

The Court was declared open at 1000 on the 7th February, 1941.

at

~~Through the Deputy Judge Advocate~~ The Accused requested permission for a further $\frac{1}{4}$ of an hour delay for summing up the Defence. The Prosecutor also required a little more time. *It was approved by the Court and*
The Court adjourned at 1000.

Court re-opened at 10.40.

The Accused's Friend then summed up for the Defence as follows:-

"The Accused is charged with having negligently or by default hazarded and lost H.M.S. "MERCURY", but for the following reasons it is not considered that the prosecution has established the hazarding charge, and therefore the charge of losing must necessarily also fail.

On 25th December when the Float continued to run erratically after a mine had been cut, the Accused did not consider that this was necessarily caused by a mine being foul of the sweep, but might have been caused by one of the following reasons:-

1. Defective calibration of the bottle screw of the otter sling, due to previous explosion of mineⁱⁿ the sweep, one of which was close to the otter and might have parted the wire seizing.
2. Chain links of otter slings being kinked, due to mine explosions.
3. Foul Float wire due to the same cause.
4. Wreckage in the sweep.

The only means of discovering the cause of the erratic running of the float was to sight the Otter, since all the normal methods of clearing the sweep had been employed without success. But, knowing that "MERCURY" was engaged in sweeping over a known minefield the possibility of the obstruction being a mine had to be borne in mind, and the Accused therefore took all necessary precautions for the safety of his ship and the personnel in her.

The engines were put to slow ahead, the kite slowly hove in seen to be clear and brought inboard. The sweep wire was then slowly hove in until the white mass of the otter could be discerned, but nothing definite could be seen owing to the wash caused by the paddles. Conditions on the day in question necessitated the otter being brought close to the ship before it could be sighted, and the engines were accordingly stopped on a request from the sweeping deck in order that it might be clearly sighted, and also to avoid any chance of the otter revolving or diving and hitting the ship's bottom, as had happened on previous occasions when the otter has been hove in close with way on the ship.

When the otter had been sighted and an obstruction discerned in it, the Accused went aft to investigate, as for reasons stated above, there was a possibility that the obstruction might not be a mine, and he was anxious to lose no more time than was absolutely necessary, as much time had already been lost by all ships of the Flotilla on these operations through parted sweep wires and lost sweeping gear.

After inspection the Accused considered that the dark object might be a mine and took the following steps:-

1. As the sweep wire was growing away from the ship, "MERCURY" being tide-ridden, he gave orders for the float to be grappled and got inboard and the float wire unshackled:

2. For the sweeping deck to be cleared on the completion of this evolution.

He then proceeded to the Bridge with the intention of going ahead and veering and cutting sweep when sufficient had been veered for safety. The explosion occurred however before this could be done.

After the explosion a piece of mine case about eight by eight.

Defence - Summing up. (Cont'd)

inches was found on the sweeping deck of "MERCURY" perforated and indented with bullet holes. The Prosecution has assumed that the mine in her sweep was a moored mine, but it is considered that the evidence given by Lieut. Blows, Leading Seaman Eastman and Leading Seaman Cope proves that it was not a moored mine, but one that had previously been cut and fired at by the mine disposal trawlers during this mine clearance, and had sufficient buoyancy to be floating submerged.

As paragraph 146 of O.U.146 and paragraph 73 of Chapter V111, C.B.1937, only legislates for a moored mine being foul of the otter, the Accused has shown that he took all possible steps to clear the obstruction in the otter, and that he proposed to carry out the instructions laid down in paragraphs 147 and 74 of these publications by going ahead and veering his sweep wire preparatory to cutting, but that the explosion occurred before this could be done, and that had he cut the sweep wire as soon as an obstruction was seen in the otter, the mine would have sunk to the bottom and exploded.

Evidence has been brought to show that "MERCURY" sustained, on 7th July, 1940, a direct hit by a bomb on the fore deck which also exploded six 12-pdr. shells causing considerable damage. During the following seven weeks whilst under going repairs she was subjected to a number of aerial attacks and many bombs fell in close proximity to the ship.

Further that whilst on passage from Portland to Ardrossan "MERCURY" encountered heavy weather, and it was found that the after peak was continually making water, and although no leaks were found when the vessel was water-tested this weakness was again evident and necessitated daily pumping when she returned to minesweeping duties.

Also, during the early part of December "MERCURY" rode out a gale at a buoy at Milford Haven, and sustained considerable damage to her boilers on account of the severe buffetting undergone.

Finally a number of mines exploded in close proximity to the vessel during recent minesweeping operations, which obviously shook the ship.

It is considered that these incidents had weakened the general structure of the "MERCURY", particularly as Paddle Minesweepers are comparatively lightly built vessels and are not designed for heavy weather, and were contributory causes to her ultimate loss.

Moreover the damage originally sustained by "MERCURY" as a result of the explosion was aggravated to a large extent when the "SCAWFELL" collided with her abaft the starboard sponson when coming alongside to take her in tow - this collision being at the point most likely to weaken the main watertight bulkhead on which the safety of the ship at this time depended.

It has been shown that from the time the explosion occurred until the ship had to be abandoned, the Accused took all possible steps to keep his ship afloat and has stated that the behaviour of his officers and ship's company was exemplary.

To conclude, the Accused is charged under Section 29 of the Naval Discipline Act with two offences:- the first of negligently or by default losing his ship and the second of hazarding that ship, but it is of course obvious that the hazarding must have taken place before the loss. In the submission of the defence the hazarding synchronised with the loss, if hazarding there was, or conversely that the loss of the ship was the first hazardous action that occurred on this occasion. It is therefore submitted that the charge of hazarding does not lie, and that the only charge that requires an answer is that of losing the ship.

In this connection the Deputy Judge Advocate will no doubt direct the Court's attention to page 64 of the Admiralty Memorandum of Naval Court Martial Procedure, Note 3., which I will take the liberty of reading:-

" If the court is of opinion that the accused has either (a) done anything which a reasonably careful and capable officer in the position

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Defence - Summing up (Cont'd)

of the accused would not have done in similar circumstances, or (b) has omitted to do anything which a reasonably careful and capable officer in the position of the accused would have done in similar circumstances, the court must find that the charge is proved and state briefly the facts upon which the finding is based. If the court is of opinion that neither of these propositions is established, then the court must find that the charge is not proved and acquit the accused."

The Court will appreciate that this is a case which must be regarded from the viewpoint of what was a reasonable action in the peculiar circumstances in which the Accused found himself in this instance. In fact he has stated in evidence that he would do this again in similar circumstances. The Accused has stated in evidence that he is aware of the instructions, but that from his personal experience of this particular ship and experiments carried out by him, he considered that the otter would have struck the bottom of the ship if the ship was moving through the water. The Accused did in fact carry out the letter of the instructions, as using his expert knowledge of the behaviour of the otter when the ship was moving ahead he did take steps to prevent the possibility of a mine touching the ship, - the actual words used in paragraph 145 of O.U. 6350. Further, the Accused intended carrying out the instructions laid down in paragraph 147 of O.U. 6350, though he has informed the Court that he was about to go ahead first and veer his sweep wire after and not veer first and then go ahead as in the wording of the paragraph.

Since the publications quoted are designed for the guidance of minesweeping Officers and do not pretend to cover all possible circumstances, there must be numerous cases when the letter of the instructions have not been carried out. The Court will envisage that in the present emergency there must be many cases where a Minesweeping Officer must take risk in the efficient prosecution of his duty - as a case in point, if a Trawler sweeping for magnetic mines discovers her D.G. broken down but decides to carry on as no other trawler is available at the moment, the Commanding Officer is technically hazarding his ship, but I, as a Port Minesweeping Officer, would rather praise than blame.

In fact, in my submission I consider the essence of successful Minesweeping is the joyful acceptance of risk and that if this principle was undermined Minesweeping would lose a very large percentage, if not all, its efficiency.