

## THE SAGINAW.

## THE PERSIA.

## HAMBURG AMERICAN LINE v. THE SAGINAW.

## CLYDE S. S. CO. v. THE PERSIA.

(District Court, S. D. New York. January 14, 1898.)

**COLLISION—THWARTING MANEUVERS—ROUNDING BUOY—MISUNDERSTANDING OF SIGNALS—BAD LOOKOUT—FAILURE TO STOP—INSPECTORS' RULE 3.**

The steamship S., outward bound, soon after rounding the Bay Ridge buoy, and about 40 minutes after sunset, came in collision with the steamship P., inward bound, striking the latter at an angle of about three points on the starboard side. When first seen, the vessels were nearly head and head, the S.'s red light before she had rounded being seen a very little on the P.'s starboard bow. The P. ported and very soon saw the S.'s two colored lights, and then her green light only on the P.'s port bow, whereupon the P. starboarded hard. The S. first noticed the P.'s red light on her starboard bow after rounding the buoy, and ported, resulting in collision as above stated. The P. on first porting gave a signal of one blast, and on afterwards starboarding, a signal of two blasts, both of which, it was alleged, were answered by the S. with similar whistles. They were neither heard nor answered by the S. There was great confusion and contradiction in the testimony as to bearings and the time of slowing and stopping. *Held*, that the maneuvers of each were thwarted by the other; that they were less than one-half a mile apart when first observed, very much nearer than claimed, through lack of a proper lookout on each; that neither was justified in starboarding, and the P. was bound under inspectors' rule 3 to reduce her speed more quickly than she did, upon an evident misunderstanding between the ships; and that the S. was further to blame for inattention to the P.'s signals.

These were cross libels for damages resulting from a collision.

Wheeler & Cortis, for the Persia.

Robinson, Biddle & Ward, for the Saginaw.

BROWN, District Judge. The above cross libels were filed to recover the damages to the steamships Persia and Saginaw, arising out of a collision between them, which occurred about 40 minutes after sunset on November 13, 1896, off Stapleton or a little to the northward of it, Staten Island, and probably a little to the westward of mid-channel. The Persia, a large steamer, 445 feet long by 51 feet beam, was coming in from sea and had left Quarantine Station, about a quarter of a mile above Ft. Tompkins, some 11 minutes before the collision, and stood up on a course about north, crossing to the eastward by one point the usual course of N. by W. in that part of the bay. The Saginaw, a much smaller steamer, 260 feet long, was outward bound, and shortly before the collision rounded to the westward of Bay Ridge buoy in about mid-channel, and in so doing by the usual course she would naturally change from S. by W. above the buoy, to S.  $\frac{1}{2}$  E. or S. by E. below it. The night was clear and calm; other vessels were about, but none to interfere with the movements of either of these steamers. Neither was observed by

the other as early as she should have been observed; both, after some previous changes of course, turned to the westward, and the Saginaw, with the bluff of her starboard bow, struck the starboard side of the Persia aft of midships at an angle of about three points or less, with a glancing blow, which damaged both vessels and injured two children on the Persia, in whose behalf libels have also been filed against both steamers.

The contention for the Persia is that while she was heading north and making nine to ten knots against an ebb tide of two or three knots, the Saginaw's red light was seen nearly ahead and a mile or more away; that the Persia at once ported and gave a signal of one whistle, which was answered by one whistle from the Saginaw; that soon afterwards the Saginaw's two side lights were seen, and shortly her green light alone; that on seeing her two side lights the Persia's engines were stopped, her wheel starboarded, and a signal of two blasts given, which was answered by two blasts from the Saginaw; that afterwards the Saginaw swinging to the westward, showed again her red light and that the Persia then gave three blasts of her whistle and reversed either then or previously; and that when the vessels were about 300 feet apart she swung her stern about one point to port to ease the blow. She charges the whole fault upon the Saginaw, (1) for swinging to port in rounding the Bay Ridge buoy so as to change her show of lights after the Persia's signal of one whistle, and (2) for turning again to starboard too late and when too near to the Persia, after her previous change to port.

For the Saginaw it is claimed that the Persia was not seen, nor any signal given to her until after the Saginaw had turned the buoy; and that no signal of one blast was heard from the Persia at any time; that after the Saginaw had turned the buoy and was on a course of about S. by E. the Persia's red light was seen half a point off the Saginaw starboard bow; that the Saginaw at once ported and gave her a signal of one whistle, and soon after repeated the signal, to neither of which was any answer received; that under the Saginaw's port wheel her head swung to starboard until the Persia was one point on the Saginaw's port bow; that soon after, when the Persia was about two points on the Saginaw's port bow, the Persia's green light came into view and her red light was shut in, being then about 1,000 feet off; that the Saginaw then gave a signal of one blast, to which the Persia replied with two blasts, whereupon the Saginaw starboarded and at once stopped and reversed at half speed and so continued until collision. She reversed at half speed only in order to avoid too rapid a swing of her head to starboard. She charges the whole fault upon the Persia for starboarding her wheel and crossing the Saginaw's bows when both were in a situation of perfect safety, after the two vessels had been showing red to red for a considerable time.

The case is an interesting and a peculiar one, because I am satisfied that each vessel when first seen by the other was seen nearly ahead, and each vessel in then porting her helm, observed the requirements of the rules of navigation, and adopted the maneuver

which seemed the proper one to avoid collision; and yet each vessel in turn thwarted the maneuver of the other, either of which maneuvers, if not thus thwarted, would have avoided collision. Both mistakes arose from the evident fact that each vessel misunderstood the intentions of the other. The object of the rules as to signals is to prevent such misunderstandings. That object was here frustrated because the Persia attributed to the Saginaw answering signals of assent which the Saginaw never gave; and because the Persia did not hear or answer the timely signals of one whistle which the witnesses from the Saginaw testify were given by her, and also because the signals given by the Persia were not heard or noticed on the Saginaw. A further question is also suggested, viz. why in a clear evening and in mild weather and only 40 minutes after sunset such vessels should not have avoided each other, even without the help of signals, if the approach of either had been reasonably attended to. This involves the question of the actual navigation of each vessel, their distances apart at their various maneuvers, and how the collision occurred. On these questions there is considerable conflict, not merely between the witnesses for each vessel against the other, but also between the witnesses on the same ship.

In endeavoring to understand how the collision occurred, I have been much embarrassed by these contradictions in the testimony. There is evident inconsistency, confusion and mistake in the Persia's testimony as regards the bearing of the lights seen at different times; and little reliance can be placed upon the estimates of distances on either side. I have spent much time in endeavoring to trace the navigation of the two vessels, according to the testimony as to what they actually did. The result is to a considerable extent in accord with the Persia's diagram; but the distance traversed between the Persia's sighting the Saginaw and starboarding her wheel is, I think, greatly exaggerated in the Persia's diagram, and the positions of the vessels when near collision seem to me forced.

From the testimony of the Saginaw's pilot, that after rounding the Bay Ridge buoy in about mid-channel the Ft. Lafayette light bore considerably more off his port bow than the Ft. Wadsworth light bore off his starboard bow, I think the Saginaw did not turn more to the eastward than S.  $\frac{1}{2}$  E. The Persia, handled as a single screw propeller, i. e. her two screws not put in contrary directions, could turn only about a point in three-fourths of a length, so that had she at first gone more than a point to starboard, she would have been so much to the eastward of the Saginaw that she could not afterwards have got under the Saginaw's bows by starboarding; since the Saginaw, a much smaller vessel, would turn much more rapidly on porting, and hence go off much faster to the westward, than the Persia.

When the Saginaw's two colored lights were first seen, the two vessels must have been less than a half mile apart, as a drawing of their courses based upon the testimony as to what each subsequently did will show. Reversing continued not over  $1\frac{1}{2}$  to 2 minutes before collision; and the master and mate say that it was but a very

short time after the two lights were seen, "a few seconds only," that the Saginaw's red light was seen a second time, whereupon the Persia reversed. I think the interval was probably half a minute, during which the Persia swung to port one or two points. But it was not probably over a third of a minute after the Persia first saw the Saginaw's red light that the latter's two lights were seen. The interval was so short that the mate thought the Persia had not answered her port helm at all; he so entered in the log, and the original libel repeats that entry. The Persia probably first turned about a point to starboard in about a third of a minute in going about 400 feet. She then starboarded, but before she broke her sheer and turned westward enough to show her green light, the Saginaw saw her red light a little on the starboard bow, ported a point in probably 20 seconds in going about 250 feet, so as to bring the Persia's red light on the Saginaw's port bow, and thus show her own red light again to the Persia, while the latter in the meantime was swinging to the westward, so as to show soon her own green again to the Saginaw's red, whereupon both reversed. Unless the Persia had first turned to the eastward about a point, she could not have exhibited her port light to the Saginaw long enough to enable the Saginaw by porting to change the bearing of the red light from her starboard bow to her port bow, as four of her witnesses testify, and at the same time have been able to get to the westward of the Saginaw, and cross her bows, before collision.

The vessels were making about the same speed over the land, viz. about 10 knots, and they were probably but little over a half mile apart when the Saginaw's lights were first seen. Probably a half minute later the Saginaw saw the Persia's red light, over her starboard bow, and ported. This was probably as soon as she had straightened upon her course of S.  $\frac{1}{2}$  E., and the attention of her officers was no longer occupied with turning the buoy, which they could not see. The pilot then first noticed the Persia's hull, and the vessels were then probably but little more than a third of a mile apart. The Persia's testimony that the Saginaw's red light appeared the second time from two to four points off the Persia's starboard bow, and the Saginaw's counter statement, that the Persia's green light came in sight two or three points on the Saginaw's port bow, are irreconcilable, both estimates of the bearing are equally improbable, and I have no doubt that each light became visible when not over half a point off the other vessel's bow, as a drawing of the navigation indicates.

For the Saginaw it is contended that the first change in her show of lights to the Persia, viz. from red to green, took place after the Saginaw had rounded the buoy and was straightened down on a course of S.  $\frac{1}{2}$  E. or S. by E., and that that change of lights was caused by the Persia's crossing the bows of the Saginaw to the westward under a starboard helm. But this theory is incompatible with the most important parts of the testimony on both sides, as any attempt to sketch the navigation of the vessels will show. The Saginaw at some time after having straightened down ported her helm,

according to her own testimony, because she saw the Persia's red light off her starboard bow. There is no other reason or justification for the Saginaw's porting. But if when the Saginaw ported her helm the Persia was showing her red light, the Persia must have been then heading somewhat to the eastward of the Saginaw, and therefore could not possibly have made her supposed turn to the westward and across the Saginaw's bows before the latter ported; if she had done so, she must have shown her green light, and the Saginaw would not have ported at all. On the other hand, the first change in the Saginaw's lights could not have been caused by the Persia's crossing the Saginaw's course to the westward after the Saginaw ported her helm, because on that hypothesis this crossing could only have occurred a few moments before collision, and the Persia could have had the Saginaw's two side lights in view only once, instead of twice, as the testimony is, and the Saginaw's red light could not have come into view a second time after her green light was seen and the red was once shut out; this theory would also impute to the Persia either mistake in putting her helm to starboard when it was ordered put to port, or else the idiotic maneuver of starboarding and running into the Saginaw, at a time when the vessels were safely showing red to red. I have no doubt, therefore, that the change in the Saginaw's lights from red to green arose from her own swing to the eastward in rounding the buoy. As the buoy was not seen, she was probably some distance below it before her course got S.  $\frac{1}{2}$  E.

Upon this view of the manner in which the collision happened, both vessels should, I think, be held to blame. Neither vessel was noticed by the other in adequate time for a complete watch and observation of course and intention, nor for a clear and intelligible interchange of signals, such as was necessary to prevent misunderstandings. Each gave the proper signal, but no answers were given or received by either until too late. The confusion and mistakes in the testimony are attributable perhaps to the suddenness of the danger when first apprehended. The lookout on the Saginaw was certainly very remiss in not seeing and reporting the Persia when she was more than a half mile away, and much sooner than the pilot saw her hull, when it was much nearer than that. Had she been seen and reported while the Saginaw still showed her red light only to the Persia, when certainly but little if any over a half mile distant, the Saginaw would have kept to the westward and avoided collision, instead of starboarding and turning as she did, to the eastward, so much as to shut out her red light before she ported.

The Persia's pilot heard no answer to his signal of one whistle, or of two whistles, but the mate told the pilot that he heard an answer of one whistle to the first signal of one blast. No such answer, however, had been given; and when, after that, the pilot of the Persia saw the Saginaw's two lights, and then the green light alone, he knew that the Saginaw was proceeding contrary to her supposed answer, that the Saginaw had probably neither seen nor heard the Persia, and that the supposed understanding was a misunderstanding.

ing, and that he was therefore bound under inspectors' rule 3 to reduce his speed to bare steerage way with a signal of three blasts, until a common understanding was had, or else to rely on the Saginaw to keep out of the way under the starboard hand rule, while the Persia kept her course, as would be required if the situation were to be treated as an original one at that time. Had the Persia observed either of these rules, collision would have been avoided.

The Persia, on first seeing the Saginaw's red light a trifle on her starboard bow, was bound to port as she did. The Persia's pilot had no right to suppose that after a signal of one whistle, which he had given and understood to be answered with one, the Saginaw would attempt to go ahead of him without a signal of two whistles. He heard no such signal at all; and the two blasts, which the other officers swear to hearing, was after the Saginaw had swung to the eastward so as to show her green light only, and after the Persia had starboarded. This was no justification, therefore, of the Persia's starboarding at that time. Considering the previous signal of one whistle by the Persia, and the supposed assenting answer reported to the pilot by the mate and the evident contrary navigation by the Saginaw, the situation was in my judgment, from the Persia's point of view, precisely the one provided for by inspectors' rule 3, as above stated. Instead of observing that rule, the pilot assumed that the Saginaw would continue her course down the bay without change, and he therefore starboarded, giving at the same time a signal of two whistles. The pilot, as I have said, heard no answer. The Persia's other witnesses say this signal was answered by a signal of two whistles from the Saginaw. This was a mistake. The Persia had not then been noticed by the Saginaw, and the situation from the Persia's point of view was evidently, as I have said, either one of uncertainty under inspectors' rule 3, or else one of the starboard hand rule, as an original situation. The Persia in violating both rules took the risk of any further misunderstanding of signals.

The Persia's master and mate say that the Persia's engines were stopped at the time the two lights were seen, though not reversed until after the Persia swung two or more points to port and the Saginaw's red light was again disclosed. Even if the engines were stopped when the Persia starboarded, that would not have been a compliance with inspectors' rule 3; and a sketch of the navigation, as well as the log entries, compel me to believe that the engines were not stopped until the Saginaw's two lights were seen the second time. The Persia's master and mate have, I think, made the same error in their testimony as to the occasion of stopping that they manifestly made as to the bearing of the two colored lights on their starboard bow when first seen, viz. that both those occurrences were when those lights were seen the second time, and not when first seen. If the engines were stopped when the two colored lights were first seen, I cannot bring the Persia ahead of the Saginaw. The engineer's log and the pilot's testimony do not agree with any such separation of the orders to stop and to reverse as the interval sufficient for the Persia to change two points to port would require.

The log has the entry of the order to stop and reverse as a single order at 5:35; the scrap-log has the collision entered as at 5:35; the third officer says the engine was not stopped any length of time; and the engineer twice says the order to reverse followed instantly the order to stop, as the log itself indicates.

The situation when the Persia starboarded was too far from the collision to be deemed a situation in extremis. It could not have been so regarded by the Persia's officers; for, if so, they would naturally not only have reversed at once, but would have worked her two propellers in contrary directions, so as to turn her head very rapidly to port. Had that been done, she would certainly have avoided the Saginaw. This, however, does not absolve the Saginaw from blame in not observing the Persia at a reasonable distance, and therefore avoiding the change in her own lights by her swing to the eastward, and the subsequent embarrassment to the Persia's navigation.

It is remarkable that none of the signals given by either vessel, when about a half or a third of a mile apart, were heard by the other; that no answer was in fact obtained by either; and that neither observed the requirements of inspectors' rule 3. I do not feel justified in ascribing the double failure to hear each other's signals to abnormal atmospheric conditions in apparently clear weather, when the vessels were so near to each other; and no other explanation of this failure is apparent except a lack of sufficient attention to the signals given by each. If the latter is the explanation, it equally affects both vessels with fault. But aside from this consideration, I think both should be held to blame for the other reasons stated; and decrees may be entered accordingly.

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## THE NYMPHAEA.

### THE MAY.

#### GRAHL v. THE NYMPHAEA.

#### STAG LINE, Limited, v. THE MAY.

(District Court, S. D. New York. October 6, 1897.)

#### **COLLISION—FOG—LOWER BAY—REVERSAL DELAYED—NAVIGATION UNEXPLAINED—DAMAGES DIVIDED.**

The steamship May, going out, and the Nymphæa, coming in from sea, came into collision a little to the northward of the swash channel in the Lower Bay in dense fog. The fog signals of each were heard by the other nearly ahead. The course ascribed by each vessel to the other was contradicted, and the navigation of each presented great difficulties, not satisfactorily explained. *Held*, that the cause of collision was the failure of each to check her speed sufficiently, or to reverse in time, and the damages were divided.

Libel and cross libel to recover damages caused by a collision between the steamships May and Nymphæa in the Lower Bay, New York Harbor.