

THE MAGGIE ELLEN.<sup>1</sup>*(District Court, E. D. New York. December 3, 1883.)***SALVAGE—COMPENSATION—COSTS TO NEITHER PARTY.**

A schooner grounded on Brigantine shoal, a dangerous shoal in the Atlantic ocean, in fair weather, with the wind light, the sea smooth, and the tide young flood. The bottom was smooth, she did not pound, nor leak, nor suffer any damage, nor set a distress signal. The value of the schooner was \$4,000. A tug, which came by, offered to tow her off for \$500 and her master offered to pay \$200, but neither offer was accepted, and the tug towed her off the shoal to an anchorage three miles distant, being employed some three-quarters of an hour, on the understanding that underwriters should fix the amount of compensation. On their refusal to do so, this suit was brought. The owners of the tug claimed \$1,000. *Held*, that there was no room to deny that this was a salvage service; that the service was worth \$200, and the offer of that sum should have been accepted. Costs were not given the libellant, because the efforts of the owners of the schooner to agree on an amount before the suit were not met in a proper spirit, and there was some reason to suppose there was the intention to compel payment of more than was just by pressure of legal proceedings. Costs were not given the claimant, as no amount was tendered, and the ground was taken that the service was towage, not salvage.

**In Admiralty.***Owen & Gray*, for libellant.*Beebe & Wilcox*, for claimant.

BENEDICT, J. This action is to recover salvage for services rendered in towing the schooner Maggie Ellen off the Brigantine shoal. Brigantine shoal is a dangerous shoal in the Atlantic ocean, just above Absecom. On the afternoon of April 23, 1882, between 5 and 6 o'clock P. M., the schooner Maggie Ellen, laden with ice and bound to the southward, grounded upon this shoal. The wind at the time was light from the north-west, and the weather fair. The sea was smooth and the tide was young flood. The vessel herself was sound and staunch. The bottom was smooth; she did not pound; made no water, and suffered no damage whatever by reason of the grounding. No signal of distress was set. As the wind and sea were, and continued to be until about midnight, there is no reason to doubt that the schooner would have got off the shoal by means of her windlass and kedge. She was within reach of assistance from a life-saving station, and a life-saving crew was on the way to her relief when the tug Argus, also bound to the south, came within hail and tendered her aid for a compensation of \$500. The master of the schooner offered \$200, and after the master of the schooner had, by sounding, shown the master of the tug that he could approach the schooner without danger, the tug took hold of the schooner, upon the understanding that the amount of her compensation should be left to the underwriters at Philadelphia. Upon this understanding the tug towed the schooner off the shoal, and took her to a place of anchorage some

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

three miles distant, being employed some three-quarters of an hour in performing the service. The underwriters refused to determine the amount, and, the parties being unable to agree, this suit is the result.

There is no room to deny that the service rendered was a salvage service. A vessel aground on Brigantine shoals, in the Atlantic ocean, is always in peril, but not necessarily in immediate peril. The service rendered by the tug was not a towage service. No tug could be expected to render a service of the character in question for ordinary towage compensation. The service was salvage, and the only question upon which there can be dispute is as to what will be a proper salvage compensation therefor. The difference between the parties is wide. One thousand dollars was demanded by the tug after the service had been performed. Two hundred dollars was offered by the schooner at the time of the service. On the trial \$750 was the least sum suggested in behalf of the libelant; \$100 the greatest suggested in behalf of the claimant. Upon considering all the circumstances, and considering that the value of the schooner does not exceed \$4,000, I am of the opinion that the offer of \$200, made by the master of the schooner at the time the service was rendered, was a liberal one, and should have been accepted. That sum is in my opinion the proper compensation to be awarded now. I give no costs to the libelant, because I consider that the endeavors of the owners of the schooner to agree upon an amount, made before suit brought, were not met in a proper spirit, and there is some reason to suppose that there was the intention to compel payment of a larger amount than was just by the pressure of legal proceedings. I cannot give the claimant his costs, for no tender of any amount whatever was made in the answer, nor was any sum paid into court. On the contrary, the ground was taken in the answer that the service rendered was towage, not salvage.

Let a decree be entered in favor of the libelants for the sum of \$200, without costs.

## 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 libellant.

*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 along-side. 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 libellants, with an order of reference to ascertain the amount.

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