

GUTHRIE v. CITY OF PHILADELPHIA.

(District Court, E. D. Pennsylvania. April 21, 1896.)

1. COLLISION—STEAMER WITH MOORED VESSEL.

The fact that a vessel propelled by steam runs into a schooner properly moored at a dock is sufficient proof of fault on her part.

2. SAME—DAMAGE BY CITY ICE BOAT.

The city of Philadelphia is liable for damage caused by a collision of its ice boat with a vessel moored at a dock in the state of Delaware, while the ice boat is engaged in private service for the owners of such dock.

This was a libel by the master of the schooner Robert A. Snyder against the city of Philadelphia to recover damages caused to the schooner by a collision of the city ice boat with her.

Curtis Tilton, for libellant.

Leonard Finletten and John L. Kinsey, for respondent.

BUTLER, District Judge. On February 10, 1895, the schooner was moored in the Marcus Hook Oil Dock in the state of Delaware. At the instance of the owners of the dock the city ice boat undertook to break the ice within the dock, and in doing it ran into her, without excuse, and inflicted injury. Soon after the boat towed the schooner out and down the bay, charging \$107 for the service. For breaking the ice inside the dock the boat made no charge, but was entitled to compensation under the statute and the city ordinance relating to the subject. The libellant's charge of fault is sufficiently established by the fact that the ice boat, propelled by steam, ran into the schooner while moored. *The Granite State*, 3 Wall. 310; *The F. C. Latrobe*, 28 Fed. 377; *Engle v. Mayor*, 40 Fed. 51, note.

The only defense urged is, in substance, that the city was engaged through its agents, in discharging a public municipal duty, and consequently that it is not responsible for the negligence which caused the injury. The answer to this, in my judgment, is twofold, first that the city owed no municipal duty in Delaware, and second that it was engaged in a private service for the benefit of the owners of the dock, for which it was entitled to compensation. It is unimportant that it performed the service gratuitously. Besides the service was a necessary incident to that rendered the schooner for which the city charged compensation. The subject does not call for discussion; it is sufficient to cite the following authorities: *Western Saving-Fund Soc. v. City of Philadelphia*, 31 Pa. St. 175; *City Council v. Hudson (Ga.)* 15 S. E. 678; *The F. C. Latrobe*, 28 Fed. 378; *The Giovanni*, 59 Fed. 304, and 10 C. C. A. 552, 62 Fed. 619; *Sherlock v. Alling*, 93 U. S. 108.

The boat was liable to seizure on the lien arising from her fault, and the owner's liability in admiralty is a necessary consequence.

CASTO v. PHISTER et al.

(Circuit Court of Appeals, Seventh Circuit. May 4, 1896.)

No. 288.

CANCELLATION OF DEEDS—SUFFICIENCY OF EVIDENCE.

Appeal from the Circuit Court of the United States for the Western District of Wisconsin.

This was a bill in equity by Elizabeth Casto against Anne M. Phister and John P. Phister, her husband, Matthew M. Gasser, and Richard Dawson, to cancel and annul two deeds conveying certain lands in Wisconsin. The circuit court dismissed the bill, and complainant has appealed.

A. L. Sanborn and Thos. M. Wood, for appellant.

W. C. Silverthorn and F. C. Ryan, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This bill was brought on the 20th day of December, 1890, to annul two deeds of conveyance of real estate situate near Superior City, in Douglas county, Wis., both purporting to have been made the 28th day of July, 1862, but executed, as indicated by the certificates of acknowledgment, on the 29th day of July, 1862, and on the 11th day of July, 1863, respectively. The same lands are described in both deeds, the purpose of the second having been to supply a defect in the certificate of acknowledgment of the execution of the first. Both were recorded in due time, and they purport and are certified to have been executed by Emily Cune, Franklin Casto and his wife Elizabeth Casto, who is the complainant in the bill, as grantors, to Anne M. Phister, wife of John P. Phister. Emily Cune and Franklin Casto were the surviving sister and brother, and sole heirs at law, of William T. Casto, of Maysville, Ky., who fell in a duel, and died intestate, on the 8th day of May, 1862, seised of the lands described in these deeds. Franklin Casto died in 1869, intestate, leaving the complainant his sole heir. The grounds alleged for relief are, in substance, that the complainant did not execute, authorize, or know of the execution of, either of the deeds in question; that Franklin Casto was a lunatic, and incapable of executing the deeds; that he was unduly influenced to part with the lands by Richard Dawson, who had a secret personal interest in the purchase, and who, by reason of being administrator of the estate of William T. Casto, and holding a power of attorney, executed by Emily Cune and Franklin Casto, authorizing him to sell a part of the lands described in the deeds, was in a position of trust and confidence, which he betrayed; and that the consideration recited in the deeds was less than the value of the lands, and was not paid. As an excuse for the long delay in bringing the action, it is alleged that the complainant was ignorant that William T. Casto ever owned the lands in question, or any land in Wisconsin; that she did not know of the execution of either of the deeds; and