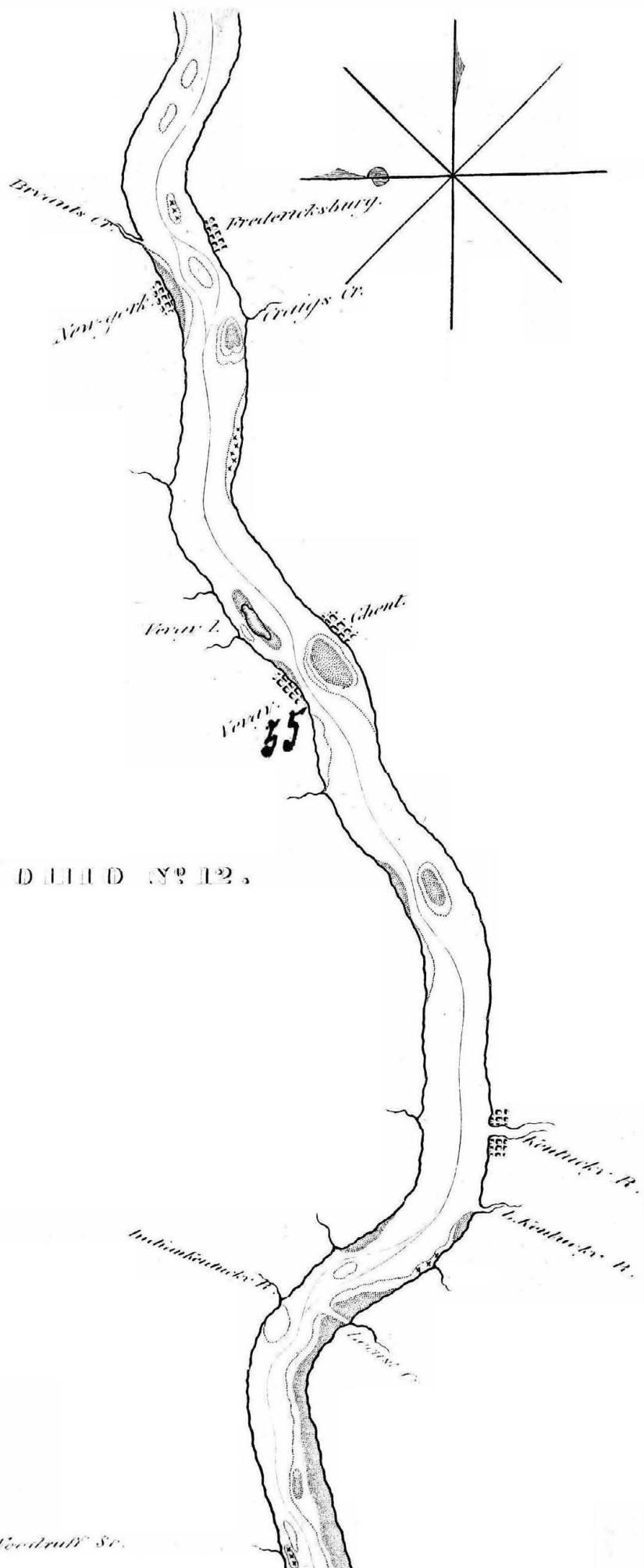
11½ 473

**Great Miami River, right side.**

4½ 477½

This is a considerable river, rising in Harden, Allen, Logan, Shelby, Mercer, and Darke counties, and empties into the Ohio about two miles above Lawrenceburgh. There is a large bar on the right, above and below Miami river. Channel near the left shore until





D E T A I L S N O 12.

you have passed the mouth nearly half a mile, then incline to the right, and keep nearest the right shore past Lawrenceburgh: there is a large bar on the left, a mile above Lawrenceburgh.

**LAWRENCEBURGH, right side,**

Is the seat of justice for Dearborn county, Indiana. After you have passed Lawrenceburgh incline over towards the left shore, to avoid the bar on the right, at the mouth of Tanner's creek; opposite to Petersburgh. Aurora, on the right, just below Logan creek, and nearly four miles below Lawrenceburgh, is a thriving town of Dearborn county, Indiana.

**Laugherty's Creek, on the right.**

There is a large bar on the left, commencing above, and extending down nearly two miles below Laugherty's creek. Channel near the right shore.

**Laugherty's Island.**

Channel left side.

**RISING SUN, right side.**

A pleasant little town of Dearborn county, Indiana. There is a very large bar opposite the town which throws the channel very close in to the right shore, and when up with the lower part of the town, keep quick over towards the left, to avoid a large low bar on the right, below.

**Arnold Creek, right side, 2 1-2—Grant Creek, right side, 1 1-2—Gunpowder Creek, left side, 5 1-2.**  
Keep well over to the left shore above the mouth of Gunpowder, and when up with its mouth, turn pretty short to the right, to within a third from the right shore, and when three-quarters of a mile below, keep short over to the left again.

**Big Bone Lick Creek, left side.**

There is a large high bar in the middle, opposite to Big Bone; channel to the left, but be careful of a hard rocky break on the left, just below the mouth. Keep a little to the right, round the left hand point below Big Bone bar, then one third from the left shore until within a mile and a half of Fredericksburgh.



**Directions for Map No. 12.—Ohio River.**

**FREDERICKSBURGH, on the left.**

About a mile above Fredericksburgh is a small rocky bar, or ledge, rather more than one third from the left shore; channel to the right, and pretty close to it, then incline to the left towards the town. There are three bars below Fredericksburgh; first, a small middle bar opposite the lowermost houses of the town; the shore bar on the right, opposite to it, and Craig's bar on the left, a mile and a half below the town. It is generally safest for those unacquainted with these bars, to keep well over to the left shore, after passing Fredericksburgh, until they approach Craig's bar below, at the mouth of Craig's creek, on the left, and then keep short

2 479½

5 484½

4½ 489

3½ 492½

9½ 502

2½ 504½

10½ 515

over towards the right, to clear the latter. At a very low stage of water, however, there is deeper water to the right of the small middle bar, but the channel through is rather crooked.

**Nine Mile, or Vevay Island.**

Channel to the left; after passing the Island, incline towards the right shore.

**VEVAY, right side.**

This is a flourishing town of Switzerland county Ind. Opposite to Vevay is a very large sand bar, which throws the channel very close to the right shore opposite to the town. Be careful of a small bar on the right just above the town, when you have past the town incline out to the middle of the river. There is a bar in the middle of the river three and a half miles below Vevay, channel to the right.

**Kentucky River, left side.**

This is a beautiful river of Kentucky, taking its rise in the Cumberland mountains. It is upwards of 200 miles in length, and navigable nearly 150 miles. It is about 160 yards wide at its mouth, and affords an excellent harbor for boats. The flourishing town of Frankfort, the seat of government for the state, is situated on this river about 60 miles from its mouth. Little Kentucky, left side three quarters of a mile below. About four and a half miles below Kentucky River, is a large bar on the left, at the mouth of Louis creek. Channel very near the right shore, round this bar, and when nearly up with Indian Kentucky, right side, keep out to the middle of the river round its bar, then incline toward the right shore again: Keep near the right shore for three miles and three quarters, when you will be three miles and one quarter above Madison, and three quarters of a mile above a small run on the right; here you must steer quick out to the middle of the river, to avoid a hard gravel bar on the right above the run, called Marecis bar.

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**Directions for Map No. 13.—Ohio River.**

**MADISON, on the right,**

Is a very flourishing town of Jefferson county, Indiana. Channel past the town rather nearest the left shore.

**Cooper's Ferry, left side.**

Here is a large bar on the left. Keep well towards the right shore above Cooper's bar, and when nearly up with its outer point, incline a little to the left, between the latter and a small gravel bar near the right shore.

**NEW LONDON, right side.**

**BETHLEHEM, right side.**

**WEST PORT, left side.**

Eighteen mile creek and island, is just below West Port. Keep to the right of the island, and when nearly up with its foot, incline

7½ 522½

2 524½

9½ 534

127½

5½ 539½

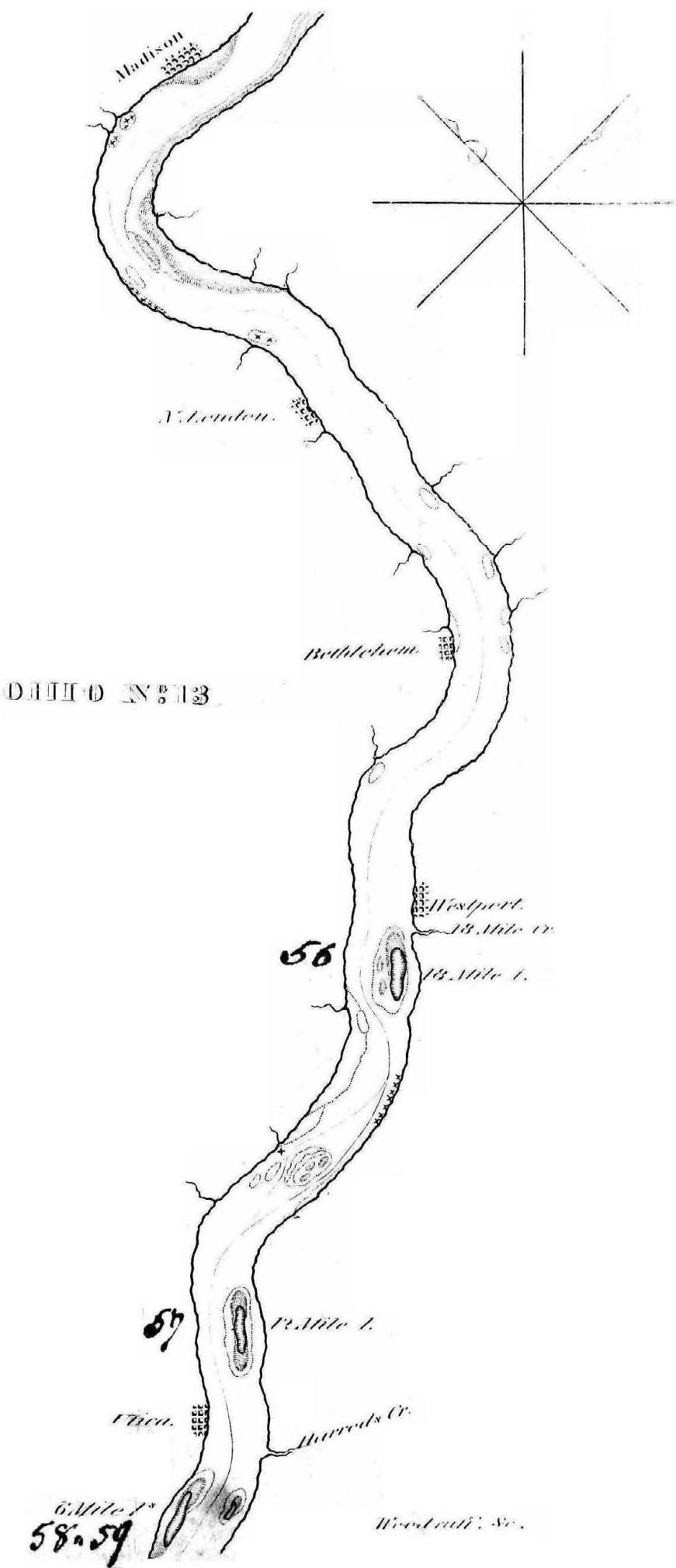
7 546½

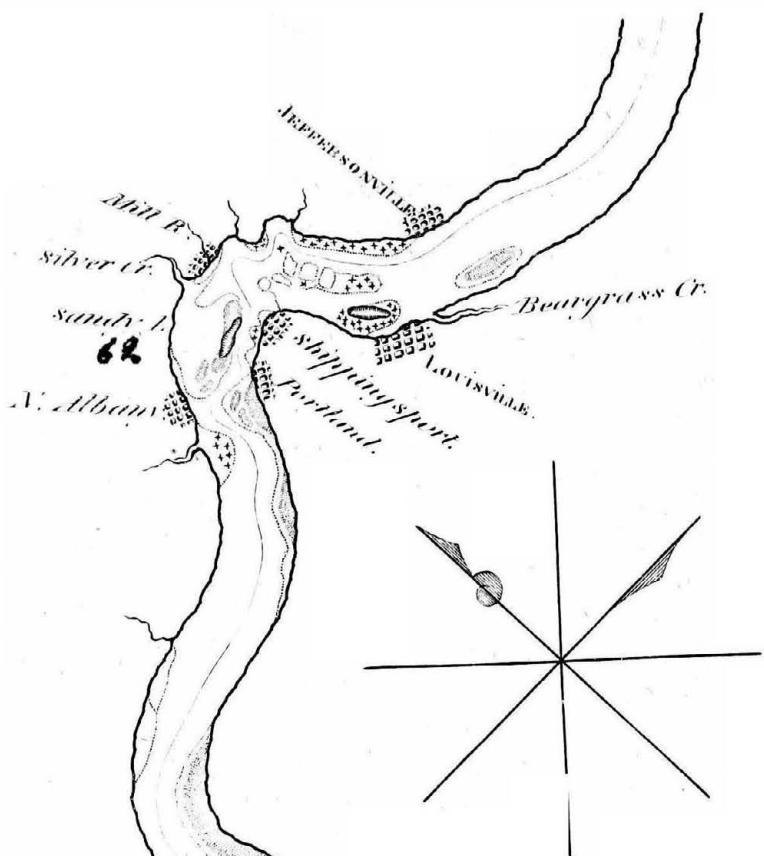
5 551½

4½ 556

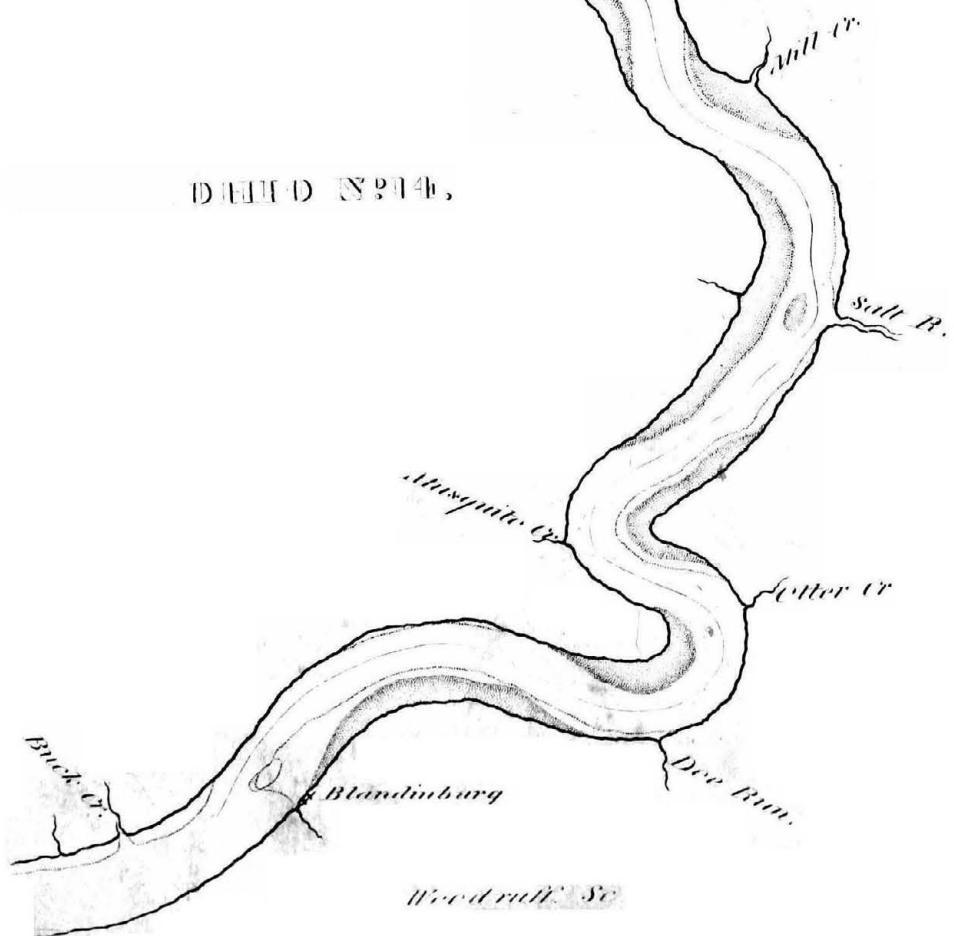
6 561

6 567





DETILED FIG. 24b.



to the left, and cross over near the left shore. About three miles below eighteen mile island is a large low bar in the middle of the river, called the meadow ground: channel either side; if you take the left, when you are nearly up with the small run opposite the head of the bar, on the left, keep close in to the left shore: if you take the right, when you are about three quarters of a mile above, incline over to the right and keep near the right shore, passing the bar, until you are up with a large rock laying on the right shore, then steer obliquely across toward the left hand point below, between the lower point of the meadow ground bar, and a small bar on the right below.

**Twelve Mile Island.**

Channel right side, and near the right shore.

**Six Mile Island.**

Channel between them. Keep well to the left passing the bar at the head of the large island, on the right, then incline to the right.

**Directions for Map No. 14.—Ohio River.**

**JEFFERSONVILLE, right side,**

This is a very pleasant town of Clark county, Indiana. Good Pilots over the falls reside here; and a pretty good landing at the upper part of the town; and if the stage of water will not admit of your passing the falls with a loaded boat, cartage round the falls can be obtained here at a moderate expense. There is a large bar on the left, opposite to Jeffersonville. If you intend landing at Beargrass, incline over to the left, from the upper part of Jeffersonville, and land opposite Gray's Warehouse, just below the mouth of the creek.

**LOUISVILLE, on the left.**

This town is situated immediately below the mouth of Beargrass creek, and directly opposite the head of the falls of Ohio, in Jefferson county, Kentucky. Louisville, in a commercial point of view, is second to no town in the Western Country, if we may except Cincinnati. The legislature of Kentucky at their last session, passed an act to incorporate a company (reserving a certain number of shares to the state,) to carry into effect the long contemplated canal around the falls. It will commence the present season, and if we may judge from the character and enterprize of the stockholders, generally, it will, without doubt, be completed the next season. This canal, in consequence of the fall of water, will afford several excellent Mill seats, and will add much to the importance of Louisville.

**SHIPPINGPORT, left side,**

At the foot of the falls. The rapids of Ohio is, both naturally and politically, a very remarkable position. It is at low water in a great measure the head of steam boat navigation, and the last point in descending the Ohio when any serious impediment to the passage of its current occurs. At low water you must pass to the

9½ 576½

4½ 581

5 536

1 587

3 590

left of Sandy island, below Shippingport. Keep close to the head of the island, and when near its foot, incline a little to the left.—Portland is about a mile below Shippingport; keep near the left shore passing it, then steer pretty short over to the right shore at the lower part of New Albany, and above Falling run, then steer short across, to one third from the left shore, to avoid an ugly rocky bar below the mouth of the latter. New Albany, on the right, above Falling run, is a thriving town, and seat of justice for Floyd county, Indiana. Five miles below Falling run commences a bar on the left: keep towards the right shore. Five miles further down commences a bar on the right: keep towards the left shore: Four miles below the latter, commences a bar on the left again; keep over into the right hand bend, and near to the right, until you are a mile below Mill creek on the left, then keep over towards the left shore again.

### Salt River, on the left.

This is a considerable stream of Kentucky, traversing the counties of Jefferson, Greenup, Washington and Mercer. Keep near the left shore above Salt river, and when within 100 yards of its mouth, incline still more to the left, and into the mouth of the latter; then incline gradually out to the right, to nearly the middle of the river. Three miles below Salt river incline well over to the right to avoid a long bar round the left hand point below.—Musqueto creek on the right, in the bend:—5 miles—keep nearest the right shore until you are a mile below Musqueto creek, then incline towards the left, to avoid a bar below the right hand point, commencing opposite Otter creek.

### Otter Creek, left side.

Keep near the left shore for about four miles and a half, or until you are one mile and a half below Doe run, on the left; then incline over towards the right shore.

### Brandenburgh's Ferry, left side.

Keep nearest the right shore for two or three miles above Brandenburgh's, and when nearly opposite the ferry, keep close in to the right shore for nearly half a mile; then incline to the left. About two miles below Brandenburgh's, Buck creek comes in on the right.

## Directions for Map No. 15.—Ohio River.

Three and a half miles below Buck creek, is a bar on the right, and just below it another on the left. Keep nearly two-thirds of the river on your right, until you are up with the head of the former, then incline to the right, and pass near its foot to avoid the latter; then keep nearest the right shore for about a mile, then incline to the left again, and keep nearest to the left shore until you approach

### Indian Creek, right side.

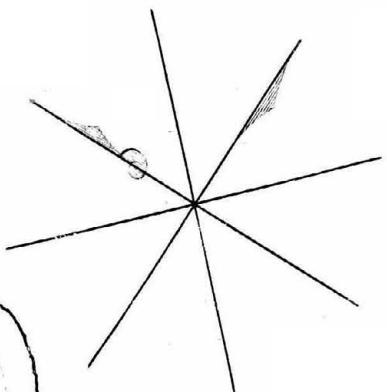
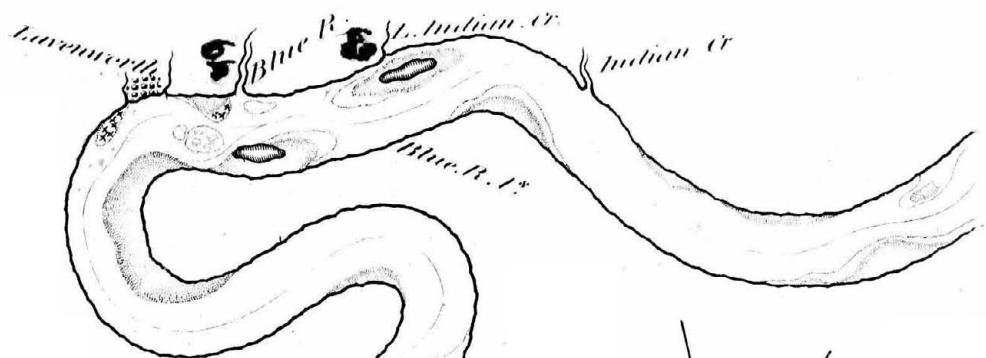
Here you must keep over to the right, and near the right shore until within three-fourths of a mile of the first of the Blue river

21½ 611½

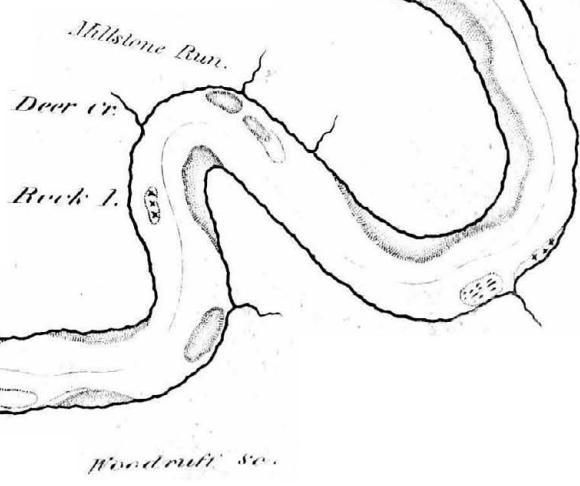
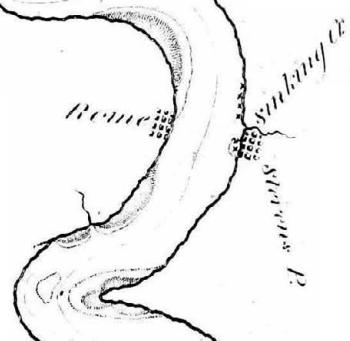
7½ 619

9 628

13 641



OHIO N° 15



Millstone Run



islands, when you must keep over towards the left shore, to avoid the bar at its head, and when you are about half way between the islands, keep to the right betwixt the bars, at the foot of the one, and head of the other.

**Blue River, right side,**

Opposite the foot of the second island. There is a bar in the middle of the river, just below the mouth of Blue river: channel either side of it. The best pilots disagree, however, respecting the channels at this place; this is not to be wondered at, as it is well known that the channel here, as well as at other places on this river, changes after a sudden and heavy rise of water; consequently it would, I think, be a prudent step, in all cases where there is any doubt, to send a skiff ahead and ascertain the right; this precaution may save a great deal of time, labour, and expense. After you have passed the bar at the head of the second island, incline towards the island, to avoid a low bar on the right, above the mouth of Blue river;—If you intend to take the left channel, hug the foot of the island very close, as also the bar to the left of it, which is very bluff, and keep close to the left shore until you approach Leavenworth, on the right, then incline well over to the right; but beware of a hard break on the right, about half a mile below the town: If you intend to take the right channel, pass pretty near to the foot of the island, then turn short to the right, and pass close to a rocky bar on the right, just below the mouth of the river. Keep near the right shore round the *great oxbow*, and when you approach the right hand point below, keep to the left. At the left hand point between the oxbows, is a very deep bar; here you must keep close to the right shore, and when past the point, incline to the left again.

**Little Blue River, right side.**

As you approach Little Blue river incline to the right, and when you have passed the small bar on the right below its mouth, keep pretty close to the right shore round the *little oxbow*.

**Flint Island, near the left shore.**

The channel past Flint island is about midway betwixt the island and the right shore, until you are nearly up with the foot of the island; then incline a little to the right, to clear the middle bar which commences near the foot of the island; incline to the left as you approach the foot of this bar, and short round its foot to the left shore, then turn short across towards the right, (to avoid a hard gravel bar round the left point) and when you are rather more than half across the river, turn short to the left again, between the left hand bar at the point, and middle bar in the bend: the channel formerly run close into the bend, at the mouth of Owl creek.

Four and a half miles below Flint island is a large middle bar, nearest the right shore: channel past it pretty close to the left shore for nearly two miles; then shoot over into a short right hand bend below it, to avoid a very deep bar at the point on the left; when past the latter, incline to the left.

**Sinking Creek, left side—ROME right side.**

About four miles below Sinking creek is an ugly bar round the left

6 647

17 664

12 676

12 688

hand point: best channel is in the middle of the river; pass out close to a snag on the lower edge of the bar, leaving it on your left. After you have passed this bar, incline to the left.

**Clover Creek, left side.**

Keep to the right as you pass Clover creek, to avoid a snaggy bar below its mouth, then incline to the left again. Keep near the left shore above the left hand point below Clover creek, to avoid an ugly bar on the right, above Millstone run.

**Deer Creek, right side.**

About three-fourths of a mile below Deer creek there is an ugly ledge, or cluster of large high rocks, about one-third from the right shore, generally called Rock island, which ought to be particularly guarded against when the water is high, as the current sets strong on to the right: channel past Rock island about the middle of the river; incline a little towards the right hand point below Rock island, to avoid a bar in the bend opposite, then keep near the middle of the river for about four miles, then keep near the left shore to avoid the bars on the right, above Troy.

**TROY, right side—Anderson's River, right side.**

Anderson's ferry is a mile and a half below Troy. Anderson's bar on the left, commences immediately below the ferry; there is also a low bar on the right, opposite, which commences immediately below the mouth of Crooked creek: channel in the middle of the river for about two miles, then close in to the right shore round the outer point of Anderson's bar; and then incline to the left.

**Directions for Map No. 16.—Ohio River.**

**Bayou Creek, right side.**

As you approach Bayou creek keep about the middle of the river, then incline to the right to avoid the bar on the left, below Blackford's creek.

**ROCKPORT, right side.**

So named from its being situated on a rock, which presents a high, bold front on the Ohio, and commands a romantic prospect of the river. When you approach within a mile and a half of Rockport, keep over towards the left hand point to avoid a large bar on the right, above Honey creek. About two miles below Rockport is a bar on the right: channel pretty near to the left shore, until you are nearly up with Puppy creek, on the left, then keep well over to the right shore above Yellow Bank islands, and when within half a mile of the first, (a small island pretty close to the right shore) steer pretty short over to the left shore: opposite the head of the second, or large island, is a sunken ledge of rocks, about fifty yards from the left shore; incline a little to the right past them, and then toward the left shore again.

**OWENSBURGH, left side,**

Is a pleasant little town in Kentucky, at the Yellow Banks, opposite the foot of the island. About a mile and a half below Owensburgh is a bar in the bend on the left: channel right side.

11 699

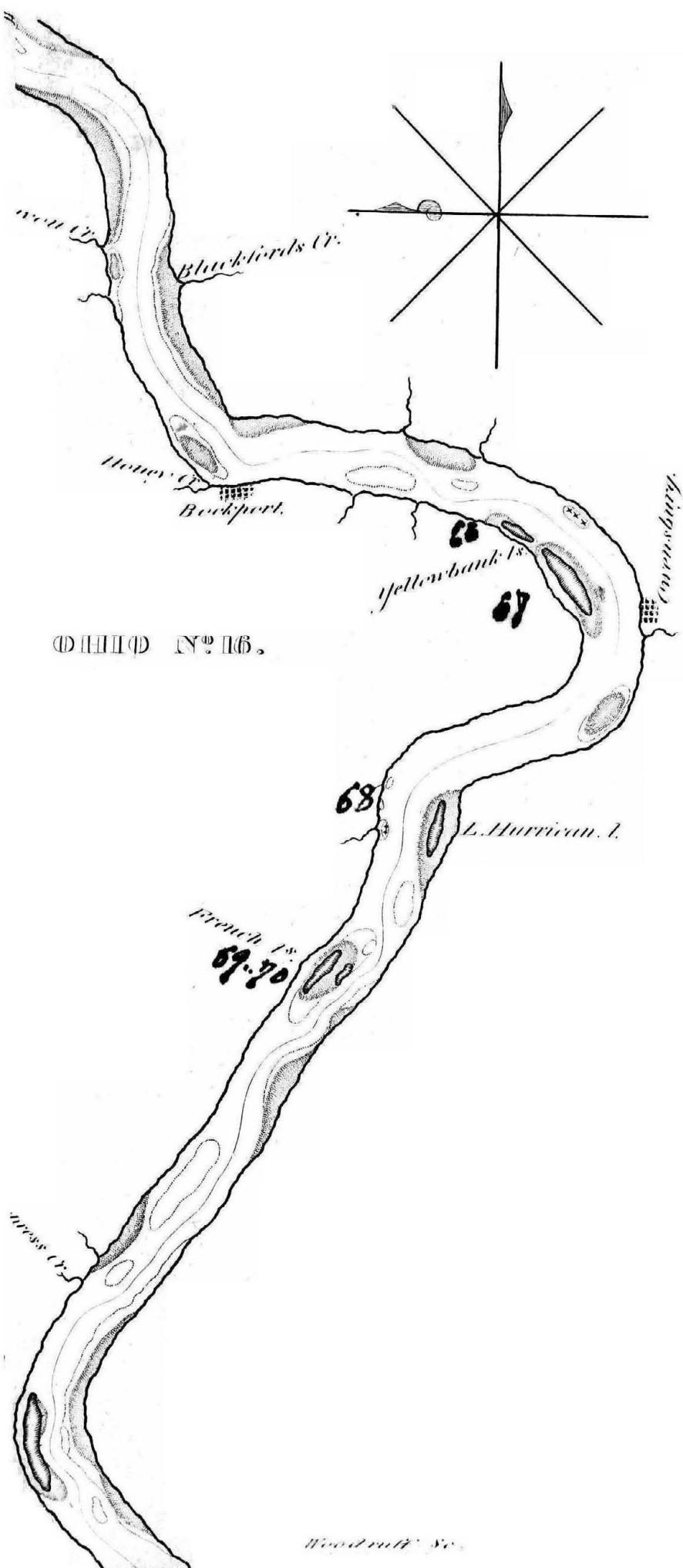
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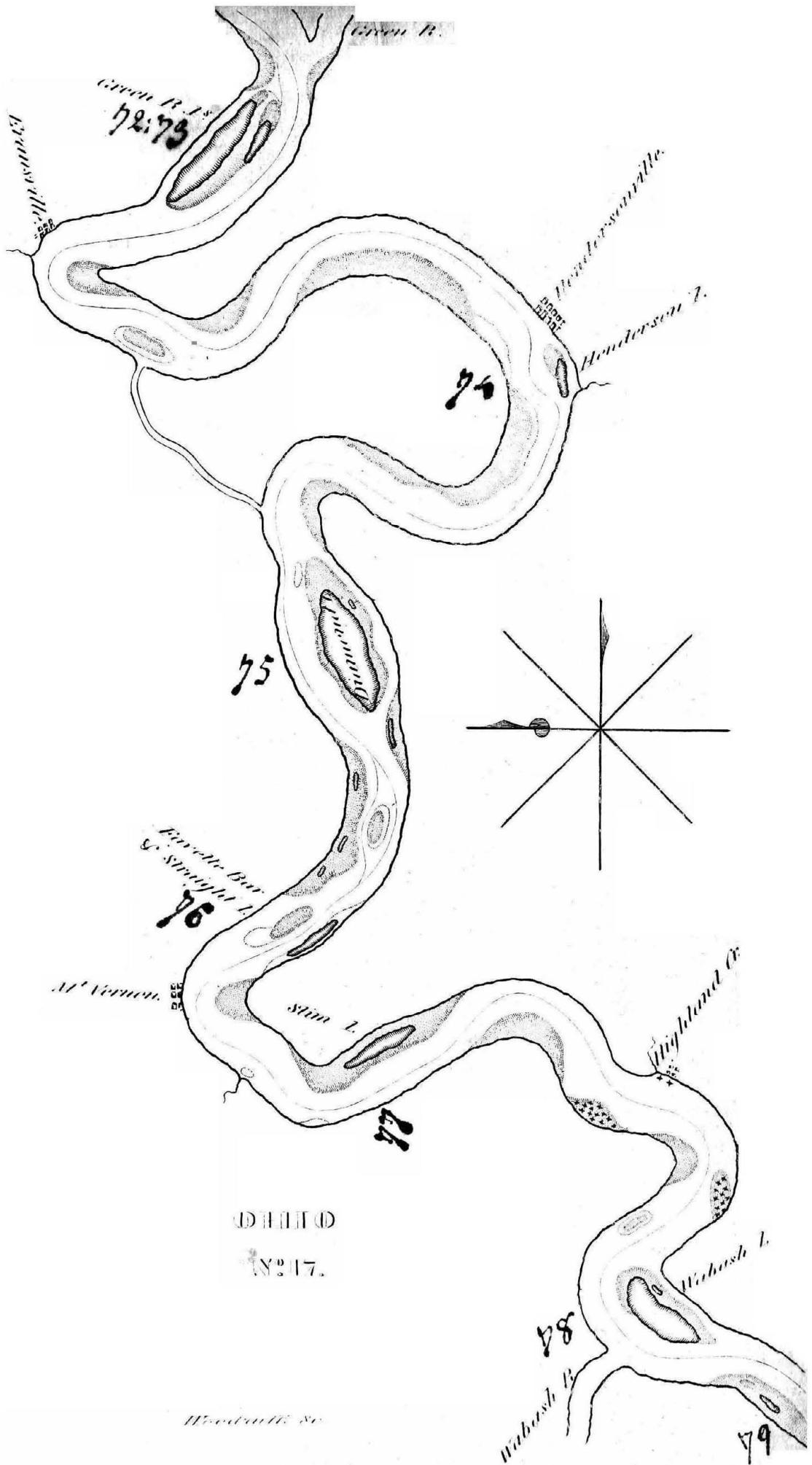
12½ 718

9½ 727½

6½ 734

8 742





**Little Hurricane Island**, near the left shore,  
Below the left hand point: channel to the right. Guard against a  
ledge on the right, opposite the island, at the mouth of Slate Run.

6 748

**French Islands: channel to the left.**

Keep pretty near to the right shore above, until within about a mile of French islands, then steer across for the left, and close to the left shore, opposite the bar at their head; there is a very strong ripple at the head of this bar. As you approach the small island, (which is opposite the other, and connected to it by a sand bar) incline to the right, towards the island, and when nearly up with the foot of the largest, keep well over towards the left shore, and when you are three-fourths of a mile below, steer across for the right shore. Keep along down the right shore for about three miles below French islands, then steer across for the left, and keep pretty near the left shore for about two miles, then incline a little to the right, but keep three-quarters of the river on your right until you are opposite Cypress creek on the right; then steer across for the right shore.

4½ 752½

**Cypress Creek, right side.**

8½ 761

**Three Mile Island,**

2½ 763½

Near the right shore: channel to the left, and pretty near to the island at its head; then incline a little to the left round a small bar which makes from the island, then keep in close to the island until you approach its foot, then keep to the left round a large bar at its foot; when you are half a mile below the island, steer short across for the right shore.

**Directions for Map No. 17.—Ohio River.****Green River, left side.**

4½ 768

This is a considerable river of Kentucky, taking its rise in Lincoln county, and is navigable about two hundred miles: channel past the mouth of Green river is near the middle, to clear the bar at the head of the islands below, and a hard break on the left just below the mouth; when past the latter, incline over to the left shore.

**EVANSVILLE, right side,**

8 776

Above the mouth of Pigeon creek. This is a very thriving town, situated in a bend of the river, fifty-four miles south of Vincennes. It is the seat of justice for Vandeburgh county, Indiana: channel nearest the right shore, round a high bar at the left hand point, opposite Pigeon creek. Two miles below Pigeon creek there is a hard bar on the right: channel near the left shore, and when you approach the left hand point below, keep over in the bend on the right, to avoid a large bar on the left, round the point; when past the latter, keep well over to the left again, to avoid the large bar on the right.

**HENDERSONVILLE, left side.**

12 788

This town is pleasantly situated at the *Red Bank*. It is the *seat*

D

of justice for Henderson county, Kentucky. Red Bank island is rather more than a mile below the town: channel to the right; keep pretty short over to the right after you have passed Hendersonville, round the bar at the head of the island, then turn short to the left and pass close to the foot of the island, to near the left shore. Opposite the foot of Red Bank island commences the five mile bar on the right—keep near the left shore until you are past it, then incline over into the right hand bend below, to avoid a large bar round the left hand point, above Diamond island.

13 801

### Diamond Island,

Channel to the right, and close to the right shore, opposite the head bar of the island; when you are past its foot, and the small island on the left below it, keep well over to the left shore for about four miles to avoid the large bars on the right below Diamond island. There is a good channel between the outer bar and the main shore bar; but it is not advisable to take it, except you should get drawn into it.

9 810

### Straight Island.

This island lies very close to the left shore, and scarcely perceptible until you approach its head. Opposite to Straight island, in the middle of the river, is an ugly bar, called Fayette bar, from the steam boat Fayette laying aground on it in 1819 and 20: channel between the bar and the island, and nearest the island; and when you are half a mile below the island, keep over to the right shore in the bend, above Mount Vernon, to avoid a deep bar round the point on the left.

8 818

### Slim Island.

Channel to the right, and close to the right shore past the bar at its head. Three-quarters of a mile below Slim island, cross over to the left shore, to avoid a bar round the right hand point below.

7 825

### Highland Creek, left side.

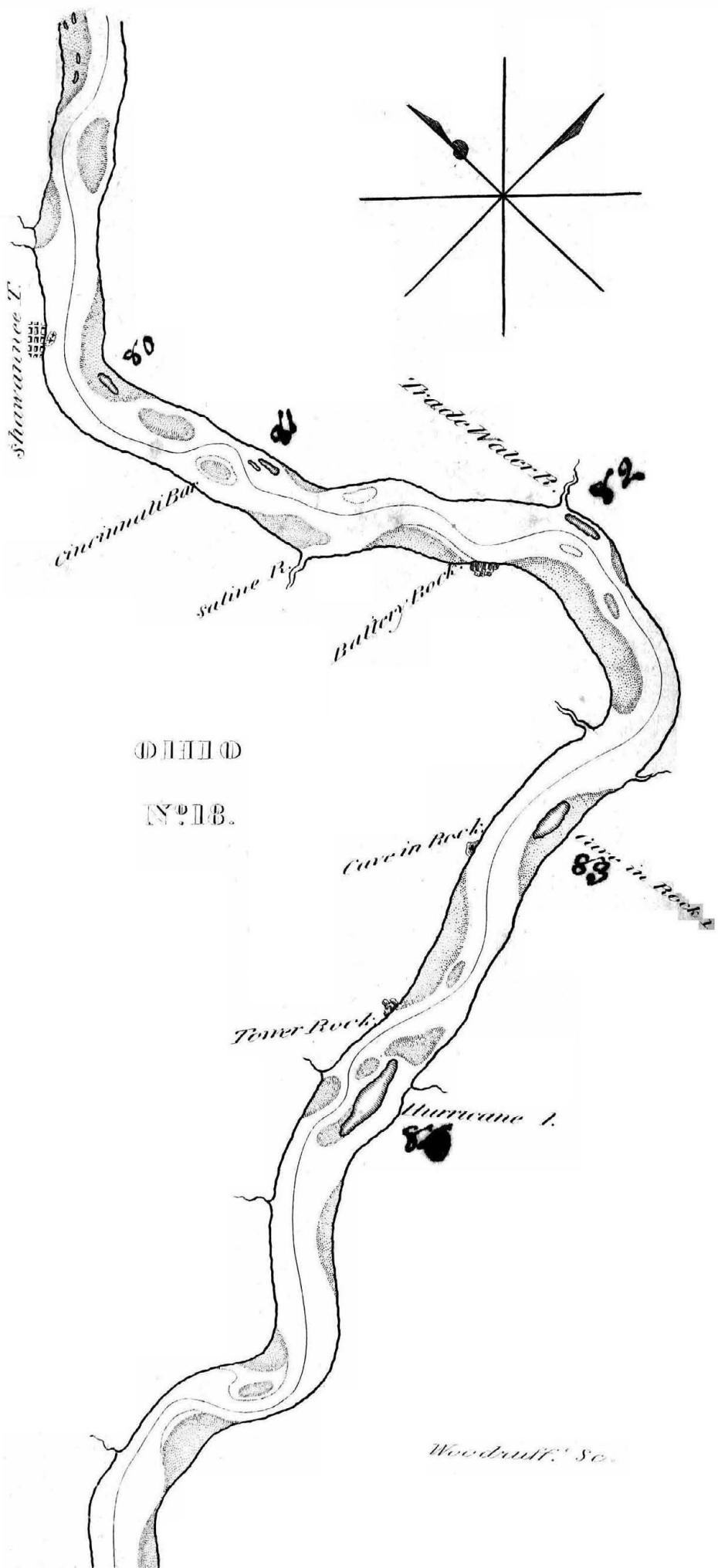
There is a high ugly ledge in the bend on the right, just above Highland creek. Keep well towards the left hand point above. About a mile below Highland creek is a bar on the right, at the point; and below it, on the left, is an ugly rocky bar, or ledge: channel in the middle, between them; hug the right hand bar well, as the current forces pretty strong on to the ledge on the left.

7 832

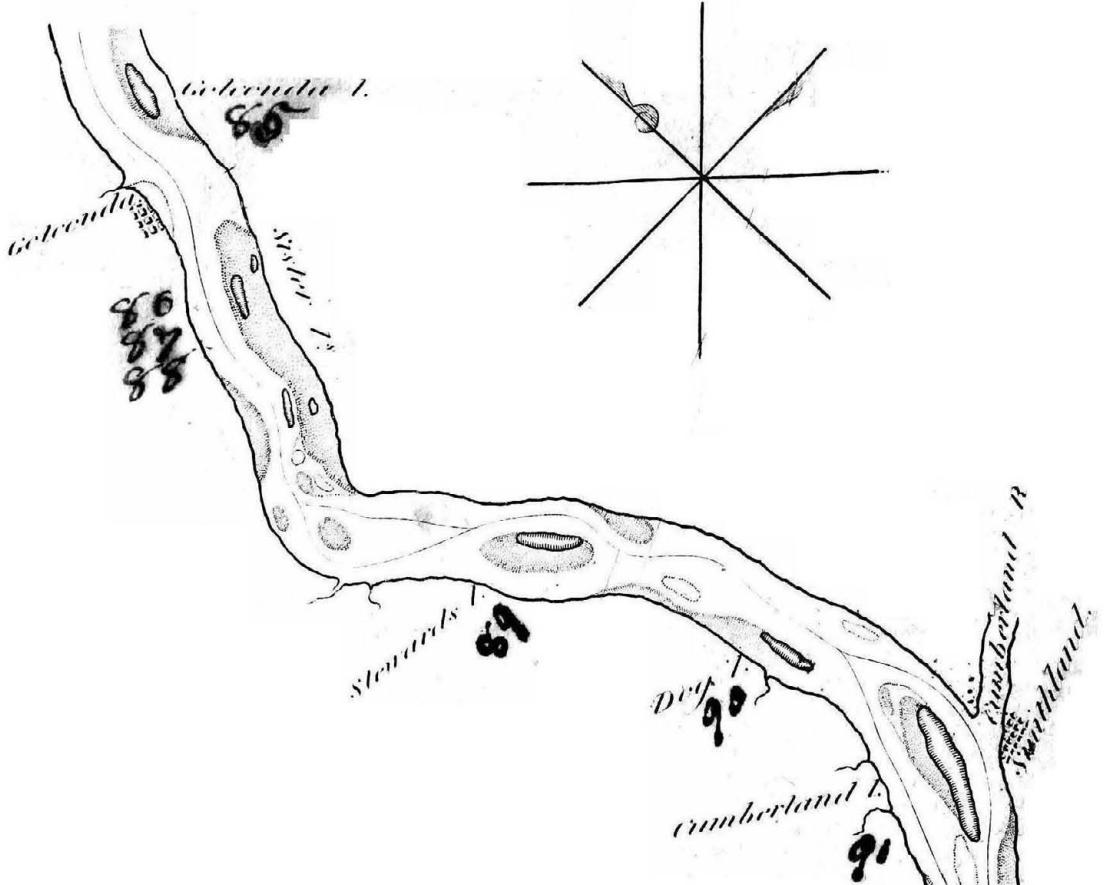
### Wabash Island,

Channel to the right. Wabash river on the right, empties in opposite to the island. This beautiful river takes its rise near the head waters of the Miami of the Lakes, and meanders through one of the most fertile regions of the west. It is about 250 yards wide at its mouth, and navigable upwards of 400 miles. When you are past Wabash island, keep over to the left shore for upwards of three miles. There is a large bar on the right, with three or four small towheads on it, called Brown's islands; the lowermost of which is near the foot of the bar; when you have passed it, cross over to the right shore, to avoid a large bar on the left—a mile and a half below the towhead keep to the left again.



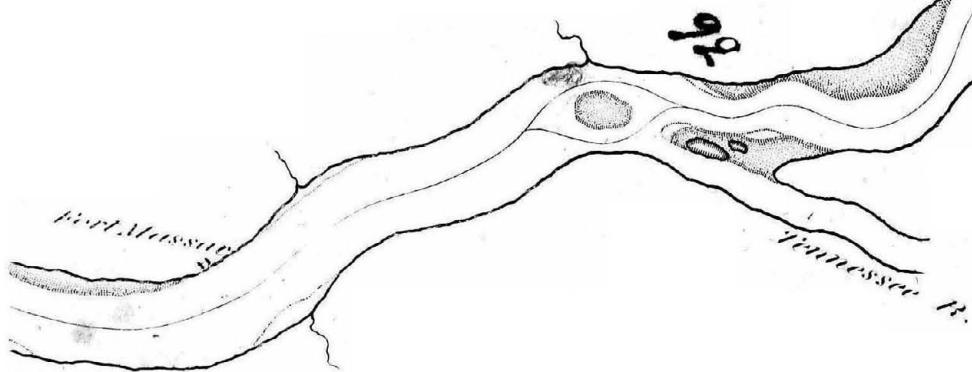






FIGURE

N<sup>o</sup> 19.



Woodward Sc.

*Directions for Map No. 18.—Ohio River.***SHAWNEETOWN, right side.**

This village formerly belonged to the Shawnee nation of Indians, from which it takes its name. It is a pleasantly situated town of Gallatin county, Illinois. Keep near the right shore for about four miles below Shawneetown, then cross short over to the left shore, about three-fourths of a mile above two small islands near the left shore; then turn short to the right, leaving the two islands on your left, and pass pretty close to the foot of Cincinnati bar on the right.

**Saline River, right side.**

There is a large bar on the right, above Saline river: channel nearest the left shore, then incline over towards the right shore past the foot of the bar, and half a mile below keep well over to the left, to clear Battery Rock bar on the right, and when nearly up with the rock, steer diagonally across for the right shore just below the rock, leaving a large bar on the left, above Trade-water; then keep over to the left again, and pass close to Trade-water island. There is a large bar on the right, below Trade-water: channel near the left shore.

**Cave-in-Rock Island,**

Channel right side. Cave-in-Rock is on the right, just below the island. After you have passed the cave half a mile, keep over to the left shore.

**Hurricane Island,**

Channel to the right. When you are about a mile and a half above Hurricane island, and rather more than three-quarters of a mile above Tower Rock, keep over for the right shore, close to the foot of the Half Moon bar on the right, and above the Tower rock. Keep near the right shore until you approach the creek on the right, opposite the middle of the island, (to clear the bar on the left below the head of the island,) then steer short across for the island, to avoid the right hand bar below the mouth of the creek, and when you approach the foot of the island, keep over for the right shore again, to avoid the bar at its foot. At the right hand point, about five miles below Hurricane island, is a large bar round the point: channel close into the bend on the left; two miles below the latter is a very deep bar on the left: channel round it close into the right, near a willow shore.

*Directions for Map No. 19.—Ohio River.***Golconda Island,**

Channel right side. Nearly a mile below the island is Lusk's creek on the right, and the town of Golconda, the seat of justice for Pope county, Illinois, just below it. There is a good landing immediately below the mouth of the creek, at the upper part of the town; but take care of the rocks near the right shore, just above

the creek. There is a low bar on the right, opposite the lower part of the town, which throws the channel out to near the middle of the river, and then incline towards the right shore again.

### Sister Islands,

Channel to the right, and close to the lower Sister, to avoid a bar on the right, then incline a little to the right, and two miles below turn short into the right shore in the bend, to avoid a small middle bar. There is a small channel to the left of the middle bar, and near to the left hand point.

### Stewart's Island,

Channel to the left. Turn out to the right past the foot of Stewart's island, to clear a bar on the left below; then incline to the left again.

### Dog Island,

Channel to the left. Keep well towards the island at its foot, and when past it, well into the right shore, to avoid the bars at the head of Cumberland island: keep near the right shore past Cumberland island, and half a mile below it, then steer short across for the left shore, to avoid a very large bar on the right below.

### Cumberland River

Empties in on the left, opposite the island. This is one of the largest rivers of Kentucky. It takes its rise from the Cumberland mountains, and interlocks with the head waters of Clinch and Kentucky rivers; flows through the state westwardly more than two hundred miles; enters the state of Tennessee, and meandering one hundred and twenty miles, reaches Nashville nearly in lat.  $35^{\circ}$  N.—from thence flowing N. W. one hundred and twenty miles, when it joins the Ohio as above stated. If you wish to stop at the mouth of Cumberland, guard against a low bar on the left, below the foot of Dog island, and then keep in close to the left shore. The channel on the left of Cumberland island (which is good except at very low water) is very close to the foot of the island. About four miles below Cumberland island are two small willow islands, near the left shore, connected by a sand bar: channel to the right, and pretty near the right shore opposite to them, and then keep over for the left shore to avoid a very large bar on the right, upwards of three miles in extent above the mouth of Tennessee river.

### Tennessee River, left side.

This is the largest branch of Ohio, and is navigable for large boats more than six hundred miles. It rises in the north-west part of Virginia, and traverses the whole width of East Tennessee in a south-west direction, and entering the north-east angle of the state of Alabama, the whole width of which it crosses, and turning just at the north-west angle of that state, it pursues a north direction, nearly in a direct line with the western boundary of that state, across the width of Tennessee and part of Kentucky, to the Ohio river. There is a large bar at the point, at the mouth of Tennessee river, with two small islands on it. Keep near the left shore until you are within half a mile of the point, then incline over towards the right, and opposite the point incline to the left again,

4 885 $\frac{1}{2}$

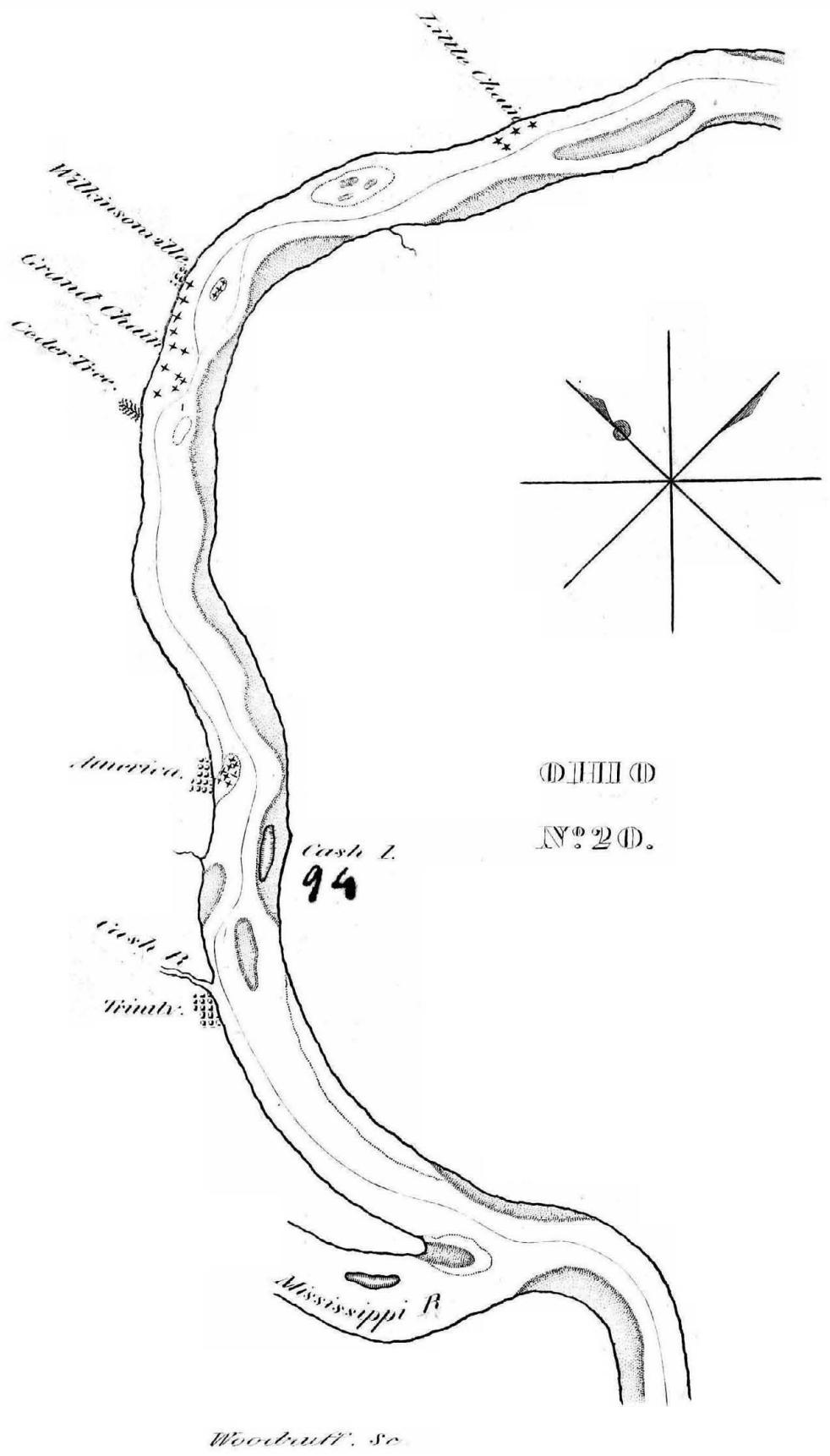
7 $\frac{1}{2}$  893

4 $\frac{1}{2}$  897 $\frac{1}{2}$

2 $\frac{1}{2}$  900

11 $\frac{1}{2}$  911 $\frac{1}{2}$





towards the islands; when up with the largest, or lowermost island, incline to the right again. About a mile below this island is a bar in the middle of the river: best channel to the right.

**Fort Massac, right side.**

9 $\frac{1}{2}$  922

**Directions for Map No. 20.—Ohio River.**

About five miles below Fort Massac commences a hard bar in the middle of the river, extending down about three miles: channel to the right. Little Chain is on the right near the foot of the above mentioned bar. Keep to the left past Little Chain, to near the middle of the river, then incline to the right again. Two miles below Little Chain is a large low bar on the right—here you must keep well over to the left shore for nearly two miles, then cross over to the right again, above Wilkinsonville.

**Wilkinsonville, right side.**

15 937

This is no other than two or three farm houses near where fort Wilkinson used to stand, and is mentioned as a distinguishing point, only. The Grand Chain of rocks commences on the right, just below Wilkinsonville, and there is a hard rocky bar in the middle opposite. Keep near the right shore above Wilkinsonville, and abreast of the houses incline a little to the left to avoid the rocks of the grand chain, near the right shore, and when you are three quarters of a mile below the houses, keep short over for the sand bar on the left, which is very bluff; keep close to the left hand bar until you are up with the lowermost group of rocks of the grand chain, then steer directly across for the right shore, where is a single cedar tree standing about two thirds up the bank. Grand chain is about four miles in extent.

**New America, right side.**

11 948

There is an ugly bar on the right opposite to New America: when you approach the town keep over to the left, more than half across the river: when you have passed the town incline to the right again, to avoid the bar at the head of Cash island. Cash island is about a mile and a half below the town. Channel right side. There is a bar on the right opposite the foot of Cash island: half a mile below the island keep pretty short across for the right shore, to avoid a bar in the middle of the river below.

**TRINITY, right side.**

5 $\frac{1}{2}$  953 $\frac{1}{2}$

This place is situate immediately below the mouth of Cash river. The proprietors (N. Berthoud & Co.) have erected spacious and secure warehouses for the reception of all kinds of goods, and have always in readiness boats adapted to the navigation of the respective rivers at the lowest stages of water.

**Mouth of Ohio.\***

5 $\frac{1}{2}$  959

There is a good landing just above the mouth of Ohio: if you do

\*The Ohio River proceeds from the junction of the Allegheny with the Monongahela, at Pittsburgh; the former is about 370, the latter about 500 yards wide at their mouths. After a

not wish to land, keep pretty well over to the left, from half a mile above the mouth, to clear the bar on the right below the point.

**Directions for Map No. 1.—Mississippi River.**

Boats descending the Missouri River at a low stage of water, must, when near its mouth, keep near the middle of the river; when you have entered the Mississippi, incline over towards the left shore. Wood river, a small stream of Illinois, empties in on the left about two miles below the mouth of Missouri.

**Choteau's Island.**

Channel to the right and nearest to the island, and to avoid a long string of bars near the right shore, and a small island near the lower extremity of them.

**Wood Island.**

Channel to the right; you may pass to the left of Wood island by keeping well toward the left shore until nearly up with its foot, then keep to the right near to its foot to avoid the bar which makes from the island on the left immediately below.

**Bloody Island; channel to the right.**

**ST. LOUIS, right side.**

This is a very flourishing town of Missouri, containing nearly six thousand inhabitants. From St. Louis the channel runs across towards the left shore, between the bar on the left below the foot of Blood island, and the bar and towheads on the right, at the mouth of Choteau's creek. Keep well over to the left below Cahokia creek, and to the left of the island, and then short across toward the right shore below.

**Vide Pouche, (or Carandolet as it is now called) right side.**

**Pear Creek, right side.**

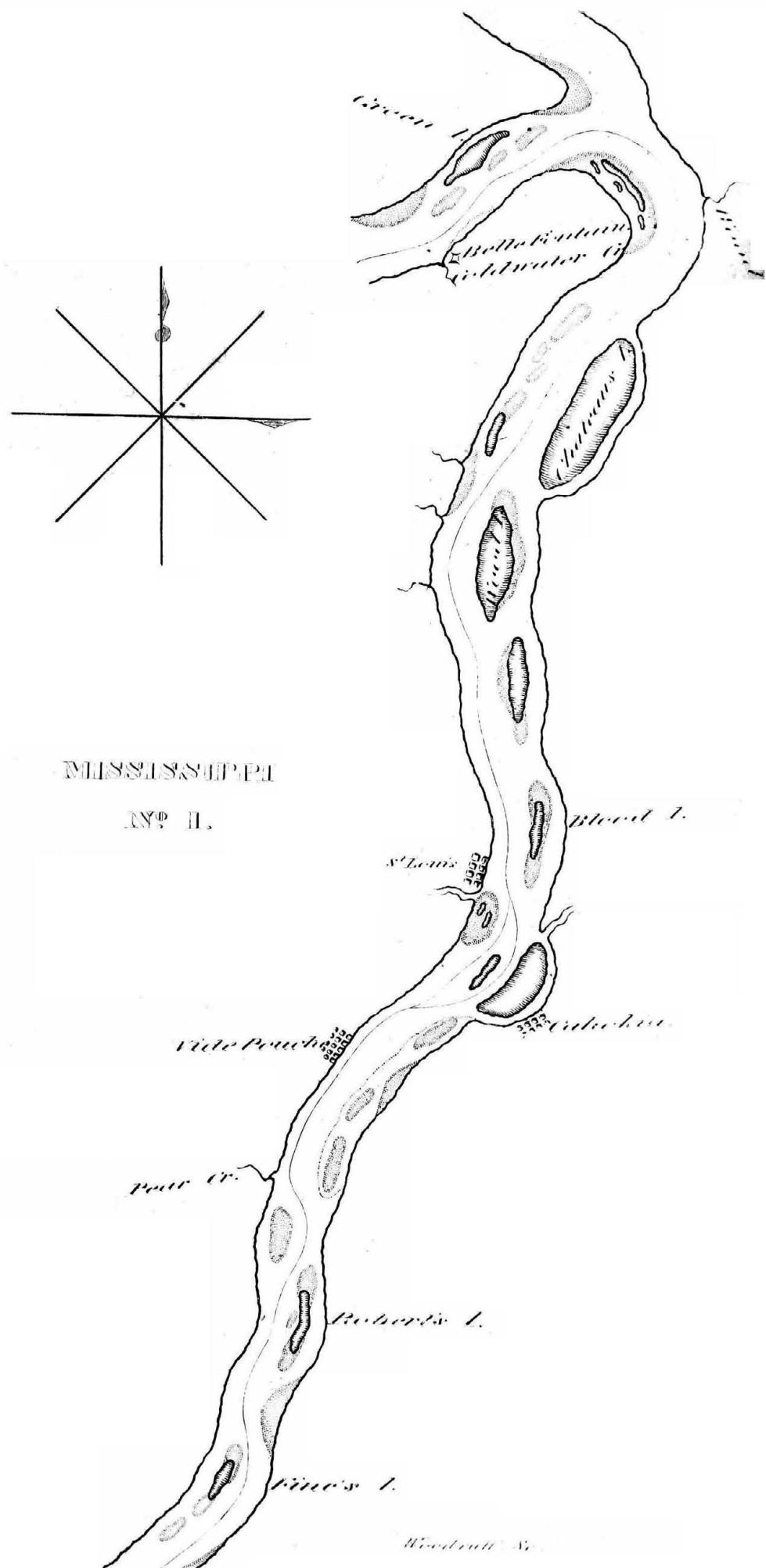
When nearly up with Pear creek cross over to the left shore, and keep pretty near to the head bar of Robert's island, and then incline towards the right shore.

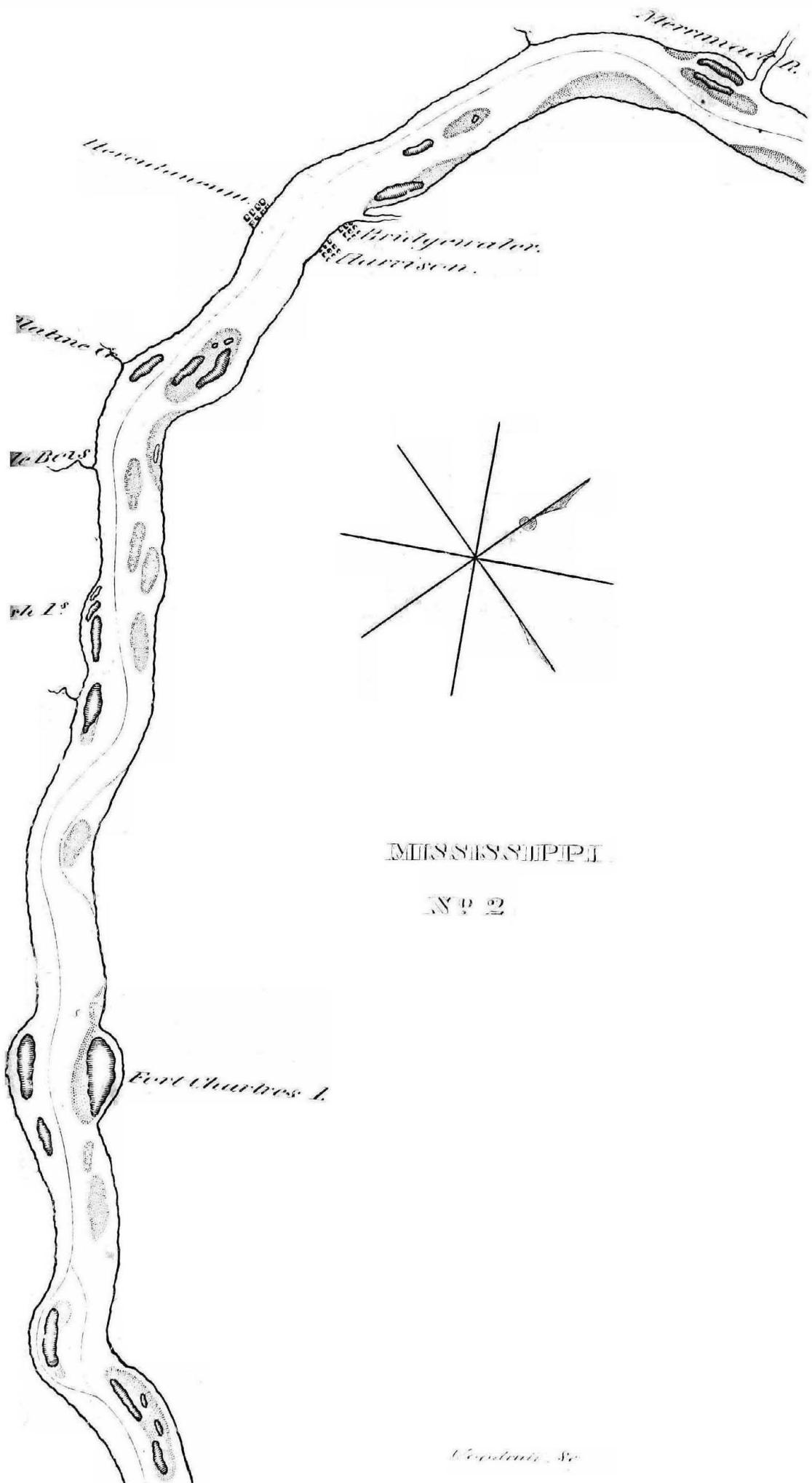
**Robert's Island: channel right side.**

**Fine's Island: channel to the left.**

W. S. W. course of 959 miles the Ohio discharges into the Mississippi, in north lat. about 37°. It varies in breadth from 400 to 1400 yards. At Cincinnati it is 847 yards, which may be considered its mean breadth. Its current is gentle, unbroken by rapids or falls, except at Louisville. It yields to but few streams in point of convenience for inland navigation; as the operation of canalling and locking the falls, will, without doubt, be accomplished the next season. The height of the fall is twenty-two feet and a half, nearly. The extent of the declivity two miles. The greatest extremes of variation in the altitude of the surface of the river, varies from Pittsburgh to the Mississippi; lessening in descending, and may average from twenty-five to thirty feet; when lowest it is fordable in divers places above the Falls.

5		
4½	9½	
7	16½	
7½	24	
5	29	
3½	32½	

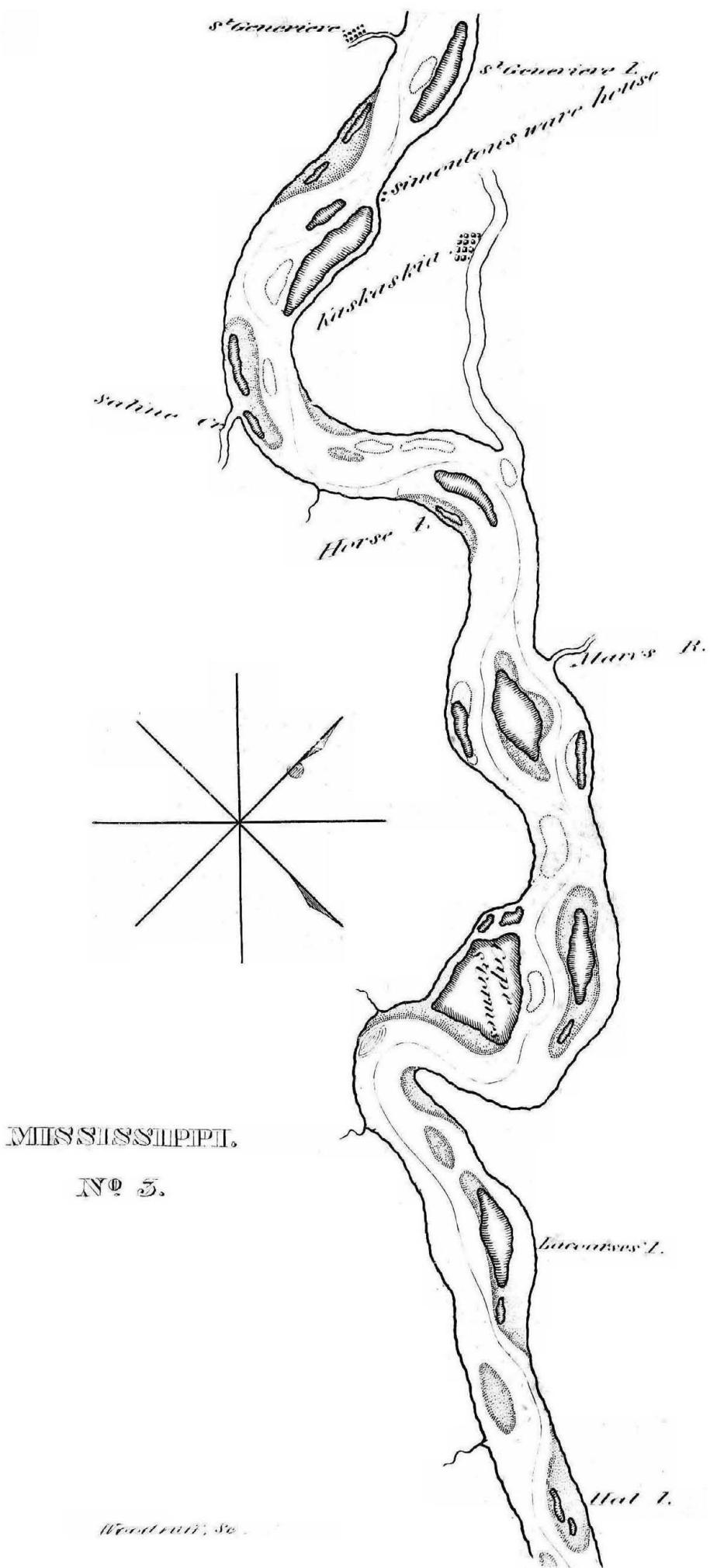




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*Directions for Map No. 2.—Mississippi River.***Merrimac River, on the right:**

This is a considerable stream of Missouri state, navigable at high water several miles. Lead is found in abundance in the vicinity of the sources of this river, and there are a number of valuable salt springs on its banks. Opposite the mouth of the Merrimac is a large bar and willow island; Channel to the left, but be careful of the bar on the left above. There is a small island close in to the right shore, immediately below the mouth of the Merrimac. After you have passed the Merrimac bar, and towhead, incline over to the right shore, to avoid a large bar on the left, a mile and a half below.

**Little Platteen Creek, on the right.**

Here commences a high rocky bluff, extending eight or ten miles along the right bank of the river, of various heights, from two to three hundred feet, nearly perpendicular; it has a majestic appearance. One and a half miles below Little Platteen, (or Little Rock, as it is generally called,) is a sand bar with a small towhead near its upper extremity: channel to the right, near the right shore, past the bar, and island below it.

**HERCULANEUM, on the right.**

This is a flourishing town of Missouri, rising fast in importance, owing principally to its lead mart; there are several shot factories erected in its vicinity. The celebrated mine a' Burton is situated nearly fifty miles west of this place.

**Platteen Islands, three in number.**

Channel to the right of the two first, (which are connected by a bar,) and to the left of the third, which lies pretty close to the right shore; opposite the latter, Platteen creek enters on the right. After you have passed Platteen islands half a mile, keep well over to the right shore for upwards of three miles, to avoid Wilcock's bars on the left.

**Rush Islands, near the right shore.**

Channel to the left, and near to the island, to avoid a large bar on the left opposite. When you are past Rush island, and the one just below it, near the right shore, keep over to the right shore again, to avoid a large bar on the left, below.

**Fort Chartres Island, close to the left shore.**

Two islands on the right opposite; channel nearest to the right hand islands, to avoid a bar on the left, opposite to Fort Chartres Island, and then incline towards the right shore. Four miles below is another island, near the right shore; at a low stage of water you must pass to the right of it, and when past the bar at its foot, keep to the left towards the island, near the left shore below.

3½ 36½

5 41½

6½ 48

3 51

6½ 57½

9½ 67

11½ 78½

*Directions for Map No. 3.—Mississippi River.***St. Genevieve Island.**

Channel to the right, and close to the right shore (after you have

past Gabbarre creek) until you approach to the lower part of the island; then cross over to the left, near to its foot. Gabbarre creek enters on the right, opposite the head of St. Genevieve island. St. Genevieve town is about a mile up the creek. This town contains about two thousand inhabitants, and is a place of considerable business, particularly in the article of lead.

### Simonton's Warehouse on the left;

Rather more than a mile below the foot of St. Genevieve Island. Kaskaskia a flourishing town of Illinois, is situated about two miles north east of Simonton's warehouse, on the Kaskaskia river, about five miles from its mouth. Just below the warehouse a handsome little shute put out on the left, passable, except at a very low stage of water. There is an island in the middle of the river just below this shute; channel to the left, and when past the island incline well over towards the right shore.

### Saline Islands.

Channel to the left. When you are up with the head of the first island, keep well to the left shore, to avoid Saline bar, run pretty close to the bar on the left, below, then cross over to the right shore above Lora creek, and below Camp Rowdy.

### Horse Island.

Channel to the left. Kaskaskia River empties in on the left, opposite Horse island.

### Mary's River Island.

Channel right side, and near to the island at its head, then short across for Allen's island on the right; and when past the bar at the foot of the latter, keep close in to the right shore for nearly a mile, then steer short over for the left shore.

### Large Island, above St. Combs.

Channel to the right. Keep near the left shore above this island, and when within rather more than a half a mile of its head, steer short across to the right shore; when you are past the outlets, on the right, keep to the left, and pass near the foot of the island, and then short across to the right, near the point: and when past the small island on the left, keep to the left into the bend. The river here makes a pretty short turn to the right, and two miles below, it turns again very short to the left, a largo eddy forms in the bend on the right, called the great eddy. Keep pretty well towards the left hand point, and when past the eddy incline towards the right shore.

### Lacour's Island.

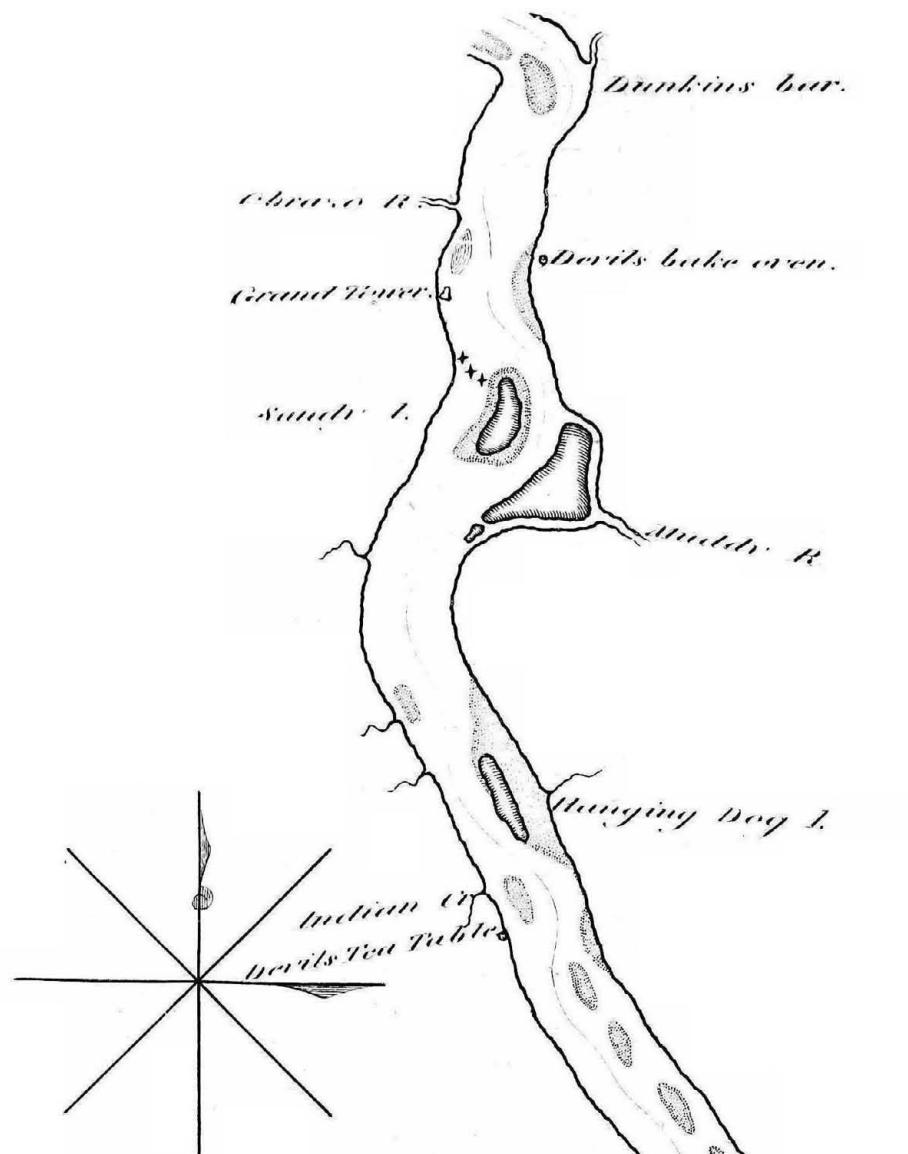
Channel to the right. Keep pretty close to the small island on the left, below Lacour's island, and close in to the left shore half a mile below it, to avoid a large middle bar on the right, and then incline towards the right shore again.

### Hat Islands.

Channel to the right. Half a mile below Hat islands, keep short in to the left shore in the bend, at low water, round Duncan's bar: at a middling stage of water you may pass to the right of Duncan's bar, by keeping near the middle of the river, round the point on the right.

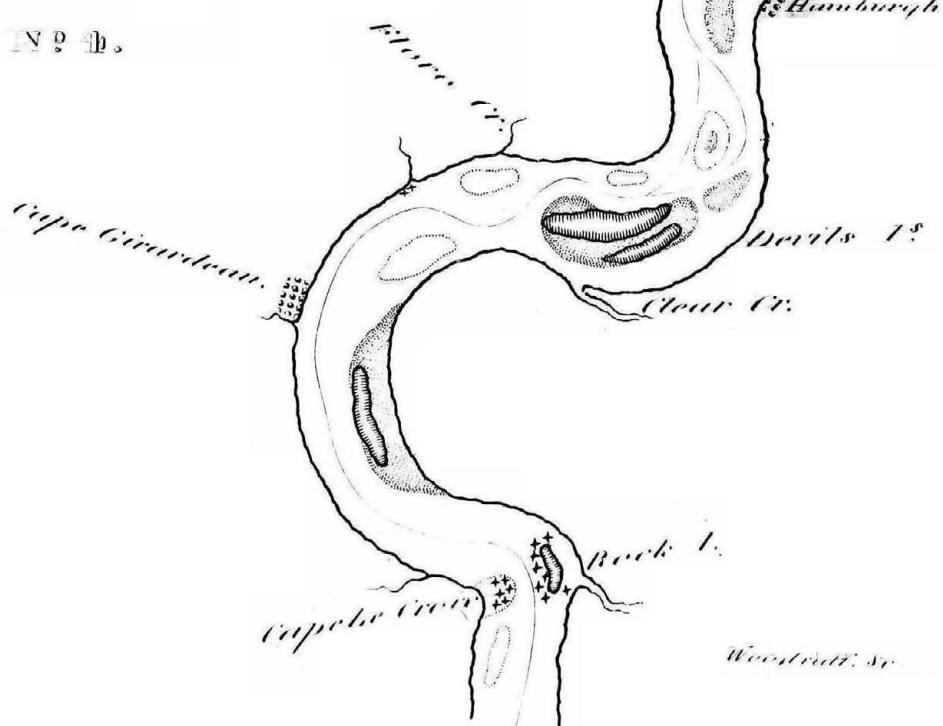
3½	82
5	87
5½	92½
4½	97
5	102
3½	110½
6½	117



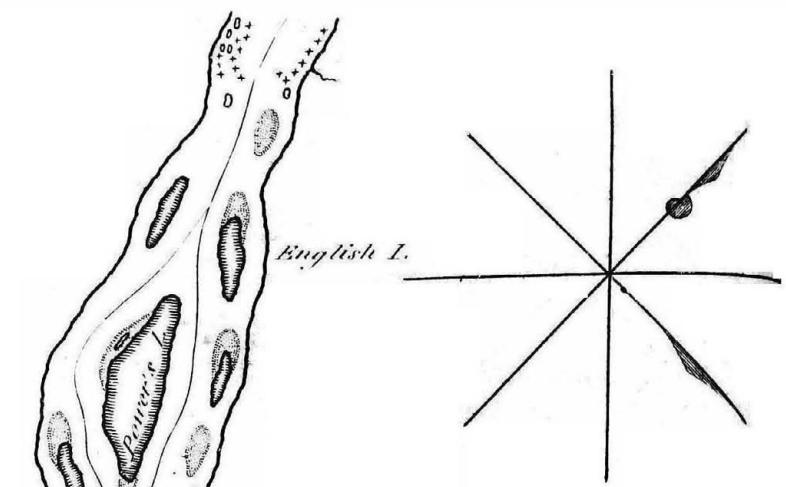


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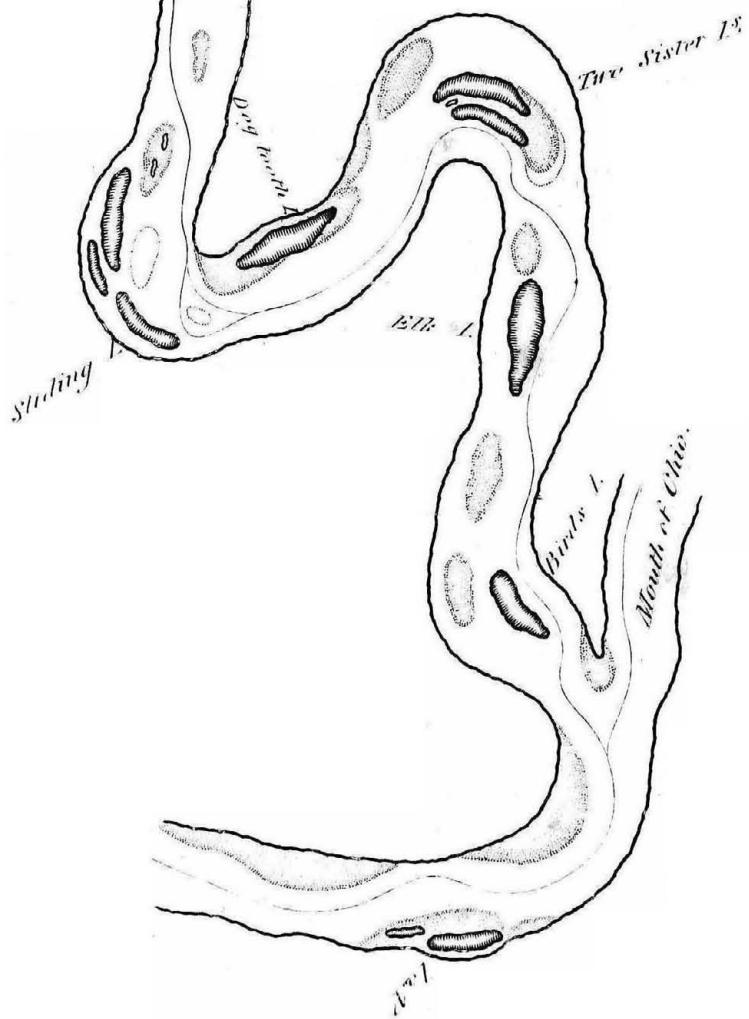






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*Directions for Map No. 4.—Mississippi River.***Obrazo River, right side.**

When you are round Duncan's bar above, incline to the right, and pass pretty near the mouth of Obrazo river, and then incline to the left, to about the middle of the river, to avoid the eddy on the right, below. About one and a half miles below Obrazo river, is a singular rock near the right shore, called the Grand Tower; this rock is about 100 feet in circumference, and 150 feet in height. About half a mile above the Grand Tower, on the left, is a high rock with a singular excavation, about 100 feet from the surface of the water, called the Devil's bake-oven.

**Sandy Island.**

Channel to the left at low water, on account of a chain of rocks stretching across from the right shore to the island, at a good stage of water you may keep to the right, which is nearest.

**Hanging Dog Island.**

Channel to the right. Nearly two miles above hanging dog island, is a bar on the right.—Channel past it, about the middle of the river, and then incline well over towards the right shore; when nearly up with the foot of the island, keep to the left, to avoid a bar on the right, opposite the mouth of Indian creek; when past it, incline towards the right shore again.

**BAINBRIDGE, on the right.**

Channel near the right shore.

**Devil's Island.**

Channel to the right, and very close to the island about its centre, then quick over towards the right shore, and when nearly up with the foot of the island, steer short to the left and pass near its foot— incline towards the left shore, and when you are about a mile below, keep towards the right shore again.

**CAPE GIRARDEAU, right side.**

This is a very pleasantly situated town of Missouri, on a high bank of the Mississippi: the country round is very fertile and thickly inhabited for 40 or 50 miles back, to the New Madrid settlements. About a mile below the town is an island: channel to the right.

**Cape Le Croix.**

Here the river turns suddenly to the right—there is a rocky island in the bend, on the left, and a rocky bar at the point, on the right: channel in the middle. This is called Little Chain. Two and a half miles below cape Le Croix, is what is called the Grand Chain, commencing at a cluster of small towheads near the right shore, and stretching obliquely across, to a small towhead near the left shore: channel in the middle of the river.

*Directions for Map No. 5.—Mississippi River.***English Island, near the left shore.**

Here the river spreads out each way to the width of nearly four miles.

miles, enclosing a group of islands, the largest of which, in the middle, is called Power's Island: channel to the right of English Island, between it and another near the right shore. You may pass either side of Power's Island: the left is generally considered the main channel. After you have passed Power's Island, and the bar at the foot of the island on the right, opposite its foot, keep well over to the right shore, to avoid a string of bars in the middle of the river, opposite Tyowapite settlement. Two miles above the islands, in the bend below, crossover to the left, and pass pretty close to the left hand point, and then cross over to the foot of sliding island on the right.

**Dog Tooth Island, near the left shore,**  
Below the left hand point: channel to the right.

14 175 $\frac{1}{2}$ 5 180 $\frac{1}{4}$ **Two Sister Islands.**

Channel to the right, and close to the islands: when you are nearly up with the foot of the Two Sister islands, steer short across for the right shore for about half a mile, then cross over to the left again, to avoid the bar above Elk Island.

3 $\frac{1}{2}$  183 $\frac{3}{4}$ **Elk Island.**

Channel to the left. When up with its head incline to the right, and pass near the foot, and when past it keep over to the left shore again.

5 $\frac{1}{2}$  189**Bird's Island.**

Channel to the left: keep well over towards the right shore after you have passed Bird's island, to avoid the bar at the point, below the mouth of Ohio, and then incline towards the left shore again.

2 191

**Mouth of Ohio.****Island No. 1,\* below the mouth of Ohio.**5 $\frac{1}{2}$  196 $\frac{1}{4}$ 

Channel to the right; incline well over to the right, opposite to No. 1, and when past it, keep to the left again.

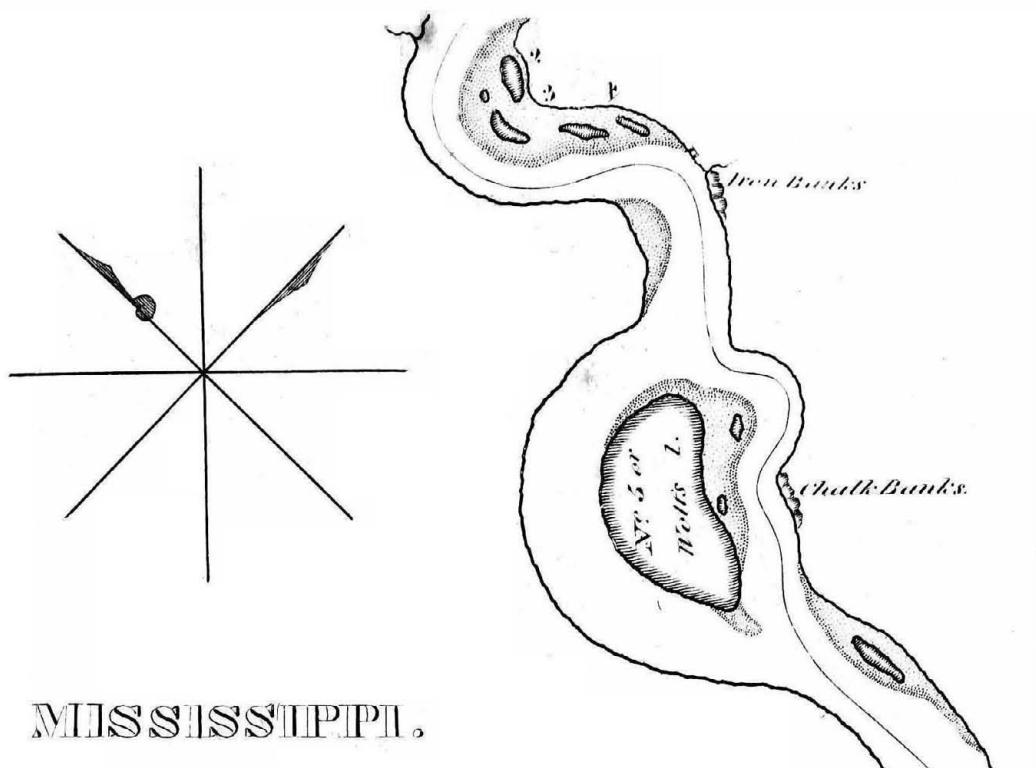
**Directions for Map No. 6.—Mississippi River.****Islands No. 2, 3, and 4,**6 $\frac{1}{2}$  202 $\frac{1}{4}$ 

Lie near the left shore. These islands are small, and connected by a large bar which makes round a left hand point: channel to the right, in the bend. There are one or two other small islands on the same bar, not numbered. There is a good landing on the left, below these islands, above the Iron banks.

**No. 5, or Wolf Island,**7 $\frac{1}{2}$  210 $\frac{1}{2}$ 

Channel either side; the left is much shortest, and generally preferred. If you take the left, keep near the left hand point above, and near the left shore until you approach the Chalk banks, then incline a little towards the bar of the island, on the right (which is here very bluff) to avoid the eddy on the left, below. Keep rather nearest the left shore until you are up with the foot of the

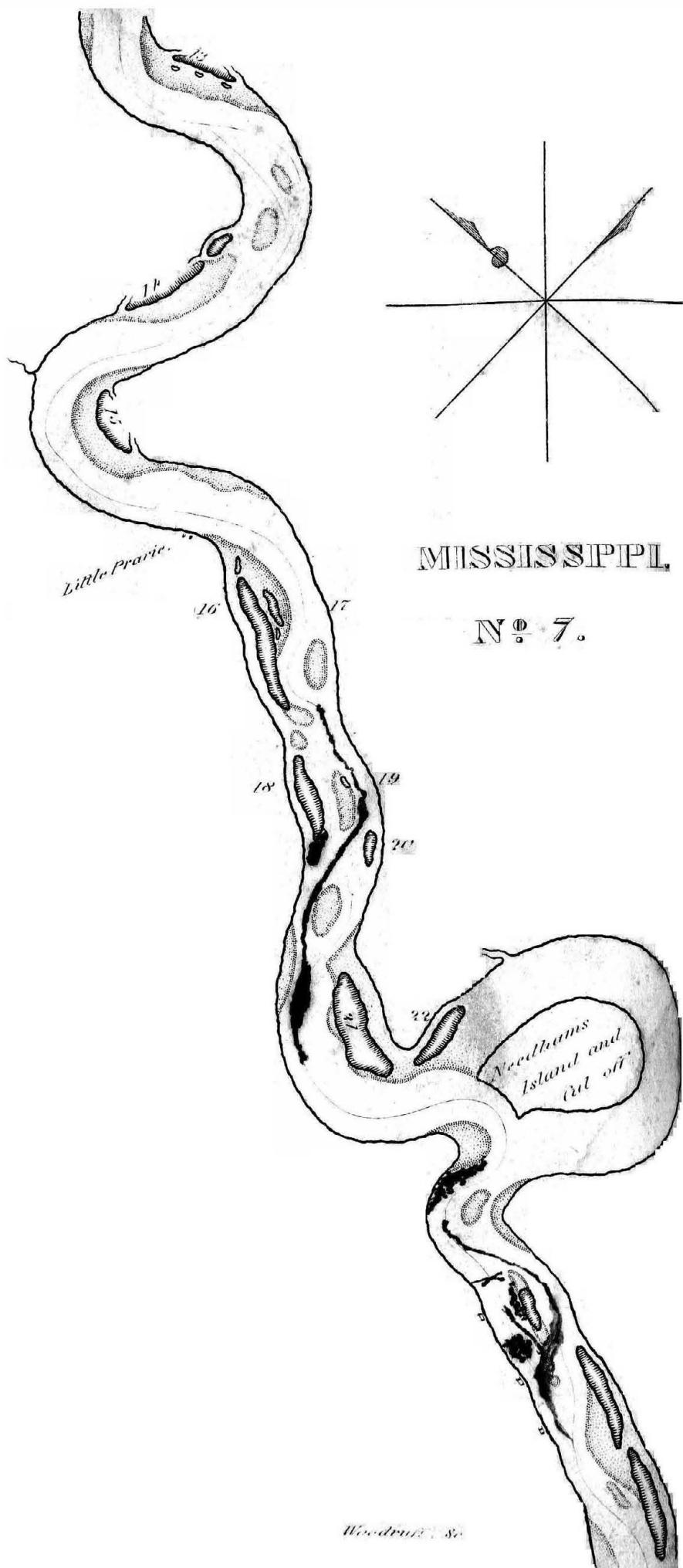
\* Below the mouth of Ohio, we shall note the islands, by their original numbers, although many are lacking to make up the complement. Many have entirely disappeared; and others, the chutes have grown up with trees on one side, so that it can scarcely be perceived that they ever were islands. New islands are continually forming, consequently it will be impossible to keep them regularly numbered: would it not be advisable to distinguish the islands by some



MISSISSIPPI.

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island, and then incline towards the right, to avoid a large bar with a small island on it, on the left below.

**No. 6,**

Channel to the left. There is a good landing opposite No. 6, on the left, below Bayou Du Chein. After you have passed No. 6, incline towards the right shore for about two miles, then keep to the left again, to avoid the bar of No. 7, on the right.

**No. 8,**

Channel to the right. When you are past No. 8, incline to the left for two or three miles, then keep to the right again, to avoid the bar of No. 9, on the left.

**No. 10,**

Channel to the right. There is a very large bar makes from the right hand point above No. 10, with a small island near the extremity of it: the channel at low water is between this small island and No. 10,—at a middling stage of water you may cross the bar to the right of the small island. Keep towards the left shore below No. 10.

**NEW MADRID, right side,**

Immediately below the mouth of Chepousa creek. There is a very large bar round the left hand point, above New Madrid: channel near the right shore for nearly four miles above, and below New Madrid; and when you approach the right hand point, about four miles below, keep to the left, to avoid the bar of No. 11—when past it, keep to the right again, to avoid the bar of No. 12 on the left.

**Riddle's Point, right side;**

There is an ugly bar on the right below the point, and another also in the bend on the left, opposite, with a towhead on it: channel nearest the left hand bar; after you have past the towhead on the latter, incline towards the left shore.

**Directions for Map No. 7.—Mississippi River.**

As you approach the left hand point, incline well towards the right shore, near where the cypress trees commence, to avoid the bar of No. 13 on the left, below the point; after you have past the latter, cross over to the left, and keep close to the left shore in the bend below, to avoid two middle bars. There is a channel between the two bars last mentioned, as also between the lowermost of them and the bar of No. 14 on the right; the left of all is preferable at low water. After you have passed the bar of No. 14, incline over into the right hand bend, to avoid the bar of No. 15, round the left hand point.

**Little Prairie, right side;**

There is a good landing at Little Prairie, opposite Wilkin's house, where stores can generally be procured.

name? There are already names for a large proportion of them, and if Pilots, and Steam-boat Captains would take the trouble to find names for the balance, in a few years they would become familiar to every one.

10½ 221

10 231

12 243

12 255

10 265

21 286

**Islands No. 16 and 17**

Are nearly two miles below Little Prairie, just below a right hand point, and are connected by a large sand bar: channel to the left, and near the left shore until you are past the small island; then incline to the right, and pass pretty close to the foot of No. 16, to avoid a large bar on the left, opposite —when nearly up with the foot of No. 16, keep short across for the left shore, to avoid a bar on the right below. No. 18 is near the right shore, about a mile below the foot of No. 16; opposite to it, and near the middle of the river, is a large bar, where No. 19 formerly stood: channel either between the bar and No. 18, or to the left of both. No. 20 lies close to the left shore, immediately below No. 18. Below No. 20 there is a large bar in the middle of the river: channel either side of it, and when past it, incline to the middle again.

**No. 21,**

Channel to the right. Four and a half miles below the head of No. 21 is Needham's cut-off. The old bed of the river above the cut-off is entirely dry at low water: channel through the cut-off pretty well to the left, (to avoid the bar formed at the point on the right) and when nearly through pull hard to the right, to avoid the eddy on the left below. Two miles below the cut-off is a large bar in the middle, opposite the left hand point—keep well towards the right shore.

**No. 25, *the left side***

Channel good on either side. Here you enter the Canadian reach. No. 26 and 27 lie pretty close to the left shore, the one immediately below the other. If you pass to the left of No. 25, keep toward the head of No. 26, to avoid the bar in the middle, opposite; and then steer across for the right shore. Keep near the right shore until you are nearly up with the middle of No. 27, then incline to the left, and pass near its foot.

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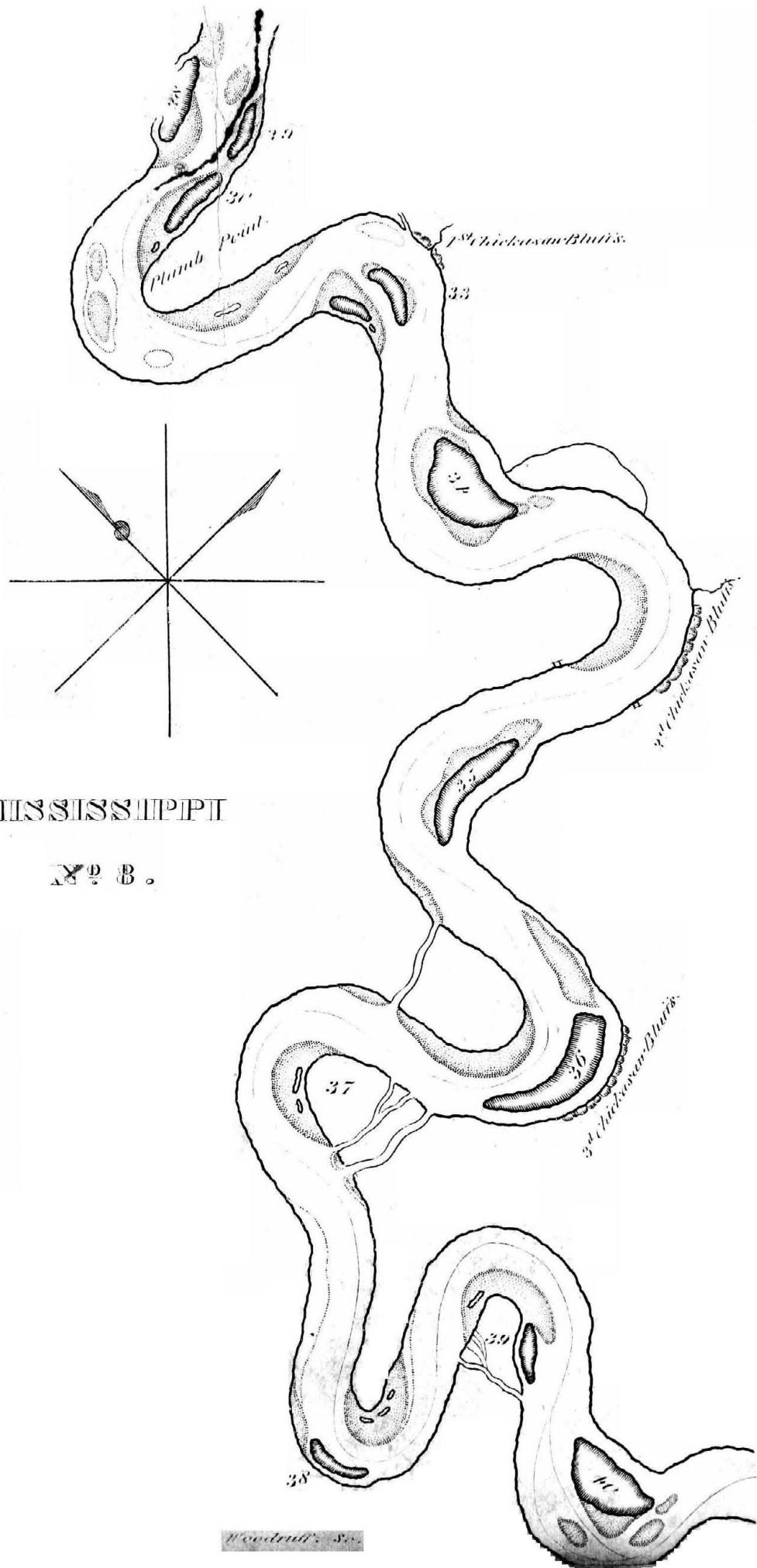
***Directions for Map No. 8.—Mississippi River.*****No. 29,**

Lies near the left shore. Just above No. 29 is a middle bar, nearest the left shore: channel to the right, betwixt it and a hook bar on the right near the head of No. 28; when opposite the head of No. 29, steer short across to the left and pass near its foot. There is a channel to the left of the above middle bar, near to the head of No. 29, but is narrow and full of snags. No. 30 lies near the left shore immediately below No. 29; when up with its head, keep well over to the right, and when past its foot, incline to the left again, and pass pretty close to Plumb point—from this the channel runs straight down into the bend below, between the bars on the right, and the large bar on the left below the point. This is perhaps one of the most difficult places in the Mississippi at a low stage of water, owing to the numerous snags, and rapidity of the current, and requires great care to steer clear of the snags. Keep near the right shore round the head of the bar below Plumb point, and for three or four miles further down.

12½ 298½

10½ 309

8 317





**No. 33, or Flour Island,**

Channel to the left. As you approach the right hand point above Flour island, incline over to the left, and when nearly up with its head, keep to the right, towards the head of the island, to avoid a low bar on the left, opposite.

12 329

**The first Chickasaw Bluffs**

Is on the left, a little back from the river, opposite to Flour island.

4 333

**No. 34,**

Channel to the right, at low water.

8 341

**Second Chickasaw Bluffs,**

Channel near the left shore.

5 346

**No. 35,**

Channel to the right at low water—at a middling stage of water, you may take the left, which is much nearer.

7½ 353½

**No. 36,**

Channel to the right. There is a large bar on the left, extending about two miles above No. 36—when up with the right hand point, opposite, incline towards the island.

**The third Chickasaw Bluffs,**

On the left, are opposite No. 36.

About three-fourths of a mile below No. 36 a handsome little chute puts out on the left, which cuts off five or six miles, and may be taken with safety at a high stage of water. There is a large bar round the left hand point, below: channel nearest the right shore, and then incline to the left again. A good landing at low water can be made either night or day, on a bluff bar, either above or below the mouth of the small chute above mentioned.

15½ 369

**No. 38,**

Channel to the left. This island lies close to the right shore, in a sharp right hand bend, the river making a very sudden turn to the left. This is called, by boatmen, the Devil's Elbow. There is a large bar round the left hand point, opposite to No. 33, which throws the channel pretty well towards the island. About three miles below No. 38, are a number of small chutes puts out on the right, just above the right hand point—immediately below them is a large bar, with a towhead on it: channel well over to the left shore round this bar, and when up with No. 39, immediately below it, incline to the right.

11 380

**No. 40,**

Channel to the right, and close to the right shore, opposite the middle of the island. The left of No. 40 is much nearest, and may be taken at a middling stage of water. There is a channel through the bar to the right of No. 40, but near the right shore in the bend is safest, and when past the island, incline to the left again.

**Directions for Map No. 9.—Mississippi River.**

About two miles below No. 40, is island No. 41, close to the right shore: channel to the left. Just below No. 41, are islands Nos. 42, 43, 44 and 45, connected by a large bar; these are called Paddy's Hen and Chickens. There is a large middle bar to the right of the *Old Hen*, with a towhead on it: channel to the right of all, close into the bend, and when nearly up with Foy's, keep to the left again.

**Wolf River, left side.**

The fourth Chickasaw Bluffs, and town of Memphis, is immediately below Wolf river, on the left. This bluff is nearly two miles in extent, on the river. Fort Pickering is near the lower extremity. There is a sand bar on the right, opposite the bluffs: channel near the left shore.

**No. 46, or President's Island.**

Is about a mile below the fourth Chickasaw Bluffs. This is a large and beautiful island. No. 47 is to the right of No. 46, and connected to it by a bar: channel to the right of both. The left is nearest, and may be taken with safety at a high stage of water. When past No. 46, incline to the left.

**Nos. 48 and 49.**

These islands, together with two or three smaller ones, or towheads, are connected by a large bar. The chute to the left of them is small, and makes out at right angles, and is not perceptible till you are nearly opposite: channel to the right of all.

**No. 50, near the right shore,**

Channel to the left, and when past it half a mile, keep to the right, to avoid a large bar on the left below, with two or three small islands on it, near the lower extremity.

**No. 51, or Buck Island,**

Channel to the left at low water. The right is much nearest, consequently preferable at a tolerable stage of water. After passing Buck island, keep nearest the right shore until you are up with the right hand point below; then keep over to the left, to avoid the bar of No. 52, on the right.

**No. 53, or Council Island.**

This island lies in a sharp right hand bend, close to the right shore. The chute to the right is nearly grown up with willows: channel to the left; and near to the island at its foot, to avoid a deep bar below the left hand point, opposite; and then incline toward the left shore again.

16 396

11 1/2 407 1/2

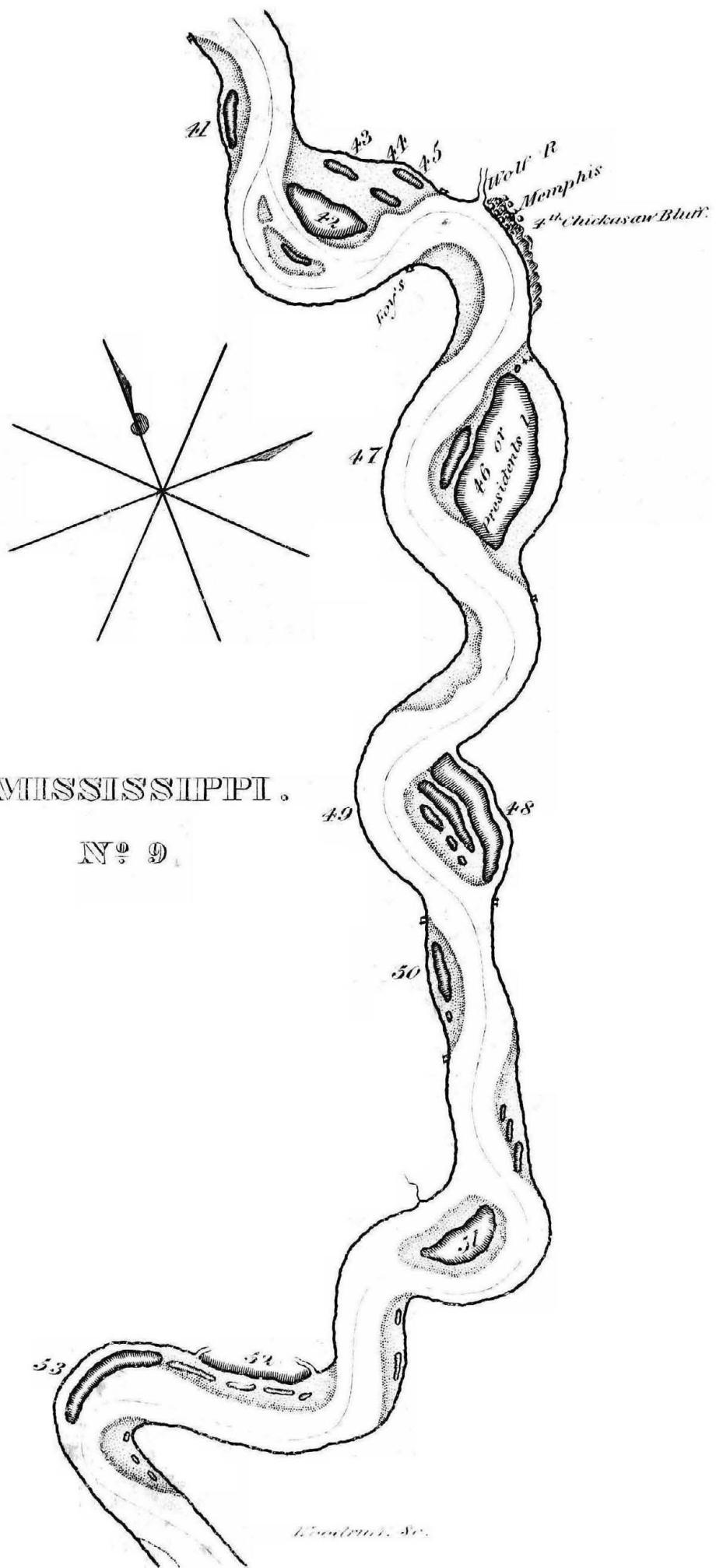
11 418 1/2

10 1/2 429

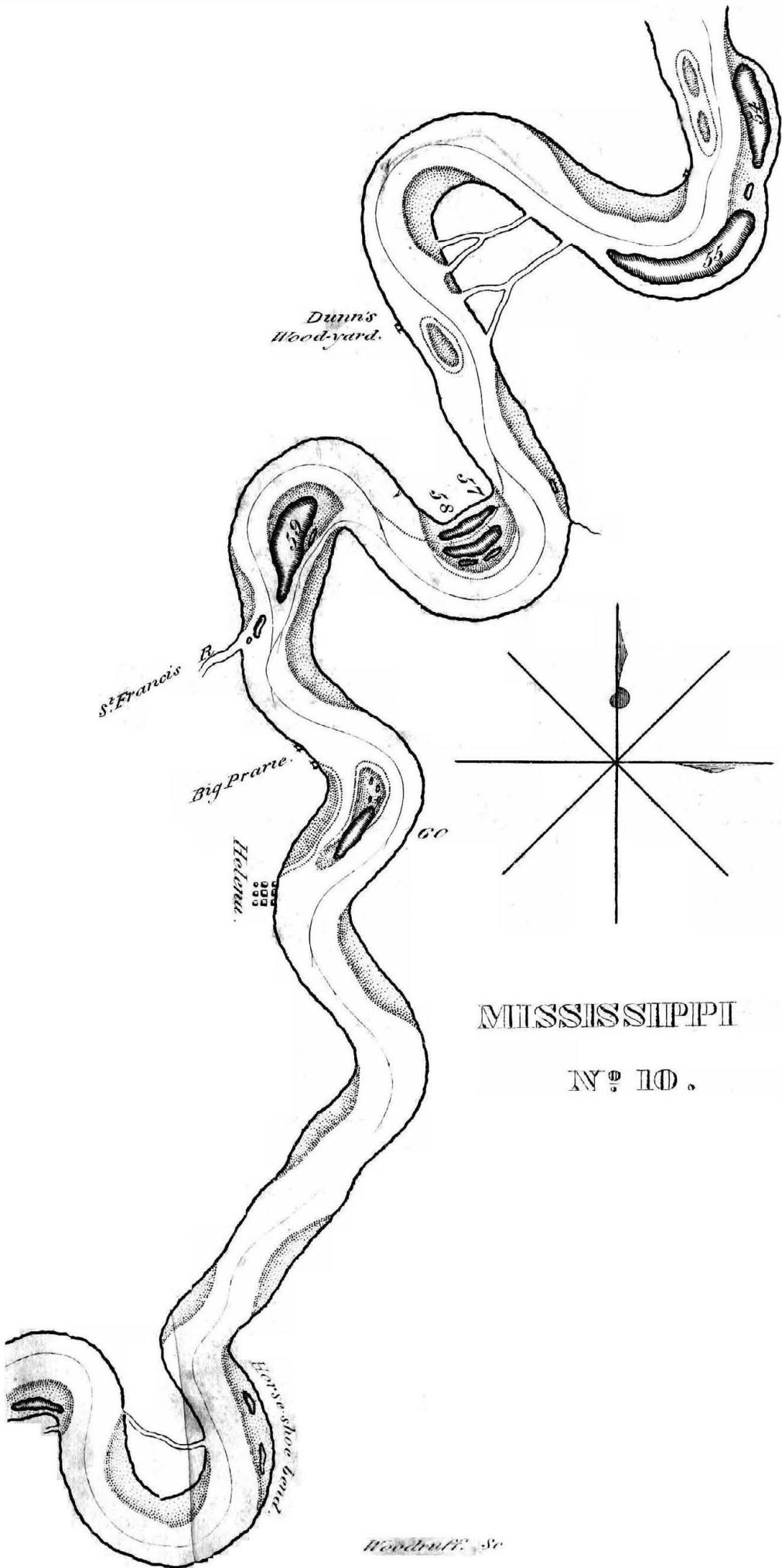
7 436

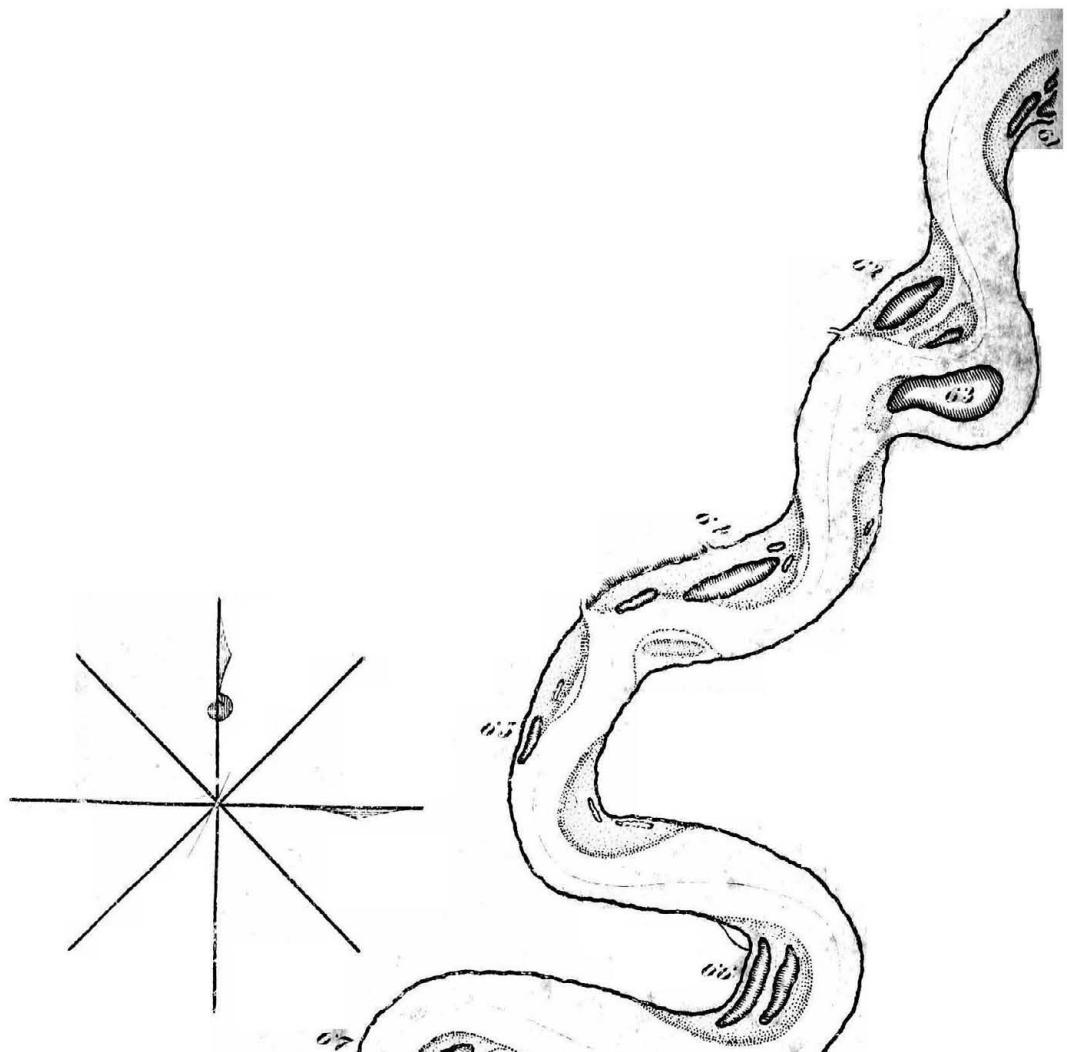
**Directions for Map No. 10.—Mississippi River.****Nos. 54 and 55**

Are connected by a large bar from the foot of the one to the head of the other: channel to the right of both. Keep two thirds of



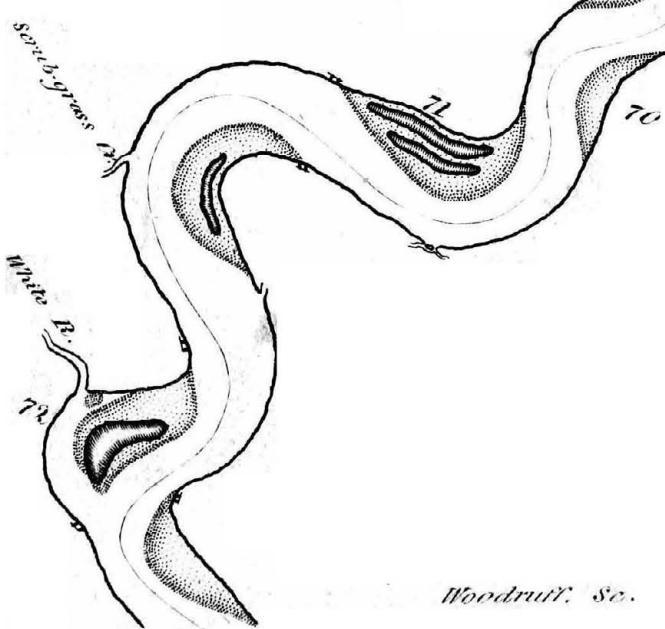






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the river on your right, passing No. 54, (to avoid the bars on the right, opposite) until nearly up with its foot; then incline to the right, and when up with the wood-yard at the point, on the right, keep to the left towards No. 55, to avoid the bar below the right hand point. There are several large snags in the channel, opposite the head of No. 55. Three-quarters of a mile below the foot of No. 55, a handsome little chute puts out on the left, which may be taken with safety at high water, and is a cut off of six or seven miles. At the left hand point below, is a large bar: channel near the right shore, and then incline to the left again, to avoid a large bar on the right, below Dunn's wood-yard; when you are past the latter, incline to the right again, and keep well towards the right shore, above the right hand point below, to avoid a bar on the left. There is a good landing on the small towhead at the lower extremity of the above bar.

### Nos. 57 and 58

Lie side by side, just below a right hand point; they are connected by a bar, which makes out considerably to the left of both: channel to the left. At high water the chute between the islands is very safe, and is much nearer.

### No. 59, or St. Francis' Island,

Channel to the right at low water, and close to the island at its foot, leaving a small island on the right, opposite the mouth of St. Francis' river; incline towards the right shore after passing the small island.

### Big Prairie, right side.

As you approach Big Prairie incline over towards the left shore, round the head bar of No. 60, which makes up nearly a mile above its head. At a middling stage of water you may pass to the right of No. 60. The town of Helena is about one mile and three-fourths below the foot of No. 60; on the right— incline towards the right shore below the town. Rather more than four miles below Helena you enter a straight reach, upwards of 8 miles in extent. The middle of the river will carry you clear of all the bars in this reach, and then incline towards the right shore, as you enter the Horse Shoe Bend, below; and when you approach the right hand point, keep nearest the left shore throughout the bend; when you approach the left hand point below, incline toward the right shore, round the bar of No. 61.

## *Directions for Map No. 11.—Mississippi River.*

### No. 62 and 63.

62 lies just below a right hand point, 63 lies in a short left hand bend just below, between them is a large bar which makes from No. 62, with a towhead near its outer extremity. Channel at low water is between the towhead and 63; this is a snaggy ugly channel, and requires great care—at a middling stage of water keep to the right of the towhead.

18 454

7 461

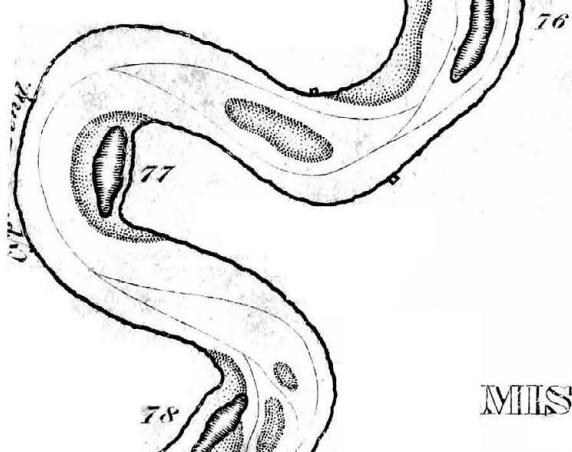
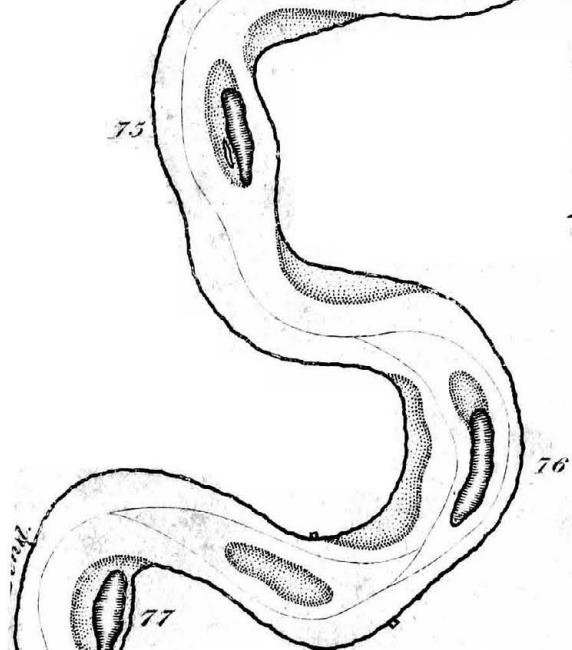
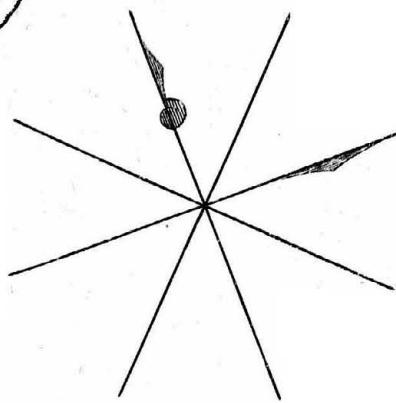
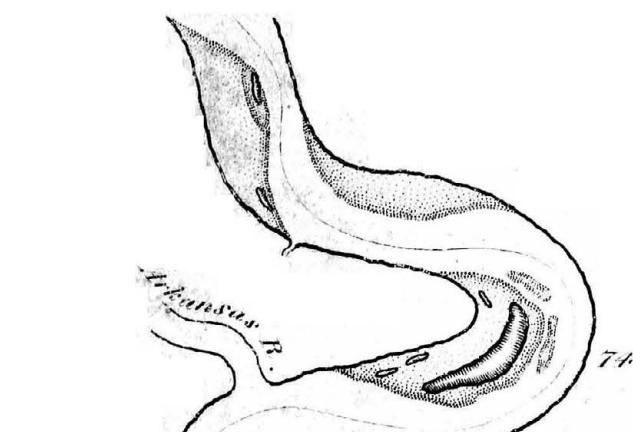
7 468

30 498

No. 64	7	505
Lies nearest the right shore, there is a large bar makes up from the head of No. 64—channel to the left, and near to the left shore until nearly up with its foot, then steer short over for the foot of the island, and pretty close to the small island below, (to avoid a bar on the left opposite,) and when past it keep over for the left shore again.		
No. 65,	5	510
Is a small island, pretty close to the right shore.—Channel to the left; when up with its head keep over to the right near its foot, to avoid a large bar at the point on the left.		
No. 66,	6	516
With a smaller island along side of it, lies immediately below a right hand point, and connected by a large bar—channel to the left, in the bend.		
Nos. 67 and 68,	7	523
Lie just below a left hand point, and are connected by a large sand bar. Channel to the right of both, in the bend; at a middling stage of water, you may pass between them which is much nearest.		
No. 69,	7	530
Lies just below a right hand point; channel to the left, and when past it, keep over to the right shore again. You may pass to the right of 69 at high water.		
No. 71,	6½	53 6½
And another island alongside of it, are just below a right hand point, and are connected by a large bar; channel to the left, in the bend, and as you approach the left hand point below, incline to the right again.		
<b>Montgomerie's Landing, right side.</b>	10	54 6½
This is the principal landing for all who are bound up the Arkansas. The proper mouth of White River, is nearly 4 miles below Montgomerie's landing, but it may be entered at little more than two miles at high water, by taking the right of No. 72 or White river island. There is a bayou or gut, about 5 miles up the White river, which communicates with the Arkansas about 25 miles from its mouth, with a current setting alternately from the one river to the other, as the flood in either may chance to predominate.—Keep to the left from Montgomerie's landing, and when up with the left hand point opposite the foot of No. 72, cross over towards the right shore, to avoid a bar below it, on the left, and when past it keep well to the left again, to avoid a very large bar on the right below		

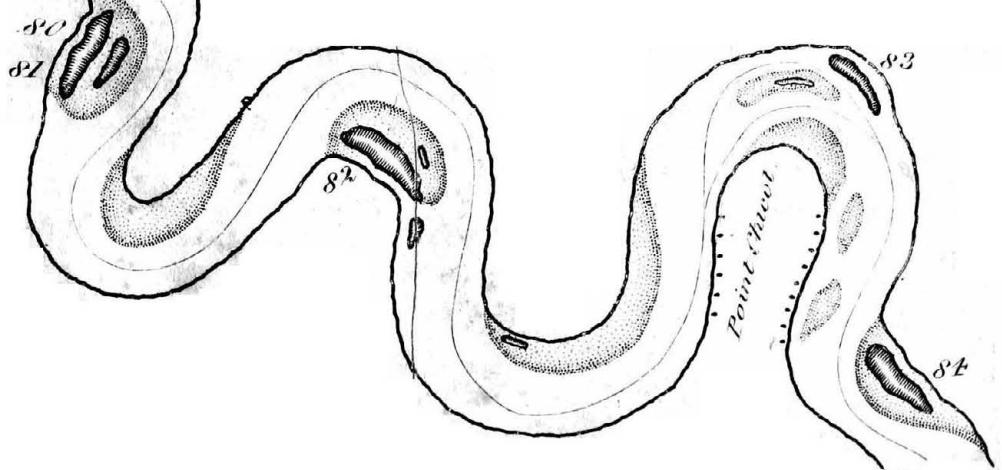
### *Directions for Map No. 12.—Mississippi River.*

The towhead on the large bar on the right, is about the middle of the river; channel to the left, and when up with the left hand point below, incline over towards the right shore, near a small towhead on the lower extremity of the bar, to avoid a large bar on the left.



MISSISSIPPI

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**No. 74,**

Just below a right hand point. There is a large bar makes up from the head of No. 74, and to the left of it; channel to the left.

14 560 $\frac{1}{2}$ **River Arkansas, right side.**

This beautiful river is about 360 yards at its mouth; it is said to be about 1500 miles in length; and takes its rise in the Mexican mountains, about north lat.  $40^{\circ}$  in the vicinity of the water of the River Platte on the one hand, and these of Rio del Norte on the other.

5 $\frac{1}{2}$  566**No. 75, or Ozark Island,**

Is about two miles below the mouth of Arkansas river; channel to the right.

10 576

**No. 76,**

Channel either side: the right is nearest, and the left is probably rather deepest. If you take the right keep well towards the island after you have passed its head, to avoid the shore bar on the right of it. About two miles below the foot of No. 76 is a large middle bar; channel to the left; you may pass to the right at a tolerable stage of water. There is seven feet water to the right when the bar is just bare. After passing this bar you enter the Cypress bend.

8 $\frac{1}{2}$  584 $\frac{1}{2}$ **No. 77, close to the left shore,**

Channel to the right.

8 $\frac{1}{2}$  593**No. 78, lies pretty close to the right shore,**

Immediately below a right hand point. There are large bars to the left of No. 78, with channels through them; but the safest channel is to the left of all, in the bend; and when nearly up with the left hand point below keep well over towards the right shore.

7 $\frac{1}{2}$  600 $\frac{1}{2}$ **No 80 and 81,**

Lie just below a right hand point, and are connected by a large bar. Channel to the left in the bend, and when past the islands keep well to the right, to avoid a large bar round the left hand point below.

8 $\frac{1}{2}$  609**No. 82,**

Lies close under a right hand point; channel to the left. You may take the right at a tolerable stage of water, by keeping close to the right hand point above. After passing No. 82, incline towards the right shore; here you enter the Spanish Moss Bend.

12 $\frac{1}{2}$  621 $\frac{1}{2}$ **Point Chicot settlement, on the right.**

Keep near the right shore until you are nearly up with the head of the middle bar above the island, on the left. then keep towards the middle bar, and pass pretty close to the foot of No. 83, to avoid the bar on the right opposite to the island. Keep nearest the left shore below, to avoid the bar on the right.

7 $\frac{1}{2}$  629**No 84,**

Channel to the right, and then incline towards the left again.

F

*Directions for Map No. 13.—Mississippi River.*

As you approach the left hand point below No. 84, keep towards the right shore—at the right hand point below, keep well over to the left, to avoid the bar of No. 85, at the point, and when past it, keep towards the right shore again.

**Nos. 86 and 87**

Are connected by a large bar: channel to the left of both. At a good stage of water, you may pass to the right of both, by keeping close to the right hand point, above.

**No. 88,**

Lies close to the left shore: channel to the right. This is Mathews' Bend.

**No. 89,**

Lies close under a right hand point: channel to the left. At high water you may pass to the right, by hugging the right hand point very close. There is a smart little settlement to the right of this island; and a little back is the Grand Lake, an old bed of the river. Keep well to the right, round the left hand point below No. 89. At the first right hand point below No. 89 there is a deep ugly bar. The boatmen call this Hull's Left Leg. At the point above the bar, are a number of large ugly snags, near the right shore. Here the current forces very strong on to the point, and boatmen err when they attempt to pull to the left of the snags. Keep close in to the point, to the right of the snags, and then incline to the left, round the bar. Below the point you enter Bunche's bend, which forms almost a circle. It is less than half a mile across from Hull's Left Leg to the lower part of the bend, above No. 92, and nearly fourteen miles round the bend; and as the banks are continually giving way on both sides, we may soon expect to see another cut-off at this place.

**No. 91, or Peniston's Island,**

Channel to the right.

**No. 92,**

Channel, at low water, to the left. When nearly up with the right hand point above 92, steer short across for the left shore, to avoid a very large bar at the head of the island. At a good stage of water, you may take the right of No. 92, by hugging the right hand point above.

**No. 93,**

Channel either side. If you take the right, keep close to the right hand shore opposite the head bar of the island, and past its foot incline to the left again. Here you enter the Nine Mile reach.

**No. 94, or Stack Island,**

As it was formerly called. The original island disappeared several years ago, and left only a dry sand bar; but it is now again fast growing up to an island: channel to the right. The lower end of Lake Providence is nearly opposite to Stack island, on the right, about three-quarters of a mile from the river.

16 645

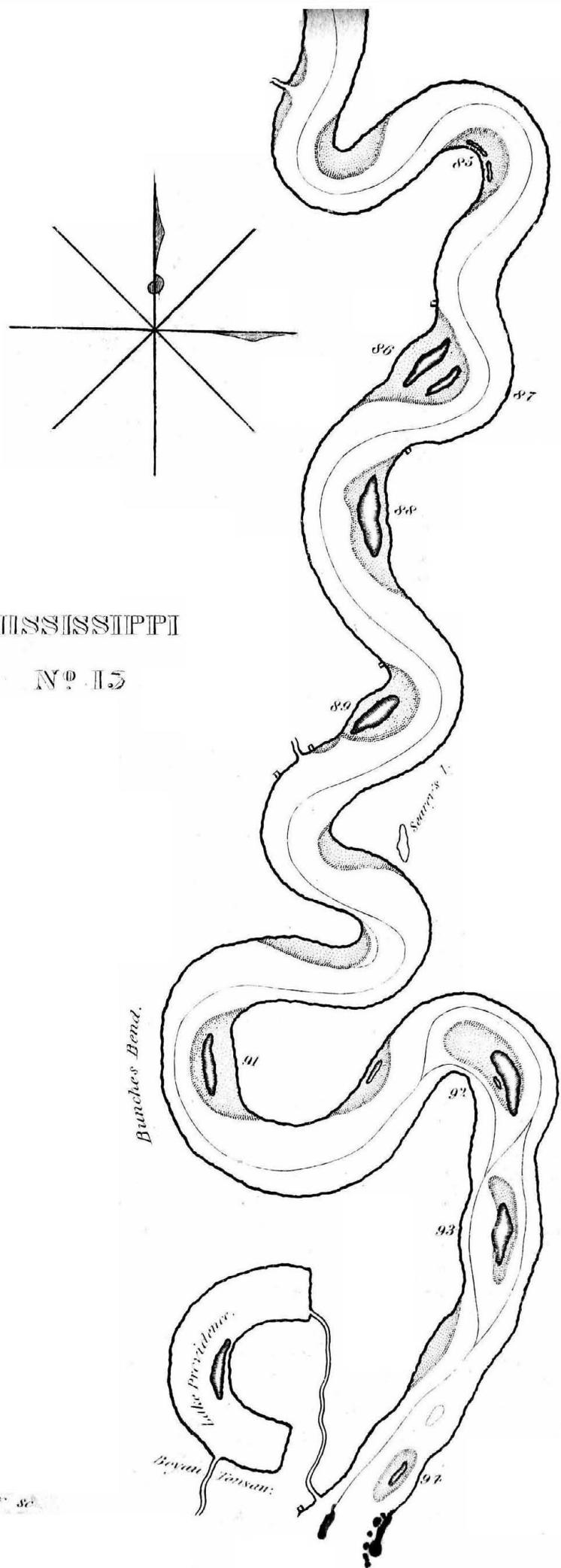
10½ 655½

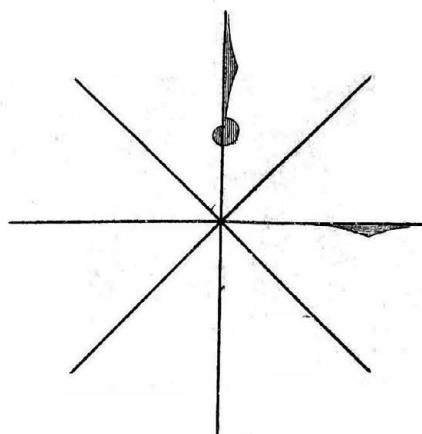
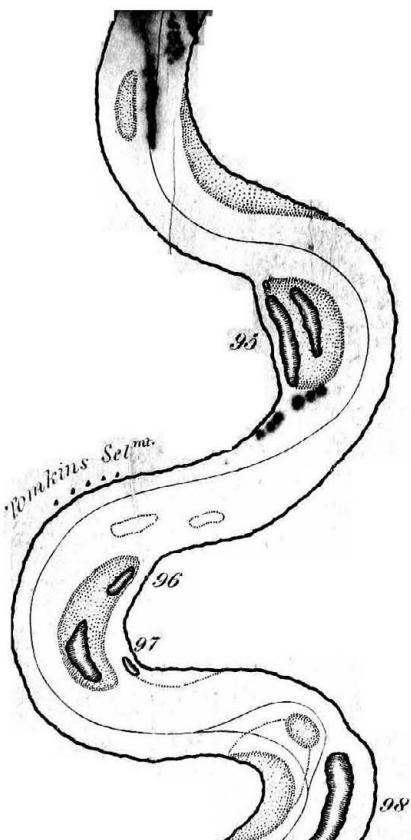
12½ 668

8 676

4½ 680½

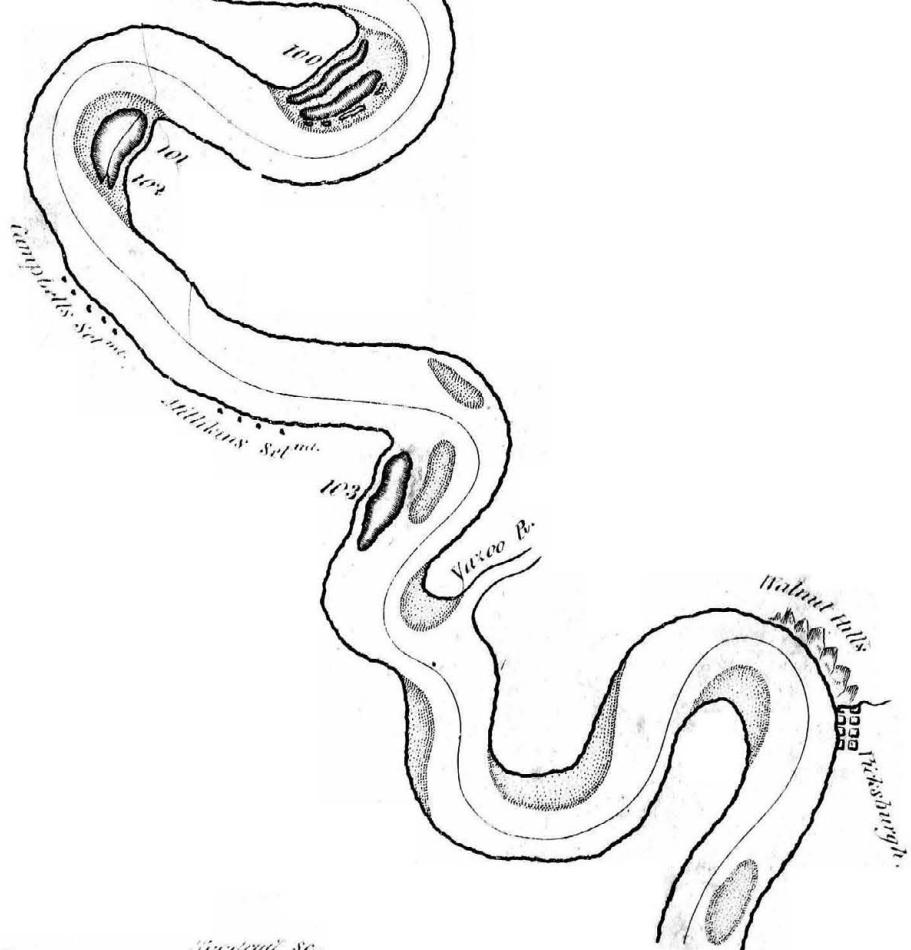
5½ 686





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**Directions for Map No. 14.—Mississippi River.**

Nearly three miles below Stack island is a middle bar on the right. Keep well to the left past it, and then incline towards the right shore.

**No. 95,**

And a smaller island, connected to it by a large bar, is immediately below a right hand point: channel to the left. The chute to the right of No. 95, although very narrow, may be taken with safety, by hugging very close to the right hand point above.

**Tompkins' Settlement, right side.**

There is a middle bar a little above Tompkins' settlement: channel to the right of it, and to the right of Nos. 96 and 97, just below it. Nos. 96 and 97 are connected by a large bar. There is a small channel to the left of them.

**No. 98,**

Lies in a left hand bend: channel to the right. There is a very deep bar stretches across from the right hand point to within one hundred and fifty yards of the left shore, above the head of No. 98, which, consequently throws the channel close in to the left shore above, at low water; but at a moderate stage of water you may pass through the bar by keeping straight down for the head of 98, from the right shore above. Keep towards the right shore round the left hand point below.

**No. 100,**

Another island, and several small towheads, are just below a right hand point, and all connected by a large sand bar: channel to the left of all, in the bend. This bend is very similar in shape to the Horse Shoe bend; it is nearly eleven miles in extent, and only about three hundred yards across from the upper to the lower part, and breaking away fast on both sides; consequently, we may expect soon to have another cut-off at this place.

**Nos. 101 and 102,**

Just below a left hand point. These *two* islands are in one, (as Paddy might say) and the *one* above is in two, as we all may perceive: channel to the right of Nos. 101 and 102.

**Campbell's Settlement, right side,**

Just below Nos. 101 and 102. Millikin's settlement, three or four miles further down, on the right.

**No. 103, or Paw-paw Island,**

Lies close under a right hand point: channel to the left, in the bend. The right chute to this island, although narrow, is very safe, but requires hard pulling, after hugging the right hand point above, to get into it.

**Yazoo River, left side.**

This river takes its rise in the state of Georgia, and taking a south-westerly direction, meanders through a fertile country, and empties into the Mississippi in north lat.  $32^{\circ} 30'$ . It is about one hundred and thirty yards wide at its mouth,

8½ 694½

7½ 702

8 710

8 718

6 724

11 735

4½ 739½

**Walnut Hills, on the left.**

These beautiful hills, about two miles in extent, on the right, boldly, though gradually, with alternate swells and gullies, to the height of nearly five hundred feet; and being under the highest state of cultivation, form the most beautiful prospect to be met with on the lower Mississippi. The new town of Vicksburg is near the lower extremity of the hills, on the left. About two and a half miles below Vicksburgh is a large bar, on the left: channel to the right.

9½

749

**Directions for Map No. 15.—Mississippi River.****WARRENTON, on the left.**

This is a smart little town, and seat of justice for Warren county, Mississippi state. Keep to the left round the right hand point below Warrenton; and at the left hand point, two or three miles further down, keep well over to the right, in the bend, round the bar of No. 104. Three or four miles lower down, keep well over to the left, to avoid the bar at the point on the right.

9½

758½

**No. 106, or Palmyra Island,**

Channel to the right of No. 106, and of the two next islands below.

12½

771

**Point Pleasant, right side.**

12½

783½

**No. 110, or Big Black Island,**

Lies in the middle of the river, about a mile below Point Pleasant: channel, at low water, to the left; but the right is preferable at a middling stage of water. There is a large bar makes up from the head of No. 110. If you take the right, keep well towards the island after you have passed the bar at its head. Two and a half miles below the foot of No. 110, is a large bar round the left hand point: Keep well to the right, in the bend, round the point.

**Big Black Creek, left side.**

14

797½

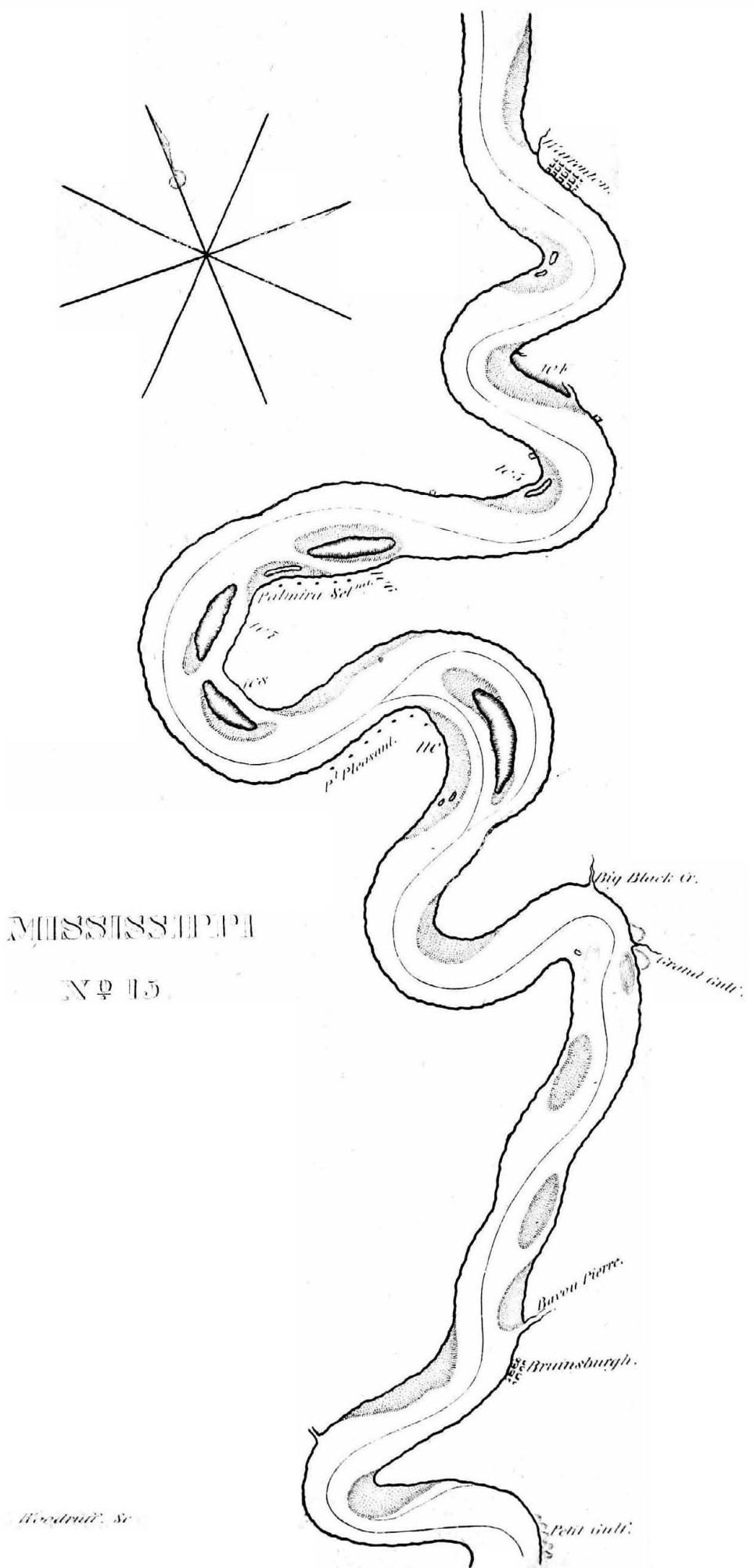
Here the river turns suddenly to the right, occasioned by a high bluff point, (rocky at its base) about three-quarters of a mile below the creek. This is called the *Grand Gulf*. There is a large eddy just below the bluff, on the left; and another opposite to it, just below the right hand point. It requires some judgment, and often some exertions with the oars, to steer clear of these eddies. At low water the current forces very strong on to the left shore above the bluff; and as you approach the bluff, it forces as strong out towards the middle of the river, and will generally carry you through betwixt the eddies without much pulling at the oars. After you have passed the gulf, keep towards the left shore, to avoid a bar on the right, about two miles below—two miles further, keep to the right again, to avoid the bars on the left.

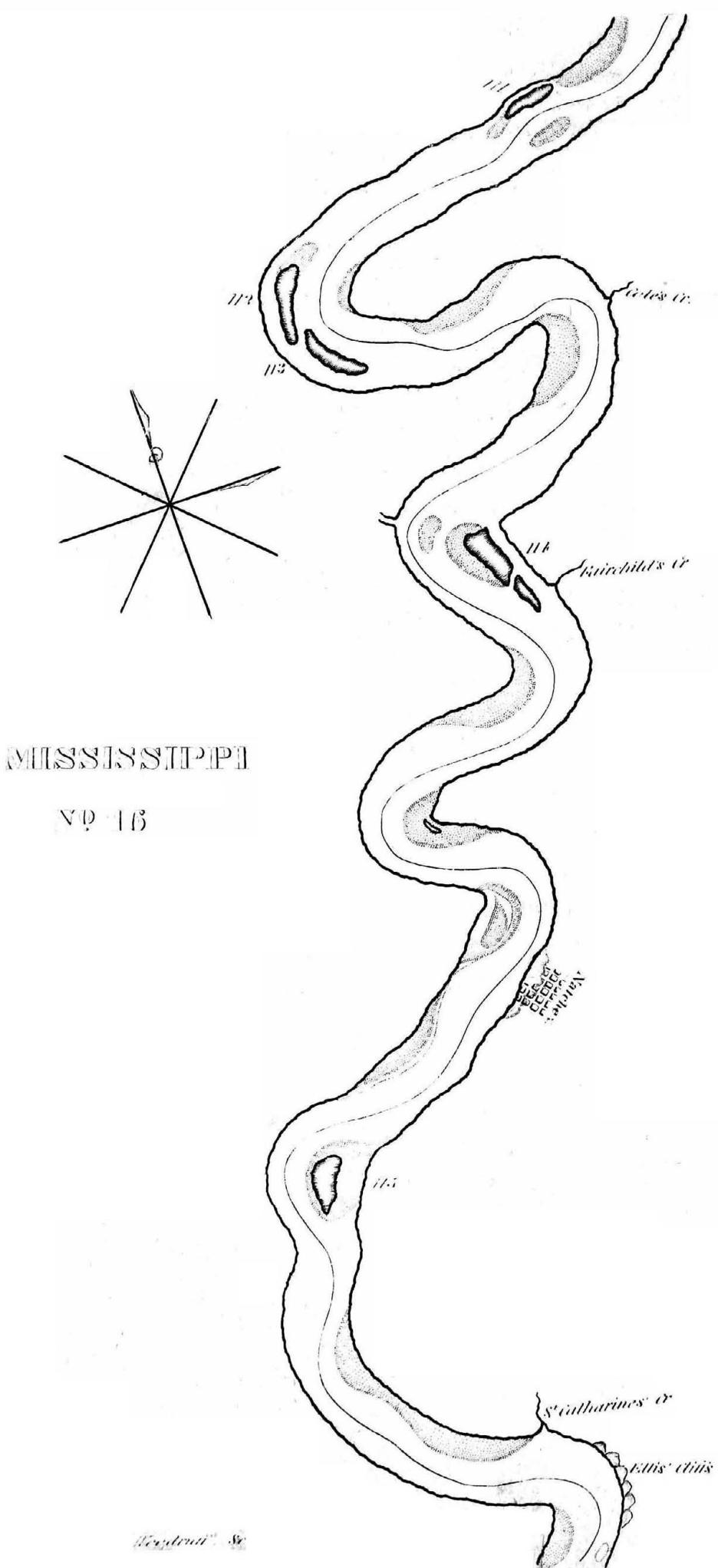
**Bayou Pierre, left side.**

Steam boats can ascend this Bayou a great part of the year, as

9½

807





far as Port Gibson, about twenty-eight miles from its mouth. Port Gibson is a very flourishing town of Mississippi state, and is the seat of justice for Claiborne county. As you approach Bayou Pierre, come no nearer the left shore than mid-river, until you are past its mouth, then steer in towards Bruinsburgh on the left, to avoid the bar on the right, opposite. There is a deep bar at the left hand point, three and a half miles below Bruinsburgh: channel to the right, in the bend.

### Pettit Gulf.

Here the river makes a short turn again to the right, occasioned by a bluff in the bend, on the left. There is an eddy under the point on the right: channel nearest the left shore.

## Directions for Map No. 16.—Mississippi River.

### No. 111,

Lies close to the right shore: channel to the left, and close to the island, to avoid a hard bar on the left, opposite; and when nearly up with its foot, keep short to the left, to avoid the bar below.

### Nos. 112 and 113,

Lie in a right hand bend, nearest the right shore: channel to the left of both, and near to No. 113, to avoid the bars on the left.

### Cole's Creek, on the left.

Here the river takes a short turn again to the right, and a large bar makes below the right hand point: channel to the left.

### No. 114, or Fairchild's Island,

Channel to the right, and close into the bend, round its bars. At a middling stage of water you may pass to the left, by hugging the left hand point above pretty close. Keep well to the left round the right hand point below Fairchild's island. There is a very deep bar at the left hand point, nearly six miles below No. 114: channel in the bend, near the right shore.

### NATCHEZ, on the left.

As you approach the right hand point, above Natchez, incline towards the left shore, to avoid the large bar on the right, above the town. If you do not intend to land at Natchez, incline out towards the middle of the river as you approach the landing, to avoid the eddy.

### No. 115, or Natchez Island,

Channel, at low water, to the right.

### St. Catherine's Creek, left side.

Ellis' cliffs, on the left, is nearly a mile below St. Catherine's creek: channel about midway between the cliffs and right hand point.

*Directions for Map No. 17.—Mississippi River.***Nos. 116 and 117,**

Channel to the left of both, and near to No. 116. About four miles below No. 116, is Deadman's bar, below a right hand point: channel to the left. Between four and five miles below Deadman's bar, there is a deep bar below the left hand point: channel well over towards the right shore.

**No. 118**

Lies near the right shore: channel to the left.

**Homochitto River, left side.**

Channel past Homochitto nearest the right shore, and when up with the right hand point, shoot over into the bend on the left, to avoid a deep bar on the right, below the point.

**Loftus's Height and Fort Adams, left side.**

Channel near the middle of the river. Between six and seven miles below Fort Adams is a bar on the left; channel to the right, and near the right shore until you are nearly up with the right hand point at the lower end of the reach; then shoot over into the bend on the left, to avoid the bar on the right, below the point. Here the current forces very strong into the bend on the left, where the banks are wearing away continually; it is only two or three hundred yards across to the river two or three miles above the Sister Islands, (or where they once were situated, for the last of them has now disappeared) and will probably be the first place where a breach will be effected; here will be a cut off of at least 18 miles. *Query:* Would it not be a prudent step for government or individuals, to cause the trees to be cut down at this place, as also at Bunch's bend? A very trifling sum would accomplish this business, and whenever the breach was made, it would enable the trees to float away, instead of fixing their roots in the bed of the river, and thereby adding some thousands to the already too numerous snags and sawyers:—but, a word to the wise. After rounding the point above mentioned, keep nearest the left shore until you approach the left hand point below, then keep over to the right, and near the right shore until nearly up with

**Red River, on the right.**

Red River joins the Mississippi a little south of the thirty-first degree of North Latitude. It is nearly 500 yards wide at its mouth, but its general width is from 250 to 300 yards. The main branch of this noble river has its source in the Mexican mountains to the eastward of Santa Fe, about north latitude  $36^{\circ}$ . It runs about 100 miles in a north east direction, where it unites itself with another large branch from the north west, and then makes a sweep round to the south east, pursuing this course to the Mississippi, the whole length being nearly 1500 miles. After you have passed Red River, keep nearest the right shore for upwards of six miles, to avoid the bar round the point on the left below, and when nearly up with the right hand point, keep short over for the left shore. Bayou Atchafalaya, or Chaffaliar, as it is generally

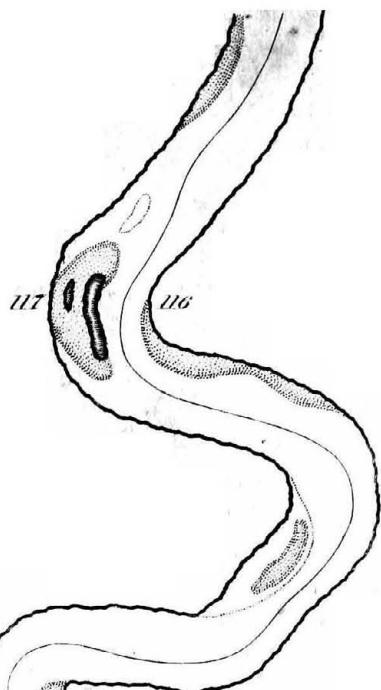
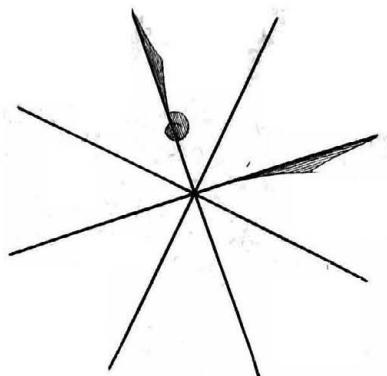
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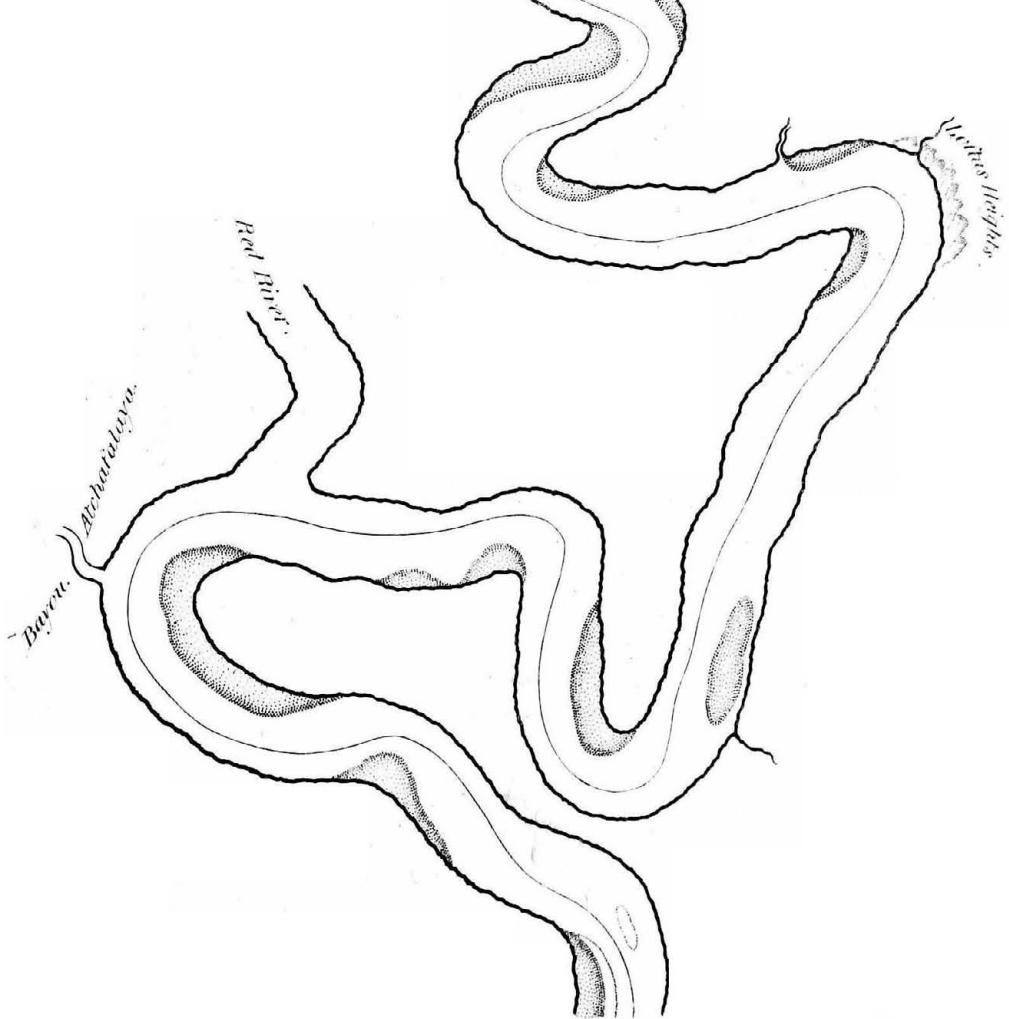
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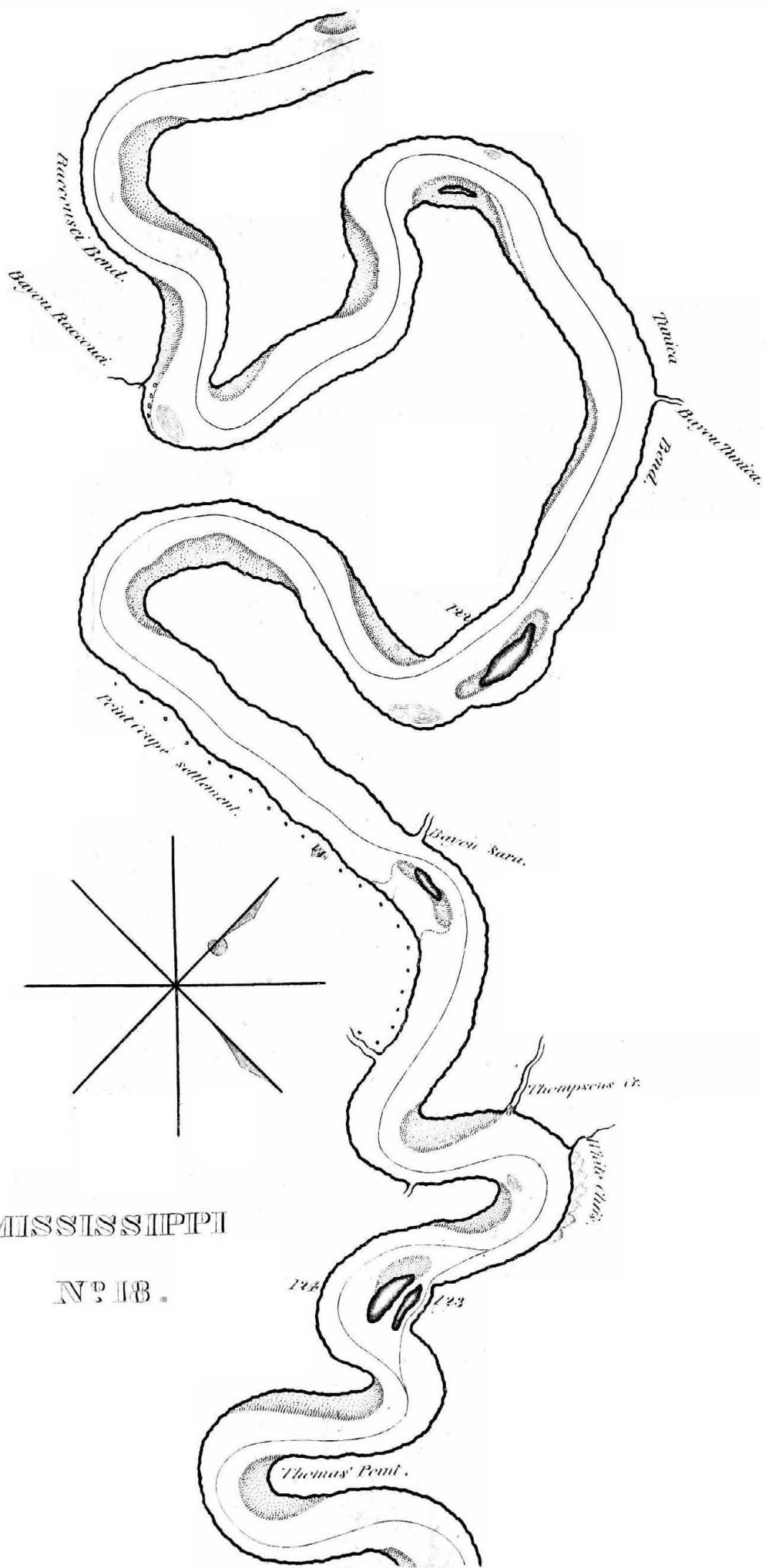
18½ 923



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called, is about three miles below Red River, on the right. At high water there is considerable of a draft into the Chaffaliar, which must be guarded against.

**Sister Islands, or No. 119.**

Here was formerly three islands; but for a number of years only one has remained, and lately that has disappeared. Channel about the middle of the river.

14 937½

**Directions for Map No. 18.—Mississippi River.**

Four and a half miles below the Sister island bar, keep over towards the right shore, in the bend, and when you approach the right hand point, above Raccourci, keep to the left again.

**Bayou Raccourci, right side.**

Here the river takes a very short turn to the left. There is a very large eddy in the bend, on the right—keep well towards the point on the left, then straight across for the right shore, below the eddy. There is a large bar and willow island below the right hand point, about seven miles below Raccourci. Channel to the left.

**Bayou Tunica, left side.**

**No. 122, or Tunica Island,**

Channel right side. There is a large eddy on the left about a mile below Tunica island; when you are up with the right hand point opposite, keep over for the left shore below the eddy. Keep near the left shore for about two miles, and then nearest the right shore until you enter Point Coupee reach.

**Bayou Sara left side.**

**ST. FRANCISVILLE**

Is situated on Bayou Sara, nearly three quarters of a mile from the river. There is a bar and small island in the middle of the river, nearly opposite Bayou Sara. Channel at low water to the left.

**Fausse Riviere, right side.**

There is a deep bar makes from the left hand point, just below Fausse Riviere, but as the current forces very strong on to the right shore, in the bend below; it requires more precaution to keep clear of the bend, than of the bar below the left hand point.

**White Cliffs, left side.**

Channel about the middle of the river.

**No. 123, 124, or Prophet's Island.**

There is a large bar makes up from the head, and to the right of Prophet's island. Channel at low water to the right in the bend. Except at very low water there is a good channel to the left of these islands. Round the point on the right below Prophet's island, keep about the middle, and then incline towards the left shore.

13½ 951

15 966

5 971

19½ 990½

5 995½

4½ 1000

3½ 1003½

**Thomas's Point, left side.**

Channel to the right, in the bend. About four miles below Thomas's point you enter the Baton Rouge reach.

7 $\frac{1}{2}$  1011***Directions for Map No. 19.—Mississippi River.*****BATON ROUGE, left side**

This place is handsomely situated on the east bank of the Mississippi, on an elevation of about thirty feet above the highest fresh, being the first high ground on the river ascending from New Orleans.

**Bayou Manchac, or Iberville, left side.**

Channel nearest the left shore, in the bend

11 1022

**Bayou Placquemine, right side.**

This bayou affords the best communication to the rich settlements of Attacapas and Opelousas. There is a bar round the left hand point, opposite to bayou Placquemine. Channel nearest the right shore. There is a bar on the right, 'her more than four miles below Placquemine; here keep to the left for about two miles, then incline to the right again.

7 $\frac{1}{2}$  1043 $\frac{1}{2}$ **Church of St. Gabriel, left side,**

(Commonly called Manchac Church.) Keep nearest the left shore until you are two miles below the Church, then incline to the right.

10 1053 $\frac{1}{2}$ **No. 125,**

Is a small island lying nearest the right shore. Channel to the left; two miles above its head, keep well over to the left, and when past the island, incline to the right, and keep nearest the right shore until you are up with the head of a small willow island in the bend below, then cross over to the left.

11 $\frac{1}{2}$  1065**Bayou La Fourche, right side.**

This bayou is well settled on both sides for nearly thirty leagues; it affords another communication to the Attacapas and Opelousas settlements. The handsome town of Donaldsonville, (now the seat of government of the state of Louisiana,) is situated immediately below the bayou. The general course of the Mississippi from this to New Orleans, is nearly east. There is a large eddy on the right, about a mile and a half below LaFourche. Keep nearest the point on the left.

11 1076

**Hampton's Plantations.**

4 1080

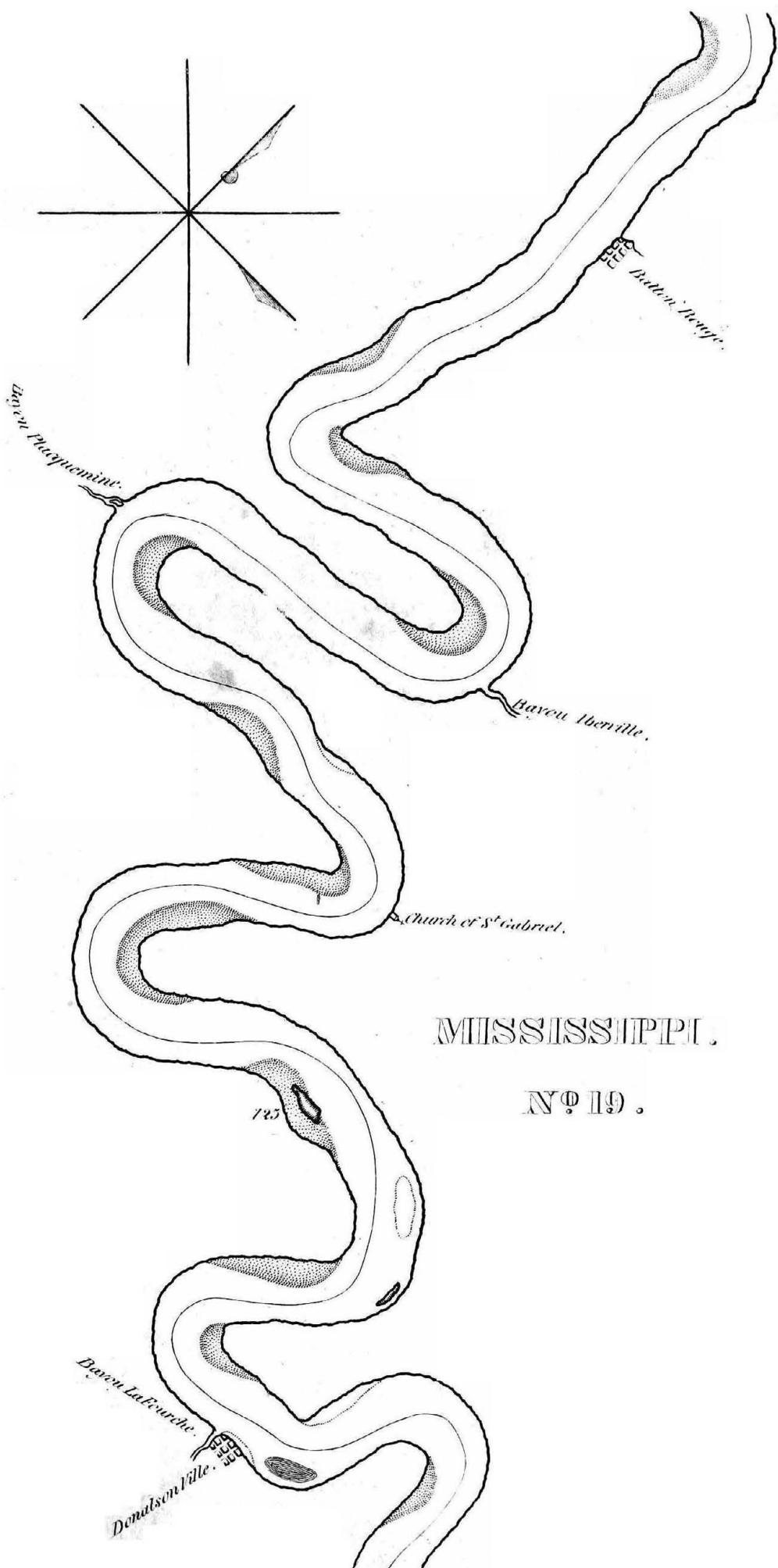
***Directions for Map No. 20.—Mississippi River.*****Bringier's, left side.**

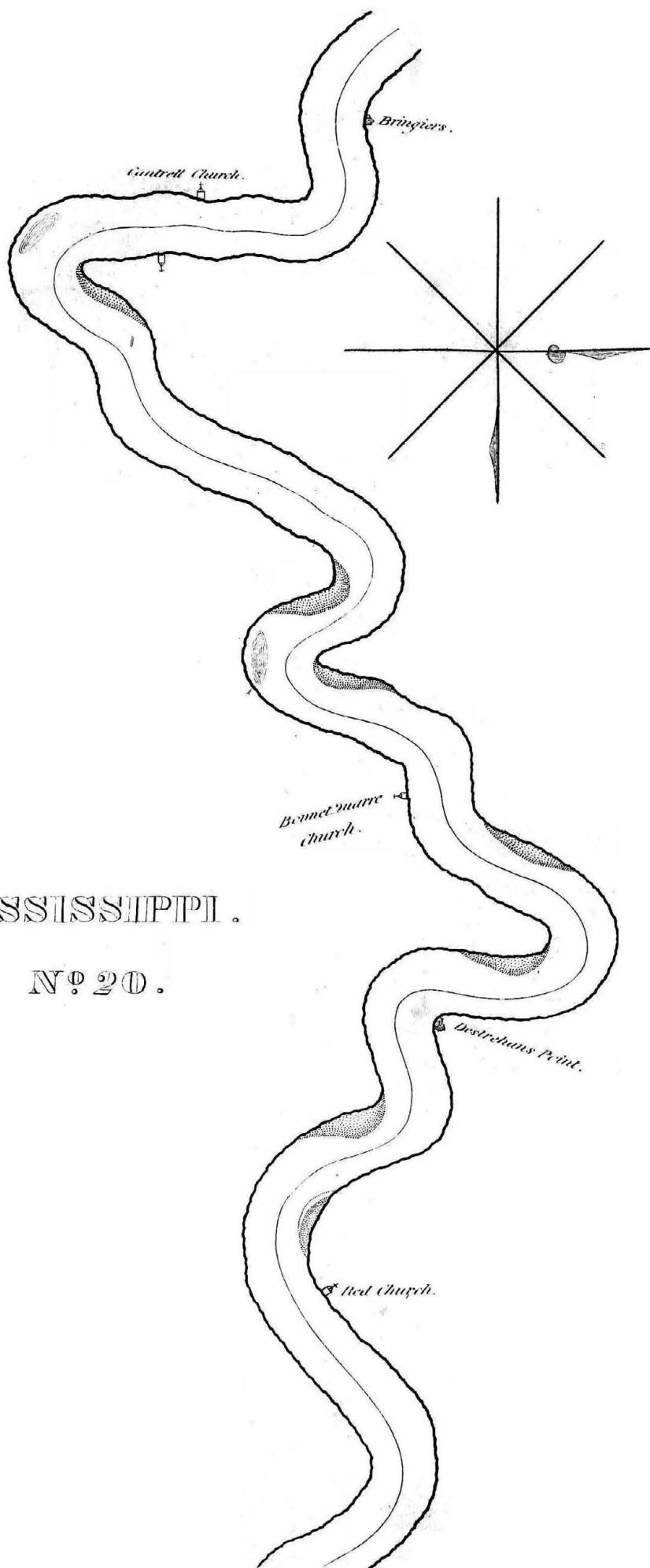
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**Cantrell Church, right side 5—left side 6.**

6 1092

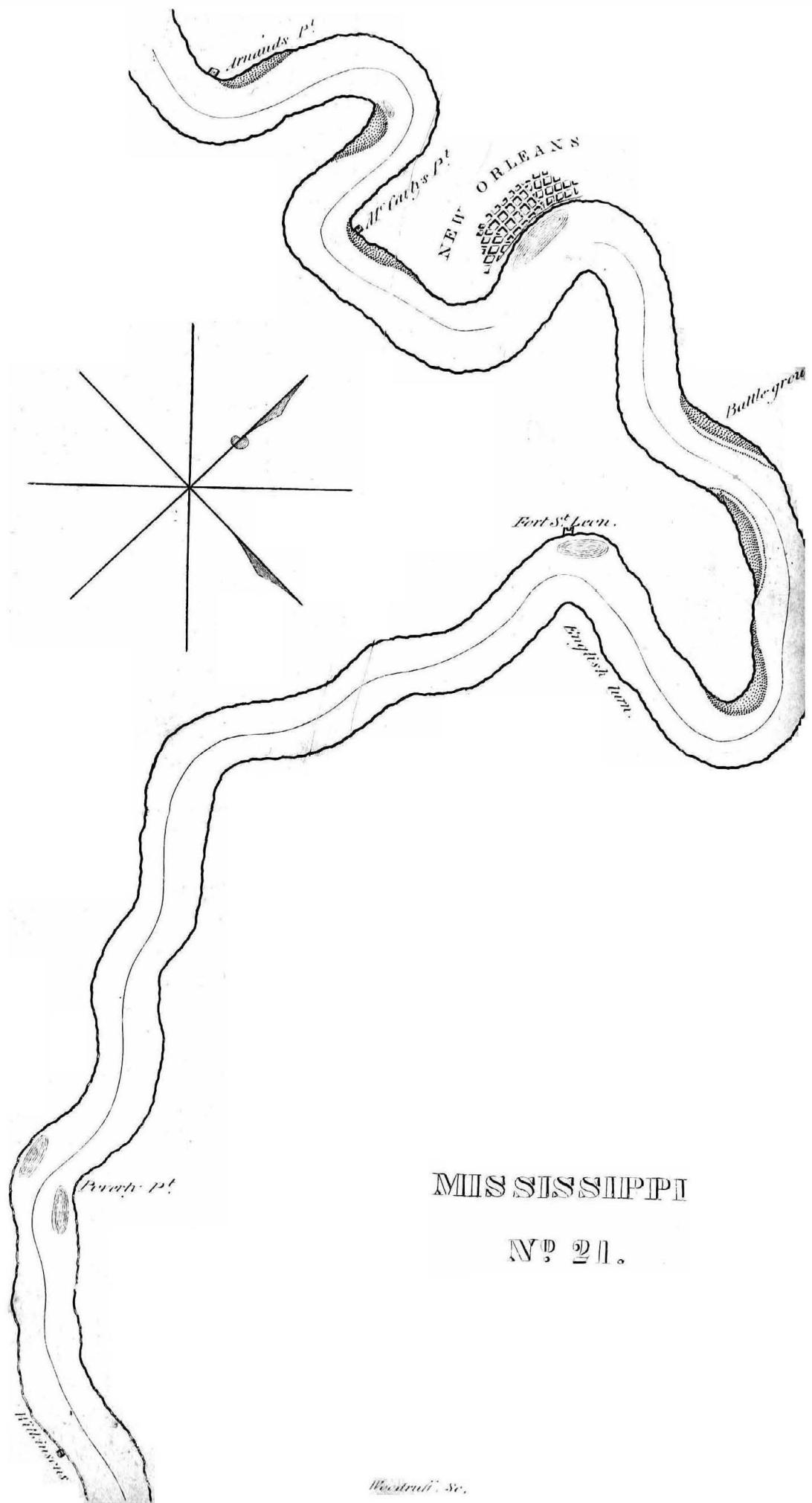
Keep near the point on the left, below Cantrell Church, to avoid a large eddy in the bend, opposite.

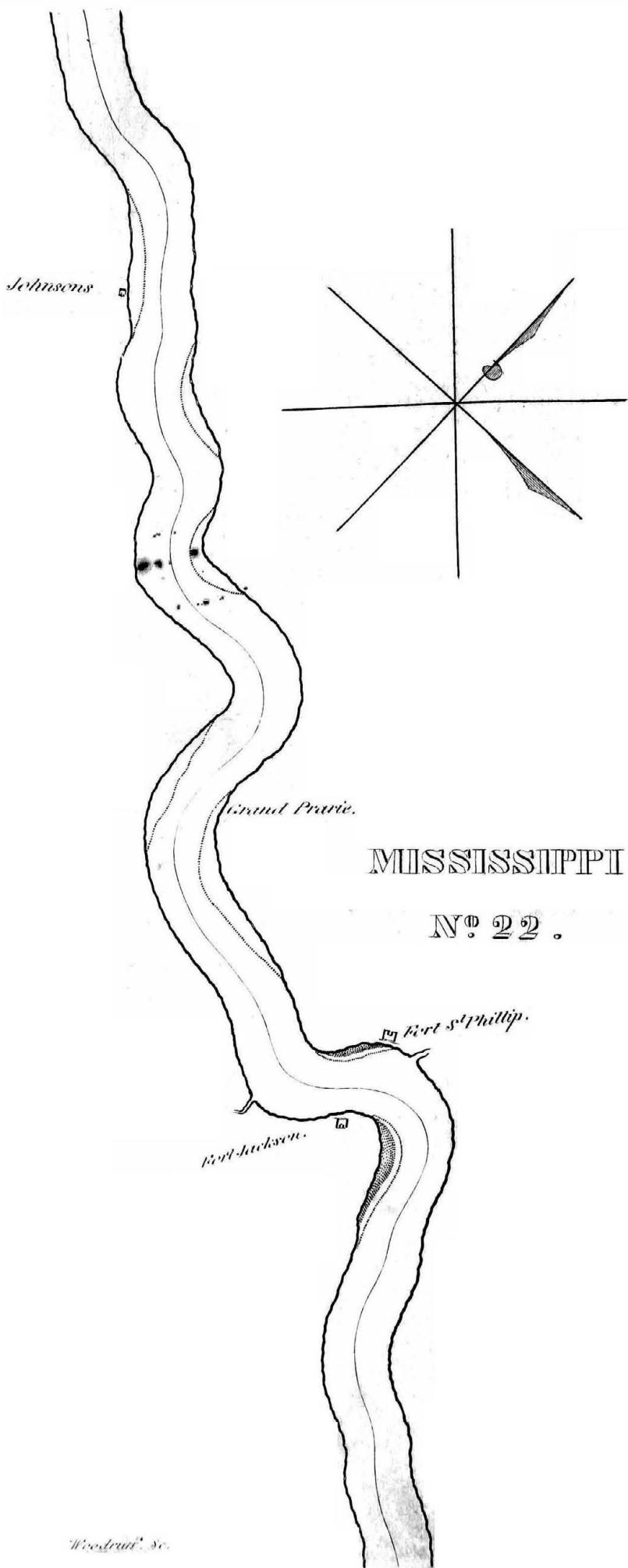




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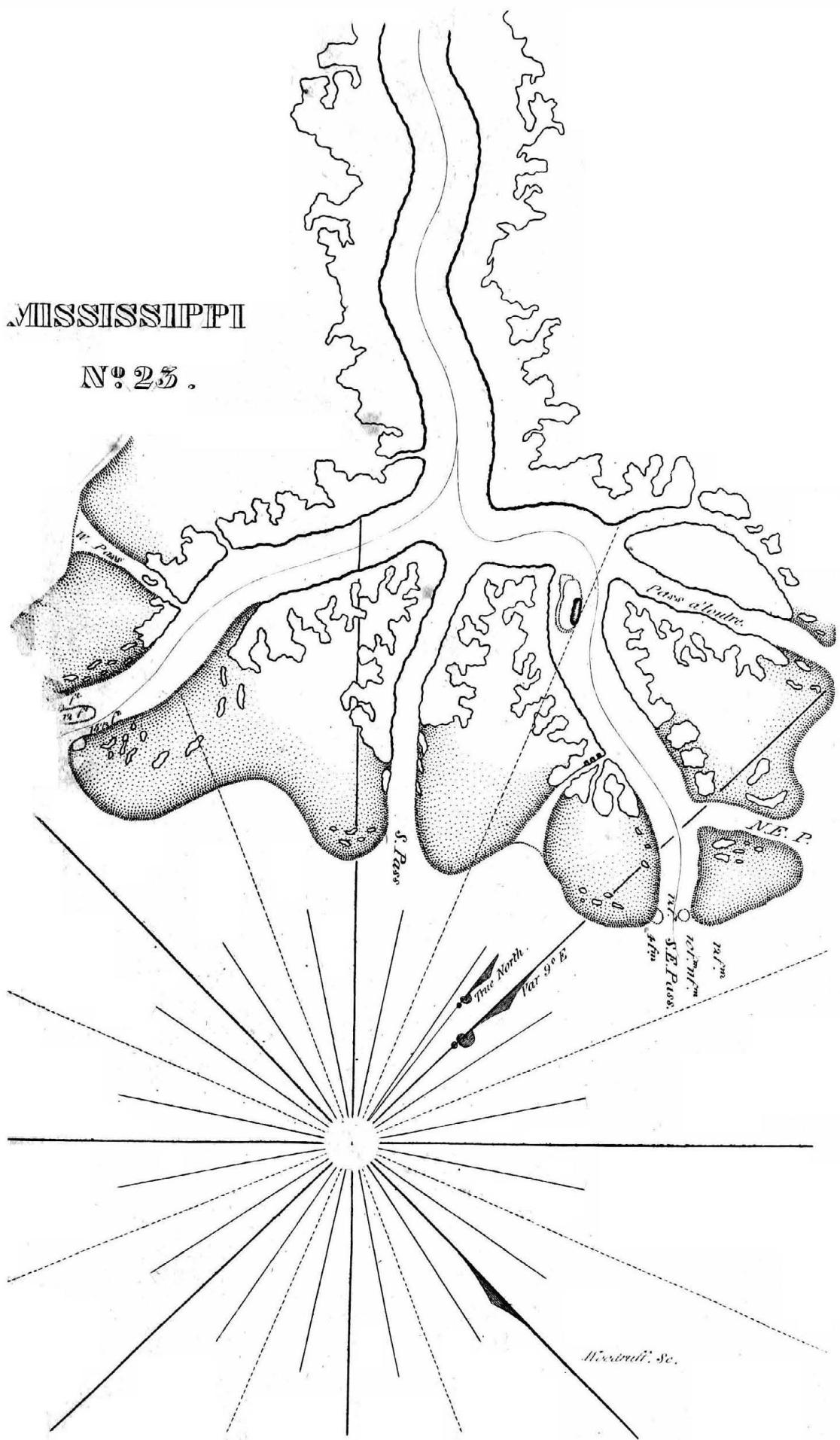
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Bonnet Quarre Church, right side.	18	1110
Detrehan's Point, left side.	8	1118
Red Church, left side.	7½	1125½
Arnaud's Point, left side.	9½	1135

*Directions for Map No. 21.—Mississippi River.*

M'Cartey's Point, left side.	8	1143
NEW ORLEANS—Steam-boat Landing.	6	1149
Battle Ground, left side.	6	1155
English Turn.	12	1167
Poverty Point, left side.	20	1187
Wilkinson's, right side.	7	1194

*Directions for Maps No. 22 and 23—Mississippi River.*

Johnson's, right side.	7	1201
Grand Prarie, left side.	10	1211
Fort St. Philip, left side.	10	1221
Fort Jackson, right side.	10	1221
South West Pass, on the right.	20	1221
Pass au l'Outre, on the left.	3½	1244½
Belize, right side.	4½	1249
Bar at the S. E. Pass.	4	1253

From La Fourche to New Orleans, there is no obstruction to the navigation; a few eddies in the bends only to be avoided.

The source of the Mississippi is in about north latitude  $48^{\circ}$ , and longitude west from Washington city  $18^{\circ}$ . Its general course is about south-west 300 miles, to the mouth of the Corbeau, which comes in from the right. Below the Corbeau the Mississippi assumes a south eastern course of 200 miles to St. Anthony's falls, at the foot of which it receives the St. Peters, a large tributary stream from the north-west. Below the mouth of St. Peters, the Mississippi continues south east 80 miles, and in that distance receives from the left the St. Croix, Chippeway, and Black rivers. Between the two former occurs lake Pepin, a mere dilatation of the river. After receiving Black river, the Mississippi curves more to the south, and eighty miles below the former receives from the left a large branch, the Ouisconsin. Thence again turning to south east 100 miles, is joined by Rock river, a stream of considerable size flowing from north east to south west, and rising near lake Michigan. Below Rock river, the Mississippi turns to a little west of south, 100 miles, to its junction with the Lemoine river, a very considerable tributary stream from the north west. One hundred and twenty miles in a south eastern course, below the Lemoine, the Illinois unites with the Mississippi, and 15 miles lower, the latter and Missouri form their junction. The entire length of the Mississippi above the mouth of Missouri, is by comparative estimates 995 miles. The country drained by this river is generally rather level than hilly, and much of its surface prarie. Except towards its source, no lakes of any considerable consequence are found on any of its confluent. Its water is tolerably limpid, and its current gentle. Though, from accidental circumstances, the Mississippi has gained the pre-eminence in giving name to the general recipient, it is, nevertheless, a mere branch, and by no means the principal one, of Missouri. Below their junction, the united stream flows 198 miles south east, where it receives an immense accession of water through the channel of Ohio; below which the congregated mass turns a little west of south, and flows in that direction 316 miles, receives the White river and 16 miles lower the Arkansas; both from the right.—The Yazoo enters from the left, 187 miles below the mouth of Arkansas; and 211 miles below the mouth of Yazoo, the Mississippi receives its last tributary stream of consequence, the Red river, from the right. Three miles below Red river, the Atchafalaya flows out to the south. From the mouth of Arkansas to the efflux of Atchafalaya, the general course of the Mississippi is nearly south: Below Atchafalaya to the gulph of Mexico, its general course is about south east. The entire length of the Mississippi, below the mouth of Missouri, is 1253 miles, by the windings of the stream. If one third is added to its comparative length above Missouri, for its particular meanders, the result will give 1327 miles, which added to 1253, yields 2480 miles as the entire length of the Mississippi, following the bends.

Like all rivers of great length, the Mississippi is subject to an annual rise and fall. The periods of those floods are tolerably regular, but the quantity and elevation of the water differs continually, and often to many feet in two succeeding seasons. The river commences its swell generally in March or the beginning of April. The increase of the water, at first rapid, gradually becomes more slow, until the supply beginning to exhaust, the volume commences its fall or decrease, which, at Natchez, is in a long series of years, from the 15th to the 20th of June, and at New Orleans in the first week in July. There is, however, in most years a lesser and earlier flood, which varies in time, much more than that of the spring and summer. In October, November, or December, this lesser flood intervenes generally, in the last days of December, and first of January. This lesser flood seldom rises so high as to overflow the banks, and it has been observed, that when the earlier flood is more than commonly high, that the latter flood is in proportion, lower than common. The efflux of Plaquemine is the common scale in the Delta, of the excess and period of both floods.

The velocity of the current of the Mississippi has been greatly mistaken.—Taking the motion of its swell, the only safe criterion, it is found that below Ohio, the entire mass does not move as much as one mile per hour. The line of upper current moves more rapidly than the mass, but even the former does not move by any means with the rapidity usually supposed. The depth of water in the Mississippi varies of course with the increase and decrease of its floods, but this difference of elevation is more perceptible above than in the Delta. At Natchez it is from 30 to 40 feet, at LaFourche about 23 feet, and at New Orleans about 9 feet. There is usually about 12 feet water on the bar, at the S. E. pass, and 15 feet at the S. W. pass\*—N. E. and pass au l'Outre 8 feet—South and West passes 9 feet. Above the passes, the river deepens to upwards of 100 feet. At New Orleans it is upwards of 120, and at the LaFourche 153 feet at high water. There is no place below the mouth of Ohio, where the channel is less than 12 feet.

\*The author of this work examined the S. W. pass, in the summer of 1824, and found not less than 11 feet at low water, over the bar. It is rather singular that this pass has not been more frequently used, as it has long been known that there was at least as much water on the bar, as at the S. E. pass, and it is in every other respect preferable to the latter—it is much easier to enter; the prevailing winds more favorable;—much better anchorage, the depth of water in the chute being uniformly from 10 to 12 fathoms, and 6 or 7 close to the banks. Two or three miles above the bar there is from 4½ to 5 fathoms, stiff ground, and excellent anchorage—proceed no further down than 4½ fathoms, if you intend to anchor above the bar. There is a small middle ground with only 12 feet water on it, which divides the channel at the bar;—to the left of it, is 15 feet at low water; to the right, ~~is~~ <sup>about</sup> 14.

We have reserved to this place our observations on New Orleans, in order to avoid interrupting the regular chain of references to the maps of the Mississippi below that city.

New Orleans stands on the left bank of the Mississippi, at north lat.  $30^{\circ}$ , west long. from Washington city  $13^{\circ} 05'$ . Its relative distance from any point on the river can be seen by reference to the directions.

The ground upon which this city stands is formed by a double bend of the Mississippi, and like all the margin of that stream above St. Philip, is composed of an alluvial deposit, sloping gradually from the bank into the adjacent marshes. The width of this comparatively elevated slip is in the centre of the city a little more than a quarter of a mile wide; but spreads to greater depth, at both extremities, in the Fauxbourgs (*suburbs*) of St. Mary, Marigny, and Declonet. When the Mississippi is at its highest elevation, its surface is above any part of the city from one to three feet, according to the excess of the annual flood. To defend the city, and indeed the whole Mississippi coast, from the effects of this mass of incumbent fluid, a levee, or embankment of earth, has been raised and extended along the river's brink. In front of the city this embankment is much more than ordinarily wide and firm. Its solidity being augmented by the continual pressure upon its surface by the passing inhabitants.

Within this effectual but apparently feeble barrier, the city and fauxbourgs extend something more than three miles, following the sinuosities of the stream, and terminating in the rear near the margin of the circumjacent morass.

The city of New Orleans proper, lies in form of a parallelogram, the streets crossing each other at right angles. The large fauxbourg

St. Mary, follows the city ascending the stream, leaving a wedge-formed slip between them, its base in the rear and point to the river. The streets of the fauxbourg St. Mary consequently diverge from those of the city, and conform to the bend of the river, as do the two other fauxbourgs still higher. At the lower extremity of the city, and immediately within the front or Levee street, stands Fort St. Charles, followed by the large fauxbourg Marigny, and two or three minor fauxbourgs still lower on the river. Here again the streets diverge and are accommodated to the windings of the stream.

In the rear of New Orleans a basin or reservoir, connected by the canal Carondelet to Bayou St. John, admits coasting vessels to the verge of the city. A slight strip of firm land extends from the city to Bayou St. John, below the outlet of the canal. The banks of the Bayou St. John are also of sufficient height and solidity to admit buildings for some distance above and below where the strip from the Mississippi reaches its margin; along both, streets have been extended: the fauxbourg St. Claude fills the intermediate space, and the fauxbourgs St. John and Allard skirt both banks of the bayou. A glance upon the map will render this short topographical description more intelligible.

The houses of New Orleans were formerly almost exclusively formed of wood, but many very fine brick buildings had been erected before, and still more since, the cession of Louisiana to the United States. A vulgar idea has been entertained, that a custom of building houses low in New Orleans prevails, and arises from dread of tornadoes. Many of the buildings of this city are four stories, some are five, and three is the common elevation of private houses recently erected of brick, and no particular danger is either experienced or dreaded from such structures. A similar observation applies to the mansion houses of the wealthy planters along the Mississippi, which are generally constructed very lofty, and with similar safety.

Cellars under ground is unknown in this city, and rendered impracticable from the nature of the ground, which is loose, spongy, and immediately below the surface composed of a tough soft mud. Both in the city and country the ground floor of the dwellings is commonly more or less raised, and seldom left to rest on or near the surface of the earth; in the commercial part of New Orleans the lower story is very generally appropriated to stores and warerooms, and made to answer the purposes of cellars. Exceptions are, however, numerous, to what is obviously a prudent practice, elevating the dwelling part of houses in a warm climate and on a moist soil.

The position of New Orleans is admirably calculated for a mart of trade. It was laid out in 1717, under the regency of the Duke of Orleans, during the minority of Louis XIV., and named by governor Bienville in honour of the regent. Its advance was necessarily slow, under the French and Spanish governments, and in 1803, when ceded to the United States, contained only about 8000 inhabitants. The following abstracts will exhibit the subsequent rapid growth of this city, and its relative magnitude in 1820.

In 1810, there were 6331 free white persons; 4950 free coloured persons; and 5961 slaves.

In 1820, there were

Free white males,						8266
Ditto females,						5318
					Total whites	13,584
Free coloured persons, males						2432
Ditto ditto females,						3805
					Total free coloured people	6237
Slaves, males,						2709
Ditto females,						4646
					Total slaves	7355
					Total population in 1820,	27,176

The public buildings of New Orleans are, a custom-house, hospital, college, a female orphan asylum, several churches, a convent of Ursuline nuns, three theatres, five banks, and the necessary edifices for legislative and judicial proceedings.

Neither wharves or docks line the margin of the Mississippi at New Orleans; the vessels lie to, and unload or load from the levee. The following port regulations it will be well for persons trading to New Orleans to clearly understand. They may indeed serve in many important cases as a bill of directions, to what authority to apply in case of difficulty.

*Extract from an Ordinance concerning the Port and the Levee of New Orleans.*

THE CITY COUNCIL ORDAINS AS FOLLOWS:

Article 1. All that part of the river Mississippi in front of the city and suburbs St. Mary and Marigny, shall continue to form the port of New Orleans.

Art. 2. Vessels shall occupy in the said port, a space whose limits shall be a line corresponding with the lower side of Barrack street, and another line corresponding with the lower part of Custom-house street; excepting, however, a sufficient space in front of the meat market and the public square of this city, and whereof the limits shall be fixed by the mayor, which space is, and remains exclusively reserved, for the public ferry boat of New Orleans, and that of the parish; as also for the pirogues and other small boats of planters, coasters, and butchers, who daily supply the market of this city: provided that nothing in the present ordinance shall be so construed as to affect the space of fifty feet on the river bank in front of the barracks, reserved by the corporation as a place for the landing of fire wood and other produce, or articles necessary for the supply of the troops of the line in garrison at New Orleans.

Art. 5. No vessel, steam-boat, public ferry boat, barge, flat, pirogue, or other craft, shall be near the levee of the city or suburbs in any other

place than that part of the port which is respectively assigned to them by the present ordinance, on penalty against every owner, captain, or master in contravention, of a fine of from three to ten dollars for every day that he shall refuse or neglect to conform to the aforesaid provision. Provided always, that barges may provisionally occupy the space above reserved for steam-boats, whenever the latter shall have quitted the port of New Orleans; but the said barges shall immediately remove from the said space, on the return of the said steam-boats, on penalty of the aforesaid fine against every offender.

Art. 7. It shall not be lawful to build, repair, or caulk any ship, steam-boat, or other vessels of large dimensions, but in that portion of the port designated by the ordinance concerning the ship yards; and no barges, boats, or other craft whatever, shall be built, repaired, or caulked, but in the place above mentioned, or in the upper part of the port beyond Girod street. And all ship-builders, or other persons in contravention, shall pay a fine of from twenty to fifty dollars, and further a fine of ten dollars per day, until they shall have taken away all the wood, materials and other objects by means of which they should have obstructed the navigation, and the free and entire use of the river bank.

Art. 8. Every vessel on arriving in the port of New Orleans must anchor in the stream at least at sixty fathoms from the shore; nor shall she warp or be moored to the levee of the city until her yards be topped, her jib-boom in with her sprit-sail-yards fore and aft; and until such of her anchors as are not in use be hoved on the forecastle deck, or some other suitable part of the vessel, so as not to injure any other vessel.

Art. 9. Vessels shall be moored only to the posts destined for that purpose, and the inside vessels shall moor in such a way as to support such a portion of the strain of the vessels lying on the outside; and every vessel lying in the third range or upwards, shall have at least one of her anchors in the stream.

Art. 10. Any vessel moored to the levee, having on board neither a crew, a ship keeper, nor any other white person capable of taking care of her, may be removed by the harbour master at the expence of the owner or consignee.

Art. 11. It shall not be lawful to throw, or cause to be thrown, the ballast of any vessel, whether wholly or in part, into the river near the bank in front of the city, to land, or cause to be landed, on the levee of the city, any of the water casks used on board, and to cause to be boiled on board, any pitch, tar or rosin; to have or keep fire in the comboose stove, or any part of any vessel after eight o'clock in the evening, from the fifteenth of September to the fifteenth of March; and after nine o'clock from the fifteenth of March to the fifteenth of September every year, except in case of urgent necessity, and with permission in writing from the mayor or the harbour master.

Art. 12. When any vessel has hay on board, not more than twenty bales thereof shall be landed at a time; nor shall any of the remaining quantity be landed as aforesaid, until such time as the above specified twenty bales shall have been removed from off the levee of the city, or other landing place within the port of New Orleans.

Art. 13. Every captain, master, or owner of a vessel, steam-boat, barge, flat, or other craft whatsoever, entering the port of New Orleans, having on board more than ten pounds of gunpowder, shall, before he has his vessel or craft moored to the levee, be obliged to land the said gunpowder, by means of one or more boats, or other small craft, and to cause it to be transported to and stored in the powder magazine situate on the right bank of the river: nor shall any powder be shipped on board any vessel, steam-boat, barge, or other craft, outward bound, until she shall have anchored in the stream, ready to leave the port of New Orleans.

Art. 14. Any vessel not engaged in discharging or taking in a cargo shall not be permitted to remain at the levee, within the limits designated for vessels or ships, more than four weeks.

Art. 15. Every captain, master, or owner of a vessel not complying with the provisions of the present ordinance, from the eighth to the twelfth article inclusively, shall pay for every one of the cases therein specified, a fine from ten to twenty dollars; and, moreover, a fine of twenty to forty dollars, for every day that he shall neglect or refuse to conform to any one of the aforesaid provisions. And every captain, master, or owner of a vessel, steam-boat, barge, flat, or other craft whatsoever, not complying with the thirteenth article of the present ordinance, or offending against any one of the provisions therein contained, shall pay a fine of fifty dollars; and, moreover, another fine of eighty dollars for every day he shall neglect or refuse to comply with such provisions; and every captain, or other person, who shall not comply with the fourteenth article of the said ordinance, shall be fined in the sum of five dollars for each and every day after the delay fixed by said article.

Art. 16. The harbour master is authorized to cause, from time to time, to remove from near the levee, such ships and vessels as are not employed in receiving or landing cargoes, in order to make room for other ships or vessels having more immediate occasion for a convenient situation, to receive or discharge theirs; and as to the fact of their being really and truly employed either in receiving or discharging their cargoes, the said harbour master is appointed sole judge to decide thereon; and, moreover, the said harbour master shall have a right to determine on what occasions, and how far, captains and others having charge of ships or vessels, must accommodate one another in their respective positions. And in case of any captain or other person resisting or opposing the said harbour master in the discharge of the functions of his office, the said captain or other person having charge of a ship or vessel, or whoever the offender may be, shall, for every such offence, be fined fifty dollars, to be sued for with costs by the city treasurer, in any court of competent jurisdiction; and all fines thus recovered, shall be paid to said treasurer for the benefit of the city.

J. ROFFIGNAC, *Mayor.*

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*Extracts from a Law, approved on the 13th February, 1816.*

Art. 1. From and after the passing of this act, if any master or commander of any ship, vessel, or other water craft in this state, or any

other person, shall carry and convey out of the same, on board of any such ship, vessel, or other water craft, any slave or slaves, the property of any person or persons of this state, without the consent of the owner or owners of the said slave or slaves previously obtained; or shall take and receive on board of any such ships, vessels, or other water craft, any such slave or slaves, or permit or suffer the same to be done, with the intent and for the purpose of carrying and conveying such slave or slaves out of this state: or shall wickedly and willingly conceal or permit to be concealed on board of any such ship, vessel or other water craft, any slave or slaves who shall or may hereafter abscond from their master or mistress, with the intent and for the purpose of enabling such slave or slaves, to effect his, her, or their escape out of this state, every such master or commander of any such ship, vessel or other water craft, or any other person, so carrying and conveying, or so taking, receiving, and concealing, or causing or permitting the same to be done with an intent as aforesaid, shall be subject to a criminal prosecution, and on conviction of any of the said offences, shall suffer imprisonment at hard labor for a term not exceeding seven years, and not less than three years; and moreover, the said master or commander, or any other person shall be sentenced to pay all the damages that the owner or owners of the said slave or slaves may have suffered thereby, which damages shall be assessed by the same jury who shall give their verdict on the criminal prosecution: *Provided*, That whenever any slave or slaves shall be found on board any ship, vessel, or other water craft, the presumption shall be that such slave or slaves were received or concealed on board said ship, vessel, or other water craft, with the intent aforesaid, saving to the party accused the right of showing the contrary.

Art. 3. No master or commander of any ship, vessel, or other water craft, shall thereafter transport or attempt to transport any negro, mulatto, man or woman, or other person of colour, out of this state, on any pretence whatsoever, until he shall have produced the said negro, mulatto, man or woman, or person of color, before the mayor, if in the parish of New Orleans, or before any parish judge of the parish in which his ship, vessel, or water craft shall lie, and shall have made out and lodged with the said mayor, or parish judge, a written declaration signed by him, and containing a description of the said negro, mulatto, man or woman, or person of colour, together with his name, and surname, probable age, and alleged place of birth, or residence, and the port to which the said master or commander may be bound, and until he shall have satisfied the mayor or parish judge, by an authentic written proof, or by the oath of two credible witnesses residing in said parish, or by the affidavits made before the judge of the parish from whence said negro, mulatto, man or woman, or person of color is come, by two credible witnesses domiciliated therein, that the said negro or mulatto, man or woman, or person of color is free, or until he shall have produced to the said mayor or parish judge, the written direction of the owner of such negro, or mulatto, man or woman, or person of color, commanding or permitting him, to carry him or her out of this state, and when the said master or commander shall have so done, it shall be

the duty of the said mayor or parish judge, as the case may be, to keep and retain the said declaration in his office, and to grant him a written certificate thereof.

Art. 4. Every master or commander of a ship, vessel, or other water-craft, neglecting or refusing to perform the requisites imposed by the preceding section, shall pay and forfeit the sum of five hundred dollars for every slave by him so carried, or attempted to be carried away out of this state, one moiety to the state, and the other moiety to the informer, to be recovered with cost by information filed in any competent court; and, moreover, such master or commander, shall be liable to the suit of the party grieved for his or her damages; and, in both suits, the said master or commander shall give bail or surety for his appearance.

Art. 5. If any master or commander of any ship, vessel, or other water craft, happens to discover any slave or slaves concealed on his board, it shall be their duty, if still in the river, or within the limits of this state, to land the said slave or slaves to the nearest place, and there to deliver him, her, or them, to any judge, justice of the peace, sheriff, jailer, or in defect thereof, to any inhabitant of the same place; that he, she, or they, may be sent to their master; and if the said master or commander refuses or neglects to perform the requisites contained in this section, he shall be liable to the same punishment and damages which are mentioned in the first section of this act.

## LIST OF STEAM BOATS.

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<i>Name of Steam Boat.</i>	<i>Where built</i>	<i>No. Tons</i>	<i>Date</i>	<i>Names of Captains.</i>	<i>REMARKS.</i>
<b>Etna</b>	Pittsburgh	361	1814		
<b>Alabama</b>	Fort Stevens	219	1818	Wilson	Sunk
<b>Alexandria</b>					
<b>Arkansas</b>					
<b>Andrew Jackson</b>					
<b>Augusta Packet</b>					
<b>Allegany</b>					
<b>American</b>					
<b>Aurora</b>					
<b>Atalanta</b>	Cincinnati		1825		
<b>Buffaloe</b>	Pittsburgh				Sunk
<b>Beaver</b>		136	1819	Black	Red River Trade
<b>Bezaleel Wells</b>	Cincinnati				
<b>Belle Creole</b>	Cincinnati	125	1822		
<b>Bolivar</b>					
<b>Belize</b>					
<b>Comet</b>	Cincinnati	154			Towing Business
<b>Cincinnati</b>	Cincinnati	157			Sunk
<b>Cedar Branch</b>					Sunk
<b>Car of Commerce</b>	Pittsburgh				
<b>Columbus</b>	New Orleans	450	1819		
<b>Calhoun</b>					
<b>Courier 1st.</b>	Louisville		1821		
<b>Courier 2nd.</b>					
<b>Congress</b>	Wheeling				
<b>Cumberland</b>	Pittsburgh				
<b>Caledonia</b>	Cincinnati	246	1822	Marks	Louisville to New Orleans
<b>Car of Neptune</b>					
<b>Cavalier</b>	Cincinnati				
<b>Columbia</b>	Cincinnati	170	1824	Noble	Louisville to New Orleans
<b>Despatch</b>					
<b>Dolphin</b>					
<b>Enterprize</b>					
<b>Eagle 1st.</b>	Cincinnati	118	1818	Wood	Sunk
<b>Eagle 2nd.</b>	Bruinsburgh				Cotton Trade
<b>Exchange</b>	Louisville	212			
<b>Experiment 1st.</b>					
<b>Experiment 2nd.</b>					
<b>Eclipse</b>					
<b>Eliza</b>	Cincinnati		1821		Sunk

LIST OF STEAM BOATS—Continued.

59

Name of Steam Boats.	Where Built.	No Tons	Date	Names of Captains.	REMARKS.
Elizabeth Expedition		243			Sunk
Franklin					
Frankfort	Philadelphia	408	1820	Reed	St Francisville & New-Orleans
Felecliana		19			Sunk
Fire Fly	Pittsburgh	1822			Louisville to New Orleans
Favorite	Louisville	314	1819		Louisville to New Orleans
Fayette					
Fidelity	Pittsburgh				
Friendship					
Florence					
Fanny					
Gen. Pike 1st.	Cincinnati	1819			Condemned
Gen. Pike 2nd.	Big Bone	150	1824	Strader	Cincinnati to Louisville
Gov. Shelby	Louisville	106	1819		Laid up—Sunk
George Madison					
Gen. Jackson	Cincinnati	250		Smith	Nashville to New Orleans
Gen. Clark					Burnt
Gen. Harrison	Louisville	1819			
Gen. Robinson	Kentucky	238	1819		Sunk
Gen. Green	Cincinnati	306	1820		Sunk
Gen. Neville	Pittsburgh	120	1822		
Gen. Putnam					
Gen. Brown	Pittsburgh				
Geo. Washington	Cincinnati	375	1825	Shreves	Louisville to New Orleans
Hecla	Cincinnati	124			
Henderson					
Hero					
Henry Clay	Kentucky	119	1819		Sunk
Hornet					
Hope					
Herald	Pittsburgh	140	1825	Eichbaum	Pittsburgh to Louisville
Helen M'Gregor	Cincinnati	250	1825		Louisville to New Orleans
Independence	Salt River	99	1818		
Indiana	New Albany				Louisville to Wheeling
James Monroe	Pittsburgh		1816		Sunk
Johnson	Wheeling	140			Sunk
James Ross	Pittsburgh	270			Sunk
Kentucky	Kentucky	112	1817		Sunk
Louisiana	New Orleans		1818		
La Fayette	Pittsburgh		1825		
Leopard					
Monroe					
Magnet					
Manhattan	New York	427	1819	McKnight	Louisville to New Orleans
Mississippi		379			
Mercury					
Maysville	Maysville	209	1818		Condemned
Mandan					St. Louis Trade
Mars	WHEELING	55			
Maid of Orleans	Philadelphia	193			
Miami	Cincinnati	50	1822		
Missouri	Kentucky	177	1819		
Missouri Packet					Sunk in Missouri River
Mechanic					
Mexico	Cincinnati				
Mobile					
Marietta	Marietta	146			
New Orleans					
Napoleon	Louisville	316	1817		
Nashville	Cincinnati	170	1822		
Neptune					
Orleans		50			Sunk

Name of Steam-Boats.	Where built.	No Tons	Date	Names of Captain.	REMARKS.
Oliver Evans					Sunk
Ohio 1st.	New Albany	364	1817		Louisville to Pittsburgh
Ohio 2nd.	Portsmouth	45	1824	Butler	Louisville to New Orleans
Olive Branch		313		Miller	
Osage	Cincinnati	144	1820		
Providence	Kentucky				Pittsburgh to Louisville
Pittsburgh					
Pennsylvania	Pittsburgh				
P. & St. L. Packet	Pittsburgh	356	1819		Louisville to New Orleans
Paragon	Cincinnati	231	1819		Towing Business
Post Boy	New Albany				
Phoenix					
Plough Boy					
Pilot	Big Bone		1825		Louisville to Wheeling
Perseverance					
Patriot	Cincinnati		1825	James	Louisville to New Orleans
Pioneer	Cincinnati			Vail	Louisville to New Orleans
President	Pittsburgh				Nashville to New Orleans
Phabus					
Robert Jackson					
Rifleman	Louisville	231	1818		
Rapide	Pittsburgh	189	1819		Burnt
Ramapo	New York	147			New Orleans to St. Francisville
Race Horse					
Rambler					
Robert Thompson					
Rocket					
Rufus Putnam					
Rob Roy	Cincinnati				Cotton Trade
Red River	Marietta		1824	Kimball	Red River Trade
St. Louis					Burnt
Spartan					
Swan					
Steubenville	Pittsburgh				
Superior					
Scioto					
Swallow					
Tamerlane	Pittsburgh	307	1818		Burnt
Thos. Jefferson					
Teche		296		Campbell	Burnt
Telegraph					Sunk
Tennessee	Cincinnati	416	1819		Sunk
United States	Jeffersonville	644	1819		Sunk
Vesuvius	Pittsburgh	390	1814		
Volcano	New Albany	217	1818		
Vesta					Sunk
Virginia					Sunk
Vulcan	Cincinnati	258	1819	McKnight	Condemned
Venture					
Velocipede 1st.	Louisville	109	1820		Condemned
Velocipede 2nd	Louisville		1824	Beckwith	Louisville to Wheeling
Western Engineer	Pittsburgh		1819		Missouri River
Wheeling Packet	Wheeling				
Washington	Wheeling	212	1815	Shreve	
Yankee	Pittsburgh	87	1819		

## MARINE INSURANCES.

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INSURANCE is a contract by which the insurer undertakes, in consideration of a premium equivalent to the hazard run, to indemnify the person insured against certain perils and losses, or against some particular event. All insurances, whether against fire or on lives, fall within this general description; but the subject meant to be considered here, is that of MARINE INSURANCES. From this definition it appears to be a contract of indemnity against those perils to which ships and goods are exposed in the course of their voyage from one place to another.

A complete system of this branch of law cannot be suddenly erected; but it is the boast of this age, that in it the great foundations of marine jurisprudence have been laid, by clearly developing the principles on which policies of insurance are founded, and by applying those principles to particular cases. In the following treatise we shall endeavour to render the law of it so clear as to be a guide to the merchant, owner, freighter, and man of business. To effect this we have divided the subject, and it will be discussed in the following order:

I. The Policy. II. The construction of the Policy. III. Perils of the Sea. IV. Capture and Detention of Princes. V. Barratry of the Master or Mariners. VI. Partial Losses and Adjustment. VII. General Average. VIII. Salvage. IX. Abandonment.	X. Fraud in Policies. XI. Sea Worthiness. XII. Illegal Voyages. XIII. Re assurance and Double Insurance. XIV. Changing the Ship. XV. Deviation. XVI. Non-compliance with Warranties. XVII. Return of Premium. XVIII. Bottomry and Respondentia.
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### I. THE POLICY.

The Policy is the instrument by which the contract of indemnity is effected between the insurer and insured; and it is signed only by the insurer who is called the underwriter. Of policies there are two kinds, *valued*, and *open*; and the only difference between them is this, that in the former goods or property insured are valued at prime cost, at the time of effecting the policy; in the latter the value is not mentioned, but in case of loss must be proved.

Policies of assurance when once they are underwritten, can, generally speaking, never be altered by any authority whatever; because it would be an opening to fraud, and would introduce uncertainty into a

species of contract of which certainty and precision are the most essential requisites. It must be observed, however, that cases frequently exist in which a policy, upon proper evidence, may be altered; and, after signing, policies are frequently altered by consent of the parties.

An instance of the former kind of the alteration of the policy occurred before Lord Hardwicke. The insurance on the ship was five hundred pounds, and the policy stated that the adventure was to commence immediately from the departure of the ship from Fort St. George to London. The plaintiff suggested that the owner had employed a Mr. Halhead to insure the ship with the defendants, to commence *from her arrival at Fort St. George*; that a label, agreeable to those instructions, with all the particulars of the agreement, had been entered in a book and subscribed by Halhead and two of the directors of the company; that, by a *mistake*, the policy was made out different from the label; that the ship being lost in the bay of Bengal, *after her arrival at Fort St. George*, but *before her departure for England*, the company refuse to pay; the plaintiff, therefore, prayed that the mistake might be rectified, and that the company might be ordered to pay five hundred pounds with interest.

His lordship was of opinion that the label was a memorandum of the agreement, in which the material parts of the policy were inserted; that, although the policy was ambiguous, the label made it clear; and, as it was only a *mistake of the clerk*, it ought to be rectified according to the label: *Motteux v. the Governor and Company of the London Assurance*, 1 Atkyns, 545.

A policy of insurance is the property of the insured; and if it be wrongfully withheld, either by his broker or any other person, he may recover it by an action of trover. *Harding v. Carter and another*: sitting at Guildhall, Easter vacation, 1781.

Policies of insurance are generally printed, leaving blanks for the insertion of names and all other requisites. It is, therefore, frequently necessary to insert written clauses, and these written clauses and conditions thus inserted are to be considered as part of the real contract; the court will look to them to find out the intention of the parties, and will consequently suffer such conditions to control the printed words.

We will now proceed to consider, first, what things may be insured; secondly, what the requisites of a policy are.

### 1st. *What Things may be Insured.*

The most frequent subjects of marine insurance are ships, goods, merchandises, the freight or hire of ships. But, although insurances on such property most frequently occur, yet there are cases which can hardly fall within any of those descriptions.

Thus *bottomry* and *respondentia* are a particular species of property which may be the subject of insurance. But then it must be particularly expressed in the policy to be *respondentia* interest; for under a general insurance on goods, the party insured cannot recover money lent on *bottomry*. Such has been, and is at this day, the established usage of merchants.

This was decided in an action upon a policy of insurance, "upon goods and merchandises loaden, or to be loaden, &c. The evidence ap-

peared to be, that before the signing of the policy the plaintiff had lent Capt. Tryon *upon the goods* then loaden and to be loaden on board the said ship on account of the said Capt. Tryon, the sum of seven hundred and sixty-four pounds at *respondentia*, for which a bond was executed in the usual form: that the ship at the time of the loss had goods and merchandises on board, the property of Capt. Tryon, of greater value than all the money he had borrowed; that the ship was afterwards burnt, and all the goods and merchandise were totally consumed and lost. Upon these facts, the question was, whether the plaintiff could recover. This case was twice argued at the bar, the court took time to consider it, and were unanimous in their determination.

Lord Mansfield, in delivering the judgment of the court, observed to this effect. I incline to support this insurance, being convinced that it is fair, and that the doubt has arisen by a slip in omitting to specify (as it was intended to have been done) that this was a *respondentia* interest. The ground of supporting this insurance, if it could have been supported, was a clause of the 19 Geo. II. c. 37. § 5, which, as to the purpose of insurance, considers the borrower as having a right to insure only for the surplus value, over and above the money he has borrowed at *respondentia*. Yet we are all satisfied that this act of parliament, never meant, or intended to make any alteration in the manner of insurances; its view was to prevent gaming or wagering policies, where the insurer had no interest at all: and if the lender of money at *respondentia* were to be at liberty to insure for more than his whole interest, it would be a gaming policy; for it is obvious that if he could insure all the goods and insure his *respondentia* interest besides, this would amount to an insurance beyond his whole interest. In describing *respondentia* interest, the act gives the lender alone the right to make insurance on the money lent; so that the act left it on the practice. I have looked into the practice, and I find that bottomry and *respondentia* are a *particular species* of insurance in themselves, and have taken a particular denomination. I cannot find even a *dictum* in any writer, foreign or domestic, that the *respondentia* creditors may insure upon the *goods, as goods*. I find too, by talking with intelligent persons very conversant in the knowledge and practice of insurances, that they always do mention *respondentia* interest, whenever they mean to insure it. It might be greatly inconvenient to introduce a practice *contrary to general usage*, and there may be some opening to fraud if it be not specified.—The grounds of our resolution is, “that it is now established as the law and practice of merchants, that *respondentia* and bottomry must be specified and mentioned in the policy of insurance.” *Glover v. Black, 3 Burr. 1394.*

But though this case is certainly good law, yet it has since been ruled, that money expended by the captain for the use of the ship, and for which *respondentia* interest was charged, may be recovered under an insurance on *goods, specie and effects*, provided the *usage of the trade*, which in matters of insurance is always of great weight, sanctions it.

Thus, in an action upon a policy of insurance on *goods, specie and effects*, of the plaintiff, who was also the captain on board the ship, the plaintiff claimed under that insurance, money expended by him in the

course of the voyage for the use of the ship, and for which he charged "respondentia interest."

Lord Mansfield said, as to whether the words "*goods, specie and effects,*" extended to this interest, I should think not, if we were only to consider the words made use of. But here there is an *express usage* which must govern our decision. A great many captains in the East India service swear that this kind of interest is always insured in this way, and here the person insured is the captain. *Gregory v. Christie, K. B. Trinity Term, 24 Geo. III.*

Insurances upon the wages of seamen are forbidden; a regulation founded upon wisdom and sound policy; for by this salutary law the sailors are interested in the return of the ship: and they will on that account be prevented from deserting it when abroad, from leaving it unmanned, and will be more anxious for its preservation. This regulation, however, does not mean to prevent mariners from insuring those wages which they are entitled to receive abroad, or goods which they have purchased with those wages in order to bring them home; but in such a case they are to be considered in the same light with other men.

It has long been a question how far insurances upon the ships or goods of enemies are politic; but whether such a contract be founded in principles of sound policy or not, it is certainly not contrary to the law of England, as it is established at this day.

### *Secondly. Of the Requisites of a Policy.*

The essentials in a policy of insurance are, first, the name of the person for whom the insurance is made; secondly, the name of the ship and master; thirdly, whether they are ships, goods, or merchandises upon which the insurance is made; fourthly, the name of the place where the goods are laden, and whither they are bound; fifthly, the time when the risk begins and when it ends; sixthly, all the various perils and risks which the insurer takes upon himself; seventhly, the consideration, or premium, paid for the risk or hazard run; eighthly, the month, day, and year on which the policy is executed.

### *First. Of the name of the person insured.*

Every policy of assurance ought to contain the name or the used style and firm of dealing of one or more of the persons interested in such insurance; or instead thereof the name or firm of the consignor or consignee of the goods and property to be insured, or the name or firm of the persons who order or effect such policy.

### *Secondly. Of the names of the Ship and Master.*

It seems to be necessary, by the law and usage of merchants, to insert the names of the ship and master, in order to ascertain the bottom upon which the adventure is to be made, and the captain by whose direction the ship is to be navigated. Sometimes, however, there are insurances generally, "upon any ship or ships," expected from a particular place; and although it is more accurate to insert the name of the captain, it is not certain that the insurance would be void if a different captain from that mentioned in the policy came into the ship; especially as the policy always contains the words "or whosoever else shall go for master in said ship."

*Thirdly. Whether they are Ships, Goods, or Merchandises, upon which the Insurance is made.*

It is absolutely necessary that there should be a specification upon which of these the underwriter insures. But it is another question, whether in policies upon goods, it be necessary to declare the particulars. The practice is very unsettled; in the opinion, however, of very respectable merchants, the particulars of goods should be specified, if possible, by their marks, numbers, and packages, and not under the general denomination of merchandise. When goods are coming from abroad, it is better to insure under general expressions, on account of the various casualties which may happen to obstruct the purchase of the commodities intended to be sent.

There are certain kinds of merchandise, which are of a perishable nature, on account of which, there is inserted a memorandum at the foot of the policy, by which it is declared, that, in insurances upon corn, fish, salt, fruit, flour and seed, the underwriters will not be answerable for any partial loss, but only for general average, except the ship be stranded. That in assurances on sugar, tobacco, hemp, flax, hides and skins, they consider themselves free from partial losses, not amounting to *five per cent.* and that on all other goods, as well as on the ship and freight, if the partial loss be under *three dollars per cent.* unless it arise from a general average, or the stranding of the ship, the underwriter considers himself discharged.

There are some kinds of property, which do not fall under the general denomination of *goods* in a policy; and for the loss of which the underwriters are not answerable, unless they are specifically named; such as *goods lashed on deck, the captain's clothes, and the ship's provisions.* A policy on *goods* means only such goods as are merchantable, and a part of the cargo; and, therefore, when goods like the present are meant to be insured, they are always insured by name, and the premium is greater. *Ross v. Thwaite, Sitt. after Hilary, 16 Geo. III.*

*Fourthly. The name of the place at which the Goods are laden, and to which they are bound.*

This has been always held to be necessary in policies, and must be so, on account of the evident uncertainty which would follow from a contrary practice, as the insurer would never know what the risk was which he had undertaken to insure; and, therefore, if a ship be insured from London to ——, a blank being left by the lader of the goods to prevent a surprise by an enemy, and if in her voyage she happen to be cast away, though there be private instructions for her port, yet the insured must sit down with his loss, by reason of the uncertainty. *Molloy, b. 2. c. 7. s. 14.*

It is also customary to state in the policy at what port or place the ship may touch and stay during the voyage, so that it shall not be considered as a *deviation* to go to any of those places.

*Fifthly. The Time when the Risk commences, and when it ends.*

The English policies expressly declare, that "the adventure shall begin upon the said goods and merchandise, from the loading thereof on board the said ship, and so shall continue until the said ship, goods and

merchandises, shall be arrived at L. and upon the said ship until she hath moored at anchor 24 hours in good safety; and upon the goods till the same be there safely discharged and landed." From these words, it is obvious, that the insurers are not answerable for any accident which may happen to the goods in lighters or boats going aboard, previous to the voyage; yet as the policy says, the risk shall continue till the goods are safely landed, it seems the insurer continues responsible for the risk to be run in carrying the goods in boats to the shore. If there be a loss, however, in these cases, the accident must have happened while the goods were in the boats or lighters belonging to the ship; but in a case where the owner of the goods brings down his own lighter, receives the goods out of the ship, and before they reach land, an accident happens, whereby the goods are damaged, the insurer is discharged, although the insurance be upon goods to London, and till the same be safely landed there. *Sparrow v. Carrothers*, 2 Stra. 1236.

In the unloading of goods there should be no unreasonable delay, but this must always depend upon circumstances.

The risk on the body of a ship is generally to commence "from her beginning to load at —, and so shall continue and endure until the said ship shall arrive at —, and hath there been moored at anchor 24 hours in good safety." This mode of stating the commencement of the risk must commonly be applied to insurances on ships outward bound; for, when insurance is made on the homeward risk, the beginning of the adventure is sometimes stated to be "immediately from and after her arrival at the port abroad;" at other times, "from the departure;" and in short, it is very variable, depending upon the inclination of the insured.

#### *Sixthly. Of the various Perils and Risks against which the Underwriter insures.*

The words now used expressive of the insurer's risks are very extensive, including "all perils of the sea, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter-mart, surprisals, taking at sea, arrests, restraints and detainments, of all kings, princes and people, of what nation, condition, or quality soever; barratry of the master or mariners, and all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandises, and ship, or any part thereof." In addition to these, however, it is frequently the practice to insure her *lost or not lost*, in which, if the ship should be lost, at the time of the insurance, still the underwriter, provided there be no fraud, is liable. This practice is peculiar to American and English policies, not being adopted by other nations.

#### *Seventhly. The Consideration or Premium for the Risk or Hazard run.*

This is always expressed to have been received at the time of underwriting; "we, the assurers, confessing ourselves paid the consideration due unto us for this assurance by the assured." This being subscribed by the underwriter, it is proper to enquire whether, if the premium were not actually paid at the time, he could afterwards maintain an action for it against the *assured*, who might then produce his subscription

in evidence against himself. Questions, upon policies of assurance, stand most broadly upon the usage of the place where the policy is effected, and this question would, no doubt, be determined by usage. By the custom of London, the underwriter credits the broker, and not the assured, for the premium; and therefore the underwriter cannot demand it of the assured; but the broker as certainly could.

*Eighthly. The Day, Month and Year on which the Policy is executed.*

This insertion seems very necessary, because, by comparing the date of the policy with the date of facts which happened afterwards, or are material to be proved, it will frequently appear, whether there is any reason to suspect fraud or improper conduct on the part of the insured.

II. THE CONSTRUCTION OF THE POLICY.

In the construction of policies two rules chiefly prevail, viz: to give effect to the intentions of the parties, and to the *usage of trade*, with respect to the particular voyages or risks to which the policy relates.

In a case so early as in the time of James the Second, a policy of insurance was construed to run until the ship had ended and was discharged of her voyage; for arrival at the port to which she was bound, was not a discharge *till she was unloaded*.

But although this construction is right, where the policy is general from A to B, yet if it contains the words usually inserted, “*and till the ship shall have moored at anchor twenty-four hours in good safety*,” the underwriter is not liable to any loss arising from seizure after she has been twenty-four hours in port: even if such seizure was in consequence of an act of barratry of the master *during the voyage*. Lockyer and others *v. Offley*. 1 Term Rep. p. 252.

Upon an insurance from London to the East Indies, warranted to depart with convoy, the facts were, that the ship went from London to the Downs, and from thence with convoy, and was lost. It was adjudged that the clause “*warranted to depart with convoy*,” must be construed according to the usage among merchants, that is, from such place where convoys are to be had, *as the Downs*. Lethulier’s case. 2 Salk. 443.

The ship Success was insured, “*at and from Leghorn to the port of London, and till there moored twenty-four hours in good safety*.” She arrived the 8th of July at Fresh Wharf and moored, but was the same day served with an order to go back to the Hope to perform a fourteen days quarantine. The men upon this deserted her, and on the 12th of the month the captain applied to be excused going back, which petition was adjourned to the 28th, when the regency ordered her back; and on the 30th she went back, performed the quarantine, and then sent up for orders to air the goods; but before she returned the ship was burnt, on the 23d of August, and the question was, whether the insurer was liable.

Lord Chief Justice Lee ruled, that though the ship was so long at her moorings, yet she could not be said to be there in *good safety*, which must mean the *opportunity* of unloading and discharging.—*Waples v. Eames*. 2 Stra. 1243.

In an insurance upon *freight*, if an accident happens to the ship before any goods are put on board, which prevents her from sailing, the insured upon the policy cannot recover the freight which he would have earned if she had sailed. *Tongue v. Watts.* 2 Stra. 1251.

But if the policy be a valued policy, and part of the cargo be on board when such accident happens, the rest being ready to be shipped, the insured may recover to the whole amount.—*Montgomery v. Eggington.* 3 Term Rep. 362.

The words "at and from Bengal to England," mean the *first arrival* at Bengal; and when such words are used in policies, *first arrival* is always implied and understood.—1 Atk. 584.

When a ship is insured *at and from a place* and it arrives at that place, as long as the ship is preparing for the voyage upon which it is insured, the insurer is liable; but, if all thoughts of the voyage be laid aside, and the ship lie there five, six, or seven years, with the *owner's* privity, the insurer is not liable. *Chitty v. Selwin.* 2 Atk. 359.

A ship was insured *at and from Jamaica to London*: she had also been insured from London to Jamaica generally, and was lost in coasting the island, after she had touched for some days at one port there, but before she had delivered all her outward-bound cargo at the other ports of the island. The question was, when the outward-bound risk commenced, and at what time the outward-bound risk determined. A special jury, after an examination of merchants as to the custom, decided, that the outward risk ended when the ship had moored in *any* port of the island, and did not *continue* till she came to the last port of delivery.—*Camden v. Cowley.* 1 Blackst. 417.

And this has since been confirmed by Lord Mansfield, who laid down in this doctrine, that the outward risk upon the ship ended twenty-four hours after its arrival in the first port of the island to which it was destined; but that the outward policy upon goods continued till they were landed. *Barrass v. London Assurance.* Sittings after Hilary, 1782.

An action was brought upon a policy of insurance "on goods, in a Dutch ship, from Malaga to Gibraltar, and at and from thence to England and Holland, both, or either; on goods, as hereunder agreed, beginning the adventure from the loading, and to continue till the ship and goods be arrived at England or Holland, and there safely landed." The agreement was, "that, upon the arrival of the ship at Gibraltar, the goods might be unloaded, and reshipped in one or more British ship or ships for England and Holland, and to return one *per cent.* if discharged in England." It appeared in evidence, that, when the ship came to Gibraltar, the goods were unloaded, and put into a *store ship*, (which it was proved was always considered as a *warehouse*,) and that there was then no British ship there. Two days after the goods were put into the *store ship*, they were lost in a storm.

Lee, chief justice.—Policies are to be construed largely, for the benefit of trade, and for the insured. Now, it seems to be a strict construction, to confine this insurance only to the unloading and reshipping, and the accidents attending that act. The construction should be according to the course of trade in this place; and this appears to be the usual mode of unloading and reshipping in that place, viz: that,

when there is no British ship there, then the goods are kept in store ships. Where there is an insurance on goods on board such a ship, that insurance extends to the carrying the goods to shore in a boat. So, if an insurance be of goods to such a city, and the goods are brought in safety to such a port, though distant from the city, that is a compliance with the policy, if that be the usual place to which the ships come. Therefore, as here is a liberty given of unloading and reshipping, it must be taken to be an insuring under such methods as are proper for unloading and reshipping. There is no neglect on the part of the insured, for the goods were brought into port the 19th, and were lost the 22d of November. This manner of unloading and reshipping is to be considered as the necessary means of attaining that which was intended by the policy: and seems to be the same as if it had happened in the act of unshipping from one ship into another. And as this is the known course of the trade, it seems extraordinary, if it were not intended. This is not to be considered as a suspension of the policy; for, as the policy would extend to a loss happening in the unloading and reshipping from one ship to another, so any means to attain that end come within the meaning of the policy. The plaintiff had a verdict.—*Tiernay v. Etherington.* 1 Bur. 348.

The decisions on this subject, notwithstanding the vast variety of their circumstances, are uniform in principle; and the judges always make a constant reference to the usage of trade.

At the same time, though the general rule be to refer to the usage of the trade, yet the parties contracting may, by their own agreement, prevent such a latitude of construction. In order to do this, it is not necessary that express words of exclusion should be inserted in the policy; but if, from the terms used, the court can collect, that such was the intention of the parties, that construction, which is most agreeable to their intention, will prevail.—*Lavabre v. Wilson.* Doug. 27.

When an insurance is made on one species of property, the damage suffered by loss of property, different from that named in the policy, cannot be recovered. Thus a man, who has insured a cargo of goods, cannot recover the *freight* which he has paid for the carriage of that cargo; nor can an owner, who insures the *ship* *merely*, demand satisfaction for the loss of merchandise, laden thereon, or ask from the insurers *extraordinary wages paid to the seamen, or the value of provisions consumed*, by reason of the detention of the *ship* at any port longer than was expected.—*Fletcher and others v. Poole.* Sittings after Easter, 1796. *Baille v. Modigliani.* Hilary Term, 25 Geo. III.

On a policy, on a *ship*, sailors' wages or provisions are never allowed in settling the damages; for, if a ship is detained, in consequence of any injury received in a storm, though the underwriter must make good that damage, yet the insured cannot come upon him for the amount of wages or provisions during the time she was so repairing.—*Robertson v. Ewer.* 3 Term Rep. 127.

But, on a policy on a ship and *furniture*, where the *provisions for the crew* were burnt, it was determined, that *provisions for the crew* are comprehended under *furniture*, and that the underwriter was of course answerable for their loss.—*Brough v. Whitmore.* 4 Term Rep. 206.

In order to entitle the insured to recover, the loss must be a direct and immediate consequence of the peril insured, and not a remote one.

In an action on a policy of insurance on the ship *Mary*, a letter of marque, the words of the policy were, "at and from Liverpool to Antigua, with liberty to cruise six weeks, and to return to Ireland, or Falmouth, or Milford, with any prize or prizes." The ship having been taken, this action was brought, when a verdict was found for the plaintiffs.

The material parts of the evidence were, that the policy was made on the 9th of February, 1779, and there was no time fixed in it for the commencement or the duration of the voyage. The captain of the ship swore, that he sailed from Liverpool on the 28th of February; he was five days before he cleared the land; and he proceeded on his direct voyage till the 14th of March, chasing, however, at different times, from the 7th to the 14th, at which time he began his cruise, giving notice thereof to the crew, and ordering a minute of it to be entered into the log-book, which was done. From the 14th of March, he continued cruising about the same latitude till the 17th or 18th of April, when he discontinued the cruise, of which he also gave notice, intending to go to the Burlings, off Lisbon, in the course of his voyage. On the 23d he renewed the cruise, of which he gave notice, as before, and ordered a minute, to that purpose, to be entered in the log-book. From that time he continued cruising till the 28th of April, when he was taken by an American privateer. Many witnesses were examined, some of whom thought that the liberty of cruising, given by the policy, meant six successive weeks; others conceived, that, if the separate times of cruising, when added together, should not exceed the space of six weeks, the terms of the insurance would be complied with; but none of them could prove any usage, as none of the witnesses ever knew a case exactly circumstanced like the present.

A motion was made for a new trial; upon which Lord Mansfield said, here, the subject matter, in my opinion, is decisive to show, that the six weeks meant one *continued* period of time. A cruise is a well known expression for a connected portion of time. There are frequently articles for a month's cruise, a six weeks cruise, &c. Such a liberty, as in this case, to a letter of marque, is an excuse for a deviation; for the true meaning is, "I will excuse a deviation for six weeks." If they had meant separate days, they would have said forty-two days.—The court ordered a new trial.

Insurance on a ship and cargo, from Liverpool to Oporto. The ship sailed, but was driven back by contrary winds; and, before she could sail again, an embargo was laid. The insured applied to the underwriters for leave to put guns on board, and to take out a letter of marque. The underwriters consented to the guns, for her defence, but refused the letter of marque. Notwithstanding which, a general letter of marque was obtained, and put on board. The ship sailed and was taken on her voyage out. The jury thought that this letter of marque was not intended to be used but in the voyage home. The court however determined that this vacated the policy.—*Denison v. Modigliani*: 5 Term Rep. K. B. 580. Easter Term, 1794.

Thus it appears, that the material rules to be adhered to, in the construction of policies, are the intention of the parties entering into the contract, and the usage of trade.

### III. PERILS OF THE SEA.

It may in general be said, that every thing which happens to a ship in the course of her voyage, by the immediate act of God, without the intervention of human agency, is a peril of the sea. Thus every accident happening by the violence of wind or waves, by thunder or lightning, by driving against rocks, by the stranding of the ship, or by any other violence which human prudence could not foresee, nor human strength resist, may be considered as a loss within the meaning of such a policy; and the insurer must answer for all damages sustained in consequence of such accident. 1 Magens, 52, 76.

If a ship has been missing, and no intelligence received of her within a reasonable time after she sailed, it shall be presumed that she founder'd at sea. Newby *v.* Read, sittings after Michaelmas. 3 Geo. III.

And even in an action on a policy, in which there was a warranty *against captures and seizures*, where it was insisted for the defendant, that as captures and seizures were excepted, it lay upon the plaintiff to prove that the loss happened in the particular manner stated. Lord Chief Justice Lee said it would be unreasonable to expect certain evidence of such a loss, where every body on board is presumed to be drowned; and all that can be required, is the best proof the nature of the case admits of, which the plaintiff has given. The jury found a verdict for the plaintiff.—Green *v.* Brown. 2 Stra. 1190.

A practice prevails among insurers that a ship should be deemed lost if not heard of in twelve months after her departure, or after the time of the last intelligence from her. If, under this usage, the insurer should pay the money, supposing the ship lost, when it really is not, he may, as we shall see hereafter, recover it back in an action.

### IV. CAPTURE AND DETENTION OF PRINCES.

A ship is to be considered as lost by capture, though she be never condemned at all, nor carried into any port or fleet of the enemy, and the insurer must pay the value. If after a condemnation the owner recover or retake her, the insurer can be in no other condition than if she had been retaken or recovered before condemnation. The insurer runs the risk of the insured, and undertakes to indemnify; he must therefore bear the *loss actually* sustained. So that if after condemnation the owner recovers the ship in her complete condition, but has paid salvage, or been at any expense in getting her back, the insurer, must pay the loss so actually sustained. No capture by the enemy can be so total a loss as to leave no possibility of recovery.

Where a capture has been made, whether it be legal or not, the insurers are liable for the charges of a compromise made, *bona fide*, to prevent the ship from being condemned as prize, or to avoid a greater expense.—Berens *v.* Rucker. 1 Blackst. 313.

In cases of capture, the underwriter is immediately responsible to the insured. But if the ship be recovered before a demand for indemnity, the insurer is only liable for the amount of the loss actually sustained at the time of the demand: or if the ship be restored at any time subsequent to the payment by the underwriter, he shall then stand in the place of the insured, and receive all the benefits and advantages resulting from such restitution. All these regulations have their foundation in this great principle, that a policy of insurance is nothing more than a contract of indemnity.

The underwriter is likewise answerable for all loss or damage arising to the insured, "by the arrests, restraints, and detainments, of all kings, princes and people, of what nation, condition, or quality whatsoever."

The only question then is, what shall be considered as such detention. Lord Mansfield has said, that the insured may abandon in case merely of an arrest or embargo by a prince, not an enemy; and consequently such an arrest is a loss within the meaning of the word *detention*. 2 Burr. 696.

An embargo is an *arrest* laid on ships or merchandise by public authority, or a prohibition of state commonly issued to prevent foreign ships from putting to sea in time of war, and sometimes also to exclude them from entering our ports. Ships are frequently detained to serve a prince in an expedition, and for this end have their loading taken out, without any regard to the colours they bear or the princes to whose subjects they belong. And this is an arrest within the meaning of the policy.

In case of a detention by a foreign power, which in time of war may have seized a neutral vessel at sea, and carried it into port to be searched for enemy's property, all the charges consequent thereon must be borne by the underwriter, and whatever costs may arise from an improper detention must always fall upon them.—Saloucci *v.* Johnson. Hil. 25 Geo. III.

But, though an underwriter is liable for all damage arising to the owner of the ship or goods from the restraint or *détention* of princes, yet that rule is not extended to cases where the insured navigates against the laws of those countries in the ports of which he may chance to be detained, or to cases where there shall be a seizure for non-payment of custom. 2 Vern. 176.

If indeed any of those acts were committed by the master of the ship, without the knowledge of the insured, the underwriter would be liable, not for losses by *detention*, but for a loss by the barratry of the master.

Since the case of Robertson *v.* Ewer, mentioned before, there seems to be very little doubt but that an underwriter is liable to pay damages arising by the *detention* or *seizure* of ships by the government of the country to which they belong: for an embargo had been laid by Lord Hood on all shipping at Barbadoes, and it was never doubted that the insurer was liable for any loss which might have been sustained by such detention, provided the loss had happened to any of the property specifically insured. If the ship be detained by the order of the sovereign before her departure for the voyage, but *after the risk commenced*, the insurer by our law is liable for the damage occasioned by such

detention, as the words in the policy do in themselves import no restriction to the restraints and embargoes by foreign potentates only.

Although the words of this part of the policy are "*arrests, restraints, and detainments, of all kings, princes and people, of what nation, condition, or quality, whatsoever;*" yet the word *people* must be understood as applying to those people who are the ruling power of the country, and not to any assemblage of people who arrest the ship in a violent and riotous manner.—*Nesbit v. Lushington.* 4 Term Rep. 783.

Before the insured can recover against the underwriter in cases of detention, he must first *abandon* to the insurers, his right, and whatever claims he may have to the goods insured. This point will be treated of under the head of abandonment.

## V BARRATRY OF THE MASTER OR MARINERS.

Barratry is committed when the master of the ship or the mariners, cheat the owners or insurers, whether it be by running away with the ship, sinking her, deserting her, embezzling the cargo, or by carrying a ship a course different from their orders. Postlethwaite's Dict. I vol. p. 136, 214. These definitions are so very comprehensive that they seem to take in every case of barratry known to the law of England. From a review of the decisions on this subject, it appears that any act of the master, or of the mariners, which is of a criminal nature, or which is grossly negligent, tending to their own benefit, to the prejudice of the owners of the ship, *without their consent or privity*, is barratry.

It is not necessary in order to entitle the insured to recover for barratry that the loss should happen *in the act of barratry*; that is, it is immaterial whether it take place *during the fraudulent voyage*, or *after the ship has returned to the regular course*; for the moment the ship is carried from its right track with an evil intent, barratry is committed. *Cowp. Rep.* 155.

But the loss in consequence of the act of barratry must happen *during the voyage insured*, and within the time limited by the policy; for if the captain be guilty of barratry by smuggling, and the ship afterwards arrive at the port of destination, and *be there moored at anchor twenty-four hours in good safety*, the underwriters are not liable if after this she should be seized for that act of smuggling. *Lockyer v. Offley.* 1 Term Rep. p. 252.

If the act of the captain be done with a view to the benefit of his owners, and not to advance his own private interest, no barratry is committed. To constitute barratry, it must be *without the knowledge or consent of the owners*.

On a case stated for the opinion of the court, Lord Mansfield observed—It is somewhat extraordinary that the word *barratry* should have crept into insurances, and still more that it should have continued in them so long; for the underwriter insures the conduct of the captain, whom he does not appoint and cannot dismiss, to the owner who can do either. The point to be considered is whether barratry, in the sense in which it is used in our policies of insurance, can be committed against any but the owners of the ship. It is clear, beyond contradiction, that

it cannot; for *barratry* is something contrary to the duty of *master and mariners*, the very terms of which imply that it must be in the relation in which they stand to the *owners of the ship*. The words used are the *master and mariners*, which are very particular. *An owner cannot commit barratry.* He may make himself liable by his *fraudulent conduct* to the owner of the goods, but not *as for barratry*. And besides barratry cannot be committed against the owner, *with his consent*; for though the owner may become liable for a civil loss by the misbehaviour of the captain, if he consents, yet that is not *barratry*. Barratry must partake of something criminal, and must be committed *against the owner* by the *master or mariners*. In the case of Valejo and Wheeler, the court took it for granted, that barratry could only be committed against the owner of the ship.

If the owner be also master of the ship, any act, which in another master would be construed into barratry, cannot be so in him.

If the parties insert in the policy the words *in any lawful trade*, if the captain commit barratry by smuggling, the underwriters are answerable. For otherwise the word *barratry* should be struck out of the policy; and most clearly the stipulation in the policy respecting the employment of the ship in a lawful trade, must mean, as was said by Lord Kenyon, in delivering the unanimous opinion of the court, *the trade on which she is sent by the owners*.—Havelock *v.* Hancil. 3 Term. Rep. 277.

A very accurate definition of one species of *barratry* has been laid down in the case of Ross *v.* Hunter.

This was an insurance on goods on board the Live Oak, at and from Jamaica to New Orleans. She sailed on the voyage, insured in May, 1783, and arrived, in June following, at the mouth of the river Mississippi. When the captain had got thus far, he dropped anchor, and went in his boat up the river to New Orleans; and, on his return, without carrying the ship to her port of destination, stood away for the Havanna; after his departure whence he was never afterwards heard of. A verdict was found for the plaintiff against the underwriter.

Mr. Justice Buller said, in one sense of the word, barratry is a *deviation* by the captain, *for fraudulent purposes of his own*. Then the question in this case is, whether the captain did deviate *with a fraudulent view*. The jury have thought that he had a fraudulent intention, and therefore the verdict is right.—4 Term Rep. 35.

## VI. PARTIAL LOSSES, AND ADJUSTMENT.

A total loss does not always mean that the property insured is irrecoverably lost or gone; but that, by some of the perils mentioned in the policy, it is in such a condition as to be of little use or value to the insured, and so much injured as to justify him in abandoning to the insurer, and in calling upon him to pay the whole amount of his insurance, as if a total loss had actually happened. But a total loss is so intimately blended with the doctrine of abandonment, that we shall defer what may be said on this subject till we come to the head of abandonment. Here it will be sufficient to remark, that in case of total loss, literally so called, the *prime cost* of the property insured, or the

value mentioned in the policy, must be paid by the underwriter; at least as far as his proportion of the insurance extends. The insurer has nothing to do with the market; he has no concern in any profit or loss which may arise to the merchant from the sale of the goods.— If they be totally lost, he must pay the value of the things he insured at the *outset*; he has no concern in any subsequent value. So, if part of the cargo, capable of a several and distinct valuation at the outset, be totally lost, as if there be one hundred hogsheads of sugar, and ten happen to be lost, the insurer must pay the prime cost of those ten hogsheads, without any regard to the price for which the other ninety may be sold.

The word *average*, in *policies*, has two significations; it means "*a contribution to a general loss*;" and it is also used to signify "*a particular partial loss*." That which means "*a contribution to a general loss*" will be treated of in the next division.

Partial loss (the subject of our present inquiry) implies a damage, which the ship may have sustained, in the course of her voyage, from any of the perils mentioned in the policy; when applied to the cargo, it means the damage which the goods may have received without any fault of the master, by storm, capture, stranding, or shipwreck, although the whole, or the greater part thereof, may arrive in port. The partial losses fall upon the owners of the property so damaged, who must be indemnified by the underwriter.

The underwriters of London expressly declare, as appears from a memorandum at the foot of the policy, that they will not answer for partial losses, not amounting to *3 per cent.* This clause was intended to prevent the underwriters from being continually harrassed by trifling demands. But, at the same time that they provide against trifling claims for partial losses, they undertake to indemnify against losses, however inconsiderable, that arise from a general average.

When we speak of the underwriters being liable to pay, whether for total or partial losses, it must always be understood, that they are liable only in proportion to the sums which they have underwritten. Thus, if a man underwrote 100*l.* upon property valued at 500*l.* and a total loss happened, he shall be answerable for 100*l.* and no more, that being the amount of his subscription; if only a partial loss, amounting to 60*l.* or 70*l. per cent.* upon the whole value, he shall pay 60*l.* or 70*l.* being his proportion of the loss.

As to the question of how the proportion of damage is to be ascertained, the grand and leading case is that of *Lewis and another v. Rucker*, 2 Bur. 1167, from which, as it was so ably treated by Lord Mansfield, we think it necessary to give copious extracts.

A rule having been obtained by the plaintiffs, who were the insured, for the defendant (the insurer) to show cause, why a verdict, obtained by him, should not be set aside, and a new trial had:

The court after hearing the matter fully debated, took time to advise, and their unanimous opinion was delivered, to the following effect, by

Lord Mansfield. This was an action brought upon a policy, by the plaintiffs, for Mr. James Bordieu, upon the goods on board a ship, called the *Vrow Martha*, at and from St. Thomas's Island to Hamburg, from the loading at St. Thomas's Island till the ship should arrive and land

the goods at Hamburg. The goods, which consisted of sugars, coffee, and indigo, were valued; the clayed sugars at 30*l.* per hogshead; the Muscovado sugars at 20*l.* per hogshead; and the coffee and indigo were likewise respectively valued. The sugars were warranted free from average, (that is partial loss) under 5*l.* per cent. and all other goods free from average under 3*l.* per cent. unless general or the ship be stranded.

In the course of the voyage the sea-water got in; and, when the ship arrived at Hamburg, it appeared that every hogshead of sugar was damaged. The damage the sugars had sustained made it necessary to sell them immediately, and they were accordingly sold; but the difference between the price which they brought, on account of the damage, and that which they might then have sold for at Hamburg, if they had been sound, was as 20*l.* 0*s.* 8*d.* per hogshead is to 23*l.* 7*s.* 8*d.* per hogshead; (that is, if sound, they would have been worth 23*l.* 7*s.* 8*d.* per hogshead; as damaged, they were only worth 20*l.* 0*s.* 8*d.* per hogshead.)

The defendant paid money into court, by the following rule of estimating the damage: *he paid the like proportion of the sum, at which the sugars were valued in the policy, as the price the damaged sugars bore to sound sugars at Hamburg, the port of delivery.* And the only question was, by what measure or rule the damage, upon all the circumstances of the case, ought to be estimated.

The special jury (amongst whom there were many sensible merchants) found the defendant's rule of estimation to be right, and gave the verdict for him.

And it is now the duty of the court to say, whether the jury have estimated the damage by a proper measure. This is the rule by which it was estimated.

The defendant takes the proportion of the difference between sound and damaged at the port of delivery, and pays that proportion upon the value of the goods specified in the policy, and has no regard to the price in money, which either the sound or the damaged goods bore in the port of delivery. He says, the proportion of the difference is equally the rule, whether the goods came to a rising or a falling market. For instance, suppose the value in the policy to be 30*l.* the goods are damaged, but sell for 40*l.*—if they had been sound they would have sold for 50*l.* The difference then between the sound and damaged is a fifth, consequently the insurer must pay a fifth of the prime cost, or value in the policy, that is 6*l.* *e converso*, if they come to a losing market, and sell for 10*l.* being damaged, but would have sold for 20*l.* if sound, the difference is one half; the insurer must pay half the prime cost, or of the value in the policy, that is 15*l.*

To this rule an objection has been made; though it is going by a different measure in the case of a partial, from that which governs in case of a total loss; for, upon a total loss, the prime cost, or value in the policy must be paid. The answer to which objection is, that the distinction is founded in the nature of the thing. Insurance is a contract of indemnity, against the perils of the voyage, to the amount of the value in the policy; and, therefore, if the thing be totally lost, the insurer must pay the whole value which be insured at the outset. But where

a part of the commodity is spoiled, no measure can be taken from the prime cost to ascertain the quantity of the damage sustained. The only way is, to fix whether the thing be a third or a fourth worse than the sound commodity; and then you pay a third or fourth of the prime cost, or value of the goods so damaged.

We are of opinion, that the rule by which the jury have gone is the right measure.

Wherever there is a specific description of casks, or goods, the rule of estimating the average is as above stated; but, in a subsequent case, the property, which consisted in various goods, taken from an enemy, was valued at the sum insured, and part was lost by perils of the sea; consequently the same rule could not be adopted, on account of the nature of the thing insured. The only mode was to go into an account of the whole value of the goods, and take a proportion of that sum as the amount of the goods lost. *Le Cras v. Hughes*, East. Term, 22 Geo. III.

Some goods are in their nature perishable; and, therefore, the underwriters have, by express words inserted in their policy, declared that they will not be answerable for any partial loss happening to *corn, fish, salt, fruit, flour, and seed*, unless it arise by way of a general average, or in consequence of the ship being stranded. Upon this clause it is necessary to observe, that *corn* is a general term, and includes many particulars; peas and beans have been held to come within the meaning of the word. *Mason v Skurray*, Sit. after Hilary, 1780.

But in a late trial at Guildhall, in the court of common pleas, Mr. Justice Wilson was of opinion, that the term *salt* did not include *salt petre*.—*Journeu v. Bourdieu*, Sittings after East. Term, 27 Geo. III.

It has likewise been determined, that there cannot be a total loss of *corn, fish, salt, fruit, flour, or seed*, but by the *absolute destruction* of the things insured; for, while it specifically remains, though wholly unfit for use, and though the loss of it exceeds the sum to be paid for the freight of it, that this is not such a loss as is to be borne by the underwriters. *Wilson v. Smith*. 3 Bur. 1550. *Mason v. Skurray*, Sittings after Hilary Term, 1780.

When the quantity of damage sustained in the course of the voyage is known, and the amount which each underwriter of the policy is liable to pay, is settled, it is usual for the underwriter to endorse on the policy "*adjusted this loss at so much per cent.*" or some words to the same effect. This is called an adjustment.

After an adjustment has been signed by the underwriter, if he refuse to pay, the owner has no occasion to go into a proof of his loss, or any of the circumstances respecting it; but, if any fraud were used in obtaining the adjustment, that would be a ground for setting it aside.—*Hogg v. Gouldney*, Sitt. after Trin, 1745. *Beawes, Lex Merc.* 310.—*Thellusion v. Fletcher, Dougl.* 301.

If any insurer pay money for a total loss, and in fact it be so at the time of adjustment; if it afterwards turn out to be only a partial loss, he shall not recover back the money so paid to the insured: for substantial justice is done by putting him in place of the insured, and giving him all the advantages that may arise from the salvage. *Da Costa v. Frith*. 4 Burr. 1966.

## VII. GENERAL AVERAGE.

Whatever the master of a ship in distress does for the preservation of the whole, in cutting away masts or cables, or in throwing goods overboard to lighten his vessel, which is what is meant by jettison or jetson, is permitted to be brought into a general average: in which all who are concerned in ship, freight, and cargo, are to bear an equal or proportionable part of the loss of what was so sacrificed for the common welfare; and it must be made good by the insurers in such proportion as they have underwritten.—1 Magens, 55.

In order to make the act throwing the goods overboard legal, the ship must be in distress, and the sacrificing a part must be necessary to preserve the rest.

If the ship ride out the storm and arrive in safety at the port of destination, the captain must make regular protests, and must swear, in which some of the crew must join, that the goods were cast overboard for no other cause but for the safety of the ship and the rest of the cargo.—Beawes, 148. Molloy, 1. 2. c. 6. s. 2.

There can be no contribution (which is another word used frequently for this species of *averages*) without the ejection of some goods, and the saving of others; but it is not always necessary for the purpose of contribution that the ship should arrive at the port of destination.

If the jettison does not save the ship, but she perish in the storm, there shall be no contribution of such goods as may happen to be saved; because the object for which the goods were thrown overboard was not attained. But if the ship be once preserved by such means and continuing her course, should afterwards be lost, the property saved from the second accident shall contribute to the loss sustained by those whose goods were cast out upon the former occasion.—2 Magens, 98.

It is hardly necessary to state with minuteness the various accidents and charges that will entitle the party suffering to call upon the rest for a contribution; because, we may refer them all to this principle, that all losses sustained and expenses incurred voluntarily and deliberately, with a view to prevent a *total loss* of the ship and cargo, ought to be equally borne by the ship and her remaining lading. Such, for instance, is the damage sustained in defending the ship against an enemy or pirate; such is the expense of curing and attendance upon the officers and mariners wounded in such defence: and such also is the sum which the master may have promised to pay for the ransom of his ship to any privateer or pirate when taken. A master who has cut his mast, parted with his cable, or abandoned any other part of the ship and cargo, in a storm, in order to save the ship, is well entitled to this compensation: but if he should lose them by the storm, the loss falls only upon the ship and freight; because the tempest only was the occasion of this loss, without the deliberation of the master and crew; and was not done with a view to save the ship and lading. Upon the principle it is established, that when a ship arrives at the mouth of a harbour, and the master, finding that his ship is too heavy laden to sail up, is obliged to put part of the cargo into hoys and barges; the owners of the ship and of the goods that remained are obliged to contribute if the lighters perished. But if the ship should be lost, and the lighters saved,

the owners of the goods so preserved were not to contribute to the proprietors of the ship and cargo lost.—2 Magens, 96. 183.

The difference is this, the lightening of the ship was an act of deliberation for the general benefit; whereas the circumstance of the lighters being saved, and the ship lost, was accidental, no way proceeding from a regard for the whole. 1 Magens, 56.

It is not only the value of the goods thrown overboard that must be considered in a general average, but also the value of such as receive any damage by wet, &c. from the jettison of the rest. Beawes, 148. Molloy, 1. 2. c. 6. s. 8.

If a ship be taken by force, carried into some port, and the crew remain on board to take care of and reclaim her, not only the charges of reclaiming shall be brought into a general average, but the wages and expense of the ship's company during her arrest, from the time of her capture and being disturbed in her voyage. Beawes, 150.

But sailors' wages and victuals, when they are under the necessity of performing quarantine, in which case the master would have been obliged to maintain and pay them, though his vessel had arrived only in ballast, do not come into general average; yet charges, occurring by an extraordinary quarantine, should be brought into a general average.

Whether the extraordinary wages and victuals expended during the detention by a foreign prince not at war, ought to be brought into a general average, so as to charge the underwriter, has never been expressly determined, although it seems to be the general opinion that they should.

So likewise where a ship is obliged to go into port for the benefit of the whole concern, the charges of loading and unloading the cargo, and taking care of it, and the wages and provisions of the *workmen hired for the repairs*, become general average. Da Costa *v.* Newnham. 2 Term Rep. 407.

By the ancient laws of Rhodes, Oleron, and Wisbuy, the ship and all the remaining goods shall contribute to the loss sustained. The most valuable goods, though their weight should have been incapable of putting the ship in the least hazard, as diamonds or precious stones, must be valued at their just price in this contribution, because they could not have been saved to the owners but by the ejection of the other goods. Neither the persons of those in the ship, nor the ship provisions, nor the respondentia bonds, suffer any estimation; nor does wearing apparel in chests and boxes, nor do such jewels as belong to the person merely; but if the jewels are a part of the cargo, they must contribute.

Those who carry jewels by sea, ought to communicate that circumstance to the master; because the care of them will be increased in proportion to their worth, to prevent their being thrown over board promiscuously, with other things, and hence their preservation will be a common benefit. 1 Magens, 63.

The wages of sailors are not to contribute to the general loss; a provision intended to make this description of men more easily consent to a jettison, as they do not then risk their all, being still assured that their wages will be paid.—1 Magens, 71.

The ways of fixing a right sum, by which the average ought to be computed, can only be by examining what the whole ship, freight and cargo, if no jettison had been made, would have produced nett, if they all had belonged to one person, and been sold for ready money. And this is the sum whereon the contribution should be made, all the particular goods bearing their nett proportion. 1 Magens, 69.

Gold, silver and jewels, contribute to a general average, according to their full value, and in the same manner as any other species of merchandise. 1 Magens, 62, and Peters *v.* Milligan, sittings at Guildhall after Michaelmas, 1787.

The contribution is in general not made till the ship arrive at the place of delivery; but accidents may happen, which may cause a contribution before she reach her destined port. Thus when a vessel has been obliged to make a jettison, or, by the damages suffered, soon after sailing, is obliged to return to her port of discharge; the necessary charges of the repairs, and the replacing the goods thrown overboard, may then be settled by a general average. 1 Magens, 60.

*The following examples of adjusted Averages are here subjoined, having received the approbation of some experienced Merchants.*

The Sea Horse, captain Dix, laden with hemp, flax, and iron, bound from Riga to Boston, ran on shore coming through the grounds at Elsineur: the captain hired a number of men and several lighters to lighten the ship and get her afloat again, which was soon done, but he was obliged to pay 500 dollars for their assistance. The expense being incurred to preserve both ship and cargo, the average must consequently be general. When the ship arrived at Boston, the captain immediately made a protest and an average bill; he then went to the merchant to whom his goods were addressed, to have it signed, and to know the value of each man's property.

*Average accruing to the ship Sea Horse, from Riga to Boston, in 1798, for assistance in getting off the Strand of Elsineur.*

To sundry charges paid at the Sound for lighters and assistance

in getting the ship off,	\$500 00
Protest and postage,	6 00
	<hr/>
	506 00

Should the ship arrive at Boston, she will make freight,	3,000 00
Wages, for all the people, three months and ten days,	620 00
Victuals for ditto,	490 00
	<hr/>

Freight to contribute,	1,890 00
	<hr/>

Ship Sea Horse valued at,	16,000 00
Freight valued at,	1,890 00
F. J. for value of hemp, as per invoice,	22,710 00
D. N. for value of flax,	4,000 00
T. R. for value of iron,	1,400 00
	<hr/>
	\$46,000 00

If 40,000 dolls. loss give 506 dolls. what will 100 dolls. loss give?

Answer, 1 doll. 10 cents per cent.

The ship must bear 16,000 dolls. at 1 doll. 10 cents (which the insurers return)	\$176 00
Freight, 1,890 dolls. at 1 doll. 10 cents per cent.	20 79
F. J. pays the captain for 22,710 dolls. at the same rate,	249 81
D. N. pays the same for 4,000 dolls.	44 00
T. R. pays the same for 1,400 dolls.	15 40
	<hr/>
	\$506 00
	<hr/>

The Mary, Captain T. partly laden with goods, sailed in May, 1798, from Boston, bound to St. Petersburg. She sailed the 3d of that month, and after an agreeable passage arrived at Elsineur on the 10th of June, whence she sailed the same day with a fair wind for St. Petersburg; the next day a heavy gale of wind arose contrary, insomuch that it obliged the captain to bear away for Elsineur again; but night coming on and the gale increasing, it being so dark that it was unsafe to continue running in such a dangerous place, thickly beset with many sands and having a strong current, the captain judged it best to bring the ship to an anchor, which he accordingly did, in 15 fathoms water.— Before the ship had been at anchor half an hour she began to drive; and as she still kept driving, with both anchors a-head, and the wind blowing stronger and stronger, they found it impossible to purchase their anchors; then the captain and the ship's company judged it safest to cut the cables in order to save their own lives and the ship and cargo, and take their chance in running for the Roads; luckily they got safe in; and, the weather abating, they brought up with a small anchor.

The Mary then wanted cables and anchors before she could proceed to St. Petersburg; the master, therefore, went directly on shore, bought them, and paid the following sums:

Protest,	\$2 50
	<hr/>
Two new cables and buoy-ropes,	360 00
One-third always deducted for new,	120 00
	<hr/>
Two anchors and two buoys,	240 00
Charges in getting them on board, &c.	148 00
	<hr/>
	8 50
	<hr/>
	\$399 00
	<hr/>

As the cables were cut away for preservation of ship and cargo, it must be a general average, and both must contribute to pay the damages sustained. The captain made the following average bill, on his arrival at St. Petersburg, in order to recover the damages.

*Average accrued to the Mary for the loss of her Anchors and Cables, in prosecution of her Voyage from Boston to St. Petersburg, 1798.*

Ship Mary valued at,	\$4,100 00
Freight (after wages and victuals deducted) valued at	250 00
Q. P's. value of goods,	3,000 00

V. R's. value of goods,	900 00
T. R's. value of goods,	150 00
	<u><u>\$8,400 00</u></u>

If 8,400 dolls. loss give 399 dolls. what will 100 dolls. give?

Answer  $\$4\ 75$  per cent.

The ship must bear 4,100 dolls. at $\$4\ 75$ per cent.	$\$194\ 75$
The freight must bear 250 dolls. at the same rate,	11 88
Q. P. must pay the captain, at St. Petersburgh, for 3,000 dolls. at the same,	142 50
V. R. must pay, for 900 dolls. at the same,	42 75
T. T. must pay, for 150 dolls. at the same,	7 12
	<u><u>\$399 00</u></u>

Having received 192 dolls. 37 cents at St. Petersburgh, the captain sends his protest and average bill to his owner, to receive of the underwriters their shares of the loss upon the ship and freight.

Capt. T. of the Sea Adventure, bound from London to Virginia, in ballast, was riding at anchor in the downs, with a large fleet of ships, in a gale of wind. She had not been at anchor long before she began to drive; and the captain, perceiving her to be in great danger of being on shore, or else foul of the other vessels, judged it safest to cut his cables, as he must have been driven on shore if he had not. After the gale was over, he went to Dover, bought new anchors and cables, and drew upon his owner for the amount of them, as follows:

Two anchors and buoys,	$\$140\ 00$
Rope-maker's bill for new cables, &c.	150 00
Protest,	2 50
Charges in getting them on board,	7 50
	<u><u>\$300 00</u></u>

The captain then sent the charges of reinstating the cables and anchors cut away, and of the protest, to his owner, that he might recover of the insurers the damage sustained.

*State of the Sea Adventure's Average.*

Two anchors and two buoys,	$\$140\ 00$
Rope-maker's bill,	150 00
One-third always deducted for new,	50 00
	<u><u>100 00</u></u>
Protest,	2 50
Charges in getting the anchors, &c. on board,	7 50
	<u><u>\$250 00</u></u>

Ship valued at 8,000 dollars.

If 8,000 dolls. loss give 250 dolls. what will 100 dolls. loss give?

Answer, 3 dolls. 12 $\frac{1}{2}$  cents per cent.

Observe, if a ship has been riding in a gale of wind, and the cables had parted, that loss would have fallen upon the owners, for the underwriters are not liable to pay for wear and tear.

This may serve as a similar case of all ships in ballast that have cut away their masts, cables, &c. for preservation.

A loaded ship met with such exceeding bad weather, that the master and mariner found it impossible to save her without throwing part of her cargo overboard, which they are authorized to do for preservation. Being thus necessitated, they threw such goods overboard as lay nearest at hand, and lightened the ship of 10 casks of hardware, and 30 hogsheads of sugar, which they judged sufficient to keep her from sinking. Soon after that, the ship arrived at her destined place and then an average bill was immediately made, in order to adjust the loss, and to pay the proprietors of those goods which were thrown overboard for the good of the whole.

*Average accrued to the Ship — for goods thrown overboard, for preservation of the Ship, Freight and Charge.*

Ship valued at,	-	-	-	-	\$8,000 00
Freight (wages and victuals deducted)	-	-	-	-	800 00
J. R's. value of goods,	-	-	-	-	25,000 00
J. P's. value of goods,	-	-	-	-	1,200 00
R. F's. value of goods,	-	-	-	-	6,000 00
A. W. for 30 hogsheads of sugar,	-	-	-	-	3,800 00
L. L. for 10 casks of hardware,	-	-	-	-	5,200 00
					<hr/>
					\$50,000 00

If 50,000 dolls. loss give 9,000 dolls. what will 100 dolls. loss give?

Answer, 18 dolls. per cent.

Mr. A. W's. goods, thrown overboard, were valued at,	\$3,800 00
Mr. L. L's. ditto,	5,200 00
	<hr/> <b>\$9,000 00</b>

The ship must pay to A. W. and L. L. for 8,000 dolls, at 18 dollars. <i>per cent.</i>	-	-	-	1,440 00
The freight, 800 dolls. at 18 dolls. <i>per cent.</i>	-	-	-	144 00
J. R. for 25,000 dolls. at the same,	-	-	-	4,500 00
J. P. for 1,200 dolls. at the same,	-	-	-	216 00
R. F. for 6,000 dolls at the same,	-	-	-	1,080 00
				<hr/>
				\$7,380 00

**A. W. and L. L. receive, of the owners of the goods saved, and of the ship's owners or captain, 7,380 dollars for their value of the goods thrown overboard; which they divide thus:**

If 9,000 dolls. receive 7,380 dolls. what will 3,800 dolls. receive?

Insurers pay for 3,800 dolls. at 18 dolls. per cent. Answer, \$3,116 00

684 00		\$3,800 00
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A. W. receives of the underwriters 18 dollars <i>per cent.</i> for the sum he insured, and of the owners of what was saved 3,116 dollars, which is equal to the loss he sustained by his property being thrown overboard.	
L. L. receives, of the owners of the ship and goods preserved,	\$4,264 00
And the insurer, for the 5,200 dolls. which he had insured, at 18 dolls. <i>per cent.</i>	936 00
Value of L. L's. property,	\$5,200 00

It is usual for the owners of goods preserved, and also for the owner of the ship, to pay their average to the sufferers on the receipt of their goods and on delivery of the ship; their redress being upon the insurers, who must return the same.

The Mary, Captain Thompson, at Leghorn, bound to Boston, sailed with a fair wind, which continued for some days, when she was boarded by pirates, who forcibly took away six large guns, two cables, two anchors, much cabin furniture, and one compass, leaving the ship without other damage. A violent storm afterwards arose, which disabled the ship so much, that the men who laboured hard at the pumps, could scarcely keep her from sinking. This continued so long, that the men, wearied out, gave themselves up for lost, and discontinued their labour. The captain supplied them with wine, and to animate them, promised a gratuity of one hundred dollars to each man if they brought the ship safe into port. This gave the men such spirits, that though they lost all their masts, they brought the ship safe to Boston under jury masts, &c.

Here was a *general* and a *particular* average. But although the gratuity was given to the seamen to preserve both ship and cargo, and was admitted into a *general average*, it was done so only as a matter of favour, and not of right. What the pirates stole, and other damages done to the ship, must make a *particular average*.

The sloop Christians and Betsey, Captain Watson, on her passage from St. Ubes to New York, met with a very heavy gale of wind, the sea breaking over her, and the vessel making much water; the captain determined on *cutting away* the jib, as he could not take it in; but before that could be done, a sea struck the vessel, and *broke the bowsprit*. The wreck of the bowsprit, jib, &c. broke the lashing of the larboard anchor, and carried it and the cable overboard; in order to preserve the ship and cargo, he cut the whole of this wreck away. During the said gale of wind, the masts having lost great part of their support in the loss of the bowsprit, he prevailed on one of his men, for a gratuity of twenty dollars, to go aloft, and cut away the top-sail, top-gallant-sail, yards, mast and rigging; and at last the vessel reached her port of delivery.

Had the jib been *cut away*, it would have been *general average*; and it was only under the particular circumstances of being carried away while that was in contemplation, it was allowed as a *particular average* on the ship, as was likewise the bowsprit. The entangling with the anchor and cable, though a consequence of the above, yet being *cut*

*away*, came into general average, as did the top-mast, &c. The gratuity to the seamen was not allowed, on the principle that a seamen is bound, by his duty and wages, to do *all* in his power for the good of the ship, and he can therefore earn no more.

*General Average.*

Blocks for topmast rigging,	·	·	·	·	\$10 50
Running rigging,	·	·	·	·	42 25
Topsail yard,	·	·	·	·	6 25
Topsail,	·	·	·	·	36 50
Top-gallant-sail,	·	·	·	·	22 00
Cable,	·	·	·	·	92 50
					_____
					210 00
One-third off,	·	·	·	·	70 00
					_____
					140 00
Surveyor 14 dolls. protest 6 dolls.	·	·	·	·	20 00
Anchor,	·	·	·	·	40 00
Anchor Stock,	·	·	·	·	3 50
Postages,	·	·	·	·	55
					_____
					\$204 05
Ship,	·	·	\$2,000		
Cargo,	·	·	1,400		
Nett freight,	·	·	310		_____
3,710 at 5 dolls. 50 cents per cent. is					\$204 05
					_____

**N. B.** No deduction is made from the value of an anchor.

*Particular average on the ship.*

Block-maker's bill,	·	·	·	·	·	\$5 50
Rope-makers account for stays, &c.	·	·	·	·	·	48 50
Bowsprit, &c.	·	·	·	·	·	33 12
Jib,	·	·	·	·	·	45 38
Carpenter's and Smith's bill,	·	·	·	·	·	23 27
Postages,	·	·	·	·	·	23
						_____
						156 00
One-third off,	·	·	·	·	·	52 00
						_____
						\$104 00
Ship 2,000 dolls. at 5 dolls. 20 cents per cent. is						\$104 00
						_____

**N. B.** The custom in America (in general) is, that when the loss does not amount to five *per cent.* nothing is allowed by the underwriters; but the common practice in the English Insurance Offices, is to allow all losses above *three per cent.*

Coasters are not generally allowed an average unless the loss amount to *ten per cent.*

## VIII. SALVAGE.

**Salvage** is an allowance made for saving a ship, or goods, or both, from the dangers of the seas, fire, pirates, or enemies. This allowance is not precisely determined by our law; but our courts always give what is just and reasonable under all the circumstances of any particular case.

The wearing apparel of the master and seamen is always excepted from the allowance of salvage.—*Lex Mercatoria*, 147.

The valuation of a ship, in order to ascertain the rate of salvage, may be determined by the policy of insurance, if there is no reason to suspect she is undervalued; and the same rule may be observed as to goods, where there are policies upon them. If that, however, should not be the case, the salvors may insist upon proof of the real value, which may be done by the merchant's invoices, and they must be paid for accordingly.—*Lex Mercatoria*, 147.

The insured may recover from the insurer the expenses of salvage; yet he cannot receive a double satisfaction for the same loss. Thus, if the insurer should have paid to the insured the expenses arising from salvage, and afterwards, on account of some particular circumstance, the loss should be repaired by some unexpected means, the insurer shall stand in the place of the insured and receive the sum thus paid to atone for the loss.—*Randall v. Cockran*, 1 Vez. 98.

## IX. ABANDONMENT.

The insured, before he can demand a recompense from the underwriter for a *total loss*, must cede, or *abandon* to him his right to all the property that may chance to be recovered from shipwreck, capture, or any other peril stated in the policy.

The right to abandon must arise upon the object of the insured being so far defeated, that it is not worth his while to pursue it: such a loss is as equally inconvenient to him as if it had been total. For instance, if the voyage be absolutely lost or not worth pursuing; if the salvage be very high, *suppose a half*; if farther expense be necessary; if the insurer will not engage at all events to bear that expense, though it should exceed the value, or fail of success; under these, and many other like circumstances, the insured may disentangle himself, and abandon, notwithstanding there has been a recapture.—2 Burr. 1209.

There may be circumstances in which it would be unjust to suffer the insured to abandon; for a ship may be taken, and escape immediately, which would be no hindrance at all to the voyage; or she might be taken and instantly ransomed, which would amount only to a partial loss; in which cases the insured shall not be allowed to demand a recompense for a total loss.—2 Burr. 697, 1213.

The right to abandon must depend upon the nature of the case at the time of the action brought, or at the time of the offer to abandon. Burr. 1124.

The owner cannot abandon, unless, at *some* period or other of the voyage, there has been a *total loss*; and, therefore, if neither the thing insured nor the voyage be lost, and the damage sustained shall be found

upon computation, not to amount to a moiety of the value, the owner shall not be allowed to abandon.—Term Rep. Easter Term, 26 Geo. III. p. 191.

These principles will be confirmed by the judgments in the following cases.

**Pringle v. Hartly in Chancery, 1744.** 3 Atk. 195. The defendant had insured the ship *Success* from London to Bermudas, and so to Carolina; the ship was taken by a Spanish privateer, and afterwards retaken by an English privateer, and carried into Boston, when no person appearing to give security, or to answer the moiety the re-captors were entitled to for salvage, she was condemned and sold in the court of Admiralty, the re-captors had their moiety, and the overplus money remained in the hands of the officers of that court.

It was contended for the underwriter the insured ought not to recover more on the policy than a moiety of the loss, as the act of the 13 Geo. II. c. 4. s. 18, gives the thing saved to the owner, and he is entitled to receive it from the officers of the Admiralty: and that the underwriter ought to be obliged to pay no more than the loss actually sustained, which cannot be ascertained till after the insured shall have received the part that might have come to him upon the salvage.

The insured was willing to relinquish his interest to the underwriter in the benefit of the salvage.

Upon this Lord Chancellor Hardwicke said: I take it when the insured is willing to relinquish his interest in the salvage, he ought to recover the whole money insured. It would be mischievous, if it were otherwise, for then, upon a recapture, a man would be in a worse situation than if the ship were totally lost.

**Cazalet and others v. Barbe, 1 Term Rep. p. 187.** This was an action on a policy of insurance upon the ship *Friendship*, from Wyburgh to Lynn, subscribed by the defendant for 100*l.* at two guineas *per cent.* The defendant pleaded a tender, and paid 48*l.* into court. The cause was tried at Guildhall, before Mr. Justice Buller, when a case was reserved for the opinion of the court, stating that the *damages sustained by the ship, in the voyage insured, did not exceed 48l. per cent.* which sum the defendant had paid into court upon pleading in the action. That, when the ship arrived at the port of Lynn, she was not worth repairing. The question for the opinion of the court was, whether the plaintiffs had a right to abandon.

The case came on to be argued when Lord Mansfield was absent, and the three other judges were unanimous in opinion for the defendant.

Mr. Justice Buller said, “nothing can be better established than that the owner of a ship can only abandon in case of a total loss. But *there is no instance where the owner can abandon, unless, at some period or other of the voyage, there has been a total loss.* No such event has happened here; for the jury have expressly found, that the loss amounted only to 48*l. per cent.* Even allowing *total loss* to be a technical expression, yet the manner in which the plaintiff’s counsel has stated it, is rather too broad. It has been said, that the insurance must be taken to be on the ship as well as on the voyage; but the true way of con-

sidering it is this: *it is an insurance on the ship for the voyage.* If either the ship or the voyage be lost, that is a total loss; but here neither is lost."

Suppose a neutral ship is arrested and detained by a foreign prince by an embargo, the owner immediately upon hearing this accident, would have a right to abandon, because no man is bound to wait the event of an embargo. But if the ship that brings the account of the embargo, should also inform him, that the embargo was taken off, that the ship had only been detained two or three days, that very trifling or no damage had arisen, then it is impossible to say that the merchant may abandon; because, as we have seen, it is a principle of good sense, that a man cannot make his election, whether he will abandon or not, till he receive advice of the loss; and if, by the same conveyance, it appears that the peril is over, and the thing insured is in safety, he has lost his election entirely; because he has, and can have, no right to abandon when his property is safe.

It has been settled also, by solemn decision of the Court of King's Bench, in *Manning v. Newnham*, Trin. 22 Geo. III. in what cases a loss should be deemed to be total, after an accident by perils of the sea.—A policy was effected in London upon the ship Grace, her "*cargo and freight*, at and from Tortola to London, warranted to depart on or before the first of August, 1781. The ship valued at 2,470*l.* the freight at 2,250*l.* and the cargo at 12,400*l.* at a premium of 25 guineas *per cent.* to return 10*l. per cent.* if she departed the West Indies with a convoy for England and arrives." At the head of the subscriptions is the following declaration, viz: *On ship, freight, and goods, warranted free of particular average.* This ship, with her cargo, was a Dutch prize, taken by a privateer from Tortola, and was there condemned; during the whole of her stay, at Tortola (four or five months) she was never unloaded. On the first of August the whole fleet of merchantmen got under way under the convoy of the Cyclops, &c. but not being able to get clear of the islands that day, they cast anchor during the night, and the next day got clear of the islands. About 10 o'clock on the 2d of August, several squalls of wind arose, which occasioned the ship to strain and make water so fast, that the crew were obliged to work both pumps; and on the third, the captain made a signal of distress; in consequence of which, she was obliged to return to Tortola, under protection of one of his majesty's ships. The captain made his protest, and a survey was had, by which the ship was declared unable to proceed with her cargo, and that she could not be repaired in any of the English islands in the West Indies; and that many of the sugars in the bilge and lower tier were washed out, and several of the casks broke and in bad order. The ship and the whole of the cargo were sold at Tortola accordingly. The assured claim a total loss of ship, cargo, and freight, which the jury thought right, and found accordingly. A motion was made for a new trial, which upon full consideration was refused.

Lord Mansfield, after stating the evidence, and that his prejudices at the trial were in favor of the underwriters, proceeded thus: But, notwithstanding this inclination of my opinion, upon full consideration we think the jury have done right. If by a peril insured the voyage,

is lost, it is a total loss; otherwise not. In this case the ship has irreparable hurt within the policy; this drives her back to Tortola, and there is no ship to be had there which could take the whole cargo on board. There were only two ships at Tortola, and both could not take in the cargo. To show how completely the voyage was lost, that no ship could be got, the assured have not been able to send that part of the goods which they purchased, forward to London. It is admitted there was a total loss on the freight, because the ship could not perform the voyage. The same argument applies to the ship and cargo. It is a contract of indemnity; and the insurance is that the ship shall come to London. Upon turning it in every view, we are of opinion that the voyage was totally lost, and that is the ground of our determination.

From what has been said in the preceding part of this subject, it appears that the insured has a right to call upon the underwriter for a total loss, and of course to abandon, as soon as he hears of such a calamity having happened, his claim to indemnity not being at all suspended by the chance of a future recovery of part of the property lost; because, by the abandonment, that chance devolves upon the underwriter; by which means the intention of the contracting parties is fully answered, and complete justice is done.

In a very modern decision it has been held, by the Court of King's Bench, that as soon as the insured receive accounts of such a loss as entitles them to abandon, they must, in the first instance, make their election whether they will abandon or not; and, if they abandon, they must give the underwriters notice in a reasonable time, otherwise they waive their right to abandon, and can never afterwards recover for a total loss. *Mitchell v. Edie*, 1 Term Rep. 608.

But if the insured, hearing that his ship is much disabled and has put into port to repair, express his desire to the underwriters to abandon, and be dissuaded from it by them, and they order the repairs to be made; they are liable to the owner for all subsequent damages occasioned by that refusal, though it should amount to the whole sum insured. *Da Costa v. Newnham*, 2 Term Rep. 407.

#### X. FRAUD IN POLICIES.

The insurers and insured are equally bound to disclose circumstances that are within their knowledge; and, therefore, if the insurer, at the time he underwrites, can be proved to have known that the ship was safe arrived, the contract will be equally void as if the insured had concealed from him some accident which has befallen the ship.

It is necessary to consider this in three divisions. 1st. *The allegations of any circumstances as facts, to the underwriter, which the person insured knows to be false*:—2dly. *The suppression of any circumstances which the insured knows to exist; and which, if known to the underwriter, might prevent him from undertaking the risk at all, or, if he did, might entitle him to demand a larger premium*: and, lastly, a misrepresentation. Of each of these in order.

In a case before Lord Chief Justice Holt, in the reign of William and Mary, that learned judge held, that, if the goods were insured as

the goods of a Hamburgher, who was an ally, and the goods were, in fact, the goods of a Frenchman, who was an enemy, it was a fraud, and that the insurance was not good.—Skinner, 327.

*A false assertion* in a policy will vitiate the contract; even though the loss happen in a mode not affected by that falsity.—3 Burr. 1419.

The second species of fraud, which affects insurances, is the concealment of circumstances, known only to one of the parties entering into the contract. The facts upon which the risk is to be computed, lie, for the most part, within the knowledge of the insured only. The underwriter must therefore rely upon him for all necessary information; and must trust to him, that he will conceal nothing, so as to make him form a wrong estimate. If a mistake happen, without any fraudulent intention, still the contract is annulled, because the risk is not the same which the underwriter intended.

One, having a doubtful account of his ship, that was at sea, namely, that a ship described like his, was taken, insured her, without giving any notice to the insurers of what he had heard, either as to the hazard or the circumstances, which might induce him to believe that his ship was in great danger if not actually lost.

Lord Chancellor Macclesfield. The insured has not dealt fairly with the insurers in this case; he ought to have disclosed to them what intelligence he had of the ship's being in danger, and which might induce him, at least, to fear that it was lost, though he had no certain account of it. For, if this circumstance had been discovered, it is impossible to think that the insurers would have insured the ship at so small a premium as they have done, but either would not have insured at all, or would have insisted on a larger premium, so that the concealment of this intelligence is a fraud. Whereupon the policy was decreed to be delivered up with the costs, but the premium to be paid back, and allowed out of the costs. *Da Costa v. Scandret*, 2 Peere Williams, 170.

In another case it appeared, that, on the 25th of August, 1740, the defendant underwrote a policy from Carolina to Holland. It came out in evidence, that the agent for the plaintiff had, on the 23d of August, (two days before the policy was effected) received a letter from Cowes, dated the 21st of August, wherein it is said, "On the 12th of this month, I was in company with the ship Davy, (the ship in question) at twelve at night lost sight of her all at once; the captain spoke to me the day before that he was leaky; and the next day we had a hard gale." The ship however, continued her voyage till the 19th of August, when she was taken by the Spaniards: and there was no pretence of any knowledge of the actual loss at the time of the insurance, but it was made in consequence of a letter received that day from the plaintiff abroad, dated the 27th of June before.

Lord Chief Justice Lee declared, that as these are contracts upon chance, each party ought to know all the circumstances. And he thought it not material, that the loss was not such an one as the letter imported; for those things are to be considered in the situation of them at the time of the contract and not to be judged by subsequent events. He therefore thought it a strong case for the defendant. The jury found accordingly. *Seamen v. Fonnerau*, 2 Stra. 1183.

But although the rule is laid down thus generally, that one of the contracting parties is bound to conceal nothing from the other, yet it is by no means so general as not to admit of an exception. There are many matters as to which the insured may be innocently silent.

Our ideas on this topic, the argument of Lord Mansfield, in *Carter v. Boehm*, 3 Burr. 1905, will completely regulate. The facts of that case are not material; but we shall only give the reasoning of Lord Mansfield upon the general doctrine of what is not necessary to be revealed.

His Lordship said, insurance is a contract upon speculation. The special facts, upon which the risk is to be computed, lie most commonly in the knowledge of the insured only. The underwriter trusts to his statement, and proceeds upon confidence, that he does not keep back any circumstances within his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back such circumstances is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement. The policy would equally be void against the underwriter if he concealed any thing; as, if he insured a ship on her voyage, which he privately knew to be arrived; and an action would lie to recover the premium. The governing principle is applicable to all contracts and dealings. Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from the ignorance of that fact, and his believing the contrary. But either party may be innocently silent as to the grounds open to both to exercise their judgments upon. There are many matters as to which the insured may be innocently silent; he needs not mention what the underwriter knows. An underwriter cannot insist that the policy is void, because the insured did not tell him what he actually knew, what way soever he came to the knowledge. The insured needs not mention what the underwriter ought to know; what he takes upon himself the knowledge of; or what he waves being informed of. The underwriter needs not be told what lessens the risk agreed and understood to be run by the express terms of the policy. He needs not be told general topics of speculation; as, for instance, the underwriter is bound to know every cause which may occasion natural perils; as the difficulty of the voyage; the kind of season; the probability of lightning, hurricanes, and earthquakes. He is bound to know every cause which may occasion political perils, from the rupture of states, from war, and the various operations of war. He is bound to know the probability of safety, from the continuance and return of peace; from the imbecility of the enemy, through the weakness of their councils, or their want of strength. If an underwriter insure private ships of war, by sea, and on shore, from ports to ports, and from places to places, any where, he needs not be told the secret enterprizes, upon which they are destined; because he knows some expedition is in view; and from the nature of his contract, he waves the information, without

being told. If he insure for three years, he needs not be told any circumstances to show it may be over in two; or, if he insure a voyage with liberty of deviation, he needs not be told what tends to show there will be no deviation. Men argue differently, from natural phenomena and political appearances; they have different capacities, different degrees of knowledge, and different intelligence. But the means of information and judging are open to both: each professes to act from his own skill and sagacity, and therefore neither needs to communicate to the other. The reason of the rule, which obliges the parties to disclose, is to prevent fraud, and encourage good faith; it is adapted to such facts as vary the nature of the contract, which one privately knows, and the other is ignorant of, and has no reason to suspect. The question, therefore, must always be, "Whether there was under all the circumstances, at the time the policy was underwritten, a fair statement, or a concealment: fraudulent, if designed; or, though not designed, varying materially the object of the policy, and changing the risk understood to be run."

3d. We come now to the third division, namely, to cases in which policies are void by *misrepresentation*. Before we proceed to state the cases under this head, it would be proper to distinguish between a warranty and a representation. A warranty or condition is that which makes a part of the written policy, and must be most literally and strictly performed; and being part of the agreement, nothing *tantamount* will do or answer the purpose. A representation is the state of the case, not a part of the written instrument, but collateral to it, and entirely independent of it, and it is entirely sufficient that a representation be *substantially* performed. Warranties will be noticed hereafter. If there be a misrepresentation, it will avoid the policy, as a fraud, but not as a part of the agreement. Even written instructions, if they are not inserted in the policy, are only to be considered as representations; and in order to make them valid and binding, as a warranty, it is absolutely necessary to make them part of the instrument, by which the contract of indemnity is effected. If a representation be false in any material point, it will avoid the policy; and if the point be not material, the representation can hardly ever be fraudulent. A few of the decisions will elucidate these principles.

*Pawson v. Watson, Cooper, 1785.* Upon a rule to show cause why a new trial should not be granted in this case, Lord Mansfield reported as follows: This was an action upon a policy of insurance. At the trial it appeared in evidence, that the first underwriter had the following instructions shown to him: Three thousand five hundred pounds upon the ship Julius Cæsar, for Halifax, to touch at Plymouth, and any port in America; *she mounts twelve guns and twenty men.*" These instructions were not asked for, nor communicated to the defendant; but the ship was only represented *generally to him as a ship of force*: and a thousand pounds had been done, before the defendant underwrote any thing upon her. The instructions were dated the 28th of June, 1776, and the ship sailed on the 23d of July, 1776; and was taken by an American privateer. That, at the time of her being taken, she had on board six four-pounders, four three-pounders, three one-pounders,

six half-pounders, which are called swivels, and twenty-seven men and boys in all, for her crew: but of them, sixteen only were *men*, not (20 as the instructions mentioned) and the rest boys. But the witness said he considered her as being stronger with this force, than if she had twelve carriage guns and twenty men: he also said, (which is a material circumstance) that *there were neither men nor guns on board at the time of the insurance*. That he himself insured at the same premium, without any other representation than that she was a *ship of force*. That to every four pounder there shall be five men and a boy. That, in merchant ships, boys always go under the denomination of men. This was met by evidence on the part of the defendant saying, that guns mean *carriage-guns* not *swivels*: and men mean able *men*, exclusive of *boys*. The defence was, that these instructions were to be considered as a warranty, the same as if they had been inserted in the policy, though they were not proved to have been shown to any but the first underwriter. If the court should be of opinion, that the instructions amounted to a warranty, then a new trial is to be had without costs; otherwise, the verdict which was for the plaintiff, is to stand.

Lord Mansfield.—There is no distinction better known to those who are at all conversant in the law of insurance, than that which exists between a *warranty* or condition, which makes a part of a written policy, and a representation of the state of the case. Where it is a part of the written policy it must be performed. As, if there be a warranty of convoy, there must be a convoy; for in the case of convoy it might be said, the party would not have insured without convoy. Therefore if there be fraud in a representation, it will avoid the policy on account of the fraud; but not on account of the non-compliance with any part of the agreement. So that there cannot be a clearer distinction than that which exists between a warranty, which makes part of the written policy, and a collateral representation, which, if false in a point of *materiality*, makes the policy void; but if it be *not* material, it can hardly ever be fraudulent. I have repeatedly, at Guildhall, cautioned and recommended it to the brokers, to enter all representations made by them in a book. That advice has been followed in London. The question then is, whether in this policy, the person insuring has warranted that the ship should positively and literally have *twelve carriage guns and twenty men*. That is, whether the instructions given in evidence are a part of the policy. The answer to this is, read your agreement, read your policy. There is no such thing to be found there. It is replied, yes, but in fact there is, for the instructions upon which this policy was made contain that express stipulation. The answer again is, there never were any instructions shown to the defendant; nor were any asked for by him. What colour then has he to say that these instructions are any part of *his* agreement? It is said, he insured upon the credit of the first underwriter. A representation to the first underwriter has nothing to do with that, which is the agreement, or terms of the policy. The representation amounts to no more than this; I tell you what the force will be, because it is so much the better for you. There is no fraud in it, because it is a representation only of what, in the then state of the ship, they thought would

be the truth. And in real truth, the ship sailed with a larger force: for she had nine carriage-guns and six swivels. The underwriters, therefore, had the advantage by the difference. There was no stipulation about what the weight of metal would be. All the witnesses say that she had more force than if she had twelve carriage guns, in point of strength, of convenience, and for the purpose of resistance. The supercargo, in particular, says, "he insured the same ship, and the same voyage, for the same premium, without saying a syllable about the force." Why then it was a matter proper for the jury to say, whether the representation was false, or whether it was in fact an insurance of a ship without force. They have determined, and I think very rightly, that it was an insurance without force, and therefore there can be no new trial.

His lordship was afterwards asked, whether it was the opinion of the court, that, to make written instructions valid and binding as a warranty, they must be inserted in the policy. Lord Mansfield answered, that most undoubtedly that was the opinion of the court: if a man warrant that a ship should depart with twelve guns, and it depart with ten only, it is contrary to the condition of the policy.

If a representation be made to the underwriter of any circumstance which was false, this if it be a material point, shall vacate the policy and annul the contract, although it happens by mistake, and without any fraudulent intention or improper motive on the part of the insured. The principle on which, in such a case, the contract is held to be void, is, that the insurer is led into error, and computes his risk upon circumstances not founded in fact; by which means, the risk actually run is different from that intended to be run, at the time the contract is made. On this ground it is, that the contract is as much at an end as if there had been a wilful and false allegation, or an undue concealment of circumstances.

*Macdowall v. Fraser, Doug.* 247.—This was an action on a policy of insurance on the ship "the Mary and Hannah, from New York to Philadelphia." At the time when the insurance was made, which was in London, on the 30th of January, the broker represented the situation of the ship to the underwriter as follows: "The Mary and Hannah, a tight vessel, sailed with several armed ships, and was seen safe in the *Delaware* on the 11th December, by a ship which arrived at New York." In fact, the ship was lost on the 9th of December, by running against a *chevaux de frise*, placed across the river. The cause came on to be tried before Lord Mansfield at Guildhall. This was held to be a material misrepresentation as to the time when the ship was seen; and the representation and the day of the loss being proved, the jury found for the defendant.

In a subsequent case, Lord Mansfield and the rest of the court were clearly of opinion, that if the broker at the time when the policy is effected, in representing to the underwriter the state of the ship, and the last intelligence concerning her does not disclose the whole, and what he conceals shall appear *material* to the Jury, they ought to find for the underwriter, the contract in such case being void: although the concealment should have been *innocent*, the facts not mentioned having appear-

ed *immaterial* to the broker, and having not been communicated merely on that account.—*Skirley v. Wilkinson*, Doug. Rep. 293.

In order to vitiate the contract, the thing concealed must be *material*, it must be *some fact*, and not merely a supposition or speculation of the insured; and the underwriter must take advantage of any misrepresentation the first opportunity, otherwise he will not be allowed to claim any benefit from it at a future period. It, therefore, the insured merely represent that he *expects* a thing to be done, the contract will not be void, although the event should turn out very different from his expectation.—*Barber v. Fletcher*, Doug. 292.

Wherever there has been an allegation of a falsehood, a concealment of circumstances, or a misrepresentation, it is immaterial, whether such allegation or concealment be the act of the person himself who is interested, or of his agent; for, in either case, the contract is founded in deception, and the policy is consequently void.—*Fitzherbert v. Mather*, 1 Term Rep. p. 12.

If the insured is supposed to be guilty of fraud, the proof of it falls upon the underwriter. Direct and positive proof is not necessary; but circumstantial evidence is all that can be expected; and, indeed, all that is necessary to substantiate such a charge.

#### XI. SEA-WORTHINESS.

Every ship insured must, at the time of the insurance, be able to perform the voyage, unless some external accident should happen; and if she have a latent defect, wholly unknown to the parties, that will vacate the contract; and the insurers are discharged. This doctrine is founded upon that general principle of insurance law, that the insurers shall not be responsible for any loss arising from the insufficient or defective quality or condition of the thing insured.

But although the insured ought to know whether the ship was sea-worthy or not at the time she set out upon her voyage, yet he may not be able to know the condition she may be in after she is out a twelve-month: and, therefore, whenever it can be made appear, that the decay to which the loss is attributable, did not commence till a period subsequent to the insurance, as she was sea-worthy at the time, the underwriter would be liable. In a late case, *Eden v. Perkinson*, Doug. 708, the same principle was much relied upon. Lord Mansfield said, “By an implied warranty every ship insured must be tight, staunch and strong; but it is sufficient if she be so at the time of her sailing. She may cease to be so in twenty-four hours after departure, and yet the underwriter will continue liable.” Every case of this kind, it is true, must depend upon its own circumstances; but, when they are once ascertained, the rule of law is clear and decisive.

#### XII. ILLEGAL VOYAGES.

Whenever an insurance is made on a voyage expressly prohibited by the common statute, or maritime law of the country, the policy is of no effect.

Even if it be told to the underwriter that the voyage is illicit, he shall not be bound: because the contract is null and void. *Bynk. Quæst. Jur. Pub. 1. i. c. 21.*

If a ship, though neutral, be insured on a voyage prohibited by an embargo, laid on in the time of war, by the prince of the country in whose ports the ship happens to be, such an insurance also is void.

Though an insurance upon a smuggling voyage, prohibited by the revenue laws of this country, would be void under the principle above stated; yet the rule has never been supposed to extend to those cases where ships have traded, or intend to trade, contrary to the revenue laws of *foreign* countries, because no country takes notice of the revenue laws of another; in such cases, therefore, the policy is good and valid; and if a loss happens, the underwriter will be answerable.—*Planche v. Fletcher, Doug. 238.*

We may conclude the present subject with this principle; that all insurances upon a voyage generally prohibited, such as to an enemy's garrison, or upon a voyage directly contrary to an express act of parliament, are absolutely null and void.

### XIII. RE-ASSURANCE AND DOUBLE INSURANCE.

Re-assurance may be said to be a contract which the first insurer enters into, in order to relieve himself from those risks which he has incautiously undertaken, by throwing them upon other underwriters, who are called re-assurers.

The re-assurer is wholly unconnected with the original owner of the property insured; and there is no obligation between them originally, so none is raised by the subsequent act of the first underwriter. The risks of the insurer form the object of the re-assurance, which is a new independent contract, not at all concerning the insured, who consequently can exercise no power or authority with respect to it.—*Pothier, tit. Assurance, No. 96.*

A *double insurance* is where the same man is to receive two sums instead of one, or the same sum twice over, for the same loss, by reason of his having made two insurances upon the same goods or the same ship. The first distinction between these two contracts is, that a re-assurance is a contract made by the first underwriter, his executor, or assigns, to secure himself or his estate: a double assurance is entered into by the insured. Where a man has made a double insurance he may recover his loss against which of the underwriters he pleases, but he cannot recover for more than the amount of his loss. It being thus settled, that the insurer shall recover but one satisfaction, and that, in case of a double insurance, he may fix upon which of the underwriters he will for the payment of his loss, it is a principle of natural justice that the several insurers shall all of them contribute in their several proportions, to satisfy that loss, against which they have all insured.

In the year 1763, it was ruled by Lord Mansfield, chief justice, and agreed to be the course of practice, that, upon a double insurance, though the insured is not entitled to two satisfactions, yet upon the first action he may recover the whole sum to be insured, and may leave the defendant therein to recover a rateable satisfaction from the other

insurers.—*Newby v. Read*, Sit. in London in Easter Vacat. 1263.—  
1 Black. Rep. 416.

Thus also it was determined in a subsequent case at Guildhall.—  
*Rogers v. Davis*, Sittings in Mich. Vac. 17 Geo. III. before Lord Mansfield.

Although a man by making a double insurance should not be allowed to recover a double satisfaction for the same loss, yet various persons may insure various interests on the same thing, and each to the whole value, (as the master for wages, the owner for freight, one person for goods, another for bottomry,) and such a contract does not fall within the idea of a double insurance.—1 Burr. 496.

#### XIV. CHANGING THE SHIP.

Changing the ship, or as it is commonly called, changing the bottom, will operate as a bar to the insured's recovering upon the policy of insurance against the underwriter. Except in some special cases of insurances upon a *ship or ships*, it is essentially requisite to render a policy of insurance effectual, that the name of the ship, on which the risk was to be run, should be inserted. That being done, it follows that the insured shall neither substitute another ship for that mentioned in the policy before the voyage commences, nor during the course of the voyage remove the property insured to another ship, without the consent of the underwriter, or without being impelled by a case of *unavoidable necessity*.

And this doctrine, relative to changing the bottom of the ship, was alluded to by Lord Mansfield, when delivering the opinion of the court in the case of *Pelly against the Royal Exchange Assurance Company*. “One objection,” said his Lordship, “was formed by comparing this case to that of changing the ship or bottom, on board of which goods are insured, *which the insured have no right to do*.”

This is to be taken as a rule, subject to the exceptions of inevitable or urgent necessity; for, it has been held, that the owners of goods insured, by the act of shifting the goods from one ship to another, do not preclude themselves from recovering an average loss, arising from the capture of the second ship, if they act from necessity, and for the benefit of all concerned. *Plantamour v. Staples*, 1 Term E. 611, note (a.)

#### XV. DEVIATION.

Deviation means a *voluntary departure*, without necessity or any reasonable cause, from the regular and usual course of the specific voyage insured. Whenever a deviation of this kind takes place, the voyage is determined; and the underwriters are discharged from any responsibility. It is necessary to insert, in every policy of insurance, the place of the ship's departure, and also of her destination. Hence it is a condition on the part of the insured, that the ship shall pursue the most direct course, of which the nature of things will admit, to arrive at the destined port. If this be not done, if there be no special agreement to allow the ship to go to certain places out of the usual track, or if there

be no just cause assigned for such a deviation, the underwriter is no longer bound by his contract. Nor is it at all material, whether the loss be or be not in actual consequence of the deviation; for the insurers are in no case answerable for a subsequent loss in whatever place it happens, or to whatever cause it may be attributed. Neither does it make any difference, whether the insured was, or was not, consenting to the deviation.

The plaintiff was a shipper of goods in a vessel bound from Dartmouth to Liverpool. The ship sailed from Dartmouth, and put into Loo; a place *she must of necessity pass by* in the course of the insured voyage. But, as she had no liberty given her by the policy to go into Loo, and, although no accident befell her in going into or coming out of Loo, (for she was lost after she got out to sea again,) yet Mr. Justice Yates held that this was a deviation, and a verdict was accordingly found for the underwriters.—*Fox v. Black*, Exeter assizes, 1767, before Mr. Justice Yates.

It was also held by Chief Justice Lee, that, if a master of a vessel put into a port not usual, or stay an unusual time, it is a deviation, and discharges the insurer.

These principles being once established, it follows, as a necessary consequence, that however short the time of deviation may be, if only for a single night, or even for an hour, the underwriter is equally discharged, as if there had been a deviation for weeks or months; for the condition being once broken, no subsequent act can ever make it good.

Whenever the deviation arises from necessity and a just cause, the underwriter still remains liable, although the course of the voyage is altered.—*Rocus*, n. 52.

The first ground of necessity, which justifies a deviation, is that of going into port to repair. If a ship is decayed, and goes to the *nearest place* to refit, it is no deviation; because it is for the general interest of all concerned, and consequently for that of the underwriters, that the ship should be put in a proper condition, capable of performing the voyage.—*Motteaux and others v. the London Assurance Company*, 1 Atk. 545; and *Gilbert v. Readshaw*, Sitt. in Lond. Hil. Vac. 1781.

The next excuse for leaving the direct course is *stress of weather*.—Upon this point the rule is this: that, wherever a ship, in order to escape a storm, goes out of the direct course; or when, in the due course of the voyage, she is driven out of it by stress of weather, this is no deviation. It has also been held, that, if a storm drive a ship out of the course of her voyage, and she do the best she can to get to her port of destination, she is not obliged to return back to the point from whence she was driven.—*Harrington v. Halkeld*, Sitt. in Lond. Mich. Vac. 1778.

If a ship be driven out of her port of loading, by stress of weather, into another, and then does the best she can to get into her port of destination, it shall not be deemed a deviation, though she do not return to the port from whence she was driven.—*Delaney v. Stoddart*, 1 Term Rep. p. 22.

A deviation may also be justified, if done to avoid an enemy; or seek for convoy; because it is in truth no deviation to go out of the

course of a voyage, in order to avoid danger, or to obtain a protection against it.—*Bond v. Gonsales*, 2 Salk. 445.—*Gordon v. Morley*.—*Campbell v. Bordieu*, 2 Stra. 1265.

In the case of *Bond* against *Nutt*, in which the material question was whether a warranty had or had not been complied with; the point of deviation for the purpose of procuring convoy also came under the consideration of the court. Upon that occasion, Lord Mansfield and the whole court held, that, if a ship go to the *usual place of rendezvous*, for the sake of joining convoy there ready, though such place be out of the direct course of the voyage, it is no deviation.—*Cowp. Rep.* 601.

And in a more modern case, the only question was, whether there was a deviation or not. Lord Mansfield there directed the jury to find for the plaintiffs, if they believed that the captain fairly and *bona fide* acted according to the best of his judgment; that he had no other view or motive but to come the safest way home, and meet with convoy; for, that it was no deviation to go out of the way to avoid danger.—*Enderby and another v. Fletcher*, Sitt. in Lond. Trin. Vac. 1780.

If, by the usage of any particular trade, it is customary to stop at certain places, lying out of the direct course from A to B, it is not a deviation to stop there, because it is a part of the voyage; but, in order to justify the captain of a ship in quitting the straight and direct line from the port of loading to that of delivery, there must be a precise, clear, and established usage upon the subject, not depending merely upon one or two loose and vague instances.

But, though an actual deviation from the voyage insured is thus fatal to the contract of insurance, yet a deviation, merely *intended*, but never carried into effect, is considered as no deviation, and the insurer continues liable. Thus, in a case of an assurance from Carolina to Lisbon, and at and from thence to Bristol, it appeared that the captain had taken in salt, which he was to deliver at Falmouth, before he went to Bristol; but the ship was taken in the direct road to both, and before she came to the point where she would have turned off to Falmouth. Lord Chief Justice Lee held, that the insurer was liable; for it is but an *intention to deviate*, and that was held not sufficient to discharge the underwriters.—*Foster v. Wilmer*, 2 Stra. 1249.

In the case of *Carter v. the Royal Exchange Assurance Company*, where the insurance was from Honduras to London, and a consignment to Amsterdam, a loss happened before she came to the dividing point between the two voyages, for which the insurers were held liable to pay.—2 Stra. 1249.

If, however, it can be made appear, by evidence, that it never was intended or came within the contemplation of the parties to sail upon the voyage insured; if all the ship's papers and documents be made out for a different place from that described in the policy, the insurer is discharged from all degree of responsibility, even though the loss should happen before the dividing point of the voyages. This distinction was very properly taken by the court of King's Bench, in *Woolbridge v. Boydel*, Dougl. 16.

In a still later case, the same doctrine was advanced, namely, that if a ship be insured from a day certain, from A to B, and before the day,

sail on a different voyage from that insured, the insured cannot recover; even though the ship afterwards fall into the course of the voyage insured, and be lost after the day on which the policy was to have attached.—*Way v. Modigliani*, 2 Term Rep. 50.

From the proposition just established, namely, that a mere *intention to deviate*, will not vacate the policy, it follows, as an immediate consequence, that whatever damage is sustained before *actual deviation* will fall upon the underwriters.

Thus it was held by Lord Chief Justice Holt, who said, that if a policy of insurance be made to begin from the departure of the ship, from England, until, &c. and after the departure a damage happens, &c. and then the ship *deviates*; though the policy is discharged from the time of the deviation, yet for the damages sustained before the deviation the insurer shall make satisfaction to the insured.—*Green v. Young*, 2 Ld. Raym. 840. 2 Salk. 444. S. C.

In cases of deviation, the premium is not to be returned; because, the risk being commenced, the underwriter is entitled to retain it.

#### XVI. NON-COMPLIANCE WITH WARRANTIES.

A warranty in a policy of insurance is a condition or contingency, that a certain thing shall be done, or happen; and, unless that is performed, there is no valid contract. It is perfectly immaterial for what view the warranty is introduced; but, being once inserted, it becomes a binding condition on the insured; and unless he can show that he has *literally* fulfilled it, or that it was *literally* performed, the contract is the same as if it had never existed.—1 Term Rep. p. 345.

But as a warranty must be *strictly* complied with in favour of the underwriter, and against the insured, equal justice demands, that if a strict and literal compliance with the warranty will support the demand of the insured, the decision ought to be in his favour; especially when, by such a decision, *all* the words in the policy will have their full operation.

In an action on a policy on goods, dated the 9th of December, 1784, *lost or not lost, warranted well this 9th day of December, 1784*; it appeared, that the warranty was at the foot of the policy; that the policy was underwritten between the hours of one and three in the afternoon of the 9th December; that the ship was well at six o'clock in the morning, but was lost at eight o'clock the same morning.

Upon a motion to set aside a non-suit which had been entered, Lord Kenyon, chief justice, Ashurst, Buller, and Grose, justices, were clearly of opinion that the warranty was sufficiently complied with, if the ship were well at any time that day; that the nature of a warranty goes to determine the question; for as it is a matter of indifference whether the thing warranted be or be not material, and yet must be literally complied with, still, if it be complied with, that is enough: that there was good reason for inserting these words, because they protected the underwriter from losses before that day, to which he would otherwise have been liable, as the policy was on the goods from the lading; and thus too, the words *lost or not lost* have also their operation. *Blackhurst v. Cockell*, 3 Term Rep. 360.

In order to make written instructions valid and binding as a warranty they must appear on the face of the policy itself; even though a written paper be *wrapt up in the policy*, when it is brought to the underwriters to subscribe, and shown to them at that time: or even though it be *wafered to the policy*, at the time of subscribing; still it is not in either case a *warranty*, or to be considered as part of the policy itself, but only as a *representation*. Both these instances have occurred before Lord Mansfield, in *Pawson v. Barnevelt*, Doug. 12. and in *Bize v. Fletcher*, Doug. 12.

It being thus settled, that a warranty must appear on the face of the instrument, it has likewise been determined that a warranty written in the margin of the policy, was to be considered equally binding, and subject to the same strict rule of construction, as if inserted in the body of the policy itself.—Doug. 10 and 271.

The warranties which most frequently occur, and upon which the greatest questions have arisen, may be reduced to three classes: *warranty as to the time of sailing*, *warranty as to convoy*, and *warranty as to neutrality*.

1st.—*As to the time of sailing.* It has been held that when a ship has been warranted to sail on a particular day, though the ship be delayed for the best and wisest reasons, or even though she be detained by force, the warranty has not been complied with, and the insurer is discharged from his contract.—*Hare v. Whitmore*, Cowp. 784.

If the warranty be to sail *after* a specific day, and the ship sail before, the policy is equally avoided as in the former case; because the terms of the warranty are as much departed from in the one case as in the other. *Vezian v. Grant*, before Mr. Justice Buller, Guildhall, East. Vac. 1779.

But when a ship is warranted to sail on or before a particular day, if she sail from her port of loading, *with all her cargo and clearances on board*, to the usual places of rendezvous at another part of the same island, merely for the sake of joining convoy, it is a compliance with the warranty, though she be afterwards detained by an embargo beyond the day. The ground is, that when a ship leaves her port of loading, when she has a full and complete cargo on board, and has no other object in view but the safest mode of sailing to her port of delivery, her voyage must be said to commence from her departure from that port. If, indeed, her cargo was not complete, it would not have been a commencement of the voyage. *Bond v. Nutt*, Cowp. 601.

The second species of warranty, which most frequently occurs in instances, is that of *sailing under the protection of convoy*. Upon this subject it is material to consider what is deemed a *convoy*. It has been settled, by the court of King's Bench, that it is not every *single man of war*, which chooses to take a merchant ship under its protection, will constitute such a *convoy* as a warranty means; but it must be a *naval force under the command of a person appointed by the government of the country to which they belong*. *Hibbert v. Pigou*, B. R. East. 23. Geo. III. 1783.

From that case of *Hibbert and Pigou*, we likewise collect this, that a *convoy appointed by the admiral, commanding in chief upon a station abroad*, is a *convoy appointed by government*.

Having seen what shall be deemed a convoy, let us proceed to consider what shall be a *departure* with convoy, within the meaning of a warranty to depart with convoy. The rule on this point is short and clear, that such a warranty implies, that the ship shall go with convoy from the usual place of rendezvous at which the ships have been accustomed to assemble; at Spithead, or the Downs, for the port of London; and Bluefields, for all the ports in Jamaica. And from the particular port to such usual place of convoy, the ship is protected by the policy. Lethulier's case, 2 Salk. 443, and Gorden *v.* Morley, 2 Stra. 1265.

Although the words commonly used are "to depart with convoy," or "to sail with convoy," yet they extend to sailing with convoy throughout the whole of the voyage, as much as if those words were inserted. If therefore the convoy is to go only a part of the way, that is not a compliance with the warranty; and the insurer is discharged from his engagements. Lilly *v.* Ewer, Dougl. 72.

But, although it has been thus settled, that a ship must depart with convoy for the whole of the voyage, yet an *unforeseen* separation is an accident to which the underwriter is liable. Jefferey *v.* Legendra, 3 Lev. 320.

Even where the ship has by tempestuous weather, been prevented from joining the convoy at all, at least, of receiving the orders of the commander of the ships of war, if she do every thing in her power to effect it, and it shall be deemed a sailing with convoy, within the terms of the warranty. Victoria *v.* Cleeve, 2 Stra. 1250.

The third species of warranty is that of *neutrality*; or, that the ship or goods insured are neutral property. If the ship and property are neutral at the time when the risk commences, this is a sufficient compliance with a warranty of neutral property; because it is impossible for the insured to be answerable for the consequences of a war breaking out during the voyage. Eden and another *v.* Parkinson, Dougl. 705. And this doctrine has been since confirmed, in the case of Tyson *v.* Gurney, 3 Term Rep. 477.

#### XVII. RETURN OF PREMIUM.

The next object of our enquiry is, in what cases, and under what circumstances, there shall be a *return of premium*.

The principle upon which the whole of this doctrine depends, is simple and plain. The risk or peril is the consideration for which the premium is to be paid; if the risk be not run, the consideration for the premium fails; and equity implies a condition, that the insurer shall not receive the price of running a risk, if in fact he runs none. 3 Burr. 1240.

Accordingly, in an action brought by the plaintiff, for 5*l.* received by the defendant to the plaintiff's use, where it appeared in evidence, that one Barkdale had made a policy of insurance upon account, for 5*l.* premium, in the plaintiff's name, and that he had paid the same premium to the defendant, and that Barkdale had no goods on board, and so the policy was void. Lord Chief Justice Holt said, the money is

not only to be returned by the custom but the policy is made originally void, the party, for whose use it was made, having no goods on board; so that by this discovery, the money was received without any *reason, occasion, or consideration*, and consequently it was received originally to the plaintiff's use. And so judgment was given for the plaintiff. *Martin v. Sitwell*, 1 Shower, 156.

Clauses are frequently inserted in policies of insurance, containing conditions on the performance or non-performance of which the premium is returnable.

By the law of England, it has been clearly settled, that, whether the cause of the risk not being run is attributable to the *fault, will, or pleasure*, of the insured, still the premium is to be returned. *Cowp. 668.*

The French, in the famous ordinances of Louis XIV. have inserted an article, declaring that if the voyage is entirely broken up, before the departure of the ship, *even by the act of the insured*, the insurance shall be void, and the underwriter shall return the premium, reserving one half *per cent.* for his trouble.

Accordingly, in England, it has always been the custom, when the policy is cancelled, to return the premium, deducting one half *per cent.* *Molloy*, 1. 2. c. 7. s. 12.

In the English law there are two general rules established which govern almost all cases. The first is, that where the risk has not been run, whether that circumstance was owing to the fault, the pleasure, or will, of the insured, or to any other cause, the premium shall be returned. Another rule is, that, if the risk has *once commenced*, there shall be *no apportionment or return of premium afterwards*. Hence, in cases of deviation, though the underwriter is discharged from his engagement, yet, the risk being once commenced, he is entitled to retain the premium.

Where, however, from the nature of the agreement between the parties, or the nature of the voyage, the contract becomes divisible, "a part of the premium shall be retained for the risk run, and part shall be returned as the risk has never commenced."

The first time in which this doctrine was considered at any length was in a case which came before the Court of King's Bench, in the year 1761. It was an insurance upon a ship, at five guineas *per cent.* lost or not lost, *at and from London to Halifax, in Nova Scotia, warranted to depart with convoy from Portsmouth*, for the voyage, that is to say, the Halifax or Louisburgh convoy. Before the ship arrived at Portsmouth the convoy was gone. Notice of this was immediately given by the insured to the underwriter; and at the same time he was also desired either to make the long insurance or to return part of the premium.—The jury found that the usual settled premium, from London to Portsmouth, was one and a half *per cent.* They also found, that it is *usual* for the underwriter, in such like cases, to return part of the premium; but the *quantum* is uncertain (and the *quantum* must in its nature be uncertain, because it depends upon certain circumstances.) It was stated that the plaintiff made an offer to the defendant of allowing him to retain one and a half *per cent.* for the risk he had run on such part of the voyage as was performed under the policy, *viz.* from London to Portsmouth.

Lord Mansfield.—I had not at the trial, nor have now, the least doubt about this question myself. These contracts are to be taken with great latitude: the strict letter of the contract is not so much regarded as the object and intention of it. Equity implies a condition, “that the insurer shall not receive the price of running a risk, if he runs none.” This is a contract without any consideration, as to the voyage from Portsmouth to Halifax; for he intended to insure that part of the voyage as well as the former part of it, and has not. Consequently, the insured received no consideration for this proportion of his premium; and then this case is within the general principle of actions for money had and received to the plaintiff’s use. I do not go upon the usage; for the usage found is only that, in like cases, it is usual to return a part of the premium, without ascertaining what part. If the risk is not run, though it is by the neglect, or even the fault of the party insuring, yet the insurer shall not retain the premium. It has been objected, that the voyage being *begun*, and part of the risk being already run, the premium cannot be apportioned. But I can see no force in the objection. This is not a contract so entire, that there can be no apportionment; for there are two parts in this contract; and the premium may be divided into two distinct parts, relative as it were, to two distinct voyages. The practice shows, that it has been usual, in such like cases, to return a part of the premium, though the *quantum* be not ascertained. And, indeed, the *quantum* must vary as circumstances vary; so that it never can have been fixed with any precise exactness. But though the *quantum* has not been ascertained, yet the principle is agreeable to the general sense of mankind.—Stevenson *v.* Snow, 3 Burr. 1237.

Some years afterwards, the principle established in the foregoing case was attempted to be applied to one which it did not at all resemble. That was in an insurance for twelve months at 9*l. per cent.* and because the ship was captured within two months after the contract was made, a return of premium was demanded. But the contract in this case was entire; the premium was a gross sum stipulated and paid for twelve months; and the parties when they made the contract, had no intention or thought of a subsequent division, or apportionment, and therefore there could be no return of premium. Tyrie *v.* Fletcher, Cowp. 666.

In a subsequent case, the Court of King’s Bench adopted the same rule of decision, where the ship was insured for twelve months, and the risk ceased at the end of two. A distinction was attempted to be made because, in this case, the whole premium, 18*l.* was acknowledged to be received from the insured *at the rate of fifteen shillings per month*; and this, it was insisted, evidently showed the parties intended the risk to continue only from month to month. This objection, was, however, overruled; the court being of opinion, that the case last mentioned decided this; and that the fifteen shillings per month was only a mode of computing the gross sum.—Lorraine *v.* Thomlinson, Dougl. 564.

The two last cases, were insurances upon time; but it seems perfectly clear, that when the contract is entire, whether it be for a *specified time* or *for a voyage*, there shall be no apportionment or return, if

the risk has *once commenced*. And, therefore, where the premium is entire in a policy on a voyage, where there is no contingency at any period, out or home, upon the happening or not happening of which the risk is to end, nor any usage established upon such voyages, although there be several distinct ports, at which the ship is to stop, yet the voyage is one, and no part of the premium shall be recoverable. *Bermon v. Woodbridge*, Dougl. 751.

The last case upon this subject was also an action for the return of the premium. The policy was "at and from Jamaica to London, warranted to depart with convoy for the voyage, and to sail on or before the 1st of August, upon goods on board a ship called the Jamaica, at a premium of twelve guineas *per cent.*" The ship sailed from Jamaica to London on the 31st of July, 1782, but without any convoy for the voyage. At the trial, before Lord Mansfield, the jury found a verdict for the plaintiff, subject to the opinion of the court, upon a case, stating the facts already mentioned. In addition to which, they *expressly* find, "that it is the constant and invariable usage in an assurance, at and from Jamaica to London, warranted to depart with convoy, or to sail on or before the 1st of August, when the ship does not depart with convoy, or sails after the 1st of August, to return the premium, deducting one half *per cent.*"

Lord Mansfield.—An insurance being on goods warranted to depart with convoy, the ship sails without convoy; and an action is brought to recover the premium. The law is clear, that, if the risk be commenced, there shall be no return. Hence questions arise of distinct risks insured by one policy or instrument. My opinion has been to divide the risks. I am sometimes aware that there are great difficulties in the way of apportionments, and, therefore, the court has sometimes leaned against them. But where an express usage is found by the jury, the difficulty is cured. They offer to prove the same usage as to the West Indies in general; but I stopt them, and confined the evidence to Jamaica. The court, therefore, decided for the plaintiff.—*Long v. Allen*, Easter Term, 25 Geo. III.

From the tenor of all these cases, it should seem, as my Lord Mansfield said, that so many difficulties occur in apportioning the premium, that the courts are often obliged to decide against it, unless there be some usage upon the subject.

### XVIII. BOTTOMRY AND RESPONDENTIA.

Bottomry is in the nature of a mortgage of a ship, when the owner of it borrows money to enable him to carry on the voyage, and pledges the keel, or *bottom* of the ship, as a security for the payment; and it is understood, that if the ship be lost, the lender also loses his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest stipulated to be paid, however it may exceed the usual or legal rate of interest. When the ship and tackle are brought home, they are liable as well as the person of the borrower, for the money lent. But when the loan is not made upon the vessel, but upon the goods and merchandises laden thereon, which, from their nature, must be sold or exchanged in the course of the voyage,

age, then the borrower only is *personally* bound to answer the contract: who, therefore, in this case, is said to take up money at *respondentia*. In this consists the difference between *bottomry* and *respondentia*; the one is a 'loan upon the ship, the other upon the goods; in the former, the ship and tackle are liable, as well as the person of the borrower; in the latter, for the most part, recourse must be had to the *person* only of the borrower. Another observation is, that in a loan upon *bottomry*, the lender runs no risk, though the goods should be lost; and upon *respondentia*, the lender must be paid his principal and interest, though the ship perish, provided the goods are safe. In all other respects, the contract of *bottomry* and that of *respondentia* are upon the same footing.

These terms are also applied to another species of contract, which does not exactly fall within the description of either; namely, to a contract for the repayment of money, not upon the ship and goods only, but upon the mere hazard of the voyage itself; as if a man lend 1000*l.* to a merchant to be employed in a beneficial trade, with a condition to be repaid with extraordinary interest, in case a specific voyage named in the condition shall be safely performed.

The contract of *bottomry* and *respondentia* seems to deduce its origin from the custom of permitting the master of a ship, when in a foreign country, to hypothecate the ship, in order to raise money to refit. Such a permission is absolutely necessary, and is impliedly given him in the very act of constituting him master, by the marine law, which in this respect is reasonable; for, if a ship happen to be at sea, and spring a leak, or the voyage is likely to be defeated for want of necessaries, it is better that the master should have it in his power to pledge the ship and goods, or either of them, than that the ship should be lost, or the voyage defeated. But he cannot do either for any debt of his own; but merely in cases of *necessity*, and for *completing the voyage*. Although the master of the vessel has this power while abroad, because it is absolutely necessary for the purpose of commerce and navigation; yet the very same authority, which gave that power in those cases, has denied it when he happens to be in the same place where the owners reside. All the cases which have been determined upon the subject, seem to require, that the ship should be *abroad*, as well as in a *state of necessity*, to justify the captain or master in taking money on *bottomry*. Molloy, in express terms, declares, that a master has no power to take up money on *bottomry* in places where his owners dwell; otherwise, he and his estate must be liable thereto.—Molloy, 1. 2. c. ii. s. ii. If, indeed, the owners do not agree in sending the ship to sea, the majority shall carry it, and then money may be taken up by the master on *bottomry* for their proportion who refuse, although they reside on the spot, and it shall bind them all.

It is of the essence of a contract of *bottomry*, that the lender runs the risk of the voyage; and that both principal and interest be at hazard; for, if the risk go only to the interest of premium, and not to the principal also, though a real and substantial risk be inserted, it is a contract against the statute of usury, and therefore void. This has been frequently so determined in our courts of law.

As the hazard to be run is the very basis and foundation of this contract, it follows, that, if the risk is not run, the lender cannot be entitled to the extraordinary premium; for that would be to open a door to means by which the statute of usury might be evaded. This was so decided in the court of Chancery.

This case was upon a bottomry bond, where the plaintiff was bound, in consideration of 400*l.* as well to perform the voyage within six months, as at the six months end to pay 400*l.* and 40*l.* premium, in case the vessel arrived safe, and was not lost in the voyage. It happened that the plaintiff never went the voyage, whereby the bond became forfeited, and he now preferred his bill to be relieved. Upon the former hearing, as the ship lay all the time in the port of London, and there was no hazard of losing the principal, the lord-keeper thought fit to decree that the defendant should lose the premium of 40*l.* and be contented with his principal and *ordinary interest.* And now, upon a re-hearing, he confirmed his former decree.—*Deguilder v. Depeister*, 1 Vern. 263.

It remains to be shown what those risks are to which the lender undertakes to expose himself. These are, for the most part, mentioned in the condition of the bond, and are nearly the same, against which the underwriter, in a policy of insurance, undertakes to indemnify. These accidents are, tempests, pirates, fire, capture, and every other misfortune, except such as arise either from the defects of the thing itself, on which the loan is made, or from the misconduct of the borrower.

Capture here does not mean a mere temporary taking, but it must be such a capture as to occasion a total loss. And, therefore, if a ship be taken and detained for a short time, and yet arrive at the port of destination within the time limited, (if time be mentioned in the condition) the bond is not forfeited, and the obligee may recover.—*Joyce v. Williamson*, B. R. Mich. Term, 23 Geo. III.

A lender on bottomry, or at respondentia, is neither entitled to the benefit of salvage nor liable to contribute in case of a general average. *Walpole v. Ewer*, Sitt. after Trin. 1789.

It has been said, that if the accident happen by default of the borrower or of the captain, the lender is not liable, and has a right to demand the payment of the bond. If, therefore, the ship be lost by a wilful deviation from the track of the voyage, the event has not happened upon which the borrower was to be discharged from his obligation. *Western v. Wildy*, Skin. 152.



#### OF BILLS OF EXCHANGE.

A bill of exchange is an open letter of request from one person to another, desiring him to pay, on his account, to a third person, a sum of money therein mentioned. The person who makes or draws the bill is called the *drawer*; he to whom it is addressed, is, before acceptance, called the *drawee*, and afterwards, the *acceptor*; he in whose favour it is drawn, is termed the *payer*, and when he has transferred it by endorsement,

ment, the *endorser*; the person to whom he transfers it is called the *endorsee*, or *holder*.

Bills of exchange and promissory notes, after endorsement, are generally subject to the same rules; the endorser of a note being subject to the same liabilities as the drawer of a bill, and the drawer of a note answering to the acceptor of a bill.

No particular form of words is necessary to a bill of exchange; but it must be drawn payable certainly, and not on a contingency, and must be for the payment of money only.

A person taking a bill in payment of a pre-existing debt, or a debt contracted at the time, is not entitled to sue on the original debt before the bill becomes due; for taking the bill amounts to giving credit for that time.

But payment by a bill will not *discharge* a pre-existing debt, unless it be expressly so agreed; nor even then if the person giving such bill knows it to be of no value.

In bills of exchange and promissory notes, the consideration need not be proved, but is presumed; and after transfer they are not liable to defalcation or set off, on account of any transactions between the original parties.

#### *Of the acceptance.*

The acceptance of a bill of exchange is such an act, by the drawee, as will make him liable to pay the same. It is usually made by signing his name or initials at the bottom of the bill, when it is presented to him by the bearer.

A very small matter will amount to an acceptance; and any words will be sufficient for that purpose which show the party's assent or agreement to the bill; as,

Writing the day of the month on the bill is sufficient acceptance.

*Leave your bill with me and call to-morrow, and it shall be accepted*, is a sufficient acceptance.

*Leave your bill with me, I will look over my book and accounts between the drawer and me, and call to-morrow, and the bill shall be accepted*, is not a sufficient acceptance.

When the bill was returned for non-acceptance, the drawee said, *that if it came back again, he would pay it*; it was ruled to be a good acceptance.

Verbal acceptance is sufficient; and an action lies against the acceptor thereon, as to the principal, but not for interest and costs. But there must be a witness. These words, "The two bills of exchange which you sent me, I will pay, in case the owners of the Queen Anne do not," are a sufficient acceptance.

Acceptance, to pay when the goods are sold, is a good acceptance.

Acceptance, to pay half in money, half in bills, is good.

Acceptance, to pay, according to the tenor of the bill, after the day of payment is past, is good.

A bill may be accepted for part, and the sum accepted for is good against the acceptor.

Acceptance of a bill, drawn upon two partners, by one of them, binds both if it concerns the joint trade.

Acceptance of a servant usually transacting business for his master, is good; yet the servant should express such acceptance to be for his master, or he is liable himself.

*Of the Protest.*

A protest is absolutely necessary on a foreign bill, where it is refused acceptance or payment, in order to charge the drawer.

The payee must demand acceptance from the drawee before protest.

If a payee dies, there can be no protest before probate or administration.

If a bill left for acceptance, be lost, the drawee must give a note for the payment thereof; otherwise it may be protested.

If a bill be lost, and no new one can be had, and the drawee does not insist on having the original, but refuses payment on another account, a protest made on a copy is sufficient.

A protest is good evidence of non-acceptance or non-payment, until the contrary is proved.

A protest on a foreign bill is necessary to recover, against the drawer, not only interest and costs, but also principal; and such protest must be made in due time, and timely notice given to the drawer.

In case of non-payment of either foreign or inland bills, the safest way is to give as early notice, to the person of whom it was received, as possible; that is, by the first post, or rather, to send the bill to a correspondent, to tender it to the drawer or indorser. Where they refuse to accept the bill, it may be protested, before the day of payment, for better security, but not for non-payment.

*Endorsement.*

A bill is generally not negotiable so as to give the assignee a right of action in his own name against any person except him from whom he immediately received it, unless the words, "or order," or some other words authorizing the payee to assign it, were originally inserted.

Endorsement is either in blank, in full, or restrictive.

The most common is in blank, and is made by merely writing the endorser's name on the back of the bill. Such endorsement makes the bill transferrable, by the endorsee by mere delivery and cannot be restrained by any subsequent endorsement in full, as the holder may strike out all subsequent endorsements.

An endorsement in full names the person in whose favour it is made, and for a further transfer his endorsement is necessary. Any endorser may restrain the negotiability of a bill by using express words of restriction, as "pay to A. B. only."

Endorsement is equivalent to drawing a new bill.

If the holder give time to the drawee without the consent of the other parties, they will, in general, be discharged. So if he receive part payment, and give time for the rest. A similar indulgence to the drawer or prior endorser will discharge the subsequent parties. But

mere forbearance to sue will not discharge. Notice of dishonour of the bill must be given to the drawer and endorsers without loss of time, or they are discharged.

*Of who shall pay the Money.*

Every drawer, endorser, and acceptor, of a bill of exchange, is separately liable to the payment thereof.

On non-payment, the payee (the person to whom it is to be paid) may sue the acceptor and drawer; but he can have but one satisfaction, that is, he can only recover from them jointly the amount of the bill in his hands.

He, who accepts for the honour of the drawer, is liable to the payment, although he may have no effects. The acceptance is an undertaking for the payment, and the law will oblige him.

If a bill be endorsed to the drawer of it, he may maintain an action as the endorsee, against the drawee, if the latter had effects of the drawer at the time of drawing the bill; otherwise not.

The holder of a bill must tender it before the three days grace are expired.

The last endorser of a bill of exchange may maintain an action against any of the former endorsers, and so any endorser may against all that precede him.

An endorser of a bill, who has paid it, must prove payment in an action against the acceptor.

The endorser of a foreign bill of exchange may be charged, without first resorting to the drawer.

A man cannot be sued in England, Scotland, or Ireland, on his acceptance of any bill of exchange abroad, after he has been discharged by the laws of that country.

It is not necessary to prove the hand of the drawer in an action against the acceptor, nor can the acceptor set up the forgery of the bill.

The assignee of the endorsee may sue, on a general endorsement, to the latter only.

A bill drawn in consideration of money lost at play is void.

If A draws a bill, payable to B for the use of C, and B endorses it to D, D may bring an action for the money.

If a bill be assigned for a just debt, equity will not relieve, though the bill was at first given without consideration.

The following directions, to the several parties to a bill of exchange, may prevent the inconveniences to which they may be liable through inexperience.

*The Drawer of Bills*

Should be well satisfied that they will be accepted and duly honoured before he draws: to this end, it is requisite that he be assured of having effects in the hands of the person drawn upon, and also that he be a man of integrity and punctuality, who will not dishonour his paper, but pay it regularly as it is due.

*The Acceptor*

Should be careful to accept no bill but what he has effects in his hand to answer: to insist upon his correspondent advising of each bill, as soon as drawn, specifying the number, date, sum, time, and to whom payable; for, if he should accept or pay a forged draft, the loss will fall on himself; to adjust and balance all accounts of this nature at least once in three months, and oftener if the drafts are large and continual.

*The Bill Holder*

Should exchange no drafts for a stranger, where he is not convinced of the validity thereof from the *writing* of the drawer or acceptor; if not, offer to send the bill to one of the parties, and, when in cash, that he will account with him for the value.

See that the bill be drawn upon a proper stamp: and make the person, paying the bill to you, endorse his name on the back. Take a regular copy of the particulars of the bill in a book.

If the bill be not already accepted, present it for acceptance. If the person it is drawn upon will not accept, and also adds he will not pay it when due, you had best return it to the endorser or drawer immediately, taking a good bill or cash for the same.

But, if the drawee says, he may pay it when due, wait till that day, present it for payment, and, if refused then, have it protested, and for the amount call upon the endorser. But as you have at present the endorser and drawer as your security, be cautious how you give up the bill to either for their single security, if doubtful.

When you remit a bill, endorse, on the back thereof, "Pay the contents to A. B. of C. or order, D. E." This will prevent the bill being negotiated, should it fall into bad hands.

If the bill be payable to bearer, write upon the face thereof, "Sent by post, August, 1800, to A. B. of C., D. E." in red ink. Endorse no bill until you pay it away.

## OWNERS OF SHIPS.

If goods are spoiled by default of a master of a ship employed by the owners, the owners are liable; but the action must be brought against all the part-owners, who make but one master.

If several part owners wish to send a ship on a voyage, but two or three other part-owners refuse their consent, the former may send her on the voyage, but they must enter into a recognizance in the admiralty for her return.

A part owner of a ship sued the other owners for his share of the freight on finishing her voyage: but the other owners had fitted her out, in which the complainant would not join, whereupon the other owners complained in the admiralty; and, by order there, they gave security, if the ship perished in the voyage, to make good to the plaintiff his share, or to that effect; in such a case, by the law marine and course of the admiralty, the plaintiff was to have no share in the freight. It was referred to Sir Lionel Jenkins to certify the course of the admi-

rality, who certified accordingly, and that it was so in all places, for otherwise there would be no navigation; whereupon the plaintiff's bill was dismissed.

If the owner of a ship lets it to another, he is still liable for a loss of gold sent by that ship. The defendant in an action of this kind, was sole owner of a ship, which he let to one Fletcher for a voyage, for a certain sum, and Fletcher was to have the benefit of carrying goods. The plaintiff sent a quantity of moidores, and had bills of lading signed by the captain; and many of the moidores not being delivered, according to consignment, an action was brought against the defendant, the owner of the ship, to make him liable as far as the ship and freight were worth, according to 7 Geo. II. c. 15

For the defendant it was insisted, that, though the ship was his property, yet he was not so owner as to be liable to the plaintiff, and that Fletcher is for this purpose the owner. But it appearing the defendant had covenanted for the condition of the ship, and the behaviour of the master, the chief justice held he was liable to the plaintiff; and the freight he had in general from Fletcher was sufficient, though the identical freight for the gold belonged to the other; and Fletcher had only the use of the ship, but no ownership.

If a ship be repaired in the river Thames, and fitted out there with new rigging and apparel, the ship itself is not liable, but the owners. If she be repaired at sea, the ship is liable, and the master may hypothecate (or pawn) her for the payment of the charges.

The repairer of a ship may sue either the master, who employs him, or the owners; but if he undertakes it on a special promise from either, the other is discharged.

If the master of a ship buys provisions for her, and has money from the owners to pay for the provisions, but sails without paying the money, the owners are liable to pay, in proportion to their respective shares in the ship, the master being but a servant to the owners.

An action was brought by a shipwright for repairing the defendant's ship in his dock. About three hours before the ship's repairs were finished, a fire happened and she was burnt. Notwithstanding which the court held that the owner was liable to pay for the repairs that had been done.

Lord Mansfield, in delivering the opinion of the court in the case of Farmer and another against Davis, where goods were ordered for a ship by the owner before the appointment of the captain, and some of which goods were delivered after his appointment, said, "Where a captain contracts for the use of a ship, the credit is given to him, in respect of his contract; it is given to the owners, because the contract is on their account; and the tradesman has likewise a specific lien on the ship itself. Therefore, in general, the tradesman, who gives that credit, debits both the captain and the owners. Now, what is this case? The captain made no contract personally: the owners contracted for their ship: the credit was given to them only; and there is not a shadow of colour to charge the captain for any part of these goods."

Wilkins and others, assignees of Brooke, a bankrupt, against Carmichael. The question in this case was, whether a captain, having paid

for stores supplied, and repairs done, to a ship in England, and having wages due to him, has such a lien on the ship as to be entitled to keep her till he is paid.

Lord Mansfield said, notwithstanding the strongest inclination that the defendant (the captain) should have full satisfaction, we are not able to find ground in which we can give judgment in his favour.— 1. He has set up a lien upon two sorts of claim, viz. wages and stores and repairs. As to wages, there was no particular contract, that the ship should be a pledge; there is no usage in trade to that purpose; nor any implication from the nature of the dealing. On the contrary, the law has always considered the captain as contracting personally with the owner: and the case of the captain has, in that respect, been distinguished from that of all other persons belonging to the ship: this rule of law may have its foundation in policy, and the benefit of navigation; for, as ships may be making profit and earning every day, it might be attended with great inconvenience, if on the change of a captain for misbehaviour, or any other reason, he should be entitled to keep the ship till he is paid. As to stores and repairs, it is a strong answer to that claim, that when the demand was made by the assignees the captain had not paid the tradesmen's bills. But, if there was any lien originally, it was in the carpenter. The captain could not, by paying him, be in a better situation than he was, and he had parted with the possession, so that he had given up his lien, if he ever had one: the other creditors had none. If the defendant is liable to the tradesmen, it is by his own act. Work done for a ship in England, is supposed to be done on the personal credit of the employer; in foreign parts the captain may hypothecate the ship. The defendant might have told the tradesmen that he only acted as an agent, and that they must look to the owner for payment. Judgment for the plaintiff.

Rich, executor, versus Coe and another.—The plaintiffs being rope makers, supplied the ship Henry and Thomas with cables to the value of 5*l.* 8*s.* 3*d.* by the order of Thomas Harwood, the captain; and made Harwood, and the owners of the ship (the defendants) debtors in the usual manner, without naming the owners, or knowing particularly who they were. The ship Henry and Thomas had been let by the defendants to Harwood upon certain articles, in which it was mutually covenanted between them as follows:—1st. The owners covenanted with Harwood, that on his performance of the covenant stipulated on his part, he should have the sole management of the ship, and employ her for his own sole benefit and advantage for the space of eleven years, if he should so long live, and the ship should not be lost. The covenants on the part of Harwood were (amongst others) to pay a yearly rent of 36*l.* per cent. at stated periods; that he would at all times, at his own cost and charge repair, maintain, and keep, the vessel, and her rigging, &c. in good and sufficient repair. The plaintiffs had no notice of this contract at the time they furnished Harwood, the captain, with the goods. The question was, whether the defendants were liable to this debt?

Lord Mansfield, in delivering judgment, said, this case was reserved not with a view to the particular matter in dispute or the parties now

before the court, but in consideration of a general anxiety in the owners of ships, employed in this trade, to know how far they are by law liable for the acts of their respective lessees. In that point of view, we have considered the cases very particularly: and after the fullest deliberation, we think it impossible to say that the plaintiffs are not entitled to recover. Whoever supplies a ship with necessaries, has a treble security. 1. The person of the master. 2. The specific ship. 3. The personal security of the owners, *whether they know of the supply or not*.—1. The master is personally liable as making the contract. 2. The owners are liable in consequence of the master's act, because they choose him; they run the risk, and they say whom they will trust with the appointment and office of master. Suppose the owners in this case, had delivered the value of the goods in question, in specie, to the master, with directions for him to pay it over to the creditors, and the master had embezzled the money, it would have been no concern of the creditors; for they trust specifically to the ship, and generally to the owners. In this case, the defendants are the owners: and there happens to be a private agreement between them and the master, by which he is to have the sole conduct and management of the ship, and to keep her in repair, &c. But how does that affect the creditors, who, it is expressly stated, were total strangers to the transaction? and that is an answer to the observation, that the plaintiff must have known the real situation of the master, in this case, from the general usage and custom of the country in that respect. To be sure, if it appeared that a tradesman had notice of such a contract, and, in consequence of it gave credit to the captain individually, as the responsible person, particular circumstances of that sort might afford a ground to say, he meant to absolve the owner, and to look singly to the personal security of the master; but here it is stated, that the plaintiff had no notice whatever of the contract. The owners themselves are aware of their being liable at the time: they choose a master to whom they agree to let the ship, and trust for their security to the covenants which they oblige him to enter into: these covenants are, that he shall keep the ship in repair, and deliver her up at the end of the term, in as good condition as when delivered to him. This is not all; for they indemnify themselves against the private debts of the master; and against his being taken in execution: for if he does not perform all and every the covenants in the agreement, (except in case of the loss of the ship) the consequence (beside their remedy against him upon the covenant) is that the contract and agreement is to be absolutely at an end, and they are to take possession of the ship.

Suppose the ship had been impounded in the admiralty court, and that happened at the end of the term: or, suppose the captain had broken a covenant which had put an end to the agreement, the defendant could never have taken the ship out of the court, without paying the debt for which the ship was impounded. We are all of opinion, therefore, that under these circumstances, there is no colour to say that the creditors should be stript of the general security, they are, by law, entitled to against the owners.

## MASTERS OF SHIPS.

Nothing more materially concerns the master of a ship, than to know what degree of responsibility is attached to his situation, and what privileges it invests him with: and it is the design of this chapter to explain them.

Masters of ships are as responsible for goods, committed to their charge, as hoymen or carriers by land are: for the law makes no distinction between carriers by land and carriers by water: and for whatever losses, that arise from the neglect of persons employed under them, they are answerable: whatever cases, therefore that are contained in this chapter, relative to carriers by land, must be understood to be equally applicable to carriers by water, or masters of ships.

In the case of *Mars v. Sluce*, it was adjudged that a master of a ship was liable for the goods of which the ship was robbed in the river; and the reasons given were, 1. Because he was an officer known; 2. Because he received his salary out of that which was paid for the freight. But the master may reimburse himself out of the mariners' wages for a loss happening by their neglect.

The law charges persons entrusted to carry goods (such as common carriers, hoymen, and masters of ships) to carry them against all events but acts of God, and public enemies.

The plaintiff puts goods on board the defendant's hoy, who was a common carrier. Coming through bridge, by a sudden gust of wind, the hoy sunk, and the goods were spoiled. The plaintiff insisted that the defendant should be liable, it being his carelessness in going through at such a time; and offered some evidence, that if the hoy had been in good order, it would not have sunk with the stroke it received; and thence inferred, the defendant was answerable for all accidents, which would not have happened to the goods in case they had been put in a better hoy. But the chief justice held the defendant not answerable, the damage being occasioned by the act of God; for though the defendant ought not to have ventured to shoot the bridge if the general bent of the weather had been tempestuous, yet this, being only a sudden gust of wind, has entirely differed the case: and no carrier is obliged to have a new carriage for every journey; it is sufficient if he provides one which (without any extraordinary accident, such as this was,) will probably perform the journey.

In the case of *Forward against Pittard*, the plaintiff had delivered goods to the defendant, who was a common carrier; and which goods were afterwards destroyed by accident of fire. The question was, whether the defendant was answerable for them?

Lord Mansfield said—It appears from all the cases, for 100 years back, that there are events for which the carrier is liable independent of his contract. By the nature of this contract he is liable for all due care and diligence; and, for any negligence, he is suable on his contract. But there is a farther degree of responsibility, by the custom of the realm, that is, by the common law: a carrier is in the nature of an insurer. It is laid down that he is liable for every accident, except by the act of God, or public enemies: now, what is the act of God? I consider it to be something in opposition to the act of man; for every

thing is the act of God that happens by his permission; every thing by his knowledge. But, to prevent litigation, collusion, and the necessity of going into circumstances impossible to be unravelled, the law presumes *against* the carrier, unless he shows it was done by public enemies, or by such act as could not happen by the intervention of man, as storms, lightning, and tempests.

If an armed force come to rob the carrier of the goods, he is liable; and the reason is, for fear it may give room for collusion, that the master may contrive to be robbed on purpose, and share the spoil.

In this case, it does not appear but that the fire arose from the act of some man or other; it certainly did arise from some act of man; for it is expressly stated not to have happened by lightning. The carrier, therefore, is liable, inasmuch as he is liable for inevitable accident.—*Judgment for the plaintiff.*

*What acceptance makes a carrier liable.* *Per King, C. J.* If a box be delivered generally to a carrier, and he accepts it, he is answerable, though the party did not tell him there was money in it. But, if the carrier asks, and the other says no, or if he accepts it conditionally providing there is no money in it; in either of these cases, I hold the carrier is not liable; and so it was afterwards determined in the court of King's Bench, in the case of *Gibson v. Poynton and another.*

If goods are lost after the owner of them has taken them from the ship into a lighter, it is his own loss: but it is otherwise if the goods are sent from the ship by the ship's boat, which is considered as part of the ship and voyage. Yet, if the owner of any goods send his servant with them, the carrier or lighterman is not liable if they be lost.

If a captain die, leaving money on board, and the mate becoming captain, shall improve the money, he shall, on allowance for his care, account both for interest and profits.

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#### FACTORS AND AGENTS.

MASTERS of ships by the customs and practice in this country very frequently have the consignment of their cargoes, and become the factors and agents of their owners. Their duty in this capacity is totally distinct from that of masters of ships; and the law on this subject forms a very important branch in the system of mercantile jurisprudence. It has been therefore thought best to state in this chapter the general rules and leading principles of law under this head, and to explain for the use both of merchants and factors their respective rights and duties.

If a factor sell the goods of a person beyond sea, he may maintain an action in his own name for the price; for the promise shall be presumed to be made to him; and so if he buys goods, the seller may have an action against him, for the credit shall be presumed to be given to him; and particularly because it is for the benefit of trade.

This seems clearly to be the case where there is no interposition of the owner of the goods sold, as to whom, it seems, "That the factor's sale creates a contract between the buyer and the owner of the goods;

and therefore if the factor sells for payment at a future day, if the owner gives notice to the buyer to pay him, and not the factor, the buyer is not justified in paying the factor." This doctrine was recognized and confirmed in the case of *Escot v. Milward*. Sittings after Mich. 24 Geo. III.

The case was this:—In the month of June, 1783, a cargo of wheat was consigned to the plaintiffs from *Ostend*, and they employed one *Farrer* as their factor to sell it. It was proved, that the factors in this trade have a *del credere* commission beside factorage, and never, except in case of the failure of the factor, make the purchasers' names known to the owners. On the 9th of June, *Farrer* sold two hundred quarters of this wheat to the defendant. On the 16th of June, *Farrer* handed over to the plaintiff the wheat then remaining in his hands, and the names of those who had purchased the rest; and among others that of the defendant *Milward*. On the 20th of the same month, *Farrer* stopt payment, and compounded with his creditors, who executed to him a deed to that purpose. On the 21st of June, the plaintiffs delivered to the defendant a bill of parcels of the wheat sold by *Farrer*, and demanded payment by his acceptance of a bill to the amount at a month's date. The defendant refused, and insisted that he had a right to set it off against a debt due by *Farrer* to him. The plaintiffs brought their action; and the above doctrine was laid down to the jury by Justice *Buller*, as the clear law on the subject; and the jury found accordingly for the plaintiffs.

"But the doctrine of this case only applies where nothing is due to the factor himself: for he has a lien upon the money in the hands of the buyer for any monies due, or for any engagement he enters into on account of the principal; for he may bring an action for the price against the buyer; and it would be no defence for him to say, that the principal (the owner of the goods) was indebted to him (the buyer) to the amount of them; for the factor has a prior right."

This was the law as held by Lord *Mansfield* in the following case:—In *assumpsit* for goods sold and delivered, by the plaintiffs as assignees for one *Dowding*, a bankrupt. It appeared that *Dowding* was a clothier, and employed one *Jefferies* as his factor, who sold to the defendant, *Goodwin*, the clothes in question, marked *J. Dowding*, before the act of bankruptcy. *Goodwin* knew *Jefferies* to have sold the goods as factor, and he had notice from the assignees not to pay *Jefferies*: notwithstanding which he did pay him, and this action was now brought to make him pay the value again to the assignees. It appeared in evidence, that *Dowding* wanting money to buy cloths, that *Jefferies* had joined him in bonds for the purpose of raising it, *on the security of the cloth being sent to him*. It was adjudged by the court that *Jefferies* had a lien upon the cloth and the money in the hands of the buyer, on account of the money so raised, (*Jefferies* having paid the amount of the bonds;) and that therefore the plaintiffs could not recover.

Every factor ought to sell for ready money, unless the usage of trade is otherwise; and if he sell upon trust, without usage to warrant him, he alone is chargeable in case of a loss: but if the usage be to give credit, then, in case he sells to a person in good credit, if such person fails, the

factor is discharged; but it is otherwise, though the usage to sell is so, if he sells to a person notoriously discredited at the time of the sale; for then in case of a loss he is liable; and so he should sell in market overt, or there is no change of property.

As a factor has a lien upon goods consigned to him for his own demands; and as also, if goods consigned to him as factor remain in specie, they are not subject to his bankruptcy; so where *bills* have been remitted to a factor for a special purpose, if not disposed of or paid away at the time of his bankruptcy, they shall still be considered as belonging to the principal, and be recovered in this action; but subject however to any lien the factor himself may have on them.

In a trial concerning the delivery of goods according to agreement, *the factor who made the agreement* was admitted as a good witness, though he was to have a shilling in the pound on the sale: for he was a mere go-between the buyer and seller, and so might be a good witness for either, as having no interest more on one side than the other.

If goods are *not delivered* to a factor or agent, but he is only *empowered to sell* by the principal, this shall not preclude the principal himself from selling them.

For where the defendant, being owner of a great quantity of malt, then being on board a vessel, empowered one Smith, a broker, to sell it: before Smith sold it, the defendant himself had sold it, but Smith had no notice: afterwards Smith sold it to the plaintiff, who brought trover for it against the defendant; it was at first doubtful whether Smith the broker would not be liable to the plaintiff, as he could not perform his bargain, though it was without his default, so that his sale ought for that reason to be held valid; but afterwards, *Rolle, chief justice*, held, that the owner's sales should prevail against that of his factor, *who had but a bare authority*, and that the broker's sale should have been conditional, if the owner had not sold before; but he said that neither the broker nor his vendees should be liable to any action for detaining the goods, if they had no notice of the sale by the owner.

A factor has only power to *sell* the goods of his principal, and thereby bind him; he cannot bind or affect his principal's property, by *pledging* them as a security for his own debt, though there is the formality of a bill of parcels and a receipt.

If there is an authority ever so general by endorsement of the bill of lading, without disclosing that the endorsee is factor, the owner (as between him and the factor) retains a lien till the delivery of goods, and until they are actually sold, and turned into money.

But if the goods are *bona fide* sold by the factor while at sea, such sale shall be good, and shall bind the owner, because the goods were *bona fide* sold, and by the owner's own authority.

And if a factor to whom a bill of lading is endorsed *generally*, but in fact to him *as factor*, though that is not expressed, endorses it over as his own property; such endorsement shall be good, if for a fair and valuable consideration and without notice; otherwise, if only a spurious one to defraud the owner.

Goods consigned to factors merely for sale, are not liable to their bankruptcy. For if a merchant consigns goods to a factor, and he be-

come a bankrupt, the goods still remaining in his possession, they shall still be deemed the property of the merchant, and he may recover them in this action.

So if the factor had sold the goods consigned to him, and received the money, and died indebted in debts of a higher nature, if it could be proved that the money so received had been invested in other goods, these shall be deemed to belong to the merchant's estate, not to the factor's; but if the money had remained in specie, it had belonged to the factor's estate, and gone to answer the debts of an higher nature; for the money has no mark to be followed by.

But where the factor had for the merchant's goods taken *notes*, instead of money, the Court of Common Pleas held, that the merchant should have the notes, as they could be traced.

And so if the factor had sold the goods consigned to him, and become a bankrupt, the merchant must come in as a creditor under the commission; though if he had *laid out the money in other goods* for the merchant, the merchant shall have them: so if the factor had sold for payment at a future day, the merchant shall have the money.

As where the plaintiff, living in Ireland, employed B. in London, to sell goods for him: B. sold them to J. S.; the plaintiff at the time was ignorant to whom they were sold, and J. S. was ignorant whose property they were; B. became a bankrupt, and J. S. paid the money to the defendants, his assignees; the plaintiff brought an action for the money against the assignees, and recovered; for though it was agreed, that a payment by J. S. to B. was a discharge for him against the plaintiff his principal, yet the debt was not in law to him, but to the plaintiff whose goods were sold; and therefore was not assigned to the defendants under the general assignment of all their debts, but remained due to A. as it was before; that being paid to the defendant who had no right to it, that it was a payment under a mistake, and so was recoverable from them.

And where the factor had a *del credere* commission, the same point was decided by the chancellor.

A factor has a lien upon goods consigned to him, not merely for what is due for those goods, but for the *balance of a general account*, and for which he may detain them. So he has a lien on the money in the hands of the buyer.

And though in this case, goods had been consigned to a factor by a trader, and *the factor knew the trader was in insolvent circumstances*, but he, nevertheless, advanced him money on the credit of the goods, it was adjudged, that he was entitled to a lien against them for the money he had advanced, and should hold them against the assignees of the consignor.

An action for money had and received will not lie against a known agent, or receiver, for money paid *voluntarily* to such agent, *for the use of the principal*, unless he had paid it over after notice not to do it: for it would be unjust to suffer such an action to proceed, and to leave him to be defended or deserted as the principal thought fit; and especially if the action is brought for the purpose of trying any right of the principal.

For where a man receives money for another as his agent, under a pretence of right (*ex. gr.* for tithe,) the court will not suffer the principal's right to be tried in an action against the agent, if the defendant can show the least colour of right in his principal: as in this case, by having been some time in possession.

So where money has been paid to an agent or receiver *by mistake*, he shall not be liable to refund it if *he has paid it over to his principal*; for he should not suffer for another's mistake, but the payer should resort to the principal himself: but if he has not paid it over to his principal, but *has it in his hands, or only given credit for it to his principal in his books, or on an account between them*: in these cases he shall be personally liable, though not paid over; but if any new credit had been given to the principal by the agent on receiving the money, it would be proper evidence to leave to the jury, whether the agent might not, or had not received any prejudice thereby? and so vary the case.

“But as to how far the principal shall be bound by the act of his agent, a distinction is to be observed between *a general and a particular agent.*”

A *general agent* shall bind his principal *by all his acts*, even though he exceeds his authority; as if a stable-keeper having an horse to sell, directs his servant not to warrant him, notwithstanding which he does, the master will nevertheless be liable on the warranty, because the servant was acting within the scope of his authority; and the public cannot be supposed to be cognizant of any private conversation between the master and the servant: but where a person is made a *particular agent*, and under a circumscribed authority, there he can only bind his principal *as far as he acts within his authority*, for that would be to enable one man to bind another against his will.



#### FREIGHT, CHARTER-PARTY, AND DEMURRAGE.

Freight is the sum agreed on for the hire of a ship or carriage of goods, and must be paid in preference to all other debts, for the payment of which the goods stand engaged; but, as the goods are obliged to the ship for hire, so is the ship to the owner of the goods, in case of damage or waste through any defect of the vessel or sailors.

Charter-party is the same in the civil law with an indenture at the common law; it settles the agreement, as the bills of lading do the contents, of the cargo; and binds the master to deliver them well conditioned at the place of discharge, according to the agreement; and, for performance, the master obliges himself, ship, tackle, and furniture.

The taking a ship to freight is the hiring her of her master or owners, either in part or the whole, and either by the month, for an entire voyage, or by the ton; and the contract, reduced into writing, commonly called a charter party, executed between the freighter and the person who lets the ship, must express the different particulars agreed on.

The master or owners generally covenant to provide a sufficiency of tackle and mariners, and to fit the ship in every respect for performing the voyage. The merchant, on his part, stipulates to comply with the

payment promised for freight on delivery of his goods; and both oblige themselves in penalties for non-compliance.

If, by the time appointed in the charter-party, the ship is not ready to take in, or the merchant (after the days of demurrage commonly granted) not ready to load, the parties are at liberty, and the suffering, one hath his remedy against the other, by action to recompense the damage.

If a part of the loading be on board, but not enough to secure the payment of freight, and some intervening misfortune prevent the merchant from shipping the whole in time, the master is at liberty to contract with another, and shall have freight by way of damage for the time that those goods were on board after that limited; for such agreements being of a conditional nature, and preceding a failure as to a complete loading, will determine the same unless afterwards *affirmed by consent*, and, though it be no prudence for every merchant or master to depart from the contract on non-compliance of articles, yet it is the highest justice that ships and masters should remain free; for otherwise, by the bare lading of a cask or bale, they might be defeated of the opportunity of passage, or the season of the year.

So, on the other hand, if the vessel be not ready, the merchant may ship the remainder of his goods on board another, and discharge the first and recover damages against the master or owners for the rest; this being grounded on the like reason as the former.

Atkinson contracted with Buckle for the carriage of a hundred quarters of barley, and promised to deliver unto him the hundred quarters of barley on ship board at Barton Haven, in the county of York, to carry them for him, and for the carriage thereof did promise to pay him so much; and Buckle promised to carry the same for him, and accordingly brought his ship to the said haven, expecting there the delivery of the hundred quarters of barley; but Atkinson came not to deliver the same unto him; whereupon Buckle brought his action of the case, upon the promise; and, upon *non assumpsit* pleaded, had a verdict and judgment, which was affirmed upon a writ of error.

If goods are fully laden on board, and the ship hath *broken ground*, and the merchant, on after-consideration, determines again to unload them, and not prosecute the adventure, by the *marine law*, the freight is due.

And, if the ship in her voyage becomes unable without the master's fault, or that the master or ship be arrested by any foreign prince or state in her voyage, the master may either *mend his ship or freight another*; but, if the merchant will not consent thereto, then the *freight* becomes due for so much as the ship hath *earned*: otherwise the master is liable for all damages that shall happen: and, therefore, if that ship, to which the goods were translated, perish, the master shall answer; but, if both ships perish, then he is discharged. But, in case of extreme necessity, as that the ship would be in a sinking condition, and an empty ship is passing by or at hand, he may translate the goods; but, if that ship sinks or perishes, he is there excused; but then it must be apparent that that ship seemed *probable and sufficient*.

If a master shall weigh anchor and sail after the time covenanted or agreed for his departure, if any damage happens at sea after that time, he shall refund and make good all such misfortune. Yet, if a *charter-party* be made, that the plaintiff shall sail from London to Lisbon with the first wind any opportunity, &c. in consideration of which the merchant did covenant to pay so much for freight, and the ship departs not with the first wind and opportunity, yet afterwards *breaks ground* and arrives at her port, the freight in this case has become due; and there is nothing that can debar the ship of her freight but non-departure; for only that in law is material to avoid the payment of the freight; but to say the ship did not depart with the next wind is but a circumstance, which, in strictness of law, is not necessary to be denied.

If it be agreed, that the master shall sail from London to Leghorn in two months, and freight accordingly is agreed on, if he begins the voyage within two months, though he does not arrive at Leghorn within the time, yet the freight is become due.

The East India Company might, by charter-party, keep a ship they had freighted a long time in India, and did so keep her until she was unfit for service, and could not come home; they were obliged in chancery to pay the damage, though by the charter-party it was payable at the return of the ship.

So, where no freight was to be paid for the cargo *outwards*, but freight for the cargo *homewards*, and the factor abroad had no goods to load her homewards, payment of the freight was decreed.

And, if a ship is freighted to go to any place to load, and on arrival there, the factor cannot or will not put any thing on board him, after the master has lain the days agreed on by charter-party, and made his regular protests, he shall be paid empty or full.

If a ship is freighted from one port to another, and thence to a third, a fourth, and so home to the port whence she first sailed, (commonly called a *trading voyage*) this is all but one and the same voyage, so as it be in conformity to the charter-party.

A contract is made between a merchant and master of a ship, that, if he carries the merchant's goods to such a port, he will then pay him so much money for freight. In making the voyage, the ship is robbed by pirates, and part of her loading lost, and afterwards the remainder is brought to the port of discharge. Here the sum agreed on for freight is not due, the agreement not being performed on the part of the master; and this is a conditional contract. But it is otherwise by the civil law; for thereby the same is a danger of the seas, which if not expressed in naval agreements, is naturally implied; and there was no default in the master or his mariners; and had these goods, which the pirates carried away, been thrown overboard in stress of weather, it would not have worked a disability in the master to receive the sum agreed on; because, both by the common law and law marine, the act of God, or that of an enemy, shall not have an effect to work a wrong in actions private; and a pirate is esteemed an enemy in our law.

If a ship be freighted by the ton, and she is full laden according to the charter-party, the freight is to be paid for the whole: otherwise but for so many tons as the lading amounted to.

If freight be contracted for the lading certain cattle, or the like, from Dublin to West Chester, and some of them happen to die before the ship's arrival, the whole freight is become due, as well for the dead as the living.

But, if the freight be contracted for the transporting at so much *per bead*, if death happens, there ariseth due no more freight than only for such as are living at the ship's arrival at her port of discharge, and not for the dead.

When cattle or slaves are sent on board, without any previous agreement about lading or transporting them, but generally, then freight shall be paid as well for the dead as the living; and, if freight be contracted for the transporting of women, and they happen in the voyage to be delivered of children, no freight becomes due for the infants.

A master of a ship is not bound to answer freight to the owners for passengers, where it appears they are not able to pay.

If goods are sent on board ship, generally, the freight must be according to that commonly paid for the like accustomed voyages.

If a ship shall be freighted, and named to be of such a burden, and, being freighted by the ton, shall be found less, there shall be no more paid than only by the ton for all the goods that were laden on board.

And, if a ship be freighted for two hundred tons or thereabouts, the addition of *thereabouts* is commonly reduced to be within five tons, more or less, as the moiety of the number ten, whereof the whole is compounded.

If a ship be freighted by the great, and the burden of it is not expressed, yet the sum certain is to be paid.

If a freighter, by loading prohibited or unlawful goods, occasion the ship's detention, or otherwise impedes her voyage, he shall pay the freight contracted and agreed for.

When a ship is freighted *out* and *in*, (or *out* and *home*) there is no freight due till the whole voyage is performed; so that, if she be cast away coming home the freight *outwards* as well as *inwards* becomes lost.

If a master lets out his ship, and afterwards secretly takes in other goods, unknown to the first freighter, by law marine he loses his freight; and, if it should so fall out that any of the freighter's goods should, for safety of the ship, be cast overboard, the rest shall not become subject to average, but the master shall make the damage good; though if the goods are brought into the ship secretly and unknown to him it is otherwise, and goods so brought in may be subject to what freight the master thinks fit.

When a ship puts into any port than that she was bound to by agreement, the master shall answer all damages that shall accrue thereby; but if she was forced in by storm, enemies, or pirates, he must afterwards proceed to that he was obliged to by contract.

In construction of law, the lading of the ship is *tacitly* obliged for the freight, the same being, in point of payment, preferred before all other debts to which the goods so laden are liable, though such debts as to time, were *precedent* to the freight; for the goods remain as it were bailed for the same, nor can they be *attached* in the master's hands, though it is commonly conceived otherwise.

As ships deserve wages like a labourer, the actions touching the same are, in the eye of the law, generally construed favourably for the ship and owners; and therefore, if four parts in five of them shall make up their accounts with the freighters and receive their proportions, yet the fifth may sue singly, by himself without joining with the rest, and this as well by the common law as the law marine.

If a ship in her voyage happens to be taken by an enemy, and afterwards is retaken by another ship, in amity, and restitution is made, and she proceeds on her voyage, the contract is not determined, though the taking by the enemy divested the property out of the owners; yet, by the law of war, that possession was defeasible, and being recovered in battle afterwards the owners become reinvested; so the contract, by fiction of law, became as if she never had been taken, and so the entire freight becomes due.

It was covenanted by a charter-party that the ship should return by a certain time within the river Thames (the danger of the sea excepted) and afterwards in the voyage, and within the time of the return, the ship was taken upon the sea by enemies unknown to the covenanter, and, being detained by them, could not return within the river Thames within the time mentioned by the covenant. *Resolved*, This impediment was within the exception; for these words intend as well any danger, upon the sea, by pirates or men of war, as dangers of the sea by shipwreck, tempest, or the like.

If a ship, freighted by the great, be cast away, the freight is lost; but if by the ton or parcels, and part thereof is saved from the wreck, *doubted* whether *pro rata*, she ought not to be answered her freight.

If a ship by charter-party reciting to be of the burden of 200 tons, is taken to freight for a sum certain, to be paid at her return, the sum certain is to be paid though the ship amounts not to that burden.

In case a ship is freighted after the rate of 20*l.* for every month that she shall be out, to be paid after arrival at the port of London; the ship is cast away going up from the Downs, but the lading is all preserved, in which case the freight is become due; for the money arises so monthly by the contract, and the place mentioned is only to show where payment is to be made; for the ship deserves wages like a mariner who serveth by the month; and though he dies in the voyage, yet his executors are to be answered *pro rata*. Besides, the freight becomes due, by intendment on the delivery, or bringing up of the commodities to the port of London, and not of the ship.

If a man freight a ship out, and covenants that the ship should sail out of the port of Cadiz with the first fair wind and opportunity, and the freighter covenants, that, for the freight of all the premises, he would pay unto the master 184*l.* if the master doth not show that the ship arrived at the port of Cadiz, he cannot maintain an action against the freighter.

If the master enter into a *charter party* for himself and owners, the master, in that case, may release the freighters without advising with the owners. But if the owners let the ship out to freight, whereof J. J. is master, though the master covenant in the same *charter-party*, and subscribe, yet his release in that case will not bind the owners; but the

owners' release, on the other hand, will include the master, and the reason is, for that the master is not made a proper party in the indenture.

If an indenture of *charter-party* made between A. and B. owners of a ship, of the one part, and C. and D. merchants of the other part; and A. only seals the deed of the one part and C. and D. of the other part; but in the indenture it is mentioned, that A. and B. covenant with C. and D., and C. and D. covenant with A. and B.; in this case, A. and B. may join in an action against C. and D., though that B. never seals the deed, for he is party to the deed, and C. and D. have sealed the other part of B. as well as to A.

If a factor freight a ship by order and for account of another, out and home, and a *charter-party* is accordingly made and indented between him and the master, the factor is liable for the freight and performance of all the covenants. But if the ship be only freighted outwards, and loaded by the factor, the goods shipped are only liable for the freight, and no demands to be made on the freighters in virtue of the *charter-party*, but the person who receives the goods is to pay it, according to the tenor of the bill of lading.

If a ship is freighted out and home, and after having delivered her cargo at the place agreed on, there are no goods provided for her re-loading, the master must stay the days of demurrage agreed on by *charter-party*, and make his regular protest for his freighter's non-compliance, who will in this case, be obliged to pay him, empty or full; though should the master not wait the time stipulated, or omit to make his protest, he will lose his freight: and in case the master, on his finding no goods provided by his freighter, should determine to load some on his account, as salt, or the like, this will not prevent his recovering his freight; for if the ship had been laden only with salt by the merchant, which (it may be) would not pay half the freight, yet the shipper, or proprietor may at pleasure abandon the same to the master for his freight, and he can demand no more by the *charter party*. But if the master take in such salt, on his own account, before the days of demurrage are expired, and that, by some condition with the freighter, he may claim freight, then this letter is to have the benefit of the salt in deduction of the said freight.

#### CHARTER-PARTY OF ASSIGNMENT.

This *Charter-Party*, indented, made, concluded and agreed upon, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, &c. between A. and B. of &c. master and owner of the ship or vessel called \_\_\_\_\_ of the burden of, &c. of the one part, and C. D. of &c. of the other part, witnesseth. That the said A. B. for the consideration hereinafter mentioned, hath granted and to freight letten, and by these presents doth grant and to freight let, unto the said C. D. his executors, administrators and assigns, the whole tonnage of the hold, stem, sheets, and half deck of the said ship or vessel, from the port of \_\_\_\_\_ to the port of \_\_\_\_\_ in a voyage to be made with the said ship in the manner following (that is to say)

the said A. B. is to sail with the first fair wind and weather that shall happen, next after the \_\_\_\_\_ day of \_\_\_\_\_ or before the \_\_\_\_\_ day of \_\_\_\_\_ next, from the said port of \_\_\_\_\_ with the goods and merchandizes of the said C. D., his factors or assigns, on board, to \_\_\_\_\_ aforesaid, there to be delivered and discharged of her said cargo, within fifteen days next after her arrival for the end of the said voyage: *In consideration* whereof, the said C. D. for himself, his heirs, executors, and administrators, doth covenant, promise, grant and agree, to and with said A. B. his executors, administrators and assigns, and every of them by these presents, that he the said C. D. his executors, administrators, factors or assigns, shall and will well and truly pay or cause to be paid, unto the said A. B. his executors, administrators and assigns, for the freight of the said ship or goods, the sum of, &c. (Or thus, 20s. a ton, for loading or unloading and taking in goods at \_\_\_\_\_ and \_\_\_\_\_ ports) within one and twenty days after the said ship's arrival, and goods discharged at \_\_\_\_\_ aforesaid, for the end of the voyage; and also shall and will pay for demurrage, if any shall be by the default of him the said C. D. his factors or assigns, the sum of three dollars a day, daily and every day, as the same shall grow due: And the said A. B. for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said C. D. his executors, administrators and assigns, and every of them, by these presents, that the said ship or vessel shall be ready at the said port of \_\_\_\_\_ at \_\_\_\_\_ key, to take in goods, by the said \_\_\_\_\_ day of \_\_\_\_\_ next coming; and within ten days after the said ship shall be ready at the said key as aforesaid, the said C. D. doth grant, promise and agree to have his goods ready and put on board the said ship, in order that she may proceed on her said voyage. And the said A. B. doth also covenant, promise, grant and agree, to and with the said C. D. his executors, administrators and assigns, that the said ship or vessel now is, and at all times during the said voyage shall be, to the best endeavour of the said A. B. his executors and administrators, at his and their own proper costs and charges, in all things made and kept stiff, staunch and strong, and will furnish and provide as well with men and mariners sufficient and able to sail, guide and govern the said ship, as with all manner of rigging, boats, tackle, apparel, furniture, provision and appurtenances fitting and necessary for the said men and mariners, and for the said ship, during the voyage aforesaid. *In witness, &c.*

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#### CHARTER-PARTY OF AFFREIGHTMENT.

This charter-party of affreightment, indented, made and fully concluded upon this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ between A. B. of, &c. owner of the good ship called the \_\_\_\_\_ of the burden of \_\_\_\_\_ tons, or thereabouts, now lying in the harbour of \_\_\_\_\_ whereof \_\_\_\_\_ is at present master, on the one part, and C. D. of, &c. on the other part, *Witnesseth*, That the said A. B. for the consideration hereafter mentioned, hath letten to freight \_\_\_\_\_ the aforesaid ship with the appurtenances to her belonging, for a voyage

to be made by the said C. D. to —— and back again to —— where she is to be discharged (the danger of the seas excepted) and the said A. B. doth by these presents covenant and agree with the said C. D. in manner following, *That is to say*, That the said ship in and during the voyage aforesaid, shall be tight, staunch, and strong, and sufficiently tackled and apparelléd with all things necessary for such a vessel and voyage; and that it shall and may be lawful for the said C. D. his agent or factors, as well at —— as at —— to load and put on board the said ship —— loading of such goods and merchandise as they shall think proper. Contraband goods always excepted. *In consideration whereof*, the said C. D. doth by these presents agree with the said A. B. well and truly to pay or cause to be paid unto him, in full for the freight or hire of his said ship and appurtenances, the sum of —— and so in proportion for a less time, as the said ship shall be continued in the aforesaid service in —— days after her return to —— and the said C. D. doth agree to pay —— the charges of victualling and manning the said ship and —— port charges and pilotage during said voyage, and to deliver said ship on her return to —— to the owner aforesaid or his order.

To the true and faithful performance of all and singular the covenants, payments and agreements aforesaid, each of the parties aforesaid binds and obliges himself, his executors and administrators, in the penal sum of —— firmly by these presents. In witness whereof, the parties aforesaid have hereunto interchangeably set their hands and seals the day and year aforesaid.

*Signed, sealed and delivered,  
in presence of us, &c.*

—  
*The following is the form of a Charter-party, whereby the owners of one Moiety of a ship let to Freight their share to the owners of the other Moiety.*

This charter-party, indented, made, and fully concluded, this —— day of, &c. between A. B. and C. D. of Boston, merchants, owners of one moiety, or half part, of the good ship, or vessel, called the Neptune, of the burden of two hundred tons, with the like moiety of all the sails, masts, tackle, apparel, furniture, ordnance, and appurtenances, thereunto belonging, riding at an anchor in the harbour of Boston, of which the said C. D. is master of the one part, and E. F. and G. H. of Boston, merchants, owners of the other moiety and residue of the said ship, with the masts, sails, tackle, ordnance, furniture and apparel, thereunto belonging, on the other part, *witnesseth*, that the said A. B. and C. D. have granted and letten to freight, and by these presents, do grant and let to freight, all their said part and moiety of the said ship and premises, unto the said E. F. and G. H. for a voyage with her (by God's grace) to be made in the manner and form following:

That is to say, That the said A. B. and C. D. for them, their executors, administrators, and assigns, do hereby covenant and grant, to and with the said E. F. and G. H. for them, their, and either of their executors and administrators, by these presents, that the said ship (being

already laden) shall, with the first good wind and weather after the date thereof (God permitting) sail directly from the harbour of Boston to the port of Leghorn, in Italy, (the perils and dangers of the seas excepted) and there discharge such goods and merchandises, as shall be directed and appointed by the said E. F. and G. H. or one of them, their, or one of their factors or assigns; and thence shall sail, and take her direct course, as wind and weather shall serve, with as much speed as may be, (the perils and dangers of the sea excepted) to Venice, and there shall stay and abide the space of forty working days next after her first arrival there, to unlade all such goods and merchandises as shall remain on board for account of E. F. and G. H. after her delivery at Leghorn as aforesaid; and to relade such goods, wares and merchandises, as the said E. F. and G. H. or either of them, their, or either of their factors and assigns, shall think fit to charge and relade on board, and into the said ship, that is to say, so much as the said ship can conveniently carry, over and above her victuals, tackle, ammunition, apparel, and furniture.

And the said ship with her said loading, shall, with the first good wind and weather after the expiration of the said forty days, sail and proceed from the said harbour of Venice to Boston. And the said E. F. and G. H. for themselves and either of them, their, and either of their executors and administrators, do covenant, promise and grant, to and with the said A. B. and C. D. and either of them, their and either of their executors, administrators, and assigns, by these presents, that they, the said E. F. and G. H. or one of them, or their or one of their executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, to the said A. B. and C. D. or one of them, their or one of their executors, or administrators, within the said town of Boston, for every ton of such wares and merchandises, as shall be laden or unladen in the said ship during the said voyage, the sum of, &c. [counting the tonnage according to custom, or if a certain sum is agreed on for the voyage out and home, or so much per month,] for the part and interest of the said A. B. and C. D. in the said ship, and for and in respect of, the freight and hire of their part of her; which said money is to be paid in manner and form following; that is to say, one-third part thereof upon the right discharge of the said ship, and another third part thereof within the space of six weeks then next following, and the remaining third part thereof within the space of two months next ensuing after the end and determination of the said six weeks.

And the said A. B. and C. D. for them and either of them, their and either of their executors and administrators, do covenant and grant to and with the said E. F. and G. H. their executors and administrators, by these presents, that the said ship, for their part, shall be strong and staunch, and well and sufficiently tackled and appareled with sails, sail-yards, anchors, cables, ropes, gun-shot, artillery, gunpowder, and all other instruments, tackle and apparel, needful and necessary for such a ship and for such a voyage, together with an able master and sufficient number of mariners.

And, in the performance of all and every the covenants, grants, articles, and agreements, on the parts, and behalffs of every of the said parties, truly to be holden, performed and kept, in all things as is aforesaid, the said parties to these presents do bind themselves to one another; that is to say, the said A. B. and C. D. do, by these presents, bind themselves, and either of them, and their several executors and administrators, goods, and their part and interest in the said ship, with the furniture thereof, to the said E. F. and G. H. and to their executors and administrators; and the said E. F. and G. H. do, in like manner bind themselves, and either of them, their and either of their executors, administrators, and assigns, and all their goods and interest in the said ship, to the said A. B. and C. D. their executors and administrators, in the sum or penalty of five thousand dollars, lawful money of the United States of America, by the party or parties infringing the said covenants, or any of them, to the other party or parties truly observing, to be paid by the virtue of these presents. *In witness, &c.*

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If before the departure of the ship there should happen an embargo, occasioned by war, reprisals, or otherwise, with the country to which the ship is bound, so that she cannot proceed on her voyage, the *charter-party* shall be dissolved without damages or charges to either party, and the merchant shall pay the charges of unlading his goods; but if the restraint arises from a difference between the parties themselves, the *charter-party* shall still remain valid in all points.

If the ports be only shut, and the vessels stopped for a time, the *charter-party* shall still be valid, and the master and merchant shall be reciprocally obliged to wait the opening of the ports, and the liberty of the ships, without any pretensions for damages on either side.

However, the merchant, at his own charges, may unload his goods during shutting up of the port, upon condition either to relade them, or indemnify the master.

The great variety of circumstances occasioned by different voyages naturally produce a correspondent diversity of charter-parties, all the different forms of which it would be impracticable and unnecessary to introduce here, as the preceding may be varied to suit any purpose.

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*Extract from the Act of Congress, 27th February, 1815.*

it shall be the duty of every master or manager of any steam-boat, packet, or other vessel, which shall pass from one port or place to another port or place, in the United States, where a post office is established, to deliver within three hours after his arrival, if in the day time, and within the two hours after the next sunrise, if the arrival be in the night, all letters and packets addressed to, or destined for, such port or place, to the post master there, for which he shall be entitled to receive of such post master two cents for every letter or packet so delivered, unless the same shall be carried or conveyed under a contract with the post master general; and if any master or manager of a steam boat, or other vessel, shall fail so to deliver any letter, or packet, which shall

have been brought by him, or shall have been in his care, or within his power, he shall incur a penalty of thirty dollars for every such failure.

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## MERCANTILE FORMS.

A bill of lading is a writing wherein masters of ships acknowledge the receipt of goods on board, and oblige themselves to deliver the same in good order and condition at the place where they are consigned to. There must always three be made out; of which one should be remitted, by the first post after signing, to the person the goods go to; another be sent him by the ship; and the third remain with the shipper; besides which, a fourth should be made out, to be given to the master for his government.

Upon delivering the goods at the port of destination to the shipper's factor or assigns, giving up the bill of lading sent to the factors or assigns is a sufficient discharge, but the master may insist on a receipt.

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### BILL OF LADING.

Shipped in good order by A. B. on the good ship *Washington*, A. B. master, now riding at anchor in the *Bay of Funchal*, and bound for *Boston*, to say,

*C. D. No. 1 a 50.* 50 quarter casks of wine.

*C. D. No. 1 a 4.* 4 pipes wine.

being marked and numbered as in the margin, and are to be delivered in the like good order (dangers of the seas and enemies excepted) at the aforesaid port of Boston, unto C. D. or his assigns; he or they paying freight for the said goods, with primage and average accustomed. In witness whereof the master of said ship hath affirmed to three Bills of Lading, of this tenor and date, the one of which being accomplished, the other two to be void.

A. B.

Funchal, Nov. 12, 1801.

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### FOREIGN BILL OF EXCHANGE.

Philadelphia, January 1, 1822.

Exchange for £500 Sterling.

At \_\_\_\_\_ after sight (or "after date") pay this my first bill of exchange, (second and third of the same tenor and date not paid) to Messrs. \_\_\_\_\_ or order, ("or bearer") five hundred pounds sterling, value received of them, and place the same to account as per advice from

J. J.

To Mr. \_\_\_\_\_, London.

## INLAND BILL.

\$500.

Philadelphia, January 1, 1822.

Two months after date (or "at sight," or "on demand," or "at \_\_\_\_ days after sight,") pay Mr. —— or order, five hundred dollars, for value received.

C. D.

*Mr. ——, Lancaster.*

## PROMISSORY NOTE.

\$500.

Philadelphia, January 1, 1822.

Sixty days after date I promise to pay A. B. or order, five hundred dollars, without defalcation, for value received.

C. D.

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## DISBURSEMENTS AND OTHER ACCOUNTS.

The method of book-keeping is the art of placing our accounts in such an easy manner, that the whole, or any part, of the money received and advanced may, with the greatest clearness, be attained in a very little time.

Whatever is paid upon a ship's account, the ship must be Dr. for it.

Whatever is received upon a ship's account, the ship must have credit for the same.

It is recommended to every captain to keep a small memorandum-book, to set down the money as he lays it out, both for himself and his ship; likewise the money which he receives, lest at any time it slip his memory and be forgotten: then these accounts can be easily entered into a larger book at leisure. By this method he can easily tell whether any thing has been omitted or not, by adding up the money paid, and taking it from the money received; if what remains is equal to the cash he has on hand, nothing has been forgotten; if they do not agree, then it is plain something has been omitted.

Many losses have frequently fallen upon owners of ships, for want of proper care being taken by their captains in signing bills of lading. When there is the least reason to suspect the quantity is not right, or that there is any damage in the goods, always write,

(If hemp, flax, bars of iron, &c.)

*Quantity and conditions unknown; and three bundles of hemp in disputes, if on board, to be delivered.*

STEPHEN HOLLAND.

(If linen, yarn, bales, hardware, &c.)

*Insides and contents unknown.*

STEPHEN HOLLAND.

(If tar, wines, brandy, turpentine, &c.)

*Contents and conditions unknown; not to be accountable for leakage; and it is agreed that freight shall be paid for the quantity shipped.*

STEPHEN HOLLAND.

The following accounts and examples will be sufficient for any voyage whatsoever, to render a captain's accounts and transactions concise and pleasant to himself, notwithstanding they are limited to one voyage only.

SALES of sundry Merchandise at Funchal, on account of C. D. Merchant, of Boston; being part of the cargo of the ship Washington.

		Dolls.	Cents.
100 barrels of Beef,	- at 16 Dolls.	1600	00
50 barrels of Pork,	- 18 Dolls.	900	00
10,000 feet of Boards,	- 20 Dolls.	200	00
		2700	00
EXPENSES.			
Boat hire,	Dolls. 5 20		
Cooperage,	- 3 00		
Commission 5 per cent,	- 135 00	143	20
		2556	80
Nett sales,			
Funchal, April, 1801.			
Errors excepted,			
A. B.			

Invoice of Wines shipped at Funchal, on board the ship Washington, by A. B. master of said ship, on account and risk of C. D. a native citizen of the United States, resident at Boston, and consigned to him.

Marks.		Dolls.	Cents.
C. D.			
No. 1. a 50.	50 quarter casks of Wine, at 30 Dolls.	1500	00
G. D. No. 1. a 4.	4 pipes Wine, 120 Dolls.	480	00
		1980	00
EXPENSES.			
Commissions 2½ per cent.	- 49 50		
Boat hire for shipping Wine,	- 1 60	51	10
		2031	10
Funchal, April, 1801.			
Errors excepted.			
A. B.			

Disbursements of the ship Washington, paid by A. B. Master.

1801.	<i>At Boston.</i>	Dolls.	Cents.
March 20	To a shipping paper,	0	60
21	To ballast,	12	00
22	To blockmaker's bill,	14	00
	To blacksmith's bill,	16	00
23	To shipchandler's bill,	16	15
24	To butcher's bill,	11	11
		69	86
April 12	<i>At Madeira.</i>	Dolls.	Cents.
	To fresh meat and vegetables,	3	12
	To one cask of wine for ship's use,	15	00
		18	12

MERCANTILE FORMS

132

Cr.

C. D. owner of the Ship Washington, in Account Current with A. B.

Dr.	C.	D.	C.	D.	C.	D.	C.
1801							
March 24	To disbursements of the ship Washington, at Boston, - - - - -		69 86	1801	April 11	By net sales of merchandise at Funchal, - - - - -	
April 11	To ditto at Funchal, - - - - -		18 12			By balance to new account, - - - - -	
	To Wine as per invoice, - - - - -		2031 10				
	To a bill of exchange for £100 ster- ling, drawn by E. E. merchant of Funchal, on G. N. merchant of Lon- don, at par, - - - - -			444 44			
				2563 52			
				6 72			
April 12	To balance old account, - - - - -						

Funchal, April 12, 1801.

Errors excepted.

A. B.

Contra Cr.

John Codline, mate of the ship Washington.

Dr.	C.	D.	C.	D.	C.
1801					
April 12	To one quarter cask of Wine, - - - - -		30 00	1801	April 12
	To cash to balance, - - - - -		2 00		By two barrels Beef, sold for 16 dolls.

D.	C.
2556 80	
6 72	

D.	C.
2563 52	

D.	C.
32 00	

**C. W. GAZZAM,**  
**COMMISSION MERCHANT:**

*Corner of Commercial & Loring's Row.*

**CINCINNATI.**

**IRWIN & WHITEMAN,**  
**General Agents and Commission Merchants,**  
**NO. 2, NOBLE'S ROW,**  
**CINCINNATI.**

**CINCINNATI READING ROOM.**

THE Cincinnati Reading Room is furnished with the best newspapers, and literary journals of the U. States; all of which are received by the most direct conveyances. Those who are desirous of obtaining the latest intelligence can find it here. Strangers have always found, and acknowledged it an entertaining resort—and not among the least inducements for the prolongation of their visits in this city. From this consideration, if no more, the room should receive the patronage of the public.

The subscription prices are low; they have been fixed with the view to suit the times, and to accomodate those who may wish to enjoy the privilege of the Room.

The Annual Subscription, if paid at the time of subscribing, is	\$4 00
Paid after, or at the end of the year,	5 00
Those who may wish to frequent it for a shorter time, can do so by paying in advance, for six months,	\$2 25
Three do.	1 25
One do.	50
Per week,	25

These, if not paid in advance, will be proportionably increased. Those who do not subscribe, but are enjoying the benefits of the room, will be charged according to the time they frequent it.

No subscription will be discontinued without previous notice to that effect.

The Room is on Third street, immediately back of the Post Office.

ELIAM P. LANGDON, *Proprietor.*

# MARCUS SMITH,

IN FRONT OF THE TWO-STEEPLE CHURCH,  
Main street, Cincinnati,

KEEPES A GENERAL ASSORTMENT OF

## Foreign and Domestic Liquors.

French Brandy,	Madeira Wine,	Cin'mon Cordial,
American do.	Malaga do.	Peppermint do.
Peach do.	Oporto do.	Rose do.
Jamaica Rum,	Teneriffe do.	Anise-seed do.
St. Croix do.	Claret do.	Holland Gin, American do.
W. I. do.	Domestic do.	Americen do.

RECTIFIED WHISKEY, &c. &c.

## Also, Nails, Iron, Hardware & Groceries.

ALL WARRANTED PURE AND OF GOOD QUALITY.

Captains of Steam-boats, River Traders, town and country Store and Tavern Keepers, are particularly invited to call and supply themselves.

# GOODWIN, ASHTON, & CO.

WHOLESALE AND RETAIL DEALERS

IN

## DRUGS, MEDICINES, &c.

No. 5, Up. Market Street,

KEEP constantly on hand a large and general assortment of articles in their line—Medicine Chests filled, and Prescriptions prepared at the shortest notice.

As they are receiving fresh supplies every three months, they feel disposed to warrant their Medicines to be of the first quality.

Patent and Family Medicines direct from the original Proprietors.

CINCINNATI, AUGUST, 1825.

**NASH & HENDERSON,****CLOCK AND WATCH MAKERS, MANUFACTURING JEWELLERS,****SILVERSMITHS,****AND****Spectacle Makers,****No. 133, MAIN STREET, CINCINNATI.**

---

**JOHN J. WRIGHT & CO.****WHOLESALE AND RETAIL****Dry Goods and Queensware****MERCHANTS,****No. 183, MAIN STREET,***One door south of the upper market,***CINCINNATI.**

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**LETTON'S****CINCINNATI MUSEUM,****CORNER OF MAIN AND FOURTH STREETS,****CONSISTING OF A LARGE NUMBER OF****NATURAL AND ARTIFICIAL****CURIOSITIES.**

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**ENGRAVING,****IN ALL ITS VARIOUS BRANCHES,****NEATLY EXECUTED BY****WILLIAM WOODRUFF,***No. 149, Main St. opposite the U. S. Bank.*

**WM. HILL WOODWARD'S**

**BOOKSTORE,**

**NO. 139, MAIN STREET,**

**CINCINNATI.**

---

**ANDREW MACK,  
CINCINNATI HOTEL,**

**Front Street—foot of Broadway,**

**OPPOSITE THE LANDING.**

---

**PERRET & SHIPP,**

**CLOCK**

**AND**

**Watch Makers,**

**Main street,**

**CINCINNATI.**

---

**JAMES JORDAN,**

**LADIES' AND GENTLEMEN'S**

**BOOT AND SHOE MAKER,**

**No. 23, Main street--Cincinnati.**

---

**ISAAC MEARS,**

**Saddler,**

**MAIN STREET,**

**CINCINNATI.**

**S**

**THOS. MATTHEWS,  
GREEN TREE HOTEL,  
No. 20, Front street,  
CINCINNATI.**

---

**NEW ROPE WALK,  
Directly at the mouth of Deer Creek.**

**A. A. TODD**

RESPECTFULLY informs the public, that he can furnish every article in his line of business, such as

**Cordage, Twine, &c.**

of the best materials and at the shortest notice.

*CINCINNATI, 1825.*

---

**Accommodation.**

**H. GILBREATH,**

SIGN OF THE SWAN—WATER STREET,

**Cincinnati,**

Keeps constantly on hand a general assortment of the choicest LIQUORS, &c.

**A. W. PATTERSON,**

NO. 11, LOWER MARKET STREET,

**MANUFACTURER OF**

**Patent elastic Water Proof Hats, &c.**

*CINCINNATI.*

**LEE & SKINNER,**  
*fancy and Windsor*  
**CHAIR MANUFACTURERS,**  
 NO. 50, WEST FRONT STREET.  
 CINCINNATI.

**Steam Boats and Public and Private Houses,**  
 Can be at all times furnished with CHAIRS, SETTEES, &c.  
 warranted of the first workmanship, and made of the best  
 materials, on the lowest terms.

---

**AVERY & SHARPLESS,**  
 WHOLESALE AND RETAIL  
**Dry Goods and Hardware**  
**MERCHANTS.**  
 No. 53, Main Street,  
 CINCINNATI.

---

## STEAM BOAT FURNITURE.

**GEORGE PORTER,**

**NO. 231, MAIN ST.**

(SIGN OF THE EAGLE.)

A constant and large assortment of FURNITURE of all descriptions always on hand, and for sale as above, at the lowest prices. The public are respectfully invited to call and examine the Work and Materials.

CINCINNATI, 1825.

---

**GOODMAN & EMERSON,**  
*Auction and Commission*  
**MERCHANTS.**

**NO. 4, LORING'S ROW, FRONT STREET,**

CINCINNATI, 1825.

## Cincinnati Bathing House, Globe Inn, Main-street, above Upper Market,

THE proprietor respectfully informs his friends and the public that his BATH-HOUSE for *warm, cold, and showering* baths, are now ready for their reception.

 Entrance to *Ladies' apartment on Sycamore Street.*

A constant supply of choice Liquors, Refreshments &c.

A. WOODRUFF.

## JAMES GOODLOE & Co.

Brass & Bell Founders & Steam Engine Builders.

Broadway, opposite the Lower Market, Cincinnati,

RESPECTFULLY inform the public that they can furnish at all times, and at the shortest notice, BRASS CASTINGS, of all sizes and patterns, and will contract for making Steam Engines on the lowest terms. Specimens of their work can be seen by calling at their establishment.

## JAMES WARD,

### Cabinet Maker,

No. 205, Main Street, between Fifth and Sixth Streets,  
CINCINNATI,

Where his friends and customers can be supplied with any description of articles in his line on the shortest notice.

1825.

## DRUGS AND MEDICINES.

### J. L. VATTER,

No. 134, Main Street,

OPPOSITE UPPER MARKET SPACE,

HAS ON HAND FOR SALE, A GENERAL ASSORTMENT OF

### DRUGS AND MEDICINES,

### PAINTS, OILS, & DYE STUFFS.

N. B. All orders from Steam Boats, Physicians, Country Merchants, and others, will be executed with accuracy and despatch.

**C. W. L'HOUMMEDIEU,**  
**Cabinet Maker,**  
**WESTERN ROW—BETWEEN SIXTH & SEVENTH STREETS,**  
**CINCINNATI.**

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**B. & D. URNER,**  
**Commission Merchants,**  
**No. 3, Loring's Row, Front Street,**  
**CINCINNATI, OHIO.**

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**PRESSED HAY,**  
**For the New-Orleans Market,**  
 Constantly on hand and for sale, corner of Sixth and Walnut Streets, by  
 E. & W. B. DODSON.

---

**J. & G. R. GILMORE'S**  
*Office of Exchange and Deposite,*  
**No. 45, Main Street, Cincinnati.**

---

**JOHN COOMBS,**  
 No. 171, MAIN STREET,

**Manufacturer of Hats of all descriptions,**

Has on hand a large description of Hatter's Furs and Trimmings for  
 sale at the lowest prices.

Cincinnati, 1825.

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**CLARK & GREENE,**  
 Commission Merchants and Steam Boat Agents,  
 No. 8, COMMERCIAL ROW, MAIN STREET,  
**CINCINNATI.**

N. B. On hand a general assortment of *Dry Goods, Groceries, Hardware, &c.* for sale at Wholesale.

---

**R. PETHERBRIDGE,**  
**DRY GOODS MERCHANT,**  
 Corner of Main & Fifth Streets, Cincinnati.

**JOHN D. JONES & CO.**

**DRY GOOD MERCHANTS,**

**No. 69, Main Street, Cincinnati.**

---

**MEARS & HORNE,**

**Main Street, Cincinnati.**

**Copper, Sheet Iron, and Tin Ware  
MANUFACTORY.**

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**John Stout & Co.**

**HOUSE CARPENTERS & JOINERS.**

**CORNER OF WALNUT AND SIXTH STREETS,  
CINCINNATI.**

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**WILLIAM H. HARRISON, Jr.  
ATTORNEY AND COUNSELLOR AT LAW.  
OFFICE NO. 93, MAIN STREET,  
CINCINNATI.**

---

**D. K. ESTE,**

**ATTORNEY AND COUNSELLOR AT LAW.**

**OFFICE CORNER OF MAIN AND WAYNE STREETS,  
CINCINNATI.**

---

**WILLIAM GREENE & JESSE KIMBALL,**

**Attorneys & Counsellors at Law;**

**OFFICE ON FOURTH STREET, 5 DOORS WEST OF MAIN.**

**CINCINNATI.**

**MOSSES LYON,  
CONFECTIONER.  
MAIN STREET, CINCINNATI.**

**B. HAYDEN & Co.  
AUCTION & COMMISSION MERCHANTS,  
NO. 7, COMMERCIAL ROW, MAIN STREET,  
CINCINNATI,—OHIO.**

**JOSEPH WOLF,  
BAKER,**

RESPECTFULLY informs captains of steam and other boats, and the public in general, that he extensively carries on the baking business in all its various branches, and can at all times furnish fresh, pilot and ship bread, crackers of all descriptions, &c. &c. at the shortest notice and on the most reasonable terms.

Cincinnati.

**PHOENIX FOUNDRY.**

**Back of the Baptist Church on Walnut street near  
Fourth,—CINCINNATI.**

The subscribers respectfully inform the public that their Foundry is now in complete operation. Their castings are inferior to none made in the country. They have constantly on hand a general assortment of Mill Irons and Wagon Boxes, with a great variety of other castings. Wholesale and Retail.

CHARLES TATEM & SON.

N. B. Orders for Steam Engines, of any size or pattern executed with punctuality and despatch.

**PETER CAZELLES,  
ORFEVRE & BIJOUTIER,  
NO. 113, MAIN STREET,—CINCINNATI.**

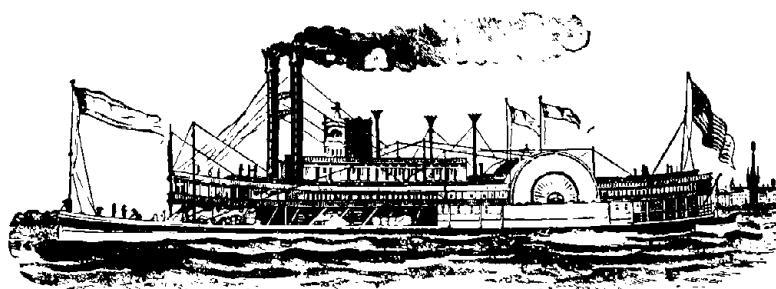
**PETER CAZELLES & CO.**

**CLOCK**

AND

**Match Stakers,  
MAIN STREET—CINCINNATI**

**PUBLIC LIBRARY OF  
CINCINNATI AND  
HAMILTON COUNTY**



**INLAND RIVERS  
LIBRARY**

**GIFT OF**

**Sons and Daughters  
of  
Pioneer Rivermen**