

Case No. 17,431. WESTCOTT V. THE ANN BARTON.
[1 Wkly. Notes Cas. 10.]

District Court, E. D. Pennsylvania.

Sept. 22, 1874.

COLLISION BETWEEN SAILING VESSELS.

[Where a vessel, close hauled and on crossing courses with one sailing free, missed stays in going about, fell off, and went astern, and was struck by the other, *held* that the latter was bound to keep out of the way, and was in fault for failing to take the necessary action in time to avoid collision.]

[This was a libel by Westcott, master of the schooner Elva Davis, against the schooner Ann Barton to recover damages resulting from a collision.]

The schooners Elva Davis and Ann Barton, bound from Boston to Philadelphia, both light, were at 11:30 p. m., on the 22d November, 1872, off the coast of Massachusetts, between Chatham Light and Pollock Rip. The night was sufficiently clear, and the wind about W. N. W., blowing a brisk breeze, with a moderate sea running. The Elva Davis was standing inshore on her starboard tack, heading S. W. by S., a point or more free. The Ann Barton was standing on her port tack close hauled, heading N. by W. The courses of both vessels were therefore converging lines, and, if kept by both vessels, must cross at some point. When the vessels were about 250 yards apart, the Ann Barton attempted to tack to the southward, but missed stays, fell off, and went astern. At about the same time the Elva Davis also tacked, but, before she gathered headway, the collision ensued.

Mr. Edmunds, for libelant.

Mr. Coulston, for respondent, referred to Act April 29, 1864 [13 Star. 58], arts. 11, 18.

Upon the hearing, it was the opinion of the nautical assessor that when the Ann Barton missed stays she became helpless, and it then devolved upon the Elva Davis to avert a collision; that she might have done so—first, by putting her helm hard up, dropping the peak of her mainsail, and letting run the main sheet, and so would have fallen off, and her bow would then have receded from the Ann Barton; or, second, by luffing a point, which the wind would have allowed her to do, before getting too close to the Ann Barton, instead of deferring this movement till the Ann Barton missed stays. In fine, that the Elva Davis was sailing with the wind free, and bound to keep out of the way of the Ann Barton, which was close hauled.

THE COURT (CADWALADER, District Judge), approving the nautical assessor's opinion, dismissed the libel, with costs.