

Case No. 246b. ALLIANCE INS. CO. v. THE MORNING LIGHT.
[Betts' Scr. Bk. 586.]

District Court, S. D. New York.

April 4, 1862.¹

COLLISION—INEVITABLE ACCIDENT—DARKNESS.

[In admiralty. Libel in rem by the Alliance Insurance Company against the brig Morning Light to recover damages suffered by the schooner Jerry Fowler in a collision, and paid by libellant as insurer. Libellant's motion to set aside an appraisement was granted. Alliance Ins. Co. v. The Morning Light, Case No. 246a. Libel dismissed.]

Benedict, Burr & Benedict, for libellant.

Beebe, Dean & Donohue and Mr. Morton, for claimants.

Before BETTS, District Judge.

This was an action to recover damages occasioned to the schooner Jerry Fowler by a collision with the Morning Light, which occurred on August 5, 1855, just about daybreak, near Martha's Vineyard. Both vessels had been going eastward through the night, the brig in the rear but gaining on the schooner, and both were on the starboard tack. The night was dark and rainy, and about 4 A. M. the Jerry Fowler undertook to tack, her master thinking her so near the Cutterhunk Shoals as to render it proper to change her course; and while tacking she was run into by the Morning Light. The libellant, having paid the loss to the owners of the schooner, now sues to recover it back. The testimony as to the darkness was conflicting.

Held by THE COURT, that the evidence shows a case of inevitable accident between the two vessels, or, if there was a fault, it was one common to both, arising from the obscurity of the weather and want of extreme vigilance on both vessels, and the uncertainty, from that cause, as to what was the proper course for either to pursue; that each party must therefore be left to bear his own loss.

Libel dismissed. Question of costs reserved.

¹ [Affirmed by circuit court in Alliance Ins. Co. v. The Morning Light, Case No. 246c.]