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THE ROCK ISLAND BRIDGE CASE.

Hurd et al.

vs.

Railroad Bridge Co.

United States Circuit Court,

Hon: John McClain presiding judge.

13th day, Tuesday Sept. 22nd, 1857.

HONORABLE ABRAM LINCOLN'S ARGUMENT.

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," he said, "but one quarter of such a number of witnesses seldom agree and even if all were on one side, some discrepancy might be 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, he said, against steam boats or steamboatmen nor any against St. Louis for he supposed they went about this matter as other people do in their situation. "St. Louis," he continued, "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 may be that she supposes that the additional cost of railroad transportation upon the productions of Iowa will force them to go to St. Louis if this bridge is removed. The meetings in St. Louis are connected with this case only as some witnesses are in it and thus has some prejudice added color to their testimony."

The last thing that would be pleasing to him, Mr. Lincoln said, 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 those 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 rising communities of the northwest.

"This current of travel," said he, "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 could surpass it. This particular railroad 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 8th, 1856, to August 8th, 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 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 strike of the contending interest and even a dissolution of the Union. The proper mode 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 and ringing of bells and whistling on all the boats as it fell. It was a jubelee a greater celebration than

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follows an excited election. The first thing I will proceed to is the record of Mr. Gurney and the complaint of Judge Wead that the record 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 19th, 1856, to May 6th--seventeen days--there were twenty accidents and all the time since then there have been but twenty hits, including seven 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 will float faster than an egg shell and the egg shell might be blown away by the wind, but if under the <u>same influence</u> 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 not speak of the angular position of the piers. What is the amount of the angle? The course of the river is a

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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, Colonel Mason says they will form an angle of twenty degrees. But the angle if measured at the pier is seven degrees, that is we would have to move the pier seven degrees to make it exactly straight with the current. Would that make the navigation better or worse? The witnesses of the plaintiff seem to think it was only necessary to say that the pier formed an angle with the current and that settled the matter. Our more careful and accurate witnesses say that though they had been accustomed to seeing the piers placed straight with the current, yet they could see that here the current had 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.

"I am not now going to discuss the question what is a material obstruction. We do not greatly differ about the law. The cases produced here are I suppose proper to be taken into consideration by the court in instructing a jury. Some of them I think are not exactly in point but I am still willing to trust his honor, Judge McClean, 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 the other side when it says that they are bound to exercise no more care than was taken before the building of the bridge. If we are allowed by the legislature to build the 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

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structure which has been legally put there. The Afton came there on the 5th and lay at Rock Island until next morning. When a boat lies up the pilot has a holiday, and would not any of these jurors have then gone around to the bridge and gotten acquainted with the place. Pilot 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 the pier was four feet; he needs information. He could have gone there that day and 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 the place.

"McCammon says that the current and the swell coming from the long pier drove her against the long pier. In other words drove her toward the very pier from which the current came! It is an absurdity, an impossibility. The only recollection 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 plaintiff's boat was destroyed and 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 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 and 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

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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 instrument. The best instruments known in 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 ran slower than five miles; that below it was swifter than five miles, but that the average was five miles. Shall men who have taken 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. Several men have given their opinion as to the distance of the steamboat 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 this 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 twenty-two feet, the width one hundred and sixteen feet, multiply there and you have the square feet across the water of the draw, viz: 2,552 feet. The Afton was 35 feet wide and drew 5 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 five and a half miles per hour. The next thing I will try to prove is that the

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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 eleven and a half miles. Take the five and a half miles which is the speed of the current in the draw and it leaves the power of that 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 were 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 the 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 then cited the testimony of eighteen witnesses on this point.

"How did the boats strike 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 and the short for the last time. None of the rest

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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 up. 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 that she struck thus.

Court adjourned.

14th day, Wednesday Sept. 23, 1857.

Mr. A. Lincoln resumed. He said he should conclude as soon as possible. He said the colored map of the plaintiff which was brought in during one stage of the trial showed itself that the cross currents alleged 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 urge. 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 around she struck the point or end of the pier where she rested. "Her engineers," said Mr. Lincoln, "say the star board wheel then was rushing around 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

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without moving one foot 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 this is her starboard wheel was not working. I shall try to establish the fact that the 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 testimonies of various witnesses to prove that the starboard wheel was not working while the Afton 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 up. The engineers differedfrom him and said they kept one 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 nearly 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

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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 defense 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 center of the very nose she was smelling she seemed suddenly to have lost her sense of smell and to have flanked over to the shortpier."

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 this 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 through a tunnel; such expense is unreasonable.

"The plaintiffs have to establish that the bridge is a material obstruction and that they have 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 up stream. Difficulties with barges in tow have nothing to do with the accident for they had no barge."

Mr. Lincoln said he had much more to say, many things he could suggest to the jury, but he wished to close to save time.

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