

## Case No. 10,057.

## NAUNTON V. THE OREGON.

[1 Pac. Law Mag. 242.]

District Court, D. California.

March 22, 1867.

## COLLISION—STEAM AND SAIL—LIGHTS.

On the night of May 21st, 1866, about twenty miles from Carmen Island, the Oregon ran into and sunk the bark Kent, which was becalmed. Hence this libel. The steamer had all lights set required by the act of congress. The bark did not have her red and green lights set, as required by the act of parliament, which is identical with the act of congress. The bark was not discovered until the steamer was close upon her. The bark had a bright white light in her main rigging. Weather clear and sea calm. The captain saw the steamer some two miles off, but had no thought of a collision.

Held, that although the bark was in fault in not displaying the proper lights, still, under the circumstances, would the steamer have seen the bark if she had had the colored lights up? To apply the strict rule would be harsh. I hold, and shall, till otherwise instructed, that under the circumstances of a ship becalmed in a remote sea and in such weather, the damage to both ships must be divided.

Ordered, that the damage to both vessels be found and the libellants recover one-half that amount with costs.

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