

## MURTAGH V. PHILADELPHIA ET AL.

[1 Wkly. Notes Cas. 37.]

Circuit Court, E. D. Pennsylvania. Oct. 19, 1874.

## RESTRAINING ERECTION OF PUBLIC WORKS—ACT OF 8TH APRIL, 1846—JURISDICTION OF FEDERAL COURTS.

Application for preliminary injunction by plaintiff, who was a citizen of New York, to restrain the completion of a bridge over the river Schuylkill, at an elevation of only sixteen feet above high-water mark, on the ground that it would, at that level (which was four or five feet lower than that of the former bridge), interfere with the navigation of plaintiff's barges. The Schuylkill is a tidal and navigable river, lying wholly within the state of Pennsylvania.

Affidavits and depositions were read by both parties as to the facts, set forth in the bill.

Thomas Hart, Jr., and Mr. Tilghman, for plaintiff.

Thayer & Sellers, for Keystone Bridge Co.

The City Solicitor and R. N. Willson, for the City of Philadelphia.

THE COURT refused the preliminary injunction, saying that where a suit in equity was merely for the enforcement of a legal right, and there was any disputable question upon the merits, it was not in general, proper to grant an injunction before final hearing or a judgment at law; and that the reason for not awarding an interlocutory injunction was here the stronger because the case depended wholly upon questions of right under the laws of Pennsylvania, and the law of that state (Act April 8, 1846; Purd. Dig. 599, pl. 55) provided that no court within the county of Philadelphia should enjoin the erection of public works until question of title and damages should be finally decided by a common law court.

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