

width,) and that it is never departed from by vessels of the class of the steamer in question. It is proved that the canal is not adapted to vessels drawing more than nine feet of water; that the *Whitby* had a cargo on board worth \$15,000, and was drawing nine feet of water, and, therefore, could not safely leave the deep channel, (whatever may have been its width); and it is admitted that the barge was lying right across the channel. The main question in the case is as to whether the *Whitby* could have stopped, so as to avoid a collision, or without danger have passed to the left, that is, to the rear of the wood barge; because, however much the persons in charge of the barge may have been in the wrong, if she was run down wilfully by the *Whitby*, the owners of that vessel are clearly liable. Before, however, coming to the consideration of these questions, it is proper to see how it was the barge came to be lying across the channel.

It appears that when the barge had got four or five arpents above the entrance of the canal the wind fell, and, then, that the barge drifted down with the current to the part of the channel where the collision occurred. So helpless were the people in the barge, that although they were right across the channel, and although they saw the *Whitby* a mile off, yet they could not get out of her way.

When asked to explain this, and to account for not having used oars or poles, Ferdinand Lalonde, one of the sailors on board the barge, says, "*Nous avions des rames mais pas des taulets (rowlocks) pour les mettre. C'est ce qui fait que nous nous sommes servis de perches, mais elles étaient trop courtes; nous ne pouvions atteindre le fond; c'est le courant qui nous a viré et mis de travers.*" F. A. Johnson proves that poles could, if of proper length, have been used with effect. And the captain of the barge says, "*Nous ne nous sommes pas servis des rames parceque nous n'avions pas de rowlocks. On était assez occupé par la voile qui nous aidait plus que les rames.*"

As they were lying motionless, I do not understand how the captain can think the sail was helping them. To me it seems that sails without wind, oars without rowlocks, and poles so short that they could not touch the bottom, were all equally useless; and

that, under these circumstances, the vessel should be found lying helpless across the channel, was not surprising. There was one other way by which this might have been avoided, namely, by throwing out the anchor when the barge was drifting down with the current; which necessarily would have brought the bow or head of the vessel to the current, and in this way she would certainly have blocked up a smaller portion of the channel than she did when lying across it.

The captain when asked why he did not throw out his anchor, answered:—" *Parce qu'on ne peut pas toujours rester à l'ancre; car du moment qu'on a vu le steamboat Whitby il était trop tard pour jeter l'ancre. On était à la place où il nous a frappé. Le steamboat était à un mille de distance quand on l'a vu.*"

But we know that the barge had drifted down four or five arpents, and it is plain that the current, if sufficient to carry the vessel down, would have been sufficient, if the anchor had been thrown out, to turn her bow to the current. And here it may be observed, that the persons in charge of the barge were very inexperienced. It was the first season for the captain as such, and he, when examined, was only 21 years of age; and the two *navigateurs*, as they term themselves, who were assisting him, were, when examined as witnesses, of the ages respectively of 19 and 16. The inexperience of the crew on board the barge may have been one of the causes which prevented them from taking any efficient means for her preservation; but, be this as it may, I think it beyond doubt, that the situation of the barge, at the time of the collision, was altogether inexcusable.

Still we have to enquire, could the steamer have stopped in time to avoid the collision, or could she, consistently with prudence, have passed to the rear of the barge, because if either of these courses was open to her, the owners must pay for the damages to the barge.

I have gone over the evidence with much care, and am satisfied, from the position in which the barge lay, with reference to the entrance of the canal, and the current there, that it was not possible to stop the steamer in time to avoid the collision.