

THE ENERGY.

*Circuit Court, D. Massachusetts.*

April 23, 1890.

COLLISION—MUTUAL FAULT.

Between 8 and 9 o'clock on a foggy night the schooner M. and the brig E. collided on an exposed and frequented part of the ocean, sinking the M. Neither vessel had a proper fog-horn sounded by mechanical means. The wind was southerly, and the M. was sailing close-hauled on the starboard tack, S. S. E. The E. was sailing on the port tack, N. N. W., six knots an hour. No horn was heard on the M., but on the E. a horn was heard just as the green light of the M. showed on the starboard bow, and the wheel was starboarded. The M., though having the right of way, luffed across the bows of the E. On the M. the skipper and nine men were below; the only men on deck being the man at the wheel, who had had but little experience, and the lookout, who also had charge of the navigation and the duty of sounding the horn. *Held*, that the damages should be divided.

In Admiralty

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*Frederick Dodge*, for libelant.

*C. T. Russek, Jr.*, for claimant.

NELSON, J. This collision between the fishing schooner Monmouth, of Gloucester, and the British brig Energy, occurred about 10 miles to the eastward of Highland light, between 8 and 9 o'clock on the evening of July 30, 1887, in a thick fog. The wind was south-westerly. The Monmouth, bound out on a fishing trip to George's banks, was sailing close-hauled on the starboard tack, and steering S. S. E. The Energy was on a voyage from Porto Rico to Boston, with a cargo of molasses. She was sailing on the port tack, with the wind abaft the beam, and was heading N. N. W., directly opposite to the course of the Monmouth. On the Energy, the sound of a fog-horn being heard ahead, and immediately after the green light of the Monmouth showing on the starboard or lee bow, the wheel was starboarded to pass on the starboard side. Had the Monmouth held to her course, as she ought to have done, having the right Of way, they would have gone clear. But, instead of keeping her course, she luffed across the bows of the Energy, and hence the collision. The Monmouth filled and sunk immediately, her men escaping on board the Energy. The Energy also suffered some injury.

There was an attempt made on the part of the Monmouth to prove that she was to the windward of the Energy, and that it was the latter's luff, and not her own, that was the cause of the accident. The man on the lookout deposed that the first he knew of the approach of the Energy was seeing both her lights over the port or lee bow. Upon this point I have no hesitation in deciding in favor of the Energy. The only men on deck on the Monmouth were the lookout and the man at the wheel, the latter a seaman of little experience. The former, in addition to his duties as lookout, had the Sole charge of the navigation of the schooner, and had besides the duty of sounding the fog-horn. The skipper and nine other men were below. This was virtually leaving the vessel without any lookout and was of itself bad navigation, and sufficient to condemn the Monmouth. On the Energy the mate's watch was on deck, consisting of the first mate, a man at the wheel, and another on lookout. The master was also on deck. All appear to have been alert, and the master, mate, and lookout were in positions to observe the approach of the Monmouth and her bearing, Their testimony that the Monmouth was to the leeward of the Energy is much more credible than that of the lookout of the Monmouth, who deposes that she was to the windward.

It was proved with sufficient certainty that the speed of the Energy was not moderate. She was sailing with the wind between two and three points abaft the beam. The wind was a good moderate breeze, and the sea smooth. She had all sail set. Her master deposes that she was going five or six knots. I think her speed may be safely taken as knots. This would not be moderate speed in the case of a steam-ship, in an exposed and frequented

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part of the ocean, in a thick fog, and I see no reason why it should be in the case of a sailing ship.

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Both vessels were without an efficient fog-horn, sounded by a bellows or other mechanical means, as required by the international sailing regulations. I decided in the recent case of *The Catalonia*, (not reported,) and also in two other cases, that neglecting to have on board the regulation fog-horn, was a fault in a sailing ship in a collision in a fog, unless it was shown with certainty that the omission could not have contributed to cause the collision. No such proof is furnished here. Both vessels sounded a common fog-horn, blown by the breath; but the fog-horn of the Energy was not heard at all on the Monmouth, and that of the Monmouth was not heard on the Energy until just the moment the Monmouth came in sight. It was plainly the duty of the Monmouth, having the right of way, to give notice of her presence to vessels approaching from the southward, by the means prescribed by the sailing rules. It was argued for the Energy that, as she was bound, to keep out of the way of the Monmouth, and the latter only to keep her course, she should be excused for the omission. But I am bound to conclude that a regulation horn can be heard further off than a common horn, and that, if the lookout on the Monmouth had been sooner made aware of the approach of the Energy, he would not in his fright and confusion, have luffed across her bows. The Energy should have shortened sail. The Energy is condemned for not going at a moderate speed, and for not carrying the regulation fog-horn. The Monmouth was in fault, not only for being without the regulation fog-horn, but also for changing her course, and for not having a competent lookout. Decree for the libelants, damages to be divided. So ordered.