

Privy Council Appeal No. 82 of 1923.

Smith, Imossi and Company - - - - - *Appellants*

v.

His Majesty's Attorney-General - - - - - *Respondent*

AND

His Majesty's Attorney-General - - - - - *Appellant*

v.

Smith, Imossi and Company - - - - - *Respondents*

(CONSOLIDATED APPEALS.)

FROM

THE SUPREME COURT OF GIBRALTAR.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1924.

Present at the Hearing :

LORD ATKINSON.

LORD WRENBURY.

LORD PHILLIMORE.

Nautical Assessors :

ADMIRAL SIR R. NELSON OMMANNEY, K.B.E.

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

[*Delivered by* LORD PHILLIMORE.]

These are an appeal and cross appeal from a decision of the Chief Justice of Gibraltar assisted by nautical assessors in a suit brought by the Attorney-General of Gibraltar on behalf of His Majesty as owner of the steam launch "Nevada" against the steam tug "Cometa" and a dumb lighter which was attached to her, both owned by the defendants trading as Smith, Imossi & Co.

The collision took place shortly after 9 in the morning of the 26th January, 1923, in the Bay of Gibraltar, outside the

northern entrance to the harbour. The weather was fine and clear, and there was no wind or tide of any importance. The first impact of collision was between the stem of the dumb lighter, which was lashed to the port side of the "Cometa" and projected a few feet in front of the "Cometa's" stem, and the bows of the "Nevada" quite close to her stem.

There was a second collision doing no damage of importance by the stem of the "Cometa" striking the rubber fender of the "Nevada" some way down on the port side.

The first collision ripped open the bows of the "Nevada" so that she shortly afterwards sank. She has since been raised and repaired. Neither the "Cometa" nor the lighter suffered appreciable damage, and there is no cross suit or counter claim.

The case of the "Nevada" was that she had been out on boarding duty and was about to return to the harbour through the northern entrance, when she saw the red flag which is hoisted as a signal to show that a man-of-war was going to use the entrance and that other vessels must wait, and further saw the destroyer "Vimiera" passing into the entrance; and that she accordingly waited with her engines stopped, and her head to the southward, clear of the entrance and about 200 yards to the westward of the North Mole, that she saw the "Cometa" coming out from the harbour crossing the bows of the "Vimiera" and then heading to pass down the port side of the "Nevada" and between her and the North Mole; that there would then have been no danger if the "Cometa" had not starboarded and turned across the "Nevada's" bows; and that on seeing this danger, she put her engines astern, but too late to avoid the collision.

The case of the "Cometa" was that she was coming out of the harbour having brought a lighter rather larger than herself and lashed to her port side from No. 2 shed on the inside of the North Mole, meaning to take the lighter to a vessel moored on the outside of the Mole about opposite the same No. 2 shed, for which purpose she would ultimately have to turn right round so as to bring the barge on the inside of her: that taking the "Nevada" as stopped, she was proceeding in her sweep to cross clear ahead of her, starboarding her helm a little as she got near so as to give more space; but that the "Nevada" suddenly went ahead and caused danger of collision, and though she—the "Cometa"—reversed her engines and took off her way, she could not avoid a collision.

The learned judge who had before him as materials for deciding the case, the deposition of the Commander of the "Vimiera" and the evidence of some of the crews of the two vessels, and of surveyors who had inspected the damage and caused photographs of it to be taken, found in conclusion that both vessels were to blame. He thought that the "Cometa" was coming at an excessive speed, and that she starboarded too late, apparently holding not that she had been in a position to pass all clear port to port, but that she would have been heading to hit the "Nevada" and took steps too late to avoid her. He held the "Nevada" to

blame, because he considered that she did move ahead as those on board the "Cometa" said. His theory as to this moving ahead, was that the coxswain of the "Nevada" had intended to go astern but spoke in the emergency in a quick, excited tone, and that the engineer who being down below, could see nothing and was naturally waiting for an order to go ahead, mistook the message which came through the speaking tube. He did not think the "Nevada" was going ahead for any length of time or at any great speed, but he thought that she had way enough on her to be a contributing factor to the damage. He thought that the "Cometa" had just taken off her way, but that the lighter was still forging ahead and supplied the other factor.

From this decision, both sides have appealed, Smith, Imossi & Co. being the first appellants.

The most important point in the case is whether the "Nevada" being stopped, continued stopped or only moved to go astern, or whether, on the other hand, she went ahead. The learned judge has found that she went ahead. Their Lordships have asked the assessors who have assisted them, whether they can infer from the nature of the damage that the "Nevada" had headway or not, and their answer is that both vessels had slight speed going ahead. This and other circumstances to which reference will shortly be made, lead their Lordships to the conclusion that the learned judge was right, and that the "Nevada" did move ahead. This is an important point in favour of the "Cometa," but it is not conclusive.

If the distance which the "Nevada" moved was only a short one, it might well be that a collision would still have occurred if she had remained stationary; only it would have taken another form, the starboard quarter of the "Cometa" sweeping into the bows of the "Nevada." Further, if the "Cometa" was coming dangerously close to the "Nevada," and in what has been called the "agony" of an apprehended collision the coxswain of the "Nevada" gave a wrong order or an order easily misunderstood, then the real fault would lie in the dangerous navigation of the "Cometa." Their Lordships must therefore inquire more closely into the facts.

Now the "Nevada" would naturally lie clear of the entrance; and it would depend upon the course of a vessel going out whether she could pass to the southward and ahead of the "Nevada," or whether she would hit the "Nevada," or whether by turning to starboard under a port helm as she came out, she would pass down the port side of the "Nevada" and between the "Nevada" and the Mole.

The assessors have told their Lordships that the natural course of the "Cometa" which she would take for her own operation unimpeded by the presence of any other vessel, would have been to describe the greater part of a circle, beginning north-west, and turning through N. and E. to south, the line of the jetty on the N. Mole running from N. to S. (geographical). There is some variation of the compass, but it does not make so much difference

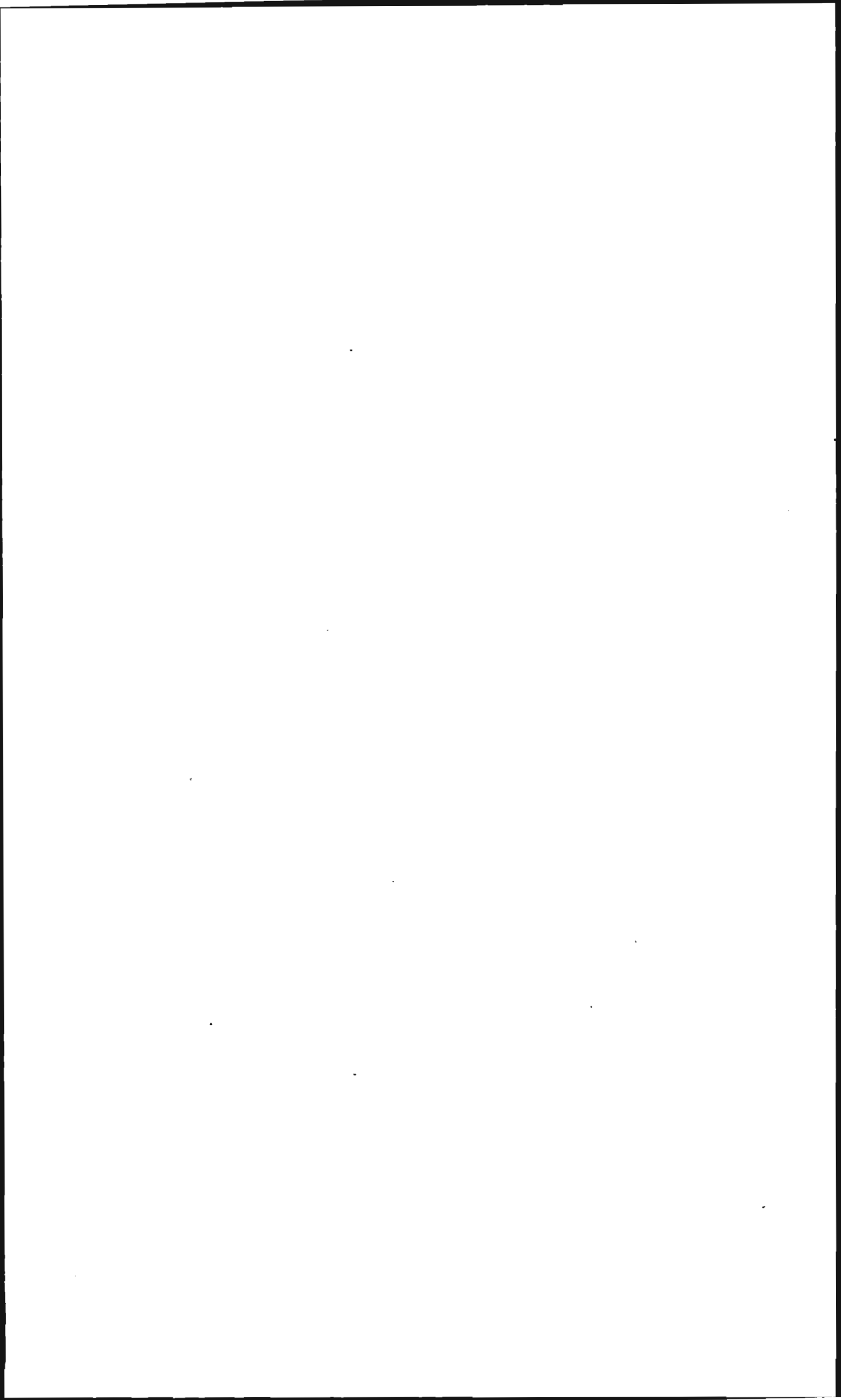
whether the courses are taken as magnetic or geographical. The question therefore is whether the sweep or seven-eighths of a circle which the "Cometa" was taking, would take her outside or inside or directly upon the "Nevada," as she lay. Those on board the "Cometa" say that when they first saw the "Nevada," they were heading N.W. This is the initial course which the assessors would attribute to her, and which the deposition of the Commander of the "Vimiera" would give to her as she passed him.

The "Cometa" says that when she was heading on this course N.W., she saw the "Nevada" 3 to 4 points on her starboard bow. Four points on the starboard bow means a bearing of north. The "Nevada" says that she was heading S.W. by S. and saw the "Cometa" 2 points on her port bow, that would mean bearing S. by W.; in other words, the "Cometa" says "I was south of the Nevada," and the "Nevada" says nearly the same, "You were S. by W. from me." For this purpose, the bearing given by the "Cometa" is, as far as the slight difference goes, more favourable to the "Nevada" than that given by the "Nevada." If then the "Cometa" bore S. of the "Nevada," and the "Nevada" remains at rest, the "Cometa" cannot come into collision unless she steers N.; and if she was before the collision showing her port bow to the "Nevada," she must have been heading N. by E. or more easterly. That would mean that in the entrance of the harbour or after coming out, she had already turned at least 5 points of the curve which she was ultimately to make, doing so under a port helm. It would be very unreasonable if she were to suddenly interrupt her curve and take action in the reverse direction and so bring herself into an unnecessary collision.

On the other hand, once it be found that the "Nevada" moved ahead, and that her witnesses are not speaking the truth in saying that she did not so move, it is not a difficult inference to draw that the motion ahead was a substantial one, taken somewhat earlier and carrying her forward somewhat further than the learned judge has found. Then there was no reason justifying this motion, and but for it there would have been neither collision nor risk of collision.

With regard to the other point which the learned judge made against the "Cometa" that she was proceeding at an excessive speed, their Lordships were somewhat astonished that a speed of 4 knots an hour in daylight and clear weather should be considered excessive; and their assessors state that in their opinion as a nautical matter it was not excessive.

Upon the whole therefore the "Cometa" must be held free from blame, and the "Nevada" alone to blame for the collision. Their Lordships will humbly recommend His Majesty that the decision of the Court below be varied, and that the collision be pronounced to have been wholly occasioned by the fault or default of the Master and crew of the plaintiff's launch "Nevada," and that the suit be dismissed with costs both here and below.



In the Privy Council.

SMITH, IMOSI AND COMPANY

v.

HIS MAJESTY'S ATTORNEY-GENERAL.

AND

HIS MAJESTY'S ATTORNEY-GENERAL

v.

SMITH, IMOSI AND COMPANY.

(Consolidated Appeals.)

DELIVERED BY LORD PHILLIMORE.

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

1924.