

We now come to the consideration of that portion of the investigation which relates particularly to the right claimed by this company, to charge toll on passengers, and it may not be amiss again to repeat that this right is not contended for under any express grant in the act of incorporation, but relying on the opinions of able counsel in Philadelphia, it is claimed as a constructive or implied power. It is boldly asserted that because the charter is silent on this subject, and because this company is not required to carry passengers, that it follows, if they do carry them, that they have the right to charge toll, but your committee would enquire from whence does this company derive authority to charge toll on any article whatever except from the charter itself. If then this power is solely derived from the act of incorporation how can it be pretended that the company has the right to make any charge not authorised by that act? It is insisted, however, that they do not charge toll on passengers in the strict sense of that term, but that they have merely agreed with the owners of the boat, in which they are conveyed, for the payment of a gross sum, varying according to the numbers conveyed; and this company further rely upon the fact that they have, for twelve years past, been notoriously charging upon passengers without objection, as evidence of some weight in establishing their right to do so. This mode of reasoning your committee regards as entirely fallacious, and it would be as novel in theory as dangerous in practice, to give a corporation powers by implication. Who, your committee would ask, is to determine the extent of these constructive powers? Certainly the Legislature never intended, in granting these charters, that the corporation itself should be clothed with the unlimited power to judge of its own franchises. Where would be the limit of such a power? There would be none, for if the power exists at all it exists to any extent and it could not be expected that the corporation would fix any limit to restrain its own privileges. If therefore the corporation itself is to be the sole judge of what are or are not its implied powers, its privileges are unlimited. In the opinion of the counsel referred to, there is a studious attempt to distinguish between a toll on passengers and an agreement with the owner of a boat to pay him a gross sum, correspondent to the number of passengers. This indirect mode of charging the toll your committee cannot but regard as an evasion. Your committee hold that the company cannot do *indirectly* what they cannot do *directly*, but the fact of the charge having been *thus* made, seems to be regarded by the counsel as important and it would not have been so prominently introduced if the company had been FULLY SATISFIED of their RIGHT to charge the toll, for if they had been so satisfied, they would doubtless have made the charge and defended it directly and manfully.

Your committee repeat that they cannot see the distinction, thus attempted to be made. In PRINCIPLE it must surely be the same, whether the toll-gatherer takes twenty-five cents, from each passenger in person, or whether he demands and receives from the Captain of the boat, twenty-five dollars for one hundred passengers.