

The Master of the British Steamship "Singleton Abbey" - - - *Appellant*

v.

The Master of the Italian Steamship "Sara" - - - *Respondent*

The Master of the Italian Steamship "Sara" - - - *Appellant*

v.

The Master of the British Steamship "Singleton Abbey" - - - *Respondent*

(Consolidated Appeals.)

FROM

THE COURT OF APPEAL OF MALTA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 16TH FEBRUARY, 1928.

Present at the Hearing :

LORD PHILLIMORE.

LORD DARLING.

LORD MERRIVALE.

Nautical Assessors :

VICE-ADMIRAL SIR H. HARVEY BRUCE, K.C.B., M.V.O.

COMMANDER L. W. BAYLDON, R.N.R.

[Delivered by LORD MERRIVALE.]

These are consolidated appeals from a judgment of the Court of Appeal of Malta whereby, reversing a judgment of the Commercial Court, the appellants and the respondents were held both to blame in respect of a collision which occurred in the Grand Harbour at Malta on the morning of the 22nd November, 1922. A series of casualties befell, on the occasion in question, several steamers which, contrary to established usage, had been allowed

by the local authorities during a north-easterly gale to remain moored by the stern with anchors out forward at the Fish Market Quay in the Outer Harbour. They bore the brunt of the storm until it became too late to remove them without grave peril. In the event the "Sara" was sunk. The plaintiff's vessel the "Singleton Abbey" was damaged, but not seriously. There was other damage not now under consideration.

The "Sara," a steamship 246 feet long and of 1,101 tons gross, had come into harbour to coal, while on a voyage westward, laden. The "Singleton Abbey," 303 feet long and of 2,324 tons gross, was light. The relative conditions of the two vessels as to cargo and free board were material facts in the case. The "Singleton Abbey," at the material times, had highly exposed freeboard, so that her propeller was only partly submerged. Before the gale reached its maximum force the S.S. "Paludina," which had been moored at the quay on the port side of the "Singleton Abbey," fell down upon her, fouling her chains and driving her down upon the "Sara," which was south of the "Singleton Abbey," but not immediately alongside, a vessel laden with munitions, whose position and cargo added to the common danger, having been removed shortly before. On the starboard side of the "Sara" was a larger vessel, the S.S. "Winona." The "Paludina," before she was brought under effective control, collided also with the "Winona."

The time occupied by the material events from the breaking loose of the "Paludina" to the foundering of the "Sara" was no more than an hour, and the rapid succession of numerous dangerous occurrences among the vessels involved is no doubt accountable for a remarkable range of contradiction in the available evidence.

When the "Paludina," which had been moored at the port side of the "Singleton Abbey," fell down upon her, fouling her anchor chains, and throwing her down upon the "Sara," both the "Singleton Abbey" and the "Sara" had steam up. The stern moorings of the "Singleton Abbey" were broken, and she was in imminent danger of being driven ashore. The "Sara" was in peril of being crushed between the "Singleton Abbey" and the "Winona." The "Sara" cast off her moorings, and both vessels made as prompt and effective use as they could of their engines. The "Sara" was first to get clear of the shoal water in front of the Quay. Neither vessel lifted an anchor at this time. The "Singleton Abbey" was anchored with her port anchor at 60 fathoms, and her starboard anchor at 30 fathoms: the "Sara" had out her port anchor only with 90 fathoms of chain.

The "Sara" as she headed to the gale steamed out to her anchor, and presently reached a position in which her anchor hung vertically. Her master's intention was to get up his anchor before steaming to a sheltered mooring in Bigli Bay or under Fort Ricasoli. The course of the "Singleton Abbey" when she headed to the gale was practically a parallel course. She did not at this time get in her anchor chains.

Shortly after the two ships reached these relative positions the casualty occurred which sunk the "Sara." After a collision between the port bow of the "Sara" and the starboard side foreward of the "Singleton Abbey" and the carrying away of her port davits, the "Sara" fell under the quarter of the larger ship, and, inasmuch as the propeller was in action, was struck by the revolving blades on the port side between her No. 1 and No. 2 holds and so badly damaged that in about a quarter of an hour she sank.

The case made on behalf of the "Sara" at the hearing was that she was well away from the Quay, and in safety, holding up to the wind while she got up her anchor, when the "Singleton Abbey" steamed out from her moorings, overtook her at full speed, struck her on her port side, deflecting her from her course and throwing her stern to port, and that, the "Singleton Abbey" continued to use her engines when to do so inevitably caused vital damage. By her preliminary act the "Sara" had alleged four particular defaults of the "Singleton Abbey": that she started manœuvring to leave the Quay without having weighed her anchors and without warning to the "Sara"; that she had dismissed a pilot and tug-boats of which she could have had the service; that she started manœuvring to weigh anchor without waiting till the "Sara" had finished her manœuvre; that after striking the "Sara" on her port side she kept her engines in action and thereby caused the blows of her propeller which caused the "Sara" to founder.

The "Singleton Abbey" alleged by her preliminary act that about a quarter of an hour later than the "Sara" came clear of the "Singleton Abbey" after the collision caused by the "Paludina," she was noticed to approach the "Singleton Abbey," and that after a collision between her port bow and the "Sara's" starboard side the "Sara," when clear, failed to steam ahead so as to avoid falling on the "Singleton Abbey." The master of the "Singleton Abbey" said that the "Sara" appeared to him to be out of control, and a good deal of evidence was given in support of a contention that the "Sara" had not (or did not make at the material time) effective use of her engines.

The most violent discrepancy in the proof at the hearing was perhaps that relating to the place of the collision. For the "Sara" it was asserted she was well over to the San Angelo side of the harbour and that the "Singleton Abbey" steamed out to her there—recklessly as it would seem. The case for the "Singleton Abbey" under this head was that she never reached such a distance from the Valletta side as to be relieved of the necessity of using her engines to keep her from being blown ashore.

The Commercial Court, on the advice of its Nautical Assessors, regarded as hopeless, in view of the perils which threatened all the vessels concerned, the allegations of the "Sara" as to what may be called the "order of going" of the "Singleton Abbey." The Court accepted evidence as to time which tended to show that the vessels were dangerously near the Valletta shore when the

ultimate clash occurred. As to the main allegations against the master of the "Singleton Abbey," the learned Judge found as follows :—

"The 'Sara,' when she had her anchor chain up and down stopped. The two steamers collided with the port bow of the 'Sara' to the starboard side of the 'Singleton Abbey.' The 'Sara' was thrown alongside the 'Singleton Abbey' as she was falling off from the wind. She was struck by one revolution of the propeller."

The Court adopted findings of the Assessors to this further effect :—

"Although the order to stop the engines had been given the propeller did not stop in sufficient time" [*i.e.* to avoid striking the "Sara"]. "The order to stop the engines could not and should not have been given before, as the 'Singleton Abbey' was light and the propeller consequently had little resistance from the water. The 'Singleton Abbey' needed the continued use of her engines to keep the ship under control."

As to the "Sara" the Commercial Court adopted findings of its Assessors that the "Sara" stopped her engines when her anchor chain was up and down, and that had she then proceeded at full speed collision would have been avoided. Upon a view, however, that this stoppage was due to defective boiler power and difficulties as to steam, the Court did not find the master to blame.

The result of the judgment of the Commercial Court was to acquit each party of any actionable default.

The Court of Appeal, differing from the Commercial Court, found both vessels to blame, and equally. The locality of the collision was found to have been :—

"Far from the shore. The master of the 'Singleton Abbey,' it was found, could have kept his ship's head to the wind and her stern off the shallow water until the 'Sara' got out of his way. On the contrary, heartened by the presence of the tug boat and made anxious by the proximity of the vessel to the shore, he increased his speed, at the same time steering to starboard as his ship gathered headway toward the 'Sara' . . . the 'Singleton Abbey' must . . . have steamed a long way out from the shore towards the middle of the harbour where the 'Sara' lay heaving her anchor. . . The master was also in fault for not having ordered the engines to be stopped as soon as the collision occurred, if not before. . . . But at that moment the master came off the bridge. When the order was given it was too late. . . . The collision and subsequent sinking of the 'Sara' was mainly due to failure on the part of the master of the 'Singleton Abbey' to exercise the skill and nerve which are ordinarily found in a competent seaman . . . in that he increased the speed of his vessel while keeping his head to the wind, before the 'Sara' was clear, and did not stop his engines in time."

The Court of Appeal found the **master** of the "Sara" to blame on these grounds: that the "Sara" took too long to heave her anchor, and that when her master found the "Singleton Abbey" was steaming towards her and collision was imminent he should have used his engines to go full speed ahead, thereby avoiding contact with the propeller.

The Court of Appeal has differed from the Commercial Court as to the inferences proper to be drawn from the evidence adduced

viva voce at first instance and presented in the record of appeal. There was, however, cogent proof before the Commercial Court to warrant at any rate the major part of the conclusions there made.

As to the place of collision, the evidence of the master of the "Singleton Abbey" was corroborated by some of the witnesses called for the "Sara." For example, the master of the tug "Ancient," which made fast to the "Singleton Abbey" immediately before the collision, said this:—

"The 'Singleton Abbey' was quite close to the shore lying parallel with the beach: close in. As the hawser was coming up tight the 'Sara' dropped and got under the 'Singleton Abbey's' quarter and . . . struck the propeller."

Moreover, a set of photographs taken from on board the "Winona," which lay southward and westward of the colliding vessels, gave definite support to the evidence of the master of the "Singleton Abbey." The position in which the wreck of the "Sara" was found is also worthy of consideration.

The finding in the Court of Appeal of a descent upon the "Sara" of the "Singleton Abbey," with increasing speed and on a course set to starboard by the master "as his ship gathered headway toward the 'Sara,'" not only overrides a body of evidence of the appellants: the charge can hardly be said to appear in the Preliminary Act on the other side. The conclusion, which appears to be vital, that the master of the "Singleton Abbey" was in fault for not having stopped his engines as soon as the primary collision occurred of port bow and starboard side is pointed if not induced by an incidental averment that "at that moment the master came off the bridge." This finding is unsupported by any evidence properly admissible and was not sustained during the hearing before their Lordships. Incidentally to findings which affect each of the vessels, the Court of Appeal finds—accepting a statement of the master of the "Singleton Abbey"—that she and the "Sara" were clear of one another after the mishap immediately due to the falling down of the "Paludina," for an interval of about fifteen minutes. Whether this estimate differs substantially from that of the Commercial Court depends no doubt upon the moment in the story at which the calculation begins. More material, however, than the measurement of the time during which the vessels were apart is what was done in the few minutes before the ultimate collision.

The conflict between the "Sara's" case of a collision due to an impatient increase of speed of the "Singleton Abbey" headed by helm action for the "Sara," as found in the Court of Appeal, and a collision due to falling down of the "Sara" before the wind at the height of the gale, as alleged on the other side, and found in the Commercial Court, depends for its decision upon questions of fact. There is more than the evidence of the witnesses from the "Singleton Abbey" to sustain the finding made in the Commercial Court. Salvatore Parascandalo, the pilot who was in charge of the "Sara," states repeatedly in his testimony that during the few

critical minutes the engines of the "Sara" were stopped. "I reckon the engines were stopped four minutes before we were hit by the 'Singleton Abbey.' . . . I guess, but may not be precise, four or five minutes." Pietro Parascandalo, son of Salvatore, who saw the collision from the wharf, said this: "The collision took place owing to the fact that one ship was thrown upon the other by the force of the weather."

The Court of Appeal differed from the Commercial Court as to the effect of the evidence for and against the "Sara" as to the non-user of her engines during the minutes just before the collision. The fact of non-user, as has been pointed out, was manifest. The Court of Appeal found the master of the "Sara" to blame in that he took too long to raise his anchor, and in that as soon as he became aware that the "Singleton Abbey" was steering toward the "Sara" and a collision was imminent, he should have kept his engines working and have gone full speed ahead. The Court was of opinion—with its Assessors—that he would thus probably have saved his ship.

The length of time taken about raising the "Sara's" anchor was fixed by her master's evidence, and in coming to the view that the master was in fault for not using his engines to go full speed ahead at the critical period, the Court of Appeal rejected the supposition which had been acted upon in the Commercial Court that the engines were not available for use at a pressure sufficient for the emergency. The Court—also acting on the view of its Assessors—overruled the master's own assertions as to various prudential reasons for non-user of his engines. So far as the questions here involved are questions of fact they depend in considerable degree upon documentary evidence.

Well established principles limit the authority of Courts of Appeal to overrule findings of fact made by tribunals of first instance. A manifestly erroneous conclusion, which a reasonable judgment rejects, is not validated by the fact that it was arrived at after hearing and seeing witnesses. On the other hand, the veracity of witnesses is ordinarily to be finally determined by those before whom they give evidence. The value of corroborative or discreditive proof can best be judged by those who have before them all the persons involved. A conclusion of fact of one tribunal founded upon divers admissible facts of varying importance ought not to be overset because the balance of proof upon consideration of the matter by different minds in a new setting seems to incline against the conclusion originally drawn.

Examination afresh of the findings which have here to be considered calls attention to a circumstance necessary to be mentioned in connection with procedure in Admiralty in the Courts of Malta. Each Court recites the conclusions of its Assessors as decisive, apparently in accordance with established practice. It is hardly necessary to observe that at first instance and upon appeal in Admiralty Courts governed by the practice in the High Court in England, facts are not found by the Assessors but by the

Court itself, and the function of the Assessors as experts is advisory only. As was said by Viscount Sumner in the case of the "Nautilus," [1927], A.C. 145 :—

"It is for" [the judges] "to believe or disbelieve the witnesses and to find the facts which they give to the Assessors. As to the advice given if they entertain a contrary opinion to the Assessors they are entitled and even bound to give effect to that view."

So also by Lord Carson, p. 157 :—

"One ought to be very careful to first come to a conclusion upon the existing facts and from them, if necessary, evolve the expert questions on which the advice of the Nautical Assessor is to be obtained."

The matter is not of crucial importance in this case, as in each of the tribunals in Malta the learned Judges expressed the findings of the Court itself so far as is material in the words employed by its Assessors. The conclusions in question can therefore be examined as the conclusions made by the several Courts.

To the observations already made upon the findings of fact upon which the Court of Appeal of Malta has differed from the Commercial Court, little needs to be added. It is established, as was found in the Commercial Court, that at such distance only from the Valletta shore as left the "Singleton Abbey" in imminent peril of being driven on shore by one of the severer blasts of the prevailing gale, her master continued to use his engines as he thought necessary to keep her head to the wind and to prevent her being blown astern; that he was so using them, though not at full speed, while the "Sara" lay with her anchor chain up and down and her engines temporarily stopped, and that he did not stop them until the collision—port bow and starboard side—had occurred. It is also established that the "Sara" at that time was not being held up to the wind by her engines. The master of the "Singleton Abbey" himself says the "Sara" appeared to be out of control and falling down upon his vessel. Upon the facts stated their Lordships have thought it proper to take the opinion of their Nautical Assessors as to whether good seamanship required that the master of the "Singleton Abbey" should stop his engines or take some action other than that he in fact took.

Their Lordships are advised by their Assessors that in keeping his engines in action the master took a proper and seamanlike course, and this is the view they themselves hold. The "Singleton Abbey," light, with her abnormally high freeboard, and with her propeller only partially submerged, could be kept in being only by steady and resolute action. Her master's immediate duty was to his own ship and crew. When the "Sara" was driven to leeward she was still, according to her own proofs, a vessel with sufficient steam pressure available to command her own course. Their Lordships are satisfied that to have stopped the engines of the "Singleton Abbey" at this juncture would have, by voluntary action, gravely imperilled the ship. This the master ought not to do. The master of the "Singleton Abbey" is, therefore,

as was held in the Commercial Court, free from blame in the matter complained of.

As to the default found by the Commercial Court against the master of the "Sara," the documentary evidence and his declarations appear to their Lordships to warrant a finding that he had engine power available. This engine power was not used. Whether the master was guilty of negligence in this depends, however, not only upon questions of the time available, the relative situation of the vessels and the imminence of the alternative perils which threatened them, but upon the degree in which blame can be imputed to a mariner because he does not infallibly take in the crisis the course which in the light of calm subsequent judgment may appear to be the best. After considering the matter with their Assessors their Lordships do not find the master of the "Sara" guilty of negligence.

Their Lordships will humbly advise His Majesty that the appeal of each of the appellants should be allowed in part, the judgment of the Court of Appeal should be reversed and the judgment of the Commercial Court restored.

Inasmuch as each party was an appellant in respect of some part of both the judgments below then no order is made as to costs in the Courts below or of this appeal.

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
LIBRARY

In the Privy Council.

THE MASTER OF THE BRITISH
STEAMSHIP "SINGLETON ABBEY"

THE MASTER OF THE ITALIAN
STEAMSHIP "SARA."

THE MASTER OF THE ITALIAN
STEAMSHIP "SARA."

THE MASTER OF THE BRITISH
STEAMSHIP "SINGLETON ABBEY."

(Consolidated Appeals.)

DELIVERED BY LORD MERRIVALL.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1928.