

## LA CRESCENTA LOSS INQUIRY CLOSED.

"A NUMBER OF MOST SERIOUS  
ISSUES."—Lord Merrivale.

### CLOSING SPEECHES FOR OWNERS AND BOARD OF TRADE.

THE Board of Trade inquiry into the loss of the tanker La Crescenta was concluded at the Institution of Civil Engineers, Westminster, yesterday, after Mr. Naisby had further addressed the count on behalf of the owners. Sir Donald Somervell (the Solicitor-General) reviewed the evidence for the Board of Trade. Lord Merrivale said there were a number of most serious issues in the case, a great mass of evidence had been heard which it was necessary to go through. The case, however, had been presented in a minimum of time. The date for delivering the findings of the court is to be announced later.

La Crescenta, an oil tanker of 5,880 tons gross, 400ft. length, 53ft. beam, 32ft. 10ins. depth, was 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). She 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, presides over the court, and is assisted by Commander H. Stockwell, Commander J. R. Williams, Mr. Edmond Wilson (marine engineer), and Mr. E. H. Mitchell as assessors.

The parties to the inquiry are as follows:—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. F. Hayward and Mr. Harold Griffin (instructed by Messrs. G. F. Hudson, Matthews and Co.) for the relatives of the dead officers, and the following officers' and engineers' protection 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.) represent the National Union of Seamen and the Transport and General Workers' Union; Mr. W. L. McNair (instructed by Messrs. Parker, Garrett and Co.) holds a watching brief for Lloyd's Register of Shipping.

#### REPAIRS EQUIPMENT.

Mr. Naisby referred to the engineers' reports, coupled with a few letters from the master, and said he ventured to submit that an examination of the reports bore out the evidence which was given by Mr. Binmore on the third day in the examination-in-chief that he had studied the repair accounts at Los Angeles—the Bethlehem repairs—and as far as he could see from the accounts and log the repairs had been satisfactorily carried out. Mr. Gooch's opinion was that he would rather he had more spare parts and spares on board for his auxiliary machinery, but there was no evidence that he ever asked for any he hadn't got, and he said himself that anything he asked for he received. Mr. Naisby submitted that it would be unfair to draw the inference on the evidence that Mr. Gooch refrained from asking for parts which he thought were vital—really necessary.

The President.—It isn't a question of vital, it is a question of being sufficiently equipped. He took one view: why didn't he act upon it? If you don't know, leave it there.

All I know of Mr. Gooch's actions and motives are what one can gather from what he said and what he thought.

#### THE LEAKAGES.

Mr. Naisby, dealing with the upkeep of the rest of the vessel, said that he took the auxiliary machinery first, because that seemed to him to be the part which was most strongly attacked by the evidence. He then referred to the question of the hull of the ship from the point of view of leaking, and said that his lordship would be advised about that, but he did submit strongly that Mr. Steel's answers, which were given on the second day, that the evidence as to what he had seen in log-books and so on as to the leaks in the hull of the vessel, were not matters in any way affecting the seaworthiness of the ship; at any rate on a loaded voyage. As his lordship probably knew, a tanker showed more leaks than an ordinary cargo vessel, and the reasons for that—there were two—was that the fluid cargo was more liable to strain, and secondly, water would go through where oil wouldn't.

The President.—I may tell you that I have discussed with the assessors this matter about the hull, and that we don't see any reason for not accepting Mr. Steel's evidence.

I am much obliged to your lordship.

#### HATCHES AND TARPULINS.

Continuing, Mr. Naisby said that hatches and tarpaulins were, or might be, a vital chink in the armour of a ship. The only evidence which criticised the hatches and tarpaulins of the vessel that had been given in the court came from Mr. Wallace, with the exception of a remark of Mr. Wildermuth, that so far as the hatch on the after bridge deck was concerned there were a couple of hatches or so that were not put on, as it was never considered necessary. He (Mr. Naisby) was not suggesting that a vessel should go to sea, or that that vessel did go to sea, with two or three hatches missing. What he did suggest was that in anything except really bad weather there was no danger of any water, at any rate water of any quantity, getting down that hatchway, and that was, no doubt, why the people on board in Mr. Wildermuth's time took the attitude which they seemed to have done. Mr. Wallace did say that the hatches were in bad condition, and that the handles by which the hatches were lifted were, in some cases, rotten and had come away.

That was contrary, continued Mr. Naisby, or rather was not in accordance with the evidence of Mr. Gooch. It was true Mr. Gooch was an engineer, but equally Mr. Wallace was a fireman. He didn't want to ask the court to take Mr. Gooch's evidence as to the hatches any further than that. He was a man who had been to sea for a number of years. In "knocking" about the deck he no doubt saw the hatches and tarpaulins and so on, although he probably did not handle them and make a close examination of them. He was able to say that so far as he saw the tarpaulins were in good condition.

Lord Merrivale.—So far as the chief engineer saw does not carry us far. I am pointing out how the matter stands.

Mr. Naisby, replying, said that he wasn't trying to put it any higher than that.

He did feel entitled to say that what one might call the casual observation of a fireman or greaser was very much in the same category. So far as the actual state at the time of the loss was concerned, the evidence of Captain Hearnden and Mr. Wildermuth was not very material, but it did go to show something of the way in which the vessel had been kept up in the time when they were on the ship, and Captain Hearnden's evidence and Mr. Wildermuth's evidence about the question of patches and tarpaulins was entirely in favour of the owners of the ship.

Mr. Naisby said he wished to say very little about the manning. In so far as there were any requirements, it was in accordance with those requirements—what he might call the statutory orders of the Board of Trade. The number of men carried was determined after consultation with Captain Upstill, and some consultation with the N.U.S.

The President.—The criticism on this has been made that the manning was the lawful minimum?—Yes, for deck hands, and that was a fact. There was a criticism of the engine-room. Mr. Gooch, the chief engineer of the ship gave particulars of the engineers in the ship on the first occasion and on the second occasion. The difference was one man.

#### ENGINE-ROOM STAFF.

The President.—What one asks oneself about that was, did the condition of the ship and the mode in which she was working, cause any reason, except economy, for reducing the engine-room staff?—It would not be proper for me to suggest that the way to look at this should be another way. Is it not proper to look at it this way? There are so many men in this engine-room. Is that sufficient? It was true, one might say, that at an earlier stage, there were more.

You see it is the same owners, same managers, and same ship?—Yes.

Well, that is the position.—It is going to be very hard on shipowners, because they have carried at one time ex-hands in the engine-room and then reduce the hands and some casualty happens to the ship, that it should be brought against them.

Not brought up against them, but inquiry is made why the reduction was made at that time. If the answer was economy of working, then that was the answer.—There is no doubt the crew was kept down in number for reasons of economy.

The President.—Very well.

Mr. Naisby, proceeding, said: Captain Upstill had been told that if the vessel was run rather than be laid up, the minimum amount of expenses would have to be incurred. It was not absolute cheeseparing, but Captain Upstill well appreciated the position. There was nothing in the reduction of the crew by one man. All the surveys of the vessel at the time of the loss were up to date, and the certificates were in force—including the wireless certificates.

#### FIRE EXTINGUISHERS.

On the question of fire extinguishers, said Mr. Naisby, there was a direct conflict of evidence. Mr. Garry and Mr. Wallace said the opposite to Mr. Gooch. It was for the court to say which they would accept. The engineers said there was no sand on board, Mr. Gooch said there was. As for the chances of explosion, it had been said the last time the electric wires were examined was in 1932. That was true that it was the only repair. When built in 1923 all the electric equipment was passed by Government Departments, and there would be no further report on the electric fittings. But the electric fittings were examined at all times of drydocking, &c. The buckling of the deck referred to was not very great. It showed nothing structurally wrong with the ship, and caused no alarm, and did not affect the strength or seaworthiness of the vessel. The suction valve had been off the vessel for over two years. Mr. Rogers had said he was to blame for that valve not having been replaced. There was no evidence that the absence of the suction valve was the cause of any trouble at all.

On the last voyage the shippers of the oil gave the quantities of the oil put on the ship. And the figure was approximately the draft of the vessel when the loading was completed. He submitted that the court should accept what the shippers said was the draft of the vessel. It was significant that the master in his loading plan, which he sent to the owners, gave the same draft as the shippers gave. He asked the court to accept the draft figures and not the weight figures. Where the weights and the draft were incomparable, he suggested that the drafts should be taken. The weights were not reliable. A gallon of oil varied in weight with its temperature.

#### SUPPLY OF STORES.

Mr. Naisby said that with regard to the figures for stores, he did not complain. He thought they were a fair approximation. But he did say that the court should not accept the calculation that was put forward by Mr. Steel. That figure was a matter of 180 tons of fresh water. On the last voyage the after boiler had been blown down, and one of the reasons, as appeared from the engineer's letter, was to take the weight of the water in the boiler—some 27 tons—out, in order to permit more cargo being taken. Was it likely that on a vessel where they were getting rid of 27 tons of water in a boiler to make room for cargo, that they were going to carry 180 tons of fresh water round to the other side of the world, shutting out cargo, cutting down the earn-

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ing capacity of the ship, and water which it was admitted was far in excess of what would be needed on the voyage, and in excess of the capacity of the ordinary fresh water tanks on board the ship? The only reason put forward as to why that water should have been carried was because, on a previous voyage, they had difficulty in getting fresh water in Japan. The ship might be delayed a considerable time to get water.

#### CARGO AND DRAFT.

Was it likely, he continued, that the master and engineer, who were trying to make the ship a paying proposition, that they would shut out a considerable quantity of cargo at a freight of over 10s a ton in order to avoid a few hours' delay in Japan. The port to which they were bound was Osaka. He believed that Osaka was a naval port, and not a port in which one would normally expect any difficulty in obtaining water. The figures of deadweight put forward—9,781 tons—were such as would have totally submerged the load-line marks on the sides of the vessel, and he did suggest that for the consideration of the court that it might be well to consider that if the crew was composed of people like Wallace and Mooney, were they likely to increase the risk for the sake of the owners, of going to sea in a vessel in that condition?

In his submission, it would be unsafe and wrong to accept as accurate the figures of cargo and to deny a hearing altogether to the figures of draft, spoken to not only by the master but by the shippers. So far as the master's figures were concerned, they were written at a time when he was not in any way concerned with an investigation either into his conduct or that of the owners or manager.

He next referred to the possible bearing on the cause of the loss. The matter of excess deadweight, if there were any, would, he thought, only have bearing on the cause of the loss if that loss were by entry of sea water into the ship. He did not think it had been suggested it would render the vessel liable to explosion, fire, or anything like that.

No one could say, said Mr. Naisby, that the loss of the ship was caused or contributed to by the improper draft of the vessel. He was not suggesting that there might not be responsibilities over a period of 14 or 10 days earlier. If the vessel was on her proper draft at the time of the loss then no one could say that no previous excessive draft contributed to the cause of the loss.

#### RESERVE BUOYANCY QUESTION.

The ship might have been meeting the weather she had met when just a few hours on leaving port. How far the reserve buoyancy was likely to affect the safety of the vessel was a question that his lordship would be advised upon.

So far as the forward hatch was concerned, that was an unusually strong hatch. If the master's loading plan was right, the vessel was laden to her summer marks; if the shipper's loading particulars were right, and the master's allowance for density was wrong, then the vessel at the time of her loss was drawing 1½ inches less than her permissible summer draft.

"I ask your lordship to accept the evidence of Mr. Graham and Mr. Holland upon the point that they made a genuine mistake to permit the mark at the Batoum voyages. I ask your lordship to believe that they do not know what tropical marks were permissible."

They were not flagrantly, knowingly and deliberately asking the master to break the law.

When the vessel was loaded to the full cargo on the summer marks the company cabled to the agents about it. Thus there was no question of keeping anything dark between the owners and the master. They cabled "What about the dead freight?" Mr. Holland was very frank and did not hesitate to take all responsibility. He was perfectly open.

#### MISSING LETTER.

There was only one letter which had not been found—the original letter to Captain Upstill. The owners of the ship had a high reputation in the City. Were they likely to jeopardise that reputation lightly? It had been suggested that the people in London were deliberately and knowingly urging this vessel's master to break the law.

It was quite true that, unfortunately, people with a high reputation sometimes lost it, but what could be the motive in that case? The largest figure was 441 tons overloading in that case. The freight on that figure was 10s 3d a ton, working out at £226. The commission to the managers would be less than £4. So the whole financial motive for the voyage would be £230 for owners and for managers combined.

There was a lawful means by which that vessel could have carried about 450 tons more cargo (d.w.)—which, it had been suggested, she could have carried for about an expenditure of £400.

#### COMPANY'S RISKS.

Mr. Naisby, continuing, said he would like to mention a few of the risks attendant upon the action that those people were said deliberately and knowingly to have taken. Supposing they adopted that unlawful means of earning £230 when, after all, their £400 doing the alterations for the tanker freeboard they were going to take back at that rate of freight in two voyages.

What were the risks that those people, in adopting those unlawful methods of earning a few more pounds, quite apart from anything which had happened, quite apart from running the risk of anything that had happened here in the last fortnight, quite apart from prosecutions either of themselves or their master in this or any other country in which the Load Line Convention has been applied, they ran the risk of a claim for loss of cargo; they ran the risk of losing the benefit of their insurance policy if anything happened to the vessel.

That, he thought, was worth bearing in mind. If overloading a vessel rendered her more liable to founder it also rendered her more liable to get deck damage. That was a matter for which the owners would have to pay out of their own pocket, and all that, it was suggested, the owners did because they wouldn't pay £400 to obtain a tanker freeboard.

If Mr. Graham were breaking the law he was doing it not for himself, but for someone else. Was it likely he would incur that risk knowingly? Was that a risk any ship manager could run in these days? What would the directors say to Mr. Holland if they heard he had been inciting the master to break the law and cause them serious financial loss?

"I do ask the court to say, whatever else might be said about Mr. Graham and Mr. Holland, they did not knowingly and deliberately and designedly mean to incite Captain Upstill, or anyone else, to any breach of the law."

The President.—You have made a very complete presentment of the case for your clients, as it appears to me.

#### CASE FOR THE BOARD OF TRADE. NO DIFFICULTY IN GETTING WITNESSES.

Sir Donald B. Somervell (Solicitor-General) then addressed the court for the Board of Trade. Mr. Hayward had said that the societies he represented had difficulty in getting statements from officers who could give useful evidence. He (Sir Donald) said that it was the last thing the Board of Trade wanted would be to prevent or discourage the organisations which Mr. Hayward represented from making representations on matters at the proper time.

"The statement as reported," he continued, "might lead to a false impression with regard to these inquiries. It might be said in these inquiries that the Board of Trade had been unable to get into the witness-box or to get statements from ships' officers whom they thought might assist the court."

"That is not so. In these inquiries such officers as we have approached, such officers as we thought could assist the court, have given statements and have gone into the witness-box. I want to make that statement in case a false impression has arisen in regard to the evidence we have presented in these inquiries."

Proceeding, Sir Donald said the points discussed fell broadly under four headings. First was the question of upkeep and defects in the ship; secondly, the question of manning; thirdly, overloading; and, fourthly, the probable cause of the loss.

It was unnecessary for him to speak at any length or go over again the points which had already been covered. He proposed to confine himself to certain matters of detail, which he could deal with quite shortly, and make one or two general observations.

First of all, he would like to add a little to the information already before the court on the question of inspection of electrical fittings. There was a formal inspection when the ship was constructed, but there was no evidence in the survey reports or elsewhere of an inspection since that date. Mr. Naisby had dealt with the matter generally, but since 1930 Lloyd's rules did specifically provide that the electrical fittings should be inspected, and were expressly commented on in the survey report.

Referring to medical stores, he said there were Board of Trade regulations as to the medical stores which ought to be carried, and that was a matter to which, when the occasion arose, the Board of Trade inspectors directed their attention.

Lord Merrivale.—There is no record of any observations or direction with regard to it by the Board of Trade surveyors.

Sir Donald Somervell said he did not think it was suggested that a Board of Trade surveyor ought to have looked at the medical stores, but it was part of the business of the Board of Trade surveyors to look into the matter, and if there was any suggestion at any time that his duty was not properly performed they would like to have their attention drawn to it.

#### CREW'S QUARTERS.

With regard to the condition of the crew's quarters, he said that, of course, was again not directly relevant to the subject matter of the inquiry. At the same time, he would like to say that he was sure everybody would associate themselves with the general proposition that crews' quarters should be watertight and in proper condition.

Lord Merrivale, interrupting, referred to the evidence given by witnesses on the subject which affected them particularly, and said it might be that they should think it necessary to say something about it.

Proceeding, Sir Donald Somervell said there was another point, which, in his submission, was an important general consideration to bear in mind. That was, it would be wrong to blame someone in the position of Mr. Rogers or the owners if they had not been asked to supply some particular store or equipment or to remedy some particular defect.

That, of course, led on to other points. It might be possible to suggest that the failure to ask was due to a well-founded apprehension that the demand might be refused. That was to say, economy was so great, at any rate, in certain matters, requests were not made which ought to have been made. The general observation seemed, to him, that these points ought to be borne in mind in consideration of what conclusion should be come to on any of these matters.

Referring to the statement that there was no spare timber for the hatches. They had a vessel like that where the hatch covers were of steel; they had No. 1 hold, he thought, permanently battened down. It was a very different state of affairs than where they were dealing with a vessel that had all wooden hatch covers. He found it difficult to believe that timber would not have been supplied if it was wanted.

#### TANKS AND VALVES.

With regard to fire extinguishers, he said that the Board of Trade had no statutory regulations, but they issued to owners certain general instructions emphasising the importance of having proper apparatus on board. He thought, probably, the complaint was that the equipment as originally supplied was inadequate.

Referring to the settling tanks and the missing valve, it was obviously a matter, in his submission, that ought to have been attended to. Those instructing him attached certainly as great, if not greater, importance to the hole which was made in the side of the settling tanks.

Sir Donald Somervell next referred to trouble given by the auxiliaries and also by the burners. So far as the auxiliaries were concerned there was, of course, not the slightest doubt that they gave a lot of trouble. There was a conflict of evidence as to the efficiency of the repairs at Los Angeles. According to the

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evidence the pumps gave a lot of trouble, but it seemed to him to stop short of suggesting that they were in a state that it was improper for the vessel to go to sea, or that they were in that state because they had been neglected in the past. Indeed, it might be that on the question of the auxiliaries and the work required in the working of the burners that most emphasis was laid.

#### MANNING AND WORK.

In connection with the manning and the work which the crew were called upon to do, the question was whether the crew were actually of the minimum number for the proper seaworthy manning of the vessel.

As had been stated in those inquiries more than once, the only existing power the Board of Trade had was to detain a vessel if she was, in their opinion, unfit to proceed to sea.

The first question was: Was the crew so small that the ship was unfit to proceed to sea. There was a second and entirely different point of view, and that was whether, assuming that she had a complement sufficient to allow her to proceed to sea without serious danger to human life, that the complement might, in fact, be overworked owing to the conditions under which the vessel was conducting her business. It seemed to him that the case made there was really more under the second heading than the first.

Sir Donald emphasised the example of overworking men in port in order to get a quick turn-round and having a complement adequate to send the ship to sea with safety. There was evidence in many of the masters and officers themselves were helping. When one came to consider regulations, at the moment it seemed to him that there might be, at any rate, great difficulty in framing or enforcing any regulation other than what was proper for safety, assuming that no extraordinary or wrongful or intolerant demands were made.

Again it was suggested that Mr. Gooch did not anticipate the trouble with La Crescenta in the Pacific. That trouble made excessive demands on the masters and others. Captain Upstill was one of those men who could not see a job of work to be done without doing it himself.

The President.—He was devoted to his ship.

Sir Donald Somervell said that if the owners and master were satisfied that the hardness of the work was impairing the health of the crew they would not allow that to continue. Speaking in general terms, the experience of the Board of Trade was that they had had no complaints with regard to engine-room staffs in ships, except in some isolated cases.

Letters from the master had said he did not look forward to leaving the ship. He told his wife the dear old ship seemed very dear to him.

#### WAS SHE OVERLOADED?

The really important question was whether La Crescenta was overloaded, and, if so, by how much? The master had drafted a letter saying he would not overload the ship for anyone. He knew quite well that Batoum should have winter marks, and that he was being asked to overload the ship.

That was the first point. The second point was that the master did actually overload the ship. The third point was to the effect that the impression was quite clearly created on the master's mind that the owners desired him to overload. That was clear from his letters to his wife.

Mr. Holland and Mr. Graham asked the court to believe that the impression of overloading was not created by the company, but by what someone else had said. He asked the court to reject that evidence.

Mr. Holland believed all the time that the ship was entitled to load down to her tropical marks.

Mr. Graham was not a reliable witness. One letter, which he said he was certain he did not see, when the original was produced, was found to have had a pencilled note in the corner in Mr. Graham's writing. His evidence was very unsatisfactory from a number of points. How important that matter was to Mr. Graham, and yet he said he had forgotten it! He held that Mr. Graham failed in the witness-box to give intelligible or credible accounts of what was going on.

What were the possible causes or the loss of the ship? The vessel was in very heavy seas and weather, and she was overladen at the time. There might have been an explosion, and there had been a suggestion put forward that the flying bridge might have been damaged to such an extent as to stop the telemotor steering gear, the power for the wireless and the communication between bridge and engine-room. That would leave the ship powerless in the trough of the sea. It seemed to be that potential reasons became actual reasons.

The President.—There seems to be no doubt that the flying gangway went. But there is no evidence of explosion. There were heavy seas, and the control of the flying bridge ceased. In such a sea such a ship was helpless.

Sir Donald Somervell concluded by saying that if the vessel was overloaded at the time of the loss, there might be the case of an explosion that smashed up the whole ship and the crew.

The President.—There are a number of most serious issues in this case and a great mass of evidence. It is necessary for me to read this all again. It will occupy some days. I adjourn the case now, and the officer of the court will say when our findings may be given. All parties will be notified in good time. I think the case has been presented in a minimum of time, and I feel much obliged to all concerned who have helped us so well.



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