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T. W. Sheridan

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A COMPETENT ATTORNEY PREPARES HIS CASE*

On the night of March 18, 1931, the large British ship *Silveryew*, inward bound to New York, collided with the small American ship *Arminda*, outward bound. Both ships were badly damaged. The second mate of the *Arminda* was shot off the bridge by the force of the concussion and was crippled for life with his back, ribs and several limbs broken. A number of other men of the *Arminda's* crew were seriously injured.

The collision occurred in New York Harbor somewhat above the Narrows (a short, narrow water passage between Brooklyn, Long Island, and Staten Island).

The *Silveryew's* story was that she had preceeded up Bay Ridge Channel on the proper, right hand, side of the Channel heading directly for the Bay Ridge Anchorage, and had sighted the *Arminda's* red light ahead and slightly on the port bow, which indicated that the *Arminda* was bound in the opposite direction and "that the two vessels were in a nice position to pass port to port."

"Then," went on the story, "a signal of one blast was heard from the *Arminda* which was immediately answered with a single blast from the *Silveryew* and the pilot ordered the helmsman to 'port easy.' The pilot had turned to make certain that the helmsman was obeying his orders, and having satisfied himself that he was, again looked forward, the *Arminda's* green light, which had been momentarily shut out after the exchange of signals, opened up and her red light disappeared, the *Arminda* swinging to port across the

*This discussion of the case of *The Arminda*, 59 Fed. (2d) 776 (1931), by Captain T. W. Sheridan shows the advantage of a skillful preparation of the case at hand and of a complete grasp of the facts involved. What appeared to be, at first blush, a hopeless case from the standpoint of one of the parties, was won by a careful analysis of the facts and of the evidence of the adverse party. Regardless of a lawyer's training and ability, nothing is more important in the trial of cases, than a thorough preparation of the particular case that one is engaged in trying.—The Editorial Board.

Silveryew's bow, apparently under a starboard helm, and the pilot ordered the helm hard astarboard and the engines put full speed astern. The *Silveryew's* helm was never starboarded. The collision occurred almost instantly. It was then 8:01 P. M. by the *Silveryew's* clock. The stem of the *Silveryew* struck the starboard bow of the *Arminda*, the blow leading aft at an angle of 55 degrees. The *Silveryew* continued to swing under port helm until she was headed for the Brooklyn shore, and the impact carried the *Arminda* around so that her starboard quarter struck the *Silveryew's* port quarter. Both vessels were seriously damaged."

(Starboard helm makes a ship go to the left; port helm makes it go to the right. The red light is on the port [left hand side looking forward] and the green light is on the starboard [right hand side looking forward].)

"Every possible witness was called from the *Silveryew*: the captain, stationed on the bridge; the state pilot, on the bridge and piloting the ship (having a state license for that purpose); the senior and junior third officers, on duty on the bridge; a senior apprentice at the wheel; the chief officer, carpenter and a seaman in the bow, on lookout," said *Silveryew's* counsel. All concurred in supporting, severally and jointly, in detail, the *Silveryew's* story of how the accident occurred.

For further support, the *Silveryew* called the captain and officers of the tanker *Bayonne* who testified that they, bound the same way, had been passed by the *Silveryew*, shortly before the accident, which, when it passed, was even further over to the right hand side of the channel than was the *Bayonne*. They had observed the collision and had heard the preceding whistles.

The *Arminda's* conflicting story was that she had steered down the western side (right side) of the channel approaching the Narrows and had observed two ships coming up in

the opposite direction. These were the *Silveryew* and the *Bayonne*. The *Silveryew* was ahead of the *Bayonne*.

“While the *Silveryew* was still below the Narrows, about three quarters of a mile away, and bearing a point to a point and a half (a point is $11\frac{1}{4}$ degrees) on the port bow of the *Arminda*, one blast was blown to the inward bound vessels to apprise them that the *Arminda* was going to keep to the right and pass them port to port. But the *Silveryew* made a small change of course to the left and did not answer the signal. The *Arminda* blew a second blast with no answer as the *Silveryew* continued on its course to the left of the *Arminda*. A third blast from the *Arminda* was again ignored and, as the ships were getting close and the *Silveryew* seemed determined to cross the bow of the *Arminda*, the latter then blew three blasts and put her engines full astern. The *Silveryew* was then across the stem and on the starboard bow of the *Arminda* but, instead of proceeding on, turned to the right and suddenly steered straight for the *Arminda*. The danger signal was blown on the *Arminda* but the *Silveryew* came on at full speed, struck her on the starboard bow and swung her around so that she was headed toward the Brooklyn shore.”

The *Arminda* was about to be sold to some Hondurans. She was very economically operated. At the time of the accident, the second mate was on watch, piloting the ship. The captain and other officers were below, there was no lookout and the only man on deck beside the second mate was the man at the wheel as there was no state pilot. After the accident, a survey disclosed that the sidelights of the *Arminda* were defective and showed over six degrees on the wrong side. It was discovered that there had been trouble with a sticky cam on the port engine just prior to the collision.

There were only two lone witnesses for the *Arminda*, the wheelman and the second mate. The wheelman was an il-

literate, inarticulate alien; and the second mate lay in a hospital with a broken back and in a hardly coherent condition.

On the other hand, the *Silveryew's* side was supported by a wealth of concurring testimony from her captain, officers (all with highest British certificates of competency), state pilot, senior apprentice, carpenter and several seamen; added to which was the testimony of the captain and officers of the *Bayonne*. Many marine men vigorously denounced the *Arminda* and British merchant master mariners universally deeply deprecated "dangerous conditions that would allow ships navigated, as the *Arminda* had been, to impede and endanger international shipping entering a port of such importance to British trade."

Charging that "The *Arminda*, after a port to port passing had been agreed by the exchange of single blasts, altered course to port across the *Silveryew's* bows and made collision inevitable"; that "The *Arminda*, at and prior to the time of the collision failed to keep a proper lookout and did not have on watch competent persons attending to their duties"; and that "The *Arminda* did not have proper lights, properly set and brightly burning"; the *Silveryew's* Proctors filed a libel against the *Arminda* to recover for the damage done to the *Silveryew*.

After a delay, the *Arminda* feebly answered by filing a cross libel charging that "The *Silveryew* altered her course to port across the course of the *Arminda* exhibiting her green light and thereby brought about eminent danger of collision"; and that "The *Silveryew* did not maintain a proper lookout."

It was generally conceded that the *Arminda* had no chance.

Then the injured second mate regained consciousness of what was going on and was able to voice his story of what had happened. He placed entire blame on the *Silveryew*, felt

that he should be compensated for being made crippled and helpless for life, and pleaded with his devoted wife to hasten to a famous admiralty lawyer, D. Roger Englar, and endeavour to interest him in the case. Fortunately for the now helpless second mate, Mr. Englar knew him as a man of character, courage and fine, keen, seamanlike ability who had had a brilliant World War record and for that reason, but with small expectation, examined the case to see if there was a faint possible chance for the *Arminda's* second mate.

To test the validity of the massive edifice of apparently impregnable, closely concurring testimony, erected by the *Silveryew's* witnesses, required that the story of each one on both sides be subjected to the closest scientific scrutiny. A multitude of diagrams were drawn to illustrate every assertion and exhaustive mathematical calculations concerning all navigational, seamanship or time statements were made. The result was perfect proof that:

"Things are seldom what they seem,
Skimmed milk masquerades as cream,
Black sheep frequent every fold,
All that glitters is not gold!"

Aye! And there was much that glittered in the *Silveryew's* story that was not good gold—for the *Silveryew!*

Mr. Leonard J. Matteson tried the case with Mr. Englar as chief of a board of strategy and myself as marine expert.

Many fundamental contradictions were found in the superficially strong, convincing story of the *Silveryew*. The first defect developed in the tale was when the *Silveryew's* story of having "steered up the starboard hand of the channel (right hand side) without going to port at all," which was told by all on the *Silveryew*, was compared with the actual position of the collision, deduced from cross bearings taken by the *Silveryew's* own officers, and it was found that the collision had occurred over 1,000 feet to the west, or *left*, of the course line on which the captain had said that the *Silveryew* had firmly steered! This showed that the *Sil-*

veryew must have gone to the left in spite of what was sworn (this vital inconsistency was not apparent until the data was plotted on the chart, which is probably why *Silveryew's* counsel never noticed it).

Then another certain, but not obvious, defect developed anent *Silveryew's* statement that "in less than ten seconds, from a safe position to pass port to port, the *Arminda* had suddenly swung round on her heel and sheered over 45 degrees to the left, right in the path of the *Silveryew*." All witnesses had emphasized the shortness of the period, explaining that it was so short that they did not have time to put the wheel over or ring the backing signal (which would have taken a couple of seconds at most). By plotting the turning circle (path a ship follows when turning) it was found that the *Arminda* would have had to travel at least 678 feet (3 times her length) to sheer 45 degrees. The *Arminda's* speed was 9 knots, 901 feet a minute, so that in 10 seconds it would have only gone 150 feet and thus could only have sheered a few degrees instead of the 45 degrees which all on the *Silveryew* had said she swung. And the *Silveryew* could not escape from this trap as all her witnesses had emphasized the shortness of the time interval involved.

Then the wheelman of the *Silveryew*, who had less at stake than her officers, inadvertently let slip the statement that he "was steering for some lights strung out like the lights of a town," just prior to the crash, and said that he did not see the brilliantly lighted Junction Buoy "anywhere near ahead." As the only lights of a town that he could have been steering for were on Staten Island and he surely would have had the Buoy ahead had he been steering up the right hand side of the Channel, this inadvertent admission, adroitly obtained on cross-examination by Mr. Matteson, still further supported the theory that the *Silveryew* had been steering for Staten Island on the left hand side of the Channel.

The captain and officers of the tanker *Bayonne* had been called by the *Silveryew* and had given testimony apparently

favorable to that ship. But this testimony, when analyzed and its meaning and effect carefully computed, proved very helpful to the *Arminda*. Large plans with the ships and respective distances drawn in to scale were prepared. The plans clearly demonstrated that when, as testified, the *Arminda* was seen to disappear behind the *Silveryew* it was not due to a sheer of the *Arminda* but the *Silveryew*, because the 9-knot *Arminda* could not have traveled the transverse distance in the time, while the 12-knot, faster, *Silveryew*, closer to the *Bayonne*, had much less distance to travel and could have done it easily. A vital piece of testimony was that the *red light* of the *Arminda* was the last thing seen when it was obscured by the *Silveryew*, proving that the *Bayonne* was looking at the *left* side of the *Arminda* which thus could not have turned to its left at that important time (remember the *Bayonne* was following the *Silveryew* up the Bay while the *Arminda* was still further up, coming down, steering in the opposite direction).

As is the practice in admiralty actions, where witnesses are roving over the Seven Seas and are only adventitiously available, most of the factual testimony of the *Silveryew* side was taken prior to trial, by deposition. It was the mission of Mr. Matteson to moor the *Silveryew* fast to her impossible story so that there would be no chance of evasion or retreat. To avoid arousing suspicion the cross-examination of witnesses consisted of an apparently desultory set of aimless questions with now and then a casual one affecting a vital matter, nailing the witness fast to his re-emphasized tale.

It was mostly upon the *Silveryew's* own story that the case of the *Arminda* rested, as little help could be expected from her illiterate, inarticulate, alien wheelman and her weak, sick second mate.

The bluff British witnesses with their honest frank appearance and their superficially most plausible story had so impressed the normally careful counsel for *Silveryew*, as

it did every one else but the skeptical lawyers for the second mate, that he had not tested the tale very critically and had no idea of the shifting sands upon which his case rested. He was sure that the *Arminda* was entirely at fault and that he would have no trouble in proving it. He sat, smiling sardonically and obviously wondering why such keen lawyers as the proctors for *Arminda's* second mate should waste their energy in such futile litigation and why, of all things, they were so helpful to him forcing witnesses to stress, on cross-examination, the strongest part of the story of the casualty. The first horrid, revealing shock came when the pilot was asked, at the trial, to point out, on the chart, just where he was going to anchor, in accordance with the course that he said that he had steered, and had to admit that a ship the size of the *Silveryew* could not have anchored there! Others followed fast.

When the *Arminda's* short side of the story was about to be presented, several sturdy servitors staggered into court laden down with charts, plans, sketches and drawings of many kinds which were convincingly utilized, by expert testimony, to demonstrate that what the *Silveryew's* witnesses had testified to was either false or, when properly interpreted, supported the allegations of the *Arminda's* second mate.

In the brief for the *Silveryew* the proctors said: "Faced with the positive evidence from those on the *Silveryew* and with the contradictory evidence from their own ship, counsel for the *Arminda* endeavored to demonstrate by elaborate calculations and diagrams that the collision could not have taken place if the evidence of the *Silveryew* is true."

Counsel for the *Arminda* were successful in that endeavor. The judge, stating that "The graphic illustration of Captain

Sheridan . . . is thus very convincing," held the *Silveryew* entirely responsible for the collision on the grounds of "poor lookout," in not seeing the *Armindá* or hearing its whistles; and improper navigation in trying to cross the bows of the *Armindá*, which act caused the crash.

Silveryew's astounded and chagrined counsel appealed but the findings were upheld.

T. W. Sheridan.

Long Island, New York.