

NOVA SCOTIA ADMIRALTY DISTRICT.

1901
May 2.

WALTER N. CONWELL & R. E. CON-
WELL, OWNERS OF THE SCHOONER } PLAINTIFFS;
CARRIE E. SAYWARD }

AGAINST

THE SCHOONER "RELIANCE" DEFENDANT.

*Admiralty law—Collision—Fishing vessels—Sufficiency of Anchor light—
Careless navigation.*

The *C. E. S.*, a fishing schooner, while lying at anchor on Bank Quero, was run into and sunk by another fishing vessel the *R.*, which was changing her berth in the night time. The weather was fine and the sea smooth. The *C. E. S.* was displaying a light in order to comply with the regulations; but it was claimed by the crew of the *R.* that they did not see the light until it was too late to avoid a collision. It was shown that the *R.* had been fishing in a berth four or five miles distant from the *C. E. S.*, that her crew knew that there were a number of vessels fishing in their vicinity, and that the master of the *R.* took no extra precautions in sailing at night over the closely crowded fishing grounds, but on the contrary went below himself leaving the ship under full sail to the charge of those on deck.

Held, that the *R.* was solely to blame for the collision.

ACTION *in rem* for damages arising out of a collision at sea.

The facts of the case are stated in the reasons for judgment.

The case was heard at Halifax, N.S., on September 21st, 1900; February 6th and 7th, 1901; March 8th and 12th, 1901.

W. B. A. Ritchie, K.C., for the plaintiffs;

R. E. Harris, K.C., for the defendant.

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McDONALD (C.J.) L.J. now (May 2nd, 1901,) delivered judgment.

The *Carrie E. Sayward*, a fishing schooner of the Port of Provincetown, United States of America, while in pursuit of her fishing voyage was at anchor on Bank Quero, about one hundred miles east of Sable Island, on the morning of the 6th September, 1901. The schooner had a crew of twelve men all told and had nearly completed her cargo of fish, when about three o'clock on the morning of the day mentioned, she was run into by a schooner afterwards ascertained to be the *Reliance* of Nova Scotia, also fishing on the Bank Quero. The result of the collision was that the *Carrie Sayward* sank at her anchors, and the vessel and cargo were totally lost. The wind was blowing about a three or four knot breeze from the W. S. W. or S. W. The *Carrie Sayward* had occupied the berth at which she was anchored when the collision took place for about a fortnight, and three other fishing vessels, the *Lottie Burns*, *A. K. Damon* and the *Hattie Western*, were anchored southerly from her at distances varying from half a mile to a mile and a half. The *Reliance* had also been fishing in the neighbourhood for some weeks at a distance of three or four miles from the *Carrie E. Sayward*, and having resolved to change her berth her master was, when the collision occurred, sailing through and among the vessels anchored in the immediate neighbourhood of the *Carrie Sayward*. Some hours before the collision, the *Reliance* had passed and spoken the *Lottie Burns* while sailing N. N. W. or N. W. on the port tack, and, having tacked, was sailing a course near south and on the port tack when the collision occurred. At the time of the collision the *Reliance* had all her sails set and was making between two and one half and three miles an hour speed. It is generally admitted on both sides that during the

early part of the night of the 5th September that the weather was fine, the sea smooth with a slight ground swell, bright moonlight and clear starlight. The moon sank about 2 a.m. on the 6th September, and there is much discrepancy as to the state of the atmosphere after the moon had disappeared, one party alleging that the night became dark and cloudy, while the others declare that it continued fine and clear till the collision took place. There is no question that the *Reliance* struck the *Carrie F. Sayward* a square blow about midships, and that from the effects of that blow the latter vessel with her cargo sank about two hours after the collision, after every effort had been made to save her by pumping. The only question for discussion, therefore, is that raised by the defendant vessel in her preliminary act, namely, "the fault or default" attributed to the *Carrie E. Sayward*, is as follows:

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a. "She was carrying no light at all.

b. The light, if any, carried by her was very dim and indistinct, and not in accordance with the regulations for preventing collisions at sea.

c. The light was not so constructed as to shew a clear or uniform unbroken light, nor was the same visible at a distance of at least one mile; but was a very dim and indistinct light, and was only visible a few feet from the said ship."

This is the only defence the defendant attempted to make at the trial, except the contention that as the *Reliance* was on the eve of collision with the other vessel, the man at her wheel was misled by a cry from the watch on the *Sayward* to "keep off." There is in this case the contradictions or discrepancies usually met with in cases relating to accidents at sea; but so far as I could judge the witnesses on both sides were respectable people of their class, and the contradictions and discrepancies appearing in the evidence may, I

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think, fairly enough be attributed to careless observation of facts in which they did not feel personally interested at the time, and which, when the incidents were recalled after the accident, naturally presented themselves in a more or less distinct and truthful light according to the intelligence of the observer. The first question, therefore, is—was the light exhibited by the *Carrie E. Sayward* such as the statute requires, on the night of and up to the time of the collision? That there was a light of some sort, intended to fulfil the regulation requirements is, I think, beyond question. The watch on the deck of the *Reliance*, at the time of the collision, admit that a light was burning in the rigging of the *Carrie E. Sayward*, but so dim and imperfect was it, that they did not see it until they had approached so near the other vessel as to render avoidance of the collision impossible. This defence of the *Reliance* rests largely upon the fact that while on her voyage from Provincetown to the fishing grounds the lamp of the *Carrie E. Sayward* shewed some defect which rendered some repairs necessary. This was done by removing from the large lantern (protecting the inside lamp) the defective lamp, and substituting another, repairs which the plaintiffs allege were entirely satisfactory, and furnished a light during the seven or eight weeks they were on the fishing grounds sufficiently strong and clear and bright to meet all the requirements of the regulations in that behalf. The evidence of the master and crew of the *Carrie E. Sayward* is very clear and positive as to the sufficiency of the light during the whole voyage up to the time of the collision. It appears that in these vessels, while at anchor on the banks, only one of the crew is on watch at night at the same time, and they take their turn of an hour each on watch. The man on watch at the time of the collision swears positively that, when he

came on deck to take his turn, the lamp was burning clear and bright as usual, and quite equal to the lights of the vessels anchored around them. The master says he was present when the light was hoisted into the rigging on the evening of the 5th September, that it was then burning bright and clear, and that when he left the deck at 10 p.m. on the night of the 5th September it was burning clear and bright, and each of the crew in succession who had been on watch from the time the lamp was lighted, on the evening of the 5th September till the collision occurred, testified that the light burned that night, while they were respectively on deck, as bright and clear as throughout the preceding part of the voyage, and that it was only after the jar caused by the collision that the light apparently became less brilliant than usual. This evidence of those on board the vessel, who have best opportunity of learning and knowing the facts as to which they testify, has not in my opinion been seriously, if at all, shaken or impugned by testimony on the part of the defendant vessel, while it is corroborated very strongly indeed by the evidence of those on board the schooners in the immediate neighbourhood of the *Carrie E. Sayward* on the night of the collision, and as to the general character of the light on board the *Carrie E. Sayward*, not only on the night and morning of the collision, but during the whole period of her voyage on the banks. These witnesses are Brier, master of the *Lottie Burns*; Silver, master of the *Ada K. Damon*; Marshall, master of the *Hattie Western*; and Gasper, a fisherman on the *Ada K. Damon*. Some of the fishermen on the neighbouring schooners testified that they did not see a light on the *Carrie E. Sayward* shewing during some part of the night of the 5th or 6th September. In itself this testimony is in my opinion worthy of little consideration in the face of the testi-

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mony of the masters and others from the vessels to which I have referred. It is significant that the people on the deck of the *Reliance* admit that they saw a light in the rigging of the *Carrie E. Sayward* as they approached her, but not in time to avoid collision. The evidence in my opinion discloses strong evidence of careless navigation on the part of those in charge of the *Reliance*. They were sailing at night over waters covered, more or less, with those fishing vessels at anchor. They had previously fished in a berth four or five miles distant, and one would suppose extra precaution would be taken on coming on new ground, among vessels anchored close together. But instead of that we find the master asleep in his cabin, having given those left in charge a roving commission among these anchored vessels, and she pursued her way under full sail, and in my opinion with careless and insufficient watch, with the result of the loss of this vessel and cargo. I am also of opinion that the light of the *Carrie E. Sayward* was, before and up to the time of the actual collision between the vessels, a bright and sufficient light as required by the regulations in that behalf, and that if a sufficient watch had been kept on board the *Reliance*, collision would have been avoided. I am also of opinion that the *Reliance* is solely to blame for the collision complained of, and that there must be judgment against her for the consequent damage with costs. There will be a decree accordingly, and it will be referred to the registrar and merchants to assess the damages.

Judgment accordingly.

Solicitors for plaintiffs: *Borden, Ritchie & Chisholm.*

Solicitors for defendant: *Harris, Henry & Cahan.*
