

"LA CRESCENTA" (S.S.)

THE MERCHANT SHIPPING ACT, 1894

REPORT OF COURT

In the matter of a Formal Investigation held at the Institution of Civil Engineers, Great George Street, Westminster, on the 18th, 19th, 20th, 21st, 22nd, 25th, 26th, 27th and 28th days of November, 1935, before the Rt. Hon. Henry Edward, Lord Merrivale, sitting as Wreck Commissioner, assisted by Commodore H. Stockwell, C.B., D.S.O., Commander J. R. Williams, R.D., R.N.R., Mr. E. H. Mitchell, M.I.N.A., and Mr. Edmund Wilson, M.I.N.A., into the circumstances attending the loss at sea of the s.s. "La Crescenta" on or about the 6th December, 1934.

The Questions submitted by the Board of Trade for the purposes of the Public Inquiry into the loss of the s.s. "La Crescenta" have been considered by the Wreck Commissioner and Assessors and they answer them as follows:—

Questions and Answers.

Q. 1. Who were (a) the owners, (b) the registered managers, of the s.s. "La Crescenta"?

A. (a) The Crescent Navigation Company, Limited,
(b) Thomas Henry Carlton Levick and Sydney Graham of 81, Gracechurch Street, E.C.

Q. 2. When and by whom was the s.s. "La Crescenta" built?

A. The "La Crescenta" was built in the year 1923 by the Furness Shipbuilding Company, Limited, of Haverton Hill-on-Tees.

Q. 3. What was the cost of the s.s. "La Crescenta" to her owners? What was her value when she last left Port San Luis, California? What insurances were effected upon and in connection with the vessel?

A. The cost of the ship to her owners was £90,429 8s 6d. The value of the ship when she left Port San Luis is problematic but, according to conclusions in which we concur, may have been £25,000 as between owners desirous of selling and a willing buyer. At the time of her loss the vessel was insured as follows:—

Hull and Machinery—£25,000 free of particular average, paying £15,000 in case of total loss.

Freight—£4,000.

Disbursements—£1,500.

Q. 4. What surveys of the s.s. "La Crescenta" had been made by Lloyd's Register of Shipping between September, 1930, and the date when she left Port San Luis on her last voyage?

A. The following surveys were carried out by the Surveyors of Lloyd's Register of Shipping between September, 1930, and the date when she left Port San Luis on her last voyage:—

Survey Report No. 21420, dated Barry, the 1st October, 1930. (Part of No. 2 Special Survey and damage repairs.)

Survey Report No. 21420, dated Barry, the 1st October, 1930. (Repairs to Engines and Boilers.)

Survey Report No. 350, dated Curacao, the 10th January, 1931. (Repairs to Engines and Boilers.)

Survey Report No. 367, dated Curacao, the 20th February, 1931. (Repairs to Engines and Boilers.)

Survey Report No. 98508, dated the 7th April, 1931, Birkenhead. (Docking Survey and Repairs.)

Survey Report No. 98508, dated at Birkenhead, 7th April, 1931. (Repairs of Engines and Boilers.)

Survey Report No. 7612, dated at Falmouth, the 4th January, 1932. (Repairs to Engines and Boilers.)

Survey Report No. 7659, dated at Falmouth the 29th February, 1932. (Repairs Survey.)

Survey Report No. 7659, dated at Falmouth the 29th February, 1932. (Repairs to Engines and Boilers.)

Survey Report No. 4289, dated at Bordeaux the 27th April, 1932. (Repairs Survey.)

Survey Report No. 4289, dated at Bordeaux the 27th April, 1932. (Repairs to Engines and Boilers.)

Survey Report No. 31000, dated the 5th August, 1932. (Repairs Survey.)

Survey Report No. 31000, dated at Sunderland the 5th August, 1932. (Repairs to Engines and Boilers.)

Survey Report No. 4771, dated at Milford Haven the 21st April, 1933. (Repairs to Engines and Boilers.)

Survey Report No. 4281, dated at Milford Haven the 4th August, 1933. (Repairs to Engines and Boilers.)

Survey Report No. 20056, dated at Swansea the 22nd November, 1933. (Repair Survey.)

Survey Report No. 20056, dated at Swansea the 23rd November, 1933. (Repairs to Engines and Boilers.)

Survey Report No. 5378, dated at Yokohama the 30th October, 1934. (Repairs to Engines and Boilers.)

Survey Report No. 1698, dated at Port San Luis, California, the 22nd November, 1934. (Repairs to Engines and Boilers.)

In addition to the above Lloyd's Register of Shipping held the following freeboard surveys:—

Survey Report No. 29374, dated at Falmouth the 30th March, 1932.

Amended Survey Report No. 29374 (undated).

Survey Report Freeboard Verification, Form for Tankers No. 29374, dated the 28th July, 1932.

Report of Annual Survey No. 29374, at Milford Haven, dated the 2nd August, 1933.

Report of Annual Survey at Yokohama dated the 23rd October, 1934.

Subject to a year of grace and special directions of Lloyd's, No. 1 Special Survey was due when the vessel was four years old; No. 2 when she was eight years old, and No. 3 when she was twelve years old. At the time of loss the "La Crescenta" was eleven years old and owing to concessions made by Lloyd's had lately completed Survey No. 2.

Q. 5. What classification did Lloyd's Register of Shipping assign to the vessel as a result of the above-mentioned surveys?

A. Lloyd's Register of Shipping assigned the vessel a classification of 100 A.1., carrying petroleum in bulk, as a result of the above-mentioned surveys.

Q. 6. Were the owners of the vessel offered a reduced freeboard for her under the provisions of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932? If so, on what conditions? Did the owners accept this offer? If not, why not?



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A. The owners of the vessel applied for an assigned tanker freeboard under the provisions of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, and were offered it subject to:—

- (1) Efficient steel covers being fitted to the hatchways on the freeboard deck to the forward cargo hold and to the coal bunker aft.
- (2) The ventilator coamings over 36 inches in height on the freeboard deck being specially supported.
- (3) A non-detachable screw plug being fitted to the opening of the air pipe 6 inches high on the forecabin deck.
- (4) Satisfactory means of closing being fitted to the air pipes 42 inches in height to the openings.
- (5) The gangway being additionally strengthened longitudinally.
- (6) It was also suggested that an additional freeing port should be cut in the bulwarks on each side of the vessel abaft the after bridge.

The owners did not accept the offer of a reduced freeboard because in effect they considered—as stated in a letter dated the 13th May, 1932—they would not derive from it sufficient benefit to justify the outlay.

Q. 7. When, if at all, did the "La Crescenta" cease to trade from Great Britain?

A. The "La Crescenta" left Dundee on the 13th January, 1934, and did not thereafter return to Great Britain.

	Specific Gravity.	Shore Temperature.	Flash Point.	Ship's Tank.
Kettleman Hills Crude	At 60°F. ·8463	60°F.	Atmosphere temperature 202°	Nos. 3, 4 and 5 Main tanks.
Poso Creek Crude	·9626	104°F.	202°	Nos. 2 and 6 Main tanks and No. 3 Summer tanks.
San Joaquin Valley Crude	·9626	104°F.	202°	Nos. 1, 7 and 8 Main tanks.

The various descriptions of oil were loaded into the ship's tanks in the order in which they are set out above.

Q. 10. How much bunker fuel oil was there on board the vessel when she began to bunker at Port San Luis in November, 1934? What was its description?

A. The total amount of fuel oil on board the "La Crescenta" when she sailed from Port San Luis according to the estimate made by the witness Henry Edward Steel was 1,150 tons, probably stowed as set out in the Answer to Question 11.

Q. 11. What amount of bunker fuel oil did the vessel take on board at Port San Luis in November, 1934? Where was this oil stowed?

What were (a) its description; (b) its gravity and its viscosity and at what temperature; (c) its flash point?

A. The quantity of bunker fuel oil said to have been shipped at Port San Luis in November, 1934, was 1,091·93 tons. The capacities of the tanks available for the stowage of bunker fuel oil show that the whole of the bunker fuel oil on board the vessel when she left Port San Luis could be stowed in the double bottom fuel tanks, the cross-bunker oil fuel tank, the No. 4 oil fuel tank, the settling tanks, and possibly a little in the cofferdam.

There is no definite evidence as to the details inquired of in (a), (b) and (c) but it appeared that the oil was suitable for its intended use.

Q. 8. What instructions, if any, were given by the owners or managers or on their behalf with regard to the loading of the vessel at material times?

A. The instructions given to the master, Captain Upstill, at material times were to the effect that he must load as much cargo as possible. Details are set forth in the Annex.

Q. 9. What descriptions of oil cargo were loaded into the vessel at Port San Luis in November, 1934?

What amount of each description of oil was loaded?

What was the specific gravity of each description of oil and at what temperature?

What was the flash point of each description of oil?

In what tanks of the vessel was each description of oil loaded?

In what order were the various descriptions of oil cargo loaded?

A. According to the bills of lading and shore measurements the following quantities and types of oil including excess water and bottom sediment were loaded on board the vessel at Port San Luis in November, 1934:—

	Tons.
Kettleman Hills Crude	3,027·04
Poso Creek Crude	2,447·32
San Joaquin Valley Crude	2,962·09
	8,446·34

The following table shows the specific gravity temperature and flash point of the different types of oil said to have been loaded and the ship's tanks into which each type of oil is said to have been loaded:—

Q. 12. What total amount of fuel oil was on board when the ship sailed and where was it stowed?

A. The total amount of fuel oil on board the vessel when she sailed from Port San Luis was about 1,150 tons, probably stowed as set out in the Answer to Question 11.

Q. 13. What amount of fresh water was there in the vessel when she began to take fresh water on board at Port San Luis in November, 1934? How much fresh water did she take on board there? How much fresh water was on board when she sailed, and where was it stowed?

A. There is no evidence of any material quantity of fresh water being on board before the time mentioned. It appears that the vessel took on board at Port San Luis about 195½ tons. The quantity used in port before she sailed would normally have been 12½ tons. The water on board when she sailed was perhaps as much as 183 tons, stowed as follows: engineroom feed tank 72 tons; forepeak tank 67 tons; drinking tanks 18 tons; forepeak or after boiler 26 tons.

Q. 14. How many boilers were filled to working height when the vessel sailed and which, if any, boilers were empty?

A. Two boilers—port and starboard—were filled; the after boiler had been surveyed and blown down and may have contained the fresh water referred to in the previous Question and Answer.

Q. 15. What weight of stores, including galley coal, crew and effects, were on board at the time of sailing?

A. Not less than 29 tons, including 23 tons of stores and 6 tons of galley coal. There is no definite evidence to establish that a larger quantity was so stored.

Q. 16. What was the full deadweight on board the vessel, including cargo, bunker oil, crew, water, stores and galley coal, when she left Port San Luis in November, 1934?

A. Evidence which we accept shows the deadweight to have been as much as 9,781 tons. On behalf of the owners it was estimated at 9,702 tons.

Q. 17. Was the vessel overloaded when she left Port San Luis in November, 1934, and, if so, to what extent?

A. According to the evidence which we accept she was overloaded to the extent of 441 tons.

Q. 18. When the vessel left Port San Luis on her last voyage (a) were the hatchways covered and adequately protected and secured; (b) were the hatch covers of proper material, adequate thickness and in good condition; (c) were the tarpaulins, cleats, battens and wedges in good condition and sufficient for their purposes? Were arrangements provided for lashing the tarpaulins and wood covers of cargo and bunker hatchways, and, if so, were lashings used?

A. There was evidence from men who had served on board—given no doubt in good faith—that the cross-bunker hatch was usually kept open in fine weather and a hatch above the engine room casing generally kept open for ventilation, and that the wooden hatch covers had not been maintained in good condition, but in view of the regular surveys made by Lloyd's Surveyors we do not find that this was the case. The latest of these—made at Yokohama—has the expression "appeared" as to a matter which should have been definitely stated, but we do not found a conclusion upon it.

Q. 19. With what steering gear was the vessel fitted? Was it in good and proper condition when she sailed from Port San Luis on her last voyage? Was it in its then condition adequate for the voyage which she was undertaking?

A. The vessel was fitted with steam steering gear fitted on the rudder head controlled by telemotor from the bridge or alternatively by a wheel on top of the house aft. The evidence is that it was adequate for the voyage.

Q. 20. Was any, and, if so, what, auxiliary steering gear fitted? Was such gear in good and proper condition and adequate?

A. The vessel had been fitted with block and tackle auxiliary steering gear to the winch aft shown on the vessel's plans. There was no evidence of its condition at any material time.

Q. 21. Was the wireless telegraphy installation of the vessel adequate and in good condition?

A. In structure and character it was of the normal type. Its continuous efficiency was dependent upon the stability of the fore and aft gangway.

Q. 22. What was the maximum normal range in the Pacific Ocean of (a) the main transmitter; (b) the auxiliary transmitter?

A. The maximum range of the transmitters was dependent on atmospheric conditions; as to the main transmitter it was stated at 250 miles to 400 miles normal, and as to the auxiliary transmitter at 150 miles to 250 miles.

Q. 23. What were the systems of communication and where did they run between (a) the steering wheel on the navigating bridge and the steering engine aft; (b) the telegraph on the navigating bridge and the telegraph in the engineroom; (c) the main wireless transmitter and the dynamo in the engineroom?

A. Between the steering wheel on the navigating bridge and the steering engine aft, telemotor con-

trol; between the telegraph on the navigating bridge and the telegraph in the engineroom, wires and chains; between the main wireless transmitter and the dynamo in the engineroom, electric cable. All of these were carried by the fore and aft gangway.

Q. 24. Were each of the above three systems of communication in good order and efficient when the vessel left Port San Luis on her last voyage?

A. There was no evidence to the contrary and we assume that they were.

Q. 25. Were the systems adopted for establishing these means of communication adequate, efficient and proper?

A. Assuming the sufficiency of the fore and aft gangway, they were.

Q. 26. When the vessel left Port San Luis on her last voyage was the hull in a seaworthy condition and was she properly equipped and provided with all necessary fittings to ensure safety?

A. The certificate of Lloyd's Surveyor is that she was in good and seaworthy condition and was properly equipped and provided. Complaint was made and evidence given before us of lack of a proper provision of fire extinguishers but such evidence was indeterminate.

Q. 27. Did the arrangements in the ship provide sufficient safeguards against the risk of explosion from the cargo tanks and in the pump room when a cargo of crude oil of a flash point below 150° Fahrenheit was carried?

A. The arrangements did not provide up-to-date safeguards against this risk of explosion such as gastight hand lamps for use when desirable and suitable lighting for working at night. In the upper section of the pump room was a storeroom through which members of the crew sometimes went. The use of a portable lamp, not gastight, on such occasions involved risk of explosion.

Q. 28. When the vessel left Port San Luis on her last voyage was she properly loaded? Had she adequate stability?

A. When the vessel left Port San Luis on her last voyage she was not properly loaded, in that her deadweight was excessive. She had adequate stability but that did not counteract the effect of overloading.

Q. 29. Was the propelling machinery in a seaworthy condition and properly equipped with all necessary fittings to ensure safety?

Were (a) the main engines; (b) the boilers; (c) the pumps for supplying feed water to the boilers, and (d) the arrangements for supplying the fuel oil to the boiler furnaces, in good condition?

A. This must be dealt with in detail.

(a) and (b). The main engines and boilers were in good condition; (c) the pumps for supplying feed water to the boilers were twin pumps each of which is supposed to be adequate for the supply, but they appear to have deteriorated for want of constant attention, and there is evidence of frequent trouble with them: spare parts called for were, however, supplied by the owners; (d) the installation as fitted was an effective installation, but difficulties arose in its operation from time to time. The absence of a drip tray in front of the boilers led to escapes of oil.

Q. 30. When the vessel left Port San Luis on her last voyage (a) how many efficient deck hands were on board; (b) was she sufficiently manned as to deck manning and engineroom manning for the voyage in question?

A. She had ten deck hands including the third mate, and her crew all told numbered twenty-nine. The voyage in question being a loaded voyage of an oil tanker the duties devolved upon the various members of the crew did not on such voyage exceed what could be reasonably required of them. The general question of the "La Crescenta's" manning is dealt with in the Annex.

Q. 31. On what date did the vessel sail from Port San Luis on her last voyage and to what port was she bound?

A. She sailed on the 29th November, 1934, and was bound for Osaka, Japan.

Q. 32. What were the weather conditions in the vicinity of the vessel on the 5th and 6th December, 1934?

A. The weather conditions were bad, and, in the region through which the "La Crescenta" was passing, precipitous seas are reported.

Q. 33. Did the vessel send out any, and if so what, wireless message or messages on the 5th and/or 6th December, 1934? Did she send out any wireless messages after that date?

A. The vessel had been in wireless communication with other ships before and on the 5th December. On that day at noon her wireless operator exchanged messages with the s.s. "Athelviscount" and gave them her position. She was signalled by the "Athelviscount" in the evening of that day but no reply could be obtained and thereafter no further signals from her were received.

Q. 34. How many members of the crew of the vessel lost their lives as the result of the casualty to her?

A. The whole of the ship's company, twenty-nine in number.

Q. 35. What was the cause of the loss of the vessel?

A. 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 telemotor control and so put the steering engines 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. The most probable cause appears to us to be seas striking the gangway and flooding the boiler-room and engine-rooms 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 is 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.

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 in 1932 when the new Load Line Act came into operation and their representatives had prescribed the alterations they deemed necessary to avert 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 in disobedience of the law without the prescribed improvements, which are set forth in the Answer to Question 6.

Q. 36. Was the loss of the s.s. "La Crescenta" caused or contributed to by the wrongful act or

default of her owners, the Crescent Navigation Company, Limited, or her registered manager, Mr. Sydney Graham, Mr. Ralph Henry Holland, or any, and, if so, which of them?

A. The causes of loss stated at the close of the Answer to Question 35 were contributed to by the wrongful acts and defaults of the owners of the s.s. "La Crescenta" and of Sydney Graham, the 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, Limited.

Dated this sixth day of December, 1935.

MERRIVALE,
Wreck Commissioner.

We concur in the above Report.

HENRY STOCKWELL,
J. R. WILLIAMS,
E. H. MITCHELL,
EDMUND WILSON, } Assessors.

Annex to the Report.

The Solicitor-General (Sir Donald B. Somervell, O.B.E., K.C.) and Mr. G. St. Clair Pilcher (instructed by the Solicitor to the Board of Trade) appeared as Counsel for the Board of Trade. Mr. J. V. Naisby (instructed by Messrs. Middleton, Lewis and Clarke) appeared as Counsel for the Crescent Navigation Company, Limited, owners of the s.s. "La Crescenta." Mr. Sydney Graham and Mr. R. H. Holland. Mr. R. F. Hayward and Mr. H. R. B. Griffin (instructed by Messrs. Hudson, Matthews and Company) appeared as Counsel for the relatives of Captain N. S. Upstill, master of the s.s. "La Crescenta." Mr. A. Everett, first officer, Mr. R. Martin, second officer, Mr. D. J. Gardner, third officer, Mr. J. Wylie, second engineer, Mr. H. Garry, third engineer, and for the following Officers' Protection Societies:—The Officers (Merchant Navy) Federation, Limited, the Imperial Merchant Service Guild, the Mercantile Marine Service Association and the Marine Engineers' Association, Limited. Mr. Vere J. U. Hunt and Mr. Peter Bucknill (instructed by Messrs. Russell Jones and Company) appeared as Counsel for the National Union of Seamen. Mr. W. L. McNair (instructed by Parker, Garrett and Company) held a watching brief for Lloyd's Register of Shipping.

A prolonged Inquiry was needed in this case by reason of very grave allegations definitely made against the persons who were responsible for the management and use of the steamship "La Crescenta" before and at the time of her loss at sea.

The "La Crescenta" was an oil tanker, built in 1923, gross tonnage 5,880; net tonnage 3,531; length 400 feet; breadth 53 feet; depth of hold 32 feet 8 inches; and was continuously classed 100 A.1. down to the time of her loss. She set out on a laden voyage across the Pacific from the United States Port of San Luis to Osaka, Japan, in November, 1934. She encountered heavy weather on the high seas at the beginning of December, and on the night of the 5th December, 1934, after a period of regular wireless communication with other vessels, she was no more heard of. Her last recorded position was in latitude 34° 51' N. and longitude 163° 24' W. She was laden with crude oil and about a month later a lake of such oil, covering about two square miles, was come upon by a vessel navigating the area in which the "La Crescenta" had disappeared in latitude 35° 2' N. and longitude 164° W. That the vessel foundered was unquestionable, and that she foundered during the heavy weather on the night of the 5th December, practically certain.

When the cause of the loss of the "La Crescenta" came to be investigated she was found to have been systematically overloaded—loaded down, it was asserted, to her Tropical Marks when she should only have been loaded to her Summer Marks; the master was said to have done this at the instance of

the owners, the Crescent Navigation Company Limited, in pursuance of instructions given by their managers. It was found, too, that in 1932, under the provisions of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, the owners had applied for an assigned tanker freeboard and had been told of alterations in the vessel's structure and equipment which were deemed necessary for this purpose, and had decided that it was not worth while to make the necessary expenditure. The alleged over-loading of the "La Crescenta" at the material times was said, therefore, to have been ordered in conscious disregard of the law.

Voyage records of the "La Crescenta" showed that in October, 1925, in a moderate gale she had shipped water heavily when steaming in high seas, large quantities fore and aft; that in January, 1930, in a moderate gale her decks were flooded and she had shipped very heavy seas "over all", rolling and straining heavily and, with wind of gale force, shipped seas which flooded her engine-room and stokehold and carried away fittings from the after deck; and a little later heavy seas which damaged her fore and aft gangway and caused considerable damage to the electric wire under that structure. The vessel also suffered casualties which involved large expenditure for repairs—mostly, of course, payable by underwriters. The expenditure to make the prescribed repairs were duly made, as was shown by, among other proofs, the reports of Lloyd's Surveyors. In July, 1932, however, there was damage to a valve on the vessel's settling tank which was not repaired.

Whereas during 1929-1930—from June to June—the owning company had distributed in dividends £6,000, and in 1930-1931 £4,500, in respect of their paid-up capital of £30,000, there was in 1931-1932 a net trading loss of £106, and, interim dividends amounting to £2,250 having been paid in the first half year, reserves were drawn upon. The vessel was laid up for a year from November, 1932, to November, 1933, and the year's account to June, 1934, also set forth a loss. These financial conditions from 1929 to 1934 no doubt had effect in relation to expenditure upon the upkeep and manning of the "La Crescenta." She had been manned substantially in excess of the legal minimum as to deck hands. By degrees the number of deck hands was reduced to the legal minimum. The engine-room staff and service staff—as to which there are no legal rules governing the minimum—were also effectively reduced.

Log entries of steamships, including tankers, which were navigating the Pacific in the region in which the "La Crescenta" was last heard of, provide information as to the weather at the time in question. That there were precipitous seas was apparent but the master of one of the ships, the master of the "Vancouver City", gave as his opinion that the weather was "not enough to sink a well found ship."

From what has been set forth, it will be seen that the Inquiry necessarily involved questions as to the loading, manning and seaworthiness of the "La Crescenta."

The Regulations in Force.

Among men concerned with shipping, the history and purport of the law governing the loading of ships for overseas trade are, of course, very well known. The Merchant Shipping (Safety and Load Line Conventions) Act, 1932, is "an Act to give effect to an international convention for the safety of life at sea." The original international convention is set out in the Act. It was signed in London on behalf of His Majesty's Government on 31st May, 1929. The Act recites that another Load Line Convention which is set out in the Act was signed on behalf of the Government on 5th July, 1930, being:—

"A Convention for promoting safety of life and property at sea by establishing in common agreement uniform principles and rules with regard to the limits to which ships on international voyages may be loaded."

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People unconcerned in shipping would not be seriously blamed for lack of knowledge concerning the Act of 1932, however well His Majesty's subjects may be presumed to know the law. A wholly different consideration applies to those who are employed in the management of shipping. It is their duty to know, and when a man has discharged duties of the gravest responsibility within the scope of the Act, not for a short time, but during many years, it is impossible to doubt that he is aware as a business man of such provisions as those which are in question in this case. Apart from this the course of his daily life must remind him what his legal responsibilities are. So also it should quicken his remembrance of the prime object of the Act in question and that its declared purpose is to promote safety of life at sea.

Every application by a ship's manager for a load line certificate and for the renewal of such certificate involves a survey and the prime purpose of the survey is to determine "the maximum depth to which the ship in question may be loaded in different times and in different seasons."

Summer Load Line, Winter Load Line, North Atlantic Load Line, and Tropical Load Line, are all strictly defined and elaborate provision is made for their application in the respective areas. Freeboards are prescribed for various classes of ships, oil tankers being separately dealt with, and the maximum depth in salt water to which a steamer may be loaded is stated, with very particular directions as to what shall be done in respect of various seasons and marine areas. For each season and each area definite regulations as to loading are carefully set out. Attached to the Regulations is a very clear map which places their meaning and effect beyond doubt.

As is well known, keen discussion among those concerned in merchant shipping attended the adoption and enactment of the Regulations in question. They incorporate serious restrictive provisions, they necessarily involve expense, and in some cases set limits upon possible profits. Moreover, being international in their effect they may be found to impose weightier obligations than regulations as to the business dealings of one citizen with another in the same State.

Over-loading.

That the "La Crescenta" was repeatedly overloaded in 1934 is beyond question. That her loading, as well as her equipment and general condition, and the sufficiency of her crew, are matters affecting the safety of ship and crew is obvious. The overloading is demonstrated by the ship's papers and the correspondence between owners and master, as well as by oral evidence.

Henry Edward Steel, a ship surveyor of the Board of Trade since 1919, gave useful evidence with regard to the structure of the "La Crescenta" and evidence of still greater importance directly bearing on the question whether the vessel was over-loaded—that is, over-loaded in contravention of the relevant Statutory Provisions—on her voyages in the year 1934. He dealt with the Summer Load Line, the Winter Load Line and the Tropical Load Line, applied them to the loading of the "La Crescenta" and gave particulars of the differences. The permissible limit of deadweight with the Winter Load Line Mr. Steel calculated at 9,065 tons; that with the Tropical Load Line at 9,616 tons.

On the voyage from Batoum to Vladivostok, Mr. Steel found the total deadweight carried to be 9,487 tons and this, he stated, involved over-loading which would submerge the vessel by 9½ inches below the permitted load line.

On the voyage from San Pedro to San Antonio loading to the Tropical Load Line was permissible and there was no over-loading, 9,616 tons being allowed and 9,587 tons carried.

Proceeding from San Pedro and Port San Luis to Japanese ports the actual deadweight was 9,660 tons, that allowable 9,340, an excess of 320 tons involving excessive submersion of 7½ inches.

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The vessel ultimately left Port San Luis on the 24th November, 1934, and Mr. Steel reckoned her actual deadweight at 9,781 tons against an allowable deadweight of 9,340 tons—an excess of 441 tons. Her correct draught—the Summer Load Line applying—would have been 27 feet 9½ inches. There was, he said, an excessive submersion of 10½ inches at the time when the “La Crescenta” left the port. Before the 6th December the deadweight had, of course, been substantially reduced by consumption of fuel and stores.

In cross-examination Mr. Steel was properly called upon to deal with various matters which were said to throw doubt on his conclusions, if not to displace them, as, for example, certificates and reports of shipping agents concerned in loading which gave the vessel a better freeboard, temperatures, and other matters which affected the specific gravity of oil and larger allowances for stores concerned. He had no doubt, however, and 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. Mr. Steel estimated it at 5 inches.

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 be 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 evidence of the witness Rogers given on the fourth day of the hearing. Upstill, however, shrank from the refusal he had at first purposed to make. Such a refusal would probably have resulted in his becoming unemployed.

In a letter to Harris and Dixon, Limited, dated the 6th January, 1934, at Dundee, he wrote this as to the voyage from Batoum to Vladivostok: “On the voyage to Vladivostok I presume you wish me to make the passage via the Suez Canal. If this is the case it will be impossible for me to do as you suggest and take 8,200 tons cargo and 1,500 tons bunkers. Black Sea ports at this time of the year come under Winter Loading and also in the Mediterranean, the Load Line Rules being international.”

On the 16th January Harris and Dixon, Limited, wrote to Captain Upstill: “We see no reason why you should not load your vessel down to her Indian Summer Marks before proceeding from the Black Sea port, allowing for the quantity of bunkers which we intend to ship at Aden” . . . “you must load your vessel down to the Summer Marks. At Aden when the vessel is bunkering you should be able to load down to her Indian Summer Marks.” He was to leave Batoum with 1,000 tons of bunkers on board “after loading your vessel down as deeply as you can.” Upstill wrote to his wife: “Sydney Graham says I must.” In May for a voyage from San Pedro to Japan this instruction was written to him: “We look to you to load the maximum quantity possible on your Tropical Load Lines.” At the end of August, when a voyage from San Pedro and Port San Luis to Japan was in view, they wrote: “Kindly load as much cargo as possible. We were disappointed last time that you did not load to your Tropical Load Line”—and this though such loading was clearly unlawful. Upstill replied that he “noted the contents of the letter”; and overloaded. In mid-September the owners sent him the charter-party for the voyage in which the ship was lost and wrote: “Our desire, of course, is for you to carry the maximum quantity of cargo possible without any dead bunkers.” The master overloaded as he was bidden.

Manning.

Under the regulations and still more with regard to broader grounds of safety and humanity, the manning of the “La Crescenta” was made the subject of close inquiry and keen debate. Evidence

was adduced as to a period of about 6 years. During 1929, 1930 and 1931 the ship's company varied between 34 and 41 in number, an ordinary total being 39 or 40. In 1932 the number of engineers was reduced from 5 to 4, the number of stewards and cooks was reduced by 3, and a ship's carpenter was no longer engaged. On the voyage which ended in November, 1934, the engineroom staff was diminished, in that instead of 3 firemen and 2 greasers as on the previous voyage, 4 firemen were taken. On the last voyage 9 sailors replaced 7 sailors and 2 apprentices and, in addition to the 4 firemen, 1 greaser was carried.

The minimum of deck hands required by the regulations was employed at the material times. What would be the effect of dispensing with the ship's carpenter, of reducing the engineroom staff from 5 engineers to 4, and 3 firemen and 2 greasers to 4 firemen, is to be judged in the light of the work falling to be carried out in the successive periods and whether anything happened to reduce it. Some light is thrown upon it, too, by the evidence which is before the Tribunal of the duties the crew, as constituted, were called upon to discharge. How a ship's company must be constituted to carry out efficiently and with reasonable regard to their well-being as well as that of the ship, the duties imposed upon them, must depend upon such things as the nature of the vessel's employment, the kind of work thereby involved and the periods during which the vessel is at sea and in port.

The Manning Regulations in force at times material in this case (Circular No. 1463 issued in March, 1909) require that in addition to the master and two mates a vessel such as the “La Crescenta” should have:—

- (i) “A sufficient number of efficient deck hands available for division into two watches, so as to provide a minimum effective watch, namely, a competent hand at the wheel, a lookout man and an additional hand on deck available for any purpose;”
- (ii) Independently of the master and two mates, not less than eight efficient deck hands; and
- (iii) Being of over 5,500 tons gross, independently of the master and two mates, not less than ten efficient deck hands.”

“Not less than” is a material provision in the manning regulations. They prescribe a minimum. Owners and managers of vessels are not relieved, when a minimum crew has been put on board, of their manifest obligation to see that the ship is adequately manned for the purposes involved in her mode of employment. Whether the “La Crescenta” was adequately manned in this sense is a question of no less importance than whether she carried the minimum complement of deck hands prescribed in the Board of Trade instructions.

The strength of the engineroom staff and the burden of their duties are also matters which clearly affect the safety of the ship. Why 5 engineers, 4 firemen and 2 greasers were considered a proper staff in 1930, and in 1934, 4 engineers, 4 firemen and 1 greaser, is as difficult to understand as it is to suppose that to dispense in the latter year with the ship's carpenter, the boatswain, 2 stewards, a cook and a cabin boy could have no serious effect on the sufficiency of the crew as a whole to do the ship's work and also to have reasonable intervals for rest.

As to the work required of the crew of the “La Crescenta” various letters which Captain Upstill wrote to his wife during 1934 show that for several weeks, there being a sedimental deposit of oil in the tanks—“gone as thick as putty” as he wrote—an extraordinary amount of work had to be done in efforts to get the tanks fit to load cargo. The master wrote that he “kept the third and second mates' watches for them while they helped the chief officer on the tanks”, and “had to keep on the lookout pretty well all the time”. On the 4th May he wrote—“I have been very busy to-day in the tanks. I have been trying to stop some of the leaks. I am afraid it's a hopeless job”. On the 18th July he

wrote: “We had a terrible job with the tanks but thanks to all the men working like H— day and night we managed . . . they are all about done up after three days and nights of it and to tell you the truth so am I”. On the 20th July Upstill wrote: “Hardly anybody had any sleep for about three or four days while we were cleaning out the tanks”. On the 7th November he wrote: “I am very awful tired. Have been down in the tanks cutting out rivets again to-day and I am awful stiff and tired”.

Samuel Frederick Marks, elsewhere mentioned, joined the “La Crescenta” as fireman in 1934. After describing the condition of her fittings and the work thereby involved he says of the ship's company on her last voyage but one, “There were only 28 and all the crew were hollow cheeked and seriously overworked.”

Hubert Garry, third engineer in August and November, 1934, says in his statement as to himself and the other engineers “we even have to clean out own tubes and back ends and chip inside as we only have two firemen and two greasers.”

The minimum of deck hands is governed by regulations. The other numbers are not. It would seem that if the various elements of well-being are all equally material there should, if possible, be regulations designed to secure sufficiency of numbers throughout the vessel with due regard to the tasks involved and the mode in which she is employed.

Condition of the “La Crescenta.”

The seaworthiness of the “La Crescenta” at the end of 1934 has been an outstanding question throughout the Inquiry. That she 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.

As to design and build, the “La Crescenta” was an attractive vessel properly constructed in her hull and main fittings with good boilers and engines and, speaking generally, expenditure for their maintenance was provided as called for.

Auxiliary machinery will presently be dealt with separately rather as a matter involving the tasks of the ship's company than in respect of readiness of the ship for overseas voyages. Under favourable weather conditions and subject to being properly loaded and handled the vessel may well have run her due course to the end.

There was much evidence as to the condition of the auxiliary machinery. The owners relied upon the survey reports and general evidence concerning them. From men who had been employed in the ship there was very serious criticism. Hubert Garry, third engineer on board in the autumn of 1934, wrote home thus:—“It is not the main engines that are the trouble; they are the best I have ever been with, thank goodness, but it is the auxiliaries such as the condensers, Weir's pumps, fuel pumps, boiler mountings, joints and the hundred and one other things.” A statement given by Samuel Frederick Marks, before mentioned, now resident at Los Angeles, who served as a fireman on board the ship in two of her last voyages, relates failure of the machinery which supplied and operated the oil fuel system, choking of filters, trouble from carbon deposit in the burner nozzles, choking of smoke tubes, heavy escapes of steam from failure of joints in the pipes and also quantities of sea water coming into the stokehold. He says that he left the ship because she was in such bad condition that he “feared disaster would overtake her.”

Two witnesses called by Counsel for the Seamen's Union were John Wallace, who served in the “La Crescenta” as a greaser in the early part of 1934, and John Mooney, who served at the same time as donkey man and pump man.

Wallace said that from what he saw of the ship before he joined her he was not keen to join her, but said that as the engineer had taken his name he would be reported to the Labour Exchange if he did not. The men's quarters, he said, were in very bad condition; port holes cracked and without rubbers, so that sea water was continually coming

in, and dead lights were not in good condition. He says that owing to oil “collected in the smoke boxes” fire occurred and the hose had to be used to put it out. The pumps he described as continuously breaking down, going for two or three hours after repair and then stopping again. The Weir's pumps, he said, successively broke down. The means of lighting available for the pump room, the condition of the fire extinguishers on board and defective action of the oil burners and engines by reason of choking were among a number of subjects about which Wallace gave evidence.

John Mooney, who signed on as a greaser, had been at sea many years and had served in various tankers. He described some parts of the auxiliary gear of the “La Crescenta” in 1934 as being “in a very deplorable out-of-order state of repair.” Weir's pumps, the fuel oil feed pumps, leakages in the pump room, carbon lodged in burners which frequently put them out and caused incessant trouble in cleaning, and absence of oil trays in front of the furnaces, were matters about which Mooney complained. He spoke of the firemen's quarters as “quarters which we could not live in when we left work” and said “they were in an insanitary condition . . . the heat was too excessive . . . we could not remain in them more than 15 minutes without having to go on deck to dry ourselves with a towel . . . there was not a port-hole, so far as I know, in any of the four rooms that was in good condition; some had no rubbers, others the glass was cracked right through, others the thumb screws would not screw up; some, dead lights none; others, the dead lights would not come down unless we hammered them.” Bedding “never dry in bad weather”. Asked why he left the ship Mooney said: “Well, with the conditions aboard the ship, the living conditions, and the messing, the food; it was beginning to wear me down a bit. The ship being out for an indefinite period, and she was to cross the Pacific, and I had had experience of that, I thought I would get out . . . I told the master I was not feeling well . . . I was paid off and sent home.”

The owners of the “La Crescenta,” in addition to their other evidence, put in an affidavit of William James Mackie, a ship's engineer who served on board the “La Crescenta” as fifth engineer in 1928-1929 and as third engineer from July, 1929, to November, 1933. He contradicts a great deal of the evidence of Samuel Frederick Marks and states that the vessel was kept in good repair and that all requests for repair received immediate attention.

Making all allowances for exaggeration, whether due to temperament, to a sense of grievance or any other matter, it is apparent that if the evidence given by Wallace and Mooney was given honestly the state of the firemen's quarters was bad and that the auxiliary machinery and the fittings connected therewith was in such condition that it threw an abnormal amount of work on the men employed. After listening carefully to their evidence we were convinced that each of them intended to tell the truth. It is proper to state definitely the opinion of the Assessors that in a vessel laid up for a long time the auxiliary pumps deteriorate much more than the main engines.

As has been said already the design and structure of a vessel are elementary considerations in the problem of seaworthiness, and with regard to the “La Crescenta” the Assessors have observed that the evidence shows her to have been a ship somewhat slow in rising to a sea in heavy weather and so designed that she drew deep water for the amount of deadweight she carried. These conditions, they say, would probably produce a greater risk of damage from seas falling on board than if she rose to the sea more readily, and, as a consequence, if the vessel were overloaded she would thereby be the more liable to damage by sea.

Causes of the Vessel's Loss.

As was said by the Solicitor-General in summing up the evidence at the Inquiry, it is reasonable to assume that the cause of the loss of the “La Crescenta” was that cause—whatever it may have

been—which suddenly put out of action the wireless apparatus of the ship. A violent explosion of oil gas could, no doubt, have had this effect, but there was no evidence of such an explosion. If it had occurred it need not necessarily have prevented repair of the wireless fittings, and if it were of such violence as to damage the hull it would hardly have failed to damage the oil tanks or some of them, so that oil in large quantities would have been discharged into the sea as the ship subsided. The discovery of a broad sheet of oil in the area in which the "La Crescenta" foundered, a month after her disappearance, seems to indicate that the oil tanks were intact when she went down. Oil thrown out a month earlier would have passed away. Again, oil in the vessel's wake after damage which did not involve sudden foundering would have lessened the force of the sea and would have rendered more possible the taking of action to keep her afloat.

Damage by a precipitous sea to the fore and aft gangway was manifestly one of the perils to the vessel when she encountered the bad weather of the 5th December, and when the question of altered load line arose in 1932, Lloyd's Surveyor had said that if the "La Crescenta" was to go to sea loaded below the then existing load line the fore and aft gangway would be unsafe and that her wooden hatches would be unsafe. That the fore and aft gangway was carried away is an almost inescapable conclusion. 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 face of precipitous seas she inevitably sank.

Individual Responsibility.

That there was "wrongful act or default" of the persons responsible for the overloading of the "La Crescenta" and for the vessel's condition is stated in the Answer to Question 36. The responsibility for such "wrongful act or default" which falls personally upon the registered manager of the ship, Sydney Graham, and the owners' shipping manager, Ralph Henry Holland, involves also their employers who did, in respect of matters involving safety at sea, things which ought not to have been done. Reference must be made to the evidence upon which this finding proceeds. To some of this, contained in the voluminous correspondence which was put in, reference has already been made. Mr. Graham said that Mr. Holland would consult him on any point of importance. He told how, for the latest voyage before the ship was laid up, they, because of the prevailing unemployment, manned her with a complement of deck hands who held master's certificates. As to the reduced manning he said that they got in touch with the officers of the Seamen's Union and "agreed the number of the crew." This we do not find to have been the fact. As to the loading of the vessel at the material times—overloading being admitted—he declared that he thought the master was wrong as to the governing marks and that although the vessel was loading at Batoum in January she could lawfully be loaded to the Indian Summer Mark, but that he "did nothing to check that opinion." As to the letter directing the master thus: "Kindly load as much as possible. We were disappointed the last time that you did not load to your Tropical loading," he allowed that it might give the impression to the master that "he was to do what he ought not". Asked by the Solicitor-General as to the correspondence in 1932 when the owners had applied for the reduced freeboard under the new Regulations and were told that for increased deadweight alterations to secure safety must be made, the material letter of the 13th May, 1932, being put to him, he made these answers: "I know nothing about it"; "I don't remember it"; "I signed the letter." As to the Act of 1932 and the regulations thereunder he said "I only heard of that three weeks ago. No, I only saw it then." This question was put: "The letters could not have been honestly sent out by

anyone who had taken the trouble to read the regulations"? and his answer was: "I agree." Asked as to Captain Upstill's letter to Mrs. Upstill that Sydney Graham has said he must load the ship to take full cargo and bunkers, his answer was: "I don't recollect." As to this witness the view submitted by the Solicitor-General was that he was an unreliable witness, that he knew what was going on and wholly failed to give an intelligible or credible account of what was going on.

The witness, Ralph Henry Holland, asserted that he thought the "La Crescenta" could be loaded to her Tropical Marks in the Black Sea, and that although the master pointed out the error he did not look into the Regulations. "We had nothing in the office" he said "that I know of to show to what draughts we could load at different times". "I thought I knew and I acted on what I thought I knew". Asked by the Solicitor-General when he first saw the relevant Statutory Orders he stated that he first saw them "some time after the ship sank". Further cross-examined as to the master's very definite statements he said, "At the time I did not attach any importance to the matter". Asked why the company wrote telling Captain Upstill when he was at Batoum to load down to his Summer Marks he replied, "I cannot remember now", and added, "I thought he could load to his Tropical Marks". "I am not suggesting I mentioned 'tropical'", "I cannot explain". Asked to explain the letter which said: "Kindly load as much cargo as possible. We were disappointed last time that you did not load to your Tropical Load Line", he said, "We stressed 'did not' meaning 'could not'." He also stated "I was not thinking of the Regulations. I came to the question on the economic point and the economic point only". The Solicitor-General epitomised his criticisms of this evidence by describing it as "An astonishing confession of reckless confidence". He added: "Disbelieve it".

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. Our conclusion with regard to the matter is that they ignored the regulations because they intended that the "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.

Generally.

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 the steamship "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 crew's 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 over-loading and our conclusions thereon suggest that the 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.

MERRIVALE,

Wreck Commissioner.

We concur,

HENRY STOCKWELL,
J. R. WILLIAMS,
E. H. MITCHELL,
EDMUND WILSON, } Assessors.

Order for Payment of Costs.

I order the Owners, the Crescent Navigation Company, Limited, of 81, Gracechurch Street, London, E.C., and Mr. Sidney Graham, the registered manager of the ship, of 81, Gracechurch Street, London, E.C., and Mr. Ralph Henry Holland, manager of the shipping department of Harris & Dixon, Ltd., of 81, Gracechurch Street, London, E.C., jointly and severally to pay on account of the expenses of this Investigation the sum of two thousand

seven hundred and fifty pounds to the Solicitor, Board of Trade, three hundred and fifty pounds to the Solicitors, Messrs. Russell Jones & Co., representing the National Union of Seamen, and three hundred pounds to the Solicitors, Messrs. G. F. Hudson, Matthews & Co., representing the relatives of officers on board the s.s. "La Crescenta" and various Officers' Protection Societies.

MERRIVALE,
Judge.

(Issued by the Board of Trade in London
on Wednesday the 1st day of January, 1936)

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