

Case No. 3,474. CUMMINGS V. THE EMILY JOHNSON.
COLE V. THE KATE HUNTER.

{N. Y. Times, Sept. 30, 1853.}

Circuit Court, S. D. New York.

1853.

COLLISION—BETWEEN SAILING VESSELS.

{A schooner sailing west, half south, closehailed, approaching a ship heading north northeast, with the wind free, apprehending a collision, immediately before its occurrence put her helm hard down, which threw her in the way of the ship, and a collision took place. The wind was south southwest. *Held*, that it was the ship's duty to have avoided the schooner by porting her helm, and that the maneuver of the schooner was excused by reason of the nearness of the danger.}

{Appeal from the district court of the United States for the southern district of New York.

{In admiralty. Libels by George B. Cummings and others against the schooner Emily Johnson, and by Abraham Cole and others against the ship Kate Hunter.}

Cross suits arising out of a collision between the ship and the schooner, which occurred November 27, 1850, off the Highlands of Navesink. The wind was south southwest. The schooner was steering west, half south, closehailed, and the ship north northeast, having the wind free. The schooner, in the moment before the collision, put her helm down, which threw her yet more in the way of the ship. But Judge Betts, in the [district] court [case unreported], held that she was excused from that, by the nearness

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of the danger, and that it was the duty of the ship to have ported her helm, and kept out of the schooner's way; and gave a decree in favor of the schooner.

Betts & Donohue, for appellants.

Piatt, Gerard & Buckley, for appellees.

NELSON, Circuit Justice. After hearing argument, the decree of the district court was ordered to be affirmed on the same grounds.