



Hurd v. Rock Island Railroad Company

Court documents of:

On April 1, 1856, engineers of the Railroad Bridge Company conducted a comprehensive examination of the just completed Rock Island Bridge. Built with more than two hundred and twenty thousand pounds of cast iron, four hundred thousand pounds of wrought iron, and one million feet of timber, the structure was the first railroad bridge to span the mighty Mississippi River. On April 21, confident in the integrity of the bridge but still exercising caution, company officials watched as a single locomotive, the *Des Moines*, rolled across the bridge from Rock Island, Illinois, to Davenport, Iowa. When three locomotives coupled to eight passenger cars completed the same short trip the following day, people standing along the tracks cheered and church bells rang out from both banks of the Mississippi.

Just fifteen days later, on May 6, there was a celebration of a decidedly different nature between the two river towns. The late-model steamship *Effie Afton*, powering upriver through the draw of the Rock Island Bridge, collided with one and then another of the piers supporting the structure. The passengers and crew managed to escape harm, but the boat caught fire and was lost, as was its entire cargo. Before the destroyed *Effie Afton* swung free of the bridge, drifted down river, and eventually sank, the long flames of the fire had reached the wooden trusses of the bridge. As the bridge began to burn, the other steamboats afloat on the river and tied up at Rock Island and Davenport blew their whistles in approval. When a section of the bridge collapsed, river captains, pilots, and crews cheered wildly. So loud was the scene that, as one newspaper reported, "It sounded like a vast menagerie of elephants and hippopotamuses howling with rage."

The Rock Island Bridge stirred up trouble in the waters of the Mississippi.

Boat destroyed and bridge damaged, the owners moved their conflict indoors, off the river and into the courtroom. Jacob S. Hurd, captain and co-owner of the *Effie Afton*, sued the Railroad Bridge Company.

Alleging that the bridge was a material obstruction to the free navigation of the Mississippi River and therefore illegal, he and his fellow owners sought a judgment for "the value of the boat, her cargo, and such other damages as they may be entitled by law and the evidence to recover," all of which they calculated to be sixty-five thousand dollars.

The trial began sixteen months later in September 1857 in the United States Circuit Court in Chicago, with Supreme Court Justice John McLean presiding. The *Chicago Daily Press* informed its readers that it would surrender considerable space to covering "the celebrated *Effie Afton* case." The editors explained that the trial was indicative of a fundamental national struggle in desperate need of resolution. In pressing their suit, the plaintiffs were defending the primacy of the navigable rivers, "the great natural channel of trade of the Mississippi Valley," against the lengthening railroads, "the great artificial lines of travel and communication." The editors believed that the conflict was "one of the most important ever to engage the attention of our courts." Accordingly, they "made such arrangements as will enable us to lay before our readers . . . verbatim (exact or what exactly they said without any changes) reports of all the more important portions of the arguments and evidence."

Representing Hurd and his associates, Hezekiah M. Wead, Corydon Beckwith, and Timothy D. Lincoln said they wanted to accommodate the growing railroad interests. In his closing statement, Wead claimed, "it was no part of [our] cause to prohibit the bridging of the Mississippi River." He insisted that a bridge, in the right place with the right structure would pose no danger to river traffic. The Rock Island Railroad Bridge he says was neither. Four and one-half years earlier, on January 17, 1853, the Illinois legislature had incorporated the Railroad Bridge Company "with the power to build, maintain and use a railroad bridge over the Mississippi River" between Rock Island and Davenport. The charter specified, though, that the bridge be erected "in such manner as shall not materially obstruct or interfere with the free navigation of said river."

Whatever achievement the bridge represented in the field of engineering, Wead argued, the Railroad Bridge Company had built it in a manner that did not allow boat to use the river. To begin with, the turntable pier was "placed laterally across the current of the stream." This meant, according to the plaintiffs, that the water did "not run square under the draw." Rather than directly "running between the long and the short pier," water is pushed into the long pier, making very dangerous and unpredictable crosscurrents and eddies. Moreover, the Railroad Bridge Company located the bridge precisely where, in that stretch of river, the speed of the current was greatest. The presence of Rock Island effectively narrowed the width of the river and increased the force of the stream. That condition was aggravated further by the addition of the bridge's piers and by the ships themselves. The turbulent water, which made the draw virtually un-navigable, forced the *Effie Afton* into the bridge. In combination, the design and the location of the bridge qualified it as an unnatural, material obstruction to navigation on the river. Wead cast the Railroad Bridge Company as a "grasping corporation," which placed the bridge where it pleased, disregarding navigation and disrespecting the public. More to the point, though, the Rock Island Bridge had violated their charter.

Wead did not want the jury to trust him when he said Rock Island Bridge was an obstruction. He admitted that "obtaining accurate knowledge of the navigation of such a stream" was terribly difficult for "all men." Referring to the specific circumstances that the *Effie Afton* faced, he said, "No man can tell what the difficulties of that navigation will be until he tries it." "Without experience," he believed, one really could not be "a competent judge" of such things. To help the jury fully understand the degree of obstruction to navigation, Wead turned to the men who made their living on the Mississippi River and the other small rivers. They came from places like Galena and Savannah, Illinois, and from Pittsburgh, Cincinnati, and St. Louis, and in addition to riverboat captains, they included the highly esteemed river pilots.

By Justice McLean's count, over fifty of these men testified that the design of the bridge "caused cross-currents and eddies in the draw," which led to the "loss of the *Effie Afton*." Witnesses agreed that the bridge was an obstruction to navigation: "a material obstruction," "a great obstruction," "a serious obstruction," "the worst obstruction on the Western waters." Fifty-year-old Thomas Taylor had spent half his life as a pilot on the Mississippi. In his estimation, the bridge was "a serious obstacle," and he said to the person taking his deposition, "You may emphasize that as much as you please." The pilots all agreed that the speed of the river increased dramatically in the draw (where the bridge was). There was no exact speed on just how much faster the water was moving. Some estimated the current reached six miles per hour; others judged it to hit twelve miles an hour; one simply said the current was "a heap stronger at the bridge." None had measured the speed of the current.

However fast the river, the pilots agreed, passing the bridge was "very unsafe." William White, a river pilot between St. Louis and St. Paul for more than two decades, believed there was "a risk of life and property in going through the bridge." He was not alone. David Moore "considered [passing the bridge] so dangerous that I took my money and other valuables on my person, to be ready for any trouble." While Wead argued that only [river men] could truly appreciate the challenges of navigation, the pilots themselves noted that the danger posed by the bridge did not escape common passengers. Pittsburgh pilot George Neare recounted a story in which his passengers were so frightened at the prospect of passing through the draw of the Rock Island Bridge that they insisted on leaving the boat, walking around the bridge, and reboarding once—if—Neare safely guided the steamship to the other side. Moreover, he noted, marine

insurance companies judged the bridge a significant risk: rates "have been greatly increased by the bridge."

Wead aimed to win the legal case for Jacob Hurd and his associates on a narrow, technical point about river navigation. He sought to win the public relations case by situating the loss of the *Effie Afton* within a particular historical narrative about the father of the waters and the American nation. Wead reminded the jury that "the law is that the citizens of the United States have a right to the free navigation of the Mississippi River." That had not always been true.

Representing Rock Island Bridge Company, Norman B. Judd, Joseph Knox, and Abraham Lincoln said that opposing counsel Hezekiah Wead was "entirely mistaken in his statement of the facts," and they proceeded to develop a defense that showed many details and a lot of evidence. With detailed statistics of bridge passings, multiple scientific tests conducted by qualified engineers, and the observations of lay people living near the Rock Island Bridge, the counsel for the defense wanted to dismantle Wead's case by demonstrating that the bridge was not a material obstruction to the navigation of the Mississippi River.

Seth Gurney, one of the first witnesses called by the defense, was the caretaker of the Rock Island Bridge and had been since April 19, 1856, two days before the steam locomotive *Des Moines* rolled across the bridge from Illinois to Iowa. Gurney stated that the bridge had been repaired by August 4, 1856, less than three months after the collision. He testified that he kept "a book in which by order I enter . . . every boat which passes." According to Gurney's log, in the thirteen months since the bridge had been repaired, "958 passages of boats have been made," and only seven boats suffered damage. Referring to these figures and the river pilots' insistence that the bridge constituted a dangerous obstruction, Knox said, "The pilots say that it is mere chance that they get through unhurt. Surely they are the luckiest men in the world." He wondered,

"Would not these boatmen soon amass a fortune if they could deal in lottery tickets?"

Defense counsel argued that the low number of accidents at Rock Island Bridge was not, in fact, due to the pilots' luck. Nor did they offer that it might be the result of the same pilots' well-developed skills. Rather, they argued there were few accidents because the bridge was well designed. To convince the jury of this, the defense called six engineers who had extensive experience with railroads, bridges, and rivers. Each of them visited the Rock Island Bridge and studied its construction and its effect upon the river. Each either conducted or observed tests of the direction, the predictability, and the speed of the current. They described the various tests they ran, most of which involved dropping weighted floats into the stream "some two hundred feet above the draw" and watching their movement as the current carried them down river through the draw. These tests, one engineer stated, were "regarded as a reliable means of determining currents in our profession." The engineers agreed that there were no crosscurrents or eddies in the main channel and that the bridge was placed nearly as well as it could be. Knox acknowledged that the plaintiff's counsel also "brought three engineers here" to add their testimony to the pilots'. Of the three, though, "only one ever saw Rock Island, and that was in February, when the river was frozen over." None of the three conducted any tests on or even saw the effect of the bridge on the river.

To help the jury properly interpret their engineers' tests, defense counsel called a number of local residents. John Deere, a fifty-three-year-old resident of Moline who was "engaged in the manufacture of plows," witnessed some of the tests conducted by the defendant's engineers. He described himself as "unskilled in navigation" and admitted that he had never passed through the bridge on a boat himself, but he still concluded that there were no crosscurrents in the main draw. Were there currents, he said, "the tests would have discovered them." Patrick Greg, physician and mayor of Rock Island, testified that he had "watched floats pass in regular file down through the draw, never diverging to the left or the right."

He said, "The current according to my observation passes through the piers on the Rock Island side as smoothly and evenly as it is possible for water to run between piers." Oliver P. Wharton was the "publisher of the *Rock Island Advertiser*," and his "office window commands a view of the bridge and vicinity." He had seen "floats in numbers," "several hundred boats," and "objects on the surface" pass through the draw "straight with the pier." He said that he was "certain there are no cross-currents." He thought "no difficulty whatever is offered by the bridge to the navigation of steamboats." Quincy McNeal, clerk of the Circuit Court of Rock Island, admitted, "From what had been told me I expected that there was difficulty until tests and experience proved to me that there is none whatever." He had "seen the floats tried and pass through straight." He concluded, "There are no cross currents in the draw." McNeal said, "If a boat is left to drift from the opening of the chute she will go right through," and David Barnes unintentionally demonstrated as much. Barnes was a resident of Rock Island and had been "engaged in the lumber trade for four years." He recounted losing control of a raft, four hundred feet long and seventy-five feet wide—significantly larger than the *Effie Afton*—above the Rock Island Bridge in September 1856. He got caught in "the steamboat channel leading to the draw, and I could not get out of it to go to the usual place" where rafts passed the bridge. Barnes gave up and let the current carry the raft where it would. The raft "went straight down through the draw without touching."

McNeal went so far as to say, "It is impossible for anything to get against those piers, except it be from some other influence than the current." Defense counsel believed they could reasonably point to other influences. Judd charged that the fate of the *Effie Afton* was the consequence of no more than "the carelessness of her officers." After all, immediately upon leaving Rock Island, the *Effie Afton* bumped into a steam ferryboat. From careless to reckless: with the bridge just three-fourths of a mile off, the *Effie Afton* engaged another steamer, the *J. B. Carson*, in a race to the draw, which affected the angle at which the *Effie Afton* approached the draw. Knox did not hesitate to attack the pilot Nathan Parker personally: although Parker may be in some respects "very excellent," he was a "very timid man" with "delicate nerves." He said that not until he listened to the plaintiff's counsel had he "heard the praises of Mr. Parker as a tip-top pilot." Knox asked the jury rhetorically, was Parker's performance "not the height of unskillfulness?"

Although the defense alleged incompetence, they also suspected devious intent. The plaintiff had claimed that the fire that ultimately destroyed the *Effie Afton* and that damaged the bridge was the accidental consequence of a stove tipping over during the collision. But Judd argued the fire was no accident at all: "The fact is she got there where she would probably be lost and she had no insurance save against fire and some of them thinking it better to take half a loaf than nothing, set her on fire." A physician who happened to be on the steamer *Vienna* the morning of May 6, 1856, testified that he witnessed Captain Hurd and a few members of the crew discussing the fact that the *Effie Afton* was only insured against fire. He believed that "one of them said: 'It is a pity she don't burn; she is good for nothing,' and with an oath said: 'I would burn her and get the insurance.'" Shortly thereafter, the *Effie Afton* was burning out of control

Knox's closing

In his closing Knox cast the Railroad Bridge Company as "a little company" now under attack by the "the greatest river interest," and he described the bridge not as an obstacle but as an "improvement" and one "which has benefited the whole land." He moved the railroad into the position long held by the rivers.

Lincoln's closing

Abraham Lincoln followed Knox with a closing of his own and pushed the argument further. He said he had no desire "to have one of these great channels, extending almost from where it never freezes to where it never thaws, blocked up." But the jury needed to see that Americans moved from east to west as well as north to south and that east-west travel "is growing larger and larger."

Between September 8, 1856, and August 8, 1857, Lincoln said, 12,586 freight cars and 74,179 passengers crossed over the Rock Island Bridge. Were it not for the Mississippi River's "advantage in priority and legislation," the railroad "would surpass it." Navigation had been shut down for nearly four months the previous year when the river had been frozen. Moreover, Lincoln added, there is "a considerable portion of time when floating or thin ice makes the river useless, while the bridge is as useful as ever." The artificial line was surpassing the natural channel, and speaking of the railroad, Lincoln said, "This current of travel has its rights" too.

The jury deadlocked at nine to three in favor of the bridge, so Jacob Hurd and his associates did not recover damages. After continued legal struggles, the final fate of the Rock Island Bridge was determined in January 1863 when the United States Supreme Court determined it could stand. By then, not a bridge but a war had stopped commercial traffic on the Mississippi River.