

THURSDAY DECEMBER 12 1935

"CANNOT BE KNOWN WITH CERTAINTY."**OVERLOADING CONTRIBUTORY CAUSE OF LA CRESCENTA LOSS.****OWNERS TO PAY £3,400 TOWARDS COST OF INQUIRY.**

YESTERDAY Lord Merrivale delivered the findings of the court which investigated the loss of *La Crescenta*, an oil tanker of 5,880 tons gross, 400ft. length, 53ft. beam, 32ft. 10ins. depth, built in 1923 by the Furness Shipbuilding Co., Ltd., Haverton Hill-on-Tees, and owned by the Crescent Navigation Co., Ltd. (Messrs. Harris and Dixon, Ltd., managers, London). *La Crescenta* was lost in December, 1934, with her crew of 29, during a voyage from California to Japan with a cargo of crude oil.

Lord Merrivale, Wreck Commissioner, presided over the court, and was assisted by Commander H. Stockwell, Commander J. R. Williams, Mr. Edmond Wilson (marine engineer), and Mr. E. H. Mitchell as assessors.

The cause of the loss could not be known with certainty, said Lord Merrivale. Two contributory causes to the loss, in their judgment, were the limited degree of the strength and stability of the fore and aft gangways and the overloading of the ship.

The causes of the loss were contributed to by the wrongful acts and defaults of the owners of *La Crescenta*, and of Sydney Graham, registered manager of the ship, and of Ralph Henry Holland, who gave evidence before the court as manager of the shipping department of Harris and Dixon, Ltd.

TIGHTENING OF REGULATIONS.

The need for tightening of the regulations in various directions was suggested. Lord Merrivale directed that the owners should pay £2,750 towards the costs of the Board of Trade, £300 to the relatives of the officers of the ship and various mercantile associations, and a further £350 to the National Union of Seamen and the Transport and General Workers' Union—a total of £3,400.

The court's answers to the two final questions submitted by the Board of Trade, viz., the cause of the loss and whether the loss was caused by wrongful act or default of the owners or managers, were:—

"The cause of the loss cannot be known with certainty. Breakdown of the fore and aft gangway by reason of sea damage or otherwise would interrupt the tele-motor control, and so put the steering engine out of action, with the probable consequence that the ship would fall into the trough of the sea and so receive heavy seas on board. Flooding of the boiler-room and engine-room in smooth water, it was said, would have been sufficient to lower the ship to sea level, in which case her main deck would be awash, and there was evidence from which it appears that if the bunker hatch gave way this might result.

"An explosion of gas in the vicinity of the gas tanks amidships, it was said, would sever the connection of the fore and aft gangway.

MOST PROBABLE CAUSE.

"The most probable cause appears to us to be seas striking the gangway and flooding the boiler-room and engine-room and putting the dynamo out of action; the working of the machinery would cease. With a ship deeper in the water than she should be the effects upon her of such causes would obviously be greater than in the case of a vessel loaded to a proper depth.

"As to the suggested possibility of explosion, it is to be observed that under ordinary circumstances the presence of gas in the vicinity of the tanks was not abnormal, and that there was no evidence of a tendency to explosion or of any explosion at the material times. Explosion would have been likely to release cargo

from a tank or tanks, and oil so released carried aft might have reduced the height and force of the waves there. Moreover, if the fore and aft gangway were carried away, but the engine-room not flooded, action could have been taken with regard to wireless communication, of which there is no indication.

"In either of the emergencies to which reference has been made, one serious factor in the possible saving of the ship was the man-power available, both of engine-room staff and deck hands.

CONTRIBUTORY CAUSES.

"Two contributory causes to the loss, in our judgment, were the limited degree of the strength and stability of the fore and aft gangway and the overloading of the ship. The limit of strength of the gangway had been brought to the notice of the owners by the representatives of Lloyd's Register in 1932, when the new Load Line Act came into operation, and their representatives had prescribed the alterations they deemed necessary to what was then a potential source of danger. What was then a potential source of danger became an actual peril when the vessel was overloaded and, in disobedience of the law, without the prescribed improvements.

"The causes of loss were contributed to by the wrongful acts and defaults of the owners of *La Crescenta*, and of Sydney Graham, registered manager of the ship, and of Ralph Henry Holland, who gave evidence before us as manager of the shipping department of Harris and Dixon, Ltd.

"That the *La Crescenta* was repeatedly overloaded in 1934 is beyond question. We have no doubt that when the *La Crescenta* left Port San Luis in November, 1934, she was more than 10 inches deeper in the water than she should have been, and that when she sank, though the submersion had been diminished, it had not been got rid of.

"The master, Captain Upstill, overloaded at the express bidding of those who represented his employers, Sydney Graham and Ralph Henry Holland. He realised the peril, but employment was precarious, and the directions he got could hardly have been misunderstood.

"When in January, 1934, he received a letter with an order to 'load as much cargo as you possibly can' he drafted a reply, as he wrote to his wife, in which he said, 'He was not going to overload for anybody.' This is shown by the evidence of the witness Rogers, given on the fourth day of the hearing. Upstill, however, shrank from the refusal he had at first proposed to make. Such a refusal would probably have resulted in his becoming unemployed."

Dealing with the condition of the vessel, Lord Merrivale said:—"The seaworthiness of *La Crescenta* at the end of 1934 has been an outstanding question throughout the inquiry. That she has kept her class at Lloyd's, that Lloyd's surveyors and others regularly reported upon her condition, that large sums were spent in effecting the repairs called for upon such surveys and otherwise, is all beyond doubt."

"That the fore and aft gangway was carried away is an almost inescapable conclusion," said Lord Merrivale. "At that time the vessel was overloaded, she was slow to rise to a sea in heavy weather, and the further conclusion to which we come is that the consequent putting out of action of the ship's motive power rendered her helpless, so that in the face of precipitous seas she inevitably sank.

"The criticisms of the Solicitor-General upon the evidence of the witness Graham and that of the witness Holland are in our opinion just criticisms.

"IGNORED REGULATIONS."

"Our conclusion with regard to the matter is that they ignored the regulations because they intended that *La Crescenta* should be loaded as fully as possible, and that this was done to secure as large a return as possible from the vessel's employment in times when profit was hard to obtain.

"The nature of the reports of Lloyd's surveyors, which are in evidence, and the conclusions at which we have arrived with regard to the condition of the auxiliary machinery and various fittings of *La Crescenta* appear to us to call for full consideration as to whether the instructions at present given to Lloyd's surveyors are sufficiently strict and definite to secure the best possible degree of safety.

"The evidence as to the crews' quarters and our conclusions thereon show, as we think, that sufficiently strict attention to ensure reasonable comfort for the ship's company is not at present enforced.

"The evidence as to manning and overloading and our conclusions thereon suggest that existing regulations and the means of enforcing them do not now command proper compliance with the law.

"Whether there should be such revision of the Merchant Shipping Act, 1894, as would prescribe statutory penalties, promptly enforceable in respect of breaches of the regulations, is a matter which we submit for the consideration of the Board of Trade."

After the findings of the court had been given, Mr. J. V. Naisby, for the owners, said he wanted to refer to an important matter. Speaking of Mr. Steele's evidence, it had been said regarding the inspections of 1929 to 1930 that there were 12 cases in which there were no excess deadweight, and seven cases in which they were. But there was a general intimation of overloading.

Lord Merrivale.—Oh, no!

Then I have misunderstood you, my lord.

Mr. G. St. C. Pilcher (for the Board of Trade) said he would like to point out the difference between "regulations" and "instructions" referred to in the judgment of the court. A pamphlet had been issued by the Board of Trade on instructions to surveyors of the Board of Trade. There were no regulations by the Board of Trade, only instructions.

Lord Merrivale.—That will not be misunderstood.

COSTS.

Mr. Pilcher.—I now apply for such sums as your lordship thinks proper should be contributed by the owners and the two managers towards the cost of the Board of Trade case.

Lord Merrivale.—You are asking for an order as to the costs against the parties concerned?—Yes.

Mr. Vere Hunt (for the National Union of Seamen and the Transport and General Workers' Union).—I was going to ask your lordship for part of the costs incurred by the union for witnesses who had assisted the court.

Mr. Harold Griffin, on behalf of officers' societies, asked for a substantial sum towards the costs of his clients.

Mr. Naisby remarked that he thought no costs should be awarded to either of the bodies just mentioned in that inquiry. In other inquiries those organisations had given assistance to the court. But in this inquiry Mr. Hunt (for the Seamen's Union) had only lengthened the inquiry. "In my judgment it is not fitting for your lordship to award Mr. Hunt any costs at all."

Mr. Naisby urged that all questions of costs should be limited to expenses in the inquiry proper, and not any previous expenses concerned with the case.

"EXTREMELY PAINFUL CASE."

Lord Merrivale.—I shall consider the whole position as carefully as I can. This has been an extremely painful case and a very expensive one. The owners' costs are very substantial. I have come to the conclusion it would be to the advantage of the owners to leave the costs there. There is an alternative. But I shall fix a sum of payment of £2,750 in respect of costs by the Board of Trade in this inquiry. I also direct there should be paid to Mr. Hayward's clients £300, and to Mr. Hunt's clients £350.

The parties to the inquiry were as follow:—The Board of Trade, represented by the Solicitor-General (Sir Donald B. Somervell) and Mr. G. St. C. Pilcher (instructed by the Solicitor to the Board of Trade). The Crescent Navigation Co., Ltd. (the owners of *La Crescenta*) and Mr. Sydney Graham, represented by Mr. J. V. Naisby (instructed by Messrs. Middleton, Lewis and Clarke). Mr. R. T. Hayward and Mr. Harold Griffin (instructed by Messrs. G. F. Hudson, Matthews and Co.) for the relatives of the dead officers, and the following navigating and engineer officers' societies who are represented on the National Maritime Board:—Officers' (Merchant Navy) Federation, the Imperial Merchant Service Guild, the Mercantile Marine Service Association, and the Marine Engineers' Association, Ltd. Mr. Vere Hunt and Mr. Peter Bucknill (instructed by Messrs. Russell, Jones and Co.) represented the National Union of Seamen and the Transport and General Workers' Union. Mr. W. L. McNair (instructed by Messrs. Parker, Garrett and Co.) held a watching brief for Lloyd's Register of Shipping.

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