

THE SHIPMASTER

Strong criticisms from an armchair as to the mariners' professional conduct in an emergency

Arbitrators and Judges respond: collection of short quotes, 1878-2023

Prokopios Krikris, Oct 2023

“

My Lords, we are not dealing with the psychology of a superman but simply of a ship's captain.....

The navigation of a sailing ship is an art which the landsman cannot be expected to understand without much explanation.....

-Lord Dunedin, 1924 & 1926

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Introduction

In the Admiralty Court, it was frequently the case that Counsel had the task of criticising, as from an armchair, the professional conduct of mariners and impugning their veracity. It has always been the practice in navigation cases to plead in some detail the action taken on board the vessel whose navigation was being explained to prove good or bad seamanship, with the benefit of hindsight, as navigation embraces matters of seamanship. That form of armchair criticism, or being wise after the event, is a known device of advocacy. Courts and tribunals have examined such criticisms and were very wary of second-guessing any decision taken by the master relating to the safety of his vessel or in an emergency without much time to react (in "the agony of the moment"). It was common ground that navigators must not to be judged in the light of the theories but in the light of the conditions and circumstances faced upon taking certain decisions; the matter must be looked at from the point of view of the person concerned at the time. It is very easy in the relatively calm atmosphere of an office, and examined in the cool light of day and from the comfort of a stable desk, to pronounce with hindsight what a reasonably competent mariner should have done in those circumstances. Hindsight is not the guide; a reasonable seamanlike foresight is. In some cases, it would be unjust to deal out hard measures to a person innocently confronted with unusual and perplexing peril.

Good seamanship is the exercise of that skill, care and nerve which are ordinarily to be found in competent mariners. Whether there has been good or bad seamanship is a question of fact to be decided upon consideration of all circumstances at that time. Mariners are not to be condemned as negligent because they have not exhibited extraordinary skill in dealing with abnormal circumstances. Persons ashore must understand that the ship's crew is not expected to show superhuman skill or make some superhuman effort. Standards of seamanship had to be applied with regard *inter alia* to the time available for reflection. In a moment of extreme peril and difficulty, you are not to expect the perfect presence of mind, accurate judgement and promptitude. Upon review of the facts, one does not expect to see that the course the person had adopted in a sudden emergency was the best. The law imposes some limit upon the amount of care, skill and nerve which are required of a person in a position of a

duty, who has to encounter a sudden emergency. The burden of proving fault in such circumstances is difficult to overcome.

However, it must be remembered that neither all cases will provide shelter under the "agony of collision" rule, nor will the masters' decisions meet the "agony of the moment" decisions of the *Bywell Castle* type of case. Concerning employment orders, the masters may be caught on the horns of the dilemma, having to make decisions under great pressure from various parties having in mind financial considerations. Safety is always paramount and commercial considerations are secondary when a ship is in imminent danger. Equally, under the duty to prosecute the voyages with utmost dispatch, the master's duty is one of reasonableness. Yet, the masters' safety concerns will not *always* suffice to disobey the charterers' orders unless his concerns are justified. The test is what was reasonable bearing in mind the surrounding circumstances at the time. In practice, the majority of the cases will not meet the *extreme facts* of the *Hill Harmony* type of cases where the master's reasons for disobeying the orders were unconvincing. Further, the advantages of modern weather forecasting and guidance technology have assisted in the decision making process as to the choice of route, making it less challenging for a party to either prove or disprove the masters' safety concerns, as the case may be.

A specialist LMAA Arbitrator (former mariner) noted in an unpublished award, "**Like most arbitrators**, I would be reluctant to criticize navigational decisions by the Master in the absence of supportive evidence that they were decisions no reasonable master could have taken".

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From Arbitrators to Law Lords, 1878-2023

Navigation and Seamanship

"At sea, a competent seaman has to use his own initiative, but, at the same time, he has to recognize the authority of the master. No vessel can be properly run with two masters, there is only room for one and that one has to take the decisions and give the orders-----" (Hewson J, 1960).

- **Lord Dunedin**

1. "My Lords, we are not dealing with the psychology of a superman but simply of a ship's captain". (1924)
2. "The navigation of a sailing ship is an art which the landsman cannot be expected to understand without much explanation". (1926)
3. "Whenever the circumstances are, and have been, it may be, suddenly rendered so extraordinarily puzzling and perplexing that it would require more than ordinary care to overcome them, then the contributory negligence is not proved. I think that in all such cases it would be unjust to deal out hard measure to a person innocently confronted with unusual and perplexing peril: and there is no law for such hard measure. The standard is ordinary reasonable care. Judged by that standard I cannot see that the ship or its officers failed in duty". (1922)
4. "The situation was one of some difficulty, in the sense that it required nice judgment, prompt decision, and rapid action, but it was in no way analogous to what is called the "agony of the

collision" - that is, of the first three collisions or any of them - it was in no way analogous to cases where, as the direct result of a collision with one vessel, a ship is forced into contact with another or has perforce to let herself drive into such contact. The situation was in no respect uncommon; the weather was not such as to tie a captain's hands, and he was at his post, in broad daylight, with steam up and in charge of an undamaged ship". (1926)

5. "It is not in the mouth of those who have created the danger of the situation to be minutely critical of what is done by those whom they have by their fault involved in the danger"(1923)

- **Lord Porter**

6. It is well settled that some latitude must be allowed to a competent seaman in determining when the last safe moment has come.." (1949)

- **Lord Allanbridge**

7. "It is very easy in the relatively calm atmosphere of a Court to pronounce with hindsight what a reasonably competent skipper should have done in those exceptional circumstances....The degree of care required varies directly with the risk involved" (1978)

- **Lord Normand**

8. "When the only rule that can be given to a ship is that she must conform to the practice of good seamanship, it lays upon those in charge of her the duty of taking account of all the concrete circumstances of the emergency, and of acting with reference to them in their totality as a skilled seaman of ordinary prudence would act.." (1949)

- **Scott LJ**

9. "My opinion is that if, in that moment of extreme peril and difficulty, such other ship happens to do something wrong, so as to be a contributory to the mischief, that would not render her

liable for the damage, inasmuch as perfect presence of mind, accurate judgment, and promptitude under all circumstances are not to be expected. You have no right to expect men to be something more than ordinary men". (1939)

- **Cotton LJ**

10. "For in my opinion the sound rule is, that a man in charge of a vessel is not to be held guilty of negligence, or as contributing to an accident, if in a sudden emergency caused by the default or negligence of another vessel, he does something which he might under the circumstances as known to him reasonably think proper; although those before whom the case comes for adjudication are, with a knowledge of all the facts, and with time to consider them, able to see that the course which he adopted was not in fact the best". (1878)

- **Brett LJ**

11. "I am clearly of opinion that when one ship, by her wrongful act, suddenly puts another ship into a position of difficulty of this kind, we cannot expect the same amount of skill as we should under other circumstances. The captains of ships are bound to shew such skill as persons of their position with ordinary nerve ought to shew under the circumstances. But any Court ought to make the very greatest allowance for a captain or pilot suddenly put into such difficult circumstances; and the Court ought not, in fairness and justice to him, to require perfect nerve and presence of mind, enabling him to do the best thing possible". (1878)

- **Karminski J**

12. "Further a master must not be judged too harshly on a decision taken in an emergency, especially in an emergency following closely in time the collision.. a decision taken in those circumstances must not be too critically examined from an armchair. I have endeavoured to try and avoid too critical an examination of a collision in the circumstances which I have described,

while myself sitting, at any rate, in a comfortable and warm Court, and not dealing with an emergency at sea when a master had lost a good deal of the forepart of his ship". (1967)

- **Hewson J**

13. "Placed suddenly in the situation in which they found themselves, the French crew must not be too harshly judged, and they must certainly not be judged in the light of theories, but in the light of the conditions and circumstances at the time. ... They must not be too critically examined from an armchair". (1964)

14. "As we all know in this Court, a ship is not a vehicle that can be handled with precision. ... I am not going to judge any ship too harshly in such conditions as these. There was little time and little room in which to manoeuvre or to handle the ship with a precision that is really beyond the capabilities or the powers of a competent seaman". (1959)

15. "The Court has to be very careful not to judge the actions or lack of action of a man with the knowledge of what has happened. Hindsight is not the guide, a reasonable seamanlike foresight is..".(1960)

- **Willmer J**

16. "But it seems to me that to say that now, a year later, in a Court of law, is something in the nature of armchair criticism. We must remember that both these vessels were faced with a sudden emergency. Those in charge of them cannot be called upon to display more than ordinary care and seamanship". (1948)

17. "For one thing, it is to be remembered that it is easy enough to be wise after the event. But on the facts as I have found them we are dealing with a man who was put into a position of no little difficulty-a position in respect of which, even if he did make a wrong decision, he ought not to be too harshly judged". (1951)

- **Langton J**

18. Once again I have to express my very real sympathy with the shipmasters and ships' companies who are called upon to exercise increasing watchfulness in circumstances of continual strain. I am very sensible of the fact that the circumstances of these wartime collisions differ widely, and always for the worse, from the normal conditions. I appreciate that navigators are not to be condemned as negligent because they have not exhibited extraordinary skill to deal with abnormal circumstances. The standard of skill and care required by the law remains as ever that of ordinary skill and good seamanship. Testing the vessels with which I am here concerned by this standard, I am reluctantly forced to the conclusion that one has failed rather largely, and the other has just failed, to measure up to the standard required" (1941)

- **Brandon J**

19. "In deciding whether the master was negligent, however, two principles have to be borne in mind. The first principle is that, where one person is put into a difficulty by the negligent conduct of another person, his reaction to the situation should not be judged too strictly. The second principle is that the matter must be looked at from the point of view of the person concerned at the time, and not with hindsight". (1979)

20. "As I have had occasion to say in another case recently, the standard of skill and care to be applied by the Court is that of the ordinary mariner and not of the extraordinary one, and seamen under criticism should be judged by reference to the situation as it reasonably appeared to them at the time, and not by hindsight". (1979)

21. "It is, however, necessary when considering a charge of negligent navigation, to have two principles well in mind. The first principle is that a mariner must not be judged by reference to the situation as it can now be seen by the Court with hindsight to have been, but by reference to the situation as it can reasonably be regarded as having appeared to him to be at the time

concerned. The second principle is that the standard of good seamanship to be set by the Court is that of the ordinary prudent seaman and not that of the extraordinarily prudent one".(1974)

- **Andrew Baker J**

22. "Good seamanship is the exercise of that skill, care and nerve which are ordinarily to be found in competent mariners. Poor or bad seamanship is the opposite, ie a decision or step that no ordinarily competent mariner acting with care would have taken or an omission to act as any such mariner would have acted. Whether there has been good or bad seamanship is a question of fact to be decided upon consideration of all the circumstances as they stood at the time. A failure to observe the Collision Regulations is bad seamanship; a failure to comply with local regulations (here, the SCA's Rules) may also be..."(2023)

Matters of employment

"Nor ought it to be forgotten that the master is to exercise a discretionary power, and that his acts are not to be censured because of an unfortunate result, unless it can be affirmatively made out that he has been guilty of a breach of duty" (Willes J., 1872)

- **Lord Hobhouse**

23. "The master remained responsible for the safety of the vessel, her crew and cargo; and if an order was given compliance with which exposed the vessel to a risk which the owners had not

agreed to bear the master was entitled to refuse to obey it: indeed, as the safe port cases show, in extreme situations the master is under an obligation not to obey the order.". (2001)

- **Phillips J**

24. "It is important to remember that the master of a merchant ship occupies a civilian post. He is not the captain of a naval vessel who might well be expected to comply instantly with an order and seek verification or reconsideration afterwards. Furthermore, he is not receiving the instruction from somebody who is his professional superior, as would be the case in the services. He is the representative of his owners and also to some extent of the charterers. He occupies a post of very great responsibility, and he occupies that post by virtue of long training and experience. If he was the type of man who would immediately act upon any order from charterers without further consideration, he would probably be unfitted for that post. It seems to me that against that background it must be the duty of the master to act reasonably upon receipt of orders. Some orders are of their nature such that they would, if the master were to act reasonably, require immediate compliance. Others would require a great deal of thought and consideration before a reasonable master would comply with them.... "(1993)

- **Gross LJ**

25. "Where, in breach of charterparty, charterers order a vessel to proceed to an unsafe port, the conduct of the vessel's master in obeying the order (placed as he well may be, on the horns of a dilemma) will be judged sympathetically, in context and will not lightly be treated as unreasonable: *Compania Naviera Maropan SA v Bowaters Lloyd Pulp and Paper Mills Ltd (The Stork)* [1955] 2 QB 68. But even negligent navigation following the charterer's order to proceed to an unsafe port will not necessarily break the chain of causation: see, for example, *Kristiandsands Tankrederei AS v Standard Tankers (Bahamas) Ltd (The Polyglory)* [1977] 2 Lloyd's Rep 353, at page 366". (2011)

London Arbitrators

26. "A master has comparative freedom regarding which route he takes in order to get from one port to the next, while performing voyages under a time charter-party. Navigation matters are left in his hands but he is under a duty to exercise the utmost despatch, and this means that he must act reasonably in deciding which route to adopt for ocean passages; in making such a decision regarding a route he should take the safety of ship and cargo into account, and also the charterers' interests in that voyage should not be unreasonably lengthened or delayed". (1980)
27. "It had to be remembered that the master of a vessel was in a very responsible position and that in itself militated for some caution, on occasions, before complying with the orders of charterers".(1982)
28. "The master was primarily responsible for the safety of his ship and cargo. He was the paramount authority for decisions made on the spot. He was the person who could best assess the risks and dangers to which the vessel was exposed. His decisions could not be challenged during an emergency or later with hindsight by outsiders ensconced in comfortable offices on shore". (1985)
29. "Accordingly where, as in the present case, the master was doing his best to "prosecute the voyage with utmost despatch" and do what the charterers wanted, but was prevented by circumstances beyond his control, there was no failure on his part and no breach of either limb of clause 8".(2015)

30. "The fact that there might be a risk of collision did not mean that fishing vessels really imposed a threat to merchant shipping. Collisions were not uncommon and occurred in every major waterway around the world without those areas being deemed to be dangerous to merchant shipping. All that was required in the present case was for the crew to exercise vigilance when navigating the area. There were far more dangerous waterways around the world which were invariably navigated safely by hundreds of ships each day".(2016)
31. "Persons engaged in commercial activities constantly had to balance risks and face the consequences when they erred. A master was no different and could not make the wrong navigational decision with impunity unless there was a compelling reason at the time to take what later turned out to have been the wrong option". (2005)
32. "The tribunal was satisfied that it was, and would be very wary of second-guessing any decision taken by the master relating to the safety of his vessel and cargo". (2021)
33. Like most arbitrators, I would be reluctant to criticize navigational decisions by the Master in the absence of supportive evidence that they were decisions no reasonable master could have taken". (Unpublished LMAA Award, 2017)

The above list is not exhaustive. If you have any other relevant quote, I will gladly consider adding it to the above list. For more information, visit www.charterpartydisputes.com or send me an email if you have any questions about this article or other posts on this website.