

THE CURTIS PARK.*

(District Court, E. D. New York. February 19, 1884.)

COLLISION ON ERIE CANAL—RULE OF THE ROAD—BURDEN OF PROOF.

A loaded boat, the B., bound east on the Erie canal, towed by a cable-boat, met a light boat, the C. P., while turning a bend where the cable-boat must keep close to the inside of the turn, which was the tow-path side. The C. P. passed the cable-boat on the outside, and then, in accordance with the rule of the canal, attempted to regain the tow-path side by passing between the cable-boat and the B., over the tow-line of the cable-boat, and in so doing was struck by the B. In an action against the C. P. for the damage done the B., *held*, that the C. P., having taken a course in accordance with the rule of the canal, and the B. having done otherwise, the burden was on the B. to excuse her omission to conform to the rule; and that, as the B. failed to do so upon the evidence, her libel must be dismissed.

In Admiralty.

J. M. Mulchahey, for libellant.

E. G. Davis, for claimant.

BENEDICT, J. This is an action to recover for damages done to the canal-boat E. M. Blazier in a collision with the canal-boat Curtis Park, on the Erie canal, at Middleport bend. The Blazier was a loaded boat, bound east, and being towed by a cable-boat, No. 8. The Curtis Park was a light boat, bound west. The Curtis Park met the cable-boat and her tow just as the cable-boat was turning the bend, and when, owing to the position of the cable, the cable-boat must necessarily keep close to the inside side of the turn, which was there the tow-path side of the canal. Accordingly, the Curtis Park passed the cable-boat on the outside, or heel-path side. It was then her right, according to the rule of the canal, to regain the tow-path side by passing between the cable-boat and the Blazier, thus going over the tow-line of the cable-boat, the same being slackened for that purpose. This course was taken by the Curtis Park; but before she reached the tow-path she was struck by the Blazier. The collision would not have occurred had not the Blazier, instead of keeping towards the berme bank, hauled in towards the tow-path. Her excuse for doing this is that she supposed the Curtis Park would go outside of her, as she had gone outside of the cable-boat. The Curtis Park having taken a course in accordance with the rule of the canal, and the Blazier having done otherwise, the burden is upon the libellant to excuse her omission to conform to the rule.

The assertion in behalf of the Blazier is that the Curtis Park at first hauled to the berme bank, with the intention of passing on the outside, thereby leading the Blazier to haul towards the tow-path side, and afterwards abandoned this intention by direction of the master of the Curtis Park, who came on deck as the boats were passing and directed his steersman to take the tow-path when it was too late to do

* Reported by R. D. & Wyllys Benedict, of the New York bar.

so without collision. The evidence has failed to satisfy me of the truth of this assertion. There is very positive testimony from several witnesses that the Curtis Park at no time took the berme bank, but passed along the cable-boat close by; and the fact stated by the libellant's witnesses to show that the Curtis Park would be likely to take the berme bank, namely, that a strong wind was blowing off the tow-path, rendering it impossible for a light boat to regain the tow-path in the manner attempted by the Curtis Park, is contradicted by the libel itself, where it is expressly stated that the wind was light.

Upon the evidence as it stands, I am unable to find that the libellant's boat has proved her excuse for being where she was when the collision occurred, she then being inside of the middle of the canal, instead of nearer to the berme bank, and accordingly I must dismiss the libel, with costs.

THE DAUNTLESS.

(District Court, E. D. New York. December 31, 1883.)

PERMISSION TO EXTRACT GUANO—RIGHTS THEREBY ACQUIRED.

One J. obtained permission from the government of Brazil to extract a cargo of guano or mineral phosphate from R. island, and sent out a vessel to get it, but the voyage was broken up. W., learning of this, went to the island with his vessel and obtained the cargo by virtue of a subsequent permission obtained by W. himself. J. filed a libel against W.'s vessel and cargo, claiming as owner to recover the cargo obtained by W. *Held*, that J.'s right of property could only attach to what phosphate he might acquire possession of by extracting it and loading it upon his vessel under the permit issued to him, and that, in the absence of proof of false representations on W.'s part in obtaining his permission that he was acting as J.'s agent, the libel must be dismissed.

In Admiralty.

Dan. Marvin, for libellant.

Goodrich, Dedy & Platt, for claimant.

BENEDICT, J. It is conceded on the part of the libellant that there can be no recovery in this action unless the libellant's ownership of the cargo proceeded against has been proved. This has not been done. It has been shown that the libellant, one Jewett, had obtained from the government of Brazil permission to extract, for his own use, from Rat island, a cargo of guano or mineral phosphate. He sent out the brig *Katie* to obtain such cargo, but she was condemned in Rio Grande do Sul, and her voyage broken up. At the time of the condemnation of the *Katie*, Williams, the claimant in this action, learned of the destination of the *Katie* and the object of her voyage, and, acting upon such information, proceeded to Rat island with his vessel, the *Dauntless*, and there obtained the cargo now proceeded

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