

## THE PONCA

*District Court, E. D. New York.* November 23, 1883.

LIABILITY OF STEAMER FOR DAMAGE TO CANAL-  
BOAT BY STEAMER'S CAREENING

Where a canal-boat, employed in coaling a steamer, was, when nearly discharged, hauled by the steamer to a position where she lay wedged in between the steamer and other boats in the slip, and when the tide fell the steamer took bottom and careened over and crushed the canal-boat, which could not extricate herself, and the liability of the steamer to careen when the tide fell was known to those in charge of the steamer, *held*, that the obligation to remove the canal-boat from the dangerous position before the tide fell attached to those in charge of the steamer, and, that obligation not having been discharged, the steamer was liable for the damage that resulted.

In Admiralty.

*E. D. McCarthy*, for libelant.

*Ullo & Davison*, (*Chas. E. Le Barbier*,) for claimant.

BENEDICT, J. In this case the following facts appear: The canal-boat Orville Dean was employed in coaling the steam-ship Ponca. The latter vessel was at the time lying in a slip, and the canal-boat alongside. When the canal-boat was nearly discharged, she was hauled by the steamer to a position where she lay wedged in between the side of the steamer and other boats in the slip, and there she was left until the tide fell. When the tide fell, the steamer took the bottom and careened over towards and upon the canal-boat, whereby the canal-boat was crushed between the boat on the outside of her and the steamer. In the condition of the slip it was not possible for the canal-boat to extricate herself from the position where she had been placed by those in charge of the steamer. The liability of the steamer to careen over when the tide fell, was known to those in charge of the steamer. Upon these facts the steam-ship must be held responsible for the

injury done to the canal-boat. When those in charge Of the steamer, for their own convenience, hauled the canal-boat into a position where she was in danger of being injured by the careening of the steam-ship when the tide fell, and from which the canal-boat could not extricate herself, the obligation to remove her from that position before the tide fell attached to those in charge of the steam-ship. That obligation not having been discharged, the steam-ship is liable for the damages that resulted.

Let a decree be entered in favor of the libelants, with an order of reference to ascertain the amount.

<sup>1</sup> Reported by R. D. & Wyllys Benedict, of the New York bar.

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