

Another question that was raised was in regard to the costs of the appeal which was taken by the stockholders from the decree formerly entered in this case. The former decree was reversed on this appeal, and the appellants in that case recovered costs against the appellee. The appellee also incurred expenses in the printing of records and briefs, etc., upon this appeal, all of which it would be unjust to charge against Mrs. Irons, the complainant in this case, because she stands merely in a representative capacity, prosecuting this suit for the benefit of the creditors of the bank; and hence it seems to me that it is just, and I shall have it so provided in the decree, that, on the payment of the money assessed against the stockholders into the hands of the clerk of the court, the clerk first ascertain the amount of costs which were recovered against the appellee, and also tax the costs which the appellee incurred in the defense of that appeal, and deduct, before any dividend is made to the creditors, the expenses thus incurred. This will protect Mrs. Irons, I think, which should properly be done. A decree may also be prepared, directing the defendant stockholders to pay, and I presume it will be more convenient for them—(this is merely a suggestion of my own, and has not been made by their counsel)—and my suggestion is that an installment of 25 per cent. be paid in 30 days, an installment of 25 per cent. in 60 days, an installment of 25 per cent. in 90 days, and the balance in 120 days; making the decree all paid up in 120 days. If this is not desired by the counsel representing stockholders, a decree may be made for the payment of the whole amount in 60 days. The counsel may consult together about that. The clerk will, under the direction of the master, tax the costs that were necessarily incurred against the defendants in resisting the claim of the People's Bank of Belleville, and the decree will adjudge these costs to be paid by the People's Bank of Belleville; but the cost of the master's fees upon this reference may go into the general costs of the case, because it is impossible to divide it, and see how much of the labor done by the master upon this reference was given to the claim of the People's Bank of Belleville, and how much to the general adjustment against each stockholder.

TEXAS & P. RY. CO. v. CITY OF BATON ROUGE *et al.*

(Circuit Court, E. D. Louisiana. June 8, 1888.)

INJUNCTION—RIGHTS PROTECTED AND WRONGS PREVENTED.

Complainant, having the right under its charter of transporting its passengers and freight across a river by means of its own boats, agreed, for a consideration, to use for such purpose only the public ferry operated by a private party under a lease. The ferry proving inadequate, complainant commenced running its own boats for purposes of transportation. *Held*, that equity would not protect complainant from the consequences of its failure to comply with the contract, by enjoining the operators of the ferry from interfering with the operation of complainant's boats.

*Publication delayed by inability to obtain copy of opinion at time of delivery.

In Equity. On motion for an injunction.

The Texas & Pacific Railway Company entered into a contract with the city of Baton Rouge and Gebelin & Philips, by the terms of which the said railroad company, in consideration of certain privileges granted by the city, agreed to transfer its freight and passengers from West Baton Rouge to the city of Baton Rouge, by means of the public ferry which had been leased by the city to said Gebelin & Philips. The ferry being deemed inadequate, the company chartered other boats, and sought to exercise the privilege granted by its charter of transporting its freight and passengers by means of its own boats. A restraining order having been issued, the complainant company asks that an injunction issue, pending suit, restraining the said city of Baton Rouge, and Gebelin & Philips from interfering with the conduct of its business in so transporting freight and passengers.

W. W. Howe, for complainant.

Farrar, Jonas & Kruttschmidt, and *C. C. Bird*, for defendants.

Before PARDEE and BILLINGS, JJ.

PARDEE, J. On the showing made we are of the opinion that the complainant under its charter, has the right to run, operate, and control transfer-boats to and from its rail terminus in West Baton Rouge to and from the city of Baton Rouge, for the transportation of its freight, passengers, and employes, (see *Harrison v. Railway Co.*, 34 La. Ann. 462; *Hepting v. Railway Co.*, 36 La. Ann. 898;) that, in landing its boats within the limits of the city of Baton Rouge, it is subject to the general police regulations and control of said city, and can only exercise special privileges therein by lawful grant of the said city, (see *Packet Co. v. Catlettsburg*, 105 U. S. 559;) that the right to operate such transfer-boats is not affected nor limited by the legislative grants to said city to operate or license public ferries to and from the west bank of the river, (see *Conway v. Taylor's Ex'r*, 1 Black, 603, 632;) that the complainant may exercise the right aforesaid by chartering or hiring boats and barges to perform the said service substantially as in the contract attached to complainant's bill; and that for so exercising the rights under its charter the complainant cannot be lawfully interfered with by the defendants, either by denying proper landing or by arresting and harassing employes.

We find, on the showing made, that within the last two years the complainant and the defendants, the city of Baton Rouge and Gebelin & Philips, the latter being the lessees of the public ferry, entered into a contract to the substantial effect that, in consideration of a certain specified landing and wharf privileges granted by the city to complainant, the complainant would operate no transfer-boat for the transfer of passengers, but would transfer them by the public ferry. It is the impairment of this contract which gives rise to this suit. The complainant, alleging that the facilities furnished by the public ferry are of "very inadequate capacity and ineffective power, * * * and which do not and cannot furnish the necessary accommodations" for complainant's largely increasing business, and that the public ferry-boat does not ply from and to

landings suitable to accommodate complainant's business, and does not cross between sunset and sunrise to meet complainant's passenger travel, has chartered boats to do all its transfer service. The defendants Gebelin & Philips allege their ability to perform all needful service, their willingness to run their boat at such times, and from and to such landings as will fully meet the wants of complainant's passenger traffic, and that they have not been put in default; and this last is conceded. The injunction asked for is to restrain the city of Baton Rouge and Gebelin & Philips from arresting and harassing complainant's employes in carrying on complainant's legitimate business. As the issues between the parties are presented to us, it seems that the controversy is one for the determination of a court of law in regular course, and that, while the defendants ought not to resort to police proceedings to enforce specific performance of the contract, the complainant ought not to have protection from a court of equity against the legitimate demands arising out of its failure to comply with its contract. On the case as made the injunction pending the suit is refused, and the restraining order heretofore issued is dissolved.

BILLINGS, J., concurs.

HINTRAGER v. NIGHTINGALE *et al.*

(Circuit Court, N. D. Iowa, E. D. December 18, 1888.)

1. TAXATION—TAX TITLE—ACTION TO QUIET—LIMITATIONS—COMMENCEMENT OF ACTION.

Code Iowa, § 2599, provides that actions in a court of record shall be commenced by serving defendant with a notice. Title 17 of the Code, which is: "Of the limitation of actions," chapter 2, enacts the time within which actions of the various classes named, not including actions in regard to land, based on tax titles, may be brought; and section 2592, a part of the chapter, provides that the delivery of the notice to the sheriff with intent that it shall be served immediately, or the actual service by another person, is the commencement of the action. *Held*, that the latter provision as to what constitutes the commencement of an action applies only to those named in that chapter, and that the former provision, being the general rule, determines what shall be the commencement of an action on a tax title to quiet adverse claims.

2. SAME.

Where a purchaser at a tax sale brings an action to quiet title, under a city treasurer's deed, and afterwards amends the petition, setting up a deed from the county treasurer, the action as to the land in the latter deed is not deemed to have been commenced till such amendment, within the meaning of Code Iowa, § 902, requiring actions for the recovery of land sold for taxes to be brought within five years from execution and recording of the treasurer's deed.

3. SAME.

Under Code Iowa, § 897, providing that when a county treasurer's deed on a sale for taxes is executed and recorded the title shall vest, an action to quiet title by a purchaser who has neglected to complete his title by having his deed recorded, for the period of limitation during which defendants have been in possession, is barred.