PITTSBURGH GAZETTE.

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PITTSBURGH.

WEDNESDAY MORNING, MARCH 3, 1852.

Whig State Convention.

☞ A Whig State Convention will be held at Harrisburg, on the 25th of March, 1852, for the purpose of nominating a Canal Commissioner, forming an Electoral Ticket, and choosing delegates to the National Convention. The Whigs of the various counties of the Commonwealth are hereby notified to elect delegates equal in number to their representatives in the Senate and House of Representatives, to attend said Convention.

By order of the Whig State Central Committee.

NER MIDDLESWARTH, President.

CHARLES THOMSON JONES, Secretary.

February 7, 1852.

Whig papers in the country will please copy.

ANTI-MASONIC AND WHIG COUNTY CONVENTION.

☞ The Committee of Correspondence, composed of the Delegates from the several Wards, Boroughs and Townships, at the last County Convention, are hereby invited to meet at the Court House, City of Pittsburgh, on WEDNESDAY, the 10th day of MARCH next, at 12 o'clock, A. M., to appoint Delegates to the State Convention, to be held at Harrisburg, on the 25th proximo. A full attendance is earnestly requested.

JOSIAH KING, Chairman.

The opinion of the Supreme Court on the Wheeling Bridge case, which was received at a late hour, has excluded several editorial articles which we had prepared for this paper.

Some dissatisfaction has been expressed at a policy said to be pursued by the Pennsylvania Railroad in regard to freight. It seems that more freight is offering than the road can possibly carry in any reasonable time, and that the officers of the company had consequently refused to receive any more goods from New York for the west, until the ability to convey was increased, believing that their duty was first to their own stockholders, the merchants of Philadelphia, who could fully supply all the freight the road could carry. We cannot approve of the policy, as we believe that common carriers ought in justice to make no distinction between their customers, and that, furthermore, such a policy will ultimately be a very bad one for the Stockholders. It is true, however, that the means of the road, with its broken connections, is at present limited to a certain amount of freight, and it cannot be expected that it should perform impossibilities. The policy of discrimination is an unsound one, and this is the most which can be said in the premises.

THE TARIFF IN CONGRESS.

We stated yesterday that there is some hope of a modification of the tariff at the present session of Congress, and urged upon our citizens the propriety of calling a convention in this city in favor of this vitally important measure, without reference to party. Our suffering interests require the sacrifice of party considerations; and although as a minority of the Whigs, as such, are powerless, yet they will co-operate cordially with their democratic friends in an effort for the common good. Whigs and Democrats co-operated in doing honor to Kossuth; now let them, with equal cordiality, unite in delivering our own country from commercial vassalage.

We have some more encouragement in the following extract from a letter of the Washington correspondent of the North American:

Although most of the friends of a modification of the tariff have abandoned confidence as to the prospect of any advantageous legislation, Mr. James, of Rhode Island, who has been most active in shaping a proposition, and in canvassing it with the majority in the Senate, is still hopeful of being able to effect some change which will afford relief. Being one of those self-relying men who depend upon their own active energies for success, and who confront difficulties as every day impediments which must be overcome, he does not yield to despondency, but, on the contrary, considers the chances favorable while there are elements to be employed or obtained which may yet reach the desired object.

One of the great obstacles in the way of any alteration, as I have repeatedly suggested, is the want of concert and inclination among the Democratic members of the Pennsylvania delegation to exert their influence in quarters where it might be exercised with decided effect. From the first Monday in December until the present hour, this has been the formidable and frowning cause of embarrassment. In all the political circles which were originally well disposed, it has been felt, and felt, too, in such a manner as to hinder every effort that was contemplated. Now, as this is a question which affects the industry of the whole country, it should not be controlled by political considerations. It is true, that ever since the organization of the Whig party, they have been the chosen and almost exclusive champions of that policy which claimed as its greatest merit the protection of American labor. They are now in a powerless minority, and must therefore yield to the necessities of such a condition. So far as I have been able to ascertain the feeling and disposition of the Whigs in Congress, they are willing at any moment to remove the tariff from the arena of party, and to accept any reasonable conditions that may be offered, allowing the Democratic party the credit and political advantage that can be derived from the adoption of such a measure.

With a view of ascertaining and testing the inclination of the Democrats in Pennsylvania, who now hold the ascendency in the State Government, Mr. James proposes to consult, personally, some of the leading men at Harrisburg. Thus far Colonel Bigler, though owing his election to assurances given to the mining and manufacturing districts of a modification of the act of 1846, has occupied a negative position, and refused to show his hand directly.

The time has now arrived when he must speak out, or when his party in the Legislature must sustain or repudiate their Governor. In order to conciliate Western influence, Mr. James may consider it expedient to make some concessions for the manufactured iron to be imported for railroads in the new States

this plea is not such as our local interests might claim, still it is to be considered that we stand in the relation of beggars and no choosers.

Some of our city papers having published an article from the *Cincinnati Commercial*, purporting to give a description of a parting interview between Kossuth and the Cincinnati Committee, calculated to do injury to the eloquent Magyar, it is only an act of justice to give the following correction of the slander, from the *Cincinnati Gazette*, of the 28th ult.

KOSSUTH AND THE CINCINNATI COMMITTEE—THE FALSE REPORTS.

As there have been widely circulated many rumors and newspaper statements regarding the final interviews between the Cincinnati Committee and Kossuth, which are grossly incorrect, and do great injustice to the parties immediately concerned, we have made diligent inquiry to arrive at the truth of the whole matter, and will now state in regard to it what we have received from the most reliable authority.

At the meeting of the Committee at the Burnet House on Thursday morning, M. Kossuth expressed, in a mild and inoffensive manner, his regrets that so little material aid had been raised in this city for the Hungarian cause. On his arrival, and throughout his whole stay in this city, the Committee had assured him that they would raise $25,000 for his cause! he would allow them to manage the affairs in their own way to which he assented, of course. Up to the time of his departure he had only received a little over $7,000 from all sources within the city. This was attributed to decided failure, viewed in connection with the expectations and promises of the Committee, and to the Magyar must have been a deep and discouraging disappointment. It was very natural that he should feel called upon to remind the Committee, after having waited so upon them for fifteen days, and when about to take his final leave, that their large promises and small returns had caused him a great waste of precious time. That he did do this we are assured, but, as has been stated, without any such remarkable display of passion as has been attributed to him by a city paper. The Committee assured him that they were, equally with him, disappointed in the amount of material aid, realized, but that they would endeavor to materially increase it by continued efforts, and would remit to him the result of their future labors, whatever it might be. We understand that the parting between Kossuth and the members of the Committee was mutually cordial and friendly.

Two of the Committee accompanied their whilom guest to the boat. Upon one of them asking him whether it would be agreeable to him to be formally "delivered over" to the Indiana Committees, he very blandly replied that he preferred to be delivered to himself!—from which we infer that he simply considered the proposed formality unnecessary, and "the breach" more acceptable to him than "the observance."

We are assured that no ill feeling whatever was manifested, and that none existed between Kossuth and those members of the Committee who attended him to the boat; but that, on the contrary, they parted in the most cordial friendship and with many mutual regrets for the necessity for their separation.

We make this statement merely to subserve the cause of Truth and Justice in a matter in which the community have the liveliest *curiosity* if not *interest*.

LAKE SUPERIOR COPPER MINES.

A friend has placed in our hands a letter from his correspondent at Ontonagon, Lake Superior, from which we gather some interesting facts respecting the operations and prospects of several of the Copper Companies in that region.

The writer represents the Toltec mine as doing very well. It is a well defined vein, yielding rich returns of barrel and stamp work. The letter proceeds:

The Adventure is looking better than ever, and there is every reason to believe that they will increase next spring's shipment materially over that of last year.

The Ridge Company are not raising much copper, owing perhaps to the reasons given by the Agent in a communication which appeared in the Lake Superior Journal of last December last.

The Ohio mine is turning out a small amount of stamp and barrel work.

The Artec Company are not working on a very productive vein, but the Agent is opening his mine in a workmanlike manner.

The Piscataqua, Bohemian and the Ontanagon mines have suspended operations for the present. The two former quit work with the best shows they ever had—the latter does not look well.

The Minesota.—The best that can be said in favor of this mine is that last month it produced 52 tons of copper, all of which was marked, barreled, and carried to their landing, besides some stamp work that they were unable to work up before the end of the month. This month the yield will be about the same.

The Forest is very unexpectedly turning out large quantities of rich stamp and barrel work this month. They have raised enough of barrel work to yield four tons of copper, and that with a force of ten miners, who are engaged in sinking and driving. When they commence sloping it is no more than probable that large quantities of copper may be expected for the force employed.

The Colling Company are driving to intercept veins in the hill, and expect to reach them before next month expires. This concern is managed by Mr. Colling; and, in my opinion, more economically than any other on the Lake.

The Ohio Trap Rock is not looking as well as it did some weeks ago.

The Norwich, adjoining the above is appearing better than any other on the West side of the river, and offers better advantages for working than any other mine heretofore discovered in the copper country.

The Fire Steel Company are driving up to meet their vein. Nothing can as yet be said in favor or against it.

Many of the pre-emptors are working their shows, and many are preparing to commence operations early in the spring; but where the capital is to come from none can tell.

The Plank Road Co. are working a force of 30 men on their road and we are building an Hotel which, when completed, will present a front of 74 feet by 40 back, and some half dozen good substantial dwellings are being erected. The town will present a good appearance from the Lake.

Very little transactions in stock, the only sales that I am cognizant of this month were 115 Farm, at $5¾, 75 do at 6;;75 Toltec at $5. Copper Stock is very dull, no sales of note (this was before the discovery of the former sinking a shaft on the latter's ground) and some few hundred shares of Eagle and Caledonia at $1¼@$1½, these two latter are recently organized and are owned by residents of this country.

Respectfully,

KOSSUTH IN LOUISVILLE.—The action of the Board of Aldermen, of Louisville, in rejecting three times, unanimously, resolutions inviting Gov. Kossuth to that city, have created an impression abroad that that people there were opposed to the great exile. The *Louisville Journal*, of the 25th inst, corrects this mistake. It seems that the "Common Council," the body emanating directly from the people, unanimously passed the Kossuth resolutions, while the aristocratic body of Aldermen,

"With fair round belly, with good capon lined,"

As unanimously rejected them. The Journal says:

KOSSUTH AND THE CITIZENS OF LOUISVILLE.—The action of the board of aldermen of this city, in relation to inviting the great Hungarian orator and patriot to Louisville, has been greatly misunderstood abroad. It has given rise to a belief that the citizens of Louisville form an exception to the people of other cities, and that they entirely disapproved of Kossuth and his efforts to secure assistance for his oppressed country in the United States.

The common council, a body composed of sixteen members, unanimously voted for a series of resolutions expressing sympathy for the struggling patriots of Europe, and the board of aldermen, consisting of eight members, unanimously rejected them. Abroad, and with that small minority who do not profess to feel such sympathy as the resolutions referred to express, our board of Aldermen are thought to have been actuated solely by patriotic motives. At home, their action is known to have been influenced quite as much by pecuniary as by patriotic considerations.

In justice to the people of Louisville, we will state that an overwhelming majority of them entertain feelings of the most decided respect and admiration for the illustrious Magyar chief, and stand in readiness to contribute "material aid" to the cause he advocates so earnestly and effectively.

* * * * * * *

Our forefathers of the Revolution sought and fortunately found sympathy in Europe. They not only sought sympathy, but they lent some of the country's most distinguished patriots to Europe to seek "material aid." They succeeded in borrowing money and in obtaining men and munitions of war, and they owe their degree of success to one, to those who furnished the "material aid" which was derived from Europe, a lasting debt of gratitude. Let those who rail at Kossuth and his cause in this country, now that they have mocked him and endeavored to bring disrepute on that cause, turn round and pour forth the vials of their wrath hot and scalding on the memory of our revolutionary patriots who during our struggle for independence visited Holland and France and begged for aid as Kossuth is now soliciting aid in this country.

FROM WASHINGTON

(Correspondence of the Pittsburgh Daily Gazette.)

WASHINGTON, Feb. 28, 1852.

THE WHEELING BRIDGE.—I received the following interesting intelligence to-day, and would have transmitted it by telegraph, but that I hope it will reach you by mail in time for Monday's paper. The opinion alluded to below will be delivered on Monday, when the Court will slap render its decision on the famous Gaines' suit:

On Monday and Tuesday the defendants' motion to modify the decree of the Court was argued by Mr. Johnson, Mr. Stanton and Mr. Stewart.

The defendants' motion was to modify the decree of the Court according to one of the following conditions:

1. To remove the Western Bridge, or
2. To place a draw in it 95 feet wide, or
3. To place a draw in the Suspension Bridge.

The motion was resisted, on the ground that the remedies proposed would not relieve navigation from obstruction.—

The opinion of the Court on the main question, declaring the Bridge a nuisance that must be abated, has been filed, and it is understood that the Court are of opinion that the proposed remedies are not sufficient, but will refer the question for examination to Mr. McAlpine, the Engineer, to report upon at the extra session in April; and that in the meantime, the degree requiring the elevation of the Suspension Bridge, or its abatement, will be fixed.

It will thus be seen that the Bridge will be suffered to remain in its present state until April next, when it is to be hoped that the "law's delay" will reach its limit.

While upon judicial matters, I am reminded of the marked contrast between the speech and toast of Justice Wayne, of Georgia, at the Kossuth banquet, which were worthy of a learned and temperate jurist in a free country, and his course at the anti-Kossuth dinner, on the 21st, where he heartily joined in with the screamall pipes of the defamers of republicanism there assembled. Alas! when a judge of the Supreme Court will allow himself to descend to the level of a Toombs. This man is a monument of the conservative South!" Had he succeeded in his incendiary purposes two years ago, Congress would have been broken up, the Supreme Court would have been dissolved, and the fair South itself would have been somewhat advanced toward that state of political extinction from which the power of the North alone withholds it.

The wrangle between Senators Rhett and Clemens was resumed this morning. The public appetite for personal contention was so whetted by the flood of bitter epithets poured out yesterday by both parties, that the Senate galleries were filled by spectators of both sexes before the Senate assembled.

At the conclusion of Mr. Rhett's remarks, yesterday, he flatly denied Mr. Clemens' assertion, that Mr. Calhoun died in the faith that no State had a right to secede, and defied him to produce his authority. He proved from Calhoun's book that he was a secessionist. That Book, however, has been published since its reputed author's death, and no man not in the secrets of its compilation, can say what part of it Mr. Calhoun wrote, and what part of it others have written for him. Mr. Rhett said that no man would dare come forward with the pretended proof that Mr. Calhoun had abjured the doctrine of secession, because Mr. C. had sons surviving, and friends who would take care to defend his reputation. So far, Mr. Rhett.—Clemens rejoined. He had not called Rhett a traitor and a knave, but if he had, it was two months ago, and Rhett had quietly rested under the imputation, and now came forward to resent it only by words. He now superadded to the epithets Rhett had appropriated that of *coward*. His charges against himself of inconsistency were unfounded. His present position as a supporter of the Compromise was not inconsistent with the stand he had made in defence of the South, before its enactment. The allegation, borrowed from others and repeated by Rhett, that he had pledged himself before election to the Senate to support the administration of Gen. Taylor, was a foul lie. He called upon the Senator from South Carolina to note well that he branded it as a foul lie. This morning Colonel Clemens resumed his defence. He had disposed of the personal part of the matter yesterday. He retracted nothing, and nothing was left to add. He then went into a long argument to show his consistency.

Rhett replied, that as to the personalities of his adversary he had no answer. He was a Christian, a professor of religion, as was well known, and did not acknowledge the obligations of the code of honor. This was the way he came the higher law over him, although this same Rhett would no doubt have counselled the hanging of Gov. Seward, should he be found advocating *any* higher law in South Carolina. But Rhett is right, though inconsistent. The law of honor, alias duelling, was made for strong, bold men, but is as much abused by running ones as most others. Those only are bound by it who make it the rule of their conduct. And so the war between these champions of secession ended, both parties retreating without loss.

Senator Pearce of Md., is strongly pressed for the vacant judgeship in the Maryland district. He is ill at home, and can take no part in the application, but it is understood that he would willingly retire to the Bench. He is a very able man, and the only objection to the appointment is, that should he now leave the Senate, he would be succeeded by a Democrat.

Hon. John B. Weller, formerly of Ohio, has been elected Senator from California. This result of the protracted contest there has been expected for some time. Col. Weller has served eight years in the lower House of Congress. He was appointed Commissioner to run the Mexican boundary line, by Mr. Polk, and was removed by Gen. Taylor, who appointed his relative by marriage, Col. Fremont, whom Col. W. now in his turn succeeds in the U. S. Senate. It is a singular coincidence, this alternative Col. Weller is a violent partisan, and rather impetuous in his manners, but he is an able man, and aside from personal and party asperities, a popular one. He will faithfully represent the interests of California.

The Mormons, it appears, have set up for independence. It is exactly the thing I expected, and the sooner their aspirations are repressed by the strong arm of force, the better for all concerned.

JUNIUS.

FROM HARRISBURG

(Correspondence of the Pittsburgh Daily Gazette.)

PENNSYLVANIA LEGISLATURE

HARRISBURG, Feb. 28.

In the Senate, nothing occurred of importance to your readers.

Some days ago a bill passed the House with the following section attached as a "rider:"

"That the Pennsylvania Railroad Company be and is hereby authorized, if they deem it expedient, to construct a lateral railroad from some point on the Pennsylvania Railroad between the borough of Greensburg and the town of Latrobe, in Westmoreland County, in a southern direction by way of or near Mt. Pleasant and Connellsville, to the borough of Uniontown, in Fayette County, and that hereafter the said lateral road shall be subject to all the provisions of the several Acts of Assembly relating to the said Pennsylvania Railroad Company, excepting the toll on tonnage provided for in the 22d section of the Act of 13th of April, 1846, entitled 'An Act to incorporate the Pennsylvania Railroad Company.'"

The bill was sent to the Senate, and this morning came back with the following additional section added:

"That the said Pennsylvania Railroad Company shall also have the privilege, and they are hereby authorized after the said lateral road shall have been completed and in operation, to extend the said lateral road from Uniontown to *or near* the town of Geneva, *or some other point on or near the waters of the Monongahela, in said County of Fayette*, or to the borough of Waynesburg, in Greene County, as may be deemed most expedient and advantageous by said Company—subject to the like provisions and restrictions as are imposed in the preceding section of this act on the proposed lateral road from the main stem of the Pennsylvania Railroad to Uniontown."

The Senate amendment being taken up for concurrence in House, Mr. Appleton moved that the bill be referred to a select committee to be composed of the members from Allegheny Westmoreland and Fayette.

This motion was opposed by Hill of Fayette, Brooma of Chester, and Flanigan and Gopler of Philadelphia, on the ground that the members from Allegheny and Westmoreland, being opposed to the bill, such a reference would be fatal. The merits of the road were also dilated upon.

Mr. Appleton stated that as this bill had never been before a committee, and its bearing and importance likely to affect great interests, it should not be passed in haste and without due examination. He finally modified his resolution so as to refer the bill to a select committee of five. He would like to amend further, if referred, requiring a vote of the Stockholders on the question of lateral roads, that Allegheny county held over a million dollars in stock and she should have a voice in the matter; the exemption of tounage was also objectionable.

Messrs Schell, Guffey and Fiffe also advocated the reference.

Messrs. Hill, Broomall, Gopler and Flanegan opposed it.

The yeas and nays were required by Messrs. Appleton and Gopler, and were as follows:

Yeas: Messrs. Anderson, Appleton, Bigelow, Dungan, Fiffe, Gibbs, Guffey, Hamilton, Harris, Henderson, Landis, McCluskey, McCune, Meloy, Miller, (All.) Mowry, Painter, Penney, Schell, Sherou, Smith, Walton, Wise—Yeas 23.

Nays: Messrs. Acker, Benedict, Beyer, Blaine, Blair, Bonham, Brock, Broomall, Chandler, Craig, Evans, Flanigan, Follmer, Fretz, Gabe, Gifford, Gillis, Goodwin, Gossler, Hart, Herbert, Hill, Hook, Huplet, Jackson, James (Chester,) Kelso, Kingsley, Laughlin, Leech, Lilly, McConnell, McGrapahan, McKean, Mackey, Merriman, Myers, Miller, (Northamp'n,) Mott, O'Neil, Reckhow, Reel, Reifsnyder, Roads, Ringer, Ross, Rubicam, Shaeffer, Shugart, Shell, Souder,, Springer, Stewart, Thomas, Torbert, Wagner, Yost and Rhey, *Speaker*—Nays 59.

The motion being lost, Mr. Appleton moved to strike out the words in the Senate, amendment in italics viz, "or some other point, on or near the waters of the Monongheln, in said country of Fayette." Mr. A. advocated his motion, and charged upon the friends of the bill, an intention under cover of the above words, of constructing a road to the Virginia State line. Mr. Hill denied such intention. The motion to strike out was not agreed to, and the amendment of the Senate was concurred in by the House.

Petroleum!

COLUMBUS, Ohio, Jan. 23, 1852.

S. M. RITZ: Dear Sir—In answer to your inquiry, I am prepared to say, that I have used the Petroleum extensively in the treatment of Diarrhea and Dysentery, and to greater success than the use of many of the principle remedies formerly used and recommended by the profession: So far as the various diseases of the lungs, for which the Cod Liver Oil has been so highly recommended, I must certify that the Petroleum in my hands has supperseded it as a curative agent. In addition to those diseases above alluded to, scrofulous affections and enlargements of the spleen, with the most extraordinary success, have been disposed with.

With these few experimental facts of the Petroleum, I remain, yours truly,

J. FLATTERY, M. D.

☞ For sale by druggists generally. f10dd&w7

☞ Go where you will, talk about what you may, and you will either see or hear of the great Arabian preparation, known to the people of the U. States as H. G. Farrell's Celebrated Arabian Liniment. It has made some of the most remarkable cures of paralysis, rheumatism, nervous affections, spinal complaints, &c., on record; and, indeed, as an external remedy, is applicable to nearly all diseases which could possibly be benefited by a medicine of that kind. [See advertisement.]

Fall Importation of Hardware, Cutlery, &c.

LOGAN, WILSON & CO.,

No. 129 Wood Street,

Desire to call the attention of Merchants and others to their LARGE STOCK of

FOREIGN AND DOMESTIC

HARDWARE, CUTLERY, &c.,

IMPORTED BY RECENT PACKETS,

And which they are now prepared to offer at such prices as cannot fail to please.

☞ A full assortment of MANN'S celebrated C. S. AXES always on hand. [illegible]

WHEELING BRIDGE CASE.

JUDGE McLEAN'S OPINION.

The opinion of the Supreme Court in this case was delivered by Mr. Justice McLean. After a statement of the history of the case, and the manner in which it came before them, and declaring the grounds on which the Court had jurisdiction, the opinion proceeds:

The fact that the bridge constitutes a nuisance is ascertained by measurement. The height of the bridge, of the water, and of the chimneys of steamboats, are the principal facts to be ascertained. If the obstruction exists, it is a nuisance. To ascertain this a jury is not necessary. It is shown in the report, by a mathematical demonstration. And the other matters, connected with the case, as to the benefit of high chimneys, lowering of them in passing under the bridge, and shortening chimneys, are matters of science and experience, better ascertained by a report than a verdict. And the same may be said of the statistics which are in the case.

The object of the suit was, not the recovery of damages, but to enjoin the defendants from building the bridge which would injure the plaintiff. If the bridge be a material obstruction to the navigation of the Ohio, it is not denied that the plaintiff would be injured. The ground of defence taken and maintained is, that the bridge is not a material obstruction to commerce on the river. On this point there is no doubt. A jury in such a case could give no aid to the court nor security to the parties. Having had notice of an application for an injunction, before the defendants had thrown any obstruction over the river, they cannot claim that their position is strengthened by the completion of the bridge.

But it is said, the bridge constitutes no serious obstruction to the navigation of the Ohio; that only seven steamboats, of two hundred and thirty, which ply upon the river as high as Pittsburgh, are obstructed; and that arises from the height of their chimneys, which might be lowered at a small expense, in passing under the bridge; that by the introduction of blowers, the chimneys might be shortened without increasing the speed of the boats; that the goods and passengers which are conveyed on the public lines of communication between Pittsburgh and Philadelphia, could be as well conveyed on boats of lower chimneys, and, consequently, the State, of proprietor of these lines, if at all injured, is injured so inconsiderably as not to lay the foundation of this procedure; that none of the packets or other boats on the river are owned by the State of Pennsylvania.

That the bridge constitutes an obstruction, is shown by the report of the commissioner, the answer of defendants, the proof in the case, and by the admission in the argument of the counsel for the defendants. The report of the commissioner is conclusive, as to the fact of the obstruction and the extent of it, of the same force as the verdict of a jury. The report having been the result of a most arduous and scientific investigation of the facts, is entitled to the full weight of a verdict. 2 Railway Cases, 530. The fact of obstruction was a plain and practical question, but it was connected with other matters involving questions of science, which were to be settled on the opinion of experts, and a report being fairly made, the court will, generally, assume it as a basis of action, unless it shall be shown to have been made under improper influences, or through a mistake of facts. 1 Railway Cases, 576. Shelford on Railways 486.

In his report the commissioner says, "the boats running in that line and passing the site of the present suspension bridge, in 1849, previous to the time when the first cables were thrown across the eastern branch of the Ohio, at Wheeling, were the Clipper, No 2; the Hibernia, No. 2; the Brilliant; the Messenger, No 2; the Isaac Newton, the New England, No. 2; and the Monongahela."

The Clipper No. 2 came out in March 1846, was 215 feet long, and had chimneys 54 feet high. The Hibernia No 2 came out in 1847. She was 225 feet long, and her chimneys were 52½ feet high from the water. The Brilliant came out in February 1848, was 237 feet long, and her chimneys 71 feet high. The Messenger No. 2 came out in the winter or spring of 1846, was 242 feet long, and had chimneys 76½ feet high. The Isaac Newton was 182 feet long, and had chimneys only 42 feet high. The New England No 2 was 222 feet long and her chimneys were 65½ feet high. The dimensions and height of the chimneys of the Monongahela, the commissioner says, I have not been able to ascertain from the evidence."

"There were also two other regular packets running past Wheeling in the spring and summer of 1849, viz: the two Telegraphs, running as regular packets between Pittsburgh and Louisville. The chimneys of the Telegraph were 79 feet 9 inches high."

"Not more than two or three of these nine packets had their chimneys prepared for lowering, at the close of the navigation in the summer of 1849. And of the five largest, only one of them could have gotten under the bridge on a twenty feet stage of water with the chimneys standing; and that one, the Brilliant, could not have gotten under when the water was more than twenty-one feet. The two Telegraphs could have gotten under the bridge at a 13 feet stage of water, with their chimneys standing."

[The opinion here quotes largely from the report of the commission, to show that the Bridge had been proved an obstruction to navigation, by stopping various boats, and compelling them to lower their chimneys before they could pass, during which accidents took place.

On the practicability and safety of lowering the chimneys, a great number of witnesses were examined. And the commissioner says, although there was great conflict in the testimony, as respects the danger to the limbs and lives of the passengers in the operation; yet, he says when the facts sworn to are examined, there is a decided preponderance against the safety of lowering the chimneys. And he remarks, "the very extended and well as large chimneys, used upon the Cincinnati and Pittsburgh packets and other boats of that class, cannot certainly with any facility or safety, be lowered by hinges at the tops. They are therefore obliged to lower them at the hurricane deck, by the means of a derrick, which weighs the parts of the two chimneys which must be let down upon those large boats, is estimated by the witnesses to be from three to four tons. This enormous weight hanging over the cabin, or rather over births of passengers, in process of lowering, would probably prove disastrous in the extreme, if by any accident the chimneys should come down upon the cabin, which is very likely to occur, from the carelessness or stupidity of the green hands that the owners and officers of western boats are so often obliged to employ."

And if to the difficulties stated in the report there be added the darkness of night, a snow storm, or the falling rain, to the proof of the boat and chimneys standing in the open air, and a high wind which, generally, is experienced in a storm, it would be impracticable, while the boat was proceeding at the rate of ten or twelve miles an hour to lower the chimneys, and this must be done or the boat must land. During this operation the pilot, on whom the safety of the boat and the lives of the passengers in a great degree depend, must, from his position, be in imminent danger.

The expense of lowering the chimneys, if practicable and safe, would constitute no inconsiderable item. The time lost in raising and lowering chimneys is variously estimated by the witnesses at from one to three hours. Take the minimum of such estimate, and according to the calculation of Colonel Long, the expense of the boat amounts to $8,33 per hour. Each packet will have to lower its chimneys every time it passes under the bridge, which will be, ordinarily, sixty times a season, amounting to the sum of $499 80 as a charge on each packet. To this may be added the apparatus for lowering the chimneys, estimated at $400, which, with its repairs, may be estimated at one hundred dollars per annum during the life of the boat, which averages five years. And it is in proof that stationary chimneys will last five years, but they will not be lowered, they will only last half that time. The cost of chimneys for a boat is stated at one thousand dollars, which may be considered as an increased expense to each boat of two hundred dollars per annum. These sums added together make a total of $799 80, which sum multiplied by seven, the number of packets, make the sum of $5,598 60 which the owners of these packets must necessarily pay as an annual tax, by reason of the obstruction of the bridge, if they run their boats and lower their chimneys.

But it is contended that the difficulty of passing under the bridge may be obviated by shortening the height of the chimneys, without lessening, materially, the speed of the boat.

That high chimneys increase the speed of the boat, is proved in the case practically and scientifically.

Professors Renwick, Byrne and Locke say, that by a law of nature the force and velocity of a draft depend upon the height of the chimney—the force and velocity being measured by the difference in the weight between the column of air within the chimney and an outside column of equal height and diameter; so that a reduction of the height of the chimney involves a diminution of that force with which nature supplies air to combine with fuel for combustion, and by consequence there follows a diminution of heat developed in the furnace, or steam generated in the boiler, and of power by which the wheel is moved and the boat propelled.

The commissioner in his report says "the deduction of science also shows that the draft is increased by elongating the chimneys." In this question economy of fuel is not the object to be attained, but the greatest practicable speed, consistent with safety. And this is attained where there is no defect in the furnace by the combustion of the largest amount of fuel. Forty-three bushels of bituminous coal are consumed per hour by each of the Pittsburgh packets.

The commissioner says, "in relation to the question whether chimneys as high as those now in use upon the Pittsburgh and Cincinnati packets and some of the larger boats on the Ohio, are necessary for obtaining the maximum of speed desirable in the navigation of the river, there is a diversity of opinion among the witnesses, especially among those who are not acquainted with the scientific principle of chimney-draft in reference to the combustion of fuel for the generation of steam. But I think there is a great preponderance of the testimony, even of that class of witnesses in favor of the necessity of very high chimneys, upon the large Ohio steamboats."

And he further remarks, "rejecting the deductions of science on the subject, the teachings of experience show, that as boats upon the Ohio have been gradually improved in their dimensions, from time to time, and the height of their chimneys increased, they have been enabled to run with greater speed, to the evident advantage of commerce and travel upon the rivers. And the fact that several different projects, for procuring artificial draft such as blowers, as an available substitute for the draft of tall chimneys, have been tried upon the western waters, and have failed and been abandoned, is very strong evidence in favor of the necessity of natural draft for the combustion of wood and bituminous coal upon the steamboats navigating the Ohio."

There is no better evidence of utility, than the progress made in the structure of steamboats and of the machinery by which they are propelled. Men who are engaged in navigation learn by experience, and adopt that which will be most conducive to their own interest.

It appears from the statement of Snowden, an Engineer, that the chimneys of the first boat called the Cincinnati were 84 feet high from the surface of the water when light, and about 74 feet high from the centre of the flues. Her chimneys were shortened eight feet, and it diminished her speed up stream from a mile to a mile and a half per hour. Captain Hasler states that adding eight feet to the chimney of the Telegraph in 1849, increased her speed about half a mile an hour up stream. And by Captain Duval that the Clipper's chimney being cut off eight feet, in order to pass the Wheeling bridge, reduced her speed about three hours between Cincinnati and Pittsburgh. And it may be fairly inferred that a reduction of twenty feet would reduce the speed between Cincinnati and Pittsburgh about four hours.

According to this estimate, the cost of the boat per hour being, as above stated, $8 33 if there should be an average loss of four hours, it would amount to $33 32. This sum multiplied by 60 the average number of trips each season, would amount to the sum of $1,999 20, and this being multiplied by seven, the number of packets, would make the sum of $13,994 40 an annual loss by the owners of the packets, by reducing the height of their chimneys so as to pass under the bridge at the different stages of the water.

But it is said these seven packets are the only boats obstructed by the bridge of the two hundred and thirty which ply upon the Ohio, and run to Pittsburgh.

The transportation of goods and passengers by these packets will show their relative importance, as instruments of commerce, between Cincinnati and Pittsburgh. From the evidence it appears they carry about one-half of the trade in value, and three fourths of the passengers, between those cities. Taking the Keystone State as a criterion, each packet transports annually thirty thousand nine hundred and sixty tons of freight, and twelve thousand passengers. The line was established in 1844, and it appears from the proof, that since that time, it has transported between the above cities nearly a million of passengers.

It is in proof that the life of these packets averages five years, when their places in the line must be supplied by new boats. If to their original cost of construction there be added the expense of running them for five years, adding nothing for repairs or accidents, a total sum will be expended of $1,680,000. This amount of capital is appropriated every five years in running this line of packets. The structure of the bridge cost less than one eighth of that sum.

The speed of these boats, their excellent accommodations and their general good management, recommended them to the public, as is shown by the large amount of goods and passengers they convey. And any change in their structure, or in the production of the propelling power, which shall impede their progress, would not only impose upon their proprietors a most onerous tax, but it would greatly lessen their profits, by reducing the amount of freight and passengers. And no part of the amount would, probably, pass to other boats on the river, but to the northern or southern lines where greater expedition is given.

In the report of the Commissioner, a statement is made of the velocity of water at Wheeling, for twelve years, beginning on the 10th of March, 1838, and ending on the 9th of the same month, 1850.

The highest part of the bridge by actual measurement from the ground is 91 31 feet. This elevation is only at a single point 284 feet from the face of the eastern abutment. From the apex it reflects east and west, being at the distance of forty feet westward only 90 18 feet above the ground, and at the same distance east only 89.77 feet above the ground. The chimneys on the seven packets require a space of about thirty feet in width and extend under the bridge within the eighty feet allowed, and the depth of water and a sufficient headway, must be deducted, to show the height of the bridge for the passage of boats. The headway required, as appears from the report of the Engineer, should be between the tops of the chimneys and the lowest parts of the bridge from two to three feet. This would reduce the space, say two feet and a half to 87-27 feet.

In the twelve years above stated the water was at the stage of twenty-one feet and over 219 days; consequently, no boat whose chimneys were 90½ feet high, could have passed under the bridge. Twenty-one feet of water, is substituted for twenty feet in the table reported, that statement allowing a foot of water below the measurement. The water, in the above period was twenty six feet and over, eighty-three days, during which time no boat could have passed under the bridge whose chimneys were sixty-two feet high. The water was twenty-eight feet and over, fifty-five days during the five years, which would have prevented a boat from passing under the bridge whose chimneys were sixty feet high. Within the same period the water was sixteen feet and over five hundred and thirty-four days; consequently boats whose chimneys were seventy-two feet high, during that whole time could not have passed under the bridge.

In his report the Commissioner says, "the bridge is 980 feet between the bases of the two abutments. At the highest point of the bridge, for the distance of about fifty-six feet in width, there is a clear headway, for the passage of steamboats with their chimneys standing, of ninety-one feet above extreme low water. But this space of fifty-six feet in width is not over any part of the river at extreme low water.—The water upon the Wheeling bar must be about four feet deep, to bring the easterly edge of the stream under the western extremity of the twenty-six feet. And it must be more than fifteen feet deep upon the bar to enable a steam boat drawing five feet to avail itself of the ninety-one feet headway above low water mark for the whole width of fifty-six feet."

"It follows from this statement of facts, that a steamboat drawing five feet of water, and whose chimneys are seventy-two feet and a half feet high, or over, can never pass under the apex of the bridge, at any stage of the water, without lowering her chimneys."

From the data referred to, the defendants' counsel contend that in a few years, at most, there will be a concentration of railroads at Wheeling, and at other places on the Ohio, connecting the eastern with the western country, which from their speed and safety must take from the river the passengers and a considerable portion of the freight now transported in steamboats. That these roads crossing the Ohio river will reach the commercial ports of the interior, and diffuse a larger amount of commerce than that which is now transported on the Ohio. And it is intimated that the Wheeling Bridge may be used by the railroad cars; but it is clearly proved that the bridge is not calculated for such a transportation.

However numerous these roads may be, there can be no doubt, like similar roads in other parts of the country, their cars will be loaded with freight and passengers. But it may not follow that the Ohio and other rivers will be deserted, or their business reduced. We have an extent of river coast, counting both shores, exceeding twenty-five thousand miles, through countries the most fertile on the globe. This is a greater distance than the combined railways of the world. That our railroads, as avenues to commerce, may develop our resources in a greater degree than is now anticipated, must be the desire of every one. But the great thoroughfares provided by a beneficient Providence, should neither be neglected nor abandoned. They will still remain the great arteries of commerce.

Past experience teaches us, that however the facilities of commerce may be multiplied, her tracks will be filled, with productions which enrich the country and add to the comforts and enjoyments of its rapidly increasing population. The rewards of labor will give an irresistible impulse to enterprise which must secure to our country a prosperity unequalled in history. Our internal commerce is more than three times as great as our foreign, and the increased lines of intercourse will cause both to rapidly advance. The protection of the river commerce is by no means hostile to any other. The multiplication of commercial facilities will, in the same proportion, increase the articles of trade.

If vladucts must be thrown over the Ohio for the contemplated railroads, and bridges for the accommodation of the numerous and rising cities upon the banks of the river, it is of the highest importance that they should not be so built as materially to obstruct its commerce. If the obstructions which have been demonstrated to result from the Wheeling bridge, are to be multiplied as these cross ways are needed, our beautiful rivers will, in a great measure, be abandoned. An experience of forty years shows how much may be done in the structure of steamboats, in the improvement of their machinery, and the propelling power, to increase the speed and the comfort of that mode of transportation, under a continued reduction of expense. But if the limit of advance, in this respect, has already been passed, and a retrograde movement is necessary, by rejecting the improvements recommended by ingenuity and experience, we close our eyes to one great source of our prosperity. What would the West now have been if steam had not been introduced upon our