

It is clear the libelant knew, from the start, that the coal was to be loaded by the Reading Company at its wharves; that the respondent had no control over the subject; that all vessels are loaded at these wharves in turn, according to the time of arrival. The custom of business there is well understood, and care is taken to keep it before shippers and the trade by the publication of circulars. No doubt the libelant desired and expected to be loaded by Saturday evening, following his engagement. I am not satisfied, however, that the respondent undertook and bound himself that the libelant should be. He knew as well as the latter that he could exercise no control over the subject; and that no one could tell with certainty whether the vessel could be loaded within this time or not; that the probability or improbability was a matter of calculation, which the libelant could make as well as himself. Why should he, under such circumstances, undertake to bind himself? In the midst of the conversation and bargaining, he went to the Reading office, avowedly to ascertain the probabilities, from what those in charge would say, and on his return reported, before the contract was completed. The inferences from surrounding circumstances sustain the respondent's allegation that he did not undertake to load the schooner on Saturday, but turned the libelant over to the Reading Company for his load, according to the well-known custom at its wharves; that the libelant understood this at the time, as well as the respondent, and entered into the contract accordingly. The libelant was anxious for employment,—more so than the respondent was for his services, I think,—and was willing to assume the risk of delay, which at the time seemed very slight.

## HATCH v. WALLAMET IRON BRIDGE CO.

(Circuit Court, D. Oregon. May, 1886.)

INJUNCTION—REMOVAL OR MODIFICATION—PETITION—PROCEEDINGS TO ENFORCE  
—WALLAMET RIVER BRIDGE.

Where an injunction has been granted restraining the erection of a bridge, the defendants enjoined cannot obtain relief by presenting a petition for removal or modification of the injunction on the ground of a change in the law, and an alteration in the plans of the bridge, but may make the point in a proceeding against them to enforce the injunction, under which the questions whether the law has been so changed, and whether the bridge being constructed is the one to which the injunction applies may be raised.

*George H. Williams and Charles B. Bellinger*, for petitioner.  
*H. Todd Bingham and Edward W. Bingham*, for respondent.

DEADY, J., (*orally*.) This is a petition of the Wallamet Iron Bridge Company for the removal or modification of the injunction against the erection of the bridge which it proposes to construct at the foot of Morrison street, or some express authority or permission by means of which the company can proceed with the work. As is well known, the construction of this bridge was enjoined by a decree of this court some years ago at the suit of parties having certain riparian rights upon the Wallamet river. The court acted upon the theory that the bridge, as it was proposed to be constructed, was an obstruction to the navigation of the river, in violation of the second section of the act of congress of February 14, 1859, admitting this state into the Union; and, following the ruling in the case of *Pennsylvania v. Wheeling, etc., Bridge Co.*, 13 How. 565, decided that it had jurisdiction of the case. The bridge was considered, upon the testimony and in the judgment of the court, to be an unwarrantable obstruction to the navigation of the river, and its construction was enjoined. No appeal was taken from this decree. Afterwards a bill of review was allowed, and an effort was made to have the decree set aside; but the court maintained its opinion, and dismissed the bill. From this decree, dismissing the bill of review, I understand, an appeal has been taken to the supreme court of the United States; but the case on the original bill remains here. Since these proceedings, the supreme court of the United States, being called upon to consider this question in the case of *Cardwell v. American River Bridge Co.*, 5 Sup. Ct. Rep. 423, has decided that language in the act admitting the state of California, similar to that used in the act admitting the state of Oregon, did not extend to the erection of a bridge in such a case; and that if the state authorized the construction of the bridge, that was authority sufficient. Since this decision by the supreme court, this court has had the same question before it in the case of *Scheurer v. Columbia-street Bridge Co.*, 27 Fed. Rep. 172, and refused to enjoin the construction of its proposed bridge at the foot of Jefferson street,

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