

Case No. 11,063.

PHARO ET AL. V. SMITH ET AL.

{17 Leg. Int. 381.}

Circuit Court, E. D. New York.

1860.

APPEAL

IN

ADMIRALTY—COLLISION—MISFORTUNE—NO
FAULT OF EITHER VESSEL.

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

{This was a libel in admiralty by Joseph W. Pharo and others against Geo. Smith and others to recover damages for collision. The decree of the district court was in favor of the libelants. Case unreported. The district court overruled a motion of libelants to require the defendants to file a stipulation for costs on appeal. Case No. 11,062.}

NELSON, Circuit Justice. The libel was filed in this case to recover damages for a collision between the schooner M. E. Pharo, and the schooner Wm. Smith, which happened on the night of April 9, 1855, off Barnegat. The M. E. Pharo was bound from Philadelphia to Rhode Island with a cargo of coal; the Wm. Smith on her way from New York to Savannah, Georgia. The wind was heavy and about north-west, the night dark. Both vessels had lights at their bows, but were not discovered until within some one hundred yards of each other. They were moving at the rate of about six miles an hour, making a combined speed of twelve miles. The M. E. Pharo was heading north-east by north when she discovered the approaching vessel, and then changed her course by falling off more eastwardly. The Wm. Smith was at first heading south by west, and afterward changed to south-west. When the vessels first discovered each other, they were approaching nearly a head, the Wm. Smith rather upon the larboard bow of the M. E.

Pharo. Both (according to the account given by The hands of each) in this position adopted the proper movement to avoid a collision. The Wm. Smith ported her helm and came up into the wind, and the M. E. Pharo the same, and fell off. But unfortunately they came immediately together, the Smith striking the starboard side of the Pharo, head on, just aft of the fore chains, and breaking her side so that she sank in a few minutes. It is impossible to reconcile the testimony, for if the hands are to be believed, upon the respective vessels, the collision would not have happened. The courses given would necessarily have continued to separate them further and further from each other, and this notwithstanding the Pharo starboarded her helm and came up into the eye of the wind, as stated by those on board, for even then she could not have reached the Smith. The misfortune, we think, is to be attributed to the darkness of the night. With the combined speed of the vessels, the time between the discovery of the lights and the collision was very short—less than a minute. There seems to have been no neglect of a proper look-out on either vessel, and the lights were seen as early as the darkness of the night would admit. We are inclined to think the collision was rather the misfortune than the fault of either, and shall reverse the decree below and dismiss the libel. The respondents have very much changed the aspect of the case by the proofs introduced in this court. Decree reversed and libel dismissed.

PHARO, The WALTER W. See Case No. 17,124.

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