THE INTREPID.[1]

WRIGHT *v.* THE INTREPID.

(*District Court, E. D. New York.* March 28, 1891.)

COLLISION—ATTEMPT TO PASS VESSEL AHEAD—NEGLIGENT SHEER.

The steam-boat M., going at night with a strong flood-tide up the East river, overtook two steam-boats, also going up stream. When in a narrow part of the river, the steam-boats ahead gave two whistles, and stopped to await the passing of the tug I., which, with a car-float along-side, was coming down stream near the Brooklyn shore. The M., without stopping, ported, to pass around the boats ahead, and discovered the tug and car-float so near that it was impossible to escape collision. *Held*, that the cause of the collision was the improper sheer of the M., under the stern of the boats ahead.

In Admiralty.

The steam-boat Morrisiana, going at night with a strong flood-tide up the East river, overtook two steam-boats, also going up stream. When about off Ninth or Tenth streets, New York, in a narrow part of the river, the steam-boats ahead gave two whistles, and stopped to await the passing of the tug Intrepid, which, with a car-float along-side, was coming down stream near the Brooklyn shore. The Morrisiana, without stopping, ported, to pass around the boats ahead, and discovered the tug and car-float so near that it was impossible to escape collision.

Wing, Shoudy & Putnam, for claimant.

George A. Black, for libelant.

BENEDICT, J. In my opinion the cause of the collision which gave rise to this action was a sudden sheer of the Morrisiana, improperly taken under the stern of the ferry-boat ahead of her, and when the Intrepid was so near that it was impossible thereafter to escape collision. An effort has been made to locate the place of this sheer at a great distance from the ferry-boat, but the effort has failed. It is impossible for the Morrisiana, in my opinion, to escape the effect of the sworn statement of Capt. Geer, her master, made the next day after the collision, wherein he says: "When within about a hundred feet of the stern of the ferry-boat, we ported our helm. As we passed the stern of the ferry-boat, we discovered the tow."

The libel must be dismissed, with costs.

[1] Reported by Edward G. Benedict, Esq., of the New York bar.

BROOKS *et al. v.* FRY *et al.*

(*Circuit Court, W. D. Arkansas.* February Term, 1891.)

FOLLOWING STATE PRACTICE—ATTACHMENT—LEVIES.

A circuit court of the United States, by reason of the existence of section 915 of the Revised Statutes of the United States, administers the attachment law of the state where such court is held; and when the statute of the state provides for successive levies, as well as for a method of settling all priorities of the several liens arising from successive levies, the marshal of the United States court may make a levy of a writ of attachment *sub modo*, and such levy will be sufficient, when the property is already in the custody of the law by virtue of a prior levy upon a writ issued from a state court, to enable a plaintiff to assert his lien if the attachment is sustained, as it may effect the property remaining after the satisfaction of the first attachment.

(*Syllabus by the Court.*)

At Law.

This is a suit brought by plaintiffs by attachment against the defendants. The writ of attachment was duly issued, and the same was by the marshal levied upon the property of the defendants, but not taken into actual possession by the marshal for the reason that the property was in the actual possession of the sheriff of Crawford county by virtue of prior writs of attachment issued by the circuit court of the state. These facts are recited in the levy of the marshal. The defendants file their motion to quash the levy made, or attempted to be made, in obedience to the writ of attachment issued in said cause, because it was no levy in law, for the reason that the property was already in the possession of the sheriff of Crawford county, and was therefore in custody of a court of competent jurisdiction, and not subject to the levy of the writ of attachment issued in this case by this court; that the marshal could not make a legal levy without taking actual possession of the property, and this he could not do because it was already in the custody of an officer of another court by virtue of a prior valid writ of attachment issued by that court.

Sandels & Hill, for plaintiffs.

Du Val & Coffey, for defendants.

PARKER, J. As a general rule, actual physical possession is necessary to constitute a valid seizure under a writ of *fieri facias* or a writ of attachment, unless there be garnishment proceedings; then service of interrogatories on the garnishee suffices. Section 915 of the Revised Statutes of the United States is as follows: "In common-law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies by attachment or other process against the property of the defendant which are now provided by the laws of the state in which such court is held for the courts thereof; and such circuit or district courts may from time to time, by general rules, adopt such state laws as may be enforced in the states where they are held, in relation to attachment and other process: provided, that similar preliminary affidavits or proofs and similar security as required by such state laws shall be first fur-