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Competent Attorney Prepares His Case

T. W. Sheridan

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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 a starboard 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 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 con-
dition.

On the other hand, the Silveryew's side was supported
by a wealth of concurring testimony from her captain, offi-
cers (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 offi-
cers of the Bayonne. Many marine men vigorously de-
nounced 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 pass-
ing had been agreed by the exchange of single blasts, al-
tered 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 colli-
sion"; 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 *Arminde*'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-
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 ladened 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 Arminda or hearing its whistles; and improper navigation in trying to cross the bows of the Arminda, which act caused the crash.

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

T. W. Sheridan.

Long Island, New York.