

ATLANTIC DREDGING CO. v. BERGEN NECK RY. CO.

*Circuit Court, S. D. New York.*

October 22, 1890.

NAVIGABLE WATERS—OBSTRUCTION—INJUNCTION—JURISDICTION.

The circuit court of the United States sitting in the southern district of New York will not grant an injunction against the erection of embankments or trestles on the soil of New Jersey, though such structures may project into the waters of a navigable channel leading into the Bay of New York

In Equity.

Order to show cause why temporary injunction should not be made permanent. The Atlantic Dredging Company was a New York corporation, which had dredged a navigable channel from the waters of New York into the territory of New Jersey, at Bayonne, at the head of which channel, and within the limits of the city of Bayonne, was situated its repair yard. The Bergen Neck Railway Company in laying its tracks claimed the right to cross such channel by embankment or trestle. This court granted a temporary injunction restraining the obstruction of the channel by defendant, and required the latter to show cause why the injunction should not be made permanent.

*Robert D. Benedict*, for complainant.

*Gilbert Collins*, for defendant.

LACOMBE, Circuit Judge. I am not satisfied that this court, sitting in the southern district of New York, has jurisdiction of this action, which is concerned with structures in process of erection on the soil of New Jersey, although such structures may project into the waters of a navigable channel coming up from the Bay of New York. *People v. Railroad*, 42 N. Y. 283; *In re Devoe Manuf'g Co.*, 108 U. S. 401, 2 Sup. Ct. Rep. 894.

Let the temporary stay be vacated.