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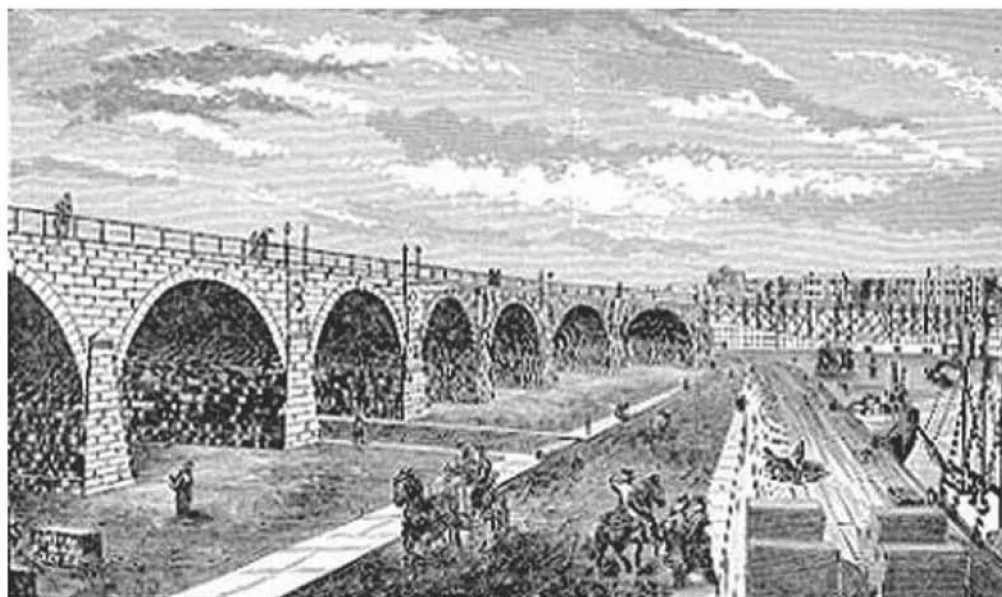
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Origin and History of the Cleveland Viaduct

by

French Collins



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PREFACE

For the satisfaction of such of my friends as are not conversant with the history of the Cleveland Viaduct, and who may entertain a just pride in the success of all laudable undertakings by those for whom they feel a friendly regard, and also for those who may wish to secure a record of its history, and being in possession of some facts in relation to it that no other man has any knowledge of, I propose to give a brief account of its origin and progress up to the present time; and in so doing my only aim is to give a true statement of facts and incidents as they occurred, as I trust will doubtless appear evident to the reader on perusal.

It will be seen by those familiar with the work that the frontispiece, though small, is a fair representation of the structure, and will enable those who never saw it to get a very correct idea of the nature of its construction and general appearance.

HISTORY

Up to the 27th January, 1872, there had never been a word written, or at least published, on the subject of a viaduct; but the high bridge question had become a common topic of conversation, and a bill was then pending in the legislature granting the city of Cleveland power to issue bonds for the purpose of building such a structure.

I had been a warm advocate for a high bridge of some sort, ever since the subject was first mentioned to me by Charles Pease, of East Rockport, about the year 1864 or 1865, while walking with him up Detroit street hill; but when it became evident that those who appeared to be the most influential on the west side of the river had their minds fixed on a high bridge from the foot of Franklin street on the west side to the foot of Superior street on the east side, three-fifths of a mile long, and high enough to overtop the highest masted vessels, I began to despair of a high bridge of any kind; for I was satisfied in my own mind that a majority of the citizens of Cleveland could never be induced to vote for such a structure, at a cost (as it was estimated) of over two millions of dollars; for it was looked upon as a visionary scheme, and justly so, too, in my estimation.

The Detroit street route was somewhat talked of, but there was a strong opposition among the business men and heavy taxpayers on the east side of the river to a high bridge at any point.

On or about the 20th of January, 1872, while passing up Detroit street hill and over the viaduct of the Mahoning railroad, the idea of a viaduct across the Cuyahoga valley suggested itself to my mind and upon giving the subject a fair investigation I was unable to see any reason why the plan would not be a feasible one, and one that would take with the people. The more I meditated upon it, the more I became convinced that it was the only feasible plan that could be offered, and from that day forward I bent all my energies in that direction.

The next question was, how to bring the subject before the people in a proper and convincing shape, I made up my mind that the subject must be thoroughly ventilated, and the press was the only channel through which it could be done.

On my return home, I took a sheet of paper and drew the plan of a viaduct, with a series of arches from bank to bank, of solid stone masonry,, and an iron drawbridge over the river; the viaduct to be sixty feet wide on top, a solid paved street, and the bridge to be sixty feet above the surface of the water in the river.

A day or two after, while returning from the city on the street cars, I fell in company with Judge Coffinberry, to whom I broached the subject of the necessity of agitating the question as to the route, etc., of the high bridge. He said, so far as he was concerned, he would prefer the Detroit street route, but thought we had better not agitate the question as to the route at present, for it might endanger the project so much that we would get no bridge at all. I told him directly the reverse of that was my opinion, for unless we did agitate it, and show up the fallacy of the Franklin street project, we certainly would never have any bridge; but I said nothing to him in reference to my plan of a viaduct at that time, for I thought he was not in a frame of mind to receive it favorably. But, in justice to Judge Coffinberry, let me here state that he subsequently became a warm advocate of the Viaduct, and wrote an able article in favor of it, which was published in the *Sunday Voice*, and was also mainly instrumental in getting up the great mass meeting that was subsequently held at the Circle, on the West Side, which was about the turning point in the ultimate success of the enterprise. The following day I wrote the article before alluded to, and at a social gathering that same evening at the house of Capt. John Spaulding, composed of a few neighbors, among whom where Chas. Pease, Ezra Nicholson, Mr. Clark, private secretary of Amasa Stone, and a few others, I submitted my plan and written article, all of which was heartily approved; but they were unanimous in the opinion that I would have to go to the Cleveland Leader to get it published, for they said the Herald would not publish it. I told them it was very essential, in my opinion, that the Herald should publish it, and that I was going directly to that office and beard the lion in his den, and if I could get the Herald to publish it a very strong point would be gained, for every other journal in the city was favorable to a high bridge of so me sort.

The following day I went to the city, and the first man I called on was Hon. Amos Townsend, President of the City Council, to whom I presented my plan. It appeared to strike him at once as being the most feasible and practicable plan that had yet been presented. While we were talking Mr. John Huntington, a member of the City Council, came in, and Mr. Townsend wished me to show him my plan of a viaduct. I did so, but he denounced it at once, and said it would be impossible to build such a structure that it would fall of its own weight, etc., etc. But that did not discourage me, nor did it seem to change Mr. Townsend's first impression, for he wished me to go and show it to Mr. Strong, the City Civil Engineer; but I declined to do that for the present, for reasons of my own.

I next went to the store of Geo. Worthington & Co., and showed it to Mr. Worthington, who viewed it in a favorable light, and said it looked like a plan that would be feasible, but at the same time denounced the Franklin street "castle in the air," as he called it, as one of the most visionary schemes that ever entered the brain of any man who pretended to be sane.

My next move was directly to the Herald office, where I met J. H. A. Bone, the associate editor, to whom I submitted my drawing and the article before spoken of, and somewhat to my surprise he seemed to be very favorably impressed with it, and expressed himself much as Mr. Worthington had done. I told him my idea was to get the drawing engraved, and have it appear in the papers together with the article; but he said it would take too long to get an engraving ready, and he thought the sooner the article was published the better, for it was essential that the Franklin street scheme should be stopped at once.

In my article, as then written, I referred the reader to the engraving which I proposed to publish at the same time; but upon inquiry I found it would require some ten days to get it ready, and hence I concluded to publish the article, and refer the reader to the city map instead; and that made it necessary for me to rearrange one of the articles that referred to the drawing.

On entering the *Herald* sanctum the following morning, after rearranging my article for publication, Mr. Bone, met me with a smile,

and said, "I have been stealing some of your thunder." "So I see," said I, and "I am glad of it"; for I had seen a short editorial in the Herald of the previous evening, where he alluded to the plan of a viaduct and bridge that I had shown him.

I then gave him the article for publication, on condition that he would, as soon as he got a proof sheet read' send one over to the Leader office, for I wanted the article to appear in both papers at the same time. He did so, and on the 27th of January, 1872, the following article appeared in both papers:

THE HIGH BRIDGE QUESTION

EDS. HERALD: Since the introduction of' the High bridge bill in the senate by Mr. Beavis, there seems to be considerable interest manifested both by the press and the citizens of Cleveland and vicinity on the subject ; which is all very proper so long as we do not indulge in vituperation, and are not governed by local prejudices, but are willing to look at the subject as it is, and with a view to afford the greatest good to the greatest number.

The first question which seems to present itself is, do we need a high bridge, or a structure of some kind that will afford additional facilities for crossing the Cuyahoga valley? If the thousands of people whose business compels them to cross that valley every day in the week, could be heard upon the subject, I think the unanimous sentiment would be, that no single improvement is as much-needed at the present time in the city of Cleveland as some additional facilities for crossing the Cuyahoga valley.

When we take into consideration the constant increase of business on the railroads for the past few years, and the almost unparalleled increase of travel, and the constant detentions, dangers and embarrassments we are now subject to, what may we reasonably expect will be the condition of things two years hence, or before any better facilities can possibly be afforded us, even if we begin now?

And when we take into account the vast amount of produce of every description that goes into the city of Cleveland from the west side of the Cuyahoga river, and the steady increase of production, what may we reasonably anticipate will be the condition of things five years hence, if we are compelled to depend on the present mode of crossing the said valley?

Five years ago, probably from \$5,000 to \$10,000 were realized for fruit on Detroit street, from the east to the west line of the township of Rockport, in one year. From a rough estimate

made from some statistics I have been able to obtain, it is safe to say that at least \$50,000 were realized the past season, for fruit alone, from the same territory. And when we take into account the vast amount, of produce of every description raised on the same street, and the amount produced throughout the whole townships as well as all other townships lying west of the Cuyahoga river within the county, together with the vast amount from adjacent townships in other counties west and south, the principal part of which seeks a market on the east side of the river, it would seem to be for the interest of every man, (on the east side, at least,) to use his influence for affording the best possible facilities for securing and retaining this vast amount of trade.

In discussing this subject, let us not be governed by any narrow-mindedness or prejudices whatsoever, but look far beyond and above all such considerations, having an eye single to the future growth, wealth and prosperity of the city and adjacent country.

If, by voting for a project that will put five dollars into our pocket, we I put ten dollars into the pocket of our neighbor, all the better.

The question is: Does the exigency of the times and the nature of the case demand an improvement of some sort that will meet the requirements of the people? If so, the next question which naturally presents itself is: What sort of a structure shall it 'be, and where located, in order to best subserve the interests of the public, and also with a view to strict economy?

It may be thought by some that to broach the subject at this time, with reference to location, etc., would be premature and uncalled for, but in my opinion directly the reverse is the case. There is no other means by which the public may become thoroughly conversant with the subject, and that will enable them to discuss or vote upon the question advisedly, than the presentation of the different routes spoken of, their feasibility, manner of construction, adaptability to. the wants of the public, comparative cost, etc., etc.

In a project of this magnitude, designed for the public good, no man should be governed by any special local interest, but should be willing the rain should fall upon his neighbor's potato patch as well as his own, for whatever tends to the prosperity of one portion of the city benefits, either directly or indirectly, all other portions. Thus far but two routes have been spoken of which seem to attract much attention, namely, one from the foot of Superior street on the east side to the foot of Franklin street on the west side, and the other from the foot of Superior street on the east side to near the foot of Detroit street on the west side, or to near the crossing of Pearl and Detroit streets.

It will be seen, by reference to the city map, that the distance of the upper or Franklin street route, by actual measurement, is something over three-fifths of a mile from the top of the east to the top of The west bank. It is proposed to build a bridge the entire length, and sufficiently high for the tallest-masted vessels to pass under.

It will also be seen that the distance of the lower or Detroit street route, from, bank to bank, is nearly one-third less. It will be observed also that about four-fifths of the distance of the upper route passes over lands lying on the east side of the river, which are very valuable, while about three-fourths of the land over which the lower route would naturally pass lies on the west side of the river, the value of which is nothing in comparison to land on the east side. In fact, it is thought by some that enough might be saved in right of way, in favor of the lower route, to nearly half build the lower structure.

It is suggested for the lower route, that instead of building a bridge the entire length, a street at least sixty feet wide, with solid arched masonry underneath, (similar to that over the Mahoning railroad on the Detroit I street bill,) be built from the top of the bank on either side, down to the river banks, and then a bridge over the river only.

A structure of this kind, built on a level, or nearly so, with the banks on either side, would, I am told, allow a large portion of the

,sailing craft on the lakes to pass under, and either a swing or I a draw would necessarily have to be used for the higher-masted vessels, unless the owners of such could be induced to so arrange their masts as to let them pass under. At all events, that would be about as high up in the air as most people would care to travel, even on a bridge no longer than sufficient to span the river.

It is offered as an argument by some in favor of the upper route, that a bridge running direct from the foot of Franklin street to the foot of Superior street, would better accommodate the traveling public, as the largest portion of the population lies west and south of that point.

Let us suppose, for instance that both structures are in existence at the same time, the upper one a bridge, (as it necessarily must be,) and the lower one a solid, permanent street, sixty feet wide the entire length (save across the river), how many people coming into the city from Brooklyn or that section of country, with a buggy or team of any kind, (especially with a load of hay,) would cross the long bridge in preference to keeping the Nicholson pavement down Pearl to Detroit and thence to Superior street? Would not nine out of ten prefer the lower route? Why? Because notwithstanding they would have a few rods further to travel, they ordinarily gain ten minutes in time; for over the upper route is a three-fifths of a mile walk, and over the lower one a good trot all the way (save across the river) and on terra firma.

True, it is claimed by the advocates of the Franklin street route that they design to have a bridge over which we can travel as fast as on a street. If I am correctly informed, the bridge is designed to be forty feet wide, with a double car track in the center embracing sixteen feet and that closed in. That would leave a roadway on either side twelve feet wide, less that portion of the work taken up by the railroad enclosure, etc.

Now, on a roadway of that width, with a constant string of teams passing, (as is supposed would be the case,) composed of vehicles of every description., it is reasonable to suppose that a certain portion of them would be of such a kind as to compel them

to travel on a walk, and for light carriages to attempt to pass loaded teams on a track of that width, would be very hazardous, to say the least. Hence I say that a walk must necessarily be the usual gait.

Then in case of a breakdown or accident of any kind, (and most assuredly such things would be quite as likely to occur there as on the street,) and it became necessary to turn back or back out, how is that feat to be accomplished? Once on the bridge, with a team behind you, and you must go through whether you will or no. In a case of that kind it certainly would be more delightful to anticipate the jam than to participate in it.

Then let me ask, how much of the through travel from east to west, would ever pass over the upper bridge? To satisfy any one as to where the principal travel naturally concentrates, you have only to refer to the count taken a year or so ago, at the different crossings. And then, when we take into consideration the many thousands who depend wholly (or nearly so) upon street cars for a mode of travel, it certainly is not an interest of such insignificance as to be entirely overlooked.

I was told a few days ago by Mr. Trimcott, one of the present proprietors of the West Side street railroad, (and all who are acquainted with Mr. Truscott as a financier know the figures close,) that if he could have the privilege of running his street cars over such a street and bridge as is here contemplated, it would save him \$10,000 a year, but that he would never attempt such a thing as putting a street car on the upper bridge, if it was built. He said he would rather adhere to his present mode of crossing the valley.

Then again, it will be seen that nearly the whole length of the lower route passing, as it naturally would, over lands a large portion of which are now unoccupied, would be brought into use by, the arches being so constructed as to form a continuous row or block of buildings underneath the road, from one to four or five stories high, and thereby making the land over which it would pass, as well as all the adjoining property, much more valuable than it now is.

Past experience teaches us the necessity of guarding against every possible danger from fire, and the recent history of Chicago enables us to form some idea as to what extent iron will stand the test of intense heat; and while the Franklin street bridge would be exposed to fires nearly its entire length, the lower structure would be in no more danger from fire than any other paved street.

It is urged as an objection to the lower route, by some who are apparently committed to the upper one, that if a pier is built in the middle of the river, the base of which being of sufficient dimensions to bear up the bridge and iron columns on which it would rest, it would occupy so much of the river as to interfere with navigation. An investigation of the subject will demonstrate the fact whether there exists any real ground for such objection or not. If it can be made to appear that a base above the bottom of the river, not to exceed two feet in diameter the pier under the Center street bridge, can be constructed capable of sustaining five times the weight required for this bridge, then we trust this objection is entirely done away with.

All we ask is a fair, impartial investigation of the whole subject. Let every advantage for, or objection to both routes be fully set forth before a site is selected, and then let each route stand or fall upon its actual merits. Let the committee to be appointed for the purpose of selecting the location of the bridge to be voted on by the people, be composed of men who can be neither bought nor sold, nor have any local interests to influence them, nor particular friends to gratify. Nothing short of this will satisfy the community.

How much such an improvement would add to the security, comfort, convenience, wealth and prosperity of the city and the surrounding country, it is impossible to estimate. And as to the manner of how the work shall be accomplished, if done at all, depends upon the powers that be. We trust that the legislature will not fail to grant the city the necessary power, and if the city authorities and the people fail to avail themselves of the privilege of performing so important a work, the fault will be all their own.

It is to the press we look in a great measure for a full ventilation of the subject, therefore let us have but a fair representation of the whole subject, that the people may be enabled to discuss and vote upon it understandingly, and we are perfectly willing to abide the result. WEST SIDE.

Immediately after the publication of this article the *Leader* took ground in favor of the Viaduct, and other journals followed suits save and except George A. Benedict of the *Herald*, who continued to oppose it to the day of his death; and in a conversation with my brother-in-law, A. M. Saxton, of St. Joseph, Missouri, on the subject, he said it was one of French's wild schemes, and never ought to be built. Still he never refused to publish any article on the subject that I requested him to. He was no doubt honest in his convictions, but if he could have been spared to witness its completion, it is possible he might have changed his mind.

My next object and purpose was to bring the subject before the Board of Improvements, City Council and Civil Engineer in a more convincing form and for that purpose I got Mr. Ezra Nicholson to draw a map of so much of the city as would embrace both the Franklin and Detroit street routes, which would show up both plans at the same time. And here let me add that Mr. Nicholson is entitled to much credit for the time and labor spent in preparing it, and also in assisting to place it before the proper authorities.

As soon as the map was completed we proceeded to exhibit it, and after showing it to Mr. Townsend, who appeared to be still more favorably impressed with the new plan, we repaired to the office of O. J. Hodge, who was at that time a member of the City Council, but that functionary viewed it with a suspicious eye, and gave us no encouragement.

Then, after much persuasion, I prevailed on Mr. Nicholson to present it to Mr. Strong, the City Civil Engineer. He found him at the Board of Improvements which was then in session, but when he presented the plan to him he (Strong) brought up many

objections to it, all of which Nicholson was ready to meet; but Strong Continuing to treat the subject so lightly, and his objection were so unreasonable, as Nicholson thought, he became disgusted with the interview, and rolled up the map preparatory to leaving; but while doing so some of the members of the board, who had been present during the conversation, requested him to leave the map with them. He did so, and notwithstanding it has been called for several times since, we have never been able to get bold of it. Hence we conclude that from that map, as a basis, the drawings of the Viaduct have all been made.

But, in justice to Mr. Strong, let me say, that he afterward became a great friend of the measure, and did his share as an official in securing its adoption.

The subject now began to assume a more hopeful aspect, and the *Viaduct* immediately became a topic of general conversation among all classes, which so stirred up the bile of friend Benedict that he came out with an editorial in the *Herald* in opposition to it, but recommending the building of more low bridges and the bridging of the railroad tracks, which, in his opinion, would afford all the facilities needed for crossing from one side to the other, and in reply to that article I wrote the following which was published in the *Leader* on the 31st Jan., 1872:

HIGH BRIDGE OR LOW

TO THE EDITOR OF THE LEADER:

“Down into the valley we should go,
Whether it be for weal or woe.”

Thus saith the *Herald* in substance. Now, my dear Herald, you and I have been friends for many years, and I trust we shall remain so for many years to come, if we should live so long, even down to the "valley of the shadow of death." And with all due deference to your opinion, I claim the privilege of a few moments' social chat with you in reference to, the position you have taken concerning the high bridge question. You say you would favor the building of more bridges across the river, and thus afford every facility for getting down into the valleys but none, as I discover, to get out. Now that is just what we are struggling for, to keep out of the valley until, by force of circumstances, we are compelled to go there.

I take it for granted that you have had but little experience for the past few years in crossing that valley with a team of any kind. I think if you were compelled to cross it from bank to bank five or six hundred times a year, as thousands of individuals are compelled to, you would change your mind. Or even, if you were engaged in business on the river, or in driving up and down through Merwin and River streets, after one season's experience through those narrow thoroughfares (as they now are) you would be ready to say, "Good Lord deliver us from such a jam." Thousands upon thousands of people are now compelled to traverse those thoroughfares who have no business on the flats, to the detriment and annoyance of themselves as well as to those who do business there.

By diverting this through travel into another channel, you not only afford relief to them, but to all whose business compels them

to encounter this constant jam from morning till night and from day to day the year round. This, in my opinion, would afford more relief and add greater facilities for the transaction of business on the river than any one thing that could possibly be done. And for those whose business calls them on the flats the facilities for getting to and from there, so far as bridges over the river are concerned, are abundant already, provided proper facilities for the through travel was afforded; all of which, as it would afford additional facilities for doing business on the flats, must inevitably enhance the value of real estate there.

Thus you see, my dear *Herald*, if my theory is correct, the very thing you are seeking for, namely, the greatest good to the greatest number, is hereby accomplished.

As to the duty of the railroad companies in bearing a proper portion of the expense of this improvement, I agree with you exactly, for it would afford as much relief to them as to any other class of the community. They should, in justice, be willing to build the street and tunnel through and under which their road would pass, at least, for they would thus be relieved of street car travel and all other through travel.

Now you know I am getting to be an old man, and it matters but little whether I go down into the valley to-day or a few years hence; but there are thousands upon thousands who are looking forward to the future with bright anticipations, and who look with holy horror upon the prospect of descending down into the great valley, and they claim, and perhaps are as much entitled to a hearing in the matter as we who are perhaps somewhat more inclined to fogyism.

Your plan of bridging the railroads we have no objection to, and we think something should be done as speedily as possible for the exclusive relief of those whose business calls them on to the flats, which would be perhaps about one-fifth of the whole traveling community. Thus you can see to what extent your plan would result in the greatest good to the greatest number.

Immediately after this the subject was brought before the Board of Improvements and City Council, where it received special attention and underwent a thorough investigation, and through a resolution of Dr. Robison, (I think it was) a quietus was put upon the Franklin street project, so that that scheme was no longer talked of, and people began to breathe easier in reference to that aerial passage over the valley.

During the winter the subject was thoroughly discussed in the Council, and a committee appointed to investigate the subject and report upon the feasibility of the viaduct plan; and on Tuesday evening, March 19, 1872, the committee submitted their report to the Council, and favorable action was taken upon it; but Proceedings were somewhat retarded in consequence of an amendment offered by Mr. Silas Merchant and adopted, which called forth from emthe following article, which appeared in the Evening *Herald*, March 23, 1872:

ACTION OF THE CITY COUNCIL ON THE BRIDGE QUESTION.

EDS. HERALD: After waiting patiently so long, we were very much gratified in reading the report of the committee and action the City Council on the bridge question, on Tuesday evening of last, save and except the amendment of Mr. Merchant.

We were much pleased at the course taken by Mr. Huntington, in recommending and urging the adoption of the report. What object Mr. Merchant could have had in insisting upon his amendment, (since the subject has been so thoroughly canvassed during the winter, I cannot see, unless it was to stave it off so that the bill could not be got through the legislature in time for the people to vote upon the question at the spring election. We hope such is not the case, and hope to see Mr. Merchant the first man at the next meeting of the Council, to move the adoption of the report, and also a resolution recommending our members of the legislature to so amend the bridge bill as to give the proper authorities power to call a special election, for the people to vote upon the question, and then shove the bill through as speedily as possible.

It is evident that two years at least must elapse from the time the work is commenced before it can be completed, and if we may estimate the increase of travel across the valley in the future, by the past, and proportionate increase of business, two years from this time our situation will be truly embarrassing.

Mr. Truscott tells me that the travel on the street cars for the last four years has a little more than doubled. This is no guess work, for he has the figures to show. And it is safe to suppose that other modes of travel will increase in proportion, and yet still more in the future than in the past. Thus it is plain to be seen to what we are rapidly tending.

With this view of the case, we think the City Council will be justified in suffering no more delay in the matter than is absolutely necessary. Of course we would not wish to dictate to the Council, but as the opinions of the people seem to have been courted by the adoption of Mr. Merchant's amendment, we have taken the liberty to express some of our views upon the subject.

With this bridge improvement completed, the railroad tracks lowered, and the Valley Railroad running into Cleveland, ten years from this time Cleveland will be among the prettiest busiest and proudest cities on this continent. WEST SIDE.

During the winter the bridge bill passed the legislature, granting the city of Cleveland power to issue bonds to a certain amount, for the purpose of building a high bridge, but provided that the question should be submitted to a vote of the people, which was accordingly done, and the result was a vote in favor of its construction, by a large majority. And much credit is due Messrs. Beavis, McFarland and Brinsmade, members of the legislature, for their untiring energies in securing the passage of the bill.

During the following summer and fall the plans for a viaduct and bridge were matured, and the City Council took the necessary steps to locate the route and secure the right of way. But in all their deliberations on a subject of so much importance, they moved very slow and with much caution, which gave the opponents of the measure ample time to rally their forces and get up a remonstrance, which was presented to the City Council requesting said Council to stop all further proceedings on said viaduct and bridge, but the Council refused to grant their request.

The opponents of the measure were so exercised in their minds about this time, that they appealed to friend Benedict to do all he could to put a stop to further proceedings; and in Monday's issue of the *Herald*, of Jan. 27, 1873, an editorial appeared headed "Go slow," in which the "city fathers" were cautioned not to "buy a pig in the poke," etc., to which I wrote the following reply, which appeared in the *Herald* of Jan. 31, 1873:

GO SLOW!

EDS. HERALD:-The above is the heading of an article in the *Herald* of last Monday's issue, admonishing our city fathers to be cautious in the letting of contracts for the viaduct and bridge lest they buy "a pig in the poke." Now, if those citizens asking the Herald to do what they could to check hasty legislation on the bridge and viaduct question had been equally solicitous in regard to public improvements exclusively on the east side, we should not have been surprised. I wonder if those citizens so extremely solicitous in regard to the bridge question have any fears that our city fathers will move too fast in reference to public improvements on the East Side, that is, east of Water street, now under consideration.

The bridge question has been under consideration for over a year, and the City Council has moved in the matter with extreme caution and, as slow in all conscience as the most guarded could expect or wish-unless their object is to defeat the measure altogether. If we can judge the future from the past, we need have no fears of the City Council doing anything very "rash."

That a fair and reasonable compensation for consequential damages, all things considered, should be awarded those claimants whose cases are now being tried before the Probate Court, no reasonable man should object to, and anything less than that, no intelligent man has, or ever had, reason to expect; and judging from the acknowledged ability and intelligence of the jury before whom the cases are being tried, we have no fear that anything more than that will be awarded ; therefore we fail to see such wonderful cause for alarm in reference to this *particular* improvement unless, as I said before, the object is to defeat the measure altogether. That, such is the secret wish of some on the east side, who are governed by local prejudice, eye have reason to fear; but all those who are not prejudiced and are governed by a truly public spirit, are not only willing but anxious to see the work

go on. to completion, and will. readily sustain the Council in the consummation of it.

If we thought such were not the case, and that we were to be governed in the future by local prejudices and sectional feelings on the part of our friends on the East Side, we would say at once, let us go back to the days of yore when we supported and maintained two separate municipalities. Either bind us together by indissoluble bands such as the bridge would bind us, and then make our interests identical, or come out fairly and squarely and say to us, if you can be content to remain as you are and play second fiddle to us for all time to come, and stop your noise, well and good, and if not, then o the best you can.

Now, Mr. Editor, we trust the day has gone by for any such feeling as that to prevail to any considerable extent, and that the time is not far distant when our city fathers will so arrange affairs that there will be no further call for controversy.

Now for the purpose of allaying the fears of those "citizens" who are so wonderfully exercised in regard to the City Council buying "a pig in the poke," we beg leave to inform said Council that they have only to be governed by territorial limits in regard to buying poked pigs, for there are none of that class east of Water street, all the poked pigs are west of that street, so you have only to observe the locality and you are safe.

Since the above was written we have had a glance at the *Herald* of Wednesday evening, giving an account of Tuesday evening's proceedings in the City Council, and the remonstrance against any further proceedings in the viaduct and bridge project. A most formidable array of names, to be sure; about one hundred a fifty all told, and some thirty or forty perhaps business men among them in a population of over a hundred thousand. Wonder how many West-Siders signed said remonstrance, or were consulted in the matter at all. No doubt the getters-up of the remonstrance thought by that scheme to secure the park.

It reminds us of the story of the white, man and the Indian dividing the game of a co-partnership hunt, which consisted of a

turkey and a buzzard. Says the white man to the Indian, "I'll take the turkey and you take the buzzard. or you may have the buzzard and I'll have the turkey?"

But we were rejoiced to see the big Indian from the Tenth ward say " Ugh! why you no talk turkey to us half the time? We no like no much buzzard!!!"

WEST SIDE.

Still the opponents of the measure were not satisfied, and made another feeble effort to get up another remonstrance; but I believe it was never presented to the Council. But friend Benedict came out with another proposition, recommending the building of another low bridge across the river at the foot of Union Lane, and thus make that and Union Lane the main thoroughfare from one side of the river to the other. In reply to that proposition, I wrote and had published in the *Plain Dealer* of February 4th, 1873, the following article:

THE VIADUCT.

MESSRS. EDITORS: – We got a glimpse last evening of another remonstrance to be presented to the City council on this, Tuesday evening, requesting them to stop all further proceedings on the viaduct and bridge. They set forth as their reason for such remonstrance, that a bridge built upon the present plan would greatly obstruct navigation.

They have at last given to the City Council and the world the great secret of their combined wisdom in a well matured plan for increasing facilities for crossing the Cuyahoga valley. That plan is to build a bridge at the foot of St. Clair street, where the approaches to it can be made easy by going down through Union lane on the East Side, and up a long and easy hill on the west, and thus by that circuitous route wind our way back onto the through thoroughfare but no provisions made for street cars whatever; they must continue to drag us up those long and steep bills with four and six horses as usual.

What a wonderful discovery! What a beautiful picture such a thoroughfare would present in the beautiful city of Cleveland; would it not be the pride of our admiration? And then again to contemplate such a splendid drive down through that narrow gut of a lane, jammed in among the thousands of drays, carriages and loaded wagons from the country, and all other kinds of travel (for that is the thoroughfare). One broken down wagon with a load of hay would blockade the route altogether.

Now if the object of these far-sighted gentlemen is to save expense and not interfere with navigation, as they claim, we think we can suggest a much better plan than theirs; and that is to go tip the river, instead of down, above the city limits, where the right of way would cost nothing, grades made easy and a good substantial wooden bridge could be built for \$10,000 or less, and where it would not obstruct navigation in the least.

Why, Mr. Editor, it is altogether too thin. It is perfectly obvious that their object from the beginning has been to defeat the

measure altogether, and sooner than be compelled to extract a single dollar from their plethoric purses for the benefit of mankind, and those too who are every day contributing in some way to fill their coffers, would see all needful improvements stop, fence the city in and call it finished.

FAIR PLAY.

Everything now appeared to be moving on to the satisfaction of the friends of the measure, and in the latter part of February, and while the suits were being tried in the Probate Court for damages for right of way on the West Side, I left for Washington, very much elated, supposing the whole question to be permanently settled; but on the first or second day of March I received news that Charles Hickox and Henry Harvey had applied for, and obtained a temporary injunction from Judge McClure, of Akron who was then holding court in Lorain county, which news fell on me like a wet blanket from a tub of ice water. Not that I much feared the injunction would be sustained, but that it would necessarily put a Stop to the further prosecution of the work, for at least one year.

Everything now came to a standstill, until the injunction suit should be tried and decided; which in consequence of the ill-health of Judge McClure, did not take place until the following August. After listening to the trial, and hearing the testimony in the case, and before Judge McClure had rendered his decision, I wrote the following article, which was published in the Herald on the 19th of August, 1873, together with an editorial, and Judge McClure's decision dissolving the injunction. All of which I deem it proper to insert, as showing the situation or affairs at, that time.

THE VIADUCT BRIDGE

EDS. HERALD:-We beg the privilege of saying a few words at this time in reference to the late unjunction suit before Judge McClure. It was our fortune (good or bad as the case may be) to listen to that trial, and we must say we were much surprised, (and we have heard many others say the same,) at some of the testimony brought out on the part of the plaintiffs in the case, especially in reference to Superior street hill being the most natural route for travel in passing from Superior street, on to Merwin street, and vice versa; and that the construction of the proposed viaduct down said Superior street hill would greatly interfere with travel, business, &c.

Now we have lived in or near the city of Cleveland for over forty years, and for the past twenty years or more, of that time, have had occasion to pass over the Cuyahoga valley with teams as often perhaps as from two to six times a week, on an average, and never to my knowledge have I ever passed up or down Superior street hill with a loaded team, nor even a light buggy, unless special business called me that way; nor do I recollect of ever having seen a dozen loaded teams pass . up or down that hill above the railroad track and the reasons why are perfectly obvious to any one viewing the situation, and capable of a moments unbiased reflection. Now would not the viaduct and bridge facilitate rather than interfere with all travel passing from one side to the other ?

And now in reference to the injury to the business and property on Merwin street, which it is claimed the building of the bridge would effect by diverting travel from said street, we beg leave to relate a conversation we had last spring, with a prominent commission merchant on Merwin street. We said to him: "Mr. ---, this Merwin street is getting to be a perfect jam. I hardly dare hitch my team in front of your store long enough to transact any business or take on a load, for fear of being run into and smashed up, and if, business continues to increase for five years to come as it has for five years past, how in the name of sense will you be able to

transact business here, unless some means are provided to throw this through travel in some other direction? I suppose" said I, "that about one half, perhaps, of the travel on this street south of James street, is through travel; that which has no business here, and which is passing from one hill to the other. Now, if this vast amount of through travel, which is daily increasing, could be thrown on to this proposed viaduct and bridge, would it not be a great relief to you in the transaction of your business. and double relief to those who come here to do business with you?" His reply was, that he had no doubt but it would.. And such is the case with every man doing business on said street, and such is the conclusion that every reflecting and unprejudiced mind must come to, as it seems to me.

In regard to the injunction suit, we have no fears but that the injunction will be dissolved, for according to all the decisions of the Supreme Court in similar cases, so far as we have heard, we cannot see a single thread on which the injunction can hang. And if the plaintiffs in the case see fit to appeal the suit, in case it is dissolved it will only be one more evidence that some men; are of such a nature that they will pay more for the gratification of their will than for soul and body both; for as to the construction of said bridge, it is only a question of time, for; come it must, and come it will, for necessity demands it. CUYAHOGA.

VIADUCT. – DISSOLUTION OF THE INJUNCTION – OPINION AND DECISION BY JUDGE M'CLURE, OF AKRON – A CAREFUL REVIEW OF THE QUESTIONS INVOLVED.

At half past eleven o'clock on Tuesday, Judge McClure, of Akron, delivered the following decision in the viaduct injunction case. He said the condition of his health was such that he would not have undertaken to deliver his opinion at this time but for the importance of the case, and, the general desire to TaTe a decision rendered today, on account of pending action by the City Council.

Hon. S. Burke, of plaintiffs' counsel, gave notice of an appeal. W.C. Bunts Esq., City Solicitor, desired to be briefly heard in relation To the amount of the bond to be given by the plaintiffs. He said that this case would be appealed to the District Court, and would thence go to the Supreme Court of the State, and perhaps to the Supreme Court of the United States. The city had appropriated land for this improvement, the amount awarded for which was about one hundred and seventeen thousand dollars. The time when this land could be taken and the bonds issued, under the appropriation, according to law, would expire August 20tb. Should the injunction finally be dissolved, the property would then have greatly advanced in value, and could not be reappropriated by the city without heavily increased cost and damage. He believed the loss to the city would be not less than one or two hundred thousand dollars, and the bond of the plaintiffs should be sufficient to fully indemnify the city against this loss and damage.

Mr. Burke said they were willing to give a reasonable bond, but would not give any such exorbitant amount as that named by the City Solicitor, unless compelled to do so by order of the court.

After some further discussion it was agreed that the court and counsel of both parties should meet at Mr. Burke's office Tuesday afternoon to arrange this matter.

THE VIADUCT. – DECISION OF JUDGE M'CLURE, DISSOLVING THE INJUNCTION.

Charles Hickox and Henry Harvey vs. the City of Cleveland;
motion to. dissolve injunction, on hearing at chambers.

To render more clearly intelligible the conclusions to which I have arrived, I have thought best to preface the same with the following brief abstract of the pleadings on file.

Petition—Charles Hickox alleges that. he is and has been for many years the owner of one hundred and sixty-six feet of land, fronting upon the Cuyahoga river in the city of Cleveland: and that the same runs back to, and fronts upon Merwin street—one of the public streets of said city. That the property aforesaid, is situated from one thousand to one thousand and two hundred feet above the point, where Superior street intersects said, river. He avers that he is in the present, actual possession and use of said property, and was erected thereon, at an expense of \$75,000—a flouring mill and much other valuable machinery; all of which is used by him in the business indicated by the description thereof He avers (very truly, without doubt), that said property with its appurtenances, is of great value ; and that, to use the same profitably, he should have free and uninterrupted access thereto, both on the river side and through Merwin and superior streets. It appears very satisfactorily from the statements of the petition, that the business carried on by Mr. Hickox requires that large quantities of grain (principally, perhaps, wheat), be conveyed thereto by water and otherwise, and he avers unqualifiedly, that of flour alone, he manufactures and ships through various channels of commercial communication about eighty thousand barrels per annum.

The plaintiff Harvey says, that he is the owner of about one' hundred and eighty feet of land, fronting upon the Cuyahoga river, and also upon Merwin street. He also says that the same is situated

about six hundred feet up the river from the foot of Superior street,. He claims to have improved said property by the erection thereon of a large, business block, and also by the construction of docks upon the river front. He also claims to be the owner of two other pieces of property on said river; one situated about four hundred feet above the point upon the same, where the Cleveland, Columbus & Cincinnati Railroad crosses it: and also another piece near to the one last mentioned-the former of which, has a frontage of one hundred and twenty-eight feet by about one hundred and ninety feet deep, and the latter has a frontage of seventy-two feet upon the river, and about one hundred and ninety feet deep. Of the three pieces above described, he says that the first is occupied by tenants for shipping and mercantile business, and the latter two pieces are occupied in like manner by tenants, but for both manufacturing and commercial purposes. He claims also, to have been put to great expense to improve said several properties, and complains especially that he has been heavily taxed by the city for dredging and improving the river.

Both plaintiffs unite in saying very emphatically, that for a considerable distance above the described properties, and even to the southern limits of the city of Cleveland, the Cuyahoga river is, and from time immemorial has been, a navigable stream, and has always been recognized and regarded as a public water highway, ever since and long before the organization of the State. The plaintiffs enumerate steamboats, propellers, schooners, brigs, barges, &c., as the description of vessels and crafts used along said river, and between the port of Cleveland and other port along the chain of lakes and rivers, of which Lake Erie forms an important link, in the transaction of commercial business. They describe the crooked character of the river (corresponding with the import of its Indian name) and the rapid increase of business thereon, together with the equally rapid increase in the value of property along its banks on either side, and urge these and other considerations as potent reasons why the channel should be kept, free of obstructions and impediments to navigation.

Notwithstanding the foregoing facts and considerations, the plaintiffs jointly complain that the City Council of the defendant (the city of Cleveland), is about to construct a bridge and viaduct across the river, commencing at or near the foot of Superior street, and extending across said river, and thence to a point at or near the intersection of Pearl and Detroit streets.

They say also that the defendant proposes to erect in the center of the river, at the foot of Superior street an abutment, upon which to build and swing said bridge, forty feet in width at the base, and the same to extend along the tread thereof eighty feet; and they also charge that there is to be super-added to each end of said abutment many feet of piling and planking, and that the bridge to be erected thereon is to be, fifty-two feet from the top thereof to the surface of the water at its ordinary height. To approach, said bridge, the plaintiffs allege that the city proposes to erect a viaduct of corresponding elevation, commencing at or near the intersection of Superior street with Union, the same to extend to, and connect with, the above described bridge. They further charge that such a structure will constitute an obstruction to Superior street as now improved and used, from Union to the river, and will cut off all useful connection with the central portions of the city, through Merwin and Superior streets.

I believe that I have now, stated all the material facts contained in the petition; and, desiring to avoid as far as possible, a repetition of the unnecessary verbiage therein contained, occasioned doubtless by the haste of the draughtsman and his desire to omit nothing which might, by any possibility, be essential to a full and perfect statement of the plaintiffs cause of action. I have concluded here to express the attempted to be made, in the form of general propositions, hoping to be able to, refer to any additional facts necessary to a full and fair comprehension of their entire case, in connection with such propositions.

1st. The plaintiffs say the structure proposed, will very prejudicially obstruct both Superior and Merwin streets.

2d. They say the river is narrow and crooked, especially where it is proposed to erect the viaduct and bridge; the width and length of which they undertake to state. Hence, for the foregoing and other reasons they insist, that the navigation of the river alone, will be ver seriously obstructed, and their property interests irreparably injured.

3d. They charge that the statute of 1872, under and by authority or which (in part at least) it is proposed to erect said pretended improvement, is unconstitutional and void. First, because it was not enacted in good faith; and also, because though apparently general in its applications, it is in fact of, and was by the framers and advocators thereof, in the State Legislation designed to be local in its application –indeed, that it was intended especially to apply to the city of Cleveland alone, and was designed to authorize the intended work now sought to be enjoined.

4th. They claim also, that considering the act to be constitutional, and to have been honestly enacted, still the Legislature had no power, in view of the ordinance of 1787, and other Congressional and State legislation, to authorize the obstruction of a navigable river in the manner proposed, nor in any manner whatever..

5th. They also aver that the city has not proceeded, even thus far, in accordance with any law whatever—that the necessary preliminary steps have not been taken by the Council, which are required by law to be taken, before any jurisdiction can be acquired to appropriate or purchase property on which to erect such structure, or even to contract for the erection of the same.

6th. They strenuously insist that the structure -when completed,, will be of no general practical utility. On the contrary, they say, it will be a public nuisance. Furthermore it is claimed by the plaintiffs, that the property "bounding or abutting" upon the proposed improvement and contiguous thereto cannot be charged-specially with the costs and expenses to be incurred, but that, under the Act of 1872, they Trust necessarily become a charge upon the

city at large. That the whole expense will far exceed \$1,100,000, which is the limitation prescribed by the statute above cited, and that there is no public need or demand for such an improvement.

The petition of which the foregoing is the substance, was verified by the plaintiffs on the 15th day of February, 1873. Without notice to the city authorities, I allowed a temporary injunction on the 18th day of the same month, application therefor having been made b Judge Ranney at Chambers, and on the day last named it was filed in the office of the Clerk of the Court of Common Pleas of Cuyahoga county, in which the action is now pending, a summons and notice of the injunction having been regularly issued and served. The petition was sustained by the affidavits of M. C. Yongglove and Joseph Perkins, to which the usual professional statement of course was superadded.

On the 22d day of March of the same year last above mentioned, the city, by its attorneys filed an answer, and, on the 19th day of the following month there was filed the motion to dissolve the injunction, which, after full hearing, it now becomes my duty to overrule or sustain.

A very brief synopsis of the answer will suffice to make intelligible the issues joined between the respective parties.

1st. The city denies every allegation of the petition except such as are expressly admitted to be true or modified.

2d. The ownership of the property, described by the plaintiffs respectively, is admitted; but the answer alleges that they have no joint interest in the same, but that their interests are distinct and several.

3d. The defendant attaches to its answer what it claims to be a copy of the plans and specifications of the proposed improvement, which have been adopted by the city, and while it admits that the river is navigable for above a mile above the point where it is proposed to build the viaduct and bridge in question, and that the river is somewhat crooked, it, nevertheless, insists, that the proposed improvement will not render its navigation any more difficult or hazardous, nor diminish the safety thereof as a harbor.

4th. It admits that the authorities propose to construct a viaduct and bridge across the river, at or near the points stated in the petition. It denies that the petition correctly describes the plan of the bridge and tile works therewith connected. It denies, most emphatically, that it now does, or ever did contemplate, the erection of one abutment or any other structure in the center of the river. On the contrary, it avers that the only abutments, proposed or contemplated by it, were to be located on the east and west sides, of the river, which, when completed, would leave one hundred and thirty feet in width of unobstructed channel in the river center. It avers that the construction of said viaduct and bridge is a matter of indispensable public necessity and of great public convenience upon the completion of which the continued prosperity of the business and commercial interests of the city largely depend. The city also avers that instead of obstructing navigation, as falsely alleged, the proposed structure would in fact improve the same. Incidentally the city also says, that there is and has been for many years, a draw-bridge across the river, with much less space for the passage of water crafts between the abutments thereof, than there will be in the proposed bridge, and it says that, instead of injuring the property of the plaintiffs, it will largely benefit the same in sundry ways, which are suggested, but need not here be enumerated.

5th. The city claims, in terms both general and specific, that by an act of the General Assembly of the State of Ohio, entitled "An act supplementary to an act entitled an act to provide for the organization and government of municipal corporations," passed April 27, 1872. It was and is duly authorized and empowered to construct across said river the viaduct and bridge sought to be prevented by the plaintiffs, not only at the point proposed, but at any other point within said city it should deem best to adopt, and it also claims to exercise such right not alone by the authority confirmed by said act, but also by virtue of previous grants of authority on the part of the state, anything contained in the ordinance of 1787 to the contrary notwithstanding. It avers also,

that in all its proceed. lugs in the premises, thus far, it has strictly followed and observed all the legal requirements necessary to render each and all of its acts legal and binding: citing in support thereof the action and resolutions of the City Council, under the date of April 30th, 1872 and exhibits attached to its answer.

6th. The defendant also denies specifically, that the viaduct, &c., if constructed as proposed, will obstruct either streets or river navigation, or injure either the plaintiffs or the public. It denies that it will be a nuisance, but avers that it is an improvement imperiously needed and demanded by the great and constantly augmenting interests and business of the city, and, as a matter of convenience and safety to the public generally.

7th. The defendant affirms the acknowledged fact, that the Cuyahoga river is wholly within the limits of the State of Ohio. That at great expense, it has taken preliminary steps with the view to the construction Of the proposed Work. That for the purpose aforesaid it has acquired certain rights to property, both by appropriation and purchase—and that, a majority of the legal voters of the city, at an election regularly authorized and held, have declared in favor of the same—and furthermore, that the cost thereof will be much less than the amount authorized and estimated.

8th. The city concludes by affirming the constitutionality of the act of 1872, affirms the good faith and integrity Of the Legislature in its enactment—and denies the rights of the plaintiffs, for reasons assigned, to maintain a joint action against the city, whatever may be their rights in other respects. No formal reply is on file, but it seemed to be understood by counsel, indeed it was announced at the opening of the case, that the hearing should proceed as if each reply had been filed, taking issue on all the facts alleged in the answer which conflict with the averment of the petition or constitute new matter. Considerable testimony was offered and received, much of it in the form of affidavits, and the residue orally. To the admissibility of some of the oral testimony objections were made and noted, and then received subject to such

objections. The case was very ably argued by counsel, but on account of its great importance to all concerned I have reserved my opinion until now, in order more fully and deliberately to consider the various and by no means unimportant questions involved. As far as it is possible to do so I shall avoid all argumentation, and content myself with as plain statements of conclusions as I am able to frame, and render such conclusions fairly and reasonably intelligible. Though none of the propositions submitted can with strict propriety be regarded as merely preliminary, yet, as the disposition of a few of them does not effect (except very remotely) my ultimate conclusions upon the more important and vital ones, I will take the liberty to dispose of them first, with but little if any regard to the order in which they were presented, or by which party urged.

1. The defendant insists that the action Ought not to have been instituted, and that it cannot be maintained by the plaintiffs jointly. The reason assigned is obvious. The counsel for the city insist that Mr. Hickox has no conceivable interest in the property of Mr. Harvey, even though the same may be fully entitled to the protection sought and the relief demanded. And they say the same is true of Mr. Harvey, with reference to relief sought in behalf of and his Hickox property. In short, it is claimed that each should have instituted a separate and several action instead of a joint one. To determine the above question correctly it becomes necessary to refer to the code of civil procedure, section 34 of which provides that "All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs except, etc. Referring now to the petition, it is therein alleged, in unequivocal and oft-repeated terms, that the structure proposed to be erected will be a nuisance—a public nuisance. Assuming the allegation above referred to be true, can it be doubted that two or more persons owning separate tenements or distinct property affected or to be affected by such nuisance, may join in a proceeding to abate the same, if already erected, or to restrain the same if threatened? I have not had time or opportunity to examine

the above question in its especial bearing upon the case now upon consideration as fully as I desired to I can well see that upon its being determined finally that the proposed structure would not and could not be held to -be a nuisance, and thereupon the plaintiffs should be driven to rely upon some other ground of relief, a very serious question might and probably would arise, touching their right in such new aspect of the case, to sustain a joint action. In view, however, of the conclusions to which I have arrived upon the whole case I do not regard the foregoing question of any special importance to either party, and therefore dismiss it with the above suggestions.

2d. Again, it is claimed by defendant's counsel that the plaintiffs in this contest, and for the purpose of this hearing, are conclusively bound by the allegations of their petition ; that in their claim for relief they are limited to, and they must stand solely upon., the causes by themselves deliberately set forth, and ought not and cannot be permitted by the Court to go outside of or beyond the same. In short, it is contended that, failing to sustain by proof the specific grounds upon which the temporary injunction was granted, such failure is fatal, and the motion should be sustained. To this it is replied, that an answer has been filed by the city; that entirely new matter is therein set forth, whereby a variety of issues are presented, none of which can be ignored or disregarded by the examining tribunal. In the solution of the above question I should feel very little if any difficulty, had the city, by answer or otherwise, taken issue alone upon the plaintiffs' propositions. The defendant however, Aid not see fit to adopt that course. Substantially the city denies all the facts of the petition, in manner and form as therein set forth. Not content with that, the city then proceeds to state what, in fact, it does propose to do, how it is proposed to do it and some things which have been done with a view to the end suggested.

Now it is possible, for a defendant to so form his pleadings as to make a better case for the plaintiff than he made for himself. Such things have often happened in the history and progress of

judicial proceedings, and my impression is that as a general rule plaintiffs have been permitted to avail themselves of some unintended aid. The only doubt I entertain upon this point is whether the rule should be applied in a case like the one at the bar, where the sole relief sought is by injunction, to be dissolved or made perpetual on final hearing. As will be disclosed hereafter this is of no particular importance to either party, and I have therefore considered the case as presented upon all the pleadings and upon all the issues.

3d. Counsel for the city also urge that as the statute prescribes a mode by which parties injured, or about to be injured, by the construction of public improvements may obtain redress, the remedies thus prescribed are alone available. Hence they ask us to remit the plaintiffs to such remedies, and to deny to them the extraordinary one by injunction, which they seek by these proceedings to enforce. The principle contended for is the correct one, and could not be refused in a proper case and where applicable. Whether the relations of the plaintiffs to the interest they seek to protect would or would not require them to proceed under the statute, instead of appealing to a court of equity for redress, I have not deemed it necessary to critically inquire, and for the reason more than once alluded to already, and that is the disposition I feel constrained to make of the disposition upon other more vital points renders it wholly unnecessary.

4th. Numerous other points were made during the arguments, but many of them were legal axioms, not controverted, or mere abstractions having no particular application to the case under consideration. To notice them in detail would be not only laborious, but unnecessarily so, and productive of no useful results.

5th. I come now to the consideration and determination of a very few questions upon which this proceeding actually does and ought to turn. Disregarding somewhat the order in which the main propositions were presented, for convenience I will adopt one of my own.

First, then, it is a conceded fact that the Cuyahoga river (which is also admitted to be navigable, to a certain extent at least) is throughout its entire course, within the limits of the State of Ohio. May the lawmaking power of the State authorize the bridging of this stream ? I believe I am safe in saying it is conceded that the legislature may do so if navigation be not materially obstructed thereby; and that the City Council may proceed to bridge the same in compliance with law, but not otherwise. It is claimed, however, that the law under which the Council have undertaken to act in the premises is unconstitutional and fraudulent. As to the latter element, the time has not yet come when the judicial tribunals of the country can pass upon the good faith or the bad faith of the law makers. That matter must be referred back to the people. Were it otherwise, it might be necessary to constitute a large number of courts and limit their jurisdiction to this class of cases alone; otherwise they would be overrun with business. Judge Ranney, in a well considered opinion, while a member of the Supreme Court, very satisfactorily to everybody, disposed of this question. But it is asserted that the law is local, not general. By its terms it is general, if in fact it be local as alleged. The investigation of that question of fact would lead me into a domain which I think is entirely outside of my jurisdiction. I accept the law as a general one, as upon its face it purports to be, and leave it there.

Again, as to the obstruction to navigation which is alleged, to say that the proof upon that point affords a negative preponderance would be to adopt too feeble a form of expression. The fact is the evidence is overwhelming that if the viaduct and bridge be constructed as proposed, they will not only not impede but will actually facilitate and improve the navigation of the river.

That the public need additional facilities of communication between the east and west sides,, even the plaintiffs very candidly say is true, but they object to the plan proposed.

Suppose it to be true that the question of the viaduct proposed would operate somewhat disadvantageously to the plaintiffs, are

we permitted to say that an improvement called for and needed by the great public outside must be refused on that account ? This age of progress will not for a moment tolerate so narrow a view of the rights of the public.

There is, perhaps, but one other matter which it is essential for me to consider, and it is the One most vehemently urged.

It is this: Conceding all other points, it is said that the city authorities have not complied either with the requirements of the act of 1872 or with the provisions of the municipal code, and hence for such reason should be restrained.

I have examined with great care the action of the city Board of Improvements, as well as that of the City. Council. To say that am entirely satisfied with the perfect regularity thereof I cannot. But I can say that so far as they have proceeded before this injunction was allowed, I find nothing which has been omitted, or so imperfectly done as that I can say that any interest, either of the public or of the individual citizen, can by any possibility be sacrificed thereby.

True, a formal resolution to make the improvement has not yet been passed—and why? I find upon examination that I allowed, the injunction while yet the action of the city authorities was incomplete. Shall I assume that they will not comply with all legal requirements before proceeding to make the proposed improvement? On the contrary, am I not bound to assume that they will comply with the law in all respects, until the contrary be demonstrated by proof, after they shall have been permitted to complete their work? I am very strongly impressed with the idea that if the courts adopt the system of throwing in an injunction midway in the action of cities while attempting to make improvements, litigation will swell to enormous proportions, and will cost the people much more than the improvements themselves, if made.

Much was said in argument about the lack of plans, specifications and. profiles, and the want of a record thereof. Now the language of the code cannot well be mistaken. But what is its

spirit and meaning? There was presented before me on the hearing a little less than a quarter of an acre of that sort of material. Is it all to be recorded in a book to comply with the requisitions of the code? If so, it must be done by almost infinitesimal sections, and if so done, who is to get any idea whatever from it? The legislature, in my view of the matter, intended no such thing. Looking to the whole case, therefore, I think I improperly allowed the temporary injunction. At the same time I do not entertain a doubt but the application was made in the utmost good faith. To say that I may not be wrong in some of my conclusions, based upon the crude material that is thrown together in our municipal code, would be to arrogate to myself an amount of wisdom that I have no ambition to assume.

Having considered the whole ground as carefully as I have been able to do, I am fully convinced That I ought to sustain the motion, and the same is therefore sustained, and the injunction heretofore allowed is dissolved.

This put an end to the injunction suit, for no appeal was had.

Up to this time, since the fall of 1871, during a term of nearly two years, I did but little else than to labor on, and discuss the viaduct and high bridge question. I made it a point to broach the subject on all possible occasions, when there appeared to be any prospect of making a convert; and so notorious -bad I become that I was dubbed the "high bridge man "; and the first words of greeting which frequently met my ears on entering the city in the morning was, "how is the high bridge?" or "did you Come over on the high bridge?" etc.

There now appeared to be nothing in the way to prevent the city authorities from once more setting the wheels in motion; and they proceeded to mature the plans, complete the drawings, etc., preparatory to letting the contract.

After much time and labor spent in investigation and discussion, and in maturing plans, the contract was finally let, to build so much of the work as lay on the west side of the river, to Mr. Ensign. But the plan as then adopted, provided that the width

of the viaduct should be but fifty feet on top, and the height of the bridge should be fifty feet above the surface of the water, thus reducing the width of the viaduct ten feet and ten feet in height below the original plan as drawn on our map. To this plan there were serious objections, and I wrote an article on the subject, setting forth among other objections, that after taking out the necessary space for sidewalks, it would leave altogether too little room for road way and street car tracks; and also that in the event of street cars being propelled by steam, which might be the case at no distant day, the grade on the east side would be too steep.

The question was eventually brought before the Council, and underwent a long and tedious discussion, which resulted, however, in the adoption of the present plan; namely, sixty-four feet wide on top, with solid masonry from the base up, and the bridge to be sixty-six feet above the surface of the water; which made it some four feet wider, and six feet higher, than the original plan, and altogether better than we had any reason to hope for.

But this change in the plan involved so much additional expense, that additional legislation became necessary, to enable the city to issue the necessary amount of bonds to meet the additional cost.

And now came another long and bitter struggle, in which the opponents of the measure did all they could to prevent the passage of the bill, and thus put a stop to any further proceedings, notwithstanding the work under Mr. Ensign's contract was already well under way. But at length the bill passed with a provision in it, that the city should have the privilege of making it a toll bridge.

And now once more the way seemed clear for a speedy prosecution of the work, but new difficulties now arose in reference to the location of the route. on the east side of the river, which had not yet been determined on ; but after much time spent in canvassing for right of way, and long and protracted discussions, the present location was finally settled upon ; which termination is the same as that proposed in the original plan.

But in consequence of the unavoidable, and in some respects, unexpected cost for right of way, it was ascertained that the amount appropriated would be insufficient to complete the whole work with stone as at first proposed. Hence it was proposed to build so much of the structure on the east side, as lies between the abutment at the river bank and the retaining walls, a distance of five hundred and eighty-five feet, of iron.

To this proposition I had serious objections, as had many others also, and in an interview I had with Mr. Ensign on the subject, he gave it as his opinion, that true wisdom and economy would dictate that iron should not be used where it could possibly be avoided. Said he, the structure that I am building on the west side, will stand for all time to come, and that on the east side should be composed of material no less durable than that on the west side; and for a city like Cleveland to haggle about a few thousand dollars in a work of so much importance seems, to me like sheer folly, but of course it is not for me to say.

About this time an article over the signature of Granite appeared in the *Morning Leader*, taking ground against the use of iron for said structure, and on the 18th of January, 1877, I wrote the following article:

THE VIADUCT. - SHOULD AN IRON BRIDGE BE BUILT.

TO THE EDITOR OF THE LEADER:

So much of the article in the *Morning Leader* of the 16th inst., and signed "Granite," on the subject of the viaduct, as relates to an iron structure on the east side of the river, we beg leave to endorse most emphatically.

In the first article written on the subject of a viaduct, and published in your issue of the 27th of January, 1872,. one of the arguments used in favor of a stone viaduct, and against the Franklin street bridge, was that the bridge was to be built of iron, and that it would not stand the test of fire.

Since the plan of an iron structure on the east side of the river, instead of a viaduct, has been talked of, we have entertained many fears in regard to the final success of the undertaking, and have so expressed ourself many times, in conversation with individuals, and since the recent disaster at Ashtabula, together with the evidence produced by the great Chicago fire of the insecurity of iron, it seems to me that a proper degree of prudence, . discretion and even economy would dictate that iron should never be used in a structure of that kind in place of stone, where it can possibly be avoided. Admitting that the first cost of a stone structure would be something more than one built of iron, what are dollars and cents compared with such . a calamity as that at Ashtabula?

We hope and trust that the original plan of a viaduct built of solid stone from bank to bank, (save across the river, of course,) will be carried out, and no portion of it metamorphosed into an insecure iron structure, for it is a work of such importance that nothing short of the very best kind of material should enter into its construction, with a view to its standing for all time to come.

WEST SIDE.

Mr. Morse, the City Civil Engineer, gave it as his opinion, that such an iron structure as they proposed to build, would be equally as durable, and the cost would be some \$600,000 less than if built of stone; but in a subsequent estimate he reduced the figures to about \$300,000, having, as I suppose, made some mistake in his first estimate.

A considerable pressure was now being brought to bear against the introduction of iron in any part of the work, and the City Council was, I believe, nearly evenly divided on the question, and on the 19th of February, 1877, I wrote my last appeal as follows, asking the City Council to appoint a committee to investigate the subject and report accordingly.

VIADUCT-WOOD OR IRON.

TO THE EDITOR OF THE LEADER:

In the *Leader* of the 15th inst. appears an article over the signature of "Tubal Cain," in which this writer sees fit to go into quite a detailed statement of the process of manufacturing iron, in vindication of its superior qualities, for the construction of a series of bridges on the east side of the river, instead of a stone viaduct, admitting the necessity of keeping a careful, constant and vigilant eye to the structure, to see that every bolt, nut and screw is placed and kept in proper order, etc. ; all of which, in our opinion, has little to do with the main question to be decided.

The question to be decided is simply this: How long will an iron structure stand with safety before it will have to give place to a new one? and will iron stand the test of intense heat? A competent committee appointed for the purpose of ascertaining these facts, would soon decide the question, and the report of such committee would be something that the community would rely upon, and something upon which the City Council might with safety base their action.

As to the writer's argument in reference to its being as safe to go to the river on an iron structure, as to go over the river on an iron bridge, we will admit that it would be, and that that portion of the structure on land would be just as safe as the bridge over the river, provided it could be made as secure from fire.

Of course, the bridge over the river must be built of iron, for "what can't be cured must be endured."

WEST SIDE.

But owing in a great measure to the fact, that still more legislation would be required, in order to enable the city to meet the cost, the Council finally decided to adhere to, and not change the plan as already adopted; and in the month of June, 1877, the contract for the building of the stone work on the east side was let,

and in October following the contract for the iron work and bridge was also let.

Work was now immediately commenced on the contracts, and up to this time, January 28, 1878, it has been pushed forward with an energy and perseverance worthy of commendation: and everything now bids fair for a speedy completion of the work. And we sincerely hope that the iron work will prove a success, and the anticipations of its advocates be fully realized. But I will venture to predict, that whoever lives to see it, thirty years from now, will see that a new structure has already been, or needs to be, built; and in that event, stone will doubtless take the place of iron.

Up to the spring of 1874 I had given Mr. Charles Pease, of East Rockport, credit for being the first one to conceive the idea of a high bridge from bank to bank over the Cuyahoga river; but in a conversation about that time, with Mr. Lester, a commission merchant on Merwin street, on the subject, a gentleman came into the office, (I think he was a lake captain, but am not sure) and after listening to our conversation for a short time, related the following: Said he, quite a number of years ago, (I do not remember the exact time), I was at work for Deacon Palmer, (the father of the late Charles Palmer), on some public work (I think it was) at Tonawanda, down east of Buffalo; and on morning the Deacon arose, and said he, "I have had a strange dream." He said he dreamed that he was in Cleveland, and there was a high bridge built over the Cuyahoga river, reaching from bank to bank, and he believed that some day such a bridge would be built.

Thus we see it was not altogether "one of French's wild schemes," as friend Benedict saw fit to call it, so far as a high bridge itself was concerned, although I had no knowledge of the revelation above described, until the project was fairly under way, but that it was before ordained that such a structure should be built, and Deacon Palmer was the chosen instrument, in the hands of Divine Providence, through whom it should be revealed to the world.

Thus we see how futile it was for its opponents to spend so much time and labor fighting against destiny.

Here let me add that whatever amount of credit there may be due to any one for the part they have taken in this enterprise, it does not all belong to the projector of it; for in addition to those already mentioned may be named L. D. Benedict, A. T. Van Tassel, George T. Chapman and Dr. Horton, of the City Council, and Capt. Elias Sims, F. W. Pelton and many others, prominent men on both sides of the river, who were ever ready to do all they could to further the enterprise.

And to the press especially, more than an equal share or credit is due; for without their aid the project never could have been carried into effect. The *Leader*, in particular deserves special mention, for it has been a warm and consistent advocate of the measure from first to last.

And now in conclusion, let me say that if I may be permitted to live to witness the completion of this enterprise, and it shall prove a success, as I trust it will, and have the satisfaction to feel that I have been in some degree instrumental in contributing to the prosperity of the city, and the comfort and convenience of the public in general, the measure of my reward will be more than full.

January 27, 1878.

JULY 27, 1878.

Several months have now elapsed since the foregoing was written, during which time the work has been rapidly pushed forward, and if nothing happens to retard its progress, now bids fair to be completed before the setting in of another winter. And here let me add that the degree of energy and skill as shown by Civil Engineer Morse in the performance of his part of the work, is truly commendable, and proves him to be a competent and efficient officer; and if that portion of the structure composed of iron, proves to be what Mr. Morse claims for it, the credit of it will be mainly due to him.

It may also be proper to add that for some time past a lively discussion has been going on with reference to the widening of the draw-bridge, the result of which has been to effect a material change in the plan, against which there could be no reasonable objection brought, since there was sufficient funds already provided for to cover the cost. According to the original plan, and under which the contract was let, the roadway was to have been twenty feet wide, with a sidewalk on either side eight feet wide, making the bridge thirty-six feet in width; but according to the plan as now adopted, the roadway is to be thirty-two feet wide, with sidewalks seven feet wide, which make an additional width in the bridge of ten feet an improvement that will doubtless be highly appreciated by the traveling public, besides adding very materially to its looks, giving the whole structure a more symmetrical appearance. And notwithstanding the active part taken by many prominent citizens on both sides of the river in favor of the change, the credit of it is mainly due to the foresight of Mr. John Coon, who first brought the subject to the notice of the public.

Since the change in the width of the bridge has been made, adding considerable to the cost, the whole structure, when completed, including the right of way, according to the last annual report, will have cost the city about two millions one hundred and fifty thousand dollars (\$2,150,000). No insignificant sum to be sure, but for solidity of structure, artificial construction, and mechanical finish, it will be unsurpassed by any public improvement in the state, if not in the United States, and is a work that the builders and the citizens of Cleveland may justly feel proud of, and that the stranger from abroad will view with wonder and admiration.