

THE STEPHEN BENNETT.¹
THE ELIZABETH T. COTTINGHAM.

District Court, E. D. New York.

May 10, 1890.

COLLISION—OVERTAKING VESSEL—MISSING STAYS.

Two schooners were beating up the coast, the B. following in close proximity to the C., and gaining slightly on her. The C. went about, and immediately afterwards the B. attempted to do the same, but misstayed, and, gathering sternway, got under the bow of the C., and was struck by her. The B. had misstayed once before that morning. *Held*, that the collision was caused by the B. in tacking so close to the C., with knowledge that she was liable to misstay.

In Admiralty. Cross-actions for damages by collision.

Owen, Gray & Sturges, for the Elizabeth T. Cottingham.

Goodrich, Deady & Goodrich, for the Stephen Bennett.

BENEDICT, J. These are cross-libels filed to recover damages by reason of a collision which occurred about noon of December 6, 1888, off the New Jersey coast near to Barnegat, between the schooner Stephen Bennett and the schooner Elizabeth T. Cottingham. The weather was clear, wind blowing very hard from the N. N. W., and a heavy sea rolling in from the N. E. Both vessels, loaded with lumber, were beating up the coast. They had stood in from off shore towards the beach for about an hour, the Cottingham being ahead and a point on the lee bow of the Bennett. When the master of the Cottingham judged that he was near enough to the beach he tacked. At the same time, or perhaps a moment later, the Bennett also came up into the wind, intending to tack, but misstayed, and, gathering sternway, got under the bow of the Cottingham, and was struck by her. Upon the evidence, the Bennett alone is responsible for the collision. She was the overtaking vessel. She had misstayed before that morning, and knew that she was liable to misstay again. She had no right to tack so close to the Cottingham as to render collision inevitable in case she should misstay. The Cottingham was guilty of no fault. She was in the open sea, and, although she might perhaps have gone a little nearer to the shore than she did, it was no fault in her to tack where she did, and it was the duty of the Bennett, following her so closely,—gaining on her, indeed, as the evidence shows,—not to tack so close to her as she did. The libel against the Cottingham must be dismissed, with costs, and the libelants in the first action must have a decree, with an order of reference.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.