

Case No. 4,404.

ELLIS V. THE KATY WISH.

[3 Hughes, 589.]¹

District Court, E. D. Virginia.

Oct. 3, 1879.

COLLISION IN FOG—BETWEEN STEAM VESSEL AND TUG WITH
TOW—INEVITABLE ACCIDENT—SPEED—FAULT.

Where a steamtug running free with the current and tide, down a river in a deep channel two hundred and fifty yards wide, at the rate of eight miles an hour, in a fog, fails, within a distance of thirty to sixty yards, to avoid collision with another tug, having six vessels in tow, coming up the stream, at the rate of two miles an hour: *Held*, that the tug which was running free was at fault in moving with such speed and such want of caution as to have failed to clear the approaching vessels, and that the plea of inevitable accident was inadmissible.

[Cited in *The Anne E. Valentine*, 22 Fed. 623.]

In admiralty. Libel for damages by a collision which happened in the Potomac river, on the 30th of April, 1879, in the middle of the channel above Hatton's point, abreast of Tenth landing, on the line of latitude 38° 44'. (See sheet No. 4, United States Coast Survey, chart of Potomac river.) The steam-tug *Kate* was steaming up the Potomac river on the morning of April 30th, 1879, having six vessels in tow, four of them upon a tow line, and two of them lashed upon her bows; the schooner *Martha* "Washington upon her port bow, and the schooner *Lynnhaven* upon her starboard. The tide was in ebb and going out at the rate of about three miles an hour. The tug was making about four and a half or five miles through the water, or about two miles or less over the ground. She was in or near the middle of the channel, which is two hundred and fifty to three hundred yards wide and upwards of thirty feet deep. The channel from Hatton's point to Alexandria is nearly" straight. There was a thick fog; but the tops of trees could be seen upon the bank, the light at Alexandria was distinct, and large objects were visible at a distance of forty to sixty yards. The tug sounded her fog-whistle diligently as she proceeded. There were proper lights upon the *Kate*, but not upon the vessels in tow. About five o'clock in the morning, when she was abreast of Tenth landing, she heard the fog-signal of a vessel meeting her. She blew one long whistle as a signal to pass to the right, and heard no answering signal. She ported her helm and slowed her engine, which changed her course from due N. to N. by E. She very soon saw an approaching steamtug (which proved to be the *Katy Wise*), at a distance not less than thirty yards off. (The testimony varied between thirty and sixty yards.) This vessel did not seem to port her helm but came on in the contrary direction, and soon ran into the port bow of the schooner *Martha Washington*, cutting into and disabling her, so that she had to be supported from sinking and tugged to the flats of Georgetown, where she now lies abandoned and nearly or quite valueless. The libel is brought by Ellis, the owner and master of the *Martha Washington*, for the damaged thus occasioned. As to the *Katy Wise*, the testimony of her master was, that

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she was coming down the channel free, moving over the ground at the speed of eight or nine miles with the tide; that she blew fog-signals as required by the regulations; that her course was S. by E.; that when he first heard the fog-signal of the Kate, that vessel was on his starboard bow; that the Katy Wise ported her helm, to pass to the right, and at the same time slowed down and reversed her engine; that the manoeuvre proved ineffectual; that the Martha Washington ran into her; and that the collision was the result of inevitable accident. There was conflict of testimony as to when the Katy Wise reversed her engine, some of the witnesses saying that it was just after the collision, but the master, Graham, stating positively that it was before that event.

S. F. Beach and J. M. Johnson, for libellant.

G. A. Mushbach, for claimant.

HUGHES, District Judge. This collision happened in a broad, deep, straight channel, much frequented, accurately surveyed and charted, well known, and within a few miles of the ports of Alexandria, Washington city, and Georgetown. It occurred in broad daylight, an hour after daybreak. There was a thick fog, but not a very dense one. Otherwise there was no vis major, and the collision ought not to have happened. If this collision was inevitable, then a total interdict would have to be put upon the navigation of the great river Potomac during every one of the frequent fogs that come over it. Undoubtedly the collision was not through inevitable accident; it occurred through fault; and the question is, where was the fault?

Much was said in the evidence and the argument about the want of regulation lights on the Martha Washington and the other vessels in tow of the Kate. But the libel, the answer, and the testimony concur in stating that the collision happened at five o'clock in the morning, and on the 30th of April. The almanac shows that this was just three minutes before sunrise, and was consequently nearly an hour after daylight. As the regulations do not require lights to be kept up in daylight, I dismiss that subject from consideration.

My own conclusion concurs with the statement of Captain Graham, master of the Katy Wise, who was at the wheel at the time, as to the manner in which the collision occurred. The Katy Wise was coming down the river with the tide at the rate of eight

miles an hour. On hearing the Kate's fog signal, or certainly on coming in sight of tier, which was from thirty to sixty yards off, he ported his helm in compliance with the eighteenth (American) rule of navigation. But he did not content himself with that manoeuvre, which would, in a distance of thirty to sixty yards, have certainly turned his prow to the right, and cleared the approaching vessels; the momentum of the Katy Wise and the propelling force of the engine giving effect to the movement of the rudder. But he did more. He did just what paralyzed the action of the rudder. He stopped his engine; indeed, his own testimony is that he reversed it. This additional action neutralized that designed to be secured by porting his helm; and the tug losing its impulsion forward, could obtain no help from the rudder to change its course; while the rudder, caught by the tide, bore the prow of the vessel to the left instead of the right, and helped to insure, if it did not cause, the collision which ensued. This is Captain Graham's own explanation of the manner in which the collision occurred. If this case depended upon rule 18, the Katy Wise was in fault; not, indeed, by omitting to port her helm as required, but in doing what was not required by that rule, and what defeated its purpose; that is to say, in stopping and probably reversing the engine which the rule implies must be kept in action. I say if this case turned upon rule 18 the Katy Wise was in fault in doing what was not required by that rule, and what defeated its purpose. The rule not only requires that the helm shall be ported but ported effectually.

There is another rule of navigation which might be claimed to govern this case, if the fog was not dense, the accident having occurred in the daytime. Though the rule is not in the schedule of statutory regulations, it is nevertheless universally recognized by mariners, especially among navigators of rivers. Where a vessel moving down with the current meets a vessel coming up, the vessel moving slowest is less bound to precaution than the other. *Waring v. Clarke*, 5 How. [46 U. S.] 502; *The Chester*, 3 Hagg. Adm. 316. It is a universal rule that where a vessel incumbered with tows, or otherwise deprived of capacity to manoeuvre at will, is met by a vessel having no vessels in tow and moving free as to wind and tide, the vessel moving free must keep out of the way of the vessel incumbered and trammelled. Especially is this the case when a steamer is approaching a tug and her tows. *The Syracuse*, 9 Wall. [76 U. S.] 676, and cases there cited.

But while the two principles thus referred to undoubtedly bear upon the case at bar, I do not think that they entirely control it. I think that the public interests require that I should base my decision in the present case upon a principle of more direct importance to the navigation of the Potomac river, liable as that river is to the frequent recurrence of such fogs as that which prevailed on the morning of this collision. I hold that the Katy Wise was in fault in moving in such a manner, as to speed and incaution down the river on that morning, that she could not be diverted from colliding with a vessel which she was meeting, and which she saw, at a distance of thirty or sixty yards. This collision

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happened in consequence of the fact that the Katy Wise did not, within that distance of thirty to sixty yards, pass far enough to the right to avoid running into the Martha Washington. If she is to be excused for doing so on the score of inevitable accident, then it will be unsafe hereafter for vessels to move at all in the Potomac river during such fogs as that not extraordinary one which prevailed on the morning of the 30th of April last. A steamer moving in a fog is required by law to go at such a moderate rate of speed as will place her headway under such easy and ready command that she can be stopped within any distance within which other vessels may be seen by her lookout; and, going at a greater rate of speed than this, is a fault on her part. The Colorado [Case No. 3,028]; McCready v. Goldsmith, 18 How. [59 U. S.] 89; The Bridgeport [Case No. 1,861]; The Pennsylvania, [Id. 10,950]; and numerous other cases.

The event proved that the Katy Wise was moving without the caution required by law, and was in fault therein.

I will sign a decree of condemnation, and referring it to the commissioner to make report of the amount of damages sustained by the libellant.

¹ [Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.]