

THE MERCEDES.<sup>1</sup>  
THE ROSA.  
NEW YORK HARBOR TOW-BOAT CO. *v.* THE MERCEDES.  
MOORE *ET AL.* *v.* THE ROSA.

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

October 22, 1888.

COLLISION—BETWEEN STEAMERS—MEETING STEAMERS—MUTUAL FAULT.

The steam-boat M. was coming down the North river, near the piers on the New York shore, and intending to round the Battery into the East river. The steam-boat R. had come from the East river into the North river, and was about to round to her berth near Castle Garden. She was outside the M., and displayed to the latter her green light. The R. whistled once to the M., and,

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without waiting for a reply, ported her helm to round in to her berth. The M., seeing the green light of the R. shutting in, and not knowing the latter's intention of going in-shore, blew two whistles, and starboarded her wheel, supposing that the R. would straighten up river again. The vessels came together at nearly right angles. *Held*, that both were in fault for the collision,—the R. for not awaiting a reply from the M. before she ported her wheel; the M. for starboarding her wheel as soon as she saw that the R. was sheering to port,—and that the damages should be divided.

In Admiralty. Cross-litigations for damages.

Cross-litigations for damages by collision by the New York Harbor & Tow-Boat Company, owner of the steam-boat Rosa, and by Harrison B. Moore and the Eastern & Amboy Railroad Company, owners of the steam-tug Mercedes.

*Wilcox, Adams & Macklin*, for the Rosa.

*Goodrich, Dedy & Goodrich*, for the Mercedes.

BENEDICT, J. These are cross-actions, arising out of a collision which took place off Castle Garden on the 5th day of August, 1887, between the steam-tug Mercedes and the steam-boat Rosa, about half past 8 in the evening. The tide was flood. The Mercedes was proceeding from the Stonington pier down the North river, intending to pass around the Battery into the East river. The steam-boat Rosa had come from the East river, and was proceeding to her berth at the bulk-head off Castle Garden, intending to round-to so as to head down the river. As the two vessels approached each other, the evidence shows that the Rosa was on the outside of the Mercedes, displaying to the Mercedes her green light. According to the statement of the Mercedes, the green light of the Rosa was observed to be shutting in. Two whistles were at once blown from the Mercedes, and the helm of the Mercedes starboarded. According to the statement of the Rosa, she gave one whistle to the Mercedes, and, without waiting for any reply, ported her helm, intending, as before stated, to round-to and come ahead to the southward at the bulk-head off Castle Garden. When about 300 feet from Castle Garden the vessels came together, nearly at right angles; the Mercedes under a starboard helm, and the Rosa under a port helm. The speed of the respective vessels was about two miles an hour for the Rosa, and about eight miles an hour for the Mercedes. The cause of the collision was this: The Mercedes supposed that the Rosa was bound up the river, and had no thought that it was her intention to round-to at Castle Garden. The Mercedes accordingly presumed that the Rosa, on receiving two whistles from the Mercedes, would at once resume her course, and pass up the river outside of the Mercedes. On the other hand, the Rosa assumed that the Mercedes, on receiving her signal of one whistle, would port, and so pass outside of the Rosa.

I find both vessels in fault for acting upon presumptions unwarranted by the facts disclosed. It was the duty of the Rosa, when she blew her signal of one whistle, to await a reply from the Mercedes before porting her helm. Instead of so doing, assuming that the Mercedes would know that the Rosa intended to round-to at Castle Garden, and of course would

port, she ported. There was nothing to justify the Rosa in this presumption, and in acting upon it without waiting for a reply to her whistle she committed a fault which conduced to the collision. On the part of the Mercedes, a fault was committed in starboarding her wheel as soon as she saw that the Rosa was sheering to port; doing this on the presumption that the Rosa was bound up the river, and would therefore, of course, go outside on receiving a signal of two whistles. There was nothing to justify the Mercedes in this presumption. Her pilot says that he saw the green light of the Rosa beginning to shut in, and immediately starboarded his wheel without waiting for a reply to his signal. It was a fault in him to starboard under those circumstances. If he had ported, I have no doubt he would have avoided the collision. Both vessels being found in fault, damages must be apportioned.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.