

THE COLUMBIAN. BLOOMSBURG, PA.

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THE TROLLEY AND THE BRIDGE.

Now Trolley Company May Cross River Bridge at Catawissa—Opinion of Court.

The Columbia & Montour Electric Railway Company and M. F. D. Scanlan & Company, plaintiffs, vs. the County of Columbia and William Krickbaum et al. Commissioners of Columbia County, defendants.

The plaintiff company is a street railway company, duly incorporated under the Act of 14th May, 1889, P. L. 211.

The river bridge forms a connecting link in the line of the plaintiff company's route to enter Catawissa, and is the only means upon which the company can construct its line to enter that borough.

The Commissioners and the plaintiff company are unable to agree upon the terms and conditions which the railway company should perform and obligate themselves to do, before being permitted to construct and operate its railway across the bridge.

It is averred on the part of the plaintiffs that the County Commissioners refuse to give such terms as are reasonable while upon the part of the County Commissioners it is claimed that before the engineer was appointed and made report, they caused an article of agreement to be prepared, wherein was stipulated the terms and conditions to be performed by the plaintiff company, before they should enter upon the bridge for the construction of their railway; and that these terms were reasonable; and that the plaintiff company declined to join the execution of the agreement, and accept the conditions therein stipulated.

This unexecuted agreement, as prepared, among other things, provides that the railway company shall lay two tracks for the operation of its cars, one on either side of the bridge; that while the bridge was occupied by the railway company it shall keep the bridge in good repair, for its own use and the use of the traveling public, at its own cost and expense, but if the company shall neglect or refuse to make the necessary repairs, then the County Commissioners shall make the repairs, and recover the costs and expenses incident thereto, from the company; and that the bond in the agreement provided for, shall contain a clause providing for the securing of such costs and expenses.

The plaintiff company aver that only one track should be laid across the bridge, and upon the southern or lower side thereof; and that the repairs incident to the maintenance of the bridge should not extend beyond keeping in repair the half of the bridge upon which the railway is laid.

The plaintiff company has the right to occupy this bridge with their railway, and operate their cars thereon. The County acting through the County Commissioners, cannot exclude them from the use of it.

Berks County vs. Railway Co., 167 P. S. R., 102. LaRue et al. vs. Oil City Railway Co., 170 P. S. R. 250. Lawrence Co. vs. Railway Co., 8 Sup. C. R., 313.

The right of the plaintiff company to the use of this bridge for their corporate purposes is conceded by the County Commissioners. The dispute in this case arises over the reasonableness of the conditions sought to be imposed by the County Commissioners, to be performed and to be further kept by the railway company before being permitted to enter upon the bridge.

The points of disagreement in the bill are averred to be:—(1) as to how the railway shall be laid upon the bridge, (2) as to the extent the plaintiff company shall be held to maintain the bridge in repair, and what repairs ought reasonably to be made by them and (3) as to what, if any, rental the company should pay for the use of the bridge.

The report of the engineer, accompanied by a draft showing the present arrangement of the floor system of the bridge, as it now is, and as proposed, recommends that a single track be laid on the lower side of the bridge; and that the bridge be strengthened and fitted for the use of the plaintiff's cars, by an additional "I" beam placed upon the plate girder underneath the floor, and midway between the rails, and that two of them will come directly under each of the rails; and that an extra floor of the same thickness as the height of the rail be laid on the top of the present floor, on that side of the bridge between and on either side of the rails to the middle of the bridge, and beveled off to the plane of the present floor, so, as it is stated by the engineer, wheels may pass either way without difficulty.

This report shows, as estimated cost of strengthening the bridge \$6170.00 and the annual cost of repairs, including the painting of the bridge, \$673.00.

The plaintiff's admit the changes recommended by the engineer will have to be made, and when made the bridge will be safe for the use of the public and the company; and that the changes must be made by the plaintiff company at its own expense.

This is a single area bridge, having a width of seventeen or eighteen feet in the clear. Nearly all of the witnesses who testified at the hearing expressed the opinion that there should be two tracks laid over this bridge, if a street railway was operated over it. Mr. Charles P. Pfahler was of the opinion that if the floor of the bridge was raised throughout, so as to be upon a level with the top of the rails, a single track would be just as good as a double track.

The track in use by the plaintiff company is about four inches in height. We are of the opinion that the general public will suffer less annoyance by the operation of a street railway over this bridge with a single track than by the operation of a double track and that the floor of the entire bridge be raised so as to be of uniform height, and on the same level and plane with the top of the rails; and that the track should be laid upon the upper or northern side of the bridge, instead of the southern side, as recommended. If the track be laid upon the southern side, every vehicle crossing the bridge will be required to cross the rails laid upon the western approach; otherwise a considerable portion of the public will not, necessarily, have to come in contact with that portion of the track.

No allusion is made, either in the engineer's report or the terms proposed by the County Commissioners' agreement, to the subject of the lighting and care of the highway upon the approaches to the bridge.

If not at the present time required, when this bridge is being operated by a street railway, it is necessary to have the bridge well lighted during all dark hours, for the convenience and safety of the traveling public crossing over it. The high trusses, braces and overhead iron work, make the passage way too dark on ordinarily dark nights.

the grading, paving or macadamizing the roadways constituting the approaches, as herein indicated. The permissible rate of speed at which the plaintiff company should operate their cars over this bridge, ought to be limited so as not to exceed a rate of four miles per hour. In view of the nature and extent of the use made by the public of this bridge, this limitation of the rate of speed is a reasonable regulation, as a condition of the contemplated use by the plaintiff company.

This railway company shall use what is known as the U rail, the kind used by this company on the streets of Berwick, in the construction of their railway across the bridge, and upon the approaches thereto.

Under the conditions hereinbefore noted, we believe that experience will show that the inconveniences and annoyances necessarily to be borne by the general public, in the operation of a street railway over this bridge, will be narrowed within the least practicable scope.

Very serious inconvenience is no doubt apprehended by the general public, and, perhaps, arises from a mistaken view entertained in respect to the rights of the street railway company, over the portion of the highway occupied by its track. Street railways do not have an exclusive right to use the highway with their tracks. In this they are unlike steam railroads. These "have the exclusive right to the use of their tracks at all times and for all purposes, except at road crossings. Street railways have not this exclusive right. Their tracks are used in common by their cars and the traveling public. While this common use is conceded, and is unavoidable in towns and cities, the railway companies and the public have not equal rights. Those of the railway companies are superior. Their cars have the right of way, and it is the duty of the citizen, whether on foot or in vehicle, to give unobstructed passage to the cars.

This results from two reasons: First, the fact that the car cannot turn out or leave its track, and secondly, for the convenience and accommodation of the public. These companies have been chartered for the reason, in part, at least, that they are a public accommodation. The convenience of an individual, who seeks to cross one of their tracks, must give way to the convenience of the public. It would be unreasonable that a car load of passengers should be delayed by the unnecessary obstruction of the track by a passing vehicle. On the other hand it is the duty of the companies to see that their motormen shall be on the alert, not only at street crossings, but everywhere upon the tracks, to see that pedestrians are not run down and injured." Per Paxson, Chief Justice, in Chrisman vs. Harrisburg Railway Co., 150 P. S. R., 180.

It appears that this bridge was opened for the public use in 1898; that it has not been painted; that rust is doing its work and that the bridge requires to be now painted, to prevent deterioration of this iron superstructure. The plaintiffs urge that they should not be obliged to contribute anything towards the painting of the bridge, because the county would have to paint the bridge, whether occupied by the railway or not, while on the other hand the Commissioners urge that the plaintiff company should paint it at their own expense.

The painting of the bridge is an incident of its maintenance. If the bridge requires to be painted it ought to be promptly done by the party upon whom the law has cast that responsibility, as well as of making all other repairs. Even if the plaintiff company should occupy the bridge with its track, the duty and responsibility of properly maintaining the bridge in a good condition of repair, should remain where it now is. The county is bound to keep the bridge open and in good repair.

The amount which the plaintiff company should pay for the use of the bridge ought to be based upon what the county will probably pay out for its maintenance and repair. We believe that the county will be subjected to costs and charges in keeping the bridge open for the public use, with the operation of a street railway upon it, that have not been noticed by the engineer, and which experience will demonstrate. But these elements of charges are problematical.

According to the engineer's report, the probable amount of annual repairs will be \$763.00. This includes \$120.00, the annual cost for the painting alone.

In our view this sum is too low for the cost of repairs. It is exclusive of the annual cost for the lighting of the bridge and also of the annual cost of the repairs to the approaches, which is graded, paved or macadamized, as heretofore indicated, probably is an item not worth considering.

annual cost for the lighting of the bridge would be about \$200.00. Upon the evidence before us and the circumstances considered, the plaintiff company should be required to pay into the County Treasury the sum of \$— for the use of the bridge, during each year that it is occupied by them, in the construction and operation of its railway across it.

As a further condition of the occupation of this bridge by the plaintiff company they should be required to give bond in the sum of \$7,500.00, with security, to be approved by the Court, conditioned on the faithful performance of the regulations, and the payment of the moneys, ordered to be paid by the decree to be entered in this case, and the compliance of any other reasonable regulations that may be imposed by the County Commissioners.

The conditions imposed upon the plaintiff company, for their use of the bridge, and as mentioned in the bill, may be summarized as follows:—

(a) That they shall strengthen the upper or northern side of the bridge, in the manner recommended by the engineer, and raise the floor of the bridge throughout so as to be on the same level with the top of the rails, at their own charges and expense.

(b) Reimburse the County of Columbia for the moneys expended. (1) In the employment of a competent person to oversee and superintend the entire work, including the adjustment of lighting appliances, the grading, paving or macadamizing of the approaches.

(2) For the purchase of appliances for lighting, and the adjustment of the same upon the bridge; the material and work for grading, paving or macadamizing of approaches, to the extent of one-half the amount thereof.

(c) The rate of speed at which the plaintiff company may operate its cars across the bridge shall not exceed four miles per hour.

(d) The rail known as the "U" rail shall be used in the construction of its tracks across the bridge, and the approaches thereto.

(e) They shall pay to the County of Columbia the annual sum of nine hundred dollars (\$900) payable semi-annually in sum of \$450 each, for the use of the bridge, during the time they occupy it; the first payment to be made six months after they shall have begun the work of fitting the bridge for their use.

(f) The Company shall first give bond, with security to be approved by the Court, in the sum of \$7,500.00 conditioned for the faithful and prompt performance of the conditions hereby imposed; and of any other reasonable conditions imposed by the County Commissioners, and which may be agreed upon by the parties. The complainants are entitled to the relief sought, upon compliance with the decree to be entered herein.

Counsel for the plaintiffs will prepare the proper decree in conformity with the conclusions herein given. The plaintiff company and Columbia County shall each pay one-half the costs of this proceedings.

BY THE COURT. Now, August 16, 1902, the foregoing opinion and order is directed to be filed and the clerk is requested to notify the counsel interested of the fact.

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