

OUACHITA & MISSISSIPPI RIVER PACKET
CO. v. ESTATE OF AIKEN AND OTHERS, WHARF
LESSEES.*

Circuit Court, E. D. Louisiana.

April, 1882.

PRELIMINARY INJUNCTION.

To decide whether the rate of wharfage fixed by ordinance of the city of New Orleans is or is not greater than a fair and reasonable compensation for the use of the city's wharves, the evidence submitted with a rule for a preliminary injunction must enable the court to say, as a matter of fact, that such greater charges is made against the particular vessels of the complainant. If the evidence does not do this the preliminary injunction will be refused.

Leathers v. Aiken, 9 FED. REP. 679, followed.

In Equity.

On a motion for a preliminary injunction restraining the collection of wharfage dues.

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Charles S. Rice, John H. Kennard, W. W. Howe,
and *S. S. Prentiss*, for complainants.

W. S. Benedict, and *George Denegre*, for
defendants.

BILLINGS, D. J. We think the principles of law applicable to this case are correctly stated in the opinion by the circuit judge in *Leathers v. Aiken*, 9 FED. REP. 679. The sole question in this cause into which we can inquire is this: Viewing the lease as an ordinance simply fixing the rate of wharfage, and excluding all imposition for the support of lights or police, is the rate of wharfage greater than a fair and reasonable compensation for the use of the city's wharves? The matter is full of intricate difficulties. We can deal with it only as a judicial question, presented by a case in court with reference to an imposition upon specific property. We cannot take it up and decide it upon the general consideration which would be proper in case the matter was pending before a

legislative body as to permitting such a lease. The case must be heard and decided by us upon evidence; that evidence must come from the bill of complaint, exhibits, and affidavits; and to authorize the granting of the injunction must enable us to say, as a matter of fact, that a greater charge is made against the particular vessels of the complainants therein than is a just wharfage.

We do not find that the evidence submitted to us upon the hearing of this preliminary motion enables us to say this. The motion must, therefore, be refused.

PARDEE, C. J., concurring.

* Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

See 16 Fed. Rep. 890, and 7 Sup. Ct. Rep. 907.

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