Privy Council Appeal No. 81 *of* 1920.

The Owners of the Italian Steamship "Cerea" - - - - *Appellants.*

v.

The Owners of the British Steamship "Soldier Prince" and her freight - - - - - - - - - *Respondents.*

The Owners of the British Steamship "Soldier Prince" - - *Appellants.*

v.

The Owners of the Italian Steamship "Cerea" and her freight *Respondents.*

The King of Italy - - - - - - - - - *Appellant.*

v.

The Owners of the British Steamship "Soldier Prince" and her freight - - - - - - - - - *Respondents*

Consolidated Appeals.

FROM

THE SUPREME COURT OF GIBRALTAR.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH JUNE, 1921.

Present at the Hearing:

VISCOUNT HALDANE.
LORD ATKINSON.
LORD PHILLIMORE.

Nautical Assessors:

ADMIRAL SIR A. MOSTYN FIELD, K.C.B.
COMMANDER CABORNE, C.B., R.N.R.

[*Delivered by* LORD PHILLIMORE.]

The actions in which the present appeals from the Supreme Court of Gibraltar have been brought originated out of a collision between the Italian steamship, "Cerea," 4,295 tons gross, 342 feet long, and the British steamship "Soldier Prince," 3,118 tons gross, 331 feet long, in the Examination Ground of Gibraltar Bay, shortly before 11 a.m. on the 15th February, 1917. Both vessels were damaged by the collision, and cross-actions were instituted; and His Majesty the King of Italy, as owner of the cargo on board the "Cerea," also instituted an action. All three actions were

consolidated, the owners of the " Cerea " and the King of Italy being treated as plaintiffs for the purposes of pleading.

Owing to the conditions of war, the evidence had to be taken at various periods and in any order and generally upon commission. Two local witnesses were examined before the Judge at the hearing. This took place on the 25th February, 1920, and on the 4th March, the acting Chief Justice, who had been assisted by nautical assessors, found both vessels to blame, and apportioned two-thirds of the blame to the " Cerea " and one-third to the " Soldier Prince." From this judgment the plaintiffs have appealed to His Majesty in Council, and the defendants have entered a cross-appeal.

The two vessels which came into collision were, with several others, in the Examination Ground outside the Southern Mole of Gibraltar waiting for instructions from the Examination Vessel. These two, as well as the hospital ship " Rewa " and a Royal Mail steamship " Arno," were under way. A fifth vessel, said to be a Frenchman, came to anchor. There was a S.W. wind of some strength, and the weather was squally. All the four vessels not held by anchor were probably heading in the same direction. There is a dispute as to whether this was N. or N.W. The " Cerea " was to the westward, that is on the port side, of the " Soldier Prince," the " Cerea " putting the distance apart as possibly not more than 600 yards when the " Soldier Prince " was particularly observed, and the " Soldier Prince " putting the original distance as they were lying as about 1,200 yards.

The story of the " Cerea " was that she was lying heading about N.W. by W., with her engines stopped, when the French ship came to anchor under her lee, and in order to avoid drifting down upon her, she put her engines slow ahead, and her helm hard-a-starboard ; that as she was so proceeding she saw the " Soldier Prince " also in motion and proceeding in a direction nearly parallel, and therefore causing no danger of collision. However, after two or three minutes, she saw the " Soldier Prince " swinging to port under a starboard helm and coming towards her. She, the " Cerea," then put her engines full speed ahead, keeping her helm hard-a-starboard, and if the " Soldier Prince " had continued her originally dangerous and improper starboarding, she would have passed just astern of the " Cerea " ; but unfortunately, shortly before the collision, she changed her course, and allowed her head to cant to starboard as if under a port helm, and so came into collision, striking the " Cerea " with her stem, abreast of the bridge on the starboard side, the " Cerea " being heading about W. by S., and the " Soldier Prince" S. by W., or S.S.W. The " Cerea " says that she heard no signals from the " Soldier Prince " except one short blast, which would signify a port helm just about the time that the " Soldier Prince " ceased to swing as if under a starboard helm.

The story of the " Soldier Prince " was that she was lying heading about N. ; that she had been visited by the Customs motor boat, and given permission to proceed out of the Examina-

tion Ground northwards to the Commercial Anchorage, which she desired to enter in order that she might get bunker coal, and had been given the proper flag to hoist as a signal that she had this permission so that she would not be fired upon; and that being desirous in a general way to proceed northwards, but having reason to suppose that it would be dangerous, either because of mines or because it was prohibited and she would be fired upon, to proceed directly northwards, or indeed anywhere to the E. of the N.W. buoy at the corner of the Examination Ground, she had to starboard her helm to get away to the westward. Accordingly, having hoisted her flag, and given the two blasts signal, which she shortly afterwards repeated, she made a course to round the N.W. buoy, putting her helm hard-a-starboard and her engines full speed ahead. She then observed the "Cerea" steaming northwards; so she blew a third time the two blasts signal for her, and shortly afterwards, having got on a course W.N.W., she steadied on that course. She says that she then observed the "Cerea" still coming on about four or five ship's lengths away and on her port beam, whereupon she put her engines full speed astern, and blew three blasts on her whistle. She got no reply from the "Cerea," but noticed that she appeared to starboard a little, and then the collision occurred, she, the "Soldier Prince," having altered course slightly under the reverse action of her engines, and so heading about N.W. by W. and the "Cerea" N. by W. or N.N.W.

Upon these two stories the important point in dispute was whether, as the "Cerea" said, the vessels were originally moving in more or less concentric curves under a starboard helm, and the collision was due to the "Soldier Prince" over starboarding and so converging upon the "Cerea" or whether it was due to the "Cerea" steaming ahead to the northward and so cutting the curve of the "Soldier Prince." On this point the evidence was very conflicting, and the "Soldier Prince" had to a certain extent the benefit of the evidence of the master of the "Rewa" and the master of the "Arno," while the "Cerea" had the benefit of the evidence of the Examination Officer and the master of the motor boat which carried him, these latter being the only witnesses whose evidence was taken in the presence of the judge. The "Rewa" had apparently been lying between the "Soldier Prince" and the "Cerea"; she heard the two blasts from the "Soldier Prince," and stopped to allow the "Soldier Prince" to cross her bows from starboard to port. The "Arno," on coming into the Examination Ground, passed the "Soldier Prince" on her starboard side, and then turned round under a starboard helm to come back to the Examination Anchorage. It is possible, and indeed it was so pleaded by the "Soldier Prince," that her action and the position of some unnamed steamships at anchor on the starboard bow of the "Soldier Prince" and ahead of her, might have contributed to make the "Soldier Prince" starboard as much as she did.

The learned Judge, with the advice of his assessors, found that the primary cause of the collision was the overstarboarding

of the "Soldier Prince," and he accepted the evidence of the "Cerea" as to the navigation. He found that the "Soldier Prince" turned to the southward, that her doing so was not a proper manœuvre, that she had ample room ahead, and had "no justification for crossing the bows of the 'Rewa' and turning down on to the 'Cerea,' thus turning the ships into crossing vessels." The grounds upon which he nevertheless found the "Cerea" also to blame will be discussed later.

A powerful argument against these conclusions was raised by counsel for the respondents in launching their cross-appeal, and it is no doubt improbable that the "Soldier Prince" should have starboarded more than was necessary to go outside the N.W. buoy, and still more improbable that she should have got her head as far to the southward as the master of the motor boat suggests and the learned Judge seems to have found. A suggestion has been made that she was not really ready to go northward out of the Examination Ground, as she still had to get a pilot, and that she might have been dodging. Unfortunately the material for this suggestion is only to be found in the evidence of the Examination Officer taken long after the witnesses from the "Soldier Prince" had been examined, so that they had no opportunity of dealing with it. It is also possible that the master of the "Soldier Prince" was more hampered than he was willing to allow at his examination by the movements of the "Arno," or he might have simply over-starboarded supposing that he had plenty of room and not regarding the "Cerea," expecting her as he evidently did to follow the example of the "Rewa," and then stuck to his starboarding till it was too late. But notwithstanding all these suggestions, the navigation of the "Soldier Prince," if it was such as the learned Judge has found, was somewhat unaccountable. On the other hand, the action which the "Soldier Prince" attributes to the "Cerea" is not a natural one. She has got to wait in the Examination Ground; the wind is blowing her out of it to the northward and eastward; going out of it to the northward would entail her being fired upon, and so her movement to avoid the anchored Frenchman would naturally be to the westward.

In this doubt there are two circumstances which seem to their Lordships, after they have received the advice of their assessors, as they seemed to the learned Judge in the Court below and his assessors, to throw the preponderance of probability in favour of the "Cerea." All these vessels were remaining under way, in the sense of not being held by their anchors, but they were not using their engines, and would lie heading in the same direction, and that direction would be broadside on to the wind; in other words they would be heading N.W. This is how the master of the "Rewa" says they were heading. The witnesses from the "Soldier Prince," however, say they were heading about N., and that they starboarded round to W.N.W. or six points. That they altered as much as six points under a starboard helm seems pretty certain; going ahead full speed for five or six minutes under a hard-a-starboard helm, they could hardly do less. But if, as

all the assessors held, they could not have been lying heading N., and if they were heading N.W., and starboarded six points, they would bring their heading to W.S.W., not indeed so far to the south as the "Cerea's" witnesses would put them, but four points further to the S. than they admit. Now the place from which they started is almost an agreed point, and the course from that spot which they would make in order to round the buoy and give it a fair berth would be W.N.W., as indeed they say, if not more to the northward. If therefore they were in fact going round to W.S.W., they were proceeding unnecessarily to the southward and unnecessarily crossing the course of the "Cerea"; and in that event one would expect to find the place of collision considerably S. of the buoy. The master of the "Soldier Prince" put the place of collision at no great distance from the buoy, and counsel for the respondents, while admitting that he put it too much to the northward, claimed that it was not more than 400 yards to the southward of the buoy. On the other hand, the witnesses for the "Cerea" put it at 1,000 yards from the buoy. Four hundred yards to the southward of the buoy gives an unnecessarily large offing, but it might pass. Anything to the southward of that makes the "Soldier Prince" take an unnecessary and dangerous course. The learned Judge took the view that it was between the two places, which would be serious for the "Soldier Prince." Upon this it was observed with some force by counsel for the respondents that the Judge's finding was not an independent conclusion, but was based upon his view of the navigation of the "Soldier Prince," and indeed that it required support from that view instead of giving support to it. This may be so, but the master of the Examination Vessel said that the collision was at the southern extreme of the Examination Ground, which is quite as favourable to the "Cerea" as her own place, and he is a witness whom the learned Judge saw, and upon whom he relied. Consistently with this statement, this witness puts the "Soldier Prince" as heading quite as far to the southward as the "Cerea's" witnesses say. He puts his statement somewhat picturesquely, possibly with a touch of exaggeration. He says that the "Soldier Prince" was at one time heading across Gibraltar Bay to Algeciras, and that just before the collision she was heading out across the Straits to Apes Hill. For these reasons their Lordships conclude that the decision of the learned Judge as regards this part of the case cannot be disturbed.

Their Lordships now approach the grounds on which the learned Judge found the "Cerea" also, and, indeed, preponderatingly, to blame. He thought that the look-out on board the "Cerea" was defective, meaning by that, not that there were not all the proper people at their proper stations, but that the master was unobservant, and that his defects of observation were not supplied by the chief officer or look-out man forward. He believed that the "Soldier Prince" had blown the three two-blast signals, as she said. He seems, however, though it is not quite clear, to have thought that she also blew, as the "Cerea" said, but as she

denied, one short blast when she altered her helm and stopped swinging to the southward. He thought that those on board the "Cerea" ought to have noticed the two-blast signals, and ought to have kept a more continuous observation upon the "Soldier Prince," and thus observed that she was on a converging course at an earlier period and before it was too late to avoid collision.

Upon this it might be remarked that at any rate the first two pairs of sound signals were not blown by the "Soldier Prince" for the special benefit of the "Cerea," but were only notifications to all vessels concerned that the "Soldier Prince" was starboarding her helm, which there was no harm in her doing as long as she did not overstarboard. As to seeing what happened, the "Soldier Prince" had been observed proceeding in a position of safety, and navigators are not bound to assume that a vessel in broad daylight will suddenly alter her course so as to bring about a collision; and even if those on board the "Cerea" had noticed at the first moment the dangerous convergence, it is very doubtful what they could have done other than what they did.

The learned Judge, though he speaks in general terms of the "negligence of the 'Cerea' in not taking proper action in due and sufficient time to avoid the 'Soldier Prince,'" does not mention any particular act which he censures except her going full speed ahead at the last moment. But counsel for the respondents at their Lordships' bar, while not throwing over this point, insisted with greater stress on the duty of the "Cerea" to have gone full speed ahead sooner. Indeed it seems that if the "Soldier Prince" had not checked her starboard helm, and by reversing canted her head one point in the opposite direction, she would have passed under the stern of the "Cerea," acting as the "Cerea" did, and there would have been no collision. On the other hand, if the "Cerea" had reversed and the "Soldier Prince" had stuck to her starboard helm, there would have been a collision. Upon the whole it seems to their Lordships, and in this they have the benefit of the advice of their assessors, that the learned Judge has imposed too heavy a burden upon those in charge of the "Cerea," who had to act in a sudden emergency, brought about by the negligent navigation of the "Soldier Prince." The primary cause of the collision being the bad navigation of the "Soldier Prince," there is no reason in law for throwing any part of the damage upon the "Cerea."

Their Lordships will therefore humbly advise His Majesty that the appeals should be allowed and the cross-appeal dismissed, that the judgment of the Court below should be varied, and the collision be pronounced to have been occasioned by the fault or default of the master and crew of the "Soldier Prince," and that the owners of the "Soldier Prince" be condemned in the whole damage and the plaintiffs have their costs of the actions and of the appeals and cross-appeal.

In the Privy Council.

THE OWNERS OF THE ITALIAN STEAMSHIP "CEREA"

v.

THE OWNERS OF THE BRITISH STEAMSHIP "SOLDIER PRINCE" AND HER FREIGHT.

THE OWNERS OF THE BRITISH STEAMSHIP "SOLDIER PRINCE"

v.

THE OWNERS OF THE ITALIAN STEAMSHIP "CEREA" AND HER FREIGHT.

THE KING OF ITALY

v.

THE OWNERS OF THE BRITISH STEAMSHIP "SOLDIER PRINCE" AND HER FREIGHT.

(*Consolidated Appeals.*)

DELIVERED BY LORD PHILLIMORE.

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