

Lincoln and the Bridge Case

[On May 6, 1856, the steamer Effie Afton was wrecked against the piers of the railroad bridge at Rock Island. This newly constructed bridge was the first to cross the Mississippi, and was a thorn in the flesh to the steamboat men and to the commercial interests of St. Louis. Suit was brought against the bridge company and when the action — entitled Hurd et al. v. the Railroad Bridge Company — came before the United States Circuit Court, with Judge John McLean presiding, Abraham Lincoln was one of the attorneys for the bridge company.

A copy of his argument in the case, in the possession of Mr. A. N. Harbert of Iowa City, was kindly loaned to the Society and, through the courtesy of the State Historical Society of Wisconsin, was verified with the original report which appeared in the *Chicago Daily Press* for September 24, 1857. In editing the article obvious typographical errors have been corrected but otherwise the newspaper account has not been changed.— THE EDITOR]

THIRTEENTH DAY.

Tuesday, September 22d, 1857.

Hon. Abram Lincoln's Argument.

Court met pursuant to adjournment.

Mr. A. Lincoln addressed the jury: He said he did not purpose to assail anybody, that he expected to grow earnest as he proceeded but not ill-natured. There is some conflict of testimony in the case, but one quarter of such a number of witnesses, seldom agree, and even if all had been on one side some discrepancy might have been expected. We are to try and reconcile them, and to believe that they are not intentionally erroneous, as long as we can. He had

no prejudice against steamboats or steamboatmen nor any against St. Louis, for he supposed they went about as other people would do in their situation. St. Louis as a commercial place, may desire that this bridge should not stand, as it is adverse to her commerce, diverting a portion of it from the river; and it might be that she supposed that the additional cost of railroad transportation upon the productions of Iowa, would force them to go to St. Louis if this bridge was removed. The meetings in St. Louis were connected with this case, only as some witnesses were in it and thus had some prejudice add color to their testimony. The last thing that would be pleasing to him would be to have one of these great channels, extending almost from where it never freezes to where it never thaws, blocked up. But there is a travel from east to west, whose demands are not less important than that of the river. It is growing larger and larger, building up new countries with a rapidity never before seen in the history of the world. He alluded to the astonishing growth of Illinois, having grown within his memory to a population of a million and a half; to Iowa and the other young and rising communities of the Northwest.

This current of travel has its rights, as well as that north and south. If the river had not the advantage in priority and legislation, we could enter into free competition with it and we would surpass it. This particular line has a great importance, and

the statement of its business during a little less than a year shows this importance. It is in evidence that from September 8, 1856, to August 8, 1857, 12,586 freight cars and 74,179 passengers passed over this bridge. Navigation was closed four days short of four months last year, and during this time, while the river was of no use, this road and bridge were equally valuable. There is, too, a considerable portion of time, when floating or thin ice makes the river useless, while the bridge is as useful as ever. This shows that this bridge must be treated with respect in this court and is not to be kicked about with contempt.

The other day Judge Wead alluded to the strife of the contending interests, and even a dissolution of the Union. Mr. Lincoln thought the proper mood for all parties in this affair, is to "live and let live," and then we will find a cessation of this trouble about the bridge. What mood were the steamboat men in when this bridge was burned? Why there was a shouting, a ringing of bells and whistling on all the boats as it fell. It was a jubilee, a greater celebration than follows an excited election.

The first thing I will proceed to is the record of Mr. Gurney and the complaint of Judge Wead, that it did not extend back over all the time from the completion of the bridge. The principal part of the navigation after the bridge was burned passed through the span. When the bridge was repaired and the boats were a second time confined to the

draw, it was provided that this record should be kept. That is the simple history of that book.

From April 19, 1856, to May 6 — seventeen days — there were 20 accidents, and all the time since then there has been but 20 hits, including 7 accidents; so that the dangers of this place are tapering off, and, as the boatmen get cool, the accidents get less. We may soon expect, if this ratio is kept up, that there will be no accidents at all.

Judge Wead said, while admitting that the floats went straight through, there was a difference between a float and a boat, but I do not remember that he indulged us with an argument in support of this statement. Is it because there is a difference in size? Will not a small body and a large one, float the same way, under the same influence? True, a flat boat would float faster than an egg-shell, and the egg-shell might be blown away by the wind, but if under the *same influence* they would go the same way. Logs, floats, boards, various things, the witnesses say all show the same current. Then is not this test reliable? At all depths too, the direction of the current is the same. A series of these floats would make a line as long as a boat, and would show any influence upon any part, and all parts of the boat.

I will now speak of the angular position of the piers. What is the amount of the angle? The course of the river is a curve and the pier is straight. If a line is produced from the upper end of the long

pier straight with the pier to a distance of 350 feet, and a line is drawn from a point in the channel opposite this point to the head of the pier, Col. Mason says they will form an angle of 20 degrees; but the angle if measured at the pier, is 7 degrees — that is, we would have to move the pier 7 degrees, and then it would be exactly straight with the current. Would that make the navigation better or worse? The witnesses of the plaintiffs seemed to think it was only necessary to say that the pier was angling to the current, and that settled the matter. Our more careful and accurate witnesses say, that though they have been accustomed to seeing the piers placed straight with the current, yet, they could see that here the current has been made straight by us, in having made this slight angle — that the water now runs just right that it is straight and cannot be improved. They think that if the pier was changed the eddy would be divided, and the navigation improved; and that as it is, the bridge is placed in the best manner possible.

I am not now going to discuss the question what is a material obstruction? We do not very greatly differ about the law. The cases produced here, are, I suppose, proper to be taken into consideration by the Court in instructing the jury. Some of them I think are not exactly in point, but still I am willing to trust his honor, Judge McLean, and take his instructions as law.

What is *reasonable* skill and care? This is a thing

of which the jury are to judge. I differ from them in saying that they are bound to exercise no more care than they took before the building of the bridge. If we are allowed by the Legislature to build a bridge, which will require them to do more than before, when a pilot comes along, it is unreasonable for him to dash on, heedless of this structure, which has been *legally put there*. The Afton came there on the 5th, and lay at Rock Island until next morning. When the boat lies up, the pilot has a holiday, and would not any of these jurors have then gone around there, and got acquainted with the place? Parker has shown here that he does not understand the draw. I heard him say that the fall from the head to the foot of that pier was four feet! He needs information. He could have gone there that day and have seen there was no such fall. He should have discarded passion, and the chances are that he would have had no disaster at all. He was bound to make himself acquainted with it.

McCammon says that "the current and the swell coming from the long pier, drove her against the long pier". Drove her towards the very pier from which the current came! It is an absurdity, an impossibility. The only reconciliation I can find for this contradiction, is in a current which White says strikes out from the long pier, and then, like a ram's horn, turns back, and this might have acted somehow in this manner.

It is agreed by all that the plaintiffs boat was

destroyed; that it was destroyed upon the head of the short pier; that she moved from the channel, where she was, with her bow above the head of the long pier, till she struck the short one, swung around under the bridge, and there was crowded under the bridge and destroyed.

I shall try to prove that the average velocity of the current through the draw with the boat in it, should be five and a half miles an hour; that it is slowest at the head of the pier,— swiftest at the foot of the pier. Their lowest estimate, in evidence, is six miles an hour, their highest twelve miles. This was the testimony of men who had made no experiment — only conjecture. We have adopted the most exact means. The water runs swiftest in high water, and we have taken the point of nine feet above low water. The water, when the Afton was lost, was seven feet above low water, or at least a foot lower than our time. Brayton and his assistants timed the instruments — the best known instruments for measuring currents. They timed them under various circumstances, and they found the current five miles an hour, and no more. They found that the water, at the upper end, run slower than five miles; that below it was swifter than five miles, but that the average was five miles. Shall men, who have no care, who conjecture, some of whom speak of twenty miles an hour be believed, against those who have had such a favorable and well-improved opportunity? They should not even *qualify* the result. Sev-

eral men have given their opinion as to the distance of the Carson, and I suppose if *one* should go and *measure* that distance, you would believe him in preference to all of them.

These measurements were made when the boat was not in the draw. It has been ascertained what is the area of the cross-section of the stream, and the area of the face of the piers, and the engineers say, that the piers being put there will increase the current proportionably as the space is decreased. So with the boat in the draw. The depth of the channel was 22 feet, the width 116 feet — multiply these and you have the square feet across the water of the draw, viz: 2,552 feet. The Afton was 35 feet wide and drew five feet, making a fourteenth of the sum. Now one-fourteenth of five miles is five-fourteenths of one mile — about one-third of a mile — the increase of the current. We will call the current $5\frac{1}{2}$ miles per hour.

The next thing I will try to prove is that the plaintiff's boat had power to run six miles an hour in that current. It has been testified that she was a strong, swift boat, able to run eight miles an hour up stream in a current of four miles an hour, and fifteen miles down stream. Strike the average and you will find what is her average — about $11\frac{1}{2}$ miles. Take the $5\frac{1}{2}$ miles which is the speed of the current in the draw, and it leaves the power of the boat in that draw at six miles an hour, 528 feet per minute, and 8 4-5 feet to the second.

Next I propose to show that there are no cross currents. I know their witnesses say that there are cross currents — that, as one witness says, there are three cross currents and two eddies. So far as mere statement without experiment, and mingled with mistakes can go, they have proved. But can these men's testimony be compared with the nice, exact, thorough experiments of our witnesses. Can you believe that these floats go across the currents. It is inconceivable that they could not have discovered every possible current. How do boats find currents that floats cannot discover? We assume the position then that those cross currents are not there. My next proposition is that the Afton passed between the S. B. Carson and Iowa shore. That is undisputed.

Next I shall show that she struck first the short pier, then the long pier, then the short one again and there she stopped. Mr. Lincoln cited the testimony of eighteen witnesses on this point. How did the boat strike Baker [sic] when she went in! Here is an endless variety of opinion. But ten of them say what pier she struck; three of them testify that she struck first the short, then the long, then the short pier for the last time. None of the rest substantially contradict this. I assume that these men have got the truth, because I believe it an established fact.

My next proposition is that after she struck the short and long pier and before she got back to the

short pier the boat got right with her bow out. So says the Pilot Parker — that he “got her through until her starboard wheel passed the short pier”. This would make her head about even with the head of the long pier. He says her head was as high or higher than the head of the long pier. Other witnesses confirmed this one. The final stroke was in the splash door, aft the wheel. Witnesses differ but the majority say she struck thus. Court adjourned.

FOURTEENTH DAY.

Wednesday, September 23, 1857.

Mr. A. Lincoln resumed. He said he should conclude as soon as possible. He said the colored map of the plaintiffs, which was brought in during the advanced stages of the trial, showed itself that the cross currents alledged did not exist; that the current as represented would drive an ascending boat to the long pier, but not to the short pier as they urged. He explained from a model of a boat where the splash door is, just behind the wheel. The boat struck on the lower shoulder of the short pier, as she swung around, in the splash door, then as she went on round she struck the point or end of the pier, where she rested. Her engineers say the starboard wheel then was rushing round rapidly. Then the boat must have struck the upper point of the pier so far back as not to disturb the wheel. It is forty feet from the stern of the Afton to the splash door,

and thus it appears that she had but forty feet to go to clear the pier.

How was it that the Afton, with all her power, flanked over from the channel to the short pier without moving one inch ahead? Suppose she was in the middle of the draw, her wheel would have been 31 feet from the short pier. The reason she went over thus is, her starboard wheel was not working. I shall try to establish the fact that that wheel was not running, and, that after she struck, she went ahead strong on this same wheel. Upon the last point the witnesses agree — that the starboard wheel was running after she struck — and no witnesses say that it was running while she was out in the draw flanking over. Mr. Lincoln read from the testimony of various witnesses to prove that the starboard wheel was not working while she was out in the stream. Other witnesses show that the captain said something of the machinery of the wheel, and the inference is that he knew the wheel was not working. The fact is undisputed, that she did not move one inch ahead, while she was moving this 31 feet sideways. There is evidence proving that the current there is only five miles an hour, and the only explanation is that her power was not all used — that only one wheel was working. The pilot says he ordered the engineers to back her out. The engineers differ from him and say that they kept one [sic] going ahead. The bow was so swung that the current pressed it over; the pilot pressed the stern

over with the rudder, though not so fast but that the bow gained on it, and only one wheel being in motion, the boat merely stood still so far as motion up and down is concerned, and thus she was thrown upon this pier.

The Afton came into the draw after she had just passed the Carson, and, as the Carson no doubt kept the true course, the Afton going around her, got out of the proper way, got across the current, into the eddy which is west of a straight line drawn down from the long pier, was compelled to resort to these changes of wheels, which she did not do with sufficient adroitness to save her. Was it not her own fault that she entered wrong? so far, wrong that she never got right. Is the defence to blame for that?

For several days we were entertained with depositions about boats "smelling a bar". Why did the Afton then, after she had come up smelling so close to the long pier sheer off so strangely? When she got to the centre of the very nose she was smelling, she seemed suddenly to have lost her sense of smell and flanks over to the short pier.

Mr. Lincoln said there was no practicability in the project of building a tunnel under the river, for there is not a tunnel that is a successful project, in the world. A suspension bridge cannot be built so high, but that the chimneys of the boats will grow up till they cannot pass. The steamboatmen will take pains to make them grow. The cars of a railroad, cannot,

without immense expense, rise high enough to get even with a suspension bridge, or go low enough to get down through a tunnel. Such expense is unreasonable.

The plaintiffs have to establish that the bridge is a material obstruction, and that they managed their boat with reasonable care and skill. As to the last point, high winds have nothing to do with it, for it was not a windy day. They must show "due skill and care." Difficulties going down stream, will not do, for they were going upstream. Difficulties with barges in tow, have nothing to do with it, for they had no barge. He said he had much more to say, many things he could suggest to the jury, but he would close to save time.