

THE ST. JOHNS.
THE GEN. ROSECRANS.
HEATH *ET AL.* V. THE ST. JOHNS *ET AL.*

Circuit Court, S. D. New York.

April 4, 1890.

COLLISION—EVIDENCE.

The steam-tug Gen. Rosecrans and the steam-tug Delaware were crossing East river in the same direction, in parallel courses, about 300 feet apart. The steam-boat St. Johns, coming up the river on their starboard, agreed by signals to cross the bow of the Delaware, and pass under the stern of the Rosecrans. As soon as the St. Johns crossed the bow of the Delaware, she changed her course so as to pass under the stern of the Rosecrans; but the Rosecrans, thinking the maneuver impossible, reversed her engine. The St. Johns immediately reversed her engine, and ailed, the Rosecrans to go ahead. The Rosecrans then started ahead, but was struck and injured by the St. Johns. But for stoppage of the Rosecrans, the St. Johns would have passed 75 or 100 feet under her stern. *Held*, that the St. Johns was not in fault.

In Admiralty. Appeal from district court.

FINDINGS OF FACT.

(1) At all the times hereinafter mentioned, the libelant Ira Heath was the owner of the canal-boat Stephen A. Pyatt, her tackle, etc. The libelants Frederick. G. Van Vliet and Isaac N. Van Vliet at the same time composed the firm of F. G. & I. N. Van Vliet, and were the owners of a cargo of about 10,000 bushels of barley aboard said canal-boat.

(2) On January 4, 1887, about 10 a. m., the canal-boat Stephen A. Pyatt, having-said cargo of barley aboard, was taken in tow by the steam-tug Gen. Rosecrans, at the foot of Morgan street, Jersey City, to be towed to Twenty-Fourth street, East river, New York. The Gen. Rosecrans took the canal-boat along-side, on the starboard side of the tug, and proceeded across the North river. At the time, the tide was running ebb in the North river, the wind was light, and the weather fair. The canal-boat was about 100 feet long.

(3) A little after the Gen. Rosecrans left Jersey City with the canal-boat, the steam-tug Delaware left pier F, which is the next pier south of Morgan street, Jersey City. She had in tow on her starboard side a car-float, carrying 10 loaded railroad cars, bound for pier 3, East river. The car-float was about 200 feet in length.

(4) The Delaware, with the car-float, followed a course substantially parallel to the course of the Gen. Rosecrans and the canal-boat, and not more than 300 feet to the southward of the latter. The Delaware moved faster than the Gen. Rosecrans, which was going at the rate of 4 or 5 knots, and gained upon her.

(5) While the Delaware and the Gen. Rosecrans were crossing the North river as above described, the steam-boat St. Johns was coming up from Sandy Hook to her usual landing place at pier 8, North river. The St. Johns is a side-wheel steamer, 260 feet long over all, and about 70 feet extreme width. She was in all respects well and competently manned and provided, and kept a good lookout. She passed up the river about a quarter of a mile from Castle William, on Governor's island, and was then heading straight up the river, on a course passing within about 100 yards of pier 1, North river, and was moving at a speed of about 13 knots an hour. When about abreast of Castle William, her master observed the two tugs on his port bow; the Rosecrans being then considerably in advance of the Delaware.

(6) When the St. Johns was a little above Castle William, whistles began to be exchanged by the Gen. Rosecrans and the Delaware with the St. Johns. First, the Rosecrans blew two whistles, indicating her intention to cross the bows of the St. Johns. Next, the Delaware blew two whistles, indicating the same intention. Then the St. Johns blew one whistle, intending to indicate to the Delaware that the steam-boat did not assent to the proposed course of the tug and float, but would herself cross the bows of the latter. To this the Delaware answered with an assenting signal of one whistle. The St. Johns then blew two blasts of her steam-whistle, intending to indicate to the Rosecrans that the latter might cross the bows of the steam-boat, and the Rosecrans answered with two. Thus the

course agreed upon by the steam-boat and the togs was that the St. Johns should pass between the tugs, ahead of the Delaware and the car-float, and astern of the Rosecrans and the canal-boat.

(7) The St. Johns continued advancing at her full speed of about 13 knots an hour, until the Delaware answered her one whistle with an assenting signal of one whistle, when the engines of the steam-boat were slowed, and her speed was soon reduced to about 5 or 6 knots. At the time she so slowed, the Rosecrans bore a little on her port bow.

(8) When the Delaware gave her assenting signal of one whistle, her car-float was nearly abreast of the stern of the canal-boat in tow of the Gen. Rosecrans,

and was not more than 300 feet to the southward. At the same time the St. Johns was about 200 yards from the Delaware or her float.

(9) As soon as the Delaware gave her assenting signal of one whistle, she reversed her engines. In consequence, her head swung around somewhat to the northward.

(10) The St. Johns kept on, with no change of helm, pointing about for the bow of the Pyatt, until just as she was passing the Delaware, and not more than 300 feet below the Rosecrans.

(11) As soon as the bow of the St. Johns reached the lower corner of the float which the Delaware had in tow, her wheel was starboarded, changing her heading three or four points to the westward, so as to pass under the stern, of the Rosecrans.

(12) As the St. Johns was drawing clear of the Delaware, the pilot of the Rosecrans, thinking that the St. Johns would not be able to get under his stern, and believing collision inevitable, reversed his engines, and blew danger signals.

(13) As soon as the stoppage of the tug was or could be seen from the St. Johns, her helm was put hard a-starboard, her engine was stopped and backed full speed, and the tug was hailed to go ahead.

(14) Thereupon the tug's engines were started ahead again. Their previous reversal, however, had somewhat checked her headway.

(15) The St. Johns was checked, but not stopped, by her reversal, and she struck the canal-boat Pyatt with her stem about 10 feet from the stern, on the starboard side, causing her to leak badly, and the cargo and boat thereby sustained serious damage.

(16) If the engines of the Rosecrans had not been stopped and backed, she and the canal-boat would have cleared the St. Johns by about from 75 to 100 feet.

(17) When the proposition of the Rosecrans to cross the St. Johns bows was made and accepted, the vessels were sufficiently far apart for the proposition to be successfully carried out, if both vessels had thereafter navigated in accordance with their agreement.

(18) The cause of the collision was the stopping and backing of the Gen. Rosecrans,—a maneuver which was the converse of what her signals had promised, and in consequence of which she was encountered by the St. Johns within water which she would have vacated had she navigated according to her signal.

CONCLUSIONS OF LAW.

(1) The Gen. Rosecrans was in fault for stopping and backing her engine.

(2) There was no fault in the St. Johns.

(3) The decree as to the St. Johns must be affirmed, and the libel as to her dismissed. *Carpenter & Mosher*, for the Pyatt.

R. D. Benedict, for the St., Johns.

Owen & Gray, for the Gen. Rosecrans.

LACOMBE, Circuit Judge. The findings, taken in connection with the opinion of the district judge, (34, Fed, Rep 763,) sufficiently indicate the grounds of affirmance. Had the navigation of both vessels been in accordance with their agreement, there would have been no collision. What, then, was the agreement, and who failed to keep to it? The Rosecrans and the Delaware being each in the "fifth situation" relatively to the St. Johns, which was on their starboard hand were required by the rules to port, and pass astern of the St. Johns; the latter continuing on her course, and passing ahead. For some reason or other, the pilot of the

Rosecrans disliked to take this course,—probably because he was crossing an ebb-tide incumbered with a tow,—and undertook to agree with the St. Johns upon some other course. What thereupon occurred, as evidenced by the signals, was this; “I Want to cross your bow,” says the Rosecrans. “I am going to cross the Delaware’s bow,” is the reply; “but, if you wish to cross mine, you may.” “I do wish to do so,” responded the Rosecrans, “and will act on your permission.” By this agreement, it became the duty of the Rosecrans to keep her course without unnecessary delay, and of the St. Johns not to thwart her, nor to intrude into the water through which the maneuver which the Rosecrans was about to undertake would in ordinary circumstances be carried out. Thereafter the St. Johns slows. She crosses the bow of the Delaware according to programme, and by as narrow a margin as she safely can. She then co-operates by starboarding. She does not intrude into the water which would have been required for the tug’s maneuver, if executed as promised. She does, in fact, collide with the Rosecrans, but solely because of the latter’s stopping. If what was ordinarily to be expected had happened, the water into which the St. Johns came would not have been at that time required for the maneuver the Rosecrans was making. Nor was the master of the Rosecrans justified in stopping by any fear as to the St. Johns’ course. Nothing in the situation or in the latter’s agreement was demanding an alteration of her course up to the time when the Rosecrans reversed. In this particular the case differs from that of *The Britannia*, ante, 67, which, both by the rule governing her situation, and by the promise of her signal, was required to alter her heading several points. This case is also to be distinguished from *The Sammie*, 37 Fed. Rep. 907. There the failure of the Burke to alter her navigation so as to co-operate with the Sammie was persisted in, without any apparent cause, for so long a time that the pilot of the Sammie was held excusable in reversing, contrary to his agreement, such maneuver being made *in extremis*. Here the St. Johns did alter her navigation to co-operate with the Rosecrans as soon as she could. It is true that by that time she was quite near the Rosecrans; but the master of the latter knew when he made his agreement with her, that he must expect no stoppage or swinging to port from her until she had reached the Delaware’s bow. Decision of district court affirmed.