

## THE VENUS, ETC,

*District Court, S. D. New York.*

June 5, 1883.

## 1. COLLISION—ERIE CANAL—STOPPING.

In a collision on the Erie canal between the steam-boat V. and the canal-boat M., which was the third boat in a tow on a hawser from a steam-cable tug-boat, where the V. claimed to have rubbed along the port quarter of the boat ahead of the M. through want of room to avoid her, and the V.'s bows

were drawn by the suction of that boat under her stern, so as to throw her in the way of the M., *held*, upon the facts, that there was sufficient room for the V. to avoid the middle boat of the tow, and that she was also in fault for not stopping, if there was in fact any danger of collision with the tow.

## 2. SAME—MOTION OF STERN.

In heavily-laden boats, under a change of wheel, the motion of the stern in the direction of the wheel *held* slight and immaterial.

## 3. SAME—LIABILITY.

*Also held*, on the facts, that the rubbing of the V. against the middle boat was intentional, and that the V. was responsible for not taking due care to avoid the M, which followed.

In Admiralty.

*E. D. McCarthy*, for libelant.

*Beebe, Wilcox & Hobbs*, for respondent.

BROWN, J. This libel was filed to recover damages sustained by the canal-boat Midland, through a collision with the steam-boat Venus, on the Erie canal, in the forenoon of August 13, 1880. The Midland was the rear boat of three canal-barges in tow of the steam-cable tug-boat No. 11, attached to each other by hawsers from 120 to 150 feet long. The boats were each nearly 100 feet long, so that the whole fleet was about 800 feet in length. The place of collision was

about two miles west of Canestota, where the canal broadens on the heel-path side to about 130 feet in width, the tow-path being unchanged. The tug and tow were coming east; the Venus going west. The day was clear and still, and there were no other obstructions in the canal. The Venus was proceeding on the tow-path side, i. e., on the right, at about two or three miles per hour, but slackened, as is claimed, to one or two miles on reaching the tow; the tow was going about two to three miles per hour. The Venus passed the tug No. 11 with a clear space between of 10 to 12 feet, and the Independence, the first of the three boats in tow, by about the same clear space. The second boat in the tow, the Maine, is alleged to have been out of line, and on the tow-path side; so that in passing her the Venus rubbed along the Maine's port quarter. It is claimed by those in charge of the Venus that they shouted to the Maine to keep off; that the latter did port her helm; that the first effect of that was to throw her stern still further towards the tow-path, and in the way of the Venus; that after the Venus struck and rubbed against the Maine, the suction of the water in the canal was such as to prevent the Venus from getting her bows away from the Maine, and that as she rounded the latter's stern the suction was still greater, so as to bring the stem of the Venus heading somewhat across the line of the canal; and that although the Midland was from 120 to 150 794 feet astern, and in line with the tow, yet that the Venus could not come round in time to avoid the Midland, but that her stem struck the port bow of the Midland about three feet from her stem, from which blow the latter sank a few minutes afterwards.

When the Venus was seen coming upon the Midland the latter cast off her hawser and her helm was ported. She was in her proper place in line, was properly navigated, and no effort was spared on her

part to avoid the collision. She cannot, therefore, be held in fault.

The claimants insist that the general cause of the collision was the unmanageable nature of the cable navigation, the *Maine's* being out of line, and her unchecked speed; and that the immediate cause was the *Maine's* port helm throwing her port quarter against the *Venus*, and the suction then changing the course of the *Venus*, from which she could not in time recover. The obvious answer to these excuses of the *Venus* is, as it seems to me, that all these circumstances and causes, whatever they were, in fact, were in full view and well known to those aboard the *Venus* beforehand, and would, all have been avoided by her stopping in due time. If the *Maine* was so far out of line towards the tow-path as to leave insufficient, room for the *Venus* to pass, that could be clearly seen long before she was reached. If porting her helm tended to throw the stern of the *Maine* still further towards it he tow-path, that tendency was known to those on the *Venus* when they shouted to the *Maine* to keep off. I doubt, however, whether there was any appreciable effect of this kind in the case of this loaded tow-boat. A sudden and strong port helm on a small, light boat, having little draught of water and a rudder very large in proportion, would no doubt thus throw the stern at first to port, though this would speedily be offset by the progress of the boat; but in large, heavy boats, with a deep draught of water and comparatively small rudder, this effect of porting upon the stern is inappreciable, as daily observation shows.

All the evidence on the part of the libellant is to the effect that there was plenty of room and to spare for the *Venus* to pass the *Maine* without touching; her, and that there was room for two boats between the *Maine* and the tow-path. Several of their witnesses testify that the *Venus* took a sheer towards the *Maine*,

as though on purpose, after shouting to her to keep over or she would “rib her down.”

From the evidence of the respondents themselves, however, I am satisfied that there was no lack of room for the Venus to pass the

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Maine without touching her, had there been any *bona fide* endeavor to do so. Their own evidence is that when the Venus struck the Midland the starboard side of the Venus was 35 feet from the tow-path. The port side of the Midland was, therefore, 38 feet from the tow-path, and by their testimony she was in line with the Independence and No. 11, and had not, when struck, gone any to starboard. The width of the canal-boats was about 16 feet; that of the Venus about the same. The respondent's witnesses do not claim, and there is no endeavor to show, that the Maine was at most more than 8 or 10 feet out of line towards the tow-path. If she were 10 feet out of line, the port side of the Maine would have been 28 feet from the tow-path, and there would have still remained this 28 feet space for the Venus to pass; or, allowing 6 feet for the margin by the bank, there would have been a space of at least 6 feet to spare between the Maine and Venus in passing; and this agrees very nearly with Chadwick's estimates. It is claimed on the part of the Venus that she was hugging the tow-path, and that at one time her stern was in the mud of the bank. Precisely when this was is not fixed, nor do I place much reliance upon it. The fact that she passed the first two boats with a space of 10 or 12 feet clear between them, is very strong probable evidence that she was not at that time close in by the tow-path bank. She would naturally take the middle of the open space; and if she did so, so that there was 11 feet on each side of her, that would make the distance of No. 11 and the Independence from the tow-path 38 feet, which accords almost exactly with the position of the

Midland, as stated by the witnesses from the Venus, at the time of collision, when, as they say, she had not changed out of line.

No satisfactory reason is given why the Venus did not stop, if there was any difficulty apprehended in passing the Maine. It is said that on backing her propeller would carry her stern out into the canal; but this affords no reason why she should not have been brought to a stand-still (which would not have carried her stern round) before reaching the Maine, if the space to pass her was insufficient. That she did not stop, as required by the rule, is presumptive evidence that there was in fact sufficient space; and if the suction, as she was passing the Maine, was as great as claimed in throwing her bows to port, reversing the propeller was precisely the movement needed to counteract that effect.

Upon the whole evidence I am satisfied the Maine was somewhat out of line, but not enough to interfere with the Venus had she chosen to avoid her; that the Venus designed to inflict a little chastisement 796 upon the Maine for thus being out of line, and purposely ran against her port quarter; and in the excitement of this maneuver she did not take care by backing, as she might have done, to keep out of the way of the Midland; and that she must, therefore, be held answerable for the damage, with costs.

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