

## WHAT IS A SHIP MASTER'S POWER AT SEA ?

(From the *Times*, 27th Aug.)

Spread as the interests and affections of this country are over so large a portion of the habitable globe, none of us can feel quite sure that we may not be called on some day to undergo that most dreary of all ordeals to a man's temper, spirits, and self-command—a long voyage in a merchant ship. It is, therefore, a matter of considerable interest to ascertain what the precise limits of the authority are to which any of us may be called upon to submit in one of these floating prisons, and we therefore wish particularly to direct the attention of the public to the case of "*Krog v. Franklin*" recently tried before Baron Watson at the Bristol assizes. Captain Franklin was the master of the ship *Undaunted*, which conveyed from Calcutta to London by way of the Cape a number of ladies, officers, and troops, one of the ladies, as was dexterously thrown in by the counsel of the plaintiff, having gone through all the horrors of the siege of Lucknow, a fact the relevancy of which to the matter in hand we have been quite unable to divine. There had been some disagreement between the passengers and the captain before his arrival at the Cape. On the 16th of May the plaintiff, Mr. Krog, embarked from the Cape as a passenger for England. In the fiery latitudes of the tropics the discord between the captain and the passengers broke out anew. The passengers seem to have sent the captain to Coventry, and made more noise in the cabin than was consistent with his desire for repose, particularly as he seems to have selected the noisiest period of the day on board a ship—the time from 8 till 10 o'clock in the evening—for the renovation of his energies by sleep. On the 5th of June some passengers were playing at whist, and had pushed the lamp, which generally slides upon a rod, over the table in a direction near the sleeping apartment of the captain. The captain desired the lamp to be removed further off, and the passengers moved it back again. On this the captain threatened to put out the light at eight o'clock, the rule of the ship being that all lights were to be put out at eleven o'clock. At this point Mr. Krog, who was a lawyer, and therefore naturally shocked at the unconstitutional conduct of the captain, which doubtless forcibly recalled to his mind the curfew of the Norman tyrant, intervened in the quarrel, by asking what it was all about. The

by asking what it was all about. The captain, it appears, had been twenty days at sea with Mr. Krog without ascertaining his name or existence—a fact in itself not very creditable to his care of the passengers. This ignorance he exhibited in the most striking manner by asking Mr. Krog who the devil he was? Thus answered, Mr. Krog replied—"I am Krog, and my position in life is better than yours." Captain Franklin, unappalled by this announcement, rejoined, after repeating the word "*Krog*" several times in a contemptuous manner, "I will show you that I shall put out the lights at eight o'clock." There is nothing, Goethe tells us in his autobiography, so irritating to a man as taking liberties with his surname, and we therefore do not wonder that Mr. Krog was irritated enough to reply, "You dare not do that; you have nothing to do with the passengers; your ship is a floating hotel, and you are the landlord of it." This was intolerable; the captain armed himself with a revolver, piped all hands on deck, and said, "you have been trying to take the ship from me, but you shan't while this body exists. I have power to put Mr. Krog in irons for using mutinous language." And he was as good as his word, for a chain seven feet long was produced, one end of which was fastened round Mr. Krog's leg and the other attached to the threshold of the cabin, and was not taken off for ten days. The thermometer at this time stood at 100 degrees, and the cabin, six feet by seven in size, was shared by Mr. Krog with two other passengers, so that the punishment he underwent was by no means nominal. For this injury Mr. Krog has brought his action, and has recovered £375 damages.

Captain Franklin pleaded that certain of the passengers resisted his orders, denied his authority, and used menacing and insulting language, which tended to disobedience and mutiny, and that he had reasonable and probable cause to believe that a mutiny would ensue. We perfectly agree with the judge and jury in thinking that not one of these allegations was proved, but we believe that even if they had been proved they would not have justified the captain in placing the passenger in irons. It is no offence, that we know of, in the passengers of a merchant ship to resist the orders of the captain, unless those orders are such as he has a right to give. The crew are under the orders of the captain, but the passengers are merely inmates or lodgers on board the vessel,

passengers or lodgers on board the vessel, over whom he has no control at all, except such as is necessary for the safety of the ship and the maintenance of decorum and good order. Nor are we aware that for a passenger to deny the authority of a captain is of itself any offence at all, depending, as it does, altogether on the manner in which that authority is exercised. It is wrong to use menacing and insulting language to any one, but the captain of a ship enjoys no immunity from bad language, and, as for imprisoning people before they have commenced a mutiny, and without any proof that they intend a mutiny, merely because he thinks that a mutiny will ensue, is the most outrageous extension of the tyrant's plea of necessity that we ever heard of. We mention this last

any one should suppose that, even if Captain Franklin had proved his plea, he would have had any right to succeed. As it was, the legality of the plea remained unquestioned, probably because the plaintiff was aware that the captain could not prove a single word of it.

This case is a remarkable illustration of the ridiculous idea of his own importance which a vain and irritable man may be led to form from the long possession of uncontrolled power. Captain Franklin had commanded a ship for 20 years, and with the notions of Divine right which he entertains must have done some strange things in his time. He seems to have been a complete specimen of a salt-water head. Because he was necessarily intrusted, for the safety of the ship, with complete control over his officers and his men, he seems to have assumed that he had the same power over the passengers whom he conveyed. On board a ship, on a long voyage, trifles are apt to swell into importance, and it is a received axiom that things seldom go right when the captain's wife is on board, though, to do the lady justice in this instance, she seems to have contributed nothing more to the disturbance than a violent fit of hysterics. But what a state of mind must a man have brought himself to who could actually believe that he had a right to direct his passengers, principally officers in the army, men of experience and high character, as to what part of the table the light should be placed over, and on their refusal to obey his dictation to threaten to send them all to bed in the dark at eight o'clock, like so many naughty children! How wonderful to ordinary mortals, who are obliged to bear with

the kicks and buffets of the world, must be the state of mind of a man who, because he was told that he had no right to do this, and also, which is perfectly true, that he stood towards his passengers in the same relation as the landlord of an hotel, could really believe that he had a right to fetter and imprison a gentleman in the presence of thirty of his fellow passengers for the space of ten days! And how extraordinary must be that delusion which could induce the captain, who could only be justified in restraining a passenger from his liberty by the most absolute necessity, to go to his prisoner day by day, and offer to release him if he would only apologise for saying he was the landlord of a floating hotel! One thing we are bound to say for Captain Franklin—we give him credit for being a perfectly sincere believer in his own extraordinary creed. We have no doubt that he considered rebellion even as the sin of witchcraft, and thought that fetters and a dungeon in the tropics were a light punishment for a man who was capable of speaking, or even thinking, disrespectfully of that absolute, inviolable, and impeccable person, the captain of a merchant ship, and that, if he was prevailed upon by the doctor to let out Mr. Krog after ten days' incarceration, it was not that he doubted his right to take the life of the offender, but because, being strong, he was disposed to be merciful. Dignity has her martyrs as well as religion, and we doubt not Captain Franklin considers himself entitled to a high place among those who have suffered for their chivalrous adhesion to the cause of order.

We trust that the damages, exceedingly moderate though they be, which have followed on this assertion of high prerogative doctrine, will act as a seasonable warning to the members of that respectable calling, the dignity of which Captain Franklin has taken so unfortunate a method to enhance. The relation of a captain to his passengers is very fairly defined by Mr. Krog to be that of the landlord of a floating hotel towards his guests. Of course there are differences, because the hotel, being a floating one, requires order and precautions which are not needed in a terrestrial caravan-serai. There is this further and very important difference—that on land the landlord can always tell the troublesome guest to depart, and always have access to regular police and duly authorised tribunals, whereas at sea whatever be a man's misconduct, he

whatever be a man's misconduct, he must be borne with till the end of the voyage. For these reasons, the captain of a ship may place restraints on the liberty of his passengers which no land-lord on shore would be justified in imposing; but, whatever he does in this way, he must be prepared to justify by a clear necessity. It is not enough that his orders be disobeyed; they must be reasonable and proper orders, such as are required for the safety and discipline of the ship or the preservation of propriety and decorum. The personal dignity of the captain, the law regards with the most stoical indifference. In doing whatever is needed for the discharge of his duty, it will support him. The moment he goes beyond that limit, he places himself exactly on the same footing as if he were the colonel of a regiment returning home on sick leave.

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