

RUMINATIONS

Crossing the River

A poem stretched across a river.

David B. Steinman, "Brooklyn Bridge: Nightfall"¹

The poems are wearing out. The Route 2 bridge between Middlesex and Moretown was suddenly closed this summer, and quickly dismantled, having demonstrated a structural deficiency sufficient to judge the bridge unsafe.² The Town of Berlin is redoing the short plank bridge on Chase Brook Road as its abutments are wearing out. The estimate for the replacement is over \$400,000.³ The Granite Street bridge in Montpelier bounces and sways when cars are lined up on it and others are passing them. The State says it is "structurally deficient," but not unsafe, even as pieces of the undercarriage have fallen off into the river. Drivers pray while they are waiting for the light to turn while on the bridge.⁴ Even the floating bridge at Brookfield is in trouble this year. It's not floating.⁵

This is the year of the bridge, or rather the year of the failing bridge. The bridges that were erected after the 1927 flood are reaching the end of their natural lives. Everywhere there are detours and temporary bridges and one-lane bridges, awaiting repairs or replacement. In the legislature, there is an annual wrestling match over how to fix or replace the hundreds of functionally obsolete, structurally deficient bridges that demand attention.

It is so easy to take bridges for granted.⁶ We notice them only when they are closed. The annual Interstate bridge replacements make us merge around them, slowing us down, but not by much. Visitors stop and take pictures of the hundred or so remaining covered bridges, because they are picturesque remnants of the past, but sentiment is missing when it comes to the modern steel and concrete structures that make even the bridges erected following the 1927 flood seem beautiful. Those riveted iron bridges replaced the wooden, covered bridges of the nineteenth century, that were built near the places the first settlers forded the river. Since that time, we have been spoiled into expecting that we can cross any water without having to wait.⁷

Fords

Rivers were the first highways in Vermont. The first roads on dry land in Vermont ran along the banks of rivers. Where the stream bed widened, and the water was shallow, before the settlers got around to building bridges, people forded the river, crossing in dry times. Many towns grew up around fords.

Pittsford takes its name from the best crossing of the Otter Creek north of Rutland. Originally called Pitt's ford, this place was named for William Pitt, who was Prime Minister of England at the time. It was located on the Crown Point military road.⁸ In high water, that passage was deemed impracticable. The state built the first bridge over the Otter Creek at Pittsford when the legislature appropriated the money for it in 1780.⁹ The state accepted the responsibility and the expense, because the bridge encouraged settlement and economic development. It was not until 1797 that the first town bridge was built by the town of Pittsford.¹⁰

The Old Fort fordway at Royalton, used since at least 1776, was finally discontinued by the selectmen in 1849, to avoid any claim of liability for damages, but the selectmen reserved the right to reopen it at some future time if needed.¹¹ The fordway at West Hartford was the principal means of crossing the White River for those heading for Woodstock before 1820.¹² Charles Marsh, a leading Woodstock attorney, crossed another fordway to get to his office each morning the river would allow him access.¹³

When bridges went out, the former fordway remained an inviting alternative. But in 1854, Dr. Dana Hyde was drowned in a fordway in a branch of the West River in Jamaica, as he attempted to cross in order to attend to a child suffering from cholera. His administrator sued the town for damages. Dr. Hyde had to ford the river because the bridge just above that ford had fallen into the river from the weight of snow the previous winter, the timbers having washed away in the spring, and the town had not re-erected

it in order to save on expenses. The courts gave the administrator no relief. The town was not liable for his death because the fordway was outside the public right-of-way, and evidence of any repair of the fordway by the town was lacking.¹⁴

Chief Judge Isaac Redfield vigorously dissented, stating that in his view if a bridge was closed, the town should take responsibility for injuries resulting from having to ford the stream. "Strangers or travelers are not obliged to consult the public records, or inquire into the history of building such highways, before they are entitled to use them."¹⁵ He accused his brethren of having more respect for "decisions made elsewhere, than in our courts."¹⁶ He also argued need:

Is it not true that my necessity, the urgency of my business, the health of my family, or a friend at a distance, may justify me, fairly and fully, in attempting to travel the highway, in a night so dark or so tempestuous, as under no such pressure or exigency, every man will pronounce the height of negligence and fool-hardy presumption?¹⁷

We have to get places, and we take chances.

As fordways usually predated the organization of a town, or even Vermont, their status as public highways was unclear, at least until the town improved them, and triggered the first examples of highway takings by dedication and acceptance. But fords were fickle. Heavy rain changed people's plans.

A bridge was the answer.

The First Bridges

The first bridge over the Connecticut was built by Enoch Hale and completed in 1785. It was not covered. It ran from Walpole, New Hampshire, to Bellows Falls.¹⁸ Neither Vermont nor Rockingham had much to say about it. The New Hampshire legislature gave Hale the right to build it in 1783, and to cover his costs through set tolls.¹⁹ It was regarded as an architectural miracle, and people came from many miles to wonder at it.²⁰

This was the first bridge in America to use more than one set of stringers.²¹ It lasted until 1840.²²

Hale lost ownership of the bridge when he sent his son to Boston to pay the mortgage. Stopping at Lowell, the messenger ran into his estranged wife. They talked out their problems, reconciled, but then he forgot about the mission and missed the deadline by a day. The mortgagee took the bridge. The early laws of foreclosure lacked any redemption or mercy.²³

At Newbury, before there were bridges over the Connecticut, there was a ferry.²⁴ When the first bridge at Wells River was built in 1805, Er Chamberlain, the ferryman, was allocated part of the tolls to compensate him for his losses. The bridge was carried away by a flood in 1807, and again in 1812. Chamberlain brought his ferry back into operation at that time, until a new bridge was constructed in 1820. Originally an open bridge, it was later given a roof. That bridge was swept away in the freshet of 1850. Another bridge was built, but soon after the railroad took it over, and the town erected another new bridge. The railroad ran its tracks along the roof of the 1850 bridge.²⁵

The second bridge built in Fairfax, on Brown's River, was constructed in 1795. The builders found a large hemlock tree standing on the riverbank at a suitable place, cut it down so that it fell right where they wanted it, drew another log across the river parallel to the first, and then laid hewn logs as cross-pieces.²⁶

The first bridges across the Winooski at Montpelier used trestles placed in the middle of the river, which naturally were lost in the flooding that occurred along the river at regular intervals. In 1826, Sylvanus Baldwin constructed the Arch Bridge, likely the first of its kind in Vermont, crossing the river a length of one hundred feet from bank to bank in a single arched span made of stone.²⁷ The public was suspicious that the design would not work. Those attending the official ceremony, where the temporary latticework supporting the new bridge was to be removed, were surprised to find the "falsework" gone when they arrived. Baldwin could not wait, and was not going to be embarrassed if the bridge fell in front of an assembly of people, so he cleared out the understructure early in the day.²⁸ The Arch Bridge lasted until 1897, when a new iron bridge replaced it.²⁹

The town of Fletcher was lucky. There were no major streams within

its boundaries, and at the end of the nineteenth century its historian crowed, "There has never been a covered bridge in town."³⁰ Bridges are expensive to build, maintain, and replace. Who would blame Fletcher for feeling relief from that burden?

Who Will Pay to Build the Bridge?

From the beginning, a bridge within one town's borders was the responsibility of that town. This was the same rule as highways. There were anomalies, such as the bridge at Pittsford, paid for by the state, but most bridges were paid for by the towns or private companies.

The state authorized a lottery to raise funds to build bridges over the Black River and Williams River in 1783, enfranchising three men to serve as managers, provided they performed the duty of raising money and building the bridges "in no wise at the risque of this State."³¹ Bridge legislation and construction accelerated during the 1790's. Jonathan Chase and others were given the exclusive privilege of building a toll bridge between Cornish, New Hampshire, and Windsor in 1797.³² The legislature authorized bridges to be funded by lotteries over the White River at Stockbridge, the Ottauquechee at Woodstock, and the West River at Dummerston.³³

But Vermonters are thrifty, and tolls are somehow antidemocratic. So the bridges were gradually made free, by conversion to public responsibility. One of first Vermont Supreme Court decisions to be appealed to the United States Supreme Court involved the West River Bridge at Brattleboro. The 1795 General Assembly had granted a company of investors the exclusive right to build and operate a toll bridge for a hundred years, but in 1843 the town laid out a public right-of-way across the bridge, paying the corporation its value as compensation, using the authority of an 1839 state statute. The company sued the men who had petitioned to convert the bridge to an open road. The county court and after that the Vermont Supreme Court upheld the taking, the Supreme Court even deferring to the county court as having exclusive jurisdiction to decide the question of damages.³⁴

An appeal to the nation's highest court followed, and the bridge company hired Daniel Webster to defend its interests. Having argued the Dartmouth College case successfully in 1819, succeeding in establishing the preeminence of the

contract clause of the federal constitution against an attempted amendment of a corporation charter, Webster was the natural choice to argue against the town's condemnation action.³⁵ But he failed to persuade the high court to overturn the Vermont decision. The 1795 act, according to the Court, was a franchise, a property right, which could be taken for public use, as long as compensation was paid. A taking for public purposes was an implied condition of every contract, according to Justice Daniel's decision.³⁶

Today, bridge decisions on town highways, as most major highway decisions, are made first by the selectboard, but also with the advice and oversight of the state Agency of Transportation. In 1806, however, the legislature empowered twenty or more freeholders to petition for the erection of bridges, and if the selectmen refused, the petitioners could take the town to county court to answer for their neglect or refusal.³⁷ Curiously, no vote of the town was required to raise funds to pay for the bridge.³⁸ Of course, there was always town meeting to overcome. However grudgingly, voters appropriated the money for bridges. Bridges were often the major expense of the town budget.

When bridges crossed from one town to another, both towns, and possibly other towns, were liable. If the two towns could not agree to share the cost, the county court decided the allocation. If the court decided that a bridge should be erected, the court appointed three disinterested commissioners to consider all the circumstances, as well as the abilities and advantages of such towns, as the place for erecting said bridge, determine whether (and at what place) such bridge should be erected. And also the proportion of the expense each town shall sustain in erecting the same. And if upon examination, it shall appear to such committee that any other adjoining town or town shall be particularly benefited by such bridge, such committee shall assess such town or towns so benefited, for the expense of building said bridge, in proportion to the benefits which they will probably receive ...³⁹

When a bridge was planned for crossing the Winooski at the southeast end of Montpelier, commissioners ordered Montpelier to pay three-ninths of the cost, Berlin (the town on the south side of the bridge) two-ninths, and the Town of Barre, several miles downriver, four-ninths of the total bill.⁴⁰ Barre was the principal destination of travelers

using that bridge, even though its border was still 2.5 miles away.

When Brookline tried to avoid paying for one fifth of the cost of erecting the bridge that linked it to Newfane in 1828, its attorneys tried an ingenious argument. They suggested that since Westminster did not own the river (as Newfane's charter line ran along the Brookline side of the West River), the town should be exempt. Westminster claimed it need not pay as there was no highway leading to it from the bridge.⁴¹ But Judge Isaac Redfield, writing for the court, was not persuaded. The towns would pay in proportion to how they benefited from the bridge, and Brookline was benefited indirectly. As for Brookline's argument, the abutment was in that town: who owned the river was irrelevant.⁴² This is the road from the Connecticut River to the county seat in Newfane, and continues to provide a shortcut for travelers from Westminster and Putney.

In 1852, commissioners found that the Saxton's River bridge, which was built by Westminster, largely benefited Rockingham, Athens, and Grafton. The order specified precisely how much each town should pay to Westminster. Judge Pierpoint Isham wrote the decision for the Supreme Court, reversing the order and faulting the commissioners for their methods. The goal was to calculate *ratios* of obligation, not actual costs.⁴³ There would be more costs for maintenance and replacement in later years, and what was needed was an equation, not a calculation of damages.

After a petition was filed, commissioners told Essex and Williston to build a covered bridge, twenty-two feet wide, with two arches resting on two abutments and one pier, giving the size and depth of the piles needed to support the abutment.⁴⁴ This was another example of commissioners overstepping their authority. The high court affirmed in 1858 that the design of the bridge was the selectmen's business.

They are certainly the parties most interested in this branch of the business. They are to perform the work and pay the expense; they are responsible for its durability and safety; if it fails they are bound to rebuild it; if it is insufficient they are subject to indictment, and the expense of making it sufficient; if an injury results from any defect in the plan, materials, or workmanship, they are alone responsible. It would seem that in view of this responsibility, the towns clearly should have the right to determine the character of the

structure for which they are so made liable.⁴⁵

In 1882, the legislature amended the law allocating the cost of bridges crossing from one town to another to include bridges entirely within one town. The new law expanded the criteria for the allocation to include not only the benefit to the towns but also public utility, the expense, and even the ability of the town to pay. The grand list, the population, and the amount of indebtedness of the town all figured into the decision.⁴⁶ The experiment only lasted four years before the legislature returned to the original plan, where only bridges across town boundaries would trigger an allocation.⁴⁷ This is another illustration of the failure of the idea of inter-town cost-sharing. The state never gave up the idea of local control. Having to share the cost of bridges when they linked two towns was tolerated, but not when the potential cost of any bridge might be borne by the town that served as the destination of the highway. If a bridge was within a town, the town would have to bear the expense of replacing it.

When the first state tax for highways was enacted in 1892, creating a fund to pay for the maintenance of state and town highways, the act forbade towns from spending those funds on bridges. That cost was to be absorbed by the town's own tax base.⁴⁸ Then, beginning in 1919, federal aid money began to drip, then pour into the towns, earmarked for the purpose of building, repairing, and rebuilding bridges.⁴⁹ Today, many bridges are repaired or rebuilt with towns having to bear but ten percent of the total cost, the rest paid by federal funds administered by the state.⁵⁰

Commissioners are still involved in bridge maintenance decisions today. Any three citizens or taxpayers can give the selectboard notice of a deficiency, and if the town does not respond within seventy-two hours by either denying the request or starting work on the bridge, the citizens can petition the superior court, giving security for the costs of the proceedings to resolve the complaint. Commissioners then make a decision, which is appealable to the court.⁵¹ Some judges do not bother with commissioners anymore, figuring the dispute is going to return to superior court eventually, whatever the outcome.

The real question is, who must decide? Selectboards enjoy extraordinary deference on highway maintenance decisions in the courts. Maybe that has always been the case.

Who Bears the Cost of Injuries?

A majority of reported bridge decisions involve accidents. By statute, towns are liable for injuries caused by the insufficiency of bridges.⁵² Previous to 1880, injured parties could collect damages caused by defective highways from towns, but the costs of this policy proved unwieldy, and the legislature changed the law, exempting towns from liability for injuries on highways, but leaving those relating to bridges and abutments intact.⁵³

Toll bridge companies had a special, higher degree of culpability than the towns.⁵⁴

After a herd of fat cattle collapsed a toll bridge at Royalton in 1831, when they were run all together over the structure, the defendant bridge company claimed it should not be liable for the imprudence of the drover, but the jury found for the plaintiff nonetheless, and the Supreme Court affirmed the verdict. Judge John Mattocks wrote the decision for the court, explaining that,

at the time company's charter was granted, this was a cattle-growing state, and Boston the emporium for beef; thence cattle had been constantly driven from a thousand hills in the interior. And in the tariff of toll we find this clause: 'For all horses, mules or neat cattle, led or driven, beside those in teams, one cent each,'—which the company have accepted and acted upon; and would it not be absurd to suppose that the company are entitled to take toll upon a drove of cattle, and not furnish a passable bridge or road? And as the grant does not define the number of cattle that may pass the turnpike, and the manner in which they are to be conducted or driven, what but the custom of the country where the road is located, the wants and usages of the community, can be the rule?⁵⁵

There were two common defenses against the tort claims of those damaged by defective bridges. Towns could argue failure of notice. Beginning in 1872, state law has required, as a prerequisite of a valid claim, that the injured party give notice to the town within twenty (originally thirty) days of the discovery that the bridge is defective.⁵⁶ This is for the purpose of ensuring that the town knows to repair the damage and of informing the town of a potential claim against it.⁵⁷

Many fights then turned on whether notice was sufficient. Originally the

statute required not only notice of the time, date, and place of the injury and the cause, but an enumeration of the parts of the body injured.⁵⁸ The notice did not have to describe in detail every element of proof to be offered by plaintiff at trial.⁵⁹ But a notice that did not state the year the accident occurred was fatal to the claim, denying plaintiff a cause of action.⁶⁰

When injury occurred on a bridge over the Poultney River, between Hampton, New York, and the Vermont towns of Fair Haven and West Haven, the court held that notice must be given to all three towns to qualify for a claim for damages under Vermont law.⁶¹ The court found that even if effective notice was given, plaintiff could not have succeeded in making his claim in this instance, because the defect in the bridge that caused the injury was beyond the borders of the state.⁶² State law stops at the border.

The statute on making a claim for damage "due to the insufficiency or want of repair of a bridge" no longer requires specifics of the injury.⁶³

The contributory negligence of the plaintiff could also defeat the claim for liability of bridge insufficiency, but this was no ordinary rule of contributory negligence. Chief Judge Isaac Redfield explained it in an 1854 decision. While plaintiff had the burden of proof to show that he was exercising proper care at the time of the injury, "this is rather a negative than an affirmative proposition. The requisite is rather that he was not guilty of negligence, than that he should prove any positive diligence."⁶⁴ In that case the question for the jury was whether the night was so dark that a prudent person would not have tried to drive a team and buggy across a bridge. Plaintiff was not required to prove that the night was light enough to make it safe to cross.⁶⁵

It was a question of fact whether crossing a bridge that lacked railings on a "pitchy" dark night demonstrated a lack of proper care. Judge Daniel Kellogg stated,

Highways are constructed for use by night as well as by day, and the purpose of the statute requires that they should be at all times sufficient for public travel. The necessities of a large class of people compel them to travel on public highways at very late hours and in dark nights, and the duty of the town which is responsible for any particular highway is not satisfied by providing for the sufficiency of the highway for travel in the day time only. It is the right of every individual to travel in

the night, and public highways should be so constructed and maintained as to admit of the safe and convenient exercise of this right.⁶⁶

When a stage coach weighing 1,750 pounds with four horses, with eight passengers, pitched off a bridge in Underhill in 1862, causing extensive injuries to the horses, passengers, and driver, the driver sued the town for damages. The Supreme Court reversed the jury verdict for the driver after it found that the judge had failed to instruct the jury that if it found the driver had reason to know the bridge was defective, verdict must be given to the town.⁶⁷

When a town bridge was constructed so that the embankment was wider than the entrance to the bridge and instead of rails there was a mere log to guide the travelers, the court concluded that the fault lay with the town, and allowed the case to go to the jury, even though there was evidence the horse that was killed in the accident was skittish and restive.⁶⁸

The law required travelers to drive horses at a walk across all bridges. Selectmen were ordered to post a sign to that effect, and violators could be fined. When a traveler in Wolcott rode quickly across a bridge, his horses at a trot, the combination of weight and speed caused the bridge to spring, jostling him and his horse off the bridge. He sued, and lost. The lack of a sign was no defense. The injury was not caused by the insufficiency of the bridge.⁶⁹

Even when a blind mare gets out of its pasture because the farmer forgot to re-erect the cross bar at the edge of the field, a town can still be liable if the reason for the injuries is the insufficiency of the bridge. The mare is still a traveler, and the farmer has a right to expect that the bridge was in good condition.⁷⁰ Even when a driver puts the reins between his legs, so he can light his pipe, and drives over a bridge at a trot, and the wagon breaks through a rotten timber and causes injury, a town can be held liable, if the jury fails to find that the accident occurred because of his negligence.⁷¹

A man was hurt trying to free some horses that fell through a bridge in Waitsfield and the town defended by saying he was not a traveler. The court demurred. The injury occurred because the bridge was insufficient, and that was enough. Judge James M. Tyler explained that the plaintiff must show that the town's negligence was the sole, operating cause of the injury, with no want of due care on his part, which he did in this case.⁷²

On the other hand, when a passenger in an unregistered vehicle is hurt, because the bridge was defective, the town prevailed on the question of its liability, because the law prohibited the use of that vehicle on the highways, even if the passenger did not know the car was unregistered.⁷³ This was analogized by the court to the case of a man injured on a defective highway in an earlier year, who was denied recovery because he was traveling on a Sunday, in violation of law.⁷⁴

Perhaps too much has been written about the contributory negligence of persons injured or damaged by defective bridges in trials. If the harm was caused by the insufficiency of the bridge, the town was liable, and it is a rare (at least reported) case where the town does not wind up paying.

Not all defective bridges create liability or damage. One dark night in Brookfield, a physician was frightened by the sound of an owl, which he took to be that of a catamount. Thinking he was being pursued, he sped up. He crossed the river and fled to the next house. They asked him how he reached them and when he explained he went over the bridge, they told him the bridge was under construction. All but the string pieces were removed. In the morning they saw the tracks of the horse leading up to the abutment. Horse and rider had crossed over the river on one stringer.⁷⁵

A Look From the Bridge

The primacy of the state in bridge affairs today is a direct consequence of funding. Law has followed money. The state highway system began in 1931.⁷⁶ With a sweeping enactment, the towns lost control of all highways and bridges included in the Federal Aid System. There are no reports of selectmen objecting to the change. Their reaction was more a sigh of relief. Many would prefer that the state would take over all the bridges. Avoidance of cost is a mighty incentive to the development of public policy. In 1899, Berlin selectmen never objected to the annexation of a portion of the town by Montpelier, along the Winooski River, in part because it meant relief from the burden of paving for four bridges.⁷⁷

The Agency of Transportation keeps track of bridges. The Agency reports that Vermont has 3,982 bridges in all, 1,606 of them over twenty feet over town highways, although its web page acknowledges no inventory of shorter bridges. There are 108 covered bridges

in Vermont.⁷⁸ Covered bridges have been the locus of instances of highway robbery.⁷⁹ They were well known as places where a couple might be able to steal a kiss without others seeing them.⁸⁰ But don't be deceived. They weren't built as tourist attractions. They were built to support the traffic of the highway and they do wear out. Imagine you were a bridge, and took the abuse of constant, pounding traffic running over your back, straining your timbers, weakening your limbs, in all kinds of weather, for eighty years or more.

The Agency currently estimates 461 Vermont bridges are functionally obsolete and 716 structurally deficient.⁸¹ The 2008 budget for repair of town bridges was 23.4 million dollars, 18.4 million of which comes from federal funds.⁸² Nobody believes this is enough.

Without bridges, you can find another way around, or could try to ford.

Paul S. Gillies, Esq., is a partner in the Montpelier firm of Tarrant, Marks & Gillies and is a regular contributor to the Vermont Bar Journal.

¹ www.endex.com/gf/buildings/bbridge/bbpoetry/bbpoemsteinmana.htm. Waxing eloquent about bridges is common among poets. Henry Wadsworth Longfellow wrote "A Covered Bridge at Lucerne" in 1872. www.online-literature.com/henry_longfellow/golden-legend/5/. In the last stanza, he wrote, "The grave itself is but a covered bridge, / Leading from light to light, through a brief darkness!" Wordsworth wrote his sonnet, "Composed Upon Westminster Bridge," in 1803. www.bartleby.com/145/www206.html.

² "Deterioration closes Route 2 bridge indefinitely," *BARRE-MONTPELIER TIMES-ARGUS*, May 31, 2008.

³ "Crosstown Road bill jumps \$38,000," *BARRE-MONTPELIER TIMES-ARGUS*, June 18, 2008. Chase Brook Road serves seven permanent residences.

⁴ "Officials defend 'scary' bridge," *BARRE-MONTPELIER TIMES-ARGUS*, June 20, 2008.

⁵ "Floating bridge is sinking down, closed by state," *BARRE-MONTPELIER TIMES-ARGUS*, May 17, 2008.

⁶ The first bridges were logs, thrown across a river. The first bridges in history include the bridge of boats, ordered by Xerxes in 490 BCE, which was one mile in length and made up of 250 bridges. THOMAS POPE, *TREATISE ON BRIDGE ARCHITECTURE* 39 (1811). Julius Caesar built a bridge over the Rhine during his wars in what is now Germany, in a record ten days. He described in detail how he did it in his writings. Engineers still celebrate his ingenuity at driving piles in the direction of the current. After crossing it, Caesar ordered the bridge taken down to keep the barbarians from crossing into the Roman territory. JULIUS CAESAR, *THE GALLIC WARS* 200-203 (H.J. Edwards trans., 1919); MICHAEL CLARKE, *STORY OF CAESAR* 68-69 (1898).

At the beginning of the war for independence, in preparing to encounter the British invasion by sea in 1777, the American soldiers at Mount Independence and Fort Ticonderoga constructed a bridge across the inlet of Lake Champlain. They sunk twenty-two piers of large pine, then filled in the spaces with separate, fifty-foot floats, each twelve feet in width, linking them with chains and ropes. Its purpose was not only to link both sides of the river for the soldiers, but to prevent the passage of ships to the south. 2 SAMUEL WILLIAMS, *THE NATURAL AND CIVIL HISTORY OF VERMONT* 101 (1809). The British demolished the bridge with a few well-chosen cannon shots. *Id.* at 107-108.

⁷ The North Hero-Alburg drawbridge is an exception.

⁸ 1 WALTER HILL CROCKETT, *VERMONT THE GREEN MOUNTAIN STATE* 171 (1922); A.M. CAVERLY, M.D., *HISTORY OF THE TOWN OF PITTSFORD, Vt.* 85 (1872); 3 ABBY MARIA HEMENWAY, *VERMONT HISTORICAL GAZETTEER* 941 (1877). "Ford" forms the final syllable of the names of many Vermont towns, including Wallingford, Thetford, Bradford, Guilford, Stamford, and Strafford, but in those cases the name originates from places in Connecticut or England or from royalty named for those places where there was a shallow place in a river where people, horses, and even wagons could cross during times of low water, or over the ice in winter. ESTHER MUNROE SWIFT, *VERMONT PLACE-NAMES: FOOTPRINTS OF HISTORY* 105-106, 296-297, 318-319, 321, 424-425, 485-486 (1977, 1996). Other Vermont towns memorialize other places named for bridges, such as Bridgewater, Cambridge, and Stockbridge.

⁹ CAVERLY, *supra* note 8, at 165.

¹⁰ *Id.* at 507.

¹¹ EVELYN M. WOOD LOVEJOY, *HISTORY OF ROYALTON, VERMONT* 263 (1911).

¹² WILLIAM HOWARD TUCKER, *HISTORY OF HARTFORD* 143 (1943).

¹³ JAMES BARRETT, *MEMORIAL ADDRESS ON THE LIFE AND CHARACTER OF HON. CHARLES MARSH, LL.D.*, *PROCEEDINGS OF THE VERMONT HISTORICAL SOCIETY* 15 (1871).

¹⁴ Hyde v. Jamaica, 27 Vt. 443, 445-446 (1855).

¹⁵ 27 Vt. at 468.

¹⁶ 27 Vt. at 469.

¹⁷ 27 Vt. at 470.

¹⁸ CROCKETT, *supra* note 8, at 513; LYMAN SIMPSON HAYES, *HISTORY OF THE TOWN OF ROCKINGHAM* 264-266 (1907).

¹⁹ FREDERIC JAMES WOODS, *THE TURNPIKES OF NEW ENGLAND AND EVOLUTION OF THE SAME THROUGH ENGLAND* 255 (1919). Compare this with *State v. Boston, Concord & Montreal Railroad Co.*, 25 Vt. 433 (1853), where the out-of-state railroad was accused by the state's attorney of violating the Vermont Constitution for building a bridge across the Connecticut River. The Supreme Court denied the claim, concluding that there was nothing in the Constitution to prohibit aliens from owning Vermont land. 25 Vt. at 443. The state's attorney argued that no one could own property in Vermont without first taking the oath of allegiance, now Chapter II, Section 66. This was the last real challenge made under this section of the Constitution.

²⁰ DAVID B. STEINMAN & SARA RUTH WATSON, *BRIDGES AND THEIR BUILDERS* 117-119 (1941).

²¹ *Id.* at 118.

²² *Id.*

²³ HAYES, *supra* note 18, at 268-269.

²⁴ FREDERIC PALMER WELLS, *HISTORY OF NEWBURY, VERMONT* 307 (1902).

²⁵ *Id.* at 308-309.

²⁶ 2 VERMONT HISTORICAL GAZETTEER 174 (1871).

²⁷ DANIEL PIERCE THOMPSON, *THE HISTORY OF THE TOWN OF MONTPELIER, VERMONT* 121 (1860).

²⁸ *Id.* at 122.

²⁹ Charles Spooner Forbes, *The City of Montpelier*, in 6 THE VERMONT, August 1901, at 146. Arches were also used in wooden covered bridges, in addition to various styles of trusses. ED BARN, *COVERED BRIDGES OF VERMONT* 19 (1996).

³⁰ *HISTORY OF FRANKLIN AND GRAND ISLE COUNTIES, VERMONT* 542 (Lewis Cass Aldrich ed. 1891).

³¹ "An act granting a lottery for the purpose of building bridges over Black River and William's River" (February 27, 1783), *LAWS OF VERMONT 1781-1784*, 13 STATE PAPERS OF VERMONT 192-193 (1965).

³² "An act confirming to Jonathan Chase, Esqr., and others, proprietors of the Cornish Bridge, the exclusive right of building toll bridges over a certain part of Connecticut River between Cornish and Windsor" (November 10, 1797), *LAWS OF VERMONT 1796-1799*, 16 STATE PAPERS OF VERMONT 221-223 (1968).

³³ "An act granting a lottery to raise four hundred dollars for the public of building a bridge over White River in the Town of Stockbridge" (November 8, 1796), *LAWS OF VERMONT 1796-1799*, 16 STATE PAPERS OF VERMONT 70-71 (1968); "An act empowering Benjamin Swan and Moses Osgood, both of Woodstock in the County of Windsor, to raise the sum of five hundred dollars by lottery for the purpose of building a bridge over Water Quechee River so called running through Woodstock in the County of Windsor, aforesaid" (March 7, 1797), *LAWS OF VERMONT 1796-1799*, 16 STATE PAPERS OF VERMONT 118-119 (1968); "An act granting to Daniel Taylor and his associates the privilege of erecting a toll bridge over West River in the Town of Dummerston" (October 28, 1797), *LAWS OF VERMONT 1796-1799*, 16 STATE PAPERS OF VERMONT 146-148 (1968). The act authorized the Vermont Supreme Court to review the income and costs, and reduce the tolls over the next forty years if the average net proceeds exceeded twelve percent per annum.

³⁴ *West River Bridge Co. v. Dix*, 16 Vt. 446, 449-450 (1844).

³⁵ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).

³⁶ *West River Bridge Company v. Dix*, 47 U.S. 507, 537-538 (1848).

³⁷ "An act, in addition to an act, entitled, 'An act, reducing into one the several acts for laying out, making, repairing and clearing highways'" (November 5, 1806), *LAWS OF VERMONT OF A PUBLIC AND PERMANENT NATURE* 437-438 (1824).

³⁸ *State v. Whitingham*, 7 Vt. at 392.

³⁹ "An act, reducing into one the several acts, for laying out, making, repairing and clearing highways," March 3, 1797, *COMPILATION OF 1797*, 427, 432.

⁴⁰ THOMPSON, *supra* note 27, at 72.

⁴¹ *Town of Brookline v. Town of Westminster*, 4 Vt. 224, 232 (1832). The site of the bridge was a former fordway. *Id.* ALBERT STILLMAN BATCHELDER, 3 NEW HAMPSHIRE TOWN CHARTERS,

- 26 STATE PAPERS OF NEW HAMPSHIRE 307-310 (1895); "An act forming a new town out of the towns of Putney and Athens in the county of Windham by the name of Brookline," (October 30, 1794), LAWS OF VERMONT 1791-1794, 15 STATE PAPERS OF VERMONT 342-343, 363-367 (1967). Comparing these sources, it is not immediately clear why Brookline believed it did not own to the center of the West River, but that is what the town stated, and the courts adopted that fact.
- ⁴² *Town of Brookline v. Town of Westminster*, 4 Vt. at 234-235. No town bordering the Winooski owns below the mean low water mark, as the various charters convey the land only to the shore and not to the thread of the stream. *Id.* at 232. The river bed is still in Vermont, and is owned by the state, in trust for the inhabitants. The eastern border is a continuing offense to Vermont statehood, however. Step below the mean low water mark on the Vermont side of the Connecticut and you are in New Hampshire. How shocked Vermonters were to discover this in 1934, when the United States Supreme Court ruled on the location of the border, but as early as 1840, Vermont historian and naturalist Zadock Thompson recognized that fact. ZADOCK THOMPSON, 3 HISTORY OF VERMONT: NATURAL, CIVIL, AND STATISTICAL 58 (1840).
- ⁴³ *Towns of Rockingham & Grafton v. Town of Westminster*, 24 Vt. 288, 292-293 (1852).
- ⁴⁴ *State v. Towns of Williston, Essex, Jericho, & Underhill*, 31 Vt. 153, 155-156 (1858).
- ⁴⁵ 31 Vt. at 159.
- ⁴⁶ *Town of Sharon v. Town of Strafford*, 56 Vt. 421, 425 (1884).
- ⁴⁷ *Town of Underhill v. Town of Essex*, 64 Vt. 28, 30-31 (1892). But when a bridge was near the line, the obligation to contribute was enforced. *Town of Glover v. Carpenter*, 70 Vt. 278, 279-280 (1898).
- ⁴⁸ Laws of 1892, No. 56, § 11.
- ⁴⁹ Laws of 1919, No. 115, § 1.
- ⁵⁰ 19 V.S.A. §§ 1501-1513. There are funds available for historic bridge preservation efforts as well. 19 V.S.A. § 1513.
- ⁵¹ 19 V.S.A. §§ 971, 972.
- ⁵² 19 V.S.A. § 971.
- ⁵³ Laws of 1882, No. 13; *Willard v. Town of Shelburne*, 59 Vt. 361, 362 (1887). In *Willard*, the town tried to escape liability by suggesting that the only way a bridge could make a town liable was if the bridge were an insufficient structure. Plaintiff had tripped on a log and fallen off a bridge that had no railings. The town failed in its argument that this was an accident more related to the insufficiency of the highway over the bridge. The injury was caused by the insufficiency of the bridge because it lacked adequate railings. Structural integrity was not the only defect to bring liability.
- ⁵⁴ *Holley v. Winooski Turnpike Co.*, 1 Aik. 74 (1826).
- ⁵⁵ *Richardson v. Royalton & W. Turnpike Co.*, 6 Vt. 496, 505 (1834).
- ⁵⁶ 19 V.S.A. §§ 987, 988.
- ⁵⁷ *Lane v. Town of Grafton*, 166 Vt. 148, 151 (1997).
- ⁵⁸ *Graves v. Town of Waitsfield*, 81 Vt. 84, 91-92 (1908).
- ⁵⁹ *Castle v. Town of Guilford*, 86 Vt. 540, 547 (1913).
- ⁶⁰ *Louthood v. Town of Cambridge*, 95 Vt. 425, 427 (1921).
- ⁶¹ *Brown v. Towns of Fairhaven & Westhaven*, 47 Vt. 386, 391-392 (1875). The current codification of this rule is found in 19 V.S.A. § 979.
- ⁶² 47 Vt. at 392. Fair Haven and West Haven's borders ended at the mean low water mark on the river. Vermont ended at the thread. Like the bed of the Winooski River, then, there is a part of the Poultney River and of Lake Champlain for that matter that belongs to no town, but to the people of the State of Vermont. See *supra*, note 42.
- ⁶³ 19 V.S.A. § 985(a).
- ⁶⁴ *Barber v. Essex*, 27 Vt. 62, 69 (1854).
- ⁶⁵ 27 Vt. at 69.
- ⁶⁶ *Swift v. Town of Newbury*, 36 Vt. 355, 358 (1863).
- ⁶⁷ *Folsom v. Town of Underhill*, 36 Vt. 580, 592 (1864).
- ⁶⁸ *Noyes v. Town of Morristown*, 1 Vt. 353, 358-359 (1828).
- ⁶⁹ *Abbott v. Town of Wolcott*, 38 Vt. 666, 672 (1866).
- ⁷⁰ *Howrigan v. Town of Bakersfield*, 79 Vt. 249, 254-255 (1906).
- ⁷¹ *Cleveland v. Town of Washington*, 79 Vt. 498, 503-504 (1907).
- ⁷² *Mobus v. Town of Waitsfield*, 75 Vt. 122, 131-132 (1902).
- ⁷³ *Hanley v. Town of Poultney*, 100 Vt. 172, 175-176 (1927). See 19 V.S.A. § 985(b), another example of a Supreme Court decision being converted into a statute.
- ⁷⁴ *Johnson v. Irasburgh*, 47 Vt. 28, 37 (1874).
- ⁷⁵ ABBY MARIA HEMENWAY, 2 VERMONT HISTORICAL GAZETTEER 858 (1871).
- ⁷⁶ Laws of 1931, No. 61.
- ⁷⁷ A PLACE TO PASS THROUGH: BERLIN, VERMONT 1820-1991, 69-74 (1993). The replacement of the Red Arch Bridge alone, in 1897, had run to over \$11,000.
- ⁷⁸ www.virtualvermont.com/coveredbridge.
- ⁷⁹ *State v. Davidson*, 30 Vt. 377 (1858).
- ⁸⁰ The covered bridge in Waterville, just north of Jeffersonville, is known as the Kissing Bridge. BENJAMIN D. EVANS & JUNE R. EVANS, NEW ENGLAND'S COVERED BRIDGES 232 (2004). Ed Barna, the author of COVERED BRIDGES OF VERMONT (1996), reports that all covered bridges have been called kissing bridges. BARN, *supra* note 29, at 16.
- ⁸¹ www.aot.state.vt.us/progdev/Documents/Structures/2008StructuresAnnualReport.pdf.
- ⁸² "An act relating to making appropriations for the support of government," No. 65, Section 252, Laws of 2007.

