

The evidence as to the other point—the possibility of the steamer going to the rear of the barge—is conflicting; but even if we take as our guide the opinions of the masters of vessels and pilots, (and this is the most favourable view for the respondent,) I think the weight of evidence is decidedly in favour of the appellant. In addition to mere opinions the appellants have proved some facts, which appear to me of great importance, as showing that the steamer could not prudently have deviated from her course to avoid the collision. There was doubtless a wide expanse of water to the rear of the barge, but the question is, was it of sufficient depth for vessels such as the *Whitby* drawing nine feet of water? Thos. Johnson, who says he has been navigating the rivers and lakes for the last fifteen years, and who has the command of a propeller of about the same size as the *Whitby*, says:—"I struck the bottom with my vessel at the entrance of the canal, not far from the lighthouse, but a little below it, last fall, (he thinks in November,) by keeping a little to the left, with a draft of 8 ft. 9 in." Now, according to the witnesses for the respondent, the steamer ought to have done that which caused Johnson's boat to strike; and yet he says he was fortunate in not having a hole knocked into the bottom of the boat.

Charles Crawley, who has been navigating the rivers and lakes for the last 21 years, and has had command of almost all kinds of vessels used in the navigation, says:—"I have struck there several times myself by keeping a little too much to the left; on one occasion, I remember, with the *Brantford*, drawing about 8½ ft. of water. On another occasion, with a smaller boat of the same draft of water, that is, the *Banshee* propeller. John Hanna says:—"The first trip I made, about 8 or 9 years ago, coming down loaded, drawing about 9 ft. 3 in., we struck very hard opposite the old depot." The evidence of Thomas F. Dutton, an experienced steamboat master, is to the same effect, and appears to me to be well deserving of attention. He says:—"I do not believe that a downward vessel like the *Whitby*, could avoid such a barge, without damaging herself; that is, if she attempted to go to the left there, she would get into shoal

water, and get among boulders. I know that there are boulders there to the left and shoal water too. I once had a steamer, 45 feet in width over all, attached to the pier, some distance below the lighthouse, probably 300 feet. I know that I was obliged to detach my steamer and go on, to permit a loaded propeller to pass down, as there was no room for her outside of my boat, without getting into the shallow water and among boulders; and I consider it equally dangerous all the way up to the buoy. It is particularly dangerous for a propeller to attempt to turn to one side in descending, because when she takes a sheer her rudder loses all command over her. You cannot bring her head back immediately to the deep channel. She goes ahead, and in such a situation would run among the boulders and into shoal water. I have found propellers aground myself, and helped them to get off; but more than 300 feet below the lighthouse I have known the mailboat "*Banshee*," when loaded, but not drawing more than seven feet of water, get aground exactly abreast of the lighthouse, and half way between it and the old Lachine depot."

The evidence of these witnesses is confirmed by that of Mr. Alexander Bisset, who has been superintendent of the Lachine canal for the last 19 years: "The downward vessel has the right of way, and should keep to the right. It is the business of upward bound vessels, particularly when unladen, to avoid her, by also keeping to the right. The position of the vessel, marked barge on said plan, is one which it would be against all sound reason for an upward bound vessel to occupy, and if it were 95 feet long, it would be impossible for a downward heavily laden steamer to avoid her, without running great risk, by turning to the left out of her proper channel. This risk would seem to me to be very great; the chances are, that by so going to the left, such a steamer would come into contact with boulders and shoals, and be seriously injured. In case she were further down, it would still be dangerous, in fact equally dangerous, unless she was far enough down to enable the steamer to stop from reaching her—that is, if she kept a like position in the channel."

Our attention was drawn to the case of