

Lincoln and the Rock Island Bridge Case

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Perhaps the most celebrated railroad case handled by Abraham Lincoln involved the construction of a railroad bridge spanning the Mississippi River. The resulting litigation pitted steamboat interests against railroad companies. It was also part of a continuing struggle between Chicago and Saint Louis for dominance as a transportation center.

At root the bridge controversy turned on whether bridges obstructed waterborne commerce and constituted a public nuisance. Some legal background is helpful. It was generally agreed that states controlled the use of navigable waters, but that such authority was subordinate to congressional control over interstate commerce. States therefore could authorize the construction of bridges even though navigation might be impeded. Early railroad charters and general railroad laws frequently conferred the right to bridge navigable waters. Thus, an 1849 general railroad law in Illinois empowered carriers to build lines across any watercourses, provided that navigation was not impaired. Still, it was unclear what limits there were to a state's authorization of bridges that potentially interfered with interstate commerce. Absent an act by congress, final determination as to whether a particular bridge amounted to an obstruction to navigation rested with the federal courts rather than state legislatures.

A development of new bridge designs in the antebellum era, notably suspension bridge technology, made it possible to span great distances. This set the stage for building more ambitious bridges and heightened the conflict between railroads and shipping interests. Railroad bridges generated extensive litigation during the 1840s and

1850s and did much to define the reach of congressional authority over commerce. The bridge controversy first reached the U.S. Supreme Court in *Pennsylvania v. Wheeling and Belmont Bridge Company* (1852). Empowered by a Virginia statute, the Wheeling and Belmont Bridge company erected a drawbridge across the Ohio River. Pennsylvania sued to enjoin the bridge as a public nuisance, claiming that the structure obstructed navigation on the river. Although not originally planned for railroad use, the Wheeling Bridge was subsequently modified for rail traffic.

The Court clearly saw the Wheeling Bridge as a harbinger of growing railroad demands to cross navigable waters. The Court, in an opinion by Justice John McLean, found that the draws in the Wheeling Bridge could not accommodate large steamboats without necessitating a lowering of the steamboats' chimneys. This procedure entailed expensive alterations and was potentially dangerous. The Court therefore concluded that the bridge impeded free navigation of the Ohio River. Since there was no declaration by Congress that the erection of such bridges was not an obstruction to navigation, the Court majority ruled that it was incumbent on the courts to remedy a public nuisance and vindicate the right of navigation. Indicating a preference for waterborne commerce, the majority lectured that if bridges "for the contemplated railroads" multiplied, steamboat traffic would be destroyed and "our beautiful rivers will, in a great measure, be abandoned." The Court ordered that the Wheeling Bridge be elevated or removed. In dissent, Justice Peter V. Daniel painted a very different picture. He argued that in the absence of congressional action states remained free to authorize the erection of bridges. Daniel saw the dispute as one between rival modes of transportation and warned that if courts prohibited the erection of bridges "the rapidly increasing and beneficial system of

railroad communication is broken up, and a system of local monopoly and inequality sustained.” Daniel’s dissenting opinion proved to be the guide for future development. The *American Railroad Journal* expressed the fear that the Court’s ruling “must ever operate as an insurmountable objection to bridging the western rivers.”

Apparently judicial nostalgia for waterborne transportation could not halt the advance of rail technology, and the Court did not have the final word with respect to the Wheeling Bridge. In 1852 Congress declared that the bridge was a lawful structure and mandated that boats navigating the Ohio River not interfere with the bridge. The Court in 1856, deferred to this exercise of congressional power over interstate commerce. “The regulation of commerce includes intercourse and navigation,” the Court declared, “and, of course, the power to determine what shall not be deemed in judgment of law an obstruction to navigation.” In effect, Congress overruled the initial Court decision. McLean, the author of the first opinion, dissented with two other justices, maintaining that the bridge as a matter of fact impeded navigation, and that Congress could not redetermine a finding of fact. Over the next decades Congress passed a number of acts sanctioning specific bridge projects, most of which involved railroads. But Congress neither regulated steamboat chimney heights nor bridge clearances. Bridge litigation therefore continued on an ad hoc basis, and judges gradually gravitated toward a balancing test to ascertain if a particular bridge was a public nuisance.

In 1853 the Illinois legislature chartered the Bridge Company, a corporation closely affiliated with the Chicago and Rock Island Railroad. The Bridge Company was authorized to build a bridge across the Mississippi River “in such manner as shall materially not obstruct or interfere” with river navigation. The plan was to construct a

bridge between the Illinois shore and Rock Island, an island in the middle of the river. A second span carried the tracks between Rock Island and the Iowa shore. The bridge encountered bitter opposition and was engulfed almost at once in a wave of litigation either to prevent construction or to compel its removal. It aroused the ire of steamboat interests, who alleged that such a structure interfered with free navigation of the river. Implicit in the bridge controversy were issues of regional competition. Saint Louis feared that the bridge would undercut its commercial advantages as a river town. Chicago, on the other hand, had pegged its future to expanding railroad traffic. The Rock Island Bridge was constructed as a joint venture between the Bridge Company and the Mississippi and Missouri Railroad Company, with the costs being shared. The bridge rested on seven piers between Rock Island and the Iowa shore.

On May 6, 1856, fourteen days after the first train crossed over the Rock Island Bridge, a steamboat, the *Effie Afton*, built only a few months earlier, struck one of the bridge's piers as it was proceeding upriver from Saint Louis. It spun out of control, hit the pier, and quickly burst into flames. The resulting fire destroyed not only the boat but also a portion of the bridge. The approximately two hundred passengers and crew escaped, but the cargo of merchandise, machinery, and livestock was almost totally lost. All of the nearby vessels celebrated the bridge's burning by blowing whistles and ringing bells. Then as now, newspapers lavished attention on disaster stories. Consider one dramatic account from the *Chicago Democratic Press*.

The upper works of the boat struck against the bridge with so much violence as to knock all in pieces; smoke pipes, stoves and the like were thrown down. The boat was set on fire in two or three places. The hull of the boat was in the mean time pressed under the bridge by the force of the current. The deck stood nearly at an angle of forty-five degrees. Boat and bridge were locked together. All was confusion—and yet several attempts were made to extinguish the fires. These

were supposed for a time to be successful, and yet soon after the flames broke out with such violence as to baffle all effort; but the connection with the bridge enabled the passengers to escape. They got themselves and their baggage on shore. The flames, however, were soon communicated to the bridge. The outer end burned off and fell upon the burning steamer; the other end of that span was cut away, and bridge and steamer floated down together, a sheet of flame. In the meantime the excitement had spread through the two adjacent cities, and thousands from Rock Island and Davenport stood upon the shores watching the sublime spectacle.

The boat was insured in Cincinnati for \$15,000. There were 25 or 30 head of cattle and horses on board. Most of them perished in the flames. Their cries of distress were heart-rending to bystanders. Some few leaped overboard and tried to swim ashore. Some succeeded and some were borne away with the current and drowned.

Railroaders were convinced that the *Effie Afton* was loaded with flammable materials and deliberately rammed the bridge. Steamboat interests, in contrast, insisted that the accident demonstrated the dangers of the Rock Island Bridge. The owner and operator of the *Effie Afton*, Jacob S. Hurd, brought suit in the federal circuit court in Chicago, claiming obstruction of commerce and seeking \$200,000 in damages. The plaintiff hoped that the high cost of the damages would make maintenance of bridges across the river unprofitable and compel railroads to unload freight on the banks of the river and use ferry boats to transport the goods to the opposite shore. The result would render the cost of rail transportation prohibitive and protect the economic interests of the steamboat industry. The lawsuit received extensive newspaper publicity and aroused bitter feelings.

For all his close involvement with the rail industry, Lincoln was a curious choice to defend the Bridge Company. In an 1853 trial, he represented the shipping interests in a dispute over a railroad bridge spanning the Illinois River. A canal boat, insured by the Columbus Insurance Company, struck the bridge and sank. The canal boat was being towed by a steamship at the time of the loss. The insurance company brought suit against

the persons who constructed the bridge seeking damages. The defendants argued that the construction of the bridge had been authorized by the state legislature. Lincoln, on the other hand, denied that the state has the power “to authorize a total obstruction of a navigable stream running within its territorial limits.” The presiding judge in the federal circuit court, Thomas Drummond, concurred that navigation of the Illinois River must “ever remain free, clear and uninterrupted.” The jury could not agree on the issue of whether the bridge in fact amounted to an obstruction to navigation, and the case was resolved out of court.

Nevertheless, Lincoln was selected to represent the Bridge Company at the recommendation of Norman B. Judd, general counsel of the Rock Island Railroad. Lincoln was part of a defense team with Judd and another railroad attorney. The case was complex, involving the mechanics of bridge construction, the velocity of river currents, and the navigation of vessels. Lincoln prepared the case carefully, visiting the bridge, talking with captains and fishermen, and generally seeking to understand both the nature of river currents and the practice of pilots.

Opponent s of the bridge were confident. “There is no question,” a report in the *Rock Island Morning Argus* declared, “about the ultimate success of the suits against the Rock Island Bridge Company, and that the bridge will be torn down by due course of law; let the others be stopped by injunction and the question be tested whether railroads can override all law and justice.”

In a preliminary skirmish over a requested continuance in the case, Lincoln was at pains to stress the potential broad impact of the pending trial:

[T]here is no other thing involved in this case, but whether the plaintiff is entitled to damages for the loss of his boat. We hope that we are quite aware that nothing

more will be absolutely determined by the decision in this case. That is we are quite aware, as we think, that the bridge will not be torn down, not be abated as a nuisance on any judgment in this case, but we nevertheless do think that both parties have been shaping their testimony in this case with reference to something more than that, and if this case should be half tried, or tried upon half the evidence that should be got in, that would bear upon, we should have another long law suit about this bridge, which if we get it fully tried, we may never have. Both parties do look upon it in that view. The examination of these 1,000 pages of testimony shows it.

Lincoln correctly perceived that, although the Hurd lawsuit sought only monetary damages, the larger issue was the validity of bridges across the Mississippi River.

The jury trial, with Supreme Court justice McLean presiding, lasted two weeks during September 1957. Although the *Effie Afton* case file was destroyed in the Chicago Fire of 1871, Hurd's 1858 deposition in a related case survives. His factual contentions can be reconstructed using this document. Hurd endeavored to convince the jury that the Rock Island Bridge was almost impassable at night or during periods of high winds, insisted that the piers were placed at an unsafe angle with the current, and testified that he had seen other vessels hit the bridge or experience difficulty in passing the draw. A parade of river pilots offered similar testimony. The court also heard from passengers, boat builders, ship carpenters, the crew of the *Effie Afton*, passenger agents, bridge builders, and eye witnesses. Lincoln's mastery of facts allowed him to cross examine Hurd and other witnesses in a searching manner. Defense witnesses maintained that there was no particular difficulty in navigating through the Rock Island Bridge.

The testimony was voluminous and repetitious. One newspaper reported at the end of the first week of trial: "I see around me of an afternoon one or two jurors who are 'nid, nod, noddin,' at times, and even the very worthy Judge who presides occasionally shuts his eyes in an almost doze."

Significantly, Lincoln was chosen to make the closing argument on behalf of the Bridge Company. He addressed the jury for two days. After noting conflict in the testimony, Lincoln presented the case in the context of national transportation policy. He made three essential points.

1. He stressed the significance of railroads to the prosperity of Illinois.
2. He maintained that east-west travel across the Mississippi River was equally as important as traffic on the river. A person, he insisted had as much right to cross a river as to move up and down it.
3. He pointed out the advantages of the railroad bridge, reminding the jury the navigation on the river was closed for nearly four months the previous year, while “the bridge was useful as ever.” In this connection, he called attention to the amount of freight and number of passengers that had gone over the bridge in 1856 and 1857.

Turning to a review of the evidence, Lincoln devoted much of his argument to questioning whether the *Effie Afton* was skillfully handled by its crew in passing under the bridge. Asking the jury to consider what constituted reasonable care, Lincoln asserted: “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 the structure, which as been *legally put there*.” He also cited testimony to the effect that the steamboat’s starboard wheel was not working and that Hurd was aware of this. Seeking to place responsibility for the accident on the steamboat, he insisted that the bridge was not an obstruction to navigation. This is the longest documented jury

argument by Lincoln. He combined a masterful command of the facts with an appeal to the self-interest of the jurors.

In his charge to the jury, McLean, who had played a prominent role in adjudicating the Wheeling Bridge matter, reviewed the testimony at length. He pointed out that states could authorize the construction of bridges over rivers so long as navigation was not obstructed. Incidental or slight inconvenience, McLean explained, did not amount to an obstruction. With these principles in mind, he framed the key question for the jury: “Was the *Effie Afton*, in attempting to pass the draw, conducted with care and competent skill?”

The jury was divided—nine voted for the defendant Bridge Company, three for the plaintiff. “This,” the *Chicago Tribune* proclaimed, “is virtually a triumph for the bridge.” There is some dispute over the precise amount that Lincoln received in fees, but it appears that the Rock Island paid Lincoln five hundred dollars for legal services.

Although the case was eventually dropped, the *Effie Afton* litigation went a long way toward establishing the right of railroads to bridge rivers. The steamboat interests, however, did not give up. There was a further challenge to the Rock Island Bridge brought by James Ward, a Saint Louis steamboat owner in May 1858. He filed action in the federal circuit court in Iowa against the Mississippi and Missouri Railroad, part owner of the Rock Island Bridge, alleging that the structure was a public nuisance that hampered navigation on the Mississippi River. Hurd, who took a keen interest in this proceeding, explained the rationale behind the second lawsuit in his deposition:

First—because I was fearful that I could not obtain an impartial jury at Chicago, in consequences of the feeling that there exists in favor of Railroads and against

the navigation of the Upper Mississippi—the general prejudice which had been created there by the entire press against any recovery in my case, and in favor of the bridge, and because there were reasonable doubts of our ability to make the money out of a judgment against the Bridge Company, if one was obtained—the Company being totally insolvent, and the Bridge being mortgaged for several hundred thousand dollars.

Ward, who may have been a proxy for the Saint Louis steamboat interests, sought an abatement of the alleged nuisance rather than monetary damages. The district court ordered the removal of three spans of the bridge on the Iowa side. Such a decree, of course, would render the bridge useless. The case was argued before the Supreme Court in 1863 during Lincoln's presidency. The Court expressed doubt that the bridge on the Iowa side was a serious impediment to river navigation, pointing out that the main channel of the river was on the Illinois side, and that the federal district court of Iowa could not exercise jurisdiction over torts committed in Illinois. Rejecting an argument that the public was entitled to navigation of the entire river, the Court expressed concern that under this contention "no lawful bridge could be built across the Mississippi anywhere; nor could the great facilities of commerce, accomplished by the invention of railroads, be made available where great rivers had to be crossed." This last point echoed a central theme of Lincoln's argument in the *Effie Afton* matter.

The Rock Island Bridge litigation was a pivotal step in Lincoln's career and solidified his growing reputation as a railroad lawyer. The *Effie Afton* case, although not the final word, anticipated judicial recognition that bridges across rivers were not to be per se outlawed as public nuisances. As Albro Martin, the dean of railroad historians, cogently observed, "The Rock Island bridge case was a milestone in the vast changes in American law and jurisprudence that the railroads were bringing, and a triumph for a

Springfield lawyer that would help propel him onto the national scene and to the White House.”

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