

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.

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

SCOBEL v. GILES.¹

(District Court, E. D. New York. September 21, 1883.)

INTERROGATORIES — TIME FOR PROPOUNDING — ADMIRALTY RULES 23 AND 32 —
RULES 99 AND 100 OF THE SOUTHERN DISTRICT OF NEW YORK.

In the eastern district of New York, interrogatories to a party are not permitted in admiralty unless propounded in accordance with the admiralty rules of the supreme court. Rules 99 and 100 of the southern district of New York have never been adopted by this court.

In Admiralty.

The libelant propounded certain interrogatories to be answered by the claimant. These interrogatories were not attached to the libel, and were not propounded until after the claimant had filed his answer.

H. D. Hotchkiss, for libelant.

Benedict, Taft & Benedict, for claimant.

BENEDICT, J. The time for propounding interrogatories on the part of a libelant is fixed by the twenty-third admiralty rule of the United States supreme court, according to which rule interrogatories are required to be put at the close or conclusion of the libel. See, also, rule 27. So, interrogatories propounded by the claimant are by the thirty-second rule required to be made at the close of the answer. The admiralty rules promulgated by the United States supreme court supersede any rule of a district court fixing a different time for propounding interrogatories; and for this reason the 99th and 100th rules of the district court of the southern district of New York, adopted many years prior to the promulgation of the admiralty rules by the United States supreme court, have never been adopted as rules of this court. In this court, interrogatories are not permitted unless propounded in accordance with the admiralty rules of the United States supreme court.

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