

3. The answer admits that the libelants did the work, and that whatever contract there was was with them. They dealt with the agent of the owner under the name of C. & R. Poillon.

4. The marshal's costs, as taxed at \$100, and with the taxation affirmed by the district judge, were paid by the claimant, as the decree states. They are not embraced in the appeal.

The libelants are entitled to a decree to the same effect with that of the district court, with costs in this court.

THE GRATITUDE.¹

(District Court, E. D. New York. July 13, 1885.)

TUG AND TOW—STRANDING—NEGLIGENCE IN PROCEEDING IN FOG.

A tug was held liable for the stranding of a boat in its tow, caused by the negligence of the master in proceeding in a fog on a course based upon a mere guess of the pilot as to their position, and in not anchoring.

In Admiralty.

Carpenter & Mosher, for libelant.

Jas. K. Hill, Wing & Shoudy, for claimant.

BENEDICT, J. Under the circumstances disclosed by the evidence, the immediate cause of the stranding of the libelant's boat upon the Negro Head rocks inside of Branford reef, upon Long Island Sound, is the conclusion arrived at by the master, when waked by the pilot, that it was proper to proceed in the fog rather than to anchor. If the master had then anchored, instead of proceeding, no disaster would have followed. The master knew that the pilot had hauled up to east, and was proceeding upon the idea that he had passed Branford reef. He also knew, or was bound to know, that the pilot had hauled up without knowing the distance run, and had acted upon the belief that he had passed Branford reef, when he had no facts upon which to found such a belief. In hauling up to east the pilot had acted upon a mere guess, as the master knew. Between proceeding in the fog upon a course based upon a mere guess of the pilot, and anchoring, by which safety would have been made sure, the master chose the former. To make such an election under the circumstances was, in my opinion, negligence, and renders the tug liable for the injuries caused the tow by the stranding that ensued.

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

KOEHLER, Receiver, etc., v. BARIN, Register, and another.

(Circuit Court, D. Oregon. October 26, 1885.)

1. PUBLIC LANDS—JUDICIAL CONTROL OF OFFICIAL ACTION.

As a means of controlling the official action of public officers, in a matter affecting private rights, the writ of injunction is the correlative of the writ of *mandamus*; and whenever in such case the latter will issue to compel affirmative action, the former may issue to restrain the same; but neither can be used to control or direct official judgment or discretion.

2. SAME—INJUNCTION, WHEN WILL NOT ISSUE TO RESTRAIN REGISTER AND RECEIVER.

An injunction will not issue to restrain the register and receiver from receiving and allowing applications to enter certain lands within their district, although it may appear, in the judgment of the court, that the same belong to the plaintiff by legislative grant, so long as there is room for difference of opinion on the question, or its determination involves the exercise of official judgment.

Suit for Injunction.

E. C. Bronaugh, for plaintiff.

James F. Watson and *James K. Kelly*, for defendants.

DEADY, J. This suit is brought by the receiver of the Oregon & California Railway Company to have the defendants, the register and receiver of the land-office at Oregon City, perpetually enjoined from receiving any application to purchase or enter any tract or subdivision of a certain portion of the public land alleged to have been granted to the Oregon Central Railway Company by the act of May 4, 1870, or otherwise disposing of the same as land of the United States. The case was heard on a demurrer to the bill for want of equity and for parties defendant.

By the act of May 4, 1870, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the state of Oregon," it was provided as follows:

"Section 1. For the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river, near McMinnville, in the state of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns * * * each alternate section of the public lands, not mineral, except coal or iron lands, designated by odd numbers, nearest to said road, to the amount of ten alternate sections per mile on each side thereof, not otherwise disposed of or reserved by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the secretary of the interior on either side of any part of said road, nearest to and not more than twenty-five miles from the track of said road, to make up said deficiency.

"Sec. 2. The commissioner of the general land-office shall cause the lands along the line of said railroad to be surveyed with all convenient speed. And whenever and as often as said company shall file with the secretary of the interior maps of the survey and location of twenty or more miles of said road,