

56, 1934

In the Privy Council.

No. 72 of 1933.

ON APPEAL FROM THE COURT OF
KING'S BENCH FOR THE PROVINCE OF
QUEBEC (APPEAL SIDE).

BETWEEN

PATERSON STEAMSHIPS, LIMITED

Appellants (Defendants)

AND

CANADIAN CO-OPERATIVE WHEAT PRODUCERS,
LIMITED - - - - -

Respondents (Plaintiffs).

RECORD OF PROCEEDINGS.

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— ■ —

Part I — PLEADINGS

*In the
Superior
Court,
District of
Montreal.*

10

No. 1.

No. 1.
Plaintiff's
Declaration,
13th Janu-
ary 1931.

PLAINTIFF'S DECLARATION

Plaintiff declares as follows :—

1.—The Plaintiff is a grain dealer and carries on business in the City of Montreal, Province of Quebec.

20 2.—The Defendant is a ship-owner and also carries on business in the said City of Montreal, in the Province of Quebec.

3.—The Plaintiff, the owner of a cargo of wheat and barley, shipped the same in good order and condition on board the Defendant's steamer "Mantadoc" on or about the 16th day of October, 1929, at the Port of Fort William, Ontario, destined for the Port of Montreal.

30 4.—The said cargo was accepted by the Defendant for carriage to Montreal in accordance with the terms and conditions of Bills of Lading, signed by the Defendant's agent, copies of which are filed with the return of this action as Plaintiff's Exhibits P-1 and P-2.

5.—The said cargo consisted of 65,150 bushels No. 2 Northern Manitoba wheat and 70,522 bushels 24 lbs. Extra No. 3 Canada Western Six Row barley.

40 6.—The said cargo arrived at Port Colbourne, Ont. on or about the 21st day of October, 1929, and part thereof was shipped on the Defendant's steamer "Sarniadoc" on or about the 28th day of November, 1929 as appears by Government Elevator Bill of Lading filed herewith as Exhibit P-3, the said cargo transhipped being made up of 56,594 bushels No. 2 Northern Manitoba wheat and 5,091 bushels Extra No. 3 Canada Western barley, Six Row, of the total value of \$89,618.83, made up as follows :—

	56,594 bushels No. 2 Northern Manitoba wheat at \$1.51 per bushel.....	\$85,456.94
	5,091 bushels Extra No. 3 Canada Western barley Six Row at \$5.81 $\frac{3}{4}$ per bushel	4,161.89
10	Total value	<u>\$89,618.83</u>

*In the
Superior
Court,
District of
Montreal.*

*No. 1.
Plaintiff's
Declaration,
13th Janu-
ary 1931—
continued.*

7.—That during the transit of the said cargo from Port Colbourne to Montreal and at or near Main Duck Island in Lake Ontario the said cargo was damaged by water entering the holds of the said steamer "Sarniadoc".

20 8.—That at all times during the said voyage and at the time of the loss the Plaintiff was the owner of the said cargo shipped on board the Defendant's ship, the said "Sarniadoc".

9.—The Defendant failed and neglected to carry out its obligations to deliver the said cargo in good condition or at all in accordance with its undertaking as set forth in Plaintiff's Exhibit P-3.

30 10.—That the said cargo so damaged was partially salvaged and was disposed of to the best advantage, the most advantageous terms that could be obtained being \$6,773.79 for 45,526 bushels of wheat and \$582.75 for 3,885 bushels of barley, or a total of \$7,356.54 net proceeds after deduction of salvage expenses of \$7,470.35.

40 11.—That in addition to loss and damage to cargo as aforesaid the Plaintiff incurred survey expenses chargeable against the said salvage paid to Hayes, Stuart & Co. Limited in the amount of \$766.74.

12.—That the net balance to be credited to the Defendant on salvage operations (the said amount of salvage proceeds of \$7,356.54 less expenses of \$766.74) is \$6,589.80.

13.—That the Defendant is indebted to the Plaintiff in the amount of \$83,029.03, made up as follows :—



	Value of 56,594 bushels wheat at \$1.51 per bushel	\$85,456.94
	Value of 5,091 bushels Barley at \$0.81¾ per bushel	4,161.89
	Total value	\$89,618.83
10	Less proceeds of salvage	6,589.80
	Total damage	\$83,029.03

In the Superior Court, District of Montreal.
 No. 1.
 Plaintiff's Declaration, 13th January 1931—
continued.

which said amount the Defendant neglects and refuses to pay though duly called upon so to do.

WHEREFORE Plaintiff prays for judgment against Defendant in the amount of \$83,029.03 with interest.

20 THE WHOLE WITH COSTS.

MONTREAL, 13th January, 1931.

Brown, Montgomery & McMichael,
 Attorneys for Plaintiff.

No. 2.

30 DEFENDANT'S SECOND PLEA AS AMENDED

1.—The Defendant admits paragraph 1 of Plaintiff's declaration.

2.—The Defendant admits paragraph 2 of Plaintiff's declaration.

40 3.—In answer to paragraphs 3, 4 and 5 of Plaintiff's declaration, the Defendant admits that on or about the date stated a cargo of wheat and barley was shipped aboard Defendant's vessel the "Mantadoc" for carriage to Montreal, the whole in conformity with the bills of lading filed as Plaintiff's Exhibits P-1 and P-2, which said documents speak for themselves.

4.—In answer to paragraph 6 of Plaintiff's declaration, the Defendant alleges that on the date stated a portion of the said cargo was in fact trans-shipped at Port Colborne, Ontario,

In the Superior Court, District of Montreal.
 No. 2.
 Defendant's Second Plea as amended, 17th March 1931.



to be carried to Montreal aboard the Defendant's steamer "Sarniadoc," as appears from Government Elevator bill of lading filed as Plaintiff's Exhibit P-3, which speaks for itself and the remainder of the said paragraph is denied.

*In the
Superior
Court,
District of
Montreal.*

10 5.—In answer to paragraph 7 of Plaintiff's declaration, the Defendant alleges that the said cargo was in fact damaged during transit to Montreal, for which damage, however, the Defendant, as will hereinafter more fully appear, is not responsible.

No. 2.
Defendant's
Second Plea
as amended,
17th March
1931—con-
tinued.

6.—The Defendant is ignorant of the allegations contained in paragraph 8 of Plaintiff's Declaration.

7.—The Defendant denies paragraph 9 of Plaintiff's declaration as drawn.

20 8.—The Defendant denies paragraph 10 of Plaintiff's declaration.

9.—The Defendant denies paragraph 11 of Plaintiff's declaration and alleges, in any event, that Defendant is not responsible for the amount claimed.

10.—The Defendant denies paragraph 12 of Plaintiff's declaration as drawn.

30 11.—The Defendant denies paragraph 13 of Plaintiff's declaration.

AND DEFENDANT ALLEGES:

40 12.—On or about the 28th day of November, 1929 a cargo of wheat and barley was loaded aboard the S.S. "Sarniadoc" belonging to the Defendant Company at Port Colborne, Ontario, for shipment to the Port of Montreal.

13.—On the 30th of November, 1929 at or near Main Ducks Island in Lake Ontario during heavy gales with accompanying seas, snow flurries and poor visibility, at about 7:30 in the morning, the vessel struck and stranded stern on, causing great damage to the said vessel as a result whereof she became to all intents and purposes a total wreck, being abandoned by her crew thirty-six hours after she had struck.



14.—The said vessel was eventually removed from her strand and brought to dry-dock, when it was found that holes had been torn in her hull and plating.

15.—As a result of the said stranding and damages to the vessel as hereinabove related, water was admitted to her cargo holds and damage caused to the cargo of wheat and barley aboard her.

16.—At the commencement of the said voyage and prior thereto and during the course thereof the said vessel "Sarniadoc" was in all respects seaworthy and properly manned, equipped and supplied.

17.—The Defendant, owners of the "Sarniadoc", at the commencement of the said voyage and prior thereto and during the course thereof, exercised due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied.

18.—Any contract of carriage or affreightment and any bill of lading issued to the Plaintiff or owners of the said cargo covering carriage of said cargo to the Port of Montreal, was in fact and by law entered into and issued subject to all the terms and provisions of the Water Carriage of Goods Act (R.S.C. Ch. 207) the provisions of which said statute apply to and form part of any contract of carriage or affreightment or bill of lading.

19.—Section 6 of the said The Water Carriage of Goods Act (R.S.C. Ch. 207) reads as follows:

40 " If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect. "

20.—The casualty, loss or damage to cargo alleged in Plaintiff's declaration was caused and attributable to a fault or error in navigation or in the management of the said vessel "Sarniadoc".

*In the
Superior
Court,
District of
Montreal.*

No. 2.
Defendant's
Second Plea
as amended,
17th March
1931—con-
tinued.



21.—And without waiver of the foregoing defences but, on the contrary, under the full benefit thereof, the Defendant pleads subsidiarily that the said casualty loss or damage was due to dangers of the sea or other navigable waters or other causes from the consequence of which the Defendant is wholly exempted by law.

*In the
Superior
Court,
District of
Montreal.*

No. 2.
Defendant's
Second Plea
as amended,
17th March
1931—*con-
tinued.*

22.—For the reasons stated the Defendant is not liable to the Plaintiff in the sum claimed in Plaintiff's declaration or in any sum of money whatsoever.

WHEREFORE Defendant prays for the dismissal of Plaintiff's action with costs.

Montreal, March 17, 1931.

Casgrain, McDougall & Demers,
Attorneys for Defendant.

—
No. 3.

PLAINTIFF'S ANSWER TO DEFENDANT'S PLEA

1.—As to paragraphs 1, 2, 3 and 4 of the said Plea the Plaintiff prays acte of the admissions therein contained and otherwise joins issue therewith.

*In the
Superior
Court,
District of
Montreal.*

No. 3.
Plaintiff's
answer to
Defendant's
Plea,
11th Janu-
ary 1932.

2.—As to paragraph 5 of the said Plea the Plaintiff prays acte of the admission of damage but otherwise denies the said paragraph.

3.—As to paragraphs 6, 7, 8, 9, 10 and 11 of the said Plea the Plaintiff joins issue therewith.

4.—As to paragraphs 12, 13, 14 and 15 of the said Plea the Plaintiff prays acte of the admissions therein contained.

5.—As to paragraphs 16, 17 and 18 of the said Plea the Plaintiff denies the same.

6.—As to paragraph 19 of the said Plea the Statute therein quoted speaks for itself.

— ■ —

10 WHEREAS the Defendant has now procured a duly authenticated copy of a Minute passed by the Board of Trade in England on the 20th of September, 1929, and a copy of the Canada Official Gazette of the 3rd of August, 1929, containing a copy of an Order-in-Council dated the 19th of July, 1929, being the Order-in-Council referred to in the said Minute of the Board of Trade, which said two documents go to show that shifting boards were not required on ships registered in England;

WHEREAS it is in the interests of the Defendant and of justice that the delibere be discharged for the purpose of allowing the filing of the said two documents to serve as evidence in the present case;

20 THAT the delibere be discharged in consequence and that the Defendant be allowed to file the said duly authenticated copy of a Minute of the Board of Trade of the 20th of September, 1929, and a copy of the issue of the Canada Gazette of the 3rd of August, 1929, hereto annexed, to avail as evidence in the present case, the whole subject to whatever conditions this Honourable Court may see fit to determine and impose.

MONTREAL, May 19, 1932.

30 Casgrain, McDougall, Demers & Lynch-Staunton,
Attorneys for Defendant.

To Messrs. Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

Sirs,

40 Take notice of the foregoing Motion and that same will be presented to the Honourable Mr. Justice Philippe Demers in chambers at the Court House, Montreal, on Wednesday, the 25th of May instant, at ten thirty o'clock in the forenoon or so soon thereafter as counsel can be heard.

MONTREAL, May 19, 1932.

Casgrain, McDougall, Demers & Lynch-Staunton,
Attorneys for Defendant.

*In the
Superior
Court,
District of
Montreal.*

—
No. 4.
Motion to
discharge
delibere and
file docu-
ments,
19th May
1932—con-
tinued.



W. C. FOLLIOTT (for Plaintiff) Examination in chief.

No. 5.

*In the
Superior
Court,
District of
Montreal.*

10

PLAINTIFF'S EVIDENCE

No. 5.
Plaintiff's
Evidence.

Deposition
of William
Charles
Folliott.
Examina-
tion.

DEPOSITION OF WILLIAM CHARLES FOLLIOTT,

A witness produced on behalf of the Plaintiff.

20

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared William Charles Folliott of the city of Winnipeg, in the Province of Manitoba, Grain Merchant, aged 42 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows :—

Examined by Mr. C. Russell McKenzie, of Counsel for Plaintiff.

30

Q.—I understand, Mr. Folliott you live in Winnipeg?

A.—I do.

Q.—And that in October 1929 you were employed as the sales manager of the plaintiff Company?

A.—I was .

Q.—Did you have occasion in October 1929 to ship certain wheat and barley from Fort William to Montreal on the defendant's steamers the "Matadoc" and "Sarniadoc"?

A.—We did.

40

Q.—Will you take communication of the plaintiff's exhibits P-1, P-2 and P-3, and examine them, and will you state to his Lordship whether they are the bills of lading covering that shipment?

A.—They are copies of the bills of lading covering the shipment.

Q.—The defendant has admitted by paragraphs 3 and 4 of its pleadings that the shipment was made in accordance with the



W. C. FOLLIOTT (for Plaintiff) Examination in chief.

plaintiff's exhibits which you have taken communication of. Will you state who was the owner of the wheat and barley referred to in those bills of lading?

10 ed. A.—The Canadian Co-operative Wheat Producers Limited.

Q.—The plaintiff in this action?

A.—Yes.

Q.—Were they the owners on the 30th November 1929?

A.—They were.

Mr. Casgrain:—That is admitted by the plea.

By Mr. McKenzie:—

20 Q.—Will you please tell his Lordship what shipment was made on board the "Sarniadoc"?

A.—There were 56,594 bushels of No. 2 Northern Wheat and 5,091 bushels of Extra 3 C.W. Six Row Barley.

Q.—When would this wheat have arrived in Montreal in due course?

A.—About the 2nd of December.

Q.—Will you give me the value of the wheat per bushel on that date?

30 A.—The No. 2 Northern would be worth \$1.51 per bushel and the Barley at 81¾.

Q.—What is the total valuation? State them separately?

A.—\$85,456.94 would be the valuation of the No. 2 Northern.

Q.—And what was the value of the Barley?

A.—\$4,161.89.

Q.—What is the total valuation?

A.—\$89,618.83.

40 cargo? Q.—I understand that certain salvage was made of the

A.—There was.

Q.—Can you tell me what amount was received and given credit to the defendant?

A.—\$6,589.80.

Q.—And what was the total damage suffered by the plaintiff company?

A.—\$83,029.03

*In the
Superior
Court,
District of
Montreal.*

*No. 5.
Plaintiff's
Evidence.*

*Deposition
of William
Charles
Folliott.
Examina-
tion—con-
tinued.*



W. C. FOLLIOTT (for Plaintiff) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 5.
Plaintiff's
Evidence.

Q.—Could you tell me who was in charge of the salvage operation?

A.—Hayes, Stuart and Company of the Inland Bureau.

10 Q.—I presume you have the original bills of lading?

A.—Yes, I have the original bills of lading.

Q.—They were all duly endorsed by the interested parties?

A.—They were.

Deposition
of William
Charles
Folliott.
Examina-
tion—*con-
tinued.*

Cross-examined by Mr. V. Lynch-Staunton, of Counsel for Defendant:—

Cross-exa-
mination.

Q.—I think you said the value of the No. 2 Northern Wheat was \$1.51 cents per bushel?

20 A.—Yes.

Q.—On what date was that?

A.—December 2nd.

Q.—How do you arrive at that?

A.—By taking the Fort William valuation and adding the freight and other charges to bring it to Montreal.

Q.—What would the Fort William valuation be?

A.—It would be approximately \$1.38.

Q.—That is for No. 2 Northern?

A.—For No. 2 Northern.

30 Q.—How do you arrive at No. 2 Northern valuation?

A.—I have taken the closing prices on that day, based on the Winnipeg Grain Exchange closing quotation.

Q.—I understand the Winnipeg Grain Exchange Quotations are for No. 1 Northern?

A.—The quote you on all grades. No. 1 Northern is only one of the various grades handled on the Exchange. You get a quotation on all grades of wheat.

Q.—And you say that on the 2nd of December the Fort William price for No. 2 Northern is \$1.38?

40 A.—\$1.38.

Q.—What makes up the difference of 13 cents between \$1.38 and \$1.51?

A.—Freight and Insurance.

Q.—Was the freight prepaid or payable at destination?

A.—The freight, I believe, in this particular case was pre-paid.



W. C. FOLLIOTT (for Plaintiff) Cross-examination.

In the
Superior
Court,
District of
Montreal.

No. 5.
Plaintiff's
Evidence.

- Q.—Do you know?
A.—I do not know whether I have any papers here that would show that or not.
- 10 Q.—I refer you to the plaintiff's exhibits P-1 and P-2 with regard to rates of freight, which show, as per agreement?
A.—That does not necessarily mean it is prepaid.
Q.—You do not know if it was prepaid or not?
A.—I have nothing here to show whether it was prepaid or not.
- Q.—Is it not a fact that prepaid freight is generally stated in the bills of lading?
A.—It has been at times. It was not in this particular case.
- 20 Q.—Is it not a fact that prepaid freight is stated as such on the bills of lading?
A.—In this particular case? The freight shows as per agreement. That does not mean prepayment.
Q.—What was the rate of freight?
A.—Ten cents on wheat and nine cents on the barley.
Q.—That would give us \$1.48, and as to the remaining 3 cents, how do you arrive at that?
A.—Well, there would be elevation at Fort William, Marine insurance, out-turn insurance.
- 30 Q.—A cent or one half cent will make a lot of difference. You must be prepared to tell me exactly what your charges were on that, in order to establish a price?
A.—Well, there is elevation.
Q.—How much is elevation?
A.—Elevation is a cent and a quarter a bushel.
Q.—Where is that?
A.—At Fort William.
Q.—And besides that?
A.—There is marine insurance.
- 40 Q.—How much was the marine insurance?
A.—I would say the marine and out-turn.
Q.—How much was it?
A.—I do not know how much it was.
Q.—And apart from that what was there?
A.—There probably would be incidentals that might amount to maybe a quarter of a cent a bushel or so.

Deposition
of William
Charles
Folliott.
Cross-exa-
mination—
continued.



W. C. FOLLIOTT (for Plaintiff) Cross-examination.

In the
Superior
Court,
District of
Montreal.

No. 5.
Plaintiff's
Evidence.

Deposition
of William
Charles
Folliott.
Cross-exa-
mination—
continued.

- Q.—Is it not a fact that on the 30th November the Win-
nipeg quote for No. 1 Northern was \$1.38 and $\frac{3}{8}$, that, the day
of the loss?
- 10 A.—On the day of the loss it was \$1.41 and $\frac{1}{8}$.
- Q.—Is that the Winnipeg quote?
- A.—Yes.
- Q.—You are sure of that?
- A.—There is the closing price. The prices in Winnipeg
have nothing to do with the prices in Montreal.
- Q.—Where do you see this closing price?
- A.—Right at the top, \$1.41 and $\frac{1}{8}$ No. 1 Northern.
- Q.—There are a lot of valuations across this thing?
- A.—Various grades.
- 20 Q.—As to types, spot, smutty, rejection.....
- A.—Spot means the top price, which is the actual price
of grain offered. Smutty means No. 1 Northern.
- Q.—What was this wheat?
- A.—No. 2 Northern \$1.38 and $\frac{3}{8}$. No. 1 Northern has
nothing to do with the No. 2 Northern.
- Q.—What is the spot price in Fort William?
- A.—On the 30th November?
- Q.—On the 30th November.
- A.—The \$1.38 and $\frac{3}{8}$.
- 30 Q.—And on the date of shipment?
- A.—I do not know.
- Q.—That would be the 16th October?
- A.—I have not got any cards for the date of shipment, but
I would say it would be more than it was on that date.
- Q.—Will you find out the price on the date of shipment,
the 16th October?
- A.—I can find out.
- Q.—On the barley?
- A.—The price of No. 2 Northern you want on date of
shipment, October 16th?
- 40 Q.—Yes. This shipment is No. 3 C.W. Six Row Barley?
- A.—I believe it is Extra No. 3 C.W. Six Row Barley.
- Q.—What does Extra mean?
- A.—That is the grade.
- Q.—Does that mean it is a premium grade?
- A.—It means that it is a higher grade than 3 C.W. It is
extra, and in addition to that it is Six Row.



W. C. FOLLIOTT (for Plaintiff) Cross-examination.

*In the
Superior
Court,
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Q.—What was the price of barley on the 30th November, 3 C.W. Six Row Barley on the 30th November: is that quoted on the Exchange?

No. 5. •
Plaintiff's
Evidence.

10 A.—All extra 3 C.W. Six Row Barley is quoted 68 and $\frac{5}{8}$.

Q.—Then, there is no premium on that. That is the price of this barley?

Deposition
of William
Charles
Folliott.
Cross-exa-
mination—
continued.

A.—No. These quotations are bid prices. To buy this grain you may have to pay a premium of 3 cents a bushel.

Q.—Let us not suppose. Let us know the bid price, that is, what you could have got for the grain?

A.—That was the bid price — a buyer's price.

20 Q.—If there was one particular locality where there was none of that grain, you might pay a premium of 10 cents, but as it is that is the price you could have got for it?

A.—We could have got that price and probably more. I would say in connection with the Six Row Barley, this Extra 3 C.W. Six Row, the valuation on that day would probably be two cents or one cent over the closing price.

Q.—But that at best is a supposition?

A.—I would not say it is a supposition.

Q.—You would not say it is a fact?

A.—No, I would not. It is sometime ago.

Q.—68 and $\frac{3}{4}$?

A.—68 and $\frac{5}{8}$.

30 Q.—Was the freight prepaid?

A.—I could not tell you as to that.

Q.—What would you calculate as the charges to Montreal?

A.—I would say 12 cents, approximately.

Q.—You do not know that?

A.—No, I could not tell you the rate to a cent.

Q.—In any event that will not bring it up to 81 cents.

A.—It would if you added the premium which I figure you would have to pay for it at that time.

40 Q.—It is not a question of what you would have to pay, it is a question of what the barley was worth?

A.—The barley was worth what you would have to pay for it if you had to buy it.

Q.—Barley is worth what you can get for it in the market?

A.—And you can get for it what the other man is willing to pay for it.

Q.—Therefore, you cannot establish on the Fort William prices plus these rather empirical charges, 81 cents?

W. C. FOLLIOTT (for Plaintiff) Re-examination.

10 A.—Well, I would say that 81 and $\frac{3}{4}$ was very close to the valuation. I would say it was the valuation. You must remember that after the close of navigation, grain that is put in Eastern positions is worth a good deal more than the Fort William prices because, the Fort William prices in November 1930, to get that to Montreal, you would have to rail it down. It could cost you considerably more than the charges I have mentioned to get it to Montreal.

Q.—Of course, that is a matter which does not concern us, but the best you can arrive at on the figures you have given me, is 80 and $\frac{3}{4}$, — 68 and $\frac{3}{4}$ plus 12, and we are giving you 3 cents over the freight to pay your charges, and I am instructed that 2 cents is ample to cover your elevating charges and your insurance?

20 A.—You can make that statement. I have made my statement.

Q.—Do you agree with me?

A.—I do not agree with you, because, the fact that grain is in the position that you are using prices to get them to Montreal, you have to base them on an all rail because, to get them to Montreal it is important that it is shipped down before the close of navigation, and it is more valuable than that grain in Fort William plus the charges of that shipment. You can ask anybody in the grain business and they will tell you that is well known.

30 Q.—What was the premium you paid, marine insurance premium?

A.—The marine insurance premium, I do not think I have that. That would be well known. These marine rates are pretty much the same. I have not got that here. I do not know what rates were quoted at that time. It would be well known.

Q.—You do not know the rate on the wheat?

A.—No.

Q.—You do not know if the freight was prepaid or not?

A.—No.

40 Re-examined by Mr. McKenzie, of Counsel for Plaintiff:

Q.—Have you any occasion to change the figures you have given to his Lordship as to the value of the barley and wheat?

A.—No, I have not.

Q.—You have no occasion to change your figures?

A.—No.

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

In the
Superior
Court,
District of
Montreal.

—
No. 5.
Plaintiff's
Evidence.

—
Deposition
of William
Charles
Folliott.
Re-exa-
mination.

P. M. DOWLING (for Plaintiff) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

DEPOSITION OF PATRICK M. DOWLING

No. 6.
Plaintiff's
Evidence.

10

A witness produced on behalf of the Plaintiff.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Patrick M. Dowling, of the city of Buffalo, in the State of New York, one of the United States of America, Cargo Surveyor, aged 39 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:—

Deposition
of Patrick
M. Dowling.
Examina-
tion.

Examined by Mr. McKenzie, of Counsel for Plaintiff:—

20

Q.—I understand you are a Marine Surveyor?

A.—Yes.

Q.—And you are associated with the Inland Bureau Surveyor?

A.—Yes.

Q.—Were you at Kingston at the time of the survey and the salvage operation of the "Sarniadoc"?

A.—Yes.

Q.—Will you tell his Lordship briefly just what occurred?

A.—I arrived there on the morning of December 2nd.

30 That was the day after the "Sarniadoc" had been abandoned. I went out with some other surveyors on the "Salvage Prince" a tug, and with some difficulty we succeeded in getting aboard the "Sarniadoc" from a fishing tug, and made as good an examination of the vessel then as could be made under the circumstances.

Q.—Would you tell his Lordship what arrangement was made with reference to the cost of salvage?

A.—I beg pardon. It was on the 3rd December.

Q.—Will you tell his Lordship what arrangement was made with reference to the cost of salvage?

40 A.—It was agreed between the cargo interests and the salvors that the cargo be salvaged.

Mr. Casgrain:—If there is any agreement in writing I want it produced?

Witness:—There is no agreement in writing. It was agreed between the cargo interests and the salvors that they salvage the cargo on a fifty fifty basis; in other words, they would get fifty percent of the net proceeds from the salvage.



P. M. DOWLING (for Plaintiff) Examination in chief.

By Mr. McKenzie:—

10 Q.—Have you the figures of the amount of cargo that was ultimately taken out of the “Sarniadoc”?

A.—Yes.

Q.—Would you give us those figures?

A.—There were 75,918 bushels and 40 pounds.

Q.—That was the total amount?

A.—That was the total salvage.

20 Q.—Can you tell me whether the owners of the “Sarniadoc” did anything with reference to the salvaging of the cargo?

A.—A representative of the owners of the “Sarniadoc” was out with us, and he verbally notified us on the way in that he was going to advise his owners to abandon the vessel.

Q.—Was anything done by the owners of the “Sarniadoc” towards salvaging the cargo?

A.—Nothing that I know of.

30

No Cross-examination.

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

—
No. 6.
Plaintiff's
Evidence.

—
Deposition
of Patrick
M. Dowling.
Examina-
tion—con-
tinued.

40

ERIC A. H. CROCKER (for Plaintiff) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

DEPOSITION OF ERIC A. H. CROCKER

No. 7.
Plaintiff's
Evidence.

10 A witness produced on behalf of Plaintiff.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared; Eric A. H. Crocker, of the city of Montreal, Surveyor, aged 31 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:—

Deposition
of Eric A. H.
Crocker.
Examina-
tion.

Examined by Mr. C. Russell McKenzie, of Counsel for Plaintiff:—

20 Q.—I understand you are the Secretary Treasurer of Hayes, Stuart & Company Limited?

A.—Yes.

Q.—Would you show me, and present to his Lordship, a statement that you prepared of the cost of salvage?

A.—Yes.

Mr. Casgrain:—That is admitted.

30 Mr. McKenzie:—We have credited, my Lord, an amount of \$6,589.80 which is, as a matter of fact, some \$38.00 more than we actually received, so our error is to the advantage of my learned friends.

By Mr. McKenzie:—

Q.—Do you confirm that?

A.—Yes. These amounts come off there, less our fees.

40 Q.—Will you file also, your account and attach it to the statement?

A.—Yes.

Q.—And will you file it as Exhibit P-4?

A.—Yes.

No Cross-examination.

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

ROBERT B. ANGUS (for Defendant) Examination in chief

*In the
Superior
Court,
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Montreal.*

Defendant's Evidence

10

No. 8.
Defendant's
Evidence.

DEPOSITION OF ROBERT B. ANGUS

A witness produced on behalf of Defendant.

Deposition
of Robert B.
Angus.
Examina-
tion.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Robert B. Angus, of the city of Toronto, in the Province of Ontario, Master Mariner, aged 39 years, a witness produced on behalf of the Defendant, who being duly sworn doth
20 depose and say as follows:—

Examined by Mr. A. Chase Casgrain, K.C., of Counsel for Defendant:—

Q.—You hold a Master's certificate, do you not?

A.—Yes, sir.

Q.—You did in 1929?

A.—Yes.

30 Q.—And you were in charge of the "Sarniadoc" during that season?

A.—I was, yes.

Q.—How long have you been a Master Mariner?

A.—At that time about seven years.

Q.—Will you tell us what happened from the moment you left Port Dalhousie until the stranding?

A.—From Port Dalhousie? Not Port Colborne?

Q.—Well, start from Port Colborne.

40 A.—We loaded this cargo in Port Colborne, loaded and left there somewhere around three o'clock in the afternoon on the 28th November. The weather was bad, cold and stormy. We came down the Welland Canal that afternoon and all night, and arrived at Port Dalhousie about two o'clock the next afternoon.

Q.—Was it freezing on that day?

A.—It was freezing hard and snowing and blowing a gale of wind, but on towards noon the weather started to moderate a



ROBERT B. ANGUS (for Defendant) Examination in chief.

little. The glass was going up, and the sun came out. The storm signals were taken down, and we left Port Dalhousie, and everything looked favorable for a good run.

10 By the Court:—

Q.—What time did you leave Port Dalhousie?

A.—We left there somewhere in the neighborhood of two fifteen in the afternoon. We ran out on the Lake about two miles on the Ranges.

By Mr. Casgrain:—

20 Q.—When you say, on the Lake, that is, Lake Ontario?

A.—Lake Ontario, yes sir. Then we altered our course about a point and ran, I think thirteen miles further near about north by west towards Toronto.

Q.—What was the purpose of that first run?

A.—In case the weather did not moderate enough, and things did not look good to go down the Lake, we would go over to Toronto and anchor, and if conditions still kept the same, possibly stay there for the winter.

Q.—I understand you had a cargo of grain which was to remain on board all winter.

30 A.—It was.

Q.—In winter storage?

A.—In winter storage.

By the Court:—

Q.—The cargo was to remain on board?

A.—The cargo was to remain on board all winter.

40 By Mr. Casgrain:—

Q.—Was that one of the reasons that you had to stop on the way at Toronto?

A.—Yes, sir. We could winter in Toronto if we could not get to Montreal.

Q.—Then after that what did you do?

A.—When I got out about fifteen miles the glass looked good; the weather looked moderate, and naturally I was anxious

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Examina-
tion—con-
tinued.*



ROBERT B. ANGUS (for Defendant) Examination in chief.

to get to Montreal if possible. I squared away down the Lake. The wind was about west, between west and west north-west, and I spread away and let her go thinking everything would be all right for a good run.

10 Q.—Before proceeding further, will you file as defendant's exhibit D-1 a chart of Lake Ontario so that the Judge may follow your evidence?

A.—Yes.

Q.—What happened then?

A.—At about four o'clock or, I think, about four ten, or four eleven in the afternoon we had squared away, and we altered our course for down the Lake with a fair wind and moderate sea, and everything looked good for a good run.

20 All went well until about nine or ten o'clock, and the wind and sea increased. The weather was cold, zero weather. We continued on, and about midnight it was blowing a gale.

Q.—A gale from what direction?

30 A.—From west, or between west or west-north-west. I was around off and on in the pilot house, and in my room trying to get a little sleep. I was kind of tired. I had been up the night before and practically for a week previous with only short snatches of sleep. I decided the best thing to do was to keep going because, if I turned around and tried to go back I possibly would not have made it. There was no shelter on the north shore that we could go into. We kept going. The Mate came on watch at midnight. I laid down for a little while, and about three o'clock he called me and told me that he had seen Point Peter. I went up to the pilot house, and I could see a few flashes of light.

Q.—Will you show the Judge where Point Peter is located on the chart?

A.—(Witness indicates).

Q.—Now, continue.

40 A.—I could see the light quite plain; then, it would disappear, and I figured that there was some snow down there, so I stayed in the pilot house continuously.

About four o'clock it started to snow hard, and I lost the light entirely. On occasions we would get an odd flash of it as we were coming up to it, and we were abreast of it around five o'clock or a little after.

Q.—You were abreast of it about five o'clock?

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ROBERT B. ANGUS (for Defendant) Examination in chief.

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A.—As near as we could tell. The ship was rolling heavily. It was snowing hard, and it was pretty hard to tell accurately. We had a bearing, or about a third and a half point bearing. She ran about nineteen minutes, I think.

10 Q.—Was your ship yawing also?

A.—She was sheering badly with the heavy sea possible a point, maybe a little more or maybe a little less. I could not just say exactly now. I forget.

Q.—Did that have any effect on your taking a bearing?

A.—It would considerably. It would not be accurate.

Q.—You can continue?

20 A.—We kept on running. The sea was increasing, snowing hard and blowing a gale. I altered the course somewhat at Point Peter, and around six o'clock I considered that if the weather continued and the sea continued getting worse, at is was, that I had better use a little caution and check down. I checked down to half speed. We kept on going. My idea was to run down abreast of the False Ducks and lane in possibly a point, and leading my course a little higher to make sure I was clear the main Ducks, come down behind it and go to the anchor.

Q.—Why did you want to anchor there?

30 A.—Because the weather was bad. There was a heavy sea running, and you could not go to Kingston, and going in by Cape Vincent, naturally we could not; you could not see anything, and it was not safe, and I wanted to get out of the weather.

Q.—What happened?

A.—We ran along at half speed watching our log. All at once we saw something right ahead of us through the snow and sized it up and decided it was the Main Ducks.

Q.—How far were you from it then as far as you could judge?

A.—Possibly three quarters of a mile, perhaps a little more, maybe a little less. I would not say for sure.

40 Q.—That would still be quite off the reef, would it not?

A.—Yes, on the east end.

By the Court:—

Q.—The east end of Main Ducks?

A.—We were to the eastward. It was ahead of us. We were to the westward of the Main Ducks.



ROBERT B. ANGUS (for Defendant) Examination in chief.

By Mr. Casgrain:—

10 Q.—Show the Judge on the chart where you were, about, when you sighted that reef on the Main Ducks?

A.—About three quarters of a mile.

By Mr. McKenzie:—

Q.—That would be on the direct course to Kingston, would it not?

A.—Yes.

Q.—Where you mark the letter X?

A.—Yes.

20

By the Court:—

Q.—Did you say you were up higher?

A.—We were right on the front of the Main Ducks.

By the Court:—

Q.—And what happened?

30 A.—I decided the best thing to do was to put my wheel hard astarboard and come around into the wind and try and work up a little bit. I worked up a little bit and then squared again and cleared the Ducks. I knew the shoal was there.

By Mr. Casgrain:—

Q.—What was the idea of putting your wheel hard astarboard? What did that mean on your ship? Going in what direction?

40 A.—Pulling her head around to the left, on to the left hand side. We put the wheel hard astarboard, and we rang full speed ahead on the telegraph several times to make sure that that would give her all she had. We came around head to sea. There was a lot of water came aboard at the time and practically wet everybody, and the ship rolled heavily and she took three or four seas over her bow and lost her way. Possibly ten or fifteen feet of blue water came over. She lost her weigh and started to drop back off again with her wheel hard astarboard into the trough of the sea. She got back about, as far as I would say, between north-west and north north-west. She came back into

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ROBERT B. ANGUS (for Defendant) Examination in chief.

10 the wind heading west in the first place, and lost her weigh and
dropped back with the wheel hard astarboard to, if I remember
right, about between north-west and north north-west. She was
laboring heavily. She was not going ahead. She was going
sideways in the trough of the sea — not exactly in the trough,
but she was about on her port bow at that time.

20 She struck aft once or twice, I think once, lightly, and she
struck right a second later, I suppose. I have no idea of the
time. It was very quickly. She struck hard and I knew she
was ashore. She split across the deck and worked in the sea.
I think she took a complete circle. It took her an hour or maybe
more — I could not say now, things were happening so fast, and
we were trying to get our Crew up forward to get them in good
condition so they would not be drowned, and I could not tell you
exactly how long it took her to turn around to find her place.
She made a complete circle around with her head to wind again
and settled down and filled with water.

30 We stayed on her. We got our life boats ready, but we
decided the best thing with the sea that was running was, to stay
aboard the boat if possible, and not endanger anybody's lives
getting off in life boats, so we went back aft, and during that
time I think the second mate, and some of them, had got the life
boats ready, and the second mate was washed overboard, but he
came back aboard again, but we decided it was better to stay
there.

Q.—Explain how that happened?

A.—The sea came aboard over the bow and washed down
the deck, and caught him when he was endeavouring to get back
aft, washed him overboard, and I think the backwash washed him
back on again. I could not say exactly what did it, but he held
on to the fence and got back aboard again.

40 Q.—Was there any ice forming on the boat while you were
coming down?

A.—The deck was covered with ice. The cabins were covered
with ice, possibly a foot deep in some places or deeper.

Q.—How did the weather on that night compare with the
weather you had met with before on Lake Ontario?

A.—I was never in a blow that hard on Lake Ontario before.

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— ■ —

ROBERT B. ANGUS (for Defendant) Examination in chief.

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Q.—And for how many years have you been navigating on Lake Ontario?

A.—On Lake Ontario or on the entire Lakes?

10 Q.—For how many years did you navigate on Lake Ontario, not exclusively, but how many years have you navigated on Lake Ontario?

A.—Altogether?

Q.—Altogether.

A.—I could not say. I have been sailing since 1908 — 1909, and I have been on Lake Ontario several times.

Q.—Several times every season?

20 A.—Well, not every season, but some seasons. Sometimes I was in a boat that ran down there. Sometimes I was in a boat that ran up above. Sometimes I was down on the Coast, but I would say during the entire time off and on I was on Lake Ontario about twelve years, during twelve seasons.

Q.—I have here some photographs which were taken of the “Sarniadoc” taken a day or so after the stranding. Would you look at them and say whether they represent the conditions as they were on board the “Sarniadoc” at that time?

By Mr. McKenzie:—

30 Q.—Do you swear those are photographs of the “Sarniadoc”?

A.—I would, yes.

Q.—Did you take them?

A.—No, I did not.

By Mr. Casgrain:—

Q.—Do you recognize the condition of the boat?

40 A.—I can recognize the condition of the boat, but I don't think there is anything else that would be in the same position.

By the Court:—

Q.—Were you present when these photographs were taken?

A.—I was not.

Mr. Casgrain:—We have a witness who will establish this.

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Evidence.

Deposition
of Robert B.
Angus.
Examina-
tion—con-
tinued.



ROBERT B. ANGUS (for Defendant) Examination in chief.

By Mr. Casgrain:—

Q.—Do they, as a matter of fact, represent what you saw just before you left the vessel?

10 A.—To a certain extent the pictures look something like it. It is nice in the picture, but it was not so good out there.

Q.—It was not so good as it looks in the picture?

A.—No.

Q.—Will you look at three other photographs I now show, and which I will prove by another witness later: these three photographs show a vessel on the Main Ducks or the western point of Main Ducks. Will you say whether that represents the position of the “Sarniadoc” as regards the Main Ducks after it stranded?

20

Mr. McKenzie:—The witness has already indicated on the chart where the boat stood.

By Mr. Casgrain:—

Q.—Will you file these three photographs as exhibits D-7, D-8 and D-9?

A.—Yes.

30 By Mr. McKenzie:—

Q.—Do you know when these pictures were taken?

A.—I don't know anything about them at all.

By Mr. Casgrain:—

Q.—When you left Port Colborne, what have you to say as to the manning and equipment of your vessel and its seaworthiness?

40 A.—You mean the general conditions. They were first class.

By the Court:—

Q.—Will you point out on the chart where you struck?

A.—(Witness indicates at the place marked with a dot right underneath the figure 19).

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tion—con-
tinued.

ROBERT B. ANGUS (for Defendant) Cross-examination.

By the Court:—

Q.—That is your estimation of the point where you went ashore?

10 A.—Just on the end of the shore.

Cross-examined by Mr. C. Russell McKenzie, of Counsel for Plaintiff:—

Q.—You seem to speak with considerable facility with reference to time. No doubt you have refreshed your mind recently by looking at your log book. I would like you to let me see your log book?

20 A.—I have not got it. The owners had it.

Mr. McKenzie:—I have already served notice for the production of the log book.

By Mr. McKenzie:—

Q.—Have you any idea where it is?

A.—The owners had it. I don't know whether they still have it or not.

30 Q.—Have you any suggestion to offer as to where the log book is?

A.—Unless the owners have it. I have not got it. I gave it to them sometime after February in 1930. I have not seen it since.

Q.—What were you doing with the log book at that time?

A.—I had it at the Wreck Enquiry in Toronto, and I had it, I guess for two or three weeks afterwards, when they called me down to the hotel one morning and asked me to bring it down. I took it down there and I have not seen it since.

40 By the Court:—

Q.—To whom did you give it?

A.—To Mr. Hall and I think Captain Tinmouth was there.

By Mr. McKenzie:—

Q.—Who is Mr. Hall?

A.—He is the general manager.



ROBERT B. ANGUS (for Defendant) Cross-examination.

By Mr. Casgrain:—

Q.—Where is he now?

A.—I think he is dead.

10

By Mr. McKenzie:—

Q.—Who is Captain Timmouth?

A.—Captain Timmouth is the Montreal agent for the Company.

By the Court:—

Q.—I suppose they have an office?

20

A.—They have an office in Montreal.

By the Court:—If there was anything in that log book in your favour, I suppose the Wreck Commissioner could state because he made the investigation. There is no use making an argument. The Wreck Commissioner made an investigation and you can get his report. Secondary evidence can be made by the evidence adduced before the Wreck Commissioner on that point.

30 Mr. Casgrain:—I agree to the filing of the proceedings before the Wreck Commissioner, of any deposition and findings, for the purpose of the plaintiff making secondary evidence of the entries in the log and will file it as exhibit P-5.

By Mr. McKenzie:—

Q.—You stated that when you left Port Dalhousie everything was favourable, it looked like a good trip down, and that the storm signals were also down?

A.—They were, yes sir.

40 Q.—So far as you were concerned there was no reason to anticipate storms?

A.—Everything looked good for a good run.

Q.—You spoke of gales on the Lakes. What do you mean by a gale?

A.—Well, a gale of wind, that is all I can tell you, blowing.

Q.—Naturally, but tell me with reference to velocity. You have some experience on the Lakes. What do you mean by a gale?

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ROBERT B. ANGUS (for Defendant) Cross-examination.

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Angus.
Cross-exa-
mination—
continued.

A.—I would say sometimes you get around fifty miles an hour, maybe it blows forty. I would say it was blowing around forty or over, maybe a little more, when it is blowing hard. It is blowing a gale of wind when it is blowing forty miles an hour.

10 Q.—At the time of the stranding what velocity would you give to the wind?

A.—I would say about the same thing.

Q.—How fast is that?

A.—About forty miles I would imagine. It might be a little more. It was blowing hard anyway. It was blowing a gale of wind.

Q.—It might be a little less too?

A.—No, not very much less.

20 Q.—What draft were you drawing at that time?

A.—About fourteen-feet — maybe fourteen point one (14.1); in the neighbourhood of fourteen feet.

Q.—That is canal draft, is it not?

A.—Canal draft.

Q.—What draft would you have fully loaded?

A.—You mean with a full cargo in the ship?

Q.—Yes.

A.—Possibly around 15.6. I could not say to an inch or two, but around that.

Q.—You did not have a full cargo in this instance?

30 A.—No.

Q.—And to that extent you were short about a foot and a half with reference to a full cargo, is that correct?

A.—No, I would not say that.

Q.—From canal draft to your full draft?

A.—Oh yes, from canal draft to full draft, but we were very seldom ever loaded to full draft.

Q.—You could not be loaded to full draft as far as the canal is concerned?

A.—No.

40 Q.—How much have you ever carried? What is the most you have ever carried aboard the "Sarniadoc" as far as a full load is concerned?

A.—I don't know. I never had her loaded full of grain. I have had about 3,000 tons of coal on her.

Q.—You never had her full of grain?

A.—No.

Q.—What time was it you arrived at Point Peter?

A.—About five o'clock or a few minutes after.



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Q.—How far off Point Peter were you at that time?

A.—In the neighborhood of three miles. She should have been about three miles off as near as we could tell.

Q.—Were you in a position to take a proper bearing?

10 A.—No, not an accurate one.

Q.—Why was that?

A.—The ship was rolling heavily. She was swinging off her course, rolling heavily, yawing.

Q.—I suggest to you that a wind at forty miles an hour is nothing extraordinary on Lake Ontario at that time of the year?

A.—Well, it blows there the same as it does anywhere. Sometimes you get a gale of wind, sometimes you do not.

20 Q.—That was weather you could have anticipated? You have been out in worse blows than that, have you not?

A.—Oh yes, a few; not on Lake Ontario I never was.

Q.—Your experience has been more on the upper Lakes?

A.—More so in bad weather.

Q.—If it blows the same up there, it would blow the same on Lake Ontario, is that not a fact?

A.—That is right.

Q.—Was there any other reason why you could not get a proper bearing on Point Peter?

30 A.—It was snowing hard. You would see the light once in a while. I think we only saw it about three times, just an odd flash.

Q.—Where were you when you were taking that bearing?

A.—In the pilot house window.

Q.—It was perfectly clear to see through?

A.—You could see out of the window. It was open. The front window was open.

Q.—And still you could not get an accurate bearing?

40 A.—No, because you could not see the light very well. The boat was rolling to beat the band and by the time you would get a flash of the light and look through the snow you might see something else.

Q.—How many points did you take on that land?

A.—As near as I could tell about three points and a half.

Q.—During that three points and a half you must have seen the light?

A.—We may have seen it once or twice; I forget, but not very often. We got it again when she was abeam, as near as I can tell. I think we only got one or two flashes of it and they were not very good.

— ■ —

ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Q.—If you had been in another position on your ship could you have got a better bearing?

A.—I do not think so. If you could not see a thing you could not take a bearing.

10 Q.—But, for instance, you were on the top of the wheel house. Could you have got it there? That is the usual place to take a bearing, is it not?

A.—Well, if you were up there it would be all right I guess.

Q.—Why could you not take your bearing off your stand-ard compass?

A.—Because it was not up there.

Q.—Where was it?

20 A.—It was on the wing of the bridge, on the starboard wing.

Q.—Was that any good?

A.—Well, it worked all right there sometimes. Sometimes it did not.

Q.—Could you rely upon it?

A.—Not to a great extent, only as a check for the other compass.

Q.—Was it actually working?

A.—Not good, no.

Q.—Did you tell your owners about it?

30 A.—I did.

Q.—You could not depend upon it?

A.—Not to make a course by.

Q.—I want you to mark on that chart, Captain, your course from Point Peter. Here is a rule, and will you please mark the course you followed? You say you were approximately three miles off Point Peter, is that right?

A.—Yes.

Q.—What was your magnetic course?

40 A.—My magnetic course was about north.

Q.—Give it in degrees?

A.—75 or 76: In the neighborhood of 75 or 76. We steered east by north.

Q.—I suggest to you that the course you laid magnetic was north 70 degrees east?

A.—No.

Q.—Would it refresh your memory to look at the evidence you gave in the Wreck Commissioner's Court on that point?



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

A.—We steered on our compass north by east for an hour. Our deviation was about five degrees westerly.....

Q.—If we had your log book here, it would be perfectly clear, would it not?

10 A.—It was about five degrees westerly, and the magnetic course was about north 74 east, somewhere near that.

Q.—That was your magnetic course?

A.—Yes.

Q.—North 74 degrees east?

A.—Yes.

Q.—That was from what point?

A.—From Point Peter.

20 Q.—Will you mark on the chart from Point Peter where you say you were, and draw your course as long as you went on that course?

A.—We were working north. That is what you want?

Q.—Yes.

marks A.—That may not be exact to an inch or two (The witness the course he followed with blue pencil).

Q.—Was that your course at 5 A.M.?

A.—Yes.

Q.—How long did you proceed on that course?

A.—About an hour.

Q.—How far up was that?

30 A.—If I remember right seven miles and a half.

Q.—Then what course did you follow?

A.—We were steering — this 74 is not what we were steering on the compass.

Q.—70 whatever your compass is here, you would have it compensated to an extent, but this brings you to the site wherever it was you expected to get: that is correct, is it not?

A.—Yes. I think if I remember it was about seven and a half miles or a little better than seven knots.

40 Q.—What position was that? Will you mark that on the chart?

A.—Witness marks it with a blue pencil).

Q.—Mark it with a blue X.

A.—Yes. (Witness marks the spot with a blue X).

Q.—From there where did you go?

A.—Then we changed our course north. We had been steering north 80 west.

Q.—Wait a minute: you are talking magnetic here?

ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

A.—We had been steering on the compass east by north or north 79 east by degrees.

Q.—Wait a minute now: from Point Peter you said you were steering magnetic north 74 east?

10 A.—Yes.

Q.—How did you vary that course north 74 degrees east?

A.—Then we hauled again which would bring her about north 70 magnetic.

Q.—That would bring you up a little further north?

A.—A little further north in order to compensate any current that was running in there.

Q.—Get me the position on the chart where you expect to be on that course? This is again the magnetic course.

20 A.—Marked with a blue pencil. It is a little high.

Q.—In the direction north of the Main Ducks.

A.—Yes. That altered course was figuring on any lee-way she might make or some attraction in here, which is considerable, and it works that way, and I wanted to clear the Main Ducks. I wanted to clear that shoal.

Q.—The pencil X at the west of the Main Ducks marks the point where you turned above?

A.—Yes.

Q.—That would take you on your course to Kingston ordinarily?

30 A.—Yes.

Q.—How long would it take you to turn around?

Mr. Casgrain:—On that occasion or generally?

By Mr. McKenzie:—

Q.—On that occasion?

A.—Fifteen minutes maybe.

Q.—How far would you go in that fifteen minutes?

40 What would be the diameter of your circle? A thousand feet or a quarter of a mile?

A.—Possibly. I would not like to say.

Q.—That would take you further north again?

A.—Well, that was the idea of getting further to the north.

Q.—What speeds were you going when you left Point Peter?

A.—About 7.6, or near about that. I think in that neighborhood, seven and a half; maybe a little less, maybe a little more.

— ■ —

ROBERT B. ANGUS (for Defendant) Cross-examination.

Q.—How about the speed from six o'clock when you made your other alteration in course? What was the speed then?

A.—It would be around six miles an hour, or a little better maybe.

10 Q.—About that?

A.—Yes, but she went faster than that apparently.

Q.—Measure the distance from Point Peter to the point which is marked on the chart as the point at which you turned into the wind?

A.—I could not tell you within an inch or two.

Q.—What time was it when you turned?

A.—A little after seven o'clock.

Q.—About what time?

20 A.—About ten minutes.

Q.—7.10?

A.—Something like that.

Q.—Will you measure the distance you travelled from five o'clock to 7.10?

A.—That is normally twenty miles.

Q.—Those are knots?

A.—Yes.

Q.—Show it to me in statute miles?

A.—Twenty-two statute miles, about.

30 Q.—How long did it take you to travel that distance?

A.—About two hours and ten minutes.

Q.—Do you suggest your ship was making that time?

A.—She must have, because she got there.

Q.—I suggest to you that in all probability you turned at a point further out from the Main Ducks than what you have indicated?

A.—That is where I thought I was. I thought I was there. Maybe my figures were wrong. I do not say they were. Maybe they were.

40 Q.—You said it was not safe to go to Kingston? Why was it not safe to go to Kingston?

A.—Well, you could not see, and there is a lot of attraction down in there. You are liable to go ashore, and you get quite a rolling. Nobody likes to put a boat in the trough of the sea. I do not, and I do not think anybody else does, because it rolls the stuff, and maybe would shift the cargo, maybe break something. That is hard to say.

*In the
Superior
Court,
District of
Montreal.*

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.



ROBERT B. ANGUS (for Defendant) Cross-examination.

- Q.—What would be the effect of shifting cargo?
 A.—It would give your ship a bad list, and handling in a heavy sea is a bad thing.
- 10 Q.—Have you ever known a cargo to shift?
 A.—I have.
 Q.—On Lake Ontario?
 A.—No, I do not think I have.
 Q.—Can you give us any instances where ships have been known to do that?
 A.—Yes. We shifted a cargo of hard coal in the “Rose-dale” a long time ago, about 1909, I think, on Lake Superior. That was quite a bad list.
- 20 Q.—How do you prevent a grain cargo from shifting?
 A.—Well on the Ocean they put in shifting boards, but up here we do not use them.
 Q.—Why do you not use them? It is not a safeguard?
 A.—I suppose it would be, but I never have seen shifting boards for years. I do not think any of the Lake vessels ever carry them.
 Q.—You used to use them, did you not?
 A.—Years ago.
 Q.—Weather conditions are just as bad now as they were then?
 A.—Just about the same.
- 30 Q.—It is just as likely the cargo would shift now as it would then?
 A.—Yes.
 Q.—You were afraid this cargo would shift when you did not go and turn into Kingston?
 A.—Well, I was afraid it might. I thought it might. I did not want to do it.
 Q.—If you wanted to be perfectly confident about it, you would not have hesitated; you would have gone right into Kingston and saved your cargo?
 A.—I do not think I would. I could not see. I figured on getting into the Ducks, and waiting there till it cleared up until I could get in without any trouble.
- 40 Q.—That was, to get behind the Main Ducks?
 A.—To get behind them, to the main land.
 Q.—But that was a secondary consideration?
 A.—No, that was the first consideration. That was my first idea.

*In the
 Superior
 Court,
 District of
 Montreal.*

*No. 8.
 Defendant's
 Evidence.*

*Deposition
 of Robert B.
 Angus.
 Cross-exa-
 mination—
 continued.*



ROBERT B. ANGUS (for Defendant) Cross-examination.

In the
Superior
Court,
District of
Montreal.

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Q.—Ordinarily you would have gone direct to Kingston,
is not that so?

A.—Ordinarily yes, under ordinary conditions.

10 Q.—In order to get on the course to Kingston what would
you have to do with your ship as far as course is concerned, with
reference to the trough of the sea?

A.—You would have to put her back in it.

Q.—If you put the ship, the "Sarniadoc", in the trough of
the sea on the 30th November at the time you suggest, what would
have happened, in your opinion?

A.—She would roll the stuffings out of you. Anything
might happen.

Q.—What would have happened to the cargo?

20 A.—If you had shifted it, I don't know.

Q.—Do you take any precautions whatever to prevent
shifting of cargo?

A.—We try and keep them out of the trough of the sea as
much as possible.

Q.—That is the only thing you do?

A.—No. They trim the top of the cargo in the ship. They
do not put it in to piles in the fall. We always level it off.

Q.—But you could not do that in a ship which was not
fully loaded?

30 A.—You could level the top of the cargo off.

Q.—But there is nothing which would prevent that cargo
from shifting?

A.—No, I guess there would not be. As far as shifting
boards, I do not think any of the Lake vessels nowadays have
them.

Q.—I suggest to you that it is necessary to have shifting
boards, or to take some other measures to prevent cargo from
shifting?

40 A.—Well, there is no rule or law as to that fact. Nobody
ever says anything about shifting boards. Nobody requires them.
Possibly if they were required by law or anything like that they
would be there, but they are not.

By Mr. Casgrain:—

Q.—Do the Government Inspectors require them?

A.—No.



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
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By Mr. McKenzie:—

10 Q.—I suggest to you that there is a rule which requires some precaution or some measure to be taken to prevent cargo shifting. I am reading now from section 696 of the Canada Shipping Act.:—

No. 8.
Defendant's
Evidence.

“ No grain cargo shall be carried on board any ship registered in Canada unless said grain cargo is contained in bags, sacks or barrels, or properly secured from shifting by boards or otherwise. ”

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Did you in any way comply with that rule?

20

A.—The cargo was levelled off when we left.

Mr. Casgrain:—I might suggest at once that this ship is not registered in Canada.

Mr. McKenzie:—There is no evidence to that effect.

By Mr. McKenzie:—

30 Q.—I suggest you did not comply with article 452 of the Merchants Shipping Act, which reads as follows:—

“ Where a grain cargo is laden on board any British ship all necessary and reasonable precautions whether mentioned in this part of this Act or not shall be taken, in order to prevent the grain cargo from shifting.”

Did you comply with that rule?

40 A.—We levelled the cargo off. Outside of that we could not do any more.

Q.—If you had had shifting boards, that would have prevented your cargo from shifting?

A.—Well, it would. The cargo did not shift though.

Q.—If you had had shifting boards you could have made either the False Ducks, or you could have got right into Kingston?

A.—I could not see them.



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

- 10 Q.—You would have attempted though?
A.—I do not think I would have.
Q.—But you were afraid of shifting?
A.—I was not afraid of it, but I did not want to do it, that
was all.
Q.—You knew the results of shifting?
A.—Well, I did. I was trying to keep from it. I knew
the results, maybe she would not, maybe she would. I don't
know; but everybody tries to keep his boat out of the trough of
the sea as much as possible, not only for the benefit of the cargo...
Q.—You do not suggest that this ship was seaworthy in the
trough of the sea without shifting boards?
A.—I think she would be.
20 Q.—But if you did put her in the trough of the sea, you
know the ship would not be seaworthy in that situation? Be frank
with me.
A.—Well, she might go along and not shift it. I won't say
she would. She might and might not, I don't know, but I would
not want to try.
Q.—What is your opinion? We know what you did, and I
know why you turned right around, but be frank with us and tell
us what your opinion is?
30 Mr. Casgrain:—I do not think that remark is at all in place.
The Captain has been as frank as he possibly could be.

Mr. McKenzie:—I am sorry.

By Mr. McKenzie:—
40 Q.—Well, Captain, will you please tell us?
A.—I do not understand what you want me to tell you?
Q.—I have asked you, that if you put this ship, the "Sar-
niadoc", loaded as she was, mind you, you have only got canal
draft; if you put that ship in the trough of the sea, could you
regard her as seaworthy for that purpose?
A.—It just depends on the way you want to look at it.

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
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No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Q.—Taking the conditions which you had on the 30th November 1929?

A.—Well, I am not going to say she was not seaworthy, because I don't know. That is all there was to it. I did not want to roll everything out of her. I thought about shifting cargo. I have seen them shifted before, and I won't say whether I thought or not, because I do not. I was afraid of it. I did not want to do it, that is all, and I won't say whether she was not seaworthy or not, because I don't know. She might have been and might not.

Q.—But at any rate nothing was done to prevent the shifting of the cargo: am I right in that?

A.—Well, I could not do anything. I could not go down there and hold it.

Q.—I do not mean that. I mean when you loaded at Cleveland.

A.—The cargo was leveled off the same as it is on every Lake boat. Other than that I have nothing more to do about it.

Q.—How many holds have you got?

A.—Two.

Q.—In the "Sarniadoc"?

A.—Two.

Q.—Approximately, what is their measurements?

A.—Oh, I don't know. I think they would carry around forty some odd thousand apiece. I could not tell you that. The register will show that. I don't know exactly. She carries about 93,000 bushels of wheat, and both the holds were about the same as near as I can tell you. They were about fifty fifty.

Q.—You were successful in turning completely around? You commenced that operation at 7.10 in the morning of the 30th November 1929?

A.—Somewhere about that.

Q.—How far around did you get?

A.—Right around head to wind about west, heading about west.

Q.—How about full speed ahead?

A.—Well, full speed ahead.

Q.—What progress did you make?

A.—She came around head to. She went a little way as near as I could tell, until she started hitting the seas too hard, and she lost her way. The seas came abcard her. hit her bow. hit the forward house, went right along her decks to the after house, and washed right over, and she lost her way.



ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
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Q.—How far over to port did you get her?

A.—How far to port?

10 Q.—I understand that there was one heading about west
by south?

A.—She may have gone west by south when she came head
to. I am not absolutely definite to an inch or two or to a degree
or the point. She was heading into the wind as near as I can tell.
When she headed right up into the wind, it might have been west
by south. She was laboring very heavily.

No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

By the Court:—

Q.—You had lost your way?

20 Q.—We had lost our way, and she started to come back
the other way.

By the Court:—

Q.—You could not stay where you were?

A.—Not exactly.

By Mr. Casgrain:—

30 Q.—What the Court means by saying that you had lost your
way is, that you did not know where you were?

A.—Oh no. I see what you mean now.

By the Court:—

Q.—If I understand you well, even when you were Point
Peter you were not sure of your position?

A.—Well, as near as I can tell. . .

40 By the Court:—

Q.—You were not sure of your position from that point?

A.—Just a moment. What I understood you meant by say-
ing, "You lost your way" — it is an expression that when a ship
stops going ahead, she has lost her way. It might mean to a shore-
man that he did not know where he was.



ROBERT B. ANGUS (for Defendant) Cross-examination.

By the Court:—

10 Q.—But you were not sure of your position either, taking the other meaning?

A.—We were not quite sure of it until we picked up the Ducks.

By the Court:—

Q.—And after you saw the Ducks?

A.—And after we saw them we knew they were behind us, when we turned around. It was snowing. You could not tell exactly.

20

By Mr. McKenzie:—

Q.—I suggest to you that you were more than three quarters of a mile off the Main Ducks when you first saw them?

A.—Not very much more I do not think; somewhere around three quarters of a mile. I could not tell you to be exact.

Q.—Did you have a lookout there?

A.—I could see them, sure.

Q.—Did you have a lookout or watchman?

A.—There were three of us there.

30

Q.—Did you have a lookout or watchman?

A.—We had the mate, the second mate and myself.

Q.—Did you have a lookout or watchman?

A.—Not a lookout, no.

Q.—Did you have a watchman?

A.—No.

Q.—He was not on board ship?

A.—No.

40

By Mr. Casgrain:—

Q.—Is a deckhand not a watchman?

A.—There were deckhands doing the watchman's work.

By Mr. McKenzie:—

Q.—You were shorthanded?

*In the
Superior
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No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
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ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
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No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

A.—We were not shorthanded. We had a full crew, but one deckhand was taking the place of the watchman, and under the circumstances I do not think the watchman would have been any use to us.

10 Q.—What is the man's name who took his place?

A.—I could not tell you. I forget.

Q.—At 7.10 you went around, and how long were you heading into the wind full speed ahead before you struck stern first?

A.—I would say around twenty minutes, maybe a little more, maybe a little less.

Q.—For twenty minutes you were going full speed ahead?

A.—Yes.

20 Q.—Into the sea, and you were not able to combat the force of wind or the sea?

A.—She was not heading exactly west for that long. She was heading in a westerly direction. She dropped back off more into the trough of sea, not completely in it, but she was going there all the time. She was not going ahead. She was drifting down.

By the Court:—

30 Q.—Where did you intend to pass between the blue lines?

A.—To come down around here behind the Main Ducks.

By the Court:—

Q.—And to anchor behind the Main Ducks?

A.—Yes. There is a bay in there. My intentions were to come down here and around in there.

By the Court:—

40 Q.—In the bay?

A.—Yes.

By the Court:—

Q.—Mark it with a blue pencil near "12"?

A.—Yes.



ROBERT B. ANGUS (for Defendant) Cross-examination.

By Mr. McKenzie:—

Q.—Is it not usual in that situation to sometimes go around
10 Timber Island?

A.—Sometimes.

Q.—You would get into the trough of the sea if you did
that?

A.—Yes.

Q.—That is the reason you did not do it in that instance?

A.—Well possibly, yes.

By the Court:—

Q.—You say possibly. You know what you intended to
20 do?

A.—Under the Main Ducks was the closest.

By Mr. McKenzie:—

Q.—I suggest to you that you had insufficient power to
overcome the elements on that morning of the 30th?

A.—I think we had as much power as the rest of those
boats have.

Q.—But if you had more power, would you not have got
30 away from that difficulty you found yourself in?

A.—I would not like to say. I might have, and I might
not. I have seen better boats than her stop altogether.

Q.—What boat are you on now?

A.—A boat called the "Sarnion".

Q.—Do you suggest the "Sarnion" would have any dif-
ficulty?

A.—She might. I never tried her.

By Mr. Casgrain:—
40

Q.—She is a bigger boat?

A.—She is a different type of boat altogether.

By Mr. McKenzie:—

Q.—She is a canal boat?

A.—She is an Upper Lake boat.

*In the
Superior
Court,
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No. 8.
Defendant's
Evidence.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
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ROBERT B. ANGUS (for Defendant) Cross-examination.

*In the
Superior
Court,
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*No. 8.
Defendant's
Evidence.*

*Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.*

By Mr. Casgrain:—

Q.—What is her tonnage?

A.—About 4800 tons, I think.

10

By Mr. McKenzie:—

Q.—As far as power is concerned, power is the main factor in getting way from a lee shore, is it not?

A.—Sometimes.

Q.—I ask you. Give me your opinion. You can say yes or no to most of the question I am asking you.

A.—Well, I never had the "Sarnion" in that position. I don't know what she would do. I would not say whether she would or would not, because I have not any idea.

20

Q.—The important thing is power, is it not? You have to have power to get away?

A.—To a certain extent; not altogether power. Some boats will go through a sea with less power than other will.

Q.—But not with the same tonnage; not with the same beam, not the same length, is not that so?

A.—I guess it is right to a certain extent. There are different types of boats. I have seen the best of them stop, stand still for hours at a time in a heavy sea, and not go at all.

30

Q.—What is the normal speed of your boat?

A.—Which one?

Q.—The "Sarniadoc"?

A.—Oh, in nice calm weather she would make a little better than eight knots an hour. That is as fast as we run her, 8.3 or 4, maybe 5 sometimes.

Q.—But this ship did not make that going down in the wind?

A.—No, it was not fine weather.

40

Q.—But she was going with the wind was she not?

A.—Sometimes they lose as much there as they would the other way.

Q.—Did you in this instance?

A.—I think we lost some.

Q.—You would not venture to say how much?

A.—No, I would not.

Q.—Take it right down to Point Peter, you had good weather, mind you, starting out?



ROBERT B. ANGUS (for Defendant) Cross-examination.

A.—Yes, it was good. She was making fairly good time. I think she averaged around seven and a half to Point Peter, somewhere thereabouts.

10 Q.—That is about a knot slower than normal speed?

A.—There is no boat will run in a sea as she will in calm weather.

Q.—Just describe the bow of the “Sarniadoc”. Do you know what a block co-efficient is?

A.—It is too deep for me.

Q.—What is the type of the bow of the “Sarniadoc”? It is pretty much a box, is it not?

A.—It is not square. It is a little rounded on the ends.

20 Q.—The bow of the “Sarniadoc” is just a little rounded on the ends, is that right?

A.—Not just a little bit. She has not a bad bow at all. She is fairly shaped.

Q.—You would not call her round, would you?

A.—Not as a knife, no.

Q.—Taking a ship with a block co-efficient, as a scientific and a fine shape, what result would you get of stemming the weather at that time on the 30th of November?

30 A.—We would get a lot more water aboard.

Q.—Do you not require more power with a blunt bow than you do with a fine shaped bow?

A.—That is not for me to say. I don't know what they work out on a boat in the canal. We all know they have not got as much power as an Upper Lake Boat. Outside of that I don't know.

40 Q.—They have just as many storms to go through? I suggest to you that forty miles an hour is nothing out of the ordinary at that time of the year?

A.—Well, in some respects it is out of the ordinary. We had not got a blow that year near as bad as that time. It had been blowing for possibly a week. Sometimes we get blows, sometimes we do not.

And it now being 12.30 the further cross-examination of the witness was adjourned until 2 P.M.

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ROBERT B. ANGUS (for Defendant) Cross-examination.

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of Robert B.
Angus.
Cross-exa-
mination—
continued.

And at 2 P.M. personally came and reappeared the said witness, Robert B. Angus, and his cross-examination was continued by Mr. McKenzie, of Counsel for Plaintiff as follows:—

10 By Mr. McKenzie:—

Q.—Do you remember having attended the Wreck Commissioners Court in Toronto at the investigation of this casualty?

A.—I remember it quite well, yes.

Q.—I have a copy of the proceedings, and at page 39 you are reported to have said:—“I could not go to Kingston because she would not stand the pull into the trough of the sea. My idea was to go behind the Main Ducks to anchor until weather conditions got better”.

20

“By the Court:—

Q.—What do you mean by she would not stand the trough of the sea. Your ship was loaded?

A.—Yes, sir, she would roll to beat the land and she would probably shift her cargo”.

A.—She probably might, yes.

30 Q.—You said she probably would, or she would probably shift her cargo. Have you any reason to change your testimony in that case before the Wreck Commissioner's Court at that time?

A.—No, I do not think I have.

Mr. Casgrain:—Read the rest of the passage.

Witness:—I do not think I would change it, because I have been taught since I was a boy to keep a ship out of the trough of the sea as much as possible.

40 Q.—How long were you actually heading into the wind? after you had turned, do you remember? You turned at 7.10 in the morning. How long were you actually heading into the wind?

A.—Well, I could not say. It was not very long.

Q.—Ten minutes or fifteen minutes?

A.—Maybe. Maybe a little more, maybe a little less.

That is along time ago. It is practically two years and a half ago. I would not like to say exactly, because I would not swear



ROBERT B. ANGUS (for Defendant) Cross-examination.

it was ten minutes. I would not swear it was fifteen minutes. I would not swear it was two hours. It was not very long.

10 Q.—But it was some appreciable time, could you go that far? It was certainly more than ten minutes if it was not two hours.

A.—Well, it was not very long.

Q.—But you would say more than ten minutes anyway?

A.—Things happen pretty quickly. Maybe it was ten, fifteen or twenty minutes, maybe a half an hour.

Q.—And you were in the wind at that time?

A.—Yes, right in the wind.

Q.—Just to refresh your memory on that, do you recall seeing another ship on your port bow?

20 A.—Not on my port bow, no.

Q.—After you turned around, mind you?

A.—No, not on my port bow.

Q.—Where was it?

A.—On the starboard bow.

Q.—I suggest to you that according to the evidence given at the Wreck Commissioner's Court you found that ship on your port bow after you turned around?

A.—No.

Q.—When you were heading west, mind you?

30 A.—Heading west she was not on my port bow.

Q.—Where was she?

A.—She was on my starboard bow.

Q.—Do you not remember that when you were coming down the Lake you found her on your starboard quarter?

40 A.—I could not say. She was on my starboard quarter at times and sometimes I think she was on my port quarter. I could not see her very often, only occasionally. It was snowing very hard, and I had not seen her for possibly — well, I would not like to say how long, maybe half an hour or so, and maybe less, but I knew she was behind me, because I knew she was coming down.

Q.—Do you remember what boat that was?

A.—I don't know what the name of the boat was. I don't know to this date, only what I heard lately.

Q.—Have you discovered what boat it was?

A.—I have discovered within the last two days.

Q.—What boat was it?

A.—The "Maple Bay".

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- Q.—Do you remember whether she was loaded or light?
A.—She was light.
Q.—And she managed to pass you safely?
A.—Well, on the starboard side. She went the other way.
10 We went short.

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Q.—She proceeded right along, as far as you know I presume, to Kingston or down the Lake?

A.—I don't know where she went. I never saw her anymore.

Deposition
of Robert B.
Angus.
Cross-exa-
mination—
continued.

Q.—As a matter of fact, could you recall whether you gave any danger signals, or any signals of any kind to that ship?

A.—I did.

Q.—What signals did you give?

- A.—I blew a danger signal if I remember right. I think
20 I blew it a couple of times. I would not swear to that; once or twice anyhow; once I know.

Q.—Was that before you turned?

A.—While I was turning.

Q.—And then, what signal did you give?

- A.—I knew this boat was behind me, and I knew what predicament I was in, and I knew what predicament he would in if he were in my position, and I did not want him to come up behind me and run into me. I did not know just exactly where he was, and I knew what would happen should a collision occur
30 in a case of that kind. I blew the danger signal to warn him, and when I got part of the way around I saw him coming up through the snow, and I blew two whistles at him to come up inside of him, and he passed me possibly, oh, as far from here to across the street maybe. I would not say exactly. It was not very far.

Q.—He was pretty close to you?

A.—He was pretty close, a nice passing distance.

- Q.—You thought when you gave your two blast signals there was some possibility that he might go either side of you?
40

A.—I thought so, yes, at the time I gave the two signals, and I wanted to make sure because I was going up swinging into the wind.

Q.—You have said that the "Sarniadoc" was in all respects properly equipped?

A.—Yes.

Q.—What about her furnaces?

A.—I don't know anything about that. That is an engineering question.



ROBERT B. ANGUS (for Defendant) Cross-examination.

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Q.—Was there anything in the log book with reference to repairs to furnaces?

A.—There was something. I could not say exactly what it was.

10 Q.—What is your recollection as to what was in the log book with references to furnaces?

A.—There was not a great deal. There was something about repairs and survey being made. I don't know.

Mr. Casgrain:—What date are you referring to?

Mr. McKenzie:—I am asking the question?

20 Witness:—There were two surveys made on that boat, one late in May and another one I think in September, about the middle of September.

By Mr. McKenzie:—

Q.—Repairs made in September of 1929 of course?

A.—I think there were. I don't know.

Q.—What was wrong with the furnaces?

30 A.—I do not think there was anything wrong with the furnaces, as far as I know in September, from what I can remember talking with the Engineer and the Surveyors at that time. I do not think there was anything wrong with the furnaces.

Q.—Was there anything wrong with the tubes?

A.—Some of the tubes were leaking, which is quite natural. In any boiler a tube is liable to leak at any time.

Q.—What caused them to leak?

A.—I could not tell you that. I am not an engineer.

Q.—Do you know if any arrangements were made to get new furnaces and new tubes?

40 A.—I believe there were, but I could not say definitely.

Q.—I suggest to you that as a matter of fact your owners had made arrangements to get entirely new furnaces and new tubes?

A.—Possibly there were. I heard them talking about it. It was not very much of my business. I am not an engineer. I don't know.

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Evidence.

Deposition
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Cross-exa-
mination—
continued.



ROBERT B. ANGUS (for Defendant) Cross-examination.

By the Court:—

Q.—You are not asked whether you are an engineer. You
10 are asked if you heard about it?

A.—I heard about it. Outside of that I don't know any-
thing about it.

By Mr. McKenzie:—

Q.—In your testimony at page 180 before the Wreck Com-
missioner, you were asked:—

20 “Q.—And after this survey in September was there
any discussion as to whether only temporary repairs
should be made, or whether new boilers should be put in”?
And you answered:—

“A.—Well, there was a discussion. I believe they
ordered new furnaces. I believe they were ordered, and
I think J. & R. Weir, if I am not mistaken had the con-
tract to put those in during the winter, and I believe the
new furnaces were ordered from the Old Country. I am
not positive about this, but I believe they were, and also
tubes.”

30 A.—That is correct. I will answer as far as I know. I
think that that is right.

Q.—How old was this ship? She came out in 1929?

A.—Yes.

Q.—She was new in 1929?

A.—She was new when she came over here. She was built
in the Old Country and came over that Spring.

Q.—Ordinarily, how long do tubes and furnaces last?

A.—Sometimes they last a long time. Sometimes they do
not last very long. I could not answer that question.

40 Q.—What was wrong with these tubes? And what was
wrong with these furnaces?

A.—They apparently had had some trouble with her com-
ing from the Old Country. They may have been salted up. I
heard them say they were salted up, but I don't know anything
about. I could not answer.

Q.—You do not know what was wrong with them?

A.—I know there was some trouble. I know there was
something wrong with them. But outside of that I could not tell
you the exact condition.

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mination—
continued.*

Q.—I presume there would be entries in the log book of whatever repairs were made, and anything else with reference to the furnaces and the boilers generally?

10 A.—Well, there was just in my log book a noting of the survey made, not in any detail about repairs, because that was not my business. The superintendents looked after that, and the engineers. I could not say exactly.

Q.—There were two occasion I understand, one in September and one when she came out here. She came here about May I understand?

A.—Early in May, yes.

Q.—You had here certificate then, is that correct?

A.—Early in May.

20 Q.—And then in September you also had another survey of some kind with reference to these boilers?

A.—Yes sir.

Q.—She was in pretty bad shape, was she not?

A.—She did not look very good when she came over, but outside of the engines and boilers she was all right. There was nothing wrong with her. I could not tell you anything about the engine and boilers. I know there were a lot of repairs made. I heard of what was done at the time, but I forget. These boilers were chipped and scaled, and some repairs made to them. I do
30 not know the full details of that. Some repairs were made to her engine, and I think she was put in good condition. At least, they said she was. Outside of that I don't know anything about it.

Q.—But as far as her condition was concerned, with the exception of the combustion chambers, at least you had four furnaces and four sets of tubes ordered?

A.—I could not tell you whether she had four furnaces or eight. I don't remember. I don't know anything about it.

40 Q.—You do not know that?

A.—No.

Q.—The defence has alleged that you were in error in the management of the navigation of your ship at that time. Could you tell us whether there was any error in the management or navigation of your ship?

A.—I tried to do the best I could under the circumstances; outside of that I cannot answer. I did the best I could under the circumstances.



ROBERT B. ANGUS (for Defendant) Re-examination.

Q.—You do not know now after going over these things whether there was an error in navigation?

10 Mr. Casgrain, K.C., of Counsel for Defendant objects to this question as illegal.

Objection overruled.

Q.—Can you go any further than that?

A.—I would not like to. I thought I was right.

Q.—Is it your opinion as far as the navigation and the management of the ship was concerned, there was no error in navigation or management, is that your opinion?

A.—That is my opinion, yes.

20 Re-examined by Mr. Casgrain, K.C., of Counsel for Defendant:—

Q.—Do you know whether there are many ships with a standard compass on the wing of the bridge?

A.—There are quite a lot.

Q.—What about the ship you have now?

30 A.—There are many compasses we use practically; we have a standard compass and we have a steering compass. We have another one we rigged up just for fun to see how it would work. It works all right.

Q.—I have here a photograph showing the ship and a certain number of men standing on deck, among whom I think I recognize you. Would you tell me if you know anything about this photograph, and when it was taken?

A.—That was taken, I think, a few hours before we got off the ship. I remember quite well the boys taking it. I could not just say who it was now.

40 not? Q.—You are shown in that photograph yourself, are you not?

A.—I am.

Mr. McKenzie:—I object to the production of this photograph at the moment.

By Mr. McKenzie:—

Q.—When did you get off the ship?

A.—On Monday afternoon.

Q.—Monday would be the 2nd December?

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ROBERT B. ANGUS (for Defendant) Re-examination.

A.—Yes, I think it was.

Q.—And this casualty happened on the 30th November?

A.—Saturday, yes.

10 By Mr. Casgrain:—

Q.—Will you file this photograph as defendant's exhibit
D-10?

A.—Yes.

Q.—Have you any shifting boards on the ship you are on
at present?

A.—No.

Q.—Have you seen any within the last ten years or so on
the Lakes?

20 A.—I have not seen shifting boards on the Lake since
about 1912 or 1913.

Mr. McKenzie:—If this is evidence of custom to vary the
law, I think it is properly the law that has been quoted. I do not
think this is permissible evidence. The Statute speaks for itself.

By Mr. Casgrain:—

30 Q.—Do you know whether those ships that had shifting
boards had them taken out afterwards?

A.—Well, I don't know that part of it. Those ships went
away. The last ship I saw with shifting boards went to Salt
Water during the War. In fact, I went down with her to New
York and left her there. I have never seen them since.

Q.—Would you say that with the conditions prevailing at
the time you passed Point Peter you could have taken any satis-
factory bearing at all from the top of the pilot house if you had
had a compass there?

40 A.—I do not think you could have. In fact, I am sure you
could not. You could not have done any better than I did.

Q.—I understand there was a wheelsman on deck at the
time of the accident.

A.—Yes, there was.

Q.—There was a wheelsman on deck?

A.—Yes.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

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RODERICK GRAHAM (for Defendant) Examination in chief.

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DEPOSITION OF RODERICK GRAHAM,

No. 9.
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10 A witness produced on behalf of the Defendant

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Roderick Graham of Owen Sound, in the Province of Ontario, Master Mariner, aged 33 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Deposition
of Roderick
Graham.
Examina-
tion.

20 Examined by Mr. A. Chase Casgrain, K.C., of Counsel for Defendant:—

Q.—How long have you had a Master's Certificate, Captain?

A.—Between seven and eight years.

Q.—How long have you been navigating?

A.—I have been in charge of a boat three years.

Q.—On the Lakes?

A.—Yes.

30 Q.—How long have you been in service? How long have you been navigating at sea?

A.—Oh, I would say around twelve or fourteen years. I started when I was about eighteen or nineteen, on and off.

Q.—What vessel were you in charge of in November 1929?

A.—The Steamer "Maple Bay."

Q.—Do you remember the 29th November 1929?

A.—Yes, I do.

Q.—What did you do on that day?

40 A.—On the 29th I left Belleville. I was bound for Port Colborne light, to load grain.

By Mr. McKenzie:—

Q.—No cargo?

A.—No cargo.

By Mr. Casgrain:—

Q.—Just continue.



RODERICK GRAHAM (for Defendant) Examination in chief.

A.—Everything went well. I came around by Proskil; came up along the north shore, went up the north shore until on in the afternoon it began to freshen, to blow pretty hard in a westerly direction. At around 8.40 p.m. in the evening she would
 10 not go ahead?

Q.—Why?

A.—Through the violence of the storm that was starting. I was forced to turn around.

Q.—What is the size of the “Maple Bay”?

A.—She is around 235 feet over all.

Q.—Single screw?

A.—No, she is twin screw.

Q.—What power have you?

20 A.—Around 700 horse power, I believe.

Q.—Can you give us the tonnage?

A.—The registered tonnage 653 or 655.

Q.—The gross?

A.—I am not sure.

Q.—After you had been blown around by the wind as you told us, what did you do?

A.—The thing was to get my ship off the north shore, get her over so I could go down outside of Point Peter, which I did.

Q.—You were going down the Lake then eastward?

30 A.—I was going down eastwards.

Q.—Did you see any other boat at that time?

A.—Not when I first turned around. Later on in the evening we picked up a vessel somewhat to the starboard of us.

Q.—Did you find out later on what vessel that was?

A.—We found out after that she was what we believed to be the “Sarniadoc”.

Q.—What was she doing when you first saw her?

40 A.—Well, when I first picked her up — she was quite a way over when I first picked her up. I did not see what she was doing. She was proceeding down the Lake, I presume.

Q.—Did you see Point Peter when you passed?

A.—Just got a glimpse of it.

Q.—Did you take any bearing on Point Peter?

A.—No, I did not get any bearing on Point Peter that night.

Q.—Will you tell us why?

A.—For one reason it was snowing heavily.

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tion—con-
tinued.

Q.—How far would you pass from Point Peter, as far as you could judge?

A.—As far as I could judge, I should say around from three to four miles. That is what I would like to be off anyway, and I think I was.

Q.—What was the wind and sea like at that time?

A.—It was increasing a little on account of head — we had turned around up the Lake.

Q.—Was the sea high?

A.—Yes, there was quite a sea running.

Q.—When you say, quite a sea running, can you give us any better description than that?

A.—You would like me to tell you the height of the sea?

Q.—To compare it to other times. You have sailed when it has been blowing?

A.—There was what we might term a pretty large sea. It has to be a pretty good sized sea to turn a boat around like it was increasing.

Q.—After passing Point Peter what happened?

A.—I was going down there, and I picked up this steamer ahead of me. I could see him once in a while. Later on I heard a danger signal.

Q.—Could you see the boat ahead of you when you heard that danger signal?

A.—I do not believe I could see the boat just at the time that I heard the danger signal, but I did a few seconds after.

Q.—Was your boat laboring at that time?

A.—Yes, she was.

Q.—What did you do upon hearing that signal?

A.—Well, just at the time I heard the signal it began to clear up.

Q.—Do you mean it began to clear up from snowing?

A.—From snowing.

Q.—Was there any change in the wind.

A.—No, none whatever. It was blowing just as hard.

Q.—Did you see any land there when it started to clear up?

A.—Well, you could see the Main Ducks.

Q.—How far were you from it?

A.—I would say we were around a mile and a quarter or a mile and a half from it.



RODERICK GRAHAM (for Defendant) Examination in chief.

Q.—How far off were you from the boat that you saw?

A.—We would not be any more than a quarter of a mile.

Q.—What did you do then?

A.—The “Sarniadoc” was blowing a danger signal. As I
10 understood him, he blew me one whistle and I immediately blew
him two whistles that I wished to start and leave him pass on the
starboard side.

Q.—Is that what you did?

A.—He answered me with two whistles.

Q.—What did you do? As a matter of fact how did you
20 pass him?

A.—I had to alter my course a little bit.

Q.—Which way?

A.—To port, to go to starboard.

20

By Mr. McKenzie:—

Q.—Starboard your helm?

A.—Starboard the helm.

By Mr. Casgrain:—

Q.—Did you then pass the “Sarniadoc”?

A.—I passed the “Sarniadoc” and passed very close to the
30 shoal that faces off the Main Ducks, there, that reaches into the
main Lake.

Q.—Is that the shoal on which the “Sarniadoc” was
stranded?

A.—I believe that is the shoal. I found out afterwards
the “Sarniadoc” stranded.

Q.—It had not yet stranded?

A.—No.

Q.—Had your ship been loaded, could you have passed with-
out danger where you did pass?

A.—Had my ship been loaded, I do not think I would have
40 tried it that way.

Q.—But could you have passed, as a matter of fact? Was
there enough water to pass with a loaded ship?

A.—I am not sure.

By the Court:—

Q.—If you had been loaded you would not have tried?

A.—I would not have tried that way.

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By Mr. Casgrain:—

Q.—What would you have tried if you had been loaded?

10 A.—Well naturally, I would have tried to come around head to the sea.

Q.—After you passed the “Sarniadoc” what did you do?

A.—I passed down close to the shoal and close to the Main Ducks Island, and I rounded in that lone bay in behind the Main Ducks.

Q.—Did you anchor there?

A.—Yes, I did.

Q.—How many anchors did you put out?

A.—Two anchors.

20 Q.—Did you stop your engines then?

A.—Yes.

Q.—What happened?

A.—Well, I only stopped there for about an hour. She kept blowing and drifting around so that I could not lay there. The ship would not lay there for me. I finally drifted out into the trough of the sea and got quite a little rolling around. It was quite cold and our deck line was frozen up, when we got out into the trough of the sea, and finally one of the anchors let go, and after that they got the steam on deck, and I got the other anchor

30 up. Q.—What do you mean when you say one of the anchors let go?

A.—Well, I mean that the chain parted.

Q.—Was that on account of the strength of the wind?

A.—Well, I would imagine that is what caused it. It parted anyway.

By Mr. McKenzie:—

40 Q.—You do not know what caused it?

A.—I am not sure what parted it.

By Mr. Casgrain:—

Q.—Was there anything else to make the chain part?

A.—It might have been through my trying to manoeuvre the vessel, trying to get her head up to the sea.

Q.—Did you succeed?

A.—No, I did not succeed.

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— ■ —

RODERICK GRAHAM (for Defendant) Cross-examination.

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mination.*

Q.—What happened?

A.—I finally got the steam on deck, and got the other anchor up, and I got down to Stoney Point where I anchored for around twenty four or thirty hours till the storm dropped down.

10 Q.—How were the ice conditions?

A.—Us being light we did not have much ice on deck or anything like that, but it was freezing quite hard.

Q.—Have you any shifting boards on board the “Maple Bay”?

A.—No, we have not.

Q.—Have you seen shifting boards since you have been Master of any vessel?

20 A.—Not in the Lake boats. Often when in Montreal I go down aboard the ocean boats. They use them there. We did not use them very much.

Q.—Have you ever seen them used on the Lakes?

A.—I have not. I have heard of them being used, but I never used them.

Q.—When you say you have heard of them being used, did you ever hear of them being used lately, or is it quite a long while ago?

A.—Quite awhile ago in some of the other boats I have sailed in.

30 Q.—Why did you not go straight down to Kingston instead of anchoring where you did?

A.—I could not make Kingston that day.

Q.—Why?

A.—For one reason I was light, and another reason, it was snowing quite hard. It was not safe to go down into Kingston.

Cross-examined by Mr. McKenzie, of counsel for Plaintiff:—

40 Q.—You would not say there was any comparison between your ship light and the “Sarniadoc”, would you? They are two entirely different propositions?

A.—Yes, I believe so.

Q.—That is so?

A.—Yes.

Q.—You say you picked up the “Sarniadoc” ahead of you, and then you starboarded your helm, is that right?

A.—Yes.



RODERICK GRAHAM (for Defendant) Cross-examination.

*In the
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- Q.—She was just about ahead of you?
A.—Just about ahead of me.
Q.—She would be about on the same course as you were?
A.—Just about.
10 Q.—Do you know the horse power of the “Sarniadoc”?
A.—No.
Q.—I suggest to you it is about 700 horse power?
A.—I presume it would be around that.
Q.—You know the tonnage of the “Sarniadoc” is much
greater, do you not?
A.—Yes.
Q.—She is a much bigger boat?
A.—Yes.
20 Q.—So proportionately you have less power than she has?
A.—Yes.
Q.—As far as canaling is concerned you know that with
a light boat it is very difficult to manoeuvre, do you not?
A.—It is quite difficult at times.
Q.—When you are in the canals without any weather at
all, as far as waves are concerned, is not the usual thing for a
light ship to tie up in the canal? Let us say you are going up the
Lake and you are light, you are away up high, you do not canal
on a very windy day, do you?
A.—No. You may take that this way, in the new Welland
30 Canal we can canal in there in any kind of weather.
Q.—Take the canals down here?
A.—For a light boat some of the canals are.
Q.—It is pretty dangerous even to do.
A.—It is dangerous at times.
Q.—You do not put your ship in any real danger when
you can avoid it, do you? You do not do that, do you?
A.—No.
Q.—And for that purpose when you are in a canal with
no question of rough weather except the wind, when you are high,
40 you are much higher light, are you not?
A.—Yes, you are.
Q.—Is it not a fact, that when you are in a canal you will
tie up rather than canal on a windy day: is not that so as a general
rule?
A.—I will answer this question in my own way. I have
not tied up for weather for two or three years.
Q.—But you know of ships that do, do you not?
A.—Occasionally, yes.

No. 9.
Defendant's
Evidence.

Deposition
of Roderick
Graham.
Cross-exa-
mination—
continued.

— ■ —

RODERICK GRAHAM (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 9.
Defendant's
Evidence.

Deposition
of Roderick
Graham.—
Cross-exa-
mination—
continued.

Q.—In the canal?

A.—In the fall of the year when it is blowing hard they do.

10 Q.—There was not anything extraordinary, as far as you
were concerned in going up Lake Ontario with a light ship and
turning back?

A.—Oh no.

Q.—You have been out in much rougher weather than
that?

A.—That was a pretty bad storm.

By the Court:—

Q.—That is not the question.

20 By Mr. McKenzie:—

Q.—Answer the question. You have been out in much
rougher weather than that?

A.—Yes, I have been out in rougher weather than that.

Q.—Actually on Lake Ontario?

A.—No, I have never been in rougher weather on Lake
Ontario.

Q.—You have not been on Lake Ontario very often then?

A.—Well, I have been on Lake Ontario quite a bit.

30 Q.—There was nothing extraordinary about that storm on
the 30th November 1929? There was nothing extraordinary at
all, I suggest that to you. What is your answer.

His Lordship:—Did the witness say it was extraordinary
weather, I did not understand he said that.

Witness:—I did not say it as extraordinary.

40 His Lordship:—He did not say it was extraordinary
weather.

Witness:—There was a good sea running, and it was snow-
ing quite heavily which handicapped us.

By Mr. McKenzie:—

Q.—You expected the weather you found on the 30th No-
vember on Lake Ontario? You expected that weather?

A.—We expect weather on the 30th November no matter
where we are.



RODERICK GRAHAM (for Defendant) Re-examination.

Q.—But you would expect that type of weather?

His Lordship:—I think that is enough. He did not say it
10 was extraordinary weather.

Re-examined by Mr. Casgrain, K.C., of Counsel for De-
fendant:—

Q.—Was that ordinary or extraordinary weather that you
got at that time?

A.—Well, for that time of the year. I said it was blow-
ing quite hard, and the snow handicapped us from navigating.

Q.—You were made to say you expected that kind of
20 weather. Had you expected it, would you have started to go up
as you did?

A.—As to the weather, when I left Belleville in the morn-
ing the sun was shining, and it was a nice day. There was no sea
running.

Q.—When you left, did you expect what happened later
on?

A.—No, I did not expect it.

Q.—Because you were made to say that you did expect
that.

30 By Mr. McKenzie:—

Q.—You say there was no sea running. What time was
that?

A.—That would be around eight o'clock. It might be a
little later. It might be around nine o'clock in the morning on
the 29th.

Q.—There was no sea running then?

A.—No, not at nine o'clock in the morning.

40 And further deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
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—
No. 9.
Defendant's
Evidence.

—
Deposition
of Roderick
Graham.
Re-exami-
nation.

HARRY J. KIRK (for Defendant) Examination in chief.

DEPOSITION OF HARRY J. KIRK

A witness produced on behalf of the Defendant.

10

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Harry J. Kirk, Lakeport, in the Province of Ontario, Master Mariner, aged 37 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. A. Chase Casgrain, K.C., of Counsel for Defendant:—

20

Q.—You have a Master's certificate?

A.—Yes, sir.

Q.—You were mate on board the "Sarniadoc" in November 1929?

A.—Yes.

Q.—For the full season?

A.—Yes, sir.

Q.—What papers did you hold at that time?

A.—Master's Inland, Mate's Coasting endorsed on it.

30 Q.—Were you on board the "Sarniadoc" on the trip of the 28th November, 1929?

A.—Yes, sir.

Q.—She was bound from Port Colborne to Montreal, was she not?

A.—Yes.

Q.—Would you tell us what happened on the 29th of November?

A.—When we left Port Dalhousie?

Q.—Well, start there if you like.

40

A.—We left Port Dalhousie in the afternoon, about half past two. We ran out there fifteen kilometers, steered north by west; we hauled down the Lake and around half past four steered due east. The object of running out there was, it was blowing quite hard. It was late in the season, and late in the afternoon; we ran out there in that way so that if it got bad we would go over to Toronto, and if it did not we would go on down the Lake, so at that particular time the glass was going up and the Captain hauled her over down the Lake for Point Peter.

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Evidence.

Deposition
of Harry J.
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tion.



HARRY J. KIRK (for Defendant) Examination in chief.

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Defendant's
Evidence.*

*Deposition
of Harry J.
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Examina-
tion—con-
tinued.*

- 10 on. Q.—Did the wind remain until you got to Point Peter?
A.—The wind was west to north west blowing quite hard.
Q.—Did it moderate as you went down?
A.—No. It increased as we went along, as darkness came
- Q.—What about the sea?
A.—There was quite a good sea right then.
Q.—What time did you go on watch?
A.—A quarter after twelve at midnight.
Q.—Did you remain on the bridge until the time of the
stranding?
A.—Yes, sir, with the exception of going back and getting
a cup of coffee after six o'clock the next morning.
- 20 Q.—Was the weather clear?
A.—The weather was clear up until four o'clock in the
morning?
Q.—What happened then?
A.—It started to snow on the north shoal quite heavy.
Q.—Do you remember passing Point Peter?
A.—Yes, sir.
Q.—Did you see the light?
A.—I picked up the light at ten minutes after three.
Q.—Did you see it constantly until you got abreast of the
Point?
- 30 A.—I got one flash.

By Mr. McKenzie:—

- Q.—What time was that?
A.—Ten minutes after three.

By Mr. Casgrain:—

- 40 Q.—And after that did you continue to see it?
A.—No.
Q.—When did you next see it?
A.—We did not see it very often. I could not recollect
the time I saw it after.
Q.—How was the ship behaving?
A.—On my watch?
Q.—Yes, when you got around Point Peter?



HARRY J. KIRK (for Defendant) Examination in chief.

By the Court:—

Q.—Is the Point Peter Light intermittent or is it a continuous light?

10 A.—It is an alternating light.

By Mr. McKenzie:—

Q.—A flash?

A.—Yes.

By Mr. Casgrain:—

20 Q.—When you got to about Point Peter, how was the ship behaving?

A.—She was yawing quite heavily.

Q.—Was there any ice on deck or on the superstructure?

A.—Yes, sir.

Q.—What was the temperature at that time?

ing. A.—Well, that is pretty hard to tell. I know it was freezing.

Q.—Did you take a bearing as you passed the Point Peter?

A.—I did not take a bearing.

Q.—Do you know whether the Captain tried to take one?

30 A.—Well, I was right there.

Q.—Was it possible to take a bearing properly?

A.—We did the very best we could.

Q.—Did you regard the bearing you got as accurate?

A.—No. It was only a time bearing.

Q.—What distance do you consider you passed from Point Peter?

A.—I would say approximately three miles or better.

Q.—Did the weather clear after you passed the Point?

A.—After we passed Point Peter, no.

40 Q.—What happened after that? Tell us the story of all that happened?

A.—We hauled around Point Peter, steered north 75 degrees east till six o'clock; at six o'clock checked her down to half speed and altered her course to east by north. The reason for checking her down was, the steam was rising off the water, and it was snowing quite heavily. We were taking all precautions.

Q.—What happened then?

A.—We continued that way until seven ten.

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Defendant's
Evidence.*

*Deposition
of Harry J.
Kirk.
Examina-
tion—con-
tinued.*



HARRY J. KIRK (for Defendant) Examination in chief.

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Defendant's
Evidence.

Deposition
of Harry J.
Kirk.
Examina-
tion—con-
tinued.

- Q.—Was the weather getting better during that time?
A.—No, it was getting worse.
Q.—Then, what happened.
A.—At seven ten we picked up the trees on the Main Ducks
10 Island through the snow. I was up on the upper top bridge.
The captain and second mate were down below in the pilot house.
We all three saw it at the same time.
Q.—What was done when you saw the Main Ducks?
A.—I heard the captain say, "Hard astarboard".
Q.—And what happened?
A.—So with that I came down and around she came.
Q.—She came head to the sea?
A.—She came around.
Q.—And what did she do then?
20 A.—Well, she came around to west — I should judge
around west. She came head to sea. I know, and she took some
pretty heavy seas there. She took blue water over the bow of
the deck.
Q.—Once or more than once?
A.—Several times, and wet us all in the pilot house; I
know that. The wind then was west, west by west.
Q.—Did any water go down the ventilators?
A.—Yes, on my watch.
Q.—Then, what happened? Tell us the whole story right
30 up to the stranding?
A.—Well, the captain blew five good distinct whistles,
which is called the danger signals in our rules, and of course, I
would not say for sure, but the "Bay" boat answered and I
know there was an exchange of whistles there, and of course, he
passed on our starboard side.
Q.—You were still going when she passed you?
A.—We were working full speed. When we turned around
the captain grabbed the telegraph and shouted four or five times,
40 sailed full speed, and of course you could feel her kind of take
hold.
Q.—Did she make any headway?
A.—She did not make any headway, because I was stand-
ing at the starboard door of the pilot house. It was open, and
by that time you could see the light on the trees, and you could
see you were falling back over sea gradually, so she veered off
to what I would say, about west north west, and she went along
there for, oh, two or three minutes I should judge, but she kept

— ■ —

HARRY J. KIRK (for Defendant) Examination in chief.

falling off on us with the hard astarboard wheel, and first thing I knew the stakes out of the wire fence started to fly out in the air, and she broke in two.

Q.—What happened after that? That is, when she struck?

10 A.—She struck on No. 5 Hatch and broke in two there. No 5 Hatch fell in the hold.

Q.—And how long did you stay aboard?

A.—Until Monday afternoon at three o'clock?

Q.—Who picked you up?

A.—The steamer "Valley Camp".

Q.—Did the "Valley Camp" go right after you had stranded, or how long after?

A.—Sunday morning at eleven o'clock.

Q.—Did he pick you up right away?

20 A.—No.

Q.—What did he do?

A.—We signalled to him.

Q.—What did it do? Did it come to anchor?

A.—He came around on us to anchor. He was going to the east of the main Ducks, and he altered his course and came up to westward of us, and came in down in around and laid to with both anchors down.

Q.—I understand he could not come to your rescue right away?

30 A.—No, he could not.

Q.—What was the good of him putting down his anchors?

A.—To hold.

Q.—Could he not have remained there on his own power?

A.—I could not say that.

Q.—Had the wind changed from the time you stranded until the "Valley Camp" came along?

A.—On Monday morning the wind changed to south.

Q.—Had you inspected the "Sarniados" before she sailed from Port Colborne, as the mate on board?

40 A.—Had I inspected her?

Q.—Yes.

A.—Myself?

Q.—Yes.

A.—She was all right as far as I was concerned.

Q.—Did you inspect her?

A.—Myself, do you mean?

Q.—Yes.

A.—Well, everything was the usual routine.

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Deposition
of Harry J.
Kirk.
Examina-
tion—con-
tinued.



HARRY J. KIRK (for Defendant) Cross-examination.

Q.—That is why I ask you if you examined her, to find out from you in what condition you found her?

A.—I found her in first class shape.

10 Q.—You have said the sea was pretty heavy. Can you give us any incident that would show what degree it was?

A.—When I came on watch that night at midnight, my room was sheeted up on the after side with sheeting, and I noticed two or three boards broken there, and over on the port side of my room there was a ventilator with a goose neck on the outside of it, and that had a mahogany cover inside, and that was partly knocked off the wall, so I discovered before I got outside there was a big sea running.

Q.—What would cause that breakage?

20 A.—I would expect it would be from the wind and the water against the after side of the cabin at different times.

Q.—Have you ever seen shifting boards used on the Lakes?

A.—I never did.

Q.—Have you been navigating on the Lakes for a long time?

A.—Since 1911.

Cross-examined by Mr. McKenzie, of Counsel for Plaintiff:—

30 Q.—You did not make any inspection of the “Sarniadoc” when you left Port Colborne?

A.—Just the usual routine.

Q.—That means nothing at all as far as inspection is concerned.

A.—You know what I mean.

Q.—Sure, I know what it means. I think we are pretty near right about that. You cannot call that much of an inspection.

A.—Well, I generally looked after things pretty well.

40 Q.—You said there were no shifting boards. I did not quite catch your answer. Did you say there were no shifting boards used on the Lake or that you had not seen any; you do not say there were no shifting boards?

A.—I have heard the older ones speak of them.

Q.—And you heard the evidence this morning?

A.—I have heard older masters speak of them, whom I have been shipmates with.

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—
No. 10.
Defendant's
Evidence.

—
Deposition
of Harry J.
Kirk.
Cross-exa-
mination—
continued.



HARRY J. KIRK (for Defendant) Cross-examination.

- Q.—Where did you first pick up the “Bay” boat?
 A.—Well, when I came out of the hall door that morning after twelve o’clock, I saw lights astern of my port quarter, which I knew was a steamer.
- 10 Q.—On your port quarter?
 A.—Yes, sir.
 Q.—That means that she was farther to the south of you?
 A.—To the north.
 Q.—To the north?
 A.—Yes.
 Q.—You were going down the Lake?
 A.—We were proceeding to Point Peter.
 Q.—Then, when did you pick her up again?
 A.—I kept watch of her there, and we could see her up
- 20 till it snowed, frequently, and of course, after it started to snow I lost her.
 Q.—Let me take you down to the point where you turned around: where was she just before you turned around?
 A.—She was right, if anything, pretty near abaft the stern, right at the stern of us.
 Q.—And then, at the moment when you got turned around, where was she?
 A.—I could not tell you, because I did not see her. It was snowing.
- 30 Q.—You were heading roughly west at that time, were you not?
 A.—East.
 Q.—When you turned around?
 A.—Well, pardon me, after we had turned around she came up to West.
 Q.—You were examined at the Wreck Enquiry?
 A.—Yes.
 Q.—I will read to you from page 106:—
- 40 “Q.—At the moment when you were heading west, roughly, where did the other boat lay from you, when you were heading west?
 A.—On the port side”.
 Q.—That is on your port side, is that correct?
 A.—That would be before we hauled, you mean?
 Q.—After?
 A.—After we hauled?
 Q.—Yes.
 A.—Then, she was on our port side.

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*No. 10.
 Defendant's
 Evidence.*

*Deposition
 of Harry J.
 Kirk.*

*Cross-exa-
 mination—
 continued.*



HARRY J. KIRK (for Defendant) Cross-examination.

*In the
Superior
Court,
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*No. 10.
Defendant's
Evidence.*

*Deposition
of Harry J.
Kirk.
Cross-exa-
mination—
continued.*

10 Q.—Mind you, you are now heading up the Lake?
A.—Up the Lake.
Q.—And you find the “Bay” boat.....
A.—On our port side.
Q.—Then you said — you were asked this question:—
“Q.—A little abaft the beam?

Your answer to that is:—

A.—Yes, sir.”

Q.—That is correct?

A.—Yes.

20 Court said:—
Q.—Captain Demers questioned you. At page 107 the

“And that his ship was light?”

The answer is:—

“Yes, sir.

30 “Q.—In order to cross your bow he got in the
trough of the sea?

A.—Yes, sir, rolled very heavily.

Q.—It is wonderful for a light ship to do that per-
formance when a loaded ship could not do it?

A.—You mean came around?

The Court:—Yes.

A.—Well, he went around us anyway.”

40 Do you still agree with that?

A.—He came around.

Q.—He came right around your bow, is that correct?

A.—He came up this way, and he was going down there,
so he came right around.

Q.—You found that he was abaft your beam?

A.—Yes.

Q.—Is that correct?

A.—Yes.



HARRY J. KIRK (for Defendant) Cross-examination.

The Court:—Before coming around?

10 Mr. McKenzie:—The witness actually says after. That is the point of my question.

Witness:—Could I explain this more definitely. Just let me explain it please.

By the Court:—

Q.—Show on the chart where he was. You had turned your boat west if I understood you well.

A.—We came up west.

20 By the Court:—

Q.—You were turning west.

A.—Yes.

By the Court:—

Q.—Where was he?

A.—He was back in here. He was coming down towards

30 By the Court:—

Q.—He was on your bow, but did he pass this way?

A.—He passed in front.

By Mr. McKenzie:—

Q.—So he had to go up around you?

A.—Yes.

40 Q.—And during that time how long would it take to go right around, if you were headed approximately west, or west by south? About how long would it take for the “Bay” boat to go around you?

A.—Fifteen or twenty minutes. He would not stay there though.

By the Court:—

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Deposition
of Harry J.
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mination—
continued.



HARRY J. KIRK (for Defendant) Cross-examination.

Q.—What prevented you from following the same course after he had passed.

10 By Mr. McKenzie:—

Q.—What prevented you from doing the same thing?

By the Court:—

Q.—Why did you not follow the other ship?

A.—We tried to follow her, because she fell off, and she would not go ahead.

20 By the Court:—

Q.—Your ship was loaded, the other was light?

A.—Yes.

By the Court:—

Q.—You should have been able to manage your ship the same way?

A.—We could not keep her up there with a starboard wheel. The seas and wind drove her right down.

30 And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

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Defendant's
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—
Deposition
of Harry J.
Kirk.
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mination—
continued.

J. D. MONTGOMERY (for Defendant) Examination in Chief.

DEPOSITION OF JAMES D. MONTGOMERY,

10 A witness produced on behalf of the Defendants.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared James D. Montgomery of Port Colborne, Ontario, Marine Superintendent, aged 46 years, a witness produced on behalf of the Defendant who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Casgrain, K.C., of counsel for Defendant:—

Q.—You are a Master Mariner?

A.—Yes.

Q.—For how many years have you sailed?

A.—About twenty years.

Q.—What was your position in 1929?

A.—Marine Superintendent at Port Colborne.

Q.—For whom?

A.—For the Paterson Steamships.

Q.—What were your duties?

30 A.—Looking after the welfare of the fleet.

Q.—Did you have occasion to inspect the “Sarniadoc”?

A.—Several times.

Q.—In 1929?

A.—Yes, sir.

Q.—Can you tell me on what dates?

A.—I cannot give you the dates off hand; once in June when she arrived in Toronto; once in September and once in November.

40 Q.—What was the occasion of the September survey?

A.—The general upkeep of the vessel.

Q.—In what condition did you find her?

A.—In first class state.

Q.—How far did your survey extend?

A.—To the hull equipment and machinery.

Q.—How did you find her hull?

A.—In good shape.

Q.—And her equipment?

A.—In good shape.

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No. 11.
Defendant's
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Deposition
of James D.
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tion.



J. D. MONTGOMERY (for Defendant) Examination in Chief.

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No. 11.
Defendant's
Evidence.

Deposition
of James D.
Mont-
gomery.
Examina-
tion—con-
tinued.

- Q.—Did you make another survey in November?
A.—Yes.
Q.—For what purpose?
A.—The final report for the season.
10 Q.—How did you find her on that occasion?
A.—In good shape.
Q.—Did that survey again include hull, machinery and
equipment?
A.—Yes.
Q.—Was she properly manned during the month of No-
vember 1929?
A.—Yes sir.
Q.—Did you find any evidence on that survey of her hav-
ing made any water.
20 A.—No.
Q.—What did you find about her engines and boilers?
A.—I got a report from the engineer. I am not an en-
gineer. I got a report from him.
Q.—Who was that?
A.—Mr. Hurl.
- By Mr. McKenzie:—
- Q.—Have you got that report?
30 A.—My reports are here somewhere.
Q.—Will you produce them?
- By the Court:—
- Q.—The reports from the engineer?
A.—No, I have not any reports from the engineer.
- By Mr. Casgrain:—
- 40 Q.—What have you to say as to her seaworthiness from
the different surveys you made?
A.—She was in first class shape.
Q.—And as to her fitness to make a trip at the end of No-
vember from Port Colborne to Montreal?
A.—In first class shape.
Q.—Have you sailed on upper Lake vessels?
A.—Yes sir.



J. D. MONTGOMERY (for Defendant) Cross-examination.

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Q.—Have you ever seen shifting boards used on board vessels?

A.—Not in my time.

Q.—What time does that mean?

10 A.—That means back to 1912 or 1911.

Q.—Will you look at the three certificates I now show you from the British Co-operative Register of Shipping and Aircraft, and tell me whether these are the certificates which this ship held at the time of the stranding?

A.—Apparently they are. I did not have them in my possession.

No. 11.
Defendant's
Evidence.

Deposition
of James D.
Mont-
gomery.
Cross-ex-
amination.

By Mr. McKenzie:—

20 Q.—You do not know anything of the contents of these certificates. They are not your certificates?

A.—No, they are not mine.

By Mr. Casgrain:—

Q.—Will you file these certificates as defendant's exhibits D-11, D-12 and D-13?

A.—Yes.

Q.—I understand that was a new ship?

30 A.—Yes.

Q.—It had been built abroad?

A.—Yes.

Q.—What about her power for that trade? What about the sufficiency of her power for that trade?

A.—She had lots of power.

Cross-examined by Mr. McKenzie, of counsel for Plaintiff:—

40 Q.—I think I understood you to say you were not an engineer?

A.—I am not an engineer.

Q.—You say she was properly manned? Do you know if she had a complete complement of crew?

A.—What does a complete complement comprise?

Q.—As required by your certificates?

A.—What does our certificates require.

Q.—You should know?

A.—They require three men.



J. D. MONTGOMERY (for Defendant) Cross-examination.

- Q.—What did you have?
 A.—She had eighteen men on her.
 Q.—Did you have everybody that was required?
 A.—Well, if she was only required to carry three and she
 10 had eighteen she must have had lots of them.
 Q.—Did you have everybody that was required?
 A.—Yes.
 Q.—According to law?
 A.—Yes.
 Q.—You did?
 A.—Yes.
 Q.—You do not suggest she would have a complete complement with three men, do you?
 A.—No.
 20 Q.—You did not have a wheelsman or a watchman, did you?
 A.—I understood there was a deck hand acting as a watchman.
 Q.—You were short one man then, were you not?
 A.—I cannot be certain. I have nothing to do with them.
 Q.—You say this ship as in good shape. Tell me something about her furnaces?
 A.—You will have to ask the engineer. I am not an engineer.
 30 Q.—You do not know anything about that?
 A.—I am not an engineer.
 Q.—What is your position with the defendant company?
 A.—Marine superintendent.
 Q.—You do not know whether these were ordered or not?
 A.—No, I did not know.
 Q.—You do not know?
 A.—No.
 Q.—You are quite sure you knew nothing about it?
 A.—I knew nothing about furnaces being ordered.
 Q.—Or contemplated, or discussed?
 40 A.—Well, that is a different thing, discussed and one thing and another.
 Q.—Tell us?
 A.—I knew nothing about it, no.

By the Court:—

Q.—Did you hear anything about furnaces having to be replaced, or tubes? You heard what was said this morning by the captain of the boat. You should know as much as he does?

*In the
 Superior
 Court,
 District of
 Montreal.*

—
 No. 11.
 Defendant's
 Evidence.

—
 Deposition
 of James D.
 Mont-
 gomery.
 Cross-exa-
 mination—
continued.



J. D. MONTGOMERY (for Defendant) Cross-examination.

A.—Well, I heard it discussed.

By the Court:—

10 Q.—Do you say it is wrong?

A.—No.

By the Court:—

Q.—What do you say?

A.—I heard it was discussed.

By the Court:—

20 Q.—Was the question of buying tubes discussed?

A.—I never heard anything about the tubes.

By the Court:—

Q.—About the furnaces?

A.—Furnaces, I understood they were down.

By Mr. McKenzie:—

30 Q.—And if they were down, you were going to have them replaced, is that not so?

A.—Yes.

Q.—And you must have known about tubes? I suggest that to you. Will you answer that?

A.—I heard it discussed.

Q.—You knew they were ordered? You heard somebody tell you they were ordered?

A.—I did not know they were ordered.

40 Q.—You knew nothing about it? Nobody told you about them being ordered?

A.—I did not know they were ordered.

Q.—I do not ask you personally, but in your office, did you not know the order was placed with J. & R. Weir?

A.—I did not.

Q.—You did not know anything about them?

A.—No.

Q.—I suggest they were right here in Montreal when that ship was coming down here?

A.—I was not in Montreal.

*In the
Superior
Court,
District of
Montreal.*

*No. 11.
Defendant's
Evidence.*

*Deposition
of James D.
Mont-
gomery.
Cross-exa-
mination—
continued.*



J. D. MONTGOMERY (for Defendant) Cross-examination.

Q.—You are the marine superintendent?

A.—At Port Colborne, not in Montreal.

10

Q.—Who is the marine superintendent in Montreal?

A.—Captain Tinmouth.

Q.—Would he know all about that?

A.—Well he is here where they were supposed to be ordered.

Q.—As marine superintendent that would come within his purview, would it not — within his jurisdiction?

20

A.—Possibly.

Q.—He will be able to tell us all on that particular score.

A.—Possibly.

Q.—I do not want to trouble you too much if there is someone else available to tell us that?

Mr. Casgrain:—Do you intend to call Captain Tinmouth?

30

Mr. McKenzie:—He is here, but I do not say I will call him.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

No. 11.
Defendant's
Evidence.

Deposition
of James D.
Mont-
gomery.
Cross-exa-
mination—
continued.

CHARLES D. MILLS (for Defendant) Examination in Chief.

DEPOSITION OF CHARLES D. MILLS,

A witness produced on behalf of the Defendant.

10

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Charles D. Mills of the city of Buffalo, in the State of New York, one of the United States of America, Marine Surveyor, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

20

Examined by Mr. Casgrain, K.C., of counsel for Defendant:—

Q.—You have no connection with the Paterson Steamship Lines?

A.—No.

Q.—For whom do you act?

A.—The American Bureau of Shipping.

Q.—Did you have occasion to examine the Sarniadoc on the 28th November 1929?

A.—I did.

Q.—Where?

30

A.—At Port Colborne.

Q.—For what purpose did you examine her then?

A.—Storage, grain classification.

Q.—In what condition did you find her?

A.—In good condition.

Q.—How did you go about that examination?

A.—I examined the tarpaulins, decks, cargo holds, bilges, bulkheads.

Q.—Did you examine the engine room?

A.—No.

40

Q.—As far as her equipment was concerned, apart from the machinery and engines, would you say she was in a seaworthy condition?

A.—What equipment do you refer to? The ground tackle or life boats?

Q.—What ever you examined. Just from the point of view of cargo?

A.—Chains and anchors.

*In the
Superior
Court,
District of
Montreal.*

No. 12.
Defendant's
Evidence.

Deposition
of Charles
D. Mills.
Examina-
tion.



CHARLES D. MILLS (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 12.
Defendant's
Evidence.

Deposition
of Charles
D. Mills.
Cross-exa-
mination.

Q.—How were the chains and the anchors?

A.—First class.

Q.—Did you require any repairs of any kind?

A.—No repairs.

10 Q.—Do you know anything about the necessity for shift-
ing boards or the usage of shifting boards on the Lakes?

A.—It is not customary.

Q.—Have you seen any used for some time?

A.—I have not seen them used since 1900.

Q.—Are you talking of Canadian practice or American
practice or both?

20 A.—I could only say as to Canadian practice that since I
have joined the American Bureau of Shipping — I have not seen
them since 1918 in Canadian practice.

Cross-examined by Mr. McKenzie, of counsel for Plain-
tiff:—

Q.—I understood you to say that you had not examined
the furnaces or boilers?

A.—I did not.

Q.—You are not in a position to say anything about them?

A.—No, not a thing.

30 And further deponent saith not.

E. W. Bush,
Official Court Reporter.

EDWARD HURL (for Defendant) Examination in Chief.

DEPOSITION OF EDWARD HURL

10 A witness produced on behalf of the Defendant.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Edward Hurl, of St. Catharines, Ontario, aged 52 years, Marine Engineer, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. A. Chase Casgrain, K.C., of Counsel
for Defendant:—

Q.—You have a certificate as chief engineer?

A.—Yes.

Q.—And you had in 1929?

A.—Yes.

Q.—Have you had one for some time?

A.—Yes.

Q.—For how many years?

A.—About fifteen or sixteen years.

30 Q.—You have been on board boats on the Lakes during
all that time?

A.—Yes.

Q.—You were the chief engineer of the “Sarniadoc” in
November 1929?

A.—Yes, sir.

Q.—When did you take over the duties on board the “Sar-
niadoc”?

A.—The 5th of July.

40 Q.—In what condition were her engines and boilers at
that time?

A.—Good.

Q.—Had any repairs been made prior to your going on
board?

A.—There had been, yes.

Q.—Were any repairs made to the engines and boilers
during the time you were on board?

A.—No, not outside of rolling tubes.

Q.—When was that?

*In the
Superior
Court,
District of
Montreal.*

—
No. 13.
Defendant's
Evidence.

—
Deposition
of Edward
Hurl.
Examina-
tion.



EDWARD HURL (for Defendant) Examination in Chief.

A.—There were a few tubes — I would not say how many, but we rolled a few tubes?

Q.—When?

A.—I think it was in September, along about the 1st of
10 September.

By the Court:—

Q.—Have you got your log book?

A.—No.

By Mr. Casgrain:—

Q.—Did you have anything to do with the survey that was
20 held aboard that boat sometime in September?

A.—Yes, sir.

Q.—What was found on that survey? Did you ask for
it?

A.—No, I just reported.

Q.—What did you report, and why did you report?

A.—Well, it was a new boat, and I reported, to protect
the Company. It was a new boat that had just come out.

Q.—What did you report?

A.—I reported that I found the furnaces had started to
30 drop.

By the Court:—

Q.—Did you make a written report?

A.—No, I did not make any written report. I just report-
ed to Captain Tinmouth.

By the Court:—

Q.—When did you make that report?
40

A.—I could not tell you the date.

By the Court:—

Q.—About?

A.—It was in the month of September I reported to Cap-
tain Tinmouth.

*In the
Superior
Court,
District of
Montreal.*

—
No. 13.
Defendants'
Evidence.

—
Deposition
of Edward
Hurl.
Examina-
tion—con-
tinued.



EDWARD HURL (for Defendant) Examination in Chief.

By Mr. Casgrain:—

Q.—Was that dropping of the furnaces a serious thing?

10 A.—No, they had not dropped far enough to make it serious.

Q.—How much had they dropped?

A.—I do not just remember. I think one of them went down around an inch or an inch and an eighth. I do not remember just what it was.

Q.—If I understand you rightly, it was because it was a new boat, and you thought they were entitled to get.....

20 A.—I understood when these boats landed here, they were supposed to be in first class condition, and when you get something new they are expected to be in first class condition.

Q.—As to the drop of the furnaces, if the boat had not been a new boat would you have said anything about it?

A.—It had not been a new boat I would not say anything about it.

Q.—Did it affect the efficiency of the power plant and that kind of thing?

A.—No, not at all.

Q.—Were any repairs made after that survey, apart from the rolling of the tubes?

A.—No.

30 Q.—Did you make many inspections of the furnaces during that season?

A.—Every trip I used to look at them. The boiler inspector told me to watch them. That is all he said, "Watch them". I used to take a look at them.

Q.—How were they on the 28th and 29th November 1929?

A.—Well, I don't know what they were just like on that date. They were all right the last time I looked at them.

40 By the Court:—

Q.—You were not on the boat?

A.—Yes, I was on the boat.

By the Court:—

Q.—That day?

A.—When she went ashore?

*In the
Superior
Court,
District of
Montreal.*

No. 13.
Defendants'
Evidence.

Deposition
of Edward
Hurl.
Examina-
tion—*con-
tinued.*



EDWARD HURL (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

By the Court:—

Q.—Yes.

A.—On the 29th?

10

By the Court:—

Q.—Yes.

A.—Yes, I was there.

—
No. 13.
Defendant's
Evidence.

—
Deposition
of Edward
Hurl.
Cross-exa-
mination.

By Mr. Casgrain:—

Q.—Did you have any complaints about them?

A.—No, nothing at all. No complaints.

20

Q.—Do you remember what the power of that boat was?

A.—Somewhere in the neighborhood of 750 horse power.

Q.—Is that ordinary power for a boat of that size?

A.—Ordinary power, yes.

Q.—How many revolutions would you get out of that?

A.—Around 87 or 88.

Q.—On that day, and when the Captain ordered full speed, after having turned the boat, when he got to the Main Ducks, were you getting the ordinary number of revolutions from your engines?

30

A.—Yes.

Q.—Was everything acting satisfactorily?

A.—Everything was fine, yes.

Cross-examined by Mr. McKenzie, of Counsel for Plaintiff:—

Q.—Now Mr. Hurl, you were also examined at the Wreck Commission, is that not so?

A.—Yes.

40

Q.—At page 141 of your evidence you were asked: “What is the number of revolutions at full speed?” Do you remember that?

A.—Yes.

Q.—Your answer was, “Well, on her regular gait we turned 77 or 78 turns”. You have gone up ten revolutions now?

A.—That was an error on my part. At the time I made a mistake. I just reversed the numbers. This boat will turn around 87 or 88 turns. I did not mean to state that. I am not trying to raise my revolutions. I am telling the truth.



EDWARD HURL (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 13.
Defendant's
Evidence.

Deposition
of Edward
Hurl.
Cross-exa-
mination—
continued.

- 10 Q.—Have you your log book with you?
A.—No. I kept my log book. I was going to bring it,
and I went home to find my log book. When I went to find it,
I guess my wife threw it in the furnace.
- Q.—When was that?
A.—When I was coming down here I thought I had nothing
to do but go and bring my log book up. I asked my wife if she
saw it. She said she threw it in the furnace.
- Q.—Were you asked for your log book before this trial?
A.—No. Nobody has seen my log book since I was at the
trial in Toronto.
- Q.—And nobody asked you for it?
A.—No.
- 20 Q.—The owners did not communicate with you with refer-
ence to your log book?
A.—No.

Mr. McKenzie:—I served notice upon my learned friends
to produce this log, and I submit it should be produced.

Witness:—I do not keep those lying around the house for
two or three years. They told me to bring my log book here,
and when I went to look for it I could not find it. It is gone.

30 By Mr. McKenzie:—

- Q.—You were wrong in your first statement?
A.—No, I understood you to say, did the owners ask me
for my log book?
Q.—Yes.
A.—Well, they did not call up till this last time, just till
I knew I was coming here. I only knew a few days ago, and
they said, bring your log book.
- 40 Q.—It was only in the last few days?
A.—And I thought I had nothing to do but to go and get
my log book.
Q.—When was that?
A.—I believe it was two weeks ago Monday, if I remember
right — two weeks ago last Monday. I would not say for certain.
Q.—You say your wife burned it?



EDWARD HURL (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

*No. 13.
Defendant's
Evidence.*

*Deposition
of Edward
Hurl.
Cross-exa-
mination—
continued.*

A.—I expect she did. I don't know. I asked her if she had seen it, and she said, "I don't know anything about it. I might have trown it in the furnace with the rest of your old books." I thought I had nothing to do but go and pick it up.

10 Q.—Apparently it is gone, anyway?

A.—It is gone. I cannot find it. If I could I would bring it here.

Q.—You told me you had no complaints to make about the equipment of this ship, is that so?

A.—That is so.

Q.—Still you have insisted upon getting new furnaces and new tubes?

A.—I beg pardon, I did not insist on it, not me.

Q.—Who did?

20 A.—I just reported my findings to Captain Tinmouth. That is all I had to do, and if I walked over that boat and found the furnace was coming down, they would tell me I was neglecting my duty if I did not know they were down.

Q.—You did know they were down?

A.—I found they were down.

Q.—And you reported that?

A.—I reported it.

Q.—Who is it who knows anything about ordering new furnaces?

30 A.—The Government Inspector.

Q.—Did he recommend new furnaces?

A.—I understand he did.

Q.—At what survey was that?

A.—That was the last survey.

Q.—He said, "You get new furnaces and new tubes", is that correct?

A.—I think so.

By the Court:—

40

Q.—On what date?

A.—It was in September. I don't know the date exactly.

By Mr. McKenzie:—

Q.—And he said, "You must get new furnaces and new tubes"?

A.—They decided on that. He did not say they must.



EDWARD HURL (for Defendant) Cross-examination.

By Mr. Casgrain:—

Q.—Who is the Government Surveyor you are talking of?

A.—Mr. Fontaine.

10 Q.—When were they to get them?

A.—Well, I don't know. They did not tell me.

By Mr. McKenzie:—

Q.—Will you look at this plan and tell me if that is approximately a plan of the "Sarniadoc's" boilers.....

A.—There are a lot of boilers the same. I don't know whether that the "Sarniadoc's" boiler or and Otto Deck, bridle deck.

20 Q.—I will tell you it is not the "Sarniadoc", but is that a fair representation of the boiler?

A.—That represents a good many boilers. It is a representation of a boiler, but whether it is a representation of the "Sarniadoc" boiler, I don't know.

Q.—I am told this is a typical scotch boiler. Would that be typical of the kind of boiler you had in the "Sarniadoc"?

A.—A similar boiler, yes.

Q.—Would you just initial it there for the purposes of the record.

30

By Mr. Casgrain:—

Q.—Look at it carefully before answering that question?

A.—No, I am not going to say that that is the same as the "Sarniadoc" boiler.

By the Court:—

Q.—It is similar?

40 A.—It is similar.

By Mr. McKenzie:—

Q.—Sign it on the corner?

A.—You must understand it is two and a half years since I was on that boat.

Q.—So there will be no question about it, I will ask you to put your initial?

A.—Why do you want me to do it?

*In the
Superior
Court,
District of
Montreal.*

No. 13.
Defendant's
Evidence.

Deposition
of Edward
Hurl.
Cross-exa-
mination—
continued.



EDWARD HURL (for Defendant) Cross-examination.

Mr. Casgrain:—I object to this as irrelevant.

By Mr. McKenzie:—

10 Q.—Will you file this plan as exhibit P-6?

A.—Yes.

Q.—You tell me you rolled the tubes?

A.—Yes.

Q.—Will you explain to his Lordship, rolling the tubes?

A.—It is something that often occurs on a steam boat.

We often have leaky tubes, and we put a tube expander in it and expand the tubes, make them tighter. They just stick through the tube sheet. We put the roller in and expanded the tubes a little bit to stop the leak, that is all.

20 Q.—And the more you roll them what happens?

A.—If you roll them enough, and keep on rolling them for years they will roll thin. We had not rolled those enough to make them thin, because they were new tubes.

Q.—Were they leaking pretty badly when you were coming down?

A.—Not an awful lot.

Q.—They were leaking pretty badly?

A.—I would not say they were leaking so awfully bad. I have had leaks far worse.

30 Q.—Did you make any reports to your owners about these leaky tubes?

A.—I told Captain Tinmouth.

Q.—He knew about it?

A.—After I told him, yes.

Q.—As I understand it if the tube is rolled on the outside you have to get that thin right at the edges?

A.—We do not roll them on the outside. We roll them on the inside.

40 Q.—What do you call that plate on the end of the tubes?

A.—Tube sheet.

Q.—You are on the outside of the tube sheet, are you not.

A.—Certainly.

Q.—You put your rollers in there, do you not.

A.—Certainly.

Q.—What happens then, when you roll that? You put that roller in there, in the tube, and you begin to roll it. What happens?

A.—You expand the tube.

*In the
Superior
Court,
District of
Montreal.*

No. 13.
Defendant's
Evidence.

Deposition
of Edward
Hurl.

Cross-exa-
mination—
continued.



EDWARD HURL (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

*No. 13.
Defendant's
Evidence.*

*Deposition
of Edward
Hurl.
Cross-exa-
mination—
continued.*

- Q.—Does that improve the tube, or does it abuse the tube?
A.—I cannot say it abuses the tube. It is something that has to be done. You have to roll the tubes in every boat.
- 10 Q.—You say you rolled those but did not completely stop the leakage?
A.—We did stop the leakage.
Q.—She was leaking coming down?
A.—No, she was not. I beg to differ with you.
Q.—You have already said she was leaking.
A.—I did not. She was not leaking, not at the time we went ashore.
- Q.—You mean to tell me that the tubes were not leaking all the way down?
20 A.—Yes sir.
Q.—You swear that?
A.—Yes sir.
Q.—When were they leaking last?
A.—In September. They never leaked after we rolled them out in September.
Q.—Who rolled them?
A.—If I remember right we got a man from Billy Walsh. I would not say for sure, but I think it was.
- Q.—Was there any test made after the tubes were rolled?
30 A.—What do you mean, tests?
Q.—Hydrostatic tests?
A.—No. We put the steam on.
Q.—Did you put the hydrostatic test on?
A.—No.
Q.—Unfortunately, we have not your log book here to find out what was done?
A.—You will find nothing in the log book that was done. We do not mark that stuff down.
- Q.—You gave evidence before the Wreck Commissioner. I read from page 150, speaking of the furnaces:—
40

“By the Court:—

Q.—Furnaces down. When was that? Since you have been there?

A.—They were down when I went there. That is the reason we had the survey because they found them down.



EDWARD HURL (for Defendant) Re-examination.

- Q.—And they were not pumped up after that?
 A.—They had been pumped up in the spring and they came back down again.
 Q.—And they were not pumped up again?
 10 A.—No, because they were going to put new furnaces in, but it did not do her any harm as far as pressure and that was concerned. The inspector told me to just watch her’’.
 A.—That is correct.
 Q.—You say that is correct?
 A.—That is correct, yes sir.
 Q.—If there was nothing wrong with these furnaces. . . .
 A.—There was something wrong with the furnaces. That
 20 is why we had the inspection, because they were coming down and they should not be. That did not affect the furnaces any
 though.
 Q.—There was something wrong with them?
 A.—There was something wrong when we were coming
 down.
 Q.—There was something wrong with the tubes, too?
 A.—Well, no, I could not say there was. Any tube is liable
 to leak. I had tubes last summer that leaked in an old boat.
 Q.—There was no occasion then to have new tubes?
 A.—That is the inspector. That was not me. I did not
 30 say anything about new tubes.
 Q.—Do you know whether they were ordered?
 A.—I could not say. I had never seen them.

Re-examined by Mr. Casgrain, K.C., of counsel for Defendant:—

- Q.—Were the tubes and furnaces in the condition in which they were in November, 28th and 29th, sufficient to keep the
 40 steam up to give the boat full power?
 A.—Yes. It did not affect the steam in any way.

By the Court:—

- Q.—You said a moment ago that they were tested after
 being rolled?
 A.—They had been tested.

*In the
 Superior
 Court,
 District of
 Montreal.*
 ———
 No. 13.
 Defendant's
 Evidence.
 ———
 Deposition
 of Edward
 Hurl.
 Re-exa-
 mination.



EDWARD HURL (for Defendant) Re-examination.

By the Court:—

Q.—How can you answer the way you do now?

10 A.—I don't understand. Do you mean the hydraulic pressure put on or what?

By the Court:—

Q.—Well, I don't know of anything except testing?

A.—Every spring?

By the Court:—

Q.—Oh no, after the rolling?

20 A.—There was no pressure put on, only the boiler pressure that is all.

By Mr. Casgrain:—

Q.—Is not the best test you can have, to use them and see whether they are leaking or not? Does that not constitute a test?

A.—What do you want me to answer?

Q.—My question is, does using the boiler have the effect of testing the tubes to see whether they leak or not?

30 A.—Well, oftentimes I have seen us put hydraulic pressure on the boiler and the tubes would leak with the hydraulic pressure, with the cold water, and we would never touch those tubes, and when we steamed her up they would not leak, because the expansion of the boiler takes up that leak.

By Mr. McKenzie:—

Q.—How did you get your horse power? Did you have indicated power?

40 A.—I did not.

And further deponent saith not.

*In the
Superior
Court,
District of
Montreal.*

*No. 13.
Defendant's
Evidence.*

*Deposition
of Edward
Hurl.
Re-Cross-
examina-
tion—con-
tinued.*

E. W. Bush,
Official Court Reporter.

EDWARD DRAKE (for Defendant) Examination in Chief.

DEPOSITION OF EDWARD DRAKE,

A witness produced on behalf of the Defendant.

10

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Edward Drake of the city of Montreal, Underwriter's Surveyor, aged 52 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

*In the
Superior
Court,
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—
No. 14.
Defendant's
Evidence.

—
Deposition
of Edward
Drake.
Examina-
tion.

Examined by Mr. Casgrain, K.C., of counsel for Defen-
dant:—

20

Q.—You are the Surveyor for the Salvage Association of London, England?

A.—Yes sir.

Q.—What is your profession?

A.—Marine Engineer.

Q.—What experience have you had as such?

A.—First of all, apprenticeship in an Engineering firm, apprentice engineer for five years.

Q.—Give us your experience shortly?

30 A.—Five years apprentice engineer in machine shops and drawing office.

Q.—And then?

A.—Seagoing experience, marine engineer certified by the Board of Trade as first class engineer of competency.

Q.—How long?

A.—From 1900 to 1908.

Q.—Did you have occasion to examine machinery on board the "Sarniadoc"?

A.—Yes sir.

40

Q.—When?

A.—On May 8th 1929, at Montreal.

Q.—On whose behalf?

A.—On behalf of the Underwriters concerned in that vessel.

Q.—What did you find?

A.—I found with regard to the boilers, there was considerable scale over the heating surfaces of the boiler. On the fire side of the boiler the furnace crowns were slightly out of shape, noticeably principally on the crowns of the furnace.



EDWARD DRAKE (for Defendant) Examination in Chief.

Inside the boiler there was quite a quantity of scale, salt deposit over the tubes and around the screw stays.

10 The steam pipes leading from the boiler to the engines, all steam lines and water lines showed evidence of being badly salted.

The glands of the main engines showed boilers had been very badly salted in coming through. Main engine and shafting and small working parts of the valve gear — working surfaces were found to be scored through insufficient lubrication.

20 The auxilliary pumps were found to be in a bad condition so far as the steam valves were concerned.

Q.—Was the survey which you made after her maiden trip?

A.—On her arrival from the Old Country.

Q.—That was her first trip?

A.—Yes.

By Mr. McKenzie:—

30 Q.—What was the date?

A.—May 8th.

By Mr. Casgrain:—

Q.—Did you recommend any repairs?

A.—Yes.

Q.—I suppose, all the repairs necessary to remedy the defects which you had found?

A.—Yes sir.

40 Q.—Do you know whether these repairs were made?

A.—Yes, the repairs were all carried out.

Q.—Was it under your supervision they were carried out?

A.—Yes.

Q.—Were they carried out to your satisfaction?

A.—Absolutely.

Q.—As far as boilers and engines were concerned, was the ship seaworthy after those repairs had been carried out?

A.—As far as boilers and engines were concerned I considered that vessel seaworthy to continue in commission.

*In the
Superior
Court,
District of
Montreal.*

*No. 14.
Defendant's
Evidence.*

*Deposition
of Edward
Drake.
Examina-
tion—con-
tinued.*



EDWARD DRAKE (for Defendant) Examination in Chief.

- Q.—Did you give any certificate after that survey?
 A.—No.
 Q.—What did you do? I understand you made a report?
 A.—After that survey I made a report to my chief surveyor.
 Q.—And after the repairs were made?
 A.—After the repairs were made.
 Q.—What was the power of that boat?
 A.—I would say the indicated horse power is 750.
 Q.—How does that power compare with other boats?
 A.—It conforms with the size of the vessel, of the carrying capacity.
 Q.—Does it conform to good practice?
 A.—Yes, sir.
 Q.—Are there many boats to your knowledge of that size plying on the Lakes with similar power?
 A.—There are quite a few with similar horse power.
 Q.—Did anybody accompany you on that survey?
 A.—Yes.
 Q.—Who accompanied you?
 A.—The Canadian Steamboat Inspector, Mr. Fontaine and the classification surveyor, Mr. McArthur.
 Q.—Did you also survey the “Sarniadoc” in September?
 A.—Yes, sir.
 Q.—For what purpose?
 A.—It was reported that the tubes were leaking and that the furnaces were coming out of shape again; also that a few of the screw stays were leaking. For that purpose we made a further examination.
 Q.—Were those defects remedied and repaired, at that time?
 A.—The tubes were expanded. The screw stays and the nuts were taken off, those that were badly leaking. The tube plates were caulked around the screw stays. The furnaces were not touched.
 Q.—Would the amount by which these furnaces were out of shape affect the work of the boilers at all?
 A.—Not at all.
 Q.—After these second repairs were made, how was the boat as regards seaworthiness, considering her engines and boilers?
 A.—I considered at that time the boat was in good condition to continue in commission.

*In the
Superior
Court,
District of
Montreal.*

No. 14.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Examina-
tion—con-
tinued.



EDWARD DRAKE (for Defendant) Cross-examination.

Cross-examined by Mr. McKenzie, of Counsel for Plaintiff:—

*In the
Superior
Court,
District of
Montreal.*

10 Q.—What repairs did you ask for or recommend?

A.—At what survey?

Q.—The last survey you were on?

A.—The last survey repairs were recommended. The final recommendation of repairs was the renewing of the tubes, screw stays and furnaces.

Q.—So you took that responsibility, as far as your underwriters were concerned to tell them that you required four sets of tubes and four new furnaces?

20 A.—I did not tell them they required them. They told me they required them.

Q.—You recommended it, is that it?

A.—Yes, I recommended it.

Q.—It was on your recommendation they would be got, necessarily?

A.—Partly, yes.

By the Court:—

Q.—Have you those letters? Was it in writing.

A.—Yes, sir.

30

By the Court:—

Q.—You recommended that by writing?

A.—In the report of survey.

By Mr. McKenzie:—

Q.—Where is your report?

40 A.—I think I have the report here. Here is the original report.

By the Court:—

Q.—Can you file a copy of that report?

By Mr. Casgrain:—

Q.—Did you have one report or two reports?

A.—That is the September report.

No. 14.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Cross-exa-
mination.



EDWARD DRAKE (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

Q.—Will you file this report as exhibit D-14?

A.—Yes.

By the Court:—

10

Q.—You will file a certified copy of the report made by
you?

A.—Yes.

By Mr. Casgrain:—

Q.—You can certify that one?

A.—That is the only report I have.

20

Q.—Will you have a copy made and file it as exhibit D-14?

A.—Yes.

By Mr. McKenzie:—

Q.—What was your capacity? You were acting as surveyor for underwriters, am I right about that?

A.—Quite right.

Q.—When you recommended that new furnaces and new tubes should be installed, when did you recommend that that should be done?

30

A.—At the owners convenience.

Q.—Were they ordered?

A.—Not at that time.

Q.—When were they ordered?

A.—In the course of a few weeks after that examination.

Q.—When were they to be installed.

A.—At the closing of the navigation.

Q.—That is, in the winter of 1929?

A.—In the winter of 1929.

Q.—They were to be installed, is that correct?

40

A.—Quite right.

Q.—Then, that would have been done on this last trip on which the "Sarniadoc" met with this disaster?

A.—Wherever the vessel laid up for the winter, that would be carried out.

Q.—You say you found these boilers badly scaled?

A.—Yes, I did.

Q.—Does not that affect the pressure?

A.—No.

No. 14.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Cross-exa-
mination—
continued.



EDWARD DRAKE (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

Q.—Were you not told that the pressure should have been reduced?

A.—No.

10 Q.—You have no recollection at any time, with reference to these boilers, that the pressure should be reduced. Please answer that question?

A.—A recommendation that the pressure should be reduced.....

Q.—Was there any suggestion from anybody that the boiler pressure should be reduced. Please answer that question?

A.—I would just have to think of it, that is all.

Q.—I suggest you did get that recommendation?

A.—As a recommendation, no.

20 Q.—As a suggestion?

A.—As a suggestion, yes.

Q.—From whom?

A.—I think that refers to correspondence I received from our Cleveland office.

Q.—They told you that the furnaces in the condition you found them should be reduced in pressure?

A.—That was their suggestion.

By the Court:—

30 Q.—Have you got the correspondence?

A.—I should have.

By the Court:—

Q.—File it as exhibit D-15.

A.—That was their suggestion, but the writer of that letter made that suggestion. His suggestion was not carried out at all. I must take the responsibility myself.

40 By Mr. McKerzie:—

Q.—To whom did you make a report?

A.—To my chief surveyor.

Q.—And he came to that conclusion on your report?

A.—He had not got my report by that time. It must have been through correspondence that I had with him.

Q.—The only thing he would have to go by would be reports from you?

A.—Communications from me.

No. 14.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Cross-exa-
mination—
continued.



EDWARD DRAKE (for Defendant) Cross-examination.

In the Superior Court, District of Montreal.

No. 14. Defendant's Evidence.

Deposition of Edward Drake. Cross-examination—continued.

Q.—And in reply to the communications that you sent to him, he said to reduce the pressure, did he not?
 A.—No, he did not say reduce the pressure.
 Q.—What did he say. He suggested it, did he not?
 10 A.—I cannot just recall the letter word for word.
 Q.—Just give us the substance?
 A.—I will tell you the substance. It was more of a precautionary measure on his part.

By the Court:—

Q.—File the letter?
 A.—Telling me that I should be careful of furnaces that
 20 are down, in reducing the pressure. I came to the conclusion that this was not a case in which the pressure should be reduced, and I stood my ground.

By Mr. Casgrain:—

Q.—What happened then? What was done?
 A.—The vessel continued in commission with her full boiler pressure.

By Mr. McKenzie:—

30 Q.—Have you got that correspondence with you now?
 A.—I will have to look up the correspondence.
 And at this point the witness' examination was suspended to allow him to look up his correspondence.

And further for the present Deponent saith not.

E. W. Bush,
 Official Court Reporter.



DUNCAN McARTHUR (for Defendant) Examination in chief.

DEPOSITION OF DUNCAN McARTHUR,

10 A witness produced on behalf of the Defendant.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Duncan McArthur of the city of Montreal, Marine Engineer, aged 58 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Casgrain, K.C., of counsel for Defendant:—

20 Q.—What is your occupation?

A.—Marine Engineer.

Q.—Are you connected with any corporation?

A.—With the British Corporation Register.

Q.—What is your qualification as an Engineer?

A.—I served an apprenticeship of six years, and after some time ashore went to sea and I passed the Board of Trade Examination for Chief Engineer in 1901. I joined the staff of the British Corporation in 1904 and have been with them ever since as a surveyor.

30 Q.—Are you a member of any Institute?

A.—Yes, the Engineering Institute of Canada, and the Institute of Naval Architects of London.

Q.—Are you a full member of the Associations?

A.—A full member of both.

Q.—Did you make a survey, or an examination of the boilers of the "Sarniadoc", and if so, when?

A.—I did so on the 9th May 1929?

Q.—Where?

A.—In Wellington Basin, Montreal.

40 Q.—Where was the boat coming from?

A.—She had just arrived from Glasgow.

Q.—What did you find on this examination?

A.—I found the boilers internally very dirty, all the valves and pipes in connection with the boilers showing signs of salt from the glands and flanges, and the main and auxiliary machinery showing signs of neglect, and the crank shaft worn out on the main bearings; also the furnace of the main boilers down to some extent.

*In the
Superior
Court,
District of
Montreal.*

—
No. 15.
Defendant's
Evidence.

—
Deposition
of Duncan
McArthur.
Examina-
tion.

DUNCAN McARTHUR (for Defendant) Examination in chief.

- Q.—Is that all?
 A.—That is all.
 Q.—Did you order any repairs?
 A.—I recommended that the boilers should be thoroughly
 10 cleaned and all the valves and connections of the boilers opened
 up and cleaned, that the cleaning of the auxilliary and machinery
 should be thoroughly overhauled.
 Q.—Do you know whether this was done?
 A.—It was.
 Q.—Was it done under your supervision?
 A.—It was.
 Q.—Was the defect you noticed in the furnace serious?
 A.—No.
 Q.—Did it affect the power of the boat in anyway?
 20 A.—Not at all.
 Q.—Did you again examine her after the repairs had been
 made?
 A.—I examined her again in September?
 Q.—What did you find then?
 A.—I found then that the stays at the back of the com-
 bustion chamber were leaking, and the tubes were leaking, and
 the furnaces all down again; the greatest difference at that time
 being an inch and a sixteenth.
 Q.—Did that affect their efficiency in any way?
 30 A.—Not a bit — I mean the furnaces being down did not.
 Q.—Were you with Mr. Drake?
 A.—I was.
 Q.—You examined the tubes then, did you not, on that last
 occasion?
 A.—Yes.
 Q.—Did you order any repairs?
 A.—As a matter of fact, most of the tubes had been ex-
 panded by the time we got to survey.
 Q.—Is expanding the tubes an extraordinary thing? Is it
 40 often done?
 A.—Yes.
 Q.—After the tubes have been expanded is the boiler safe?
 A.—Yes.
 Q.—It can be used perfectly?
 A.—Yes.
 Q.—After the repairs had been made in May, did you have
 a test of any kind made?
 A.—Hydrostatically, is that what you mean?

*In the
 Superior
 Court,
 District of
 Montreal.*

No. 15.
 Defendant's
 Evidence.

Deposition
 of Duncan
 McArthur.
 Examina-
 tion—con-
 tinued.

— ■ —

DUNCAN McARTHUR (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 15.
Defendant's
Evidence.

Deposition
of Duncan
McArthur.
Cross-exa-
mination.

- Q.—Any kind of test, or any kind of trial?
A.—We had a test under steam and adjusted the safety valve.
- 10 Q.—And what was it?
A.—180 pounds.
Q.—Was there anything you noticed after these repairs were carried out? What can you tell us about her seaworthiness so far as the boilers are concerned?
A.—I think the efficiency of the engines and boilers was not as good as when she came out, but she was quite efficient.
Q.—Do you consider that boat was sufficiently powered?
A.—Yes.
Q.—Have you seen many boats of the same kind?
A.—I know of forty five.
- 20 Q.—How does this boat compare as to power with others?
A.—The same power, the same dimention of boat too.
Q.—For the same trade?
A.—For the same trade.
Q.—If the boat had been old, would you have bothered about this, outside of the furnaces?
A.—No. I would have recommended it to be kept under observation.

Cross-examined by Mr. McKenzie, of counsel for Plain-
30 tiff:—

- Q.—The ship was not seaworthy when you examined her?
A.—On what date?
Q.—When you examined her?
A.—In May?
Q.—It certainly was not seaworthy then?
A.—In the beginning of May?
Q.—Yes?
A.—No.
- 40 Q.—I will read you Mr. Drake's report. He says that, "In the opinion of the undersigned and also that of the other surveyors (of which you were one) that the present leaking condition of stays and tubes is through the bad condition the boilers were found in when the vessel arrived in Montreal in May 1929".
A.—Yes, I remember hearing someone. . . .
Q.—And this is the September report?
A.—Well, that information that the boilers had been salted so badly on the way out, the stays, the tube plates and com-

DUNCAN McARTHUR (for Defendant) Cross-examination.

*In the
Superior
Court,
District of
Montreal.*

No. 15.
Defendant's
Evidence.

Deposition
of Duncan
McArthur.
Cross-exa-
mination—
continued.

bustion chamber, back plates had expanded around the stays of
the tubes and got out of shape, and although the salt was there
on the way over, when she went up into fresh water this salt had
dissolved and caused the leakage, which is quite common in a
10 boat coming from salt water to fresh water.

Q.—Had the condition in September been attributable to
the situation in May?

A.—It might have been.

Q.—You have already subscribed to that?

A.—No, not at all. That is not my report.

By the Court:—

20 Q.—Did you make any written report yourself?

A.—Yes sir, I did.

By the Court:—

Q.—Well, could you give us a copy of your report?

A.—I have not a copy here.

Mr. Casgrain:—We will file it.

By Mr. McKenzie:—

30 Q.—You are D. McArthur, classification surveyor?

A.—That is not the report I signed. That is the specifica-
tion for repairs.

Q.—But is Mr. Drake's report?

By the Court:—

Q.—Signed by you also?

A.—Not at all.

40

By Mr. McKenzie:—

Q.—I presume you are one of the surveyors to whom Mr.
Drake refers?

A.—Yes.

Q.—You do not contradict his report?

A.—No. That is not my own idea about the salt.



DUNCAN McARTHUR (for Defendant) Cross-examination.

Q.—What would it cost to put in those new furnaces and tubes?

A.—That I could not tell you.

Q.—You have no idea?

10 A.—No.

Q.—I suggest to you it is a mighty expensive job?

A.—It is quite a big job.

By the Court:—

Q.—I suppose you have an idea what it would cost?

A.—I don't know.

20 By the Court:—

Q.—You have no idea?

A.—No.

By the Court:—

Q.—You cannot give us an idea?

A.—Not at all.

By the Court:—

30 Q.—Even to a layman?

A.—No.

By the Court:—

Q.—You are asked if it is a very expensive job. You have no idea, and yet you are a Marine Engineer?

A.—Our committee does not allow us to have anything to do with money at all.

40 By Mr. McKenzie:—

Q.—I had hoped Mr. McArthur that you would tell us something as to whether this was a serious thing or not?

A.—Well certainly, it is a serious thing.

Q.—It is a very serious thing?

A.—Well, I should think it would cost what new boilers would cost.

*In the
Superior
Court,
District of
Montreal.*

—
No. 15.
Defendant's
Evidence.

—
Deposition
of Duncan
McArthur.
Cross-exa-
mination—
continued.

DUNCAN McARTHUR (for Defendant) Re-examination.

Q.—At least that?

A.—Yes.

10 Q.—And what would the cost of new boilers be?

A.—I do not know.

Re-examined by Mr. Casgrain, K.C., of counsel for Defendant:—

Q.—You were asked about your report. I have here what I think is an exact copy of your report, dated the 11th October 1929?

20 A.—That is my report.

Q.—Will you file a copy of this report, signed Duncan McArthur dated the 11th October 1929 as exhibit D-16?

A.—Yes.

Q.—This report I see appears to have been made after the repairs had been completed?

A.—Yes.

30 His Lordship:—The report speaks for itself.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

No. 15.
Defendant's
Evidence.

Deposition
of Duncan
McArthur.
Re-exami-
nation.

EBEN R. MacMILLAN (for Defendant) Examination in chief.

DEPOSITION OF EBEN R. MACMILLAN,

A witness produced on behalf of the Defendant.

10

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Eben R. MacMillan of the city of Toronto, Ontario, Ship Surveyor, aged 44 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. A. Chase Casgrain, K.C., of counsel for Defendant:—

20

Q.—What is your occupation?

A.—Ship Surveyor.

Q.—Will you state what your qualifications are?

A.—I am Surveyor to the British Corporation Register of Shipping.

Q.—That is not your qualification. That is your occupation?

A.—I served an apprenticeship with the Fairfield Ship Building and Engineering Company, Glasgow.

Q.—Are you a naval architect?

30

A.—I would say I was a ship surveyor. There is a difference between a Naval Architect and a Ship Surveyor.

Q.—Did you have occasion to examine the “Sarniadoc”?

A.—Yes.

Q.—When?

A.—At Toronto in the latter part of May, 1929.

Q.—Are you sure it was in May, and not in June?

A.—My report was made out in June, but it was about the 27th or 28th of May 1929.

Q.—On whose behalf did you make this survey?

40

A.—I was requested to carry out a grain class inspection.

Q.—What did you find on that occasion?

A.—I examined the holds, the ship generally throughout, except for the machinery. I found her in good condition with the exception of a few inundations on the bow plating which had been caused by the vessel encountering ice on her voyage from Wales to Montreal.

Q.—Was that repaired?

A.—I did not consider it necessary. There was no evidence of leakage or any trouble, and I considered her seaworthy.

*In the
Superior
Court,
District of
Montreal.*

—
No. 16.
Defendant's
Evidence.

—
Deposition
of Eben R.
Macmillan.
Examined.

EBEN R. MacMILLAN (for Defendant) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

- Q.—Did you recommend her for continuation of class?
A.—I recommended her for continuation of class.
Q.—Did she get it?
A.—I understand so. She continued in service. There
10 was no question about it.
Q.—How did she compare with other boats of that kind in
the canals?
A.—She is practically a sister ship to a great many of
them, a large number.
Q.—Do you know anything about shifting boards?
A.—I know they are required on the ocean for carriage
of bulk cargoes of grain.
Q.—Are they used on the Lakes?
A.—I have never seen them.
20 Q.—Do you require them, as far as you are concerned, for
classification?
A.—No.

No. 16.
Defendant's
Evidence.

Deposition
of Eben R.
Macmillan.
Examina-
tion—con-
tinued.

By Mr. McKenzie:—

- Q.—You are not a navigator?
A.—No, but I am a ship surveyor. Our rules require no
shifting boards so far as I know. I have seen no order for them,
and our instructions regarding carrying out grain classification
30 are mentioned there. I understand the instructions come from
the American Underwriters. They carry no instructions regard-
ing shifting boards either. We have detailed instructions as to
other things, but none as to that.

By Mr. Casgrain:—

- Q.—Can you identify these certificates as certificates is-
sued by your Corporation? I am referring to exhibits D-11, D-12
and D-13?
40

Mr. McKenzie:—Are they signed by the witness?

Mr. Casgrain:—No, they are not signed by the witness.
They are signed on the other side.

Witness:—I can identify the signature. I can identify
these two signatures. They are J. L. Adam and John Flemming.



EBEN R. MacMILLAN (for Defendant) Cross-ex. and Re-ex.

*In the
Superior
Court,
District of
Montreal.*

By Mr. Casgrain:—

No. 16.
Defendant's
Evidence.

- 10 Q.—And probably the seal also?
A.—I am quite familiar with these signatures.
Q.—And the other one?
A.—They are all signed the same way I would imagine.
Q.—What does this B/S mean on this certificate exhibit
D-9, with the star?
A.—That indicates the highest class of the British Corpo-
ration Register, British Standard Star.
Q.—Is that equivalent to Lloyds No. 1?
A.—It is equivalent to the highest class at Lloyds.
Q.—What about the other two?
20 A.—I identify the signature of each of these.

Deposition
of Eben R.
Macmillan.
Examina-
tion—*con-
tinued.*

By Mr. McKenzie:—

- Q.—Would Lloyds admit that?
A.—I am afraid they would deny it.
Q.—They would not admit it though?
A.—But they could not deny it.

Cross-examined by Mr. McKenzie, of counsel for Plain-
tiff:—

Cross-exa-
mination.

- 30 Q.—You speak of your rules in the British Corporation:
there is not anything in those rules which requires certain power
for a certain ship, is there?
A.—Not so far as I know.

Re-examined by Mr. Casgrain, K.C., of counsel for De-
fendant:—

Re-exa-
mination.

- 40 Q.—If a ship was not properly powered, would you give
her class?
A.—It would be a very hard thing to decide whether she
was not properly powered or not.
Q.—You are not an engineer?
A.—No, I am not an engineer.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

JOHN H. SMITH (for Defendant) Examination in chief.

DEPOSITION OF JOHN H. SMITH

A witness produced on behalf of the Defendant.

10 On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: John H. Smith, of the City of Cleveland, in the State of Ohio, one of the United States of America, Marine Architect, Surveyor, and Appraiser, aged 50 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Casgrain, K.C., of Counsel for Defendant:—

Q.—What are your qualifications Mr. Smith?

A.—As Marine Architect I have spent thirty two years building ships, designing them, repairing them, taking them off reefs and drawing up specifications.

Q.—Did you survey the “Sarniadoc”?

A.—Yes, after she was released from the strand on Main Ducks.

Q.—At whose demand did you do so, and for whom?

30 A.—I was ordered to the wreck by the brokers representing the owners, and later I worked directly with the owners in the work, the Paterson Steamship Company.

Q.—I understand you had certain photographs taken?

A.—Yes, I had some taken.

Q.—Will you look at the photographs I now show you, which are exhibits D-2 to D-6 inclusive, and say whether you recognize these photographs as those taken on your demand?

A.—Those are pictures taken about the time I was there.

Q.—Do they well represent the conditions of the ship at that time?

40 A.—That is, the photographs of the ship on the strand.

Q.—Can you say whether these photographs D-7, D-8 and D-9 give a good idea of the boat on the strand on the Main Ducks?

A.—Well, they are aerial photographs taken along about February, before the ship was released.

By the Court:—

Q.—Taken in February?

A.—Taken in February from aeroplane.

*In the
Superior
Court,
District of
Montreal.*

—
No. 17.
Defendant's
Evidence.

—
Deposition
of John H.
Smith.
Examina-
tion.



JOHN H. SMITH (for Defendant) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

By Mr. Casgrain:—

- 10 Q.—I understand the others were taken in December?
A.—They were taken in December.
Q.—Shortly after the accident?
A.—After the accident occurred.
Q.—Do you remember the date they were taken?
A.—Somewhere between the 1st and 10th. There were
several taken at different times.

No. 17.
Defendant's
Evidence.

Deposition
of John H.
Smith.
Examina-
tion—*con-
tinued.*

By Mr. McKenzie:—

- 20 Q.—Were you there?
A.—Yes, I was there.
Q.—When the pictures were taken?
A.—I was there when some of them were taken.

By Mr. Casgrain:—

- Q.—Did you examine the boilers after the accident?
A.—No, I did not examine them, but they were examined
by a man whom I thought competent to do it.

Mr. McKenzie:—I object to this evidence as illegal.

30

By Mr. Casgrain:—

- Q.—Were they examined in your presence?
A.—Yes, sir, they were examined while I was in the ship
yard.
Q.—Do you know whether any repairs were made to these
boilers after the accident?

40 Mr. McKenzie:—I object to any evidence of repairs after
the accident as illegal.

Mr. Casgrain:—I submit, my Lord, inasmuch that if we
can prove the boilers after the accident were in such condition
that they did not need any repairs, it would prove that they were
in good condition at the time of the accident.

His Lordship:—Objection maintained.



JOHN H. SMITH (for Defendant) Examination in chief.

By Mr. Casgrain:—

Q.—What about shifting boards?

10 1902. A.—I have not seen a shifting board on the Lake since

By Mr. McKenzie:—

Q.—You are not a navigator though?

A.—I am a ship builder.

By Mr. Casgrain:—

20 Q.—Do you ever build any ships with shifting boards?

A.—No, I have never built a ship with them, and I have built ships for salt water as well as for fresh water. I have never put shifting board in them.

Q.—Did they take them out of the old boats?

A.—We reconstructed all the old Lake boats up to 1902, and took them out and used what we call aerial construction.

Q.—Was the “Sarniadoc” properly designed for the trade she was engaged in?

A.—I thought so, yes.

30 Q.—Properly powered?

A.—Yes, sir.

No cross-examination.

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

—
No. 17.
Defendant's
Evidence.

—
Deposition
of John H.
Smith.
Examina-
tion—con-
tinued.



JOS. H. FONTAINE (for Defendant) Examination in chief.

DEPOSITION OF JOSEPH H. FONTAINE

10 A witness produced on behalf of the Defendant.

On this tenth day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Joseph H. Fontaine, of the city of Montreal, Steamship Inspector, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Errol M. McDougall, K.C., of Counsel for Defendant:—

- 20 Q.—What is your occupation Mr. Fontaine?
 A.—Government Steamship Inspector.
 Q.—For both hulls and engines?
 A.—Yes.
 Q.—Did you have occasion to examine the “Sarniadoc”?
 A.—Yes.
 Q.—When?
 A.—In the month of May. I have not the dates.
 Q.—Early in May when she arrived from the other side?
 A.—As soon as she arrived from the other side.
- 30 Q.—Did you see her at a later time in the season?
 A.—I saw her in September afterwards.
 Q.—What was the purpose of your examination?
 A.—Well, it was reported the boilers were in bad condition, and I examined the boilers to find out whether it was right.
 Q.—You saw the boilers?
 A.—Yes.
 Q.—You had certain criticisms to offer?
 A.—Certainly.
 Q.—Were repairs carried out to these boilers?
 40 A.—Yes, sir.
 Q.—Were they satisfactory to you?
 A.—Yes, all the repairs carried out were satisfactory.
 Q.—What were the repairs that were done?
 A.—On the first survey the furnaces were jacked up to make them as near true as possible.

By Mr. McKenzie:—

Q.—Jacked up or pumped up?

*In the
 Superior
 Court,
 District of
 Montreal.*

—
 No. 18.
 Defendant's
 Evidence.

—
 Deposition
 of Joseph H.
 Fontaine.
 Examina-
 tion.

JOS. H. FONTAINE (for Defendant) Examination in chief.

A.—Jacked up with the jack. It is a hydraulic jack. We call that pumping them up or jacking them up, whichever you like.

10 By Mr. McDougall:—

Q.—Just continue and tell us what repairs were done?

A.—The boilers were properly cleaned to start with, because they were full of salt.

Q.—You saw the recommendations made by the other surveyors who were there, Mr. Drake and Mr. McArthur?

A.—I made my own recommendations. Here are my two reports.

20 Q.—Were you satisfied with the repairs as carried out?

A.—Yes.

Q.—Did you find her seaworthy?

A.—Yes, otherwise she would not have run.

Q.—You were satisfied with her then at that time?

A.—Yes.

Q.—Was this condition of the furnaces being slightly down a serious defect?

A.—Not very serious.

Q.—Would that interfere with her motive power steam?

30 A.—Well, it would interfere with her steaming on the tubes on the furnaces. She would not steam as well.

Q.—Do you remember how far down the furnaces were?

A.—It is on the report. I cannot give you that offhand. This is a copy of the report. You can keep it. That is a copy of the report that was sent to Ottawa.

Q.—Will you file these two reports as exhibits D-17 and D-18?

A.—Yes.

Q.—In order that we may understand, what do you mean by the furnaces being down?

40 A.—A furnace is absolutely round when it is new, and then naturally through some cause or other it may come down on the top, or it may come down on the quarters; when it comes off the true, it is liable to come right down, go further down.

Q.—Did it come down later?

A.—It did come down after we jacked it up.

Q.—By how much?

A.—One boiler was down as far as one inch and one eighth. It began from seven eighths to an inch and one eighth.

*In the
Superior
Court,
District of
Montreal.*

No. 18.
Defendant's
Evidence.

Deposition
of Joseph H.
Fontaine.
Examina-
tion—con-
tinued.



JOS. H. FONTAINE (for Defendant) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

Q.—Is that done by horizontal and vertical gauge?
A.—I gauged the furnaces myself.
Q.—In that way?
A.—I gauged the furnaces to find out how much they
10 were off the true.

No. 18.
Defendant's
Evidence.

By the Court:—

Q.—Did you examine the furnaces afterwards?
A.—After they were gauged the first time.

Deposition
of Joseph H.
Fontaine.
Examina-
tion—con-
tinued.

By the Court:—

Q.—After the repairs?
20 A.—I gauged them after they had been jacked up. I
gauged them again to find out if they were true.

By the Court:—

Q.—You examined them?
A.—In September I gauged them again.

By the Court:—

Q.—Did you make another report?
30 A.—Yes, you have it right there.

By Mr. McDougall:—

Q.—When you examined them in September, were you
satisfied at that time?

A.—I was satisfied they were allright without jacking.
I was satisfied they were allright without jacking to complete
the season of navigation. It is stated in my report.

40 Q.—Did you also see the tubes which are said to have been
leaking?

A.—They were not leaking when I looked at them, but
they were reported to be leaking.

Q.—And they were satisfactory to you when you saw them?

A.—They expanded.

Q.—They had been rolled?

A.—They had been rolled.

JOS. H. FONTAINE (for Defendant) Cross-examination.

Q.—Do you know what the power of this ship is, what she could develop?

A.—According to the size of her cylinders the nominal horse power would be, according to our own regulations, 81 nominal horse power, and that would give her approximately 900 in indicated horse power.

By Mr. McKenzie:—

Q.—900 indicated horse power?

A.—900 at the steam pressure of 180 pounds per square inch.

By Mr. McDougall:—

Q.—Were you satisfied she had sufficient power for the trade in which she was engaged?

A.—Yes.

Q.—You would not have let her go unless she was?

A.—She is designed for that.

Q.—Was there any suggestion or doubt in your mind about cutting steam at any time because of the condition?

A.—None whatever.

Q.—How does her power compare with other boats of that description?

A.—If I remember right, there are about 22 steamers for the Lakes which have been built under the same design, which have the same sized cylinders and the same carrying capacity.

Q.—And that you have passed as fit?

A.—They have been passed as allright. They have been built for that design.

Q.—Would you have given her a certificate the following year for furnaces?

A.—Well, it was decided by the owners that they were going to renew the furnaces and the tubes and the stays and the back plates.

Cross-examined by Mr. McKenzie, of Counsel for Plaintiff:—

Q.—You had no way of coming to a proper conclusion with reference to power without taking an indicator test?

A.—We can arrive at a very near approximation.

*In the
Superior
Court,
District of
Montreal.*

—
No. 18.
Defendant's
Evidence.

—
Deposition
of Joseph H.
Fontaine.
Cross-exa-
mination.

EDWARD DRAKE (recalled for Defendant) Exam. in chief.

*In the
Superior
Court,
District of
Montreal.*

- 10 Q.—Not without a test?
A.—Without taking an indicator test.
Q.—That is only a calculation?
A.—That is a calculation, but that is near enough.
Q.—From your nominal horse power you come to the shaft
break power?
A.—You can do it another way also. That is not the only
way you can arrive at it.
Q.—You made no such test?
A.—No, I just roughed it out, that is all.
Q.—You recommended that the boilers should be renewed?
A.—I did not recommend that at all.
Q.—The furnaces?
20 A.—No. The owners had decided on the second survey
to renew the boilers.

No. 19.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Examined.
(Recalled.)

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

30 DEPOSITION OF EDWARD DRAKE,

A witness recalled on behalf of the Defendant.

On this eleventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Edward Drake a witness already examined, now recalled to continue his evidence on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

40 Examined by Mr. A. Chase Casgrain, K.C., of counsel for Defendant:—

Q.—I understand, Mr. Drake, you were to look for certain correspondence. Have you found it?

A.—I have.

Q.—Will you produce it?

A.—Your Lordship, I was asked yesterday by Counsel for the Plaintiff as to whether there was any recommendation or in-



EDWARD DRAKE (recalled for Defendant) Exam. in chief.

10 intimation that the boiler pressure should be reduced. As you noticed I took quite a long time before I could answer that question, and it seemed to me there was correspondence to that effect, and I also looked up my file.

I was under the impression yesterday that Counsel was asking me whether there was any indication of the pressure being reduced, taking the period from May 1929, when I made my first survey, that period going on until the vessel stranded in December of 1929, or November 1929.

20 From the first time I made my survey in May and in September, and up to the time when the vessel stranded, there was no intimation or any requests for recommendation about reducing the boiler pressure, but in 1930, that is in the next year, February 24. . . .

Mr. McKenzie:—I do not think we should go into any evidence in 1930.

His Lordship:—No. I ruled against that yesterday.

By Mr. McKenzie:—

30 Q.—You have not any correspondence? Any correspondence you had you cannot find it?

A.—There is no correspondence relating to that period, when I first made my survey until the vessel stranded, on the reduction of pressure.

Q.—So, if there ever was any correspondence, at least, you could not find it?

A.—There was no correspondence to find.

No cross-examination.

40 And further deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

No. 19.
Defendant's
Evidence.

Deposition
of Edward
Drake.
Examina-
tion.
(Recalled)—
continued.

OMERY CAUDLE (for Defendant) Examination in chief.

DEPOSITION OF OMERY CAUDLE,

A witness produced on behalf of the Defendant.

10

On this eleventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Omery Caudle of the town of Midland, in the Province of Ontario, Mate, aged 27 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. A. Chase Casgrain, K.C., of counsel for Defendant:—

20

Q.—You were mate on the “Valley Camp” in November 1929, were you not?

A.—Yes.

Q.—I understand the captain of that boat was Captain Nichols?

A.—Bruce Nichols.

Q.—Do you know why he could not come to this trial?

A.—Yes. His daughter is very sick.

Q.—Do you know whether he did come to Montreal and had to go back, as a matter of fact.

30

A.—Well yes, I did not know until you called me.

Q.—That is why you were called?

A.—Yes.

Q.—What size of boat is the “Valley Camp”?

A.—She is in the neighborhood of 253 feet length and around 42 feet beam. I do not just know her depth.

Q.—Do you know what power she had?

A.—No, I do not.

Q.—On the 29th November 1929, were you on Lake Ontario?

40

A.—Yes.

Q.—At what place were you on that day?

A.—What day was that — Friday?

Q.—That was Friday?

A.—Friday we were anchored at Sodus Point.

Q.—Did you intend to leave there on that day?

A.—If the weather had moderated.

Q.—Did you try to leave, as a matter of fact?

A.—We did the night before.

*In the
Superior
Court,
District of
Montreal.*

No. 20.
Defendant's
Evidence.

Deposition
of Omery
Caudle.
Examina-
tion.



OMERY CAUDLE (for Defendant) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

No. 20.
Defendant's
Evidence.

Deposition
of Omery
Caudle.
Examina-
tion—con-
tinued.

- Q.—You tried to leave on the night of the 28th?
A.—Yes.
Q.—What did you do? Did you leave the dock?
A.—Yes.
10 Q.—And how far did you go?
A.—We went to the Point until we could see what the weather was like outside.
Q.—And what did you do then?
A.—We saw the weather was not fit to go out, so we anchored.
Q.—Was that boat loaded or light?
A.—She was loaded.
Q.—Was that not on Saturday?
A.—No.
20 Q.—Have you got your log?
A.—Yes.
Q.—Will you please refer to your log?
A.—We were anchored there.
- By Mr. McKenzie:—
- Q.—Anchored where?
A.—At Sodus Point, November 30th.
- 30 By Mr. Casgrain:—
- Q.—When did you leave Sodus Point?
A.—December 1st.
Q.—When did you come to anchor at the Point?
A.—November 30th.
Q.—Was it on that occasion you said you did not dare cross the Lake on account of the weather?
A.—Yes.
Q.—When did you finish loading at Sodus Point, and
40 when were you to leave?
A.—We finished and departed from the dock at 11.10 P.M.
Q.—On what date?
A.—On the 29th.
Q.—Leaving the Dock you went as far as the Point at the entrance of the Bay?
A.—Yes.



OMERY CAUDLE (for Defendant) Examination in chief.

*In the
Superior
Court,
District of
Montreal.*

No. 20.
Defendant's
Evidence.

Deposition
of Omery
Caudle.
Examina-
tion—con-
tinued.

Q.—And there you anchored, you did not dare cross the
Lake?
A.—Yes sir.
Q.—What was the draft of your vessel?
10 A.—The draft was 15.5 and 14.8.
Q.—What was she loaded with?
A.—Coal.
Q.—Then, later on, I understand you did cross and went
to the “Sarniadoc”?
A.—Yes.
Q.—When was that?
A.—Sunday morning.
Q.—Had the weather moderated at all then?
20 A.—It had moderated enough for us to get out.
Q.—What did you do when you came to the “Sarniadoc”?
A.—We rounded up to the north of them and dropped both
anchors.
Q.—Could you save the people then?
A.—We could not get them off just at that time.
Q.—How many anchors did you put out?
A.—Two.

Mr. McKenzie:—This is December 1st, the next month,
my Lord.
30 Mr. Casgrain:—The day after.

By Mr. Casgrain:—

Q.—Could you hold with your two anchors?
A.—No. They kept the engines working head enough to
hold her in that position.
Q.—You had to keep the engine working notwithstanding?
40 A.—Yes.
Q.—How long have you been navigating on the Lakes?
A.—About twelve seasons.
Q.—How do you compare the weather you had when you
came to the point, coming out of Sodus Bay with other weather
you have had?
A.—On Lake Ontario?
Q.—Yes?
A.—Well, that was just about as bad as any I have seen
on Lake Ontario.

OMERY CAUDLE (for Defendant) Cross-examination.

Q.—During this time that you had been navigating had you seen shifting boards used?

A.—No.

10 Cross-examined by Mr. McKenzie, of counsel for Plaintiff:—

Q.—Would you take communication of this chart exhibit D-1, and just mark on the chart where you were loading?

By the Court:—

Q.—Mark it with the letter “X”?

20 A.—(The witness marks the point with the letter “X”).

By Mr. McKenzie:—

Q.—That marks the point where you were?

A.—Yes.

Q.—Will you tell me how far that is from the Main Ducks?

A.—Sixty one and a half miles.

By Mr. Casgrain:—

30 Q.—Is Main Ducks sixty one and a half miles?

A.—No, forty three and a half to the upper end, from Sodus Point to the west end of the Main Ducks.

By Mr. McKenzie:—

Q.—So, on the morning of November 30th, you cannot tell me what the weather was at the Main Ducks, can you?

A.—No.

40 Q.—In taking your course out from Sodus Point you would be right in the trough of the sea there, would you not?

A.—Pretty well in the trough of the sea.

Q.—That would be a pretty dangerous proposition for you to start out there?

A.—That is the reason we did not try to leave Sodus Point.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

No. 20.
Defendant's
Evidence.

Deposition
of Omery
Caudle.
Cross-exa-
mination.

A. J. CONNOR (for Plaintiff in Rebuttal) Examination in chief.

Plaintiff's Evidence in Rebuttal

10

DEPOSITION OF ABRAHAM JAMES CONNOR,

A witness produced on behalf of Plaintiff in Rebuttal.

On this eleventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared : Abraham James Connor of the city of Toronto, in the Province of Ontario, Climatologist, aged 46 years, a witness produced on behalf of the Plaintiff in Rebuttal, who being duly sworn, doth depose and say as follows :—

20

Examined by Mr. Russell McKenzie, of counsel for Plaintiff:—

Q.—What is your occupation?

A.—Climatologist to the Meteorological Survey of Canada.

Q.—How long have you been in that Department?

A.—Twenty five years.

30

Q.—As climatologist?

A.—The first four years in the Forecast Division of the Weather Bureau and the remaining twenty one years as Climatologist.

Q.—What are your duties?

A.—To keep a record of the weather of the world in the office, and interpret and explain, give out information to anybody that requires it.

Q.—Have you had occasion to make a study of the weather conditions existing along the Eastern end of Lake Ontario on the morning of November 30th 1929?

40

A.—Yes, I looked up all the available information on that from Canada and the United States on that day. I have most of it here.

Q.—What do your records show as to the velocity of the wind at or about 7.30 on the morning of November 30th 1929 in the vicinity of Main Ducks?

Mr. Casgrain:—I object to this question as the witness has no personal knowledge of the fact and he can only rely on data, which is not proved in this case.

*In the
Superior
Court,
District of
Montreal.*

No. 21.
Plaintiff's
Evidence in
Rebuttal.

Deposition
of Abraham
James
Connor.
Examina-
tion.



A. J. CONNOR (for Plaintiff in Rebuttal) Cross-examination.

His Lordship:—Objection reserved.

By Mr. McKenzie:—

10 Q.—You might answer that question Mr. Connor, as to the velocity of the wind at the time mentioned, and the place and the direction of the wind.

A.—At Kingston twenty five miles an hour, and at Oswego seventeen miles an hour.

Mr. Casgrain:—I renew my objection inasmuch as the witness is speaking without any personal knowledge.

Same reserve.

20

By Mr. McKenzie:—

Q.—Will you record on the chart the position of these two points that you have taken?

His Lordship:—That is not necessary.

By Mr. McKenzie:—

30 Q.—From such data could you estimate the wind velocity at the Main Ducks?

Mr. Casgrain:—I object to this question as absolutely irrelevant.

Same reserve.

A.—Something between the two, probably about twenty five miles an hour from the south west.

40 Q.—Were such conditions anything unusual?

A.—No. There is nothing that has not happened many times before, or worse.

Cross-examined by Mr. Casgrain, K.C., of counsel for Defendant:—

Q.—Have you ever been at Main Ducks?

A.—No.

*In the
Superior
Court,
District of
Montreal.*

*No. 21.
Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Abraham
James
Connor.
Cross-exa-
mination.*

A. J. CONNOR (for Plaintiff in Rebuttal). Cross-examination.

Q.—You have no personal knowledge of conditions there at all, have you?

A.—No.

10 Q.—Have you any personal knowledge of the velocity of the wind at any place at all, except Toronto on the 29th November 1930?

A.—Well, I don't know what you mean by personal knowledge. It is my duty as an official of the Dominion Government to know what the velocity of the wind was at any point in Canada.

Q.—Personal knowledge means to ascertain the thing by your own senses Mr. Connor.

20 His Lordship:—He has said enough. He could not be everywhere.

By Mr. Casgrain:—

Q.—Can you swear as to what the exact velocity of the wind was at Toronto on that day?

Witness:—What hour are you asking?

Counsel:—On the 29th.

30 Witness:—At what hour.

Counsel:—Any time on the 29th?

A.—Well, I will read it off to you hour by hour.

Beginning at 1 a.m. in the morning, north west 2.3.

40 2 a.m. north west 16.
3 a.m. north west 15.
4 a.m. north west 12.
5 a.m. north 6.
6 a.m. north east 2.
7 a.m. north east 3.
8 a.m. west 5.
9 a.m. north west 6.
10 a.m. north west 7.
11 a.m. west 7 mile.

*In the
Superior
Court,
District of
Montreal.*

*No. 21.
Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Abraham
James
Connor.
Cross-exa-
mination—
continued.*

A. J. CONNOR (for Plaintiff in Rebuttal) Cross-examination.

His Lordship:—That is enough.

By Mr. Casgrain:—

10 Q.—So obviously there is a great difference in that day between the wind at Toronto and at Oswego, for instance, is there not?

A.—A storm has to travel. It moved across the Lake and there were different velocities at different times at all points.

Q.—Different times in different places?

A.—Yes, certainly.

20 Q.—You have referred to the velocity of the wind at Kingston. Will you please look at a letter signed A. J. Connor that I now show you, and say whether that is a letter written by you?

A.—Yes, that is my letter and my signature.

Q.—Will you file this letter as defendant's exhibit D-19?

A.—Yes.

Q.—I have here a report signed by J. Paterson and bearing the initials "A.J.C.". Will you say whether those are your initials?

A.—Yes. That was a copy made by me and signed by me.

Q.—Will you please file this as exhibit D-20?

A.—Yes.

30 Q.—So we may understand it, will you explain to us what the writing opposite the dates 29th and 30th November show? Is it the direction and the velocity of the wind?

A.—Yes, the direction and the velocity of the wind in miles per hour.

Q.—Have you any personal knowledge of what is shown on this document?

A.—That document from Toronto.

Q.—Yes?

40 A.—Well, I read you the original curve taken off the instrument.

Q.—At Toronto?

A.—Yes.

By the Court:—

Q.—It does not agree with what you have said. Toronto is different to what you said, from what I see. That would be a contradiction and I would like you to explain?

*In the
Superior
Court,
District of
Montreal.*

*No. 21.
Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Abraham
James
Connor.
Cross-exa-
mination—
continued.*

T. L. STANLEY (for Plaintiff in Rebuttal) Exam. in chief.

A.—He asked me read the mileage hour by hour for the 29th, and I read the 29th.

10 By Mr. McKenzie:—

Q.—At Toronto?

A.—At Toronto.

Mr. Casgrain:—In justice to the witness I must say I asked him for the 29th and I also intended asking him for the 30th but your Lordship stopped him and said you had enough.

20 Mr. McKenzie:—I do not think there is any contradiction because one was the 29th.

Mr. Casgrain:—No, there is not.

His Lordship:—It is my mistake.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

30

DEPOSITION OF THOMAS L. STANLEY

A witness produced on behalf of the Plaintiff in Rebuttal.

On this eleventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared: Thomas L. Stanley: of Essex Falls, in the State of
40 New Jersey, one of the United States of America, Consulting Engineer and Marine Surveyor, aged 42 years, a witness produced on behalf of the Plaintiff in Rebuttal, who being duly sworn doth depose and say as follows:—

Examined by Mr. McKenzie, of Counsel for Plaintiff:—

Q.—What is your business, Mr. Stanley?

A.—Consulting Engineer and Marine Surveyor.

*In the
Superior
Court,
District of
Montreal.*

—
No. 22.
Plaintiff's
Evidence
in Rebuttal.

—
Deposition
of Thomas
L. Stanley.
Examina-
tion.



T. L. STANLEY (for Plaintiff in Rebuttal) Exam. in chief.

Q.—I would like you to state your experience and qualifications as an expert Marine Engineer and Surveyor?

10 A.—I served six years apprenticeship with Blair and Company of Stockton-on-Tees, England.

I went to sea for five or six years until I was Chief Engineer.

I have both British and American Unlimited Chief Engineer's license for Steam, Diesel and Electric Drive. I was in the Dry Docks in England for one year.

20 I was surveyor of the Naval Construction Department at Quebec, Canada for one year.

Q.—What Societies do you belong to?

A.—I am a member of the Society of Naval Architects of America.

Q.—I would like you to take communication of exhibit P-6, which is a plan of a similar type of boiler to that of the "Sarniadoc", and explain to his Lordship the nature of the repairs which would be required according to Mr. Drake's report. Have you read Mr Drake's report?

A.—Yes.

30 Q.—That is filed as exhibit D-14. Would you describe this boiler to his Lordship, starting with the furnace itself?

A.—"A" is the furnace into which the fuel is drawn and burned which provides hot gases which pass into the combustion chamber "B". There are two of these combustion chambers and two furnaces to each boiler. This vessel had two boilers.

40 These hot gases then pass from the combustion chamber through all these various tubes "C", and then up into the stack which is "D".

The report calls for these furnaces having been down in the survey in May, and then pumped back into their original position. The reason for that is, that these furnaces are made cylindrical, so they can withstand pressure without having to be stayed. The flat surfaces as in "B" have to be secured by stay bolts which are referred to in the report.

*In the
Superior
Court,
District of
Montreal.*

*No. 22.
Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Thomas
L. Stanley.
Examina-
tion—con-
tinued.*

T. L. STANLEY (for Plaintiff in Rebuttal) Exam. in chief.

The flat surfaces of the tube sheets through which the tubes pass are also secured by several of the tubes being screwed through these plates, and fastened with nuts at the ends.

- 10 The report says that these furnaces in May were down, and again in September were down, and in May they were pumped back into their original condition, having been knocked down by the dirty condition due to salt water, but in September there was no salt water to cause that condition, so of course, there is nothing to cause that other than the inherent weakness that the furnaces have due to being burned on the previous date.

Q.—That is, when they came down the second time?

- 20 A.—Yes. The first time there was salt water which deposited scale on the heating surfaces, and by getting the water away from the hot plates, the plates became burned, and were forced down by the pressure in consequence.

Q.—Immediately above the top of that furnace you have water?

A.—Yes, and all around the tubes, and all around the combustion chambers marked “B”.

- 30 The report also says, the owner of the vessel said that they had repeatedly removed screw stay nuts connected to the thin sides and refaced nuts, but could not keep stays tight. These also had to be taken down and expanded, and still the leakage was very apparent. These are the nuts here. These (indicating) are what we term stay bolts.

Q.—Mark the stay bolts .

- 40 A.—I will mark them with the letter “E”. These stay bolts are marked “E”. The reason for this is, because they are flat surfaces. They must be supported by other means than the shape of the body itself. The top of the combustion chamber at the point “F” are also secured by stay bolts and what are termed dogs, marked with the letter “F”.

Q.—Was there a pressure of water or steam at those various points?

A.—The furnaces, the tubes, and the combustion chambers are all subjected on the outside to the pressure which is maintained inside the boiler shell itself. In other words, these are parts within the shell of the boiler. The water that is ge-

*In the
Superior
Court,
District of
Montreal.*

*No. 22.
Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Thomas
L. Stanley.
Examina-
tion—con-
tinued.*

— ■ —

T. L. STANLEY (for Plaintiff in Rebuttal) Exam. in chief.

nerated in the boiler is subjected to all these various parts I have mentioned; the tubes, the combustion chambers, and the furnaces they also state that these stay bolts which have to support these flat surfaces could not be kept tight.

10

They also say that these nuts on these stay bolts at the parts "E" had to be refaced. The fact that they had to be refaced is positive proof that the surface on which they were had become distorted, and there is only one thing that can distort those surfaces, and that is through being burned at some time due to scale or oil, or whatever it might be that kept the water away from the heating surfaces. The distortion of those flat surfaces makes it well nigh impossible to ever absolutely make those things tight again, and that is what the record suggests.

20

By Mr. McDougall:—

Q.—Do you say the report shows they were distorted?

A.—No. I said the report shows that these nuts had to be refaced, and if these plates that they went on to had not been distorted, there would be no need to reface the nuts.

It also says the tubes were leaking. The full report says that these furnaces, all these stay bolts, and all these tubes must be renewed; in other words, the only parts of the boiler to be saved are the actual flat surfaces of the combustion chambers and the shell of the boiler itself, and of course, the boiler mountings and the main stays, and the steam plates, all the tubes, stay bolts and furnaces to be removed.

30

By Mr. McKenzie:—

Q.—The stay bolts run right through the boiler?

A.—Of course, there are stay bolts from the shell of the boiler to this side of the furnace, the combustion, that is, the port side on this particular plan, and then, from the star board side of that combustion chamber to the port side of the star board combustion chamber, and then, from the starboard side of the star board combustion chamber to the shell of the boiler on the star board side, and the entire back of the combustion chambers to the back end of the shell of the boiler.

40

Q.—What is the effect of that leakage? — the dropping of the furnace, what is the effect of that?

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tinued.*

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A.—Well, the effect of any furnace coming down is just the same; it is going to have a weakening effect on the furnace, and just in the same way as though you took a piece of flat steel and bent it back and forth, naturally, eventually it will snap.

10 You weaken the structure of the steel, and through time, if it is allowed to go far enough, once it has started to go I have seen furnaces come down as far as nine inches, and of course, you may have an explosion that will kill somebody etc., so that once they start to go, you have to be very careful, otherwise something very serious is going to happen.

Q.—What is the effect as far as steam properties are concerned, of the leakage of this water?

A.—If you have leakage of steam or water out of any part of your boiler, you have a loss of the steam itself, but the

20 worst of it is that that steam or water that would ordinarily pass through the machinery, and in the general cycle of operations, would go back into the boiler: it would go into the hot well from which it would be pumped at roughly 160 degrees, passing through the feed water heater into the boiler at about 240 degrees. This water level in the boilers must be maintained, and when this water is lost you must get your supply from somewhere else, which would naturally be the Lake or the tanks as the case may be, and with that water going back into the boiler, starting at a temperature of say, 50 degrees in the Lake in November, you would

30 have that as against the ordinary hot water temperature of 160, which means you are putting water back into the boilers at approximately 110 or thereabouts less any temperature which meets the cold water going into the boiler, would flatten down your steam, and make it pretty much more difficult to maintain the temperature of the water.

Q.—Can you give his Lordship an example of that?

A.—For instance, if you have a kettle steaming on the stove, and it is steaming away there coming out of the kettle, and it only half full, then if you took a big pitcher of water and

40 poured it into that kettle it would very rapidly stop steaming.

Q.—What would be the cost, approximately, of the repairs suggested by Mr. Drake, and recommended by him?

A.—Well, I have not any sizes other than my visual vision of the boilers, but I would say \$15,000.00 to \$18,000.00 would cover it.

Mr. Casgrain:—I object to this evidence as illegal.

The Court reserves the objection.

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Court,
District of
Montreal.*

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Plaintiff's
Evidence
in Rebuttal.*

*Deposition
of Thomas
L. Stanley.
Examina-
tion—con-
tinued.*



T. L. STANLEY (for Plaintiff in Rebuttal) Exam. in chief.

By Mr. McKenzie:—

10 Q.—From your examination of Mr. Drake’s report, and the recommendations he made with reference to these particular required repairs, what would you say was the condition of the “Sarniadoc” with regard to her seaworthiness?

Mr. Casgrain:—I object to this question as illegal.

Same reserve.

Mr. Casgrain:—Before or after?

20 Mr. McKenzie:—At the time, according to Mr. Drake’s report, and at the time the vessel went ashore, at the time of the casualty.

Mr. Casgrain:—The Captain said he was not there.

By the Court:—

Q.—By the report? Speak from the report.

30 A.—Taking into consideration that report as repairs necessary to those boilers, I would consider she was not fit to go to sea.

By Mr. McDougall:—

Q.—When?

A.—At the time that the report was made, and at any time after that until such time as those repairs had been carried out one hundred per cent.

40 Mr. McKenzie:—I may point out, my Lord, that this report is dated January 31st, 1930.

No cross-examination.

And further Deponent saith not.

E. W. Bush,
Official Court Reporter.

*In the
Superior
Court,
District of
Montreal.*

No. 22.
Plaintiff’s
Evidence
in Rebuttal.

Deposition
of Thomas
L. Stanley.
Examina-
tion—con-
tinued.

No. 23.

*ED. DRAKE (for Defendant in Sur-Rebuttal) Exam. in chief.**In the
Superior
Court,
District of
Montreal.***Defendant's Evidence in Sur-Rebuttal**No. 23.
Defendant's
Evidence
in Sur-
Rebuttal.

10

DEPOSITION OF EDWARD DRAKE,Deposition
of Edward
Drake.
Examina-
tion.

A witness produced on behalf of the Defendant in Sur Rebuttal.

On this eleventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared Edward Drake of the city of Montreal, Underwriter's Surveyor, aged 52 years, a witness produced on behalf of the Defendant in Sur Rebuttal, who being duly sworn doth depose and say as follows:—

Examined by Mr. McDougall, K.C., of counsel for Defendant:—

Q.—Mr. Drake, you have already been sworn?

A.—Yes.

Q.—Did you hear Mr. Stanley speak about the surfaces held by the stay bolts on the plan filed?

A.—Yes.

Q.—You heard the testimony on that?

A.—Yes.

Q.—Will you state whether those surfaces were distorted or not as Mr. Stanley said?

A.—All the flat surface in the combustion chambers secured and held by the screw stays were not distorted at all.

By the Court:—

Q.—Why did you recommend repairing?

A.—Because the stays were leaking. Around the screw stays the plate was leaking.

By Mr. McDougall:—

Q.—You also heard Mr. Stanley say that if the furnaces were down nine inches he would not consider it a very good furnace, you agree, do you not?



ED. DRAKE (for Defendant in Sur-Rebuttal) Exam. in chief.

*In the
Superior
Court,
District of
Montreal.*

- A.—Nine inches is quite a serious thing.
 Q.—How much was it in this case?
 A.—In this particular case?
 Q.—Yes?
 10 A.—The least was half an inch which it was down, one half an inch, and the maximum was an inch.
 Q.—What is the difference in gauging, in diameter?
 A.—That half inch is the difference in the vertical gauge, the distance vertically as compared with the distance horizontally; there was a difference found of half an inch. That really does not show the furnace is down exactly half an inch. It is a difference in the gauging. You have one horizontal and one vertical, and the difference between those measurements is one half an inch.

No. 23.
Defendant's
Evidence
in Sur-
Rebuttal.

Deposition
of Edward
Drake.
Examina-
tion—con-
tinued.

- 20 Q.—Are these furnaces in the first place perfectly cylindrical when installed?

A.—These furnaces are rolled, but very frequently they do not roll out a true surface. They maybe as much as 3/16 to a quarter of an inch out of the true circle when they are originally made in the rolls.

Q.—How do you do that gauging to determine the difference.

- 30 Mr. McKenzie:—The report speaks for itself on that. It is a half an inch to an inch and a half.

By Mr. McDougall:—

Q.—Do the builders leave them like that, not perfectly cylindrical?

A.—If, after a furnace is made by the builders it is gauged vertically and horizontally, and the circle is found to be true within one quarter of an inch, it is passed as a perfect furnace.

- 40 Q.—How do you do that gauging to determine the difference of one inch or one half inch? How is that done?

A.—It is done by a steel telescopic gauge, that is, one gauge slides in the other. This gauge measures over 33 inches I think, and this telescopic gauge is graduated. The one sliding in is graduated, so when you move this telescopic gauge upwards until you have the range of the furnace, you put it on the bottom of the furnace and you sweep around and strike an arc. The arc may be about a foot long. Then, you raise the inside telescope and you strike another arc, then the arc gets smaller until you have reached a point when you do not strike any arc. Then,



ED. DRAKE (for Defendant in Sur-Rebuttal) Exam. in chief.

you know you have got the extreme diameter. You take the reading. You do the same process on the side and the difference in the reading is the amount of distortion of the furnace.

10 Q.—Do you know what the diameter of these furnaces of the “Sarniadoc” was?

A.—I would not be sure.....

Q.—Roughly? The certificate will show, will it not?

What was the relative drop of the furnaces of the “Sarniadoc”. Can you tell from exhibit D-12? You can tell very closely, can you not?

A.—I think they are about 38 inches. I am not quite sure.

Q.—What proportion of the furnace would the drop be?
1.39?

A.—Less than that.

20 Q.—Why would it be half of that?

A.—Well, because the side of the furnace where you have a collapse of your furnace, when you talk about the furnace crown, if the crown is coming down, the side of the furnace is going outwards.

Q.—A one inch drop as compared with the nine inch drop spoken of by Mr. Stanley, do you regard that as serious or affecting the motive power of the ship?

30 A.—There is absolutely no comparison with a furnace that is down or out of shape one inch or with one furnace that is down nine inches. The one nine inches is dangerous and should be taken out.

Q.—Did you hear Mr. Stanley on the effect that this would have on the steam delivered to the engine? Do you agree with him on that?

A.—No, I do not.

Q.—Just explain why?

40 A.—First of all, the heating surfaces, which is the furnace, has not altered at all, so that the heat passes through your damaged — we call it a damaged or collapsed furnace — passes through just the same whether it was distorted or whether it was in a perfect circle; it makes no difference at all, so that you can generate your steam. In the case of the one down nine inches you are obstructing the draught of your furnace, if you have your furnaces down nine inches. In this case the draught is not obstructed and the steam is maintained.

*In the
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*No. 23.
Defendant's
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of Edward
Drake.
Examina-
tion—con-
tinued.*



ED. DRAKE (for Defendant in Sur-Rebuttal) Cross-exam.

Cross-examined by Mr. McKenzie, of Counsel for Plaintiff:—

10 Q.—Whether it is down a half an inch or an inch and a half, or nine inches, you condemn it, do you not?

A.—No, I do not.

Q.—Well, now, did you not recommend four new furnaces for the “Sarniadoc”?

A.—I certainly did.

Q.—And one of the reasons that you give in your report is, that these furnaces had been down twice and they were down half an inch to an inch and a half?

20 A.—The reason those furnaces were recommended to be renewed was, owing to the fact that we have to put that vessel back in the same, or as good a condition, as she was before the boilers received the damage. This boiler was a new boiler furnace. We had to put it back in a new condition.

Q.—Whether it was good or bad, that is, some time subsequently you were going to do that, but in this instance, this half inch to an inch and a half was sufficient reason to ask for a new boiler?

30 A.—The first survey after the furnaces were found to be down, the furnaces were jacked back to within a quarter of an inch of their survey, the first survey, and I agreed with the owners, or the owners representative of the vessel that if those furnaces not being jacked maintained their shape, and gave no further trouble, he was going to accept those repairs, and the cost of the repairs as being a permanent repair to his vessel. If he did not take that as a permanent repair to his vessel, he would have taken it as a temporary repair and he would have had to pay for them himself. Providing the furnace is kept in the position they were jacked up, provided they were kept in that position there was going to be no further claim on the Underwriters. I was representing the Underwriters, but unfortunately the furnaces came down again. The owner of this vessel has a new vessel
40 delivered, and he has a boiler or two boilers that are giving him trouble; he does not want to carry on with the ship, or carry on with these boilers giving trouble; that means he would have to jack his furnaces back from time to time, if necessary, and he has leaky boilers which he would have to have under constant repair. For that reason, being a new ship, a new boiler, it was then necessary to put this boiler back into as good a condition as she was before she received the damage.

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Cross-exa-
mination.*



ED. DRAKE (for Defendant in Sur-Rebuttal) Re-examination.

*In the
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Q.—That was a matter between you and the Underwriters, was it not. That has nothing to do with the actual condition of these boilers whatever your arrangement happened to be with the Underwriters?

10 A.—Yes.

Q.—And on your recommendation four new furnaces were ordered?

A.—Were ordered, yes.

Q.—And actually delivered in Montreal?

A.—Yes.

Q.—And if the ship had only got down here for the winter season and had foregone all their profits of their carriage for the fall, she would have been safe and sound, is that not so?

20 A.—She would have been safe.

Re-examined by Mr. McDougall, K.C., of Counsel for Defendant:—

Q.—Why do you say she would have been safe and sound? Was she not safe and sound. That had nothing to do with her being safe and sound? Her coming down to Montreal had nothing to do with her being safe and sound?

A.—I did not understand that question.

30 And further Deponent saith not.

E. W. Bush,
Official Court Reporter.



No. 23.
Defendant's
Evidence
in Sur-
Rebuttal.
Deposition
of Edward
Drake.
Re-exami-
nation.

Canada
Province of Quebec
District of Montreal
No. B-79114.

10

JUDGMENT OF THE SUPERIOR COURT.

MONTREAL, the 31st day of May, 1932.

Present : Hon. Mr. Justice Philippe Demers.

20

THE COURT, having heard the parties by their Counsel upon the merits of the present case, examined the proceedings, the evidence and proof of record, and upon the whole deliberated;

WHEREAS Plaintiff declares as follows : See plaintiff's Declaration, page 3.

WHEREAS Defendant, after denying most of the allegations of Plaintiff's declaration, pleads specially that : See Defendant's second Plea as amended, page 5.

30 ADJUDICATING UPON THE MERITS OF THE PRESENT CASE :

CONSIDERING that Plaintiff has proved the principal allegation of its demand except that he has not proved that he paid the freight, to wit, \$6,117.59, which sum should be deducted;

40 CONSIDERING that Defendant has failed to prove that it had made due diligence to make the ship in all respects seaworthy; that the grain cargo had not been properly secured from shifting by boards or otherwise; that the Master could not properly navigate his ship by fear of the shifting of the cargo; and that it is the principal reason of the stranding of the ship;

For these reasons, DOTH DISMISS the Plea, and DOTH CONDEMN the Defendant to pay Plaintiff the sum of \$76,911.44, with interest since the 14th of January, 1931, and costs.

Philippe Demers,
J. S. C.

*In the
Superior
Court,
District of
Montreal.*

No. 24.
Judgment
of the Hon.
Mr. Justice
Philippe
Demers,
31st May,
1932.

NOTES OF JUDGMENT OF HON. MR. JUSTICE
PHILIPPE DEMERS.

*In the
Superior
Court,
District of
Montreal.*

—
No. 25.
Notes on
Judgment
of the Hon.
Mr. Justice
Philippe
Demers,
31st May,
1932.

10 This action is brought to recover damages for the loss of the Plaintiff's cargo of wheat and barley shipped October, 1929, at Fort William, Ontario, on Defendant's steamer MANTADOC, and transhipped at Port Colborne, Ontario, on November 28th, 1929, on Defendant's steamer SARNIADOC. The cargo was accepted by Defendant for carriage to Montreal, in accordance with the terms and conditions of bills of lading signed by Defendant's agent, copies of which were filed as Plaintiff's Exhibits P-1, P-2 and P-3.

20 The SARNIADOC departed from Port Colborne at about 3 P.M. on November 28th, 1929. The vessel entered Lake Ontario at Port Dalhousie at about 2.15 P.M. November 29th. The following day, November 30th, 1929, at about 7.30 A.M., the SARNIADOC stranded, stern first, on Main Duck Island, and with her cargo became practically a total loss.

The Defendant pleads that it exercised due diligence to make its ship, the "Sarniadoc", in all respects seaworthy, properly manned, equipped and supplied.

30 That the loss resulted from faults or errors in navigation or in the management of the said ship.

That, therefore, it could not be held liable in view of Section 6 of the Water Carriage of Goods Act, which reads as follows:

40 "6. If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damages resulting from faults or errors in navigation or in the management of the ship, or from latent defect."

Subsidiarily, the Defendant pleads that if the loss or damage was not due to faults or errors in navigation or in the



management of the vessel, it must necessarily be attributed to dangers of the sea or other navigable waters, in which case also it could not be held liable in view of Section 7 of the said Act, which reads as follows:

10 “ 7. The ship, the owner, charterer, agent or mas-
 “ ter shall not be held liable for loss arising from fire,
 “ dangers of the sea or other navigable waters, acts of
 “ God or public enemies, or inherent defect, quality or
 “ vice of the thing carried, or from insufficiency of pack-
 “ age, or seizure under legal process, or for loss resulting
 “ from any act or omission of the shipper or owner of the
 “ goods, his agent or representative, or from saving or
 “ attempting to save life or property at sea or from any
 “ deviation in rendering such service, or other reasonable
 20 “ deviation, or from strikes, or for loss arising without
 “ their actual fault or privity or without the fault or ne-
 “ glect of their agents, servants or employees.”

*In the
 Superior
 Court,
 District of
 Montreal.*

No. 25.
 Notes on
 Judgment
 of the Hon.
 Mr. Justice
 Philippe
 Demers,
 31st May,
 1932—
continued.

ON THE QUESTION OF SEAWORTHINESS

30 I have arrived at the conclusion that as regards the boilers
 of the said steamship, the Company Defendant had made all due
 diligence. They had the boat examined by competent persons
 and repaired by diligent persons. It is also proved that the
 boilers were sufficient for the voyage.

I have arrived at the conclusion that the ship on this point
 was seaworthy. The recommendation to replace the boiler is
 explained. It was not made because the ship was not considered
 safe, but to protect the Defendants who had just bought this
 ship.

40 However, seaworthiness does not apply to the ship only.
 The cargo must be stowed so as not to be a source of danger.
 CARVER, 7th Edition, pages 24 and 28. Seaworthiness means
 that the ship is fit for the voyage.

Under the title “UNSEAWORTHY SHIPS”, the Mer-
 chants Shipping Act says (Article 457) that it is a misdemeanour
 to send a British ship to sea in such an unseaworthy state that
 the life of any person is to be likely in danger; and Article 459,



that a ship is "unsafe" not only by reason of the defective condition of the hull, equipments or machinery, or by reason of undermanning, but by reason of overloading or improper loading; and, therefore, Section 452 says, where a grain cargo is laden on board any British ship, all necessary and reasonable precautions (whether mentioned in this part of this Act or not) shall be taken
 10 in order to prevent the grain cargo from shifting.

These "necessary and reasonable precautions" were not taken in this case.

It is admitted by the Master that he could not navigate his ship with liberty, for fear that his cargo would shift, and no doubt it is the reason why he would not swear that his vessel was seaworthy.

20 It is proved that since many years, there are no shifting boards on the vessels carrying cargoes on the lakes, but no usage should prevail against the law. Moreover, no general negligence of a duty is a good answer.

The Wreck Commissioner in his report admits that this practice on the lakes is bad, and he recommends a law on the subject. This law existed in this case.

30 It has been contended that since the Governor-in-Council has adopted a regulation as to grain cargoes loaded at ports in Canada on ships bound to ports outside of Canada, not within the limits of inland navigation, according to Article 696, paragraph 2, Revised Statutes of Canada, ch. 186, which rules have been approved of by the Board of Trade, that it follows that no measure of precaution as to the shifting of the grain cargo is required in inland navigation.

I fail to see the force of this argument.

40 By 696, ships registered in Canada and trading on the lakes are obliged to secure their grain cargo with shifting boards or otherwise. Ships loaded at ports in Canada and bound outside of Canada are obliged to adopt special precautions determined by these rules.

It follows that for inland navigation, there is no special rule; so long as the Master prevents the shifting in any manner whatever, he is following the law.

*In the
Superior
Court,
District of
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—
No. 25.
Notes on
Judgment
of the Hon.
Mr. Justice
Philippe
Demers,
31st May,
1932—
continued.



It is what you see in the Memorandum relating to grain cargo issued by the Board of Trade. On p. 9, we read:

10 “ Owners and masters of such vessels are, however, “ hereby warned not to assume that the absence of such “ regulations affords any warranty for neglecting to take “ all necessary and reasonable precautions” and so on.

In the Superior Court, District of Montreal.

—
No. 25.
Notes on Judgment of the Hon. Mr. Justice Philippe Demers, 31st May, 1932—
continued.

AS TO THE LAST QUESTION “PERILS OF THE SEA”

20 I do not consider that that plea is justified. Danger of the sea covers only dangers beyond human foresight and resistance.

“Rough seas”, says Carver, Carriage of Goods, 7th Edition, Section 87, “which are characteristically sea perils are “ common incidents of a voyage, but damage arising from them, “ whether by their beating into the ship or driving her on the “ rocks, is within the exception — if there has been no want of “ reasonable care and skill in fitting out the ship and in managing her”.

30 The defence, paragraph 20, is to the effect that the loss and damage to this cargo are attributed to error in navigation or in the management of the said vessel “Sarniadoc”. Moreover, it is not proved that this was an extraordinary storm at this season of the year.

40 I have, therefore, reached the conclusion that the ship — no precaution having been taken to prevent the shifting of the cargo — was not safe for the voyage and, therefore, was unseaworthy; that she was driven on the rocks on account of bad navigation; and that she was not properly navigated because of improper loading.

For these reasons, the action is MAINTAINED, with costs.

MONTREAL, the 31st day of May, 1932.

Philippe Demers,
J. S.C.

SECURITY BOND
SECURITY IN APPEAL

10

BOND No. 50535

*In the
Superior
Court,
District of
Montreal.*

SUPERIOR COURT

CANADA
Province of Quebec,
District of Montreal,
S.C. No. B-79114.

No. 26.
Security
Bond.

20 WHEREAS, on the Thirty-First day of May, One Thou-
sand, Nine Hundred and Thirty-Two, judgment was rendered by
the Superior Court for the Province of Quebec, sitting at Mont-
real in the District of Montreal in a certain cause BETWEEN
PATERSON STEAMSHIPS, LIMITED, a body politic and
corporate having an office and place of business in the
City and District of Montreal, Defendant in the
Superior Court,

Appellant,

— vs —

30

CANADIAN CO-OPERATIVE WHEAT PRODUCERS, LI-
MITED, a body politic and corporate having an office and
place of business in the City and District of
Montreal, Plaintiff in the Superior Court,

Respondent.

40 WHEREAS, the said Judgment has been appealed from
to the Court of King's Bench, sitting in Appeal, by the said De-
fendant, thus rendering necessary the security required by
Article 1214 of the Code of Civil Procedure:

THEREFORE, THESE PRESENTS TESTIFY that,
on the Twenty-second day of June, One Thousand, Nine Hundred
and Thirty-Two, came and appeared before me, Deputy Protho-
notary of the Superior Court in and for the District of Montreal,
TORONTO GENERAL INSURANCE COMPANY, having its



Head Office in the City of Toronto in the Province of Ontario, and having its Chief Office for the Province of Quebec in the City of Montreal in the said Province of Quebec, and duly authorized to become surety before the Courts of this Province, under the Provisions of Articles 7446 and 7452, R.S.Q., 1909, and herein represented and acting by C. D. MATHESON, Attorney
 10 of the said Company, duly authorized by Power-of-Attorney, executed by the Proper Officers of the said Toronto General Insurance Company, duly certified copy of said Power-of-Attorney being hereunto annexed, and which said Company has acknowledged and hereby acknowledges itself to be the legal surety of the said appellant, in regard to the said appeal, and hereby promises and binds and obliges itself that, in case the said appellant does not effectually prosecute the said Appeal, and does not pay all the costs adjudged, in case the judgment appealed from is confirmed, then the said Surety will satisfy the condemnation
 20 and pay all costs and damages which may be hereafter adjudged in case the judgment appealed from is confirmed to the use and profit of the said Plaintiff, their heirs, administrators, executors and assigns.

*In the
 Superior
 Court,
 District of
 Montreal.*

—
 No. 26.
 Security
 Bond—
continued.

AND the said TORONTO GENERAL INSURANCE COMPANY has signed these presents by its said Attorney.

30 Taken and acknowledged before
 me at Montreal this Twenty-second
 day of June A.D. 1932.

C. E. Sauvé,
 D. P. C. S.

TORONTO GENERAL INSURANCE COMPANY

By C. D. Matheson,
 ATTORNEY.





DUPLICATE

TORONTO GENERAL INSURANCE COMPANY
Toronto — Canada

POWER OF ATTORNEY

10

KNOW ALL MEN BY THESE PRESENTS that TORONTO GENERAL INSURANCE COMPANY, of Toronto, Ontario, has made, constituted and appointed, and by these presents does hereby make, constitute and appoint

C. D. MATHESON, of Montreal, Quebec,

20

its true, sufficient and lawful attorney, with full power and authority to make, execute, attach its corporate seal thereto and deliver for it, in its name and on its behalf, as surety, at Montreal, Quebec aforesaid,

ANY AND ALL BONDS, GUARANTEES,
UNDERTAKINGS OR OBLIGATIONS
OF SURETYSHIP,

30

hereby giving its said attorney full power and authority to do everything whatsoever requisite and necessary to be done for the purpose of making, executing and delivering such obligations as fully as the officers of the said TORONTO GENERAL INSURANCE COMPANY could do, if personally present, and hereby ratifying and confirming all that its said attorney shall lawfully do, or cause to be done by virtue hereof, but reserving to itself full power of substitution and revocation.

40

IN WITNESS WHEREOF the said TORONTO GENERAL INSURANCE COMPANY has caused its corporate seal to be hereunto affixed and these presents to be duly executed by its proper officers at the City of Toronto, Ontario, on this Sixteenth day of June, 1930.

TORONTO GENERAL INSURANCE COMPANY

By M. Fern,
Vice-President & Managing Director.

Paul N. Horst,
General Manager.

TORONTO GENERAL INSURANCE COMPANY. —
Insure with Confidence.

*In the
Superior
Court,
District of
Montreal.*

No. 26.
Security
Bond—
continued.

CONSENT OF PARTIES AS TO CONTENTS OF
PRINTED CASE.

- 10 1.—Declaration.
 2.—Plaintiff's List of Exhibits with return.
 3.—Exhibit P-1.
 4.—Exhibit P-2.
 5.—Exhibit P-3.
 6.—Defendant's Second Plea as amended.
 7.—Plaintiff's Answer to Plea.
 20 8.—Plaintiff's List of Exhibits at Enquete.
 9.—Exhibit P-4.
 10.—Exhibit P-5 — extract only.
 11.—Exhibit P-6.
 12.—Defendant's List of Exhibits at Enquete.
 13.—Exhibit D-1.
 14.—Exhibit D-2.
 30 15.—Exhibit D-3.
 16.—Exhibit D-4.
 17.—Exhibit D-5.
 18.—Exhibit D-6.
 19.—Exhibit D-7.
 20.—Exhibit D-8.
 21.—Exhibit D-9.
 40 22.—Exhibit D-10.
 23.—Exhibit D-11. Two inside pages only exclusive of figure
 and particulars of scantlings.
 24.—Exhibit D-12.
 25.—Exhibit D-13.
 26.—Exhibit D-14.

*In the
Superior
Court,
District of
Montreal.*

No. 27.
Consent of
Parties as to
contents of
printed case.



- 27.—Exhibit D-16.
 28.—Exhibit D-17.
 29.—Exhibit D-18.
 30.—Exhibit D-19.
 10 31.—Exhibit D-20.
 32.—Motion to Discharge Delibere and File Documents.
 33.—Defendant's Exhibit D-21.
 34.—Extract from Defendant's Exhibit D-22. Preamble only.
 35.—Extract from Plaintiff's Exhibit P-7.
 36.—All depositions.
 37.—Judgment of Superior Court.
 20 38.—Notes of Mr. Justice Philippe Demers.
 39.—Inscription in Appeal.
 40.—Security Bond.
 41.—This agreement.

MONTREAL, July 25, 1932.

30 Casgrain, McDougall, Demers & Lynch-Staunton,
 Attorneys for Appellant,

Brown, Montgomery & Mc Michael,
 Attorneys for Respondent.

*In the
 Superior
 Court,
 District of
 Montreal.*

No. 27.
 Consent of
 Parties as to
 contents of
 printed case
 —continued.



CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Court of King's Bench
(IN APPEAL)

*In the
Court of
King's
Bench
(In Appeal).*

10 In appeal from the judgment of the Superior Court, sitting in and for the District of Montreal, rendered by the Honourable Mr. Justice Philippe Demers the 31st day of May, 1932.

No. 28.
Inscription
in Appeal,
18th June,
1932.

Paterson Steamships, Limited,

20 a body politic and corporate, having an office and place of business in the City and District of Montreal,

(Defendant in the Superior Court),

APPELLANT

— vs —

**Canadian Co-Operative Wheat Producers
Limited,**

30 a body politic and corporate, having an office and place of business in the City and District of Montreal,

(Plaintiff in the Superior Court),

RESPONDENT

THE CASE

40

INSCRIPTION IN APPEAL

The Appellant hereby inscribes the present case in appeal to the Court of King's Bench sitting in appeal at Montreal from the Judgment of the Superior Court of the District of Montreal, Philippe Demers, J., rendered on the 31st day of May, 1932,



maintaining the Plaintiff's action for the sum of Seventy-six thousand nine hundred and eleven Dollars and forty-four cents (\$76,911.44) with interest from the 14th day of January, 1931 and costs and hereby gives notice to the Respondent and to Messrs. Brown, Montgomery & McMichael, its attorneys, that the present Inscription has been filed in the office of the said Superior Court and that on Wednesday, the 22nd day of June, 1932 at eleven o'clock in the forenoon, before the Prothonotary of the Superior Court for the District of Montreal at his office in the Court House, the Appellant will give good and sufficient security that it will effectually prosecute the said appeal and will pay any condemnation and all costs and damages that may be adjudged against it in case the Judgment appealed from is confirmed and that the said security will consist in a bond of the Toronto General Insurance Company, a body politic and corporate having its head office and principal place of business in the City of Toronto in the Province of Ontario and its principal place of business for the Province of Quebec in the City and District of Montreal, it being duly authorized to give judicial bonds before the Courts of the Province of Quebec and that the said Toronto General Insurance Company will then and there justify its solvency if so required.

Montreal, June 18, 1932.

30 Casgrain, McDougall, Demers & Lynch-Staunton,
Attorneys for Appellant.

*In the
Court of
King's
Bench
(In Appeal).*

—
No. 28.
Inscription
in Appeal,
18th June,
1932—con-
tinued.



No. 29.

JUDGMENT OF THE COURT OF KING'S BENCH
(IN APPEAL), DATED 29 MARCH, 1933.

*In the
Court of
King's
Bench
(In Appeal).*

CANADA,
Province de Québec.

COUR DU BANC DU ROI (EN APPEL).

Montréal, le vingt-neuvième jour de mars, mil neuf cent
trente-trois.

No. 29.
Judgment of
the Court
of King's
Bench (In
Appeal),
29th March
1933.

Présents :

10

Les Hon. Juges : TELLIER,
DORION,
RIVARD,
LETOURNEAU,
BOND.

No. 388.

PATERSON STEAMSHIPS, LTD. - - - - *Appellant*

&

CANADIAN CO-OPERATIVE WHEAT PRO-
DUCERS, LTD. - - - - *Intimée.*

20

LA COUR, après avoir entendu les parties par leurs avocats,
sur le mérite du présent appel, examiné le dossier de la procédure
en Cour de première instance, et sur le tout, délibéré :

CONSIDÉRANT qu'il n'y a pas mal jugé dans le jugement
rendu par la cour supérieure, siégeant à Montreal dans le district
de Montreal le trente-et-unième jour de mai mil neuf cent trente-deux
et dont est appel, renvoie le dit appel, CONFIRME le dit jugement,
avec dépens contre l'appelante en faveur de l'intimée.

(signé) Adjutor Rivard,
J.C.B.R.

30

DISSIDENT :
JUGE BOND.

True Copy.

— Marchand,
Deputy Clerk of Appeals.

No. 30.

REASONS FOR JUDGMENT OF THE HON. CHIEF
JUSTICE TELLIER.

*In the
Court of
King's
Bench
(In Appeal).*

CORAM : Tellier, J.C., Dorion, Rivard, Létourneau, et Bond, JJ.

APPEL, par la défenderesse, d'un jugement de la Cour Supérieure (Montreal, 31 mai 1932, Philippe Demers, J.), la condamnant à payer à la demanderesse \$76,911.44 de dommages, avec intérêt et dépens, pour dommages résultant de la perte d'une cargaison de grain qu'elle avait entrepris de transporter par eau de Port William à Montréal.

No. 30.
Reasons for
Judgment,
29th March
1933.
(a) The Hon.
Chief Justice
Tellier.

TELLIER, J.C. :

Je partage l'opinion de mes collègues, MM. les juges Rivard et Létourneau. Je confirmerais le jugement de la Cour Supérieure, avec dépens.

J. M. Tellier,
J.C.B.R.

REASONS FOR JUDGMENT OF THE
HON. MR. JUSTICE RIVARD.

(b) The Hon.
Mr. Justice
Rivard.

CORAM : Tellier, J.C., Dorion, Rivard, Létourneau, et Bond, JJ.

Sur appel, interjeté par la défenderesse, d'un jugement de la Cour Supérieure (Montréal, 31 mai 1932, Ph. Demers, J.), la condamnant à \$76,911.44, avec intérêt du 14 janvier 1931, et aux frais, perte sur la valeur d'une cargaison de blé et d'orge, endommagée par suite de l'échouement du navire "Sarniadoc," qui la transportait sur le lac Ontario, en vertu de connaissements.

DELIBERE.

RIVARD, J.

La marchandise chargée à bord d'un vaisseau " doit être délivrée conformément aux termes du connaissement et suivant la loi et l'usage en force au lieu de la délivrance " (C. civ. 2429). Le propriétaire du bâtiment est donc, dans le principe, responsable des dommages soufferts par la cargaison durant le voyage. Cependant, sa responsabilité est diminuée ou il y échappe totalement dans certains cas prévus.

Ainsi, le propriétaire n'est pas responsable des pertes qui, sans faute actuelle de sa part, surviennent par fortune de mer. (Loi du transport des marchandises par eau, S.R.C. 1927, chap. 207, art. 8.)

De même, bien que responsable en général des pertes dues à quelque faute commise par le maître dans la navigation ou dans

la conduite du bâtiment, il est indemne, s'il a pris, avant d'entreprendre le voyage, les soins requis pour que le vaisseau soit propre à la mer, et dans un état convenable quant aux réparations, à l'avitaillement et à l'équipage. (Loi du transport des marchandises par eau, S.R.C. 1927, chap. 207, art. 6.)

*In the
Court of
King's
Bench
(In Appeal).*

10 Poursuivie en recouvrement d'une perte sur la valeur d'une cargaison de grains, blé et orge, endommagée par suite de l'échouement du "Sarniadoc" sur le lac Ontario, la compagnie appelante, propriétaire du navire, invoque ces deux dispositions : l'échouement du "Sarniadoc" ne peut être attribué qu'à une erreur de navigation ou aux périls de la mer; s'il est dû à une faute du maître dans la conduite de son vaisseau, le propriétaire n'est pas responsable, parce que le "Sarniadoc" était en état de tenir la mer; et, d'autre part, si c'est une fortune de mer, le propriétaire échappe pareillement à toute responsabilité.

No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*
(b) The Hon.
Mr. Justice
Rivard—
continued.

Le "Sarniadoc" était-il propre à la mer?

Quant au bâtiment même, spécialement quant à ses machines, le premier juge a trouvé que les propriétaires n'étaient pas en défaut; je ne crois pas qu'il y ait lieu de revenir sur cette décision.

20 Mais l'arrimage convenable de la cargaison est compris dans les conditions exigées pour qu'un bâtiment soit considéré comme propre à la mer. Le propriétaire est donc tenu de prendre des soins, non seulement pour que le navire même soit en état, mais aussi pour que l'arrimage des marchandises ne puisse pas affecter la sécurité du transport dans les conditions où il doit se faire.

30 "Seaworthy means that the ship should be in a condition to encounter whatever perils a ship of that kind and laden in that way might be fairly expected to encounter in making a voyage at such a time of year." (Scrutton, *Treaties on Charter parties*, 12^e éd., p. 101.)

C'était donc un chargement de grains, que le "Sarniadoc" avait pris à Port Colborne, en destination de Montréal, via le canal Welland, le lac Ontario, etc.; le bâtiment n'avait cependant pas toute sa charge, à cause du tirant d'eau réduit que requiert le passage dans les canaux du St.-Laurent. Le voyage se faisait tard en automne, à la fin du mois d'octobre, et en partie sur le lac Ontario, où les tempêtes comme celle que le "Sarniadoc" devait rencontrer ne sont pas inattendues, surtout à cette époque tardive.

40 Dans ces conditions, comment le chargement de blé et d'orge devait-elle être arrimée, pour que le vaisseau chargé fût propre à la mer? et quels soins avait-on pris de s'assurer contre un désarrimage dangereux?

Car il ne semble pas douteux que l'échouement du "Sarniadoc" ait été le résultat d'une manœuvre erronée en soi, mais que le maître dut adopter, parce que la marche normale du vaisseau l'aurait mis au creux de la lame, avec danger de désarrimage des grains. Le naufrage et une perte totale auraient pu résulter d'un désarrimage

dans ces conditions, la manœuvre adoptée pour éviter ce désastre a causé l'échouement et une perte partielle. Erreur de navigation, mais justifiée, chez le maître, par la crainte d'un désarrimage possible et qui en effet devait être prévu.

*In the
Court of
King's
Bench
(In Appeal).*

Il est évident qu'une cargaison de grains, en vrac dans la cale d'un vaisseau, surtout quand la charge n'est pas complète et partant peut glisser de bâbord à tribord, présente des dangers exceptionnels de désarrimage, et qu'il convient donc d'y apporter des précautions singulières. Tous les textes de lois ou de règlements
10 sur cette matière, applicables à l'espèce ou non, en témoignent.

No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*

"Where a grain cargo is laden on board any British ship, all necessary and reasonable precautions (whether mentioned in this part of this Act or not) shall be taken in order to prevent the grain cargo from shifting." (Merchant Shipping Act, 1894, art. 452, par. 1; et voir le Memorandum relating to grain cargoes, publié par le Board of Trade en 1928.)

(b) The Hon.
Mr. Justice
Rivard—
continued.

"No grain cargo shall be carried on board any ship registered in Canada, unless said grain cargo is contained in bags, sacks or barrels, or properly secured from shifting by boards or otherwise."
20 (Loi de la marine marchande du Canada, S.R.C. 1927, chap. 186, art. 696; et voir l'Ordre en conseil du 19 juillet 1929, approuvé le 20 septembre 1929 par le Board of Trade.)

Il est vrai que, le "Sarniadoc" étant enregistré en Angleterre, ses propriétaires prétendent n'être pas assujettis aux prescriptions de l'article 696 de notre Loi de la marine marchande, non plus qu'aux règles édictées par le Gouverneur en conseil en vertu de ce même article (par. 2); et il est également juste de noter que ces réglementations particulières, telles qu'approuvées par le Board of Trade (voir l'ordre en conseil et le Memorandum cités ci-dessus) n'ont
30 d'application qu'aux vaisseau "qui vont à des ports en dehors du Canada." De là, il ressort qu'un bâtiment anglais, comme le "Sarniadoc," naviguant dans les eaux intérieures canadiennes, n'est assujetti, quant à l'arrimage des grains, à aucune règle spécifique touchant les moyens à prendre pour prévenir le désarrimage de la cargaison; mais il n'est pas moins tenu de se conformer à la règle générale; toutes les précautions nécessaires et raisonnables doivent être prises.

Quelles sont ces précautions? L'indication, dans les textes de lois et dans les règlements, de diverses mesures jugées efficaces,
40 peut au moins servir de guide, sinon de prescription précise.

Le mode le plus ancien, qui paraît encore le plus sûr et le plus recommandé, c'est l'établissement de bardis, qui permettent de charger les blés en grenier, sans danger de déplacement; si l'effet du roulis est seul à craindre, il suffit même de deux compartiments séparés par une cloison longitudinale. Cette coutume, fort ancienne, est encore pratiquée et, comme on l'a vu, prescrite par les autorités compétentes. Cependant, il paraît que sur nos grands lacs, où

elle serait pourtant tout aussi utile que sur la haute mer, on l'a abandonnée. On se contente, comme on a fait sur le "Sarniadoc," de niveler la masse des grains; avec un plein chargement, cela suffit peut-être; mais, lorsque l'intérieur du vaisseau n'est pas rempli, l'espace libre favorise le désarrimage, et l'emménagement reste défectueux. Si les propriétaires du "Sarniadoc" ne croyaient pas devoir établir dans leur navire des bardis et greniers, ils devaient employer quelque autre moyen également efficace.

10 Je crois, comme le premier juge, qu'il y avait eu défaut de précautions dans l'arrimage; en conséquence, les propriétaires du bâtiment sont responsables de l'erreur occasionnée par ce défaut.

Cette erreur dans la manœuvre étant la vraie cause de l'accident, le moyen de défense tiré des périls de la mer est écarté.

Je rejeterais l'appel.

Adjutor Rivard,
Juge de la C.B.R.

(L.S.)

*In the
Court of
King's
Bench
(In Appeal).*

No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*

(b) The Hon.
Mr. Justice
Rivard—
continued.

REASONS FOR JUDGMENT OF THE HON. MR. JUSTICE
LETOURNEAU.

(c) The Hon.
Mr. Justice
Létourneau.

20 CORAM :—Tellier, J.C., Dorion, Rivard, Létourneau, Bond, JJ.

NOTES DU JUGE LETOURNEAU.

Vu les dérogations au droit commun que comportent en faveur du propriétaire d'un navire les articles 6 et 7 de S.R.C. 1927, Chap. 207, tout doit se ramener à la question de savoir si le navire était propre à la mer; ou, plus précisément, si dans les circonstances de la cause, on aurait dû faire usage de cloisons (shifting boards).

30 Indépendamment des textes positifs, il reste acquis que : "all necessary and reasonable precautions . . . shall be taken in order to prevent the grain cargo from shifting" (Merchant Shipping Act, 1894, section 452); que "no grain cargo shall be carried on board any ship registered in Canada, unless said grain cargo is contained in bags, sacks or barrels or properly secure from shifting by boards or otherwise" (Loi de la Marine Marchande du Canada, S.R.C. 1927, chap. 186, art. 696); enfin : "que le bâtiment sera propre à la mer à l'époque du départ" et "il est propre à la mer s'il est dans un état convenable quant aux réparations, avitaillement, équipage et sous tous autres rapports pour entreprendre le voyage (art. 2505 C.C.).

40 Ceci revient à dire qu'une *négligence* ou *imprudence*, dans l'arrimage, à la seule condition d'avoir eu avec l'échouement une relation de cause à effet, peut être tenue pour décisive. Pas plus que dans un cas d'application ordinaire de l'article 1053 C.C., un usage établi ne saurait servir d'excuse, à mon humble avis.

Dans l'espèce, il est établi qu'à venir il y a une vingtaine d'années, l'on recourait au système des cloisons intérieures, dans les chargements de grain sur les bâtiments de nos grands lacs, mais que depuis lors ce système a été abandonné.

Il serait donc difficile d'invoquer ce changement en faveur de la théorie de la défenderesse-appelante, puisque nul ne pourrait assurer qu'il n'y avait pas plus de prudence avec l'ancien système qu'avec le nouveau et que l'on n'aurait pas plutôt cédé, en faisant ce changement, à un désir d'économiser sur le coût et sur le temps.

10 Le dossier fait bien voir que le cas échéant, ces cloisons constituent la meilleure protection et ainsi offrent un maximum de sûreté.

Reste à savoir si dans l'espèce, cette précaution eut permis de sauver le navire et sa cargaison. . . .

Il y a là une question de fait et d'appréciation qui est, en somme, le nœud de la cause. J'ajoute que c'est dans le témoignage de Robert B. Angus, celui qui en l'occurrence avait la direction et commandait la manœuvre, qu'il faut rechercher la réponse à cette question.

20 Il est vrai qu'il n'y a pas eu déplacement du chargement (*shifting*); mais il l'est également que c'est par crainte que ce déplacement ne se produisit que le capitaine n'a pas entrepris la manœuvre qu'il aurait voulu. Or, il faut à mon humble sens présumer que cette manœuvre qu'aurait voulue le capitaine, qu'il aurait entreprise sans la crainte d'un *shifting* était la bonne : celle qui aurait permis de se tirer du mauvais pas où l'on était.

30 Il faut déduire de l'ensemble du témoignage du capitaine Angus que forcé de s'éloigner des récifs qu'il venait d'apercevoir, et incapable pour cela de remonter contre le vent et la vague, ainsi qu'il l'a tenté, il eut pu réussir en prenant en diagonale la vague ou tout au moins le creux de la lame (*the trough of the sea*). C'est ce qu'il aurait fait s'il n'eut craint le *shifting*; et, encore une fois, le témoignage qu'il rend sur ce point implique que cette manœuvre eut été la bonne. L'absence des cloisons a empêché qu'il y eut recours.

L'on objecte que sans égard à cette complication pouvant provenir d'un déplacement de la cargaison, déjà le navire m'avait d'autre issue que d'atteindre l'abri de Main Ducks, qu'il était virtuellement en perdition, faute d'une visibilité suffisante, et l'on donne à l'appui cette réponse du capitaine (*Record*, p. 22) :—

40 “ Q.—Why did you want to anchor there ?

A.—Because the weather was bad. There was a heavy sea running, and you could not go to Kingston, and going in by Cape Vincent, naturally we could not; you could not see anything, and it was not safe, and I wanted to get out of the weather.”

*In the
Court of
King's
Bench
(In Appeal).*

—
No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*

(c) The Hon.
Mr. Justice
Létourneau
—*continued.*

Il convient de reconnaître que le capitaine s'était en effet arrêté à cette idée; mais il serait plus difficile de conclure que ce fût là la seule issue qu'il avait.

10 Quoiqu'il en soit de cette première idée d'aller se mettre à l'abri de Main Ducks, il faut reconnaître que cette idée a dû faire place à une autre lorsqu'à 7.10 A.M., le capitaine aperçut, en face de lui, les récifs; et c'est bien plutôt à la situation telle qu'elle se présentait alors, à cette minute précise, qu'il faut s'arrêter, puisqu'il se présentait là un danger soudain et imminent, soit que le but ultime fût le port de Kingston ou la rade de Main Ducks.

L'important était pour l'instant d'éviter ce danger, de s'éloigner des récifs; et pour cela, la visibilité n'importait guère . . . ; seule la lame constituait l'obstacle : il fallait ou la surmonter de front—ce qui n'a pas été possible, malgré un effort de vingt minutes environ—, ou compromettre avec elle en la prenant de flanc. . . . C'est ce que n'a pas osé le capitaine, redoutant, faute d'être muni des cloisons, un plus grand danger, celui d'un déplacement de la cargaison (*shifting*).

20 A la page 38 du dossier conjoint (Record, p. 36), voici ce que nous lisons du témoignage du capitaine Angus :—

“ Q.—If you put the ship, the ‘ Sarniadoc,’ in the trough of the sea on the 30th November at the time you suggest, what would have happened, in your opinion ?

A.—She would roll the stuffings out of you. Anything might happen.

A la page 40 (Record, p. 38) :—

“ Q.—But if you did put her in the trough of the sea, you know the ship would not be seaworthy in that situation ? Be frank with me.

30 A.—Well, she might go along and not shift it. I won't say she would. She might and might not. I don't know, but I would not want to try.”

A la page 41 (Record, p. 39) :—

40 “ A.—Well, I am not going to say she was not seaworthy, because I don't know. That is all there was to it. I did not want to roll everything out of her. I thought about shifting cargo. I have seen them shifted before, and I won't say whether I thought or, because I do not. I was afraid of it. I did not want to do it, that is all, and I won't say whether she was not seaworthy or not, because I don't know. She might have been and might not.”

Le capitaine ne veut pas décider du mérite du litige, surtout contre l'Appelante, mais il est clair que c'est à cause d'une défectuosité de l'arrimage—cette absence de cloisons—, qu'il n'a pas osé la manœuvre qui, autrement, s'imposait.

*In the
Court of
King's
Bench
(In Appeal).*

No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*

(c) The Hon.
Mr. Justice
Létourneau
—*continued.*

Pour établir l'impossibilité où il s'est trouvé de surmonter carrément et de front la vague, voici ce qu'il dit (Record, p. 42):—

In the Court of King's Bench (In Appeal).

“ Q.—At 7.10 you went around, and how long were you heading into the wind full speed ahead before you struck stern first ?

A.—I would say around twenty minutes, maybe a little more, maybe a little less.

Q.—For twenty minutes you were going full speed ahead ?

A.—Yes.

Q.—Into the sea, and you were not able to combat the force of wind or the sea ?

A.—She was not heading exactly west for that long. She was heading in a westerly direction. She dropped back off more into the trough of sea, not completely in it, but she was going there all the time. She was not going ahead. She was drifting down.

No. 30.
Reasons for Judgment,
29th March 1933—*continued.*

(c) The Hon. Mr. Justice Létourneau
—*continued.*

10

Et pour montrer jusqu'à quel point il redoutait la creux de la lame (the trough of the sea) (Record, p. 43):—

20

“ Q.—Is it not usual in that situation to sometimes go around Timber Island ?

A.—Sometimes.

Q.—You would get into the trough of the sea if you did that ?

A.—Yes.

Q.—That is the reason you did not do it in that instance ?

A.—Well, possibly, yes.”

30

Enfin, nous retrouvons dans le passage suivant de ce même témoignage, que c'est pour le même motif, soit par crainte du creux de la lame (the trough of the sea), qu'en réalité l'on avait décidé de ne pas continuer vers Kingston et d'ancrer plutôt derrière Main Ducks (Record, p. 46):—

“ Q.—Do you remember having attended the Wreck Commissioners Court in Toronto at the investigation of this casualty ?

A.—I remember it quite well, yes.

Q.—I have a copy of the proceedings, and at page 39 you are reported to have said :—‘ I could not go to Kingston because she would not stand the pull into the trough of the sea. My idea was to go behind the Main Ducks to anchor until weather conditions got better.’ ”

40

By the Court :—

Q.—What do you mean by she would not stand the trough of the sea. Your ship was loaded ?

A.—Yes, sir, she would roll to beat the band and she would probably shift her cargo.

A.—She probably might, yes.

Q.—You said she probably would, or she would probably shift her cargo. Have you any reason to change your testimony in that case before the Wreck Commissioner's Court at that time?

A.—No, I do not think I have.

Mr. Casgrain :—Read the rest of the passage.

10 Witness :—I do not think I would change it, because I have been taught since I was a boy to keep a ship out of the trough of the sea as much as possible.

Dans ces circonstances, je crois bien établi que l'arrimage, ou plus exactement l'absence des cloisons qui devaient assurer la stabilité de la cargaison, a joué un rôle décisif; la relation de cause à effet entre cet inconvénient et l'échouement même, me paraît suffisamment démontrée.

Je confirmerais.

Severin Letourneau,
J.C.B.R.

20

REASONS FOR JUDGMENT OF THE
HON. MR. JUSTICE BOND.

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This is an appeal by the Defendant in the Superior Court from a judgment rendered on the 31st May, 1932 (P. Demers, J.), maintaining the Respondent's action, and condemning the Appellant to pay to it the sum of \$76,911.44, with interest and costs.

30 The Respondent instituted proceedings against the Appellant to recover damages for the loss of a cargo of wheat and barley shipped, during the month of October, 1929, at Fort William, Ontario, on the Appellant's Steamer "Mantadoc," and transhipped at Port Colborne, on the 28th November, 1929, to the Appellant's Steamer "Sarniadoc."

The cargo was accepted by the Appellant for carriage to Montreal in accordance with the terms and conditions of the Bills of Lading, but the cargo was for winter storage in the vessel.

40 The "Sarniadoc" left Port Colborne about 3 o'clock in the afternoon on November 28th, 1929, and entered Lake Ontario at Port Dalhousie about 2.15 p.m. on the 29th November. On the following day, November 30th, a little after 7 o'clock in the morning, the "Sarniadoc" stranded, stern first, on Main Duck Island, and, with her cargo, became practically a total loss. The Respondent claimed from the Appellant the value of such cargo, less salvage.

The Appellant contested the Respondent's action by pleading that it exercised due diligence to make its ship, the "Sarniadoc," seaworthy and properly manned, equipped and supplied; that the loss resulted from faults or errors in navigation or in the management of the ship; and it accordingly invoked the exemption from liability conferred by Section 6 of the WATER CARRIAGE OF GOODS ACT, which reads as follows:—

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10 "If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect."

The Appellant further pleaded, subsidiarily, that if the loss or damage was not due to faults or errors in navigation or in the management of the ship, it was attributable to dangers of the sea or other navigable waters, in which case it invoked the exemption from liability provided for by Section 7 of the said Act, reading as
20 follows:—

30 "The ship, the owner, charterer, agent or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God or public enemies, or inherent defect, quality or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service, or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity or without the fault or neglect of their agents, servants or employees."

As already mentioned, the "Sarniadoc" left Port Dalhousie about 2.15 p.m. on the 29th November. It had been freezing hard, snowing and blowing a gale during the earlier part of the day, according to the evidence of the Master (Record, p. 19), but towards noon the weather moderated, the glass went up, and the sun came out. Storm signals were taken down, and accordingly the ship left port.

40 Instead of proceeding directly down the Lake towards Kingston, the Master ran the ship for thirteen miles on a course north by west towards Toronto on the opposite side of the Lake, his reason being that in case the weather did not moderate enough and things did not look favourable to go down the Lake, he would go over to Toronto and anchor there, and possibly stay for the

winter, inasmuch as the cargo was to remain on board all winter. (Record, p. 20.)

Having reached this point about thirteen miles on his original course, and seeing the weather looked moderate and the glass good, the Master altered his course to an easterly direction to run down the Lake. About nine or ten o'clock in the evening the wind and sea increased, and the temperature dropped to zero.

10 About 3 a.m. the Mate, who had come on watch at midnight, called the Master and told him that he had seen Point Peter; and about 5 o'clock a.m. the ship was about abreast of this point as far as the Master could tell. They were unable to get an accurate bearing as it was then snowing hard (Record, p. 30), and the ship was "rolling to beat the band." When abeam of the light, the Master only got one or two flashes of it, and they were not very good. (Record, p. 30.) He fixed his approximate distance as 3 miles off the Point. From there he set a course which he followed for about an hour, when he altered the course with a view to running down between Main Duck Island and the False Ducks, intending to take shelter behind the Main Duck. It is clear from the
20 evidence of the Master that he was far from being certain as to his position. (Record, p. 34, lines 36 *et seq.*, and pp. 40 and 41.)

About 7.10 a.m., the Master suddenly observed, directly in front of him, the trees of Main Duck Island about three-quarters of a mile off, and thereupon the helm was put hard-a-starboard, and the ship turned round till she was facing in the direction from which she came. Full-speed was ordered ahead on the engines—which had been checked down to half-speed about 6 a.m.—but the ship was unable to make any headway, and blue water came over the bows repeatedly. The ship gradually drifted astern, and
30 stranded on the shoals of Main Duck Island, and after having settled down, the decks split.

The look-out, at the time in question, consisted of the Master, the Mate, and the Second Mate. (Record, p. 41.)

The ship when fully loaded had a draft of about fifteen and a half feet, but on the voyage in question was only laden to Canal depth, fourteen feet. The cargo consisted of bulk grain.

The foregoing is a brief recital of the bald facts of the case, and it now becomes necessary to consider the questions involved relating to the liability, or otherwise, of the carrier for failure to
40 deliver the goods entrusted to his care.

An Inquiry was held before the Dominion Wreck Commissioner, assisted by two Nautical Assessors, on the 9th January, 1930; and on the 3rd February, 1930, the Commissioner delivered his judgment attributing the loss of the steamer "partly to very poor judgment, consequently poor seamanship on the part of the Master." (Record, p. 215.)

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The learned Trial Judge in the present cause, reached the conclusion “that the Master could not properly navigate his ship by fear of the shifting of the cargo; and that it is the principal reason of the stranding of the ship.” (Record, p. 136.)

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As already mentioned, the WATER CARRIAGE OF GOODS ACT relieves the owner from liability for loss resulting from faults or errors in navigation or in the management of the ship, provided the owner has exercised due diligence to make the ship in all respects seaworthy.

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10 The Civil Code of this Province, Article 2505, declares that a ship is seaworthy, “when she is in a fit state, as to repairs, equipment, crew, and in all other respects, to undertake the voyage.”

CARVER—*Carriage by Sea*—7th ed., Section 18, says, in this connection :—

“The ship must be fit in design, structure, condition, and equipment to encounter the ordinary perils of the voyage. She must also have a competent master, and a competent and sufficient crew. . . . Also, the cargo taken must be a safe cargo for such a voyage as may be reasonably expected; and it must be stowed so as not to be a source of danger.

20

* * * * *

“But the duty to supply a seaworthy ship is not equivalent to a duty to provide one that is *perfect*, and such as cannot break down except under extraordinary peril. What is meant is that she must have a degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage, having regard to all the probable circumstances of it.”

SCRUTTON—*Charter Parties*—11th ed., p. 100, note 3, says :—

30 “Seaworthy means that the ship should be in a condition to encounter whatever perils a ship of that kind and laden in that way might be fairly expected to encounter in making such a voyage at such a time of year.”

In the present case, the Appellant contends that it exercised due diligence to make the ship seaworthy, and consequently that the stranding being the result of an error in navigation, the owners are relieved of liability for the ensuing loss.

40 The Respondent, on the other hand, contends that the ship was unseaworthy, and consequently the exemption provided for by the Act is inoperative.

Two main grounds are advanced on behalf of the Respondent in support of its contention that the ship was unseaworthy:—

First: That the boilers of the "Sarniadoc," including her furnaces and furnace tubes, were in a damaged condition, and inadequate for the purposes of the voyage.

Second: Stowage of the cargo was improper, inasmuch as no precautions were taken to prevent the cargo from shifting.

I deal with the question of the boilers first.

10 The ship in question was an absolutely new ship, built in Scotland, and registered at Newcastle, England, in that very year, namely, 1929. She crossed the Atlantic and reached Montreal early in May, after having obtained a certificate of test of boilers, a machinery certificate, and a certificate of class from the British Corporation Register of Shipping and Aircraft. (Record, pp. 181, 182 and 186.)

20 On arrival on this side, it was found that a certain amount of damage had been sustained in the crossing, and she was surveyed with a view to ascertaining the extent of the damage, and the responsibility therefor, by Mr. EDWARD DRAKE, Surveyor for the Salvage Association of London, England. He examined the machinery on board on the 8th May, 1929, at Montreal, on behalf of the Underwriters, and he recommended certain repairs necessary to remedy the defects which he found. These repairs, he further testifies, were all carried out to his satisfaction, and as far as the boilers and engines were concerned, he considered the vessel seaworthy to continue in commission. (Record, p. 93.)

30 The principal defects that he referred to related to scale over the heating surfaces of the boiler. On the fire side of the boiler the furnace crowns were slightly out of shape. Salt deposit over the tubes and around the screw stays. The steam pipes showed evidence of being badly salted, as well as the glands of the main engine. The main engine and shafting and small working parts of the valve gear—working surfaces—were found to be scored through insufficient lubrication. (Record, p. 93.)

This survey was held in order to determine the nature of the repairs to be made, for if they were to be regarded as permanent repairs, the cost would fall upon the Underwriters. If taken as temporary repairs, they would fall upon the owners.

40 Mr. Drake further recommended that new furnaces and tubes should be installed after the closing of navigation. (Record, p. 96.)

Temporary repairs were made at this time; but in September it was reported that the tubes were leaking, and that the furnaces were coming out of shape again. A fresh examination was held, when the tubes were expanded; the screw stays and nuts taken off

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those that were badly leaking; the tube plates were caulked around the screw stays; the furnaces were not touched.

After these second repairs were made, Mr. Drake testified that as regards seaworthiness, considering her engines and boilers, he considered that the boat was in good condition to continue in commission. (Record, p. 94.)

10 Mr. McARTHUR, Surveyor of the British Corporation Register of Shipping and Aircraft, surveyed the ship's machinery both in May and September, after the suggested repairs had been made. He testifies that in September he found that the stays at the back of the combustion chamber were leaking, the tubes were leaking, and the furnaces all down again; the greatest difference at that time being an inch and a sixteenth.

“ Q.—Did that affect their efficiency in any way?

A.—Not a bit—I mean the furnaces being down did not.”

(Record, p. 100.)

20 He also adds that most of the tubes had been expanded by the time they got the survey, and after the tubes had been expanded the boiler was safe, and could be used perfectly. His Report dated the 11th October, 1929, concludes as follows :

“ The temporary repair, as recommended, was carried out, and the undersigned is of opinion that the boilers are in a fit condition to retain Classification in this Register, but recommends that the back stays of the combustion chambers, all tubes and all furnaces be renewed at the close of navigation.” (Record, p. 204.)

30 The Government Steamship Inspector, Mr. JOSEPH H. FONTAINE, also examined the vessel's machinery in May upon her arrival, and again in September, and he states that he was satisfied with the repairs as carried out, and that he found the boat seaworthy, otherwise she would not have run. (Record, p. 112.)

Mr. E. R. Macmillan, Surveyor of the British Corporation Register of Shipping and Aircraft, examined the ship, for her grain Classification, in the latter part of May at Toronto, and he considered her seaworthy, and recommended her for continuation of class. (Record, pp. 105 and 106.)

40 The only witness called to contradict this evidence of seaworthiness as regards boilers, was Mr. STANLEY, but as he had not seen the vessel prior to the stranding, his opinion was entirely based upon the reports that had been made. I do not think it can prevail against the testimony adduced on behalf of the Appellant. Moreover, the Chief Engineer of the “ SARNIADOC ” testifies that the boiler tubes were not leaking at the time of the voyage in question (Record, p. 89), nor was the steam pressure

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adversely affected by the furnaces or tubes. The engines were of 750 horse power producing 87 or 88 revolutions, and at the time when the Master, after having turned the boat about, ordered "Full speed," he was getting the ordinary number of revolutions from his engines. (Record, p. 84.)

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Mr. JOHN H. SMITH, also called on behalf of the Appellant, was of the opinion that the ship was properly powered for the trade she was engaged in. (Record, p. 110.)

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10 As a result of the consideration of the foregoing, I have no hesitation in agreeing with the learned Trial Judge that, as regards the boilers of the said steamship, the Appellant had made all due diligence to render the ship seaworthy. (Record, p. 138.)

The second question that arises relates to the stowage of the cargo, which the Respondent contends was improper, inasmuch as no precautions were taken to prevent it from shifting.

20 At the time in question, there can be no doubt that there was a strong wind blowing from the southwest, which, on the 29th November, attained a maximum velocity of 38 miles per hour. But the maximum velocity attained up to 8 o'clock in the morning of the 30th November was 34 miles per hour at 8 o'clock. (Record, p. 210). At 5 o'clock a.m. on the 30th, about the time when the ship was abreast of Point Peter, the velocity was 33 miles per hour.

Mr. A. J. CONNOR, Climatologist to the Meteorological Survey of Canada, who testified as to the wind velocity, asked, "Were such conditions anything unusual?" replied, "No. There is nothing that has not happened many times before, or worse." The velocity of the wind as given by this witness was determined at Toronto as, unfortunately, the anemometer at Kingston was out of commission, as likewise the one at Cobourg.

30 Captain GRAHAM, the Master of the S/S "MAPLEBAY" which followed the "SARNIADOC" down the Lake on the day in question and passed her as she turned round, testifies that the storm in question was "a pretty bad storm"; he had never been in rougher weather on Lake Ontario; "there was a good sea running and it was snowing quite heavily which handicapped us." He refused, however, to say that the weather was extraordinary. (Record, p. 61.)

40 I turn, now, to the question of stowage, for, as Lord Sumner said—

"Bad stowage, which endangers the safety of the ship, may amount to unseaworthiness, of course, but bad stowage, which affects nothing but the cargo damaged by it, is bad stowage and nothing more, and still leaves the ship seaworthy for the adventure, even though the adventure be the carrying of that cargo."

(CARVER—Carriage by Sea—7th ed., p. 28.)

It is the contention of the Respondent that the failure to provide shifting boards, or the stowage of bulk grain in a ship not provided with shifting boards, amounts to bad stowage, rendering the ship unseaworthy, and consequently precludes the owners from invoking the benefit of the exemption conferred by the Act.

The "SARNIADOC," being registered in England, is governed by the provisions of the MERCHANT SHIPPING ACT and not by the CANADA SHIPPING ACT. Section 452 (1) of the
10 MERCHANT SHIPPING ACT reads as follows :

"Where a grain cargo is laden on board any British ship all necessary and reasonable precautions (whether mentioned in this Part of this Act or not) shall be taken in order to prevent the grain cargo from shifting "

and Section 453 (1) and (2) reads :

"(1) Where a British ship laden with a grain cargo at any port in the Mediterranean or Black Sea is bound to ports outside the Straits of Gibraltar, or where a British
20 ship is laden with a grain cargo on the coast of North America, the precautions to prevent the grain cargo from shifting, set out in the Eighteenth Schedule to this Act, shall be adopted, unless the ship is loaded in accordance with regulations for the time being approved by the Board of Trade, or is constructed and loaded in accordance with any plan approved by the Board of Trade.

"(2) If this section is not complied with in the case of any ship, reasonable precautions to prevent the grain cargo of that ship from shifting shall be deemed not to have
30 been taken, and the owner and master of the ship and any agent charged with loading her or sending her to sea shall be liable accordingly to a fine under this Part of this Act."

In August, 1913, the Board of Trade issued a Notice in connection with an Inquiry recently held into the loss of a ship through insufficient precautions taken to prevent a grain cargo from shifting. This Notice contains the following paragraph :

"The Board of Trade are not prepared to advise, in general terms, as to what precautions shall be taken in the case of vessels loading grain at foreign ports, other than
40 Mediterranean, Black Sea, or North American ports for which special requirements are laid down in Sections 453 and 454 of the Merchant Shipping Act, 1894.

"Owners and masters of such vessels are however hereby warned not to assume that the absence of such regulations affords any warrant for neglecting to take all necessary and reasonable precautions, and the responsibility

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for taking such precautions is placed by the law on the owners and their agents, and on the masters of the vessels referred to." (Record, p. 177.)

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It would consequently appear that there is no specific provision of law requiring ships of British Register, navigating in inland waters, to instal shifting boards. On the contrary, there are specific provisions calling for the use of shifting boards in certain named localities, that is, the Mediterranean, Black Sea, etc. This distinction made by the British Parliament is not without some
10 significance, for the Legislature in thus expressly making this distinction, obviously must have had the matter in mind, yet expressly refrained from directly imposing this duty upon British ships engaged in inland navigation in Canada. As a consequence of this, the question arises, should the Courts require such a precaution when Parliament has deliberately refrained from doing so?

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I reach the conclusion that, notwithstanding the fact that no express provision requiring shifting boards has been imposed, nevertheless, the test must still be, whether or not all necessary and reasonable precautions, in order to prevent a grain cargo from
20 shifting, have been taken by the owners.

In attempting to solve this problem, reference should be had to the CANADA SHIPPING ACT, R.S.C., 1927, chapter 186—Section 696, which reads as follows:—

“No grain cargo shall be carried on board any ship registered in Canada, unless such grain cargo is contained in bags, sacks or barrels, or properly secured from shifting by boards or otherwise. . . .”

Section 864 of the said Act appears, however, to restrict the general application of Section 696, for it provides as follows:—

30 “The master of any vessel intending to load grain in bulk, for any port not within the limits of inland navigation and not within Canada, shall, before taking in any such grain, notify the port warden, from time to time, while the different chambers are being prepared, to survey and inspect the said vessel as well as the dunnage and lining boards.”

Sub-section 3 of this Section provides, further, that in such case the port warden shall see that the ship is provided with shifting boards.

Section 891 also refers to this matter, but again, restricts its effect to grain loaded in bulk for any port “not within the limits
40 of inland navigation or within Canada.”

Notwithstanding the limitations thus placed upon the general provisions of Section 696, I think it must be taken that, under the CANADA SHIPPING ACT, shifting boards are required; and this

fact must be borne in mind notwithstanding that the MERCHANT SHIPPING ACT and not the CANADA SHIPPING ACT is the Act which applies in the present instance.

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The question that arises is one of fact rather than law, for the "SARNIADOC," being registered in England, is subject to the MERCHANT SHIPPING ACT, as admitted by the Respondent. (Record, p. 6.)

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10 The MERCHANT SHIPPING ACT, as I have pointed out, contains no express enactment relating to a duty to supply shifting boards as regards Canadian ports, though it does impose a duty of providing them in certain other named areas. If the CANADA SHIPPING ACT were applicable, then, since there is an express enactment on the subject, reference to custom or practice would be excluded, for custom cannot override express law. But, under the provisions of the MERCHANT SHIPPING ACT, Section 452 (1), the inquiry is more properly directed to the question whether,—
"all necessary and reasonable precautions (whether mentioned in this Part of this Act or not)" were taken in order to prevent the grain cargo from shifting.

20 "What is a reasonable performance may often be ascertained by reference to the ordinary practices of men engaged in the same and other kindred businesses. The methods they adopt, and the conditions they impose on one another, indicate what they regard as fair and suitable in carrying out such transactions, and thus generally show what is reasonable in the opinions of those best able to judge. Moreover, when things are ordinarily done at the place in some particular way it would generally not be convenient, and therefore not reasonable, to adopt a method which is not
30 consistent with the usual arrangements."

(CARVER—Carriage by Sea—7th Ed., Section 181.)

Now, it is clearly established by the evidence that shifting boards were abandoned in lake use over 20 years ago, and have not since been in use. It would appear, thus, that in the opinions of those best able to judge, their use was not a necessary and reasonable precaution. Reference might here be had to the evidence of the following witnesses to this effect:—

40 CHARLES D. MILLS, Marine Surveyor of the American Bureau of Shipping (Record, pp. 79 & 80); E. R. MACMILLAN, Surveyor of the British Corporation Register of Shipping & Aircraft (Record, p. 106); J. H. SMITH, Marine Architect (Record, p. 110); Captain GRAHAM, Master of the s/s "MAPLEBAY" (Record, p. 59, lines 22 *et seq.*), and H. J. Kirk, Mate of the "SARNIADOC"

(Record, p. 68). Even the Master of the "SARNIADOC," in his evidence before the Wreck Commissioner, agrees (Record, p. 212):—

“ Q.—Any ships you ever were in that carried shifting boards on the Lakes ?

A.—Yes sir, years ago.

Q.—But no ships recently ?

A.—No, sir.

Q.—As far as you know a ship is seaworthy without shifting boards ?

10 A.—Well, they are if they don't have to get in the trough of the sea. There is no one carries them. Nobody carries them these days.”

—See also the evidence of the Master, at the present trial, to the same effect (Record, pp. 35, 36 & 53).

There is no suggestion in the record of any grain cargo having shifted in Lake Ontario through failure to provide shifting boards (Record, p. 35).

20 Moreover, the Regulations made by Order-in-Council (Canada) dated the 19th July, 1929, and referred to in the Memorandum of the British Board of Trade (Record, p. 238), while containing full instructions for the fitting of shifting boards (Record, p. 240 *et seq.*) expressly state that they are “ Regulations prescribing the manner in which cargoes of grain shall be loaded at Ports in Canada on ships bound to Ports outside of Canada (not within the limits of inland navigation) ” (Record, pp. 187 & 188).

30 Attention should here be drawn to the fact that the absolute warranty of seaworthiness provided for, both by the Civil Code and the common law, is superseded in cases where the WATER CARRIAGE OF GOODS ACT applies, by a qualified obligation to exercise due diligence to make the ship in all respects seaworthy. I would gravely doubt if this qualified obligation required a ship-owner to adopt a precaution not prescribed by the Act which governs him, namely, the MERCHANT SHIPPING ACT, and which, while prescribed by the Canada Shipping Act (which does not govern him), does not appear to have been enforced, the effect of which has, apparently, been relaxed by Order-in-Council made under the authority of that Act, and which is not in accordance with the ordinary practices of those engaged in the business.

40 Again, there must be some relationship of cause and effect between the ground of alleged unseaworthiness and the casualty.

“ The ship owner remains responsible for loss or damage to the goods, however caused, if the ship was not in a seaworthy condition when she commenced her voyage, and if the loss would not have arisen but for that unseaworthiness. The goods owner must, in order to make the ship owner

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liable, establish both these facts, and cannot recover for the loss or damage merely on the ground that the ship was unseaworthy, unless it is also shown that the loss or damage was caused by the unseaworthiness.”

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(CARVER—Carriage by Sea—7th ed., Section 17.)

In the present case, the cargo did not shift. All that is contended is, that the mere apprehension somewhat feebly voiced by the Master is sufficient to establish a relationship, and to render the owners liable.

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10 There is no doubt that there was rough weather on this occasion. Captain GRAHAM, the Master of the “MAPLE BAY,” which was following quite closely the “SARNIADOC,” says, he had never been in rougher weather on Lake Ontario, and he adds that it was not extraordinary weather. (Record, p. 61.)

The statements relied upon by the Respondent are all made by the Master of the “SARNIADOC,” and it is contended that their effect was to show that the course that he adopted was attributable to the fact that the boat was not provided with shifting boards. He was, it is contended, as a consequence, deterred from taking
20 the proper course. The statements of the Master in this connection are as follows (Record, p. 34):—

“ Q.—You said it was not safe to go to Kingston?
Why was it not safe to go to Kingston?

A.—Well, you could not see, and there is a lot of attraction down in there. You are liable to go ashore, and you get quite a rolling. Nobody likes to put a boat in the trough of the sea. I do not, and I do not think anybody else does, because it rolls the stuff, and maybe would shift the cargo, maybe break something. That is hard to say.

* * * *

30 Q.—How do you prevent a grain cargo from shifting?

A.—Well, on the Ocean they put in shifting boards, but up here we do not use them.

Q.—Why do you not use them? Is it not a safeguard?

A.—I suppose it would be, but I never have seen shifting boards for years. I do not think any of the Lake vessels ever carry them.

Q.—You used to use them did you not?

A.—Years ago.

40 Q.—Weather conditions are just as bad now as they were then?

A.—Just about the same.

Q.—It is just as likely the cargo would shift now as it would then?

A.—Yes.

Q.—You were afraid this cargo would shift when you did not go and turn into Kingston?

A.—Well, I was afraid it might. I thought it might. I did not want to do it.

Q.—If you wanted to be perfectly confident about it, you would not have hesitated; you would have gone right into Kingston and saved your cargo?

A.—I do not think I would. I could not see. I figured on getting into the Ducks and waiting there till it cleared up until I could get in without any trouble.” (Record, p. 35.)

10

From these two passages just quoted, it will be observed that it was not so much the apprehension of the cargo shifting that influenced the Master, as the fact that he could not see, and had lost his whereabouts.

Again the Master testifies (Record, p. 37) :—

“ Q.—If you had had shifting boards, that would have prevented your cargo from shifting?

A.—Well, it would. The cargo did not shift though.

Q.—If you had had shifting boards you could have made either the False Ducks, or you could have got right into Kingston?

20

A.—I could not see them.

Q.—You would have attempted though?

A.—I do not think I would have.

Q.—But you were afraid of shifting?

A.—I was not afraid of it, but I did not want to do it, that was all.

Q.—You knew the results of shifting?

A.—Well, I did. I was trying to keep from it. I knew the results, maybe she would not, maybe she would. I don't know; but everybody tries to keep his boat out of the trough of the sea as much as possible, not only for the benefit of the cargo . . .

30

Q.—You do not suggest that this ship was seaworthy in the trough of the sea without shifting boards?

A.—I think she would be.”

In the case of *Elder Dempster & Company v. Paterson, Zochonis & Company, et al* (1924, A.C. at p. 549), Lord Sumner said,—

40

“ Two things must therefore be shown, one, that the ship was unseaworthy in the sense of the word established by the decisions, and, two, that the damage complained of was caused thereby and would not have arisen but for that unseaworthiness.”

*In the
Court of
King's
Bench
(In Appeal).*

No. 30.
Reasons for
Judgment
29th March
1933—*con-
tinued.*
(d) The Hon.
Mr. Justice
Bond—*con-
tinued.*

It does not appear from the foregoing excerpts that the fear of the cargo shifting was the real cause of the action taken by the Master. On the contrary, it appears rather that lack of visibility and the fact that he had lost his bearings was the real cause for abandoning his plan to proceed to Kingston. He stated (Record, p. 22),

*In the
Court of
King's
Bench
(In Appeal).*

10 “ There was a heavy sea running, and you could not go to Kingston, and going in by Cape Vincent, naturally, we could not; you could not see anything, and it was not safe, and I wanted to get out of the weather.”

No. 30.
Reasons for
Judgment,
29th March
1933—*con-
tinued.*
(d) The Hon.
Mr. Justice
Bond—*con-
tinued.*

The situation that had thus arisen was attributable to prior defects in navigation; the delay of about two hours at the start in proceeding towards Toronto instead of directly down the Lake; the failure to take proper steps to secure accurate bearings and observations off Point Peter; continuing thereafter for some 7 or 8 miles at full speed before checking down when approaching narrow and dangerous waters; the failure to make use of the sounding apparatus. (Record, p. 217, lines 21 *et seq.*)

20 The Wreck Commissioner reached the conclusion that the lack of shifting boards was not the cause of the loss of the ship. He stated,—(Record, p. 216)

“ Concerning shifting boards, or the lack of them, as they were not the cause of the loss of ship only by indirect implication from the Master, no allusion would have been made on the subject.”

The Wreck Commissioner also found,—(Record, p. 215)

“ . . . that the loss of the S.S. “ Sarniadoc ” was due partly to very poor judgment, consequently poor seamanship on the part of the Master.”

30 It is established that the cargo was properly levelled and trimmed before the ship sailed.

40 From a consideration of the whole of the foregoing, I reach the conclusion that the cause of the stranding cannot be attributed to the absence of shifting boards, and that, since the Act did not specifically require them, the conditions prevailing did not necessitate their provision in the exercise of due diligence on the part of the owners to make their ship seaworthy. The stranding of the ship was due to errors and faults in navigation occurring prior to the sudden emergency which confronted the Master upon suddenly seeing the Island immediately in front of him, and the course of action then adopted by him was not influenced, to any appreciable extent, by a consideration of the likelihood of the cargo shifting,

but rather to his inability to locate himself or to see sufficiently to proceed on his intended course.

Under these circumstances, by virtue of the WATER CARRIAGE OF GOODS ACT, the owners having exercised diligence to render their ship seaworthy, and the stranding being due to errors in navigation, the owners are freed from liability; and I would consequently MAINTAIN the Appeal.

W. L. Bond,
J.K.B.

In the Court of King's Bench (In Appeal).

No. 30. Reasons for Judgment, 29th March 1933—*continued.* (d) The Hon. Mr. Justice Bond—*continued.*

10

No. 31.

APPELLANTS MOTION FOR LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL (dated 24 April 1933).

(Not printed.)

No. 31.

No. 32.

JUDGMENT GRANTING LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL (25 April 1933).

Montréal, Tuesday, the 25th day of April, 1933.

Present :—The Honourable Mr. Justice Tellier, C. J., Dorion, Hall, Letourneau, Walsh.

No. 32. Judgment granting leave to appeal to His Majesty in Council, 25th April 1933.

20 PATERSON STEAMSHIP LIMITED - *Defendant-Appellants*
&
CANADIAN CO-OPERATIVE WHEAT PRODUCERS LTD.
Plaintiff-Respondents.

30 THE COURT, having heard the parties upon the merits of a motion presented by the Appellants, by which they pray, for the reasons mentioned therein, that they be permitted to appeal to His Majesty in his Privy Council from the judgment rendered on the 29th day of March, 1933, by the Court of King's Bench, Appeal Side, whereby the appeal of the Defendant was dismissed, and the judgment *a quo* condemning them to pay the Respondent \$76,911.44 with interest and costs, was confirmed.

And the Appellants pray also that a delay be fixed by the Court of Appeal within which the Appellants shall furnish good and

sufficient security as required by law to prosecute the said appeal in the event of the judgment being confirmed;

SEEING articles 68 and 1249 of the Code of Civil Procedure, SEEING also the affidavit filed in support of the present motion :

DOTH GRANT the said motion, security to be given within 30 days from this date to the satisfaction of the Clerk of the Court of Appeals, and in default of so doing it is ordered that the record shall be remitted to the Court below without any further order; the costs to follow suit.

(Signed) J. M. Tellier,
C.J., K.B.

In the Court of King's Bench (In Appeal).

No. 32. Judgment granting leave to appeal to His Majesty in Council, 25th April 1933—*continued.*

No. 33.

SECURITY BOND (23 May 1933).

(Not printed.)

No. 33. Security Bond, 23rd May 1933.

No. 34.

CONSENT OF PARTIES AS TO CONTENTS OF PRINTED CASE.

The parties by the undersigned, their solicitors, hereby request the clerk of the Court of King's Bench (Appeal Side) to transmit to the Registrar of His Majesty in His Privy Council in London, the original court record, and consent that the following documents shall form the printed case on appeal to His Majesty in His Privy Council :—

1. Declaration.
2. Plaintiff's List of Exhibits with return.
3. Exhibit P-1.
4. Exhibit P-2.
5. Exhibit P-3.
6. Defendant's Second Plea as amended.
7. Plaintiff's Answer to Plea.
8. Plaintiff's List of Exhibits at Enquete.
9. Exhibit P-4.
10. Exhibit P-5. Extracts only as printed for the Court of King's Bench.
11. Exhibit P-6.
12. Defendant's List of Exhibits at Enquete.

No. 34. Consent of parties as to contents of printed case, 20th June 1933.

- 10
13. Exhibit D-1.
14. Exhibit D-4.
15. Exhibit D-5.
16. Exhibit D-7.
17. Exhibit D-10.
18. Exhibit D-11. Two inside pages only and exclusive of
figure and particulars of scantlings.
19. Exhibit D-12.
20. Exhibit D-13.
21. Exhibit D-14.
22. Exhibit D-16.
23. Exhibit D-17.
24. Exhibit D-18.
25. Exhibit D-19.
26. Exhibit D-20.
27. Motion to Discharge Delibere and File Documents.
28. Defendant's Exhibits D-21.
29. Extract from Defendant's Exhibit D-22. Preamble only.
20 30. Extracts from Plaintiff's Exhibit P-7 as printed for the
Court of King's Bench.
31. All depositions.
32. Judgment of Superior Court.
33. Notes of Mr. Justice Philippe Demers.
34. Inscription in Appeal to the Court of King's Bench.
35. Judgment of the Court of King's Bench.
36. Notes of Mr. Justice Tellier.
37. Notes of Mr. Justice Rivard.
38. Notes of Mr. Justice Letourneau.
30 39. Notes of Mr. Justice Bond.
40. Motion on appeal to the Privy Council.
41. Judgment of the Court of King's Bench on Motion to
appeal to the Privy Council.
42. Security Bond.
43. This agreement.

*In the
Court of
King's
Bench
(In Appeal).*

No. 34.
Consent of
parties as to
contents of
printed
case,
20th June
1933—*con-
tinued.*

MONTREAL, June 20th, 1933.

(Signed) Casgrain, Weldon, Demers
& Lynch-Staunton, Attorneys for
Appellant.

40 (Signed) Brown, Montgomery &
McMichael, Attorneys for
Respondent.

No. 35.

CERTIFICATE OF CLERK OF APPEALS THAT
SECURITY GIVEN.

*In the
Court of
King's
Bench
(In Appeal).*

We, the undersigned, Clerk of the Court of King's Bench (Appeal Side), do hereby certify that the present printed documents from page one to page 228 of 1st volume and from page one to page H of the 2nd volume is the Record stated by the parties, for the appeal to His Majesty's Privy Council in a certain cause lately pending, in the said Court of King's Bench, between :—

No. 35.
Certificate
of Clerk of
Appeals
that security
given,
21st August
1933.

10 PATERSON STEAMSHIPS LIMITED
(Defendant) Appellant
AND
CANADIAN CO-OPERATIVE WHEAT PRODUCERS,
LIMITED - - - - *(Plaintiff) Respondent.*

And we further certify that the said Paterson Steamships Limited have given proper security to the satisfaction of the Honourable J. M. Tellier, Chief Justice of the Court of King's Bench for the Province of Quebec, as appears by a copy of the said security bond, to be found on page F of the 2nd volume.

20 In testimony whereof, we have hereunto subscribed our hand and affixed the seal of the said Court of King's Bench, at Montreal this 21st day of August 1933.

(Signed) Marchand,
Deputy Clerk of Appeals.



EXHIBITS

PLAINTIFF'S EXHIBIT P-7 AT ENQUETE

Extract from Memorandum relating to Grain Cargoes.

10

Issued by the Board of Trade.

MEMORANDUM

Relating to

GRAIN CARGOES.

London :

20

Printed and Published by His Majesty's Stationery Office
1928

Exhibits.

—
P-7.

Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928.

MEMORANDUM

Carriage of Grain.

30 The law relating to the carriage of grain in ships is con-
tained in Sections 452 to 456 of the Merchant Shipping Act, 1894,
and in Sections 3 and 11 of the Merchant Shipping Act, 1906.

(See Appendix A.)

Whenever a grain cargo is laden on board any British
ship all necessary and reasonable precautions must be taken to
prevent the grain cargo from shifting.

40 Special requirements are laid down in Sections 453 and
454 of the Merchant Shipping Act, 1894, for British ships load-
ing grain at ports in the Mediterranean and Black Sea and
on the coast of North America, it being required by Section 453
that these vessels must be loaded in accordance with either:—

(1) The Eighteenth Schedule to the Merchant Shipping
Act, 1894. (See Appendix A.) Or,

(2) Regulations for the time being approved by the
Board of Trade. (See Appendix C.) Or,



- (3) A plan of loading approved by the Board of Trade for that particular vessel.

Exhibits.

10 The conditions under which plans of loading are approved are indicated in Appendix D, and skeleton forms of approved plans of loading and model drawings of approved grain arrangements are given in Appendix E.

P-7.
Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.

The provisions of the Merchant Shipping Act, 1894, respecting the carriage of grain in British ships, are, to a limited extent, applied to Foreign ships loading, or arriving with, grain in the United Kingdom, by Section 3 of the Merchant Shipping Act, 1906. (*See Appendix A.*) Under this section:—

20

- (1) Foreign ships loading grain in the United Kingdom must comply with Section 452 of the Merchant Shipping Act, 1894, while they are within a port in the United Kingdom.

30

- (2) Foreign ships arriving in the United Kingdom with grain must in every case comply with Section 452, and ships arriving with grain laden at any port in the Mediterranean, Black Sea, or on the coast of North America must comply with Section 453. Masters of these vessels must also deliver the Notice required by Section 454 to the proper Officer of Customs at their port of arrival in the United Kingdom.

40

- (3) Foreign ships loading or discharging grain at any port in the United Kingdom may be inspected, as regards their grain cargo, by Surveyors of the Board of Trade, while they are within a port in the United Kingdom.

Mercantile Marine Department,
Board of Trade.



APPENDIX A.

Merchant Shipping Act, 1894.

Sections 452 and 453.

10

Carriage of Grain.

Obligation to take precautions to prevent grain cargo from shifting.

452.—(1.) Where a grain cargo is laden on board any British ship all necessary and reasonable precautions (whether mentioned in this Part of this Act or not) shall be taken in order to prevent the grain cargo from shifting.

20 (2.) If those precautions have not been taken in the case of any British ship, the master of the ship and any agent of the owner who was charged with the loading of the ship or the sending of her to sea, shall each be liable to a fine not exceeding three hundred pounds, and the owner of the ship shall also be liable to the same fine, unless he knows that he took all reasonable means to enforce the observance of this section, and was not privy to the breach thereof.

Precautions against shifting of grain cargo laden in port in Mediterranean or Black Sea, or on coast of North America.

30 453.—(1.) Where a British ship laden with a grain cargo at any port in the Mediterranean or Black Sea is bound to ports outside the Straits of Gibraltar, or where a British ship is laden with a grain cargo on the coast of North America, the precautions to prevent the grain cargo from shifting, set out in the Eighteenth Schedule to this Act, shall be adopted, unless the ship is loaded in accordance with regulations for the time being approved by the Board of Trade, or is constructed and loaded in accordance with any plan approved by the Board of Trade.

40 (2.) If this section is not complied with in the case of any ship, reasonable precautions to prevent the grain cargo of that ship from shifting shall be deemed not to have been taken, and the owner and master of the ship and any agent charged with loading her or sending her to sea shall be liable accordingly to a fine under this Part of this Act.

(3.) Nothing in this section shall exempt a person from any liability, civil or criminal, to which he would otherwise be subject for failing to adopt any reasonable precautions which, although not mentioned in this section, are reasonably required to prevent grain cargo from shifting.

Exhibits.

P-7.

Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.



APPENDIX B.

NOTICES ISSUED BY THE BOARD OF TRADE.

10

(1) Shifting of Grain Cargoes.

In an inquiry held recently (1913) into the loss of a vessel laden with wheat, chiefly in bulk, at a French port in the Bay of Biscay, it was found that the precautions taken to prevent the grain cargo from shifting were not sufficient.

20

Although the precise cause of the loss of the vessel could not be determined, yet, in view of the heavy weather she encountered, the shifting of the cargo and consequent capsizing of the vessel were considered by the Court to be the probable causes of the disaster.

30

The law requires, in the case of vessels laden with grain cargoes, that all necessary and reasonable precautions must be taken in order to prevent the grain cargo from shifting; and, if these precautions have not been taken, the master of the ship and any agent of the owner who was charged with the loading of the ship or the sending of her to sea, are each liable to a fine not exceeding three hundred pounds, and the owner of the ship is also liable to the same fine, unless he shows that he took all reasonable means to enforce the observance of the requirements, and was not privy to the breach thereof.

The Board of Trade are not prepared to advise in general terms as to what precautions shall be taken in the case of vessels loading grain at foreign ports, other than Mediterranean, Black Sea, or North American ports for which special requirements are laid down in Sections 453 and 454 of the Merchant Shipping Act, 1894.

40

Owners and masters of such vessels are however hereby warned not to assume that the absence of such regulations affords any warrant for neglecting to take all necessary and reasonable precautions, and the responsibility for taking such precautions is placed by the law on the owners, and their agents, and on the masters of the vessels referred to.

Marine Department.

August, 1913.

Exhibits.

P-7.

Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.



(2) Support of Bulkheads.

10 The attention of the owners and masters of vessels loading grain in bulk is drawn to the necessity of properly supporting the wood bulkheads that divide a cross bunker from a hold compartment containing grain.

Cases have recently occurred where the bulkhead, not having been properly supported, has given way under the pressure of the grain in the adjoining hold, after the coal in the cross bunker has been worked out, and in consequence the grain cargo has shifted.

20 Owners and masters are therefore advised that such wood bulkheads require to be properly supported in the bunkers by shores, or otherwise, and special attention should be given to the cants at the bottom to ensure that they are wide enough, well fastened, and supported either by angle lugs riveted to the inner bottom plating or by fore and aft planks butted against the cants and well spiked to the ceiling in the bunkers.
Marine Department.

August, 1913.

(3.) Carriage of Grain.

30 *Home Trade and Coasting Vessels.*

The owners and masters of vessels engaged in the home and coasting trades, as well as the stevedores engaged in loading them with grain cargoes, are informed that from time to time reports have been forwarded to the Board of Trade of the grain cargoes having shifted in such vessels. In one case a coasting steamer laden with a cargo of wheat, chiefly in bulk, was in grave danger of foundering owing to the shifting of the cargo, and the master was prosecuted and fined because necessary and reasonable precautions had not been taken to prevent the cargo from shifting.

In another case an official inquiry was held on the loss of a coasting steamer laden with a cargo of bulk maize, and the court came to the conclusion that during the height of a storm the vessel pitched and rolled so heavily as to cause the cargo to shift and give her a list, and that whilst in this position she shipped heavy seas on board which burst in the hatches, causing her to fill rapidly and to founder.

Exhibits.

—
P-7.

Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.



From the various reports it appears that the shifting of the cargo is frequently attributable to one or more of the following causes:—

- 10 (1) *Bulk grain not properly trimmed and fed.*—Hatchways which were utilised as feeders to hold spaces containing bulk grain have been found empty and the surface of the bulk grain some distance below the deck indicating that sufficient attention had not been paid to the trimming of the grain into the wings, ends and beam spaces of the holds.
- 20 (2) *Bulk grain not properly secured.*—Compartments have been found only partly filled with bulk grain, the only attempt at securing the grain being in the form of a single tier of bagged grain laid upon the free surface of the bulk grain without any platform between the bags and the bulk. In other cases attempts have been made to secure the bulk grain by means of a bulkhead of bagged grain, but the bulkhead has given way or has not been fitted gaintight at the decks.

30 Where bulk grain does not completely fill a hold or compartment, the surface of the grain should be levelled as well as possible and secured by means of bagged grain stowed on separation cloths and a wooden platform, or by other effective means.

Placing bagged grain on the surface of bulk grain without providing a suitable platform between and of forming bulkheads of single tiers of bagged grain are not considered satisfactory.

40 The law requires, as regards vessels laden with grain in the trades referred to, that all necessary and reasonable precautions must be taken to prevent the grain cargo from shifting, and if these precautions have not been taken, the master of the ship and any agent of the owner, who was charged with the loading of the ship or the sending of her to sea, shall each be liable on summary conviction to a fine not exceeding one hundred pounds, and the owner of the ship shall also be liable to the same fine unless he shows that he took all reasonable means to enforce the observance of the requirements and was not privy to the breach thereof.

Exhibits.

P-7.

Extract from Memorandum relating to Grain Cargoes, 1928—*continued.*



10 Having regard to the widely different conditions as to weather and sea which prevail on different parts of the coast, the length of the voyage, and the varying construction of vessels, it is not possible to draw up regulations which will meet all cases as to the precautions which should be taken in the case of grain-laden vessels engaged in the home and coasting trades. The responsibility for taking all necessary and reasonable precautions in order to prevent a grain cargo from shifting is placed by law on the owners as well as on their agents and on the masters of the vessels referred to, and it is recommended that owners should definitely instruct their masters and stevedores to see:

Exhibits
P-7.
Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.

- 20 (1) That grain cargoes loaded in vessels in their charge are properly trimmed and secured by shifting boards, bags, or other equally effective means, and, where necessary, properly and sufficiently fed.
- (2) That any bulkhead formed of wood or bagged grain, which it may be found necessary to erect in any of the holds for securing the cargo, is properly and strongly constructed, and, if necessary, well shored against fore and aft movement when the vessel is pitching and 'scending in a seaway.
- 30 (3) That all loose water is pumped out of the tanks and bilges before proceeding to sea, or if water ballast is necessary, that all the tanks are carefully hardened up.
- (4) That all other necessary and reasonable precautions are taken in order to ensure that the vessel will have sufficient stability and to prevent the grain from shifting.

40 Mercantile Marine Department,

January, 1927.



• RESOLUTION OF THE BOARD OF TRADE.

10 Whereas it is provided by Section 453 of the Merchant Shipping Act, 1894, inter alia, that "Where a British ship is laden with a grain cargo on the coast of North America, the precautions to prevent the grain Cargo from shifting, set out in the Eighteenth Schedule to this Act, shall be adopted, unless the ship is loaded in accordance with regulations for the time being approved by the Board of Trade":

Exhibits.
—
P-7.
Extract
from
Memo-
randum
relating to
Grain
Cargoes,
1928—
continued.

20 Now, therefore, the Board of Trade in pursuance of the provisions of Section 453 of the said Act, and for the purpose only of giving effect to the provisions contained in Part V of the said Act relating to the carriage of grain, do hereby approve the Regulations made by his Excellency the Governor-General of Canada in Council, prescribing the manner in which cargoes of grain shall be loaded at certain ports in Canada annexed hereto and dated the 17th day of December, 1923.

Dated this 18th Day of March 1924.

(Signed) H. A. Payne,
A Secretary to the Board of Trade.

30

DEFENDANT'S EXHIBIT D-12 AT ENQUETE

Certificate of Test of Boiler.

No. 4324.

THE BRITISH CORPORATION REGISTER OF
SHIPPING AND AIRCRAFT.

40

Established 1890.

Exhibits.
—
D-12.
Certificate
of Test of
Boiler,
2nd April,
1929.

CERTIFICATE OF TEST OF BOILER.

THIS IS TO CERTIFY that the Two Main Boilers, No. 629 made by Barclay Curle & Co. Ltd. at Glasgow and intended for the S.S. No. 629 being built by Barclay Curle & Co. Ltd. at Glasgow were in my presence at Glasgow on the 14th February



1929 satisfactorily tested, by hydraulic pressure, to 320 lbs. per square inch, for a working pressure not exceeding 180 lbs. per square inch.

Exhibits.

D-12.
Certificate
of Test of
Boiler,
2nd April,
1929—
continued.

MARK ON BOILER

B. C. TEST.

10 No. 5136

320 lbs.

W.P. 180 lbs.

J. W. H.

14 2 29

J. B. for Chief Surveyor.

J. Wood Harrington,
Surveyor to the British Corporation Register.

20

John Fleming, Secretary.
Glasgow 2nd April 1929.

DEFENDANT'S EXHIBIT D-13 AT ENQUETE

Machinery Certificate M. B. S.

30

No. 3617.

THE BRITISH CORPORATION REGISTER
OF SHIPPING AND AIRCRAFT

Established 1890.

*(Appointed by the Board of Trade to approve and certify Load
Lines under the Merchant Shipping Acts.)*

Exhibits.

D-13.
Machinery
Certificate,
M.B.S.,
2nd April,
1929.

40

MACHINERY CERTIFICATE.

M. B. S. *

The Engines and Boilers of the Steel Screw Steamer "Sarniadoc" Off. No. 149496 have been constructed under the special supervision of the Surveys to this Corporation, and reported to be, on the 30 th March 1929 in good and safe condition, at a working pressure of 180 lbs. per sq. inch, and have been en-



tered in the Register Book of the Corporation, with the character M. B. S.* subject to Periodical Survey.

Exhibits.

D-13.
Machinery
Certificate,
M.B.S.,
2nd April,
1929—
continued.

10

Witness our hands,
Crawford,
for Chairman of Committee of Management.

John Fleming,
Secretary.

14 Blythswood Square,
Glasgow, 2nd April 1929.

Seal:—

20 The British Corporation Registered, Shipping and Aircraft.

Engines, Description, Triple expansion. Surface condensing.

Name of Builders, where and when built, Barclay Curle & Co. Ltd. Glasgow, 1929.

Diameters of Cylinders, 15", 25" 40". Length of Stroke, 33"
30 Cub. ft. L. P. Cyl., 24'.

Diameters of Shafts, Crank, 8³/₈". Thrust, 8³/₈". Intermediate,..... Propeller, 9".

Diameter of Propeller, 12'-3". Pitch, 10'-9". Surface, 48 sq. ft.

40 Boilers, Description, Cylindrical Multitubular Draught, description, closed ashpit.

Number, Single ended, two No. of Furnaces in each, two Double ended,.....No. of Furnace in each,.....

Name of Builders, where and when built, Barclay Curle & Co. Ltd. Glasgow 1929.

Single-ended Boilers — Greatest Internal Diameter, 10'-13³/₈". Greatest Internal Length, 10'-10".



	Double-ended Boilers—Greatest Internal Diameter,.....	
	Greatest Internal Length,	Exhibits.
	Total Heating Surface, 2136 sq. ft. Total Grate Surface, 64 sq. ft. Working Pressure, 180 lb. 0''.	D-13.
10	Donkey Boiler, No.....Description,.....No. of Furnaces,.....	Machinery Certificate, M.B.S., 2nd April, 1929—
	Name of Builders, where and when built,.....	<i>continued.</i>
	Greatest Internal diameter,.....Greatest Internal Length, or Overall Height,	
20	Total Heating Surface,.....Total Grate Surface,.....Working Pressure,	
	Steam Trial, Date, 30th March 1929. Speed, 9.28 knots.	

PERIODICAL SURVEY OF ENGINES AND BOILERS.

30 The Engines of all Vessels classed with the Corporation will be required to undergo Special Survey at the same times as the Special Surveys on the hull. In cases of accident involving considerable repair and an extensive examination of the machinery, such examination may, with the sanction of the Committee, be considered equivalent to a Special Survey.

40 At each Special Survey the cylinders or turbines, pistons, valves, pumps, condensers, thrust blocks, main and tunnel bearings, shafting, evaporators, and steam steering gear are to be opened up for examination; such other parts of the machinery as may be considered necessary are also to be examined, and the pumping arrangements are to be inspected.

Propeller Shafts should be drawn at least once every two years, or more frequently if considered necessary by the Surveyor; where liners are continuous, or where approved lubricating arrangements are adopted, the shafts need only be drawn once every three years; the Committee are prepared to consider representation from Owners as to special circumstances which may modify these requirements in particular cases. When the



after bearing is worn down $\frac{1}{4}$ " with shafts not exceeding 9 inches in diameter, $\frac{5}{16}$ " when over 9 and not exceeding 12 inches, and $\frac{3}{8}$ " with shafts over 12 inches in diameter, the bearing is to be rebushed.

10 At each Special Survey all openings to the sea, together with the cocks and valves in connection with the same, are to be examined while the Vessel is in dry dock; all iron and steel fastenings of sea cocks and valves to the shell plating should be removed for examination at each Special Survey No. 3.

20 Water tube boilers are to be surveyed annually; the first survey of cylindrical boilers is to be made when the boilers are four years old, the second when six years old, and subsequent surveys at intervals of twelve months. Boilers, superheaters, safety valves, and other boiler mountings are to be carefully examined inside and outside at each Survey; the safety valves are to be afterwards set to the working pressure. If at any of these Surveys the Surveyor considers it desirable, the actual thickness of plates and strength of stays are to be ascertained in order to determine the future working pressure, and the boilers and superheaters tested by hydraulic pressure.

30 The donkey boilers of Sailing Vessels are to be subject to Special Periodical and Annual Survey in accordance with the foregoing requirements, if it desired to maintain the record of Classification in the Register.

Main Steam Pipes are to be tested periodically by hydraulic pressure to at least twice the working pressure. Brazed copper pipes are to be tested every four years; seamless copper pipes, iron pipes, and steel pipes are to be tested every six years. Copper pipes should be annealed before being tested.

40 If it be found desirable, upon inspection, that any part of the Engines or Boilers should be examined again within shorter periods than specified above, it will be necessary for the Owner to comply with the Committee's requirements in this respect.

Special Survey No. 1 is due March 1933.

Jas. Barr for Chief Surveyor.

Glasgow, 2nd April 1929.

Exhibits.

D-13.
Machinery
Certificate,
M.B.S.,
2nd April,
1929—
continued.



DEFENDANT'S EXHIBIT D-11 AT ENQUETE

*Extract from Certificate of Class B. S. **

10 No. 3617

THE BRITISH CORPORATION REGISTER
OF SHIPPING AND AIRCRAFT

Established 1890.

*(Appointed by the Board of Trade to approve and certify Load
Lines under the Merchant Shipping Acts.)*

20

CERTIFICATE OF CLASS

B. S. *

The Steel Screw Steamer "Sarniadoc" Off. No. 149496 was built under the Special Supervision of the Surveyors to this Corporation and reported to be, on the 30th March 1929 in Hull and Equipment, in good and efficient condition, fit to carry dry and perishable cargoes on the Great Lakes & River St. Lawrence & Gulf of St. Lawrence from 31st March to 30th September and has been Classed and entered in the Register Book of the Corporation with the character B. S. * (Great Lakes & Limited Gulf of St. Lawrence Service) subject to the Freeboards and Periodical Survey, as set forth on the other pages of this Certificate.

Witness our hands,

Crawford,
For Chairman of Committee of Management.

40

John Fleming,
Secretary.

14 Blythswood Square,
Glasgow, 2nd April 1929.

Seal:—

The British Corporation Registered. Shipping and Aircraft.

[Exhibits.

D-11.

Extract
from Certificate of
Class B.S.,
2nd April,
1929.



Name and Description, "Sarniadoc" Steel Screw Steamer.

Date of Launch, 27th February 1929. Port of Registry, Newcastle. Off. No. 149496.

10 Name and Address of Owners, Patersons Steamships Ltd. Montreal.

Name and Address of Builders, Barclay Curle & Co. Ltd.

Registered Dimensions, 252.7' x 43.3' x 17.85'. Moulded Dimensions, 253'-0" x 43'-2" x 30'-0".

Registered Tonnages; Gross, 1939.94. Nett, 1159.74. Under Deck, 1634.4.

20 Freeboard in Summer, from Statutory deck line 1½ ins. above iron upper deck at side, 6'-2. Allowance in Fresh Water, Winter,..... Winter North Atlantic,.....

Special Survey No. 1 is due March 1933.

Exhibits.
—
D-11.
Extract from Certificate of Class B.S., 2nd April, 1929—
continued.

J. L. Adam,
Assistant Chief Surveyor.
Glasgow 2nd April 1929.

30

DEFENDANT'S EXHIBIT D-22 AT ENQUETE

Extract from The Canada Gazette.

[1313]

Order

AT THE GOVERNMENT HOUSE AT OTTAWA

40

Friday, the 19th day of July, 1929.

Present :

HIS EXCELLENCY THE GOVERNOR.
GENERAL IN COUNCIL :

His Excellency the Governor General in Council, on the recommendation of the Minister of Marine and Fisheries and under and by virtue of the powers contained in the Canada Ship-

Exhibits.
—
D-22.
Extract from the Canada Gazette Order, 19th July, 1929.



ping Act, Chapter 186 of the Revised Statutes of Canada, 1927, is pleased to make the annexed regulations prescribing the manner in which cargoes of grain shall be loaded at ports in Canada on ships bound to ports outside of Canada (not within the limits of inland navigation) and prescribing the manner in which the Port Wardens at such ports shall perform their duties in connection therewith, and the same are hereby made and established 10 accordingly.

His Excellency in Council, on the same recommendation, is further pleased to rescind and doth hereby rescind the regulations made by Order in Council dated the 17th December, 1923 (P.C. 2435).

E. J. LEMAIRE,
Clerk of the Privy Council.

Exhibits.
D-22.
Extract from the Canada Gazette Order, 19th July, 1929—
continued.

20 DEFENDANT'S EXHIBIT D-18 AT ENQUETE

Report Inspection the S.S. "Sarniadoc"

Department's File No.....

COPY

DEPARTMENT OF MARINE, CANADA

Steamship Inspector's Office

At 170 Youville Place,

Montreal, July 31st. 1929.

30

Frank McDonnell, Esq.,
Chairman of the Board
Steamship Inspection,
Ottawa, Ont.

Sir:—

Please find enclosed form S. 1.30 for the SS "SARNIADOC". Owned by the Paterson S/S. Co.

40

This vessel was built in England this year and started operation on the grain trade between the Great Lakes and Montreal this spring.

She has not come under our Canadian Inspection yet.

I remain, Sir,

Your obedient servant.
(sgd.) Jos. H. Fontaine,
Steamship Inspector.

Exhibits.
D-18.
Report Inspection the S.S. "Sarniadoc," 31st July, 1929.



COPY.

DEPARTMENT OF MARINE AND FISHERIES

10

(Marine Branch)

Steamship Inspector's Office

At 170 Youville Place,

MONTREAL July 31st 1929.

Exhibits.

D-18.

Report
Inspection
the S.S.
"Sarnia-
doc,"
31st July,
1929—
continued.

20 Sir,

I beg to furnish herewith the following particulars for in-
sertion in Form for the Seamer "SARNIADOC" O. N. NEW
CASTLE ON TYNE, dealing with the annual inspection of
this vessel made by
on.....19.....

30 As requested by the Owners Representatives, I the undersigned
Surveyor on the 8/5/29 & subsequent days proceeded to Ogilvy's
Flour Mill dock for the purpose of ascertaining the nature and
extent of damage, alleged to have been sustained while on a
voyage from the United Kingdom to Canada, Commencing at
Glasgow, March 13/29 arriving Montreal May 7/29 thence on to
Toronto laden with a full cargo of coal, through neglect or ne-
gligence of the Chief Engineer in not controlling the density in
the main boilers, allowing both to reach the point of saturation
and also damaging main engines through apparent neglect in
lubrication. All being fully set forth in protest of Owners, En-
gineer has been released by Owners after arrival of steamer at
Montreal.

40

A fee of \$40.00 is charged for this inspection and attend-
ance during repairs.

Your obedient servant,

(Sgd.) Jos. H. Fontaine,
Steamship Inspector.



Copy sent to Inspector.....

The Chairman,

10 Board of Steamship Inspection,
Department of Marine and Fisheries,
Ottawa.

Note.—This form to be used for forwarding particulars as to officers engaged subsequent to inspection of ship, details of additional equipment, etc., issue and expiry of certificate of inspection, or any other particulars not available at the time of inspection.

Exhibits.

D-18.
Report
Inspection
the S.S.
"Sarni-
doc,"
31st July,
1929—
continued.

COPY.

20 REPORT OF SURVEY ON THE SS "SARNIADOC".
EXAMINATION.

Found both machinery and boilers in a very bad condition, salt hanging from every gland, valve, flange, and joint on high pressure, reduced pressure, heater line, main and auxiliary feed and blow down lines in fact from all and every connection direct or indirectly to boilers Boilers badly salted up with a heavy scale on all heating surfaces, especially the furnace crowns, all of which show signs of collapse.

30 The main and auxiliary machinery showing signs of extensive wear and damage bearings being badly worn, oil pipes and cups adrift and broken, with practically all oil holes filled solid with dirt.

In order to repair this damage and restore ship to the best possible condition as prior to the damage, the following repairs are found necessary and are

40 " RECOMMENDED "

MAIN ENGINE Crank shaft to be lifted, all bearings to be remetalled, journals filed, shaft bedded down and bearings adjusted.

Crank pins to be filed true, brasses dressed and leaded to pins, adjusted, Cross head pins to be filed true, brasses dressed and leaded to pins adjusted.



Radius links to be filed true, rod and drag links pins dressed, all brasses dressed and fitted, oil holes cleared, oil grooves recut, all; set up, adjusted.

10 Valve stem guide brackets, adjusted with eccentric straps taken down, cleaned and adjusted.

Rocker shaft, lifted, shaft filed, bearings dressed, replaced and adjusted.

Pump links taken adrift, pins, and brasses dressed, then replaced and adjusted.

Air pump taken adrift, valve seats faced and new king-horn valves fitted.

20 Feed pumps opened out, all seats faced with new spindles and valves fitted, relief valves and shut off valves on feed pumps repaired in good order, guide brass adjusted, with new packing fitted.

Main cylinders all opened up, all cylinders, valves, seats and pistons, cleaned examined, replaced and adjusted.

Thrust, all collars lifted, oil holes and grooves cleared, then replaced and adjusted.

30 Reversing engine opened up, repaired, cleaned with new valves, lubricator and gland fitted.

All oil pipes to main engine, cleaned, repaired and re-fastened in position.

All water services piping taken apart, repaired, cleaned, and replaced.

40 All grease cups for main bearings and cylinder lubricator, renewed.

All pressure and vacuum gauges, repaired and tested.

Coupling bolts, 4 renewed.

Circulating pump opened up, steam cylinder taken off, valve and seat refaced, pump overhauled, repaired and placed in good working order, lubricator broken renewed.

Exhibits.

D-18.

Report
Inspection
the S.S.
"Sarnia-
doc,"
31st July,
1929—
continued.

Ballast pump, opened up, valve and seats faced, new valve fitted to pump, all repacked and closed up in good order.

General service pump, cylinder and water end opened up, slide valve dressed, seats trued up, water and valves and seat faced in lathe, pump repacked and closed up.

10

Sanitary pump, cylinder and valve chest opened, repacked and closed up.

Steering gear, all opened out, cylinders, valves and bearings examined, oil holes and oil ways cleared, with bearing adjusted.

20

Filter opened up, cleaned all valves repaired, then closed up.

Feed heater, opened up, coils cleaned and tested. valves repaired, then closed.

BOILERS. Boilers very heavy with scale, to be chipped and cleaned as best as possible, all four furnaces down from $\frac{1}{4}$ " to 1" all to be jacked up where down to within a quarter of an inch of original diameter.

30 All bridges walls removed in order to effect repairs, to be renewed.

All boiler mountings and all steam connections to be thoroughly overhauled, repaired or renewed.

All piping attached by leaking at joints, to be repaired, it being necessary to renew main and auxiliary feed line from pump to boilers and partly renew main and surface blow down piping.

40

New valves & checks being fitted to the following :—

2 Main stops, seats reseated, valves refaced, 1 new spindle.

2 Auxiliary stops, seats reseated, valves renewed, 2 new spindles.

Throttle valve reseated, valve refaced.

Exhibits.

D-18.

Report
Inspection
the S.S."Sarnia-
doc,"31st July,
1929—*continued.*



- 2 Main chocks, new seats and valves, 1 new spindle.
- 2 Auxilliary checks, new seats and valves, 2 new spindles.
- 10 2 Shut off valves, seats refaced, valves refaced, 2 new spindles.
- 2 Blow down valves, valves refaced, seats refaced.
- 1 reducing valve, new seats and valve.
- 3 Reducing valves (auxiliary) seats refaced, 2 new valves.
- Safety valves, seats refaced, valves refaced, 2 new stems, new guide spider.
- 20 Trycocks, ground and repacked.
- Circulating pump, new valve, steam and exhaust.
- Ballast pump, new valve, steam and exhaust.
- General service pump, new valve steam and exhaust.
- Steering engine, new valves, seats refaced, steam and exhaust.
- 30 Dynamo, new valves, seats refaced, steam and exhaust.
- Ice machine, new valves, seats refaced, steam and exhaust.
- Fresh water pump, new valves, seats refaced, steam and exhaust.
- Sanitary pump, new valves, seats refaced, steam and exhaust.
- 40 Filter, 2 valves renewed.
- Heater, 2 valves renewed.
- Deck winches, 4 valves refaced, seats refaced, steam and exhaust.
- Manifold valves, valves refaced, new valves and spindles were necessary.

Exhibits.

D-18.

Report
Inspection
the S.S.

“Sarnia-

doc,”

31st July,

1929—

continued.



Steam to I.P. new valve, seats refaced.

Steam reversing engine, new valve, seats refaced.

Glands of all valves cleaned and repacked.

10 The repairs and renewals as outlined in the recommendations have been carried out to my satisfaction.

On the 22/5/29 after completion of repairs I tried the main engine and all auxiliary machinery and floated safety valves to blow at 180 Lbs. per. sq. inch.

	Master:—Robert Bruce Angus. Can. Mast C/S Coast	11,790
	1st Mate:—Harry James Kirk, Can. Mast "I.I.W."	9,460
20	2nd. Mate:—Thos. Wilson, Can. Mast I. W.	12,045
	Chief engineer:—Robert Duguid, 1st. B.T.	47,195
	2nd. engineer:—Jos. L. A. Sauvageau, 4th. Cl. Can.	11,232

Exhibits.
D-18.
Report
Inspection
the S.S.
"Sarni-
doc,"
31st July,
1929—
continued.

DEFENDANT'S EXHIBIT D-14 AT ENQUETE

30 *Copy of Specifications for Repair Boilers.*

S U P P L E M E N T A R Y

R E P O R T O F S U R V E Y

Held on the instructions of the Representatives of the Salvage Association.

S.S. "SARNIADOC"

40 of Newcastle, England. 1934 G. T. Register.

Held at Montreal, Que., Sept. 21st. and 23rd, 1929.

Disaster of March 13th. to May 7th. 1929.

THIS IS TO CERTIFY that the Undersigned Surveyor, representing Underwriters concerned in the Steamer "SARNIADOC", did at the request of Mr. R. Parry-Jones of the

Exhibits.
D-14.
Copy of
Specifica-
tions for
Repair
Boilers,
21st Sept-
ember, 1929.



10 Salvage Association, again examine the S.S. "SARNIADOC" on September 21st. and 23rd. 1929, while the vessel was afloat in the harbour of Montreal, Que., for the purpose of determining the condition of Port and Starboard main boilers with regard to damage alleged to have been sustained while on a voyage from the United Kingdom to Canada, commencing at Glasgow March 13th. and ending at Montreal, Quebec on May 7th. 1929. For further particulars please refer to previous survey which was held on May 8, 1929.

Exhibits.

—
D-14.
Copy of
Specifica-
tions for
Repair
Boilers,
21st Sept-
ember, 1929
—continued.

20 In briefly referring to previous survey, repairs were made to main boilers by jacking up the collapsed furnaces, cleaning boilers and so forth. The repairs were completed to the satisfaction of Owners, and all surveyors. During the season of navigation 1929 the boilers continually were giving trouble. Examinations on September 21st. and 23rd. 1929 were again made while the boilers were under steam and also with the steam off the boilers. Surveyors attending were Mr. P. Bonham, representing Owners, Mr. D. Carswell, representing the builders of the vessel, Mr. D. McArthur, British Corporation Classification Surveyor, and Mr. J. Fontaine, Canadian Steamship Inspection Surveyor. And UPON:—

E X A M I N A T I O N

30 It was found that on the fireside of each boiler, port and starboard furnaces and combustion chambers, considerable leakage was coming from stay tubes, plain tubes, and back end screw stays. There was no deflection of the flat surfaces. The furnace crowns were again down from $\frac{1}{2}$ to $1\frac{1}{2}$ inches. The Owners of vessel state that they had repeatedly removed screw stay nuts, caulked around these stays and refaced the nuts but could not keep stays tight. The tubes had also at different times been expanded and still the leakage was very apparent.

40 It is the opinion of the undersigned and also that of the other surveyors, that the present leaking condition of stays and tubes is through the bad conditions the boilers were found in when the vessel arrived at Montreal in May 1929. That the furnaces through the first damaged condition are not capable of retaining their circular shape. Therefore with reference to the boilers, in order to place the vessel in as good a condition as she



was at the commencement of the voyage from the United Kingdom to Canada in March 1929, it is necessary to renew the furnaces, tubes and screw stays on flat surfaces in each boiler.

S.S. "SARNIADOC"

10 Disaster of March 13th. to May 7th. 1929.

A Specification covering the repairs was drawn up accepted by the Owners and approved by the Undersigned Surveyor. Copies of Specifications were handed to the following firms:—

Messrs. J. & R. Weir, Ltd., Montreal.

20 Messrs. Canadian Vickers Limited, Montreal.

Messrs. Montreal Drydocks Limited, Montreal.

Messrs. Sorel Mechanical Shops, Sorel, Quebec., for the purpose of obtaining tenders for the cost of carrying out and completing the repairs. Copies of Specification and tenders received are attached hereto and forms part of this report.

30 The tenders were received at the Montreal office of the Owners of the vessel on October 5, 1929, and were as follows:—

Messrs. J. & R. Weir, Limited, Montreal, \$6,390.00

Messrs. Montreal Drydocks Limited, Montreal, \$7,550.00

Messrs. Sorel Mechanical Shops, Ltd., Sorel \$7,200.00

40 The tender from Canadian Vickers Limited did not comply with the requirements of the specification and was therefore considered not in order.

The tender from Messrs. J. & B. Weir, Limited, being fair and reasonable was accepted by the Owners and approved by the Undersigned Surveyor.

According to terms of specification the contractor was to accept the vessel at Montreal at the close of 1929 navigation and to deliver vessel to Owners with repairs completed by the opening of navigation 1930.

Exhibits.

D-14.
Copy of
Specifications for
Repair
Boilers,
21st September, 1929
—continued.



10 It might not be possible to carry out the above mentioned repairs owing to the fact that at the present time the vessel is a wreck, having stranded on the Main Duck Island, Lake Ontario, on November 29th. 1929. It is therefore understood that should the "SARNIADOC" be released from her stranded position and drydock for repairs at any other port away from Montreal, Quebec, the contract price of SIX THOUSAND THREE HUNDRED AND NINETY DOLLARS (\$6,390.00) remains as if the vessel repaired at Montreal.

Messrs. J. & R. Weir, Limited, report having received the new furnaces from the United Kingdom, also they have on hand the tubes and stay bolt material, all of which they are holding pending decision of the Owners and the final disposition of vessel.

20 The above survey held, and repairs recommended without prejudice and subject to the terms of the policy.

E. DRAKE,
Underwriters' Surveyor.

MONTREAL, QUEBEC.
Jan. 31, 1930.

(COPY)

30

S.S. "SARNIADOC"

SPECIFICATION FOR REPAIRS

TO

PORT AND STARBOARD BOILERS

40 BOTH BOILERS

Each furnace, to be cut out removed and renewed, same design as original ones. Stokehold bulkhead to be cut, to facilitate removal and replacing of furnaces, the cropping of bulkhead to be fitted with rivetted patch, in accordance with Classification requirements. If after careful measurements it is found possible to remove and replace furnaces without the cutting of bulkhead, then all grating, fittings, piping, etc. removed for this

Exhibits.

D-14.
Copy of
Specifications for
Repair
Boilers,
21st September, 1929
—continued.



work to be replaced in good condition. The removal of coal to facilitate repairs is to be replaced to the satisfaction of Chief Engineer.

10 Furnace fronts together with all necessary forced draft fitting to be removed in way of repairs, and replaced in proper working order.

CHAMBER STAYS

All screw stays in back end of chamber to be cut out and renewed together with nuts except the 2" dia stays as shown on blue print.

20 All stay and plain tubes to be removed and renewed.

All threaded holes to be retapped. All stays and stay tubes to be fitted accordingly.

Any parts or parts of boilers damaged in making repairs, to be renewed by contractors.

Boiler covering necessary to be disturbed in way of repairs to be renewed.

30 All repairs to be carried out to the satisfaction of Owners, or their representative .

Classification, Canadian Steamship requirements, and Underwriters' Surveyors.

Boiler to be tested in accordance with Classification and Canadian Steamship requirements both with water and steam tests.

40 Repairs to be carried out and completed during winter at the close of present navigation and completed in time for opening of navigation for 1930.

Contractors to accept vessel at Montreal. Owners to take delivery at port of repairs.

Exhibits.

—
D-14.
Copy of
Specifica-
tions for
Repair
Boilers,
21st Sept-
ember, 1929
—continued.



Tenders to be delivered in quadruplicate at Office of the Paterson Steamship Co. at Montreal on October 5th. at 10 a.m.

Exhibits.

D-14.

Copy of Specifications for Repair Boilers, 21st September, 1929 —continued.

- 10 (Signed) P. C. Bonham
OWNERS' REPRESENTATIVE.
- “ D. McArthur
CLASSIFICATION SURVEYOR.
- “ J. H. Fontaine
CANADIAN STEAMSHIP INSPECTION
- “ E. Drake
UNDERWRITERS' SURVEYOR.
- “ R. W. Weir
REPAIRERS' REPRESENTATIVE.

(COPY)

20

J. & R. WEIR LIMITED
ENGINEERS
MONTREAL

October 5, 1929.

Paterson Steamships Limited,
300 St. Sacrement Street,
MONTREAL, QUEBEC.

Gentlemen :

30

S.S. "SARNIADOC"

We are pleased to quote you price to do the repairs and renewals to Port and Starboard Boilers, all as per your specifications dated September 27th. 1929.

Our price for these repairs and renewals will be SIX THOUSAND, THREE HUNDRED AND NINETY DOLLARS (\$6,390.00).

40

Thanking you for your inquiry.

We remain,

Yours very truly,

J. & R. WEIR LIMITED
by R. M. Weir

RMW/SB



(COPY)

SOREL MECHANICAL SHOPS LIMITED

10

SOREL, QUE. October 5, 1929.

Messrs. Paterson Steamship Co. Limited,
Board of Trade Building,
MONTREAL.

Exhibits.

D-14.
Copy of
Specifications for
Repair
Boilers,
21st Sept-
ember, 1929
—continued.

Dear Sirs:—

RE : QUOTATION S/S "SARNIADOC"

20

We are pleased to quote you a price of Seven Thousand Two Hundred Dollars (\$7,200.00) for repairs to Port and Starboard boilers, as per specifications, Steamer "SARNIADOC".

Work to be completed before opening of navigation of 1930.

Thanking you for this opportunity of quoting and hoping to be favored with this business.

30

We remain,

Yours truly,

SOREL MECHANICAL SHOPS LIMITED

(Ini) W. N.

GENERAL SUPERINTENDENT.

40





(COPY)

MONTREAL DRY DOCKS LIMITED

10

MONTREAL,

Oct. 5th. 1929.

S.S. "SARNIADOC" & Owners,
Paterson Steamship Co. Ltd.,
Montreal, Que.

Gentlemen:

20

Attention Captain T. W. Timmouth

We hereby offer to carry out and complete repairs to the Port & Starboard boilers of the above vessel, all as per specification and letter of September 27th. for the sum of SEVEN THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$7,550.00).

Yours very truly,

30

MONTREAL DRY DOCKS LIMITED.

(Signed) B. S. Hastings,
Manager.

BSH/JB

40



Exhibits.

D-14.

Copy of
Specifications for
Repair
Boilers,
21st Sept-
ember, 1929
—continued.



DEFENDANT'S EXHIBIT D-17 AT ENQUETE.

Report Inspection from Mr. Joseph H. Fontaine.

10

DEPARTMENT OF MARINE

Steamship Inspector's Office

At 170 Youville Place.,

Montreal, 7th. October, 1929

Sir,

20 I beg to furnish herewith the following particulars for
insertion in Form for the steamer "SARNIADOC"
O.N. 149496. New Castle dealing with the annual inspection of
this vessel made byon.....19....

30 As requested by the Owners Representatives, I the under-
signed Surveyor on the 23/9/29 and subsequent dates proceeded
to Cote St. Paul, Lachine Canal, there to inspect main boilers,
which were reported in bad condition. Upon examination of the
water side I found surfaces in a rusty condition, majority of
stays in back ends leaking, also tubes leaking, I gauged the fur-
naces and found them down 1/2" to 7/8" in stbd. boiler and 7/8"
to 1 1/8" in port boiler. Temporary repairs were effected to
allow the vessel to complete the season of navigation, as follows:
(See next page).

New chief engineer Thos. Ed. Hurl, 2nd Class Can. 8025

No change in other officers.

A fee of \$15.00 is being charged for this inspection.

40

Copy sent to Inspector

I am, Sir,

Your obedient servant,

(sgd) Jos. H. Fontaine,
Steamship Inspector.

Exhibits.

D-17.
Report
Inspection
from Mr.
Joseph H.
Fontaine,
7th October,
1929.



Fee.....
 The Chairman,
 Board of Steamship Inspection,
 Department of Marine,
 Ottawa.

Exhibits.

D-17.

- 10 Note.—This form to be used for forwarding particulars as to officers engaged subsequent to inspection of ship, details of additional equipment, etc., issue and expiry of certificate of inspection, or any other particulars not available at the time of annual inspection.

Report
 Inspection
 from Mr.
 Joseph H.
 Fontaine,
 7th October,
 1929—
continued.

COPY.

SS. "SARNIADOC".

20

Montreal, 7th. October, 1929.

Tubes were expanded.

Stay nuts in back ends were removed, plates caulked around stays and nuts refitted.

Boilers were cleaned and surfaces coated with white zinc paint and turpentine heated surfaces coated with lime wash.

30

The furnaces are to be under observation each trip to Montreal.

Permanent repairs will be effected this winter and will consist of the renewal of furnaces of both boilers, retubing both boilers and re-staying of combustion chamber back plates of both boilers.

40 This vessel is new no papers are available except ship's registry.

I remain, Sir,

Your obedient servant,

(sgd) Jos. H. Fontaine,
 Steamship Inspector.



DEFENDANT'S EXHIBIT D-16 AT ENQUETE

Report from Mr. D. McArthur.

10 THE BRITISH CORPORATION REGISTER OF
SHIPPING AND AIRCRAFT.

Head Office,
14 Blythswood Square, Glasgow, Scotland.

Port of Montreal, Quebec.

October 11th, 1929.

20 The Undersigned, Duncan McArthur, Surveyor to this Corporation, did at the request of the Owners, Messrs. Paterson Steamships, Limited, attend the Steel Screw Steamer "SARNIADOC" of Newcastle-on-Tyne, 1940 gross tons, 140,496 Official Number, as she lay afloat in the Lachine Canal, Montreal, Quebec, on the 16th September, 1929, and subsequent dates, in order to examine and report upon damage sustained by the main boilers supplementary to that repaired at this Port in May, 1929.

30 For further particulars see Report dated 25th June, 1929.

Upon examination it was found that all furnaces were again more or less distorted the worst being the port furnaces of the port boiler where the difference between the horizontal and vertical gauging was 1-1/16", the horizontal being greater. All stays on the backs of the combustion chambers and all tubes, plain and stay, in both boilers were found to be leaking badly.

40 As a temporary repair it was recommended that the combustion chamber back stays be caulked and the nuts rejoined and made tight and that all the tubes be expanded.

The temporary repair, as recommended, was carried out and the Undersigned is of opinion that the boilers are in a fit condition to retain Classification in this Register but recommends that the back stays of the combustion chambers, all tubes and all furnaces be renewed at the close of navigation.

Duncan McArthur,
Surveyor.

Exhibits.

D-16.

Report from
Mr. D.
McArthur,
11th October,
1929.

PLAINTIFF'S EXHIBIT P-1 WITH RETURN

*Bill of Lading S.S. Mantadoc for 65,150 Bushels No. 2
Northern Manitoba Wheat.*

10

LAKE SHIPPERS' CLEARANCE ASSOCIATION

Fort William, Ont., Oct. 16, 1929.

COPY NOT NEGOTIABLE

SHIPPED, in apparent good order and condition by Canadian Co-operative Wheat Producers Limited as agents and forwarders, for account and at the risk of Whom it may concern, on board the vessel S. S. "MANTADOC" whereof Kirk is Master, now in the port of Fort William, Ont., and bound for Port Colborne, Ont.

20

The property herein described, to be delivered in like order and condition (the dangers of navigation, fire, and collision excepted) as consigned herein or to consignee's or consignees' assigns upon payment of the freight and charges as noted below or as previously agreed upon.

30

The carrier shall make no claim for any over-run or surplus in the outturn of cargo at the port of discharge and assumes no responsibility for shortage or for differences in weight other than that imposed by the Water Carriage of Goods Act; but the carrier shall allow and turn over to the shipper or his agent a fixed amount equal to one quarter bushel per thousand bushels as tare on the basis of c.i.f. value at port and date of discharge on bill of lading quantities, and shall also pay to the shipper or his agent tallying charges of 24 cents per 1000 bushels on direct cargoes and 48 cents per 1000 bushels on cargoes which require to be trans-shipped, such amount and tallying charges to be deducted from the freight if the freight has not been paid, otherwise to be paid in cash by the carrier. All grain on board is to be delivered and freight is to be collected upon bill of lading weight. Where two or more shipments are carried in the same compartment of the vessel, the shortage, if any, resulting upon unloading the last of these shall be borne and adjusted pro rata by the shippers.

40

Exhibits.

P-1.

Bill of
Lading S.S.
"Manta-
doc" for
65,150
bushels
Wheat,
16th Octo-
ber, 1929.



10 If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the ship-owner, shall contribute in General Average, and shall pay such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness.

20 This shipment is subject to all the terms and provisions and all the exemptions from liability contained in the "Water Carriage of Goods Act".

Permission given to tow and be towed and for reasonable deviation for that purpose.

30 IN WITNESS WHEREOF The Master, Owner or Agent of said Vessel hath affirmed to one Bill of Lading and copies thereof, the Original Bill of Lading being alone negotiable, and the said copies being marked on their face as follows. — Copy not negotiable.

Order The Canadian Bank of Commerce. Notify Canadian Co-operative Wheat Producers, Limited Montreal, Que. Care of Canadian Co-operative Wheat Producers, Limited, 40 Montreal, Que. Destination — Montreal, Que., via Port Colborne, Ont.	Sixty Five Thousand One Hundred and Fifty (65,150) Bushels No. Two (2) North- ern Manitoba Wheat. Hold 4. Rate of Freight As. per agree- ment. (Signed) J. A. Speers, per R. Milligan, Agent for vessel.
--	---

Exhibits.

P-1.

Bill of
Lading S.S.
"Manta-
doc" for
65,150
Bushels
Wheat,
16th Octo-
ber, 1929

—continued.



PLAINTIFF'S EXHIBIT P-2 WITH RETURN

*Bill of Lading S. S. Mantadoc for 70,522 Bushels 24 lbs, Extra
No. 3 Canada Western 6 Row Barley.*

10

LAKE SHIPPERS' CLEARANCE ASSOCIATION

Fort William, Ont., Oct. 16, 1929.

COPY NOT NEGOTIABLE

SHIPPED, in apparent good order and condition by Canadian Co-operative Wheat Producers, Limited, as agents and forwarders, for account and at the risk of whom it may concern, on board of the vessel S. S. "MANTADOC" wherof Kirk is Master, now in the port of Fort William, Ont. and bound for Port Colborne, Ont.

20

The property herein described, to be delivered in like order and condition (the dangers of navigation, fire, and collision excepted) as consigned herein or to consignee's or consignees' assigns upon payment of the freight and charges as noted below or as previously agreed upon.

30

The carrier shall make no claim for any over-run or surplus in the outturn of cargo at the port of discharge and assumes no responsibility for shortage or for differences in weight other than that imposed by the Water Carriage of Goods Act; but the carrier shall allow and turn over to the shipper or his agent a fixed amount equal to one quarter bushel per thousand bushels as tare in the basis of c.i.f. value at port and date of discharge on bill of lading quantities, and shall also pay to the shipper or his agent tallying charges of 24 cents per 1000 bushels on direct cargoes and 48 cents per 1000 bushels on cargoes which require to be trans-shipped, such amount and tallying charges to be deducted from the freight if the freight has not been paid, otherwise to be paid in cash by the carrier. All grain on board is to be delivered and freight is to be collected upon bill of lading weight. Where two or more shipments are carried in the same compartment of the vessel, the shortage, if any, resulting upon unloading the last of these shall be borne and adjusted pro rata by the shippers.

40

Exhibits.

P-2.

Bill of
Lading S.S.
"Manta-
doc" for
70,522
Bushels,
Barley,
16th Octo-
ber, 1929.



10 If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in the navigation or management of the ship, or from latent or defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the ship-owner, shall contribute in General Average, and shall pay such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness.

20 This shipment is subject to all the terms and provisions and all the exemptions from liability contained in the "Water Carriage of Goods Act".

Permission given to tow and be towed and for reasonable deviation for that purpose.

30 IN WITNESS WHEREOF The Master, Owner or Agent of said Vessel hath affirmed to one Bill of Lading and copies thereof, the Original Bill of Lading being alone negotiable, and the said copies being marked on their face as follows:—
Copy not negotiable.

Order Bank of Montreal.
Notify Canadian Co-operative
Wheat Producers, Limited
Montreal, Que.
Care of Canadian Co-operative
Wheat Producers, Limited,
Montreal, Que.
Destination — Montreal, Que.,
40 via Port Colborne, Ont.

Seventy Thousand Five Hundred and Twenty Two 24/48
(70,522-24) Bushels Extra
No. Three (3) Canada Western
Six (6) Row Barley.
Hold 3.
Rate of Freight As per agreement.
(Signed J. A. Speers,
per R. Milligan,
Agent for vessel.

Exhibits.
P-2.
Bill of Lading S.S.
"Mantadoc" for
70,522
Bushels,
Barley,
16th October, 1929
—continued.

PLAINTIFF'S EXHIBIT P-3 WITH RETURN.

Bill of Lading S.S. Sarniadoc for 5,091 Bushels, Extra No. 3 Canada Western Barley, 6 Row and 56,594 No. 2 Northern Manitoba Wheat.

Exhibits.

P-3.
Bill of Lading S.S. "Sarniadoc" for 5,091 Bushels, Wheat, 28th November, 1929.

Department of Railways and Canals
GOVERNMENT ELEVATOR
WELLAND CANAL

Port Colborne, Ont., Nov. 28th 1929.

MEMORANDUM NOT NEGOTIABLE

SHIPPED in apparent good order and condition by GOVERNMENT ELEVATOR, WELLAND CANAL, Agents for whom it may concern, in and upon the SS. "SARNIADOC" whereof is Master for the present voyage and now lying in the port of Port Colborne, the undermentioned and described property, to be delivered in like good order and condition at the port of Montreal, Quebec, (the act of God, the King's enemies, fire and all and every dangers and accidents of the seas, rivers and navigations, of whatsoever nature and kind excepted), he or they paying freight at the rate of As Per Agreement.

This instrument is a memorandum only and is NOT NEGOTIABLE. Original bill of lading of lake steamer named hereon, and for like quantity, which is now outstanding, will be required before delivery of this cargo. Lake bill of lading consigned as appears below.

Ex-Steamship	Consignee	Quantity and Grade of Grain
Shipper; "MANTADOC" Nov. 2nd. 1929	Can. Co-oper. Wht. Prod. Ltd. Order of Bank of Montreal, Notify Can. Co-oper. Wht. Prod. Ltd. Care of Can. Co-oper. Wht. Prod. Ltd. Montreal, Quebec	Five Thousand and Ninety One (5,091) Bushels. Extra # 3 (Three) Canada Western Barley. 6 Row Hold — 1 first in covered up.
Shipper; "MANTADOC" Nov. 2-29	Canadian Co-oper. Wht. Prod. Ltd., Order of Canadian Bank of Commerce, Notify Canadian Co-oper. Wht. Prod. Ltd. Care of Canadian Co-oper. Wht. Prod. Ltd. Montreal.	Fifty Six Thousand, Five Hundred and Ninety Four (56,594) Bushels. # 2 (Two) Northern Manitoba Wheat Hold-2

J. M. Finch
Agent or Master of Vessel

DEFENDANT'S EXHIBIT D-20 AT ENQUETE

Report of Wind at Toronto November & December.

ABSTRACT OF THE WIND AT TORONTO FOR THREE DAYS IN THE MONTH OF NOVEMBER & DECEMBER 1929

Showing the direction and Velocity for each hour of the day, with the number of miles from each direction, average monthly velocity, etc., etc.

Note : Prevailing direction with total number of Miles for each hour.

HOUR ENDING	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID.	
Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	Dir. Mts.	
DEC. 1	SW 20	SW 22	SW 20	SW 19	SW 19	SW 17	SW 17	SW 17	SW 19	W 18	W 15	SW 15	W 19	SW 14	SW 14	SW 12	SW 9	SW 12	SW 18	SW 17	SW 17	SW 17	SW 17	SW 17	SW 14
NOV. 29	NW 30	NW 13	NW 16	NW 15	NW 12	N 6	NE 2	NE 3	NW 5	NW 6	NW 7	W 7	W 10	SW 35	SW 35	NW 13	NW 18	SW 23	SW 23	SW 26	SW 26	SW 26	SW 26	SW 26	SW 32
NOV. 30	SW 30	SW 32	SW 32	SW 32	SW 33	SW 30	SW 30	SW 32	SW 34	SW 29	SW 28	SW 30	SW 35	SW 35	SW 34	SW 32	SW 30	SW 30	SW 29	SW 29	SW 21	SW 23	SW 23	SW 21	SW 17

Certified correct copy by C. S. Trent,
A. J. C.

J. Patterson
Director.

Exhibits:
D-20,
Report of
wind at
Toronto,
November
and Decem-
ber, 1929.



PLAINTIFF'S EXHIBIT P-5 AT ENQUETE

Extract from Testimony before Wreck Commissioner. —

9th Jan. 1930.

S.S. SARNIADOC

EXTRACTS FROM TESTIMONY

— before —

WRECK COMMISSIONER

20 His judgment with questions and answers annexed thereto.

S.S. SARNIADOC

Angus, p. 4;

“Q.—What was the draught of your ship at the time of the accident? A.—Fourteen feet.

“Q.—Fully loaded? A.—Fully loaded. Well, fully loaded — she would be about fifteen feet six.

30 *Angus, p. 39-40;*

“Q.—And you were reasonably sure of your position at Point Peter. A.—Yes, sir. I had allowed her — I steered high and I allowed her five degrees for local attraction at the foot of the Lake, from around the False Ducks, as she had always done from observing it at various times and she usually pulled about five degrees to starboard and I gave her that and I figured that she would be possibly a mile, maybe a little more, to port of the Main Ducks. I could not go to Kingston because
40 she would not stand the pull into the trough of the sea. My idea was to go behind the Main Ducks to anchor until weather conditions got better.

BY THE COURT:—

“Q.—What do you mean by she would not stand the trough of the sea? Your ship was loaded. A.—Yes, sir. She would roll to beat the band and she would probably shift her cargo.

Exhibits.

P-5.

Extract from Testimony before Wreck Commission, 9th January, 1930.



Exhibits.

P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.

“Q.—Don’t you face the same conditions right through the fall when you are carrying cargo from one place to another?

A.—Yes, sir.

“Q.—When you get on Lake Superior, don’t you get exposed to the trough of the seas? A.—Not very often if I can help it.

10 “Q.—How often does a ship shift cargo on the Lakes?
A.—Lots of them.

“BY CAPTAIN FOOTE:—

“Q.—Any ships you ever were in that carried shifting boards on the Lakes? A.—Yes, sir, years ago.

“Q.—But no ships recently? A.—No, sir.

20 “Q.—As far as you know a ship is seaworthy without shifting boards? A.—Well, they are if they don’t have to get in the trough of the sea. There is no one carries them. Nobody carries them these days.

Kirk, p. 75;

“Q.—What was the velocity of the wind in your point of view — Beaufort Scale? A.—Approximately thirty miles an hour, I should judge.

Kirk, p. 91-92;

30 “Q.—As Mate did you make a practice always to be guided by the steering compass, or if you checked it by your standard?
A.—Check by the standard.

“Q.—When you take bearings of ranges you go to the standard compass first? A.—If it is working. Of course, I do, and if not I go to the steering compass.

“Q.—When you go to take observations you take the standard compass? A.—Yes, sir.

40 “Q.—And afterwards you check the steering compass by that? A.—Yes, sir.

“Q.—Really the standard compass is the reliable compass on board of a ship. A.—Yes, sir.

Hurl, p. 150-151;

BY THE COURT:—

“Q.—Furnace down — When was that? Since you have been there? A.—They were down when I went there. That is the reason we had the survey because they found them down.

BY MR. ATKINS:—

“Q.—And they were not pumped up after that? A.—
They had been pumped up in the spring and they came back down
again.

10 “Q.—And they were not pumped up again? A.—No,
because they were going to put new furnaces in; but it did not
do her any harm as far as pressure, and that was concerned.

The Inspector told me to just watch her and that.

BY THE COURT:—

“Q.—Would it not affect the working of the machinery
with the furnaces down? A.—No, sir.

20 “Q.—Don't you have to reduce your power or pressure?
A.—No — that did not cut the pressure.

“Q.—If it does not affect the pressure what was the reason
to repair it? A.—It would keep on going down. They
were going to renew them this fall and they let the boat go.”

Hurl, p. 164-165:

“Q.—In the course of evidence the Mate and Captain
testified that they gave full speed, and in several instances they
repeated the signal of full speed. A.—They did.

30 “Q.—I don't see an entry of that. A.—No. We did
not bother marking that down because in a case of that kind you
don't think of these little things all at once.

“Q.—What do you mean by a case of that kind? A.—
When you are out there at sea and he rings the full speed ahead
just for the minute.

“Q.—It is not a minute. It appears it was ten minutes
or very near a quarter of an hour on full speed. A.—Well,
probably it was, yes.

40 “Q.—You haven't entered that? A.—No. I did not
mark it down.

“Q.—Was it really given ... that full speed? A.—Yes,
sir. It was really and truly given. There is no dispute about
it ... it aint in the book.

“Q.—Well then, your system of keeping a log is defective.
A.—Well, I suppose we don't just keep it up to the standard
that we should; but we don't look for these kind of things. We
don't think we are going to be brought up here to be sworn to
the like of this.

Exhibits.

P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.



“Q.—Why? A.—We don’t expect it.

“Q.—Have you made similar entries in your real log — in your ink log? A.—I don’t put everything down in my other log. I pick out when I leave Port Dalhousie and when I get to Kingston.

10 “Q.—Are your owners satisfied with such a log as that as a record of events? A.—Never had any complaints.

“Q.—Do they ever see it? A.—Yes, sir. My log is sent in every trip.

Hurl, p. 170-171;

“Q.—What is the horsepower there? A.—Oh, I don’t know. I never figured her out to see what she was. She wasn’t a very big engine — she was only fifteen high.

20 “Q.—You don’t know her horsepower? A.—No.

“Q.—Do you know why the survey was called in September? A.—Yes, sir.

“Q.—Why? A.—Why I guess I was responsible for the survey because the tubes leaked and I went into the back end and I seen the tubes was leaking and I wasn’t satisfied with it, and I said what is the use of fooling with this thing and I will report it, and I reported that the tubes was leaking and I thought we would have more trouble with them, and they come and had the survey and they fixed them up and she never leaked after. They fixed them up temporarily for the fall and I never had
30 the fires out after.

Angus, p. 177 :

“Q.—You testified yesterday that these entries in this log book were your own handwriting? A.—Yes, sir.

“Q.—And you also testified that you gave an order twenty minutes prior to the standing of full speed ahead? A.—Yes, sir.

40 “Q.—I have the same reproach to make to you. It does not appear in your log book. A.—I did not have time to write it.

“You had time to go over this and rub off, which wasn’t advisable, on account of the book being wet and icy as you said, and you went over this very carefully and so carefully that you left the impression of your pencil right throughout half a dozen pages. Did you think it important to enter this in your log book? A.—I never thought of it. I might have done it.

Exhibits.

—
P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.



“Q.—Did you really go full speed ahead? A.—Yes, sir.

Angus, p. 180:

10 “Q.—When the standard compass did not give satisfaction after it was put on the wing of the bridge? A.—Not altogether — it did to a certain extent in fine weather; but not in bad weather.

20 “Q.—Did you make any report of that to your owners? A.—I did verbally. I talked it over with Captain Tinmouth in Montreal and we did not know what we could do, and we had spoken of strengthening up the top of the pilot house so that we could put it back there, and there was a question of finding the best place for it where it would work. There was considerable vibration up there on top of the pilot house and under the pilot house it is strengthened with stanchions. The one in the pilot house is good — there is practically no vibration; but the top roof on the pilot house is very thin, and there is considerable vibration.

Angus, p. 181:

30 “Q.—Would your ship, under the conditions that existed after you turned around on a starboard helm, have come up easier or harder if she had been without cargo? A.—Well, I don't think she would have ever have stood it if she had been without cargo at all.

J U D G M E N T

40 The Court having carefully reviewed and weighed the evidence adduced finds for the reasons given in the Report, that the loss of the S S “Sarniadoc” was due partly to very poor judgment, consequently poor seamanship on the part of the Master.

Mr. Francis King, K.C., pointed out that some years ago the Court expressed itself strongly against the wisdom of late navigation. These views are still entertained. It would not be consistent if in its punitive role, the court would severely

Exhibits.

P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.



penalize Masters or Officers for conditions over which they have no control, and which neutralizes their efforts as well as their thinking powers and judgment, such as below zero weather, violent gales of wind, narrow dangerous waters, snow storms obliterating for hours all land marks, aids to navigation and rendering them powerless to utilize to the utmost efficiency either anchors, log or even sounding instruments.

10

Notwithstanding the above sentimental expressions, it is found that from the outset proper and ordinary judgment was not exercised. The omission to record in both log books the last important order that of full speed ahead, leaves a very bad impression which is difficult to define. It is a source of wonderment that Owners or Managers are content with such incomplete records.

20

In view of the situation presented by the evidence and observations made thereupon the Court, finding the Master, Robert Bruce Angus, Certificate No. 11790, in default, will deal leniently in penalizing him. He stands severely reprimanded for lack of resourcefulness.

The Chief Engineer, F. C. Hurl, is cautioned for his omission to record in his log a special peremptory significant order from the bridge.

30

The First and Second Officers are absolved from blame as the Master, as is the custom on the Lakes, alone attended to the navigation of his ship.

R I D E R

Mr. Atkins, Counsel for the Underwriters of the Cargo, commented on the condition of the standard compass, and the lack of shifting boards, implying that the former was faulty and the latter lacking.

40

With respect to the compass, the Court has already opined.

Shifting boards

Concerning shifting boards, or the lack of them, as they were not the cause of the loss of ship, only by indirect implication from the Master, no allusion would have been made on the subject: but since that safety measure was hinted, at, if but casually, it behoves the Court to submit its opinion.

Exhibits.

P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.



In view of the stringent but necessary regulations enacted as to the stowing of grain cargoes from Canada to out ports or Foreign Ports, it is thought and suggested that some similar legislation be framed for Lake vessels, not necessarily enforcing or compelling the erection of bins and feeders; but certainly of longitudinal shifting boards.

10

Exhibits.

P-5.

Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.

Late navigation

With respect to the allusion made by Mr. King, K.C., as to the hazards of late navigation with which the Court agrees absolutely, it can be said on this subject, that so long as the Insurers of cargoes and hulls are willing to take risks at that period of the year, this deprecatory condition will exist through the inducements offered.

20

Sounding machines

In the "Sarniadoc" the sounding machine was within the pilot house; but the outrigger on the main deck. I suggest that said outrigger, which does not necessarily require to be of great length, six feet at the utmost, be placed at either end of the bridge deck, to swing back when not in use. Then such excuse as that given in this case would not have its *raison d'être* in fact no excuse could be accepted for its non usage.

30

It is also urged that, on the part of Owners, their Agents and Managers, there be exacted from Masters, Officers and Engineers, a more accurate and reliable recording of events in their log books and scrap logs.

A rush in the transportation of grain is in evidence for the coming season, which in the haste and hurry, may bring about casualties, damages and losses of all kinds, with the inevitable detention so harmful from a financial point of view.

40

Hence the united efforts of vessel owners is necessary in order to see that all navigational instruments are so installed as to be ever in readiness and handy for use, such as standard compasses, soundings machines and logs, which, instead of being trailed from aft, should be so arranged that its work could be performed and instantly verified from the bridge.

— ■ —

READ IN OPEN COURT AT OTTAWA THIS 3rd
DAY OF FEBRUARY, 1930.

sgd L. A. Demers,
Dominion Wreck Commissioner

Concurred in by

sgd James B. Foote.
sgd John Williams,
Nautical Assessors.

10

I hereby certify that the foregoing is a true
copy of original Report and Judgment herein.

J. T. Rowan,
Secretary, Wreck Commissioner's Court.

Exhibits.
—
P-5.
Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.

20

At the conclusion of the hearing of evidence the follow-
ing questions were read and submitted, for and on behalf of the
Department of Marine and Fisheries, for the opinion of the
Court.

1. What number of compasses had the vessel? When were they
last adjusted? Were they in good order and sufficient for
the safe navigation of the vessel?
- 30 2. Did the Master ascertain the deviation of his compasses from
time to time by observation? Were the errors correctly as-
certained and the proper correction to the courses applied?
3. What were the weather conditions prevailing previous to and
at the time of stranding? Was due and proper allowance
made for wind, currents, &c., having in view the weather
conditions which existed?
- 40 4. Were safe and proper measures taken to check the ship's
position off Point Peter Light? Was a safe and proper
courses steered from there to pass Main Duck Island?
5. Were soundings taken? If not, should the lead have been
used?
6. Was the vessel navigated with proper and seamanlike care?
7. Was a good and proper look-out maintained on board?



8. What was the cause of the stranding?

9. Was the stranding and/or loss caused through the wrongful act or default of the Master, First Officer, Second Officer, or any member of her crew, or any one or more of them, and, if so, which of them?

10

ANSWERS TO QUESTIONS BY THE COURT.

1. Ship had two compasses adjusted in September. The Standard compass had been placed on the bridge deck. They were in good order and sufficient for the safe navigation of the vessel.

20 2. Yes; but no use was made of standard compass.

3. Heavy snowflurries with strong wind and freezing temperature. Yes.

4. No.

5. Soundings were not taken; but such might have been attempted.

6. See Report and Finding.

30

7. Yes.

8. See Report and Finding.

9. Default of Master.

40

Exhibits.

P-5.
Extract
from Testi-
mony before
Wreck Com-
mission,
9th Janu-
ary, 1930—
continued.





Exhibits.

P-4.
Statement
of Hayes,
Stuart &
Co., Ltd.,
15th January,
1930.

PLAINTIFF'S EXHIBIT P-4 AT ENQUETE

Statement of Hayes, Stuart & Co. Limited.

10

Canadian Cooperative Wheat Pool,
Board of Trade Bldg.,
Montreal, P. Q.

Montreal, January 15th 1930

In Account With

HAYES, STUART & CO. LIMITED

20

No. 1600

Surveyors Geo. L. Hayes.

Inspectors

2nd December 1929 SS "SARNIADOC" — 30th November 1929.

30

10th January 1930 To services rendered proceedings to Kingston, Ont. and attending aboard SS "SARNIADOC" at various dates between 2nd December 1929 and 10th January 1930 Arranging salving of cargo and final disposal of cargo, reporting on same.

15 days @ \$25.00 per day.....	\$375.00
Expenses 2/10 December 1929.....	78.87
do 15/17 December 1929.....	43.30
do 8/9 January 1930.....	30.50
do Mr. Crocker expenses to Kingston	29.92
Long distance telephones & telegrams	29.50

40

\$587.09

HAYES, STUART & Co. Limited. Paid Feb. 4, 1930.

E. G.

Canadian Cooperative Wheat Pool,
Board of Trade Bldg.,
Montreal, P.Q.

Montreal, January 31st, 1930

Exhibits.

10

In Account With

HAYES, STUART & CO. LIMITED

Surveyors Geo. L. Hayes
13/14
January 1930 SS "SARNIADOC"

No. 1615
Inspectors

P-4.
Statement
of Hayes,
Stuart &
Co., Ltd.,
15th Janu-
ary, 1930—
continued.

20

Expenses proceeding to Kingston, to dispose of salvage grain.	\$30.50
Long distance telephone	8.40
	<hr/>
	\$38.90

HAYES, STUART & Co. Limited. Paid Feb. 13, 1930.
E. G.

30

Canadian Cooperative Wheat Pool,
Board of Trade Bldg.,
Montreal, P.Q.

Montreal, May 30th 1930

In Account With

HAYES, STUART & CO. LIMITED

Surveyors G. L. H.

No. 1772
Inspectors

40

SS "SARNIADOC" — 30th November 1929 To services attending at Kingston 30th April 1930 and 4th May 1930 arranging disposal cargo, apportioning proceeds, reporting on same.	\$100.00
2 trips to Kingston	35.75
Telegrams and telephone	5.00
	<hr/>
	\$140.75

HAYES, STUART & Co. Limited. Paid June 9, 1930.
E. G.

SS " SARNIADOC "

Disaster November 30th 1929

10 DISPOSITION OF SALVAGE

Lot No. 1

Sold up to January 10th 1930

Gross Proceeds Cost of
Salvage

2,704 Bus @ \$1.00.....	\$ 2,704.00		
40,872 Bus @ .37.....	15,122.64		
	<u>17,826.64</u>	\$17,826.64	\$ 8,913.32

20

Lot No. 2

Sold up to January 23rd 1930

6,991 Bus @ \$0.30.....	\$ 2,097.30		
366 Bus @ \$0.30.....	109.80		
456 Bus @ \$0.80.....	364.80		
<u>7,813</u>	<u>\$ 2,571.90</u>	2,571.90	1,295.37

30

NOTE : \$18.85 Paid to Mr. DuGrey

Lot No. 3

217 Bus. 40 lbs @ \$0.80

174.20 87.10

\$20,572.74 \$10,295.79

Nett Proceeds \$10,276.95

Proportion to

40 Canadian

Cooperative

Wheat Pool \$ 6,179.46

Proportion to

James Richardson

& Sons Limited.. 4,097.49

\$10,276.95

Exhibits.

P-4.
Statement
of Hayes,
Stuart &
Co., Ltd.,
15th Janu-
ary, 1930—
continued.



Lot No. 4

Brought in by Ship

21,733 Bus @ \$0.15.....

3,259.95

1,704.97

10 Nett Proceeds \$ 1,554.97

Proportion to
Canadian
Cooperative

Wheat Pool \$ 945.24

20 Proportion to
James Richardson
& Sons Limited.. 609.73

\$ 1,554.97

Exhibits.

P-4.

Statement
of Hayes,
Stuart &
Co., Ltd.,
15th Janu-
ary, 1930—
continued.

NOTE : \$150.00 paid for hire of Lighter "MELROSE"

LOT-No. 5

2,579 Bus. Barley @ \$0.15

386.85

193.43

30

Nett Proceeds \$ 193.43

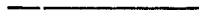
Handed to Canadian
Cooperative

Wheat Pool \$ 193.43

\$24,219.54

\$12,194.19

40





SS "SARNIADOC"

SUMMARY OF DISBURSEMENT OF PROCEEDS

10	75,918 bus. 40 lbs. grain salvaged realizing.....	\$24,219.54	
	Cost of salvage & disbursements, etc.....	12,194.19	
	NETT PROCEEDS	<u>\$12,025.35</u>	

Exhibits.

P-4.

Statement
of Hayes,
Stuart &
Co., Ltd.,
15th Janu-
ary, 1930—
continued.

Proportion nett proceeds handed to Can-
adian Cooperative Wheat Pool..... \$ 7,318.13

20	Proportion nett proceeds handed to James Richardson & Sons Limited.....	4,707.22	\$12,025.35
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SUMMARY OF DISBURSEMENT OF SALVAGE COSTS

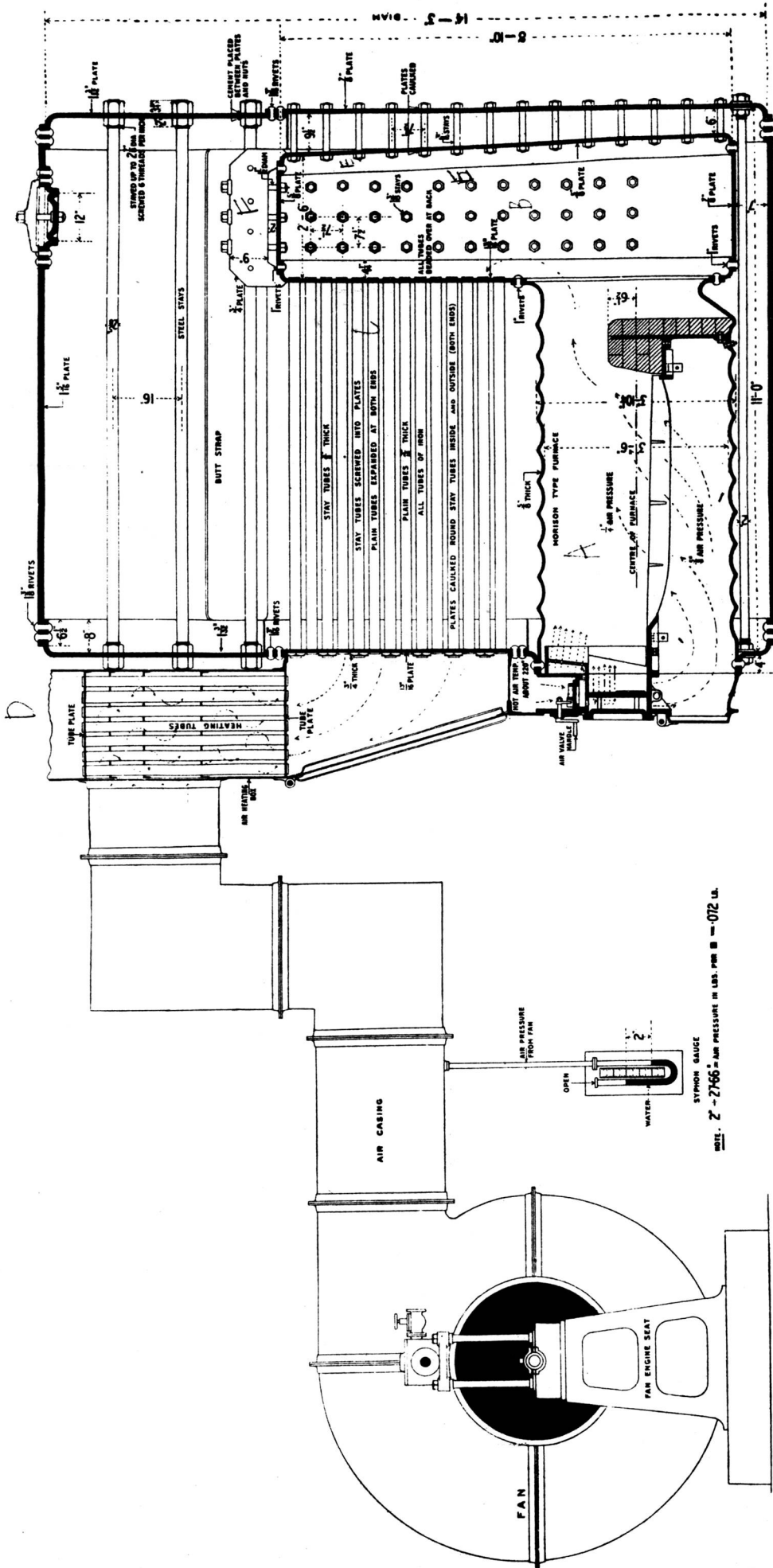
	Total Cost of Salvage.....	\$12,194.19	
	Messrs. Pyke Salvage Company.....	\$ 6,012.67	
	Messrs. Sin Mac Lines Limited.....	6,012.67	
30	Hire Lighter "MELROSE".....	150.00	
	Fee and expenses to Mr. DuGrey.....	18.85	
		<u>\$12,194.19</u>	<u>\$12,194.19</u>

HAYES, STUART & CO. LIMITED

President.

40

E. A. H. CROCKER,
Treasurer.



No. 63 - Sectional View of Boiler with Howard's Forced Draught.

The draught is generated by the fan shown, and the cold air (say at 60°) is delivered, by way of the air casing, into the air heating box which is situated in the uptake. The air circulates inside the heating tubes, and becomes raised in temperature by the waste gases to 200 or 220° Fahr., at which temperature it enters the furnaces, being admitted by one valve above the fire-bars and by two valves (both operated by one handle) to below the bars. This pressure can only be measured by a portable U tube similar to the one shown in the drawing.

NOTE - The various details shown above should be carefully studied by the student, the data given being that of the most recent practice. It should be observed that the water in the U tube of the hydrometric gauge rises higher in the leg open to the atmosphere, as the pressure of the draught is slightly in excess of the atmospheric pressure. With undisturbed draught the water would rise higher in the opposite leg of the tube.



PLAINTIFF'S EXHIBIT P-6 AT ENQUETE

Sectional View of Boiler

Exhibits.

P-6.
Sectional
view of
Boiler.



DEFENDANT'S EXHIBIT D-1 AT ENQUETE

Map of Lake Ontario.

Exhibits.

—
D-1.
Map of Lake
Ontario.

Separate.



DEFENDANT'S EXHIBIT D-2 AT ENQUETE ^{Exhibits.}
_{D-2.}
_{Photo.}
(Photo)

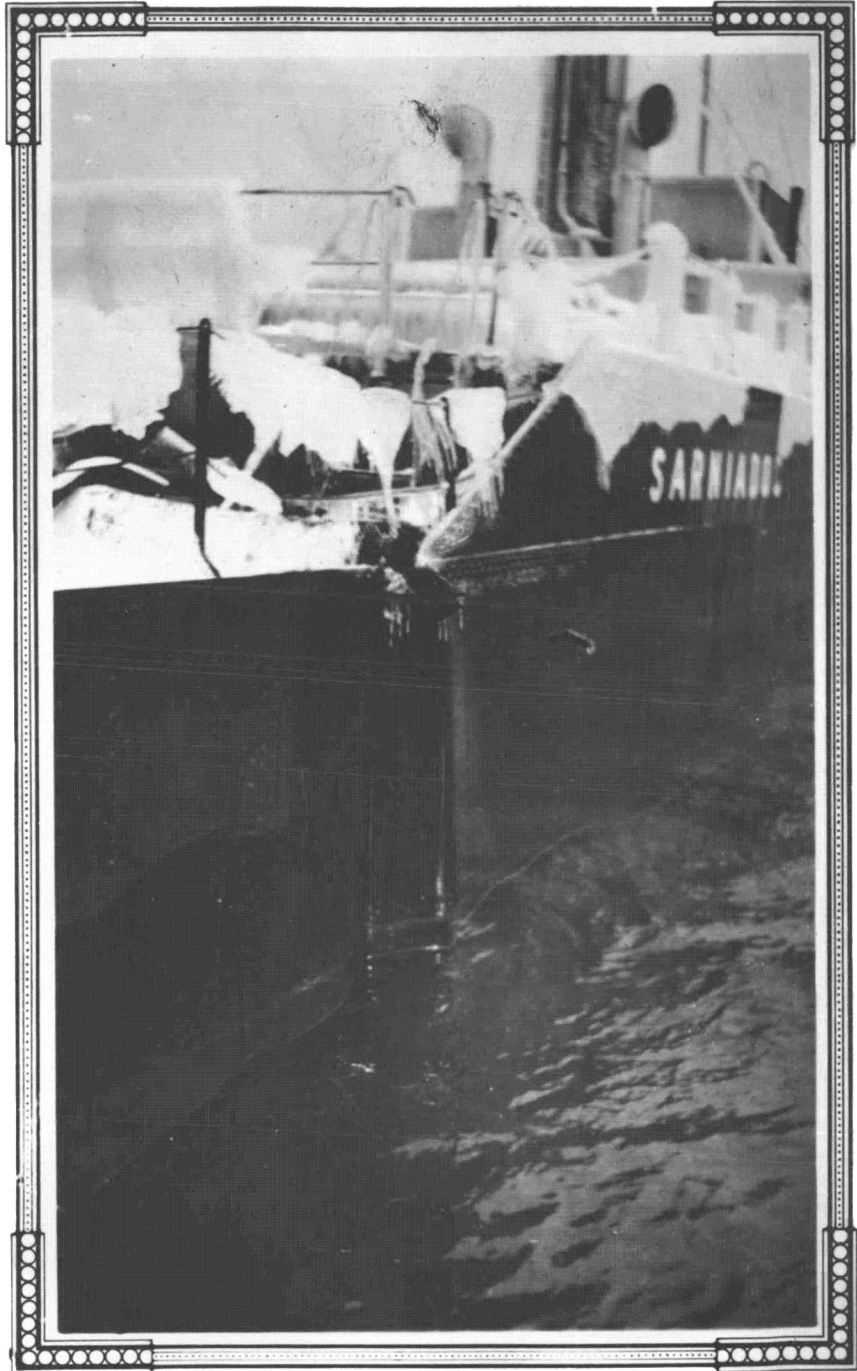
(Omitted by consent.)



DEFENDANT'S EXHIBIT D-3 AT ENQUETE
(*Photo*)

Exhibits.
—
D-3.
Photo.

(Omitted by consent.)

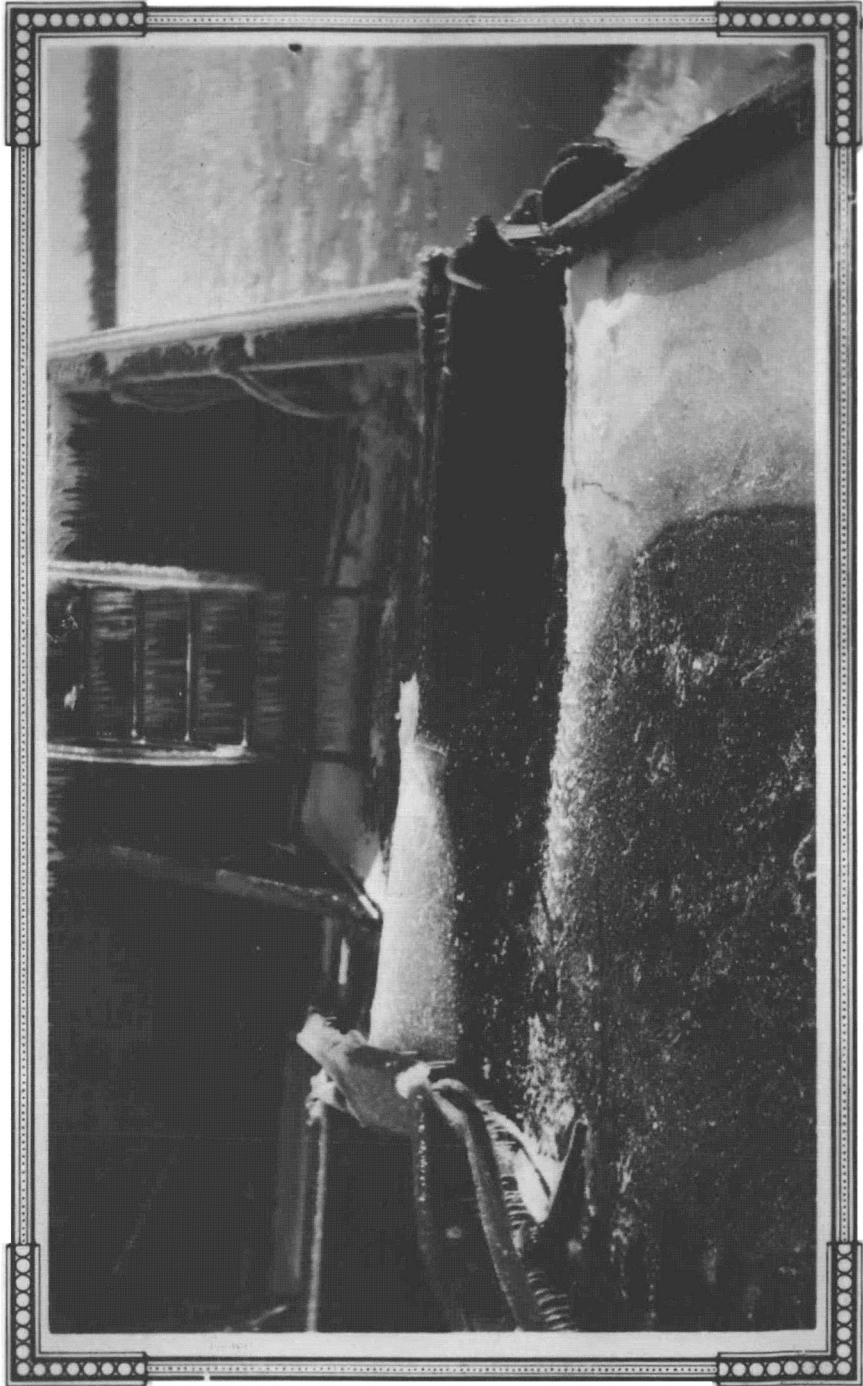




DEFENDANT'S EXHIBIT D-4 AT ENQUETE
(Photo)

Exhibits.

D-4.
Photo.





DEFENDANT'S EXHIBIT D-5 AT ENQUETE ^{Exhibits.}
_{D-5.}
Photo.
(Photo)



DEFENDANT'S EXHIBIT D-6 AT ENQUETE ^{Exhibits.}
_{D-6.}
Photo.
(Photo)

(Omitted by consent.)





DEFENDANT'S EXHIBIT D-7 AT ENQUETE

Exhibits.
D-7.
Photo.

(Photo)



DEFENDANT'S EXHIBIT D-8 AT ENQUETE

(Photo)

Exhibits.
—
D-8.
Photo.

(Omitted by consent.)



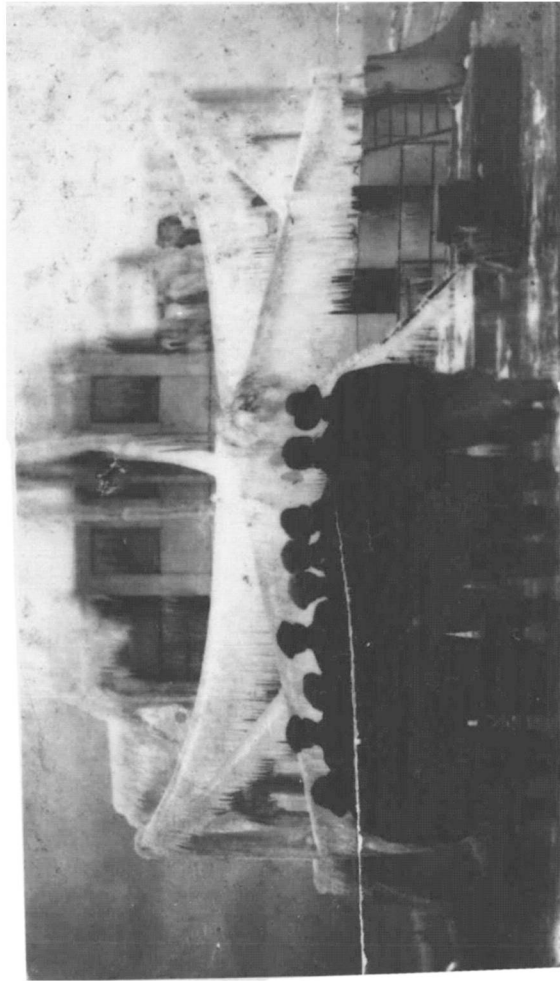
DEFENDANT'S EXHIBIT D-9 AT ENQUETE

(Photo)

Exhibits.

D-9.
Photo.

(Omitted by consent.)





DEFENDANT'S EXHIBIT D-10 AT ENQUETE
(*Photo*)

Exhibits.
D. 10.
Photo.



DEFENDANT'S EXHIBIT D-19 AT ENQUETE

*Letter from A. J. Connor to Messrs. Rowell, Reid, Wright
& McMillan.*

10

DEPARTMENT OF MARINE

Meteorological Service of Canada

Toronto 5, Ont. February 29, 1932.

Messrs. Rowell, Reid, Wright & McMillan,
38 King St. West,
Toronto, Ont.

20

Dear Sirs,

We are giving to your messenger the meteorological data for November 29th, 30th and December 1st, 1929 at stations on Lake Ontario.

We are giving the hourly velocity and direction of wind at Toronto and Agincourt. At Kingston the anemometer was, unfortunately, out of commission and the same was true at Cobourg. We have given, however, the estimate of the observer of the velocity and the direction of the wind at Kingston at 8 a.m. and 8 p.m. on those days.

30

The general state of the weather and temperature have been noted at Belleville, Bloomfield, Brockville and Agincourt as well as at Toronto and Kingston.

Yours truly,

40

A. J. Connor.

AJC/HB

A. J. Connor,
Climatologist.
For the Director.

Exhibits.

D-19.

Letter from
A. J. Connor
to Messrs.
Rowell,
Reid,
Wright &
McMillan,
29th Febru-
ary, 1932.

DEFENDANT'S EXHIBIT D-21 AT ENQUETE

Certificates and Memorandum relating to Grain Cargoes.

10 I JOHN ALFRED DONNISON of the City of London Notary Public duly admitted and sworn practising in the said City Do hereby Certify and Attest

20 THAT the signature "W. Carter" subscribed to the Certificate endorsed on copy hereunto annexed of Board of Trade Minute relating to Grain Cargoes dated the twentieth day of September One thousand nine hundred and twenty-nine is of the proper handwriting of Mr. WALTER CARTER, who is to me the said Notary known as one of the Assistant Secretaries of the Marine Department of His Britannic Majesty's Committee of Privy Council for Trade (Board of Trade), Great George Street, in the City of Westminster, County of London, and which said signature was this day subscribed by him in my presence; and I further Certify that the said Walter Carter is a proper Officer to sign such Certificate and is duly authorized to certify the said copy Minute, therefore full faith and credit may be given thereto in Judicature and thereout.

30 WHEREOF an Act being required, I, the said Notary have granted these Presents under my Notarial Firm and Seal to serve and avail when and where need may require.

DONE and PASSED in London the fourth day of May in the year of our Lord One thousand nine hundred and thirty-two.

J. A. Donnison,
Not. Pub.

Exhibits.

D-21.
Certificates
and Memo-
randum
relating to
Grain
Cargoes,
4th May,
1932.



Issued by the Board of Trade.

MEMORANDUM

Relating to

GRAIN CARGOES.

Supplement No. 1 to 1928 Edition.
London:

Printed and Published by His Majesty's Stationery Office.

Rules and Regulations for the Loading and Carriage of Grain Cargoes in
Vessels loaded at Canadian Ports made by Order in Council, dated
19th July, 1929.

GENERAL

(1) Plans.—Builders and Owners may submit for approval to The Deputy Minister of Marine, Ottawa, Ontario, Canada, plans of a particular vessel showing their proposals for erection of Shifting boards feeders etc. Preliminary plans should be in duplicate and may be on paper, final plans to be stamped *approved* must be submitted in quadruplicate on tracing cloth or linen-backed paper.

All plans must be to scale.

Profile and plans not less than $\frac{1}{8}$ -inch—1 foot.

Half Section of vessel $\frac{1}{4}$ -inch—1 foot.

Details of fittings sufficiently large to indicate them clearly.

(2)—(a) In these Rules and Regulations a reference to "Light Grain" means Oats and/or Cotton Seed. All other grain is "Heavy Grain."

(b) The provisions of Sections A. B. C. D. E. F and H apply to Heavy Grain cargoes, and with the modifications set out in Section G, apply to Light Grain cargoes, and to combined cargoes of Light Grain and Heavy Grain.

Exhibits.

D-21.
Certificates
and Memorandum
relating to
Grain
Cargoes,
4th May,
1932—*continued.*

10

20

30

40

- etc. Section A. Preliminary Inspection of Bilges, Limbers,
 Section B. Shifting Boards, Uprights and Shores.
 10 Section C. Construction of Feeders and Bulkheads.
 Section D. Loading Regulations.
 Section E. Freeboard.
 Section F. Stowage.
 Section G. Light Grain.
 20 Section H. Safety.

Exhibits.

D-21.
 Certificates
 and Memo-
 randum
 relating to
 Grain
 Cargoes,
 4th May,
 1932—con-
 tinued.

A.—PRELIMINARY INSPECTION OF BILGES, ETC.

1. Agents, owners or masters of vessels arriving at a port in Canada for a grain cargo shall notify the Port Warden and make arrangements for a preliminary survey.
- 30 2. If the vessel has a plan showing the proposals for erection of shifting boards, feeders, etc., which has been approved by the Department of Marine, Ottawa, such plan must be submitted to the Port Warden for his information prior to his preliminary survey.
3. At the preliminary survey, section of the limber-boards must be clear for inspection of the bilges, which must be clean and clear of any refuse liable to choke the suction pipes.
- 40 4. All pipes, gearing, rods and sounding tubes entering the bilges must be absolutely grain tight. Drain pipes and scupper pipes from compartments carrying bulk wheat must be blocked up.
5. Limber-boards must be grain tight.

6. Cement cappings or chocks must be in good condition.

7. Permanent ceilings on tank tops must be made grain tight and when laid on top of fuel oil tanks must have a clear space of 2½ inches between ceiling and tank top and be laid on athwartship bearers.

10

8. The Port Warden, if requested, shall issue within 24 hours of the completion of such preliminary survey a written report setting out the repairs and work necessary to render the vessel fit to carry her proposed grain cargo and any modifications considered necessary for the erection of shifting boards, feeders, etc.

9. The report shall also specify the dunnage required to be laid.

20

B.—SHIFTING BOARDS, UPRIGHTS AND SHORES.

1. Longitudinal grain tight shifting boards must be fitted from deck to deck or deck to ceiling in any compartment or hold in which bulk grain is carried and must be continuous for the whole length of the compartment or hold, excepting where vessels load parcels of bulk grain in the lower holds not exceeding one-third the capacity of their respective holds and provided the bulk grain is levelled and covered with platforms in accordance with Paragraph 5, Section F, and secured with approved cargo to prevent grain from shifting.

30

2. Shifting boards are to be fitted in the hatchways and trunk feeders up to the bottom of the hatch covers.

3. Shifting boards of a minimum thickness of 2 inches of good sound lumber will be accepted.

4. The maximum unsupported span to be allowed for shifting boards of varying thickness is as follows (not to apply to permanent fittings) :—

40

Thickness.	Span.	Housing of Bulkheads.
2-inch planks	Unsupported span not to exceed 8 feet	3 inches.
2½-inch planks	Unsupported span not to exceed 10 feet	3 inches.
3-inch planks	Unsupported span not to exceed 12 feet	3 inches.

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tinued.



5. When shifting boards have a greater unsupported span than the above, they must be supported by wood uprights or other approved means spaced with their centres at distances not greater than provided for by these figures.

10 6. Wood uprights must not be less than 10 inches in width and 2 inches in thickness.

7. Shifting boards must be securely housed at bulkheads, and where permanent angle bar stiffeners are not available for this purpose, wood uprights must be fitted not less than 6 inches in width and 3 inches in thickness shored to requirements.

20 8. Where 2½-inch or 3-inch shifting boards are used, longitudinal joints may be butt joints between uprights, care being taken to have at least 4 inches of plank supported. Where 2-inch shifting boards are used, joints must overlap by at least 9 inches between uprights.

9. Wood uprights must be supported by steel wire rope stays set up at the ship's side, or else by wood shores securely heeled against the permanent structure of the ship, such as frames or stringers at the ship's side, hatch coamings, girders, pillars, etc.

30 10. In all ships over 50 feet in breadth it is strongly recommended that instead of wood shores, steel wire rope stays be fitted for supporting the shifting boards.

All wood shores must be of good sound timber in a single piece.

11. The size of the shores required is based on the area of the boards to be supported, thus:—

The length of shores may in ordinary cases be taken as equal to half the registered breadth of the vessel less one foot.

40 S=spacing of shores fore and aft.

D=registered depth (reduced aft by the height of tunnel above floors).

N=number of shores in depth.

$$\text{Area per shore} = \frac{S \times D}{N + 1}$$

Exhibits.
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tinued.

12. Convenient standard sizes of rectangular shores as follows may be taken as the minimum permissible sizes:—

	<i>Length of Shores</i>	<i>Minimum Size</i>
10	Up to and not exceeding 16 ft.	6 x 4
	Over 16 ft. and not exceeding 20 ft.	6 x 6
	Over 20 ft.	8 x 6

Shores 24 ft. and over must be bridged and no shores to be spliced.

20 13. Where difficulties and delays might be experienced in procuring scantlings as above, shores of lesser scantlings may be sanctioned, provided the area supported is reduced in proportion as may be prescribed by the Port Warden. Where vessels are already fitted with shores of lesser scantlings than prescribed by the above, the Port Warden may sanction the continued use of these provided the timber is in good condition and the area supported is reduced as may be prescribed by the Port Warden and approved by the Department of Marine, Ottawa.

30 14. Vertical spacing of shores. The uppermost shore is to be within 18 inches of the top of uprights approximately in a line with the lower edge of hatch coamings and heeled against hatch coamings or girder; every succeeding shore is to be spaced 7 ft. apart vertically measured from the uppermost shore down, except that 8 ft. may be accepted between the lowest shore and heel support. Shores may be heeled on the permanent floors or ceilings provided that cleats or cants are used of sufficient dimensions to distribute the strain over several planks.

40 15. The angle between any shore and the surface to be supported must not exceed 45° from the horizontal.

16. When a shore is set at an angle exceeding 10 degrees from the horizontal the next larger size of shore to that required by its length must be used.

17. Uprights should be cleated to the floor or ceiling where fitted, and when the upright is not securely housed at the top the upper supporting shore should not be more than 18 inches down from the deck or top of the upright.

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1932—con-
tinued.

18. When either the hold or 'tween decks are fitted with tiers of closely spaced pillars these may be utilised for supporting the shifting boards, provided that they are of the approved size of deck beam pillars.

19. When the pillars are not reeled or staggered to support both sides of the shifting boards, additional support must be given by hook or U clamps spaced 6 feet apart.

20. When wire stays are used in lieu of shores for either permanent or non-permanent fittings, the following minimum sizes will be required:—

(a) 3-inch flexible steel wire rope stays, fitted horizontally.

(b) 1 $\frac{1}{4}$ -inch rigging screws, which preferably should be fitted at the side of the ship for convenience and easy access for tightening.

(c) 1-inch shackles.

(d) 1 $\frac{1}{4}$ -inch screw bolts through wood or angle-bar uprights.

(e) Four $\frac{7}{8}$ -inch nut and screw bolts, for securing the wood uprights or steel angle bars together.

(f) 1-inch eyeplates, efficiently riveted to side stringers or frames or 1-inch shackle through frame.

21. Where no special arrangements are made for grain tight filling between the beams, wood filling pieces the same thickness as the shifting boards must be fitted grain tight between the beams, and must be secured in place by cleats or scabs at both ends and fitted both sides. The cleats or scabs are to be at least 2 inches by 4 inches and must extend the full depth of the filling piece and as much again below, and be securely nailed or spiked to the shifting boards and filling pieces.

22. Where permanent steel uprights and wire stays are fitted which have been approved by the Canadian Department of Marine, the Board of Underwriters of New York or by the British Board of Trade, the maximum unsupported span allowed for boards of various thickness is as follows:—

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Cargoes,
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tinued.



Thickness.	Span.	Housing of bulkheads.	Exhibits.
2½-inch planks	Unsupported span, 12 feet	3 inches.	— D-21.
3-inch planks	Unsupported span, 13 feet	3 inches.	Certificates and Memo- randum relating to Grain Cargoes, 4th May, 1932—con- tinued.

23. Where steel uprights are secured as approved at both
 10 head and heel, one wire stay on each side of each upright will be
 accepted in holds 20 ft. and under in depth, to be placed approxi-
 mately one-third down from under deck. Over 20 ft. two wire
 stays on each side of each upright will be required, the upper
 stays to be placed approximately one-quarter down from under
 deck and the lower stays at half depth of hold. If after holds
 depth to be measured to tunnel top.

24. The following dimensions are recommended for an-
 20 gle-bar uprights:—

Each upright to consist of four angle-bars 4 inches by 4
 inches by .40 and steel plate 11½ inches by .50 riveted to form one
 complete structure allowing 4 inches housings on both forward
 and aft sides; equivalent brackets riveted to head and heel of up-
 rights, each to take five 7/8-inch bolts with corresponding lugs
 and/or angles on tank top, tunnel top and hatch webs.

C.—CONSTRUCTION OF FEEDERS AND WOOD
 BULKHEADS

30

1. The walls of trunk feeders and wood bulkheads must
 be of sufficient strength to withstand the pressure due to the head
 of grain contained, and must be made grain tight.

2. Trunk feeders in the 'tween decks constructed in the
 hatchways must be made grain tight around the hatch coamings
 and hatch beams.

3. Ships having one or more decks with one continuous
 40 hold forward and/or one continuous hold aft with two hatches
 to each hold, shall have a well constructed bulkhead, extending
 from side to side of the ship between the two hatches to divide the
 space.

4. Thwart ship bulkheads in holds for partitioning holds
 or reserve bunkers shall be constructed of planks not less 3 inches
 in thickness, efficiently stiffened and shored.



5. Trunk feeders in the 'tween decks fitted in the hatchways may be constructed of planks worked vertically of a minimum thickness of 2 inches. When the vertical unsupported span exceeds 8 ft., thicker planks must be used, or increased stiffening must be fitted as the Port Warden may require.

- 10 6. Where more convenient, feeders may be constructed of studding and lined with grain tight boards 2 inches or two 1-inch layers of shiplap, laid horizontally with broken joints. Studding where possible should be placed inside the hatch coamings and must be not less than 4 inches by 6 inches on edge spaced not more than 2 feet centres.

Wing feeders are to be constructed in a similar manner. Feeders already erected may be accepted if such feeders are equal from a structural standpoint to specifications as outlined.

20

7. Engine room and stokehold bulkheads and donkey recesses where subjected to heat must be sheathed with wood and made grain tight. An air space of at least 6 inches should be left between the bulkhead and the sheathing and a box trunk ventilator 6 inches by 8 inches should be provided from the top of the air space to a ventilator or hatchway, or other equal and approved means of ventilation adopted.

- 30 8. Sheathing should be supported on vertical wood runner spaced not less than 2-foot centres and should consist of 2-inch planks or two thickness of 1-inch boards laid to break joint.

D.—LOADING REGULATIONS

In these regulation "steamship" includes any vessel propelled wholly or in part by steam or by any machinery or power other than sails or oars.

40

Single Deck Steamships

1. Single deck steamships with high hatch coaming may load full cargoes of grain in bulk below deck. The hatch coamings may be used as feeders provided they contain not less than 2 per cent. of the capacity of the hold they are designed to feed and are so placed that they are capable of feeding the centre and both ends of such hold.

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tinued.



2. Where no provision is made for feeding the hold, the bulk grain must be secured by four heights of bagged grain laid on a suitable platform on top of the grain in bulk.

10 3. Grain in bags may be carried above deck in deck erections when complying with regulations *re* shifting boards and dunnage.

Two Deck Steamships.

20 1. Two deck steamships may carry bulk grain to the full capacity of all lower holds, provided properly constructed feeders are fitted in the hatches and trunked in the 'tween decks, and, if necessary, with supplementary feeders as required by Paragraph 4, "Stowage." Such feeders shall contain not less than 2½ per cent and not more than 8 per cent of the capacity of the hold they are designed to feed and be so placed that they are capable of feeding the centre and both ends of such hold.

2. All other grain in the 'tween decks and/or deck erections must be in bags, complying with regulations affecting shifting boards and dunnage.

Two Deck Steamships with Bridge Deck or Bridge and Poop Combined

30 3. Two Deck Steamships having a bridge Deck or Bridge and Poop combined, constituting in each case a third deck over a partial length of vessel, may carry bulk grain in the lower 'tween decks in that part of vessel where there are three decks, providing properly constructed feeders are erected between the uppermost and second decks to efficiently feed the bulk grain in the respective 'tween decks and lower holds — as in the case of Three Deck Steamships.

Three Deck Steamships

40 1. Three deck steamships may carry bulk grain to the full capacity of all lower holds and lower 'tween decks, provided properly constructed midship feeders are fitted trunked in the upper 'tween decks, and the third deck down is fitted with proper trimming hatches suitably placed to feed the wing spaces and ends of the holds. If the third deck down is fitted with proper trimming hatches the lower hold and the lower 'tween decks may be considered as one hold and loaded accordingly. All hatches and trimming hatch covers on the third deck down are to be left off.

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tinued.



The feeders shall contain not less than 2½ per cent and not more than 8 per cent of the combined capacity of the lower holds and 'tween decks which they are designed to feed.

2. Lower holds and lower 'tween decks when loaded to capacity may be loaded as separate compartments provided that properly constructed feeders are erected in both upper and lower 'tween decks to efficiently feed the bulk grain in both the lower holds and lower 'tween decks independently. The feeders shall contain not less than 2½ per cent and not more than 8 per cent of the compartments they are designed to feed.

3. All other grain in the upper 'tween decks and/or erections must be in bags and have shifting boards fitted.

4. *Deep Tanks.*—Vessels loading part cargoes of bulk grain not exceeding two-thirds of the total cargo carrying capacity of such vessel will not be required to have a feeder for the deep tank, provided the deep tank is divided by a steel centre longitudinal bulkhead and that the bulk grain is well stowed, the tank completely filled and hatch covers secured. Feeders will be required over deep tanks for vessels loading in excess of this quantity.

E.—FREEBOARD

1. The freeboard of all ships laden with grain shall not be less than that assigned under the laws of the country in which they are registered.

2. In the case of ships laden with grain not having a freeboard certificate, the Master, on arrival, shall make application to a representative of any recognised classification authority for a freeboard certificate and shall produce such certificate to the Port Warden before clearance will be granted.

F.—STOWAGE

1. In loading, the grain shall be properly stowed, trimmed and secured.

2. Feeders must be suitably arranged as far as possible to feed the different parts of the holds or compartments and when this can be done in ships of ordinary proportions minimum capacity of feeders in 'tween deck vessels is not to be less than 2½ per

Exhibits.

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cent and not more than 8 per cent of the capacity of the holds which they are designed to feed, and in the case of single deck vessels the minimum capacity of the deep hatch coamings is not to be less than 2 per cent. capacity of the holds.

- 10 3. Capacity of feeders is to be the net internal capacity after allowing for shifting boards, shores or hatch beams measured above the line of the deck to the top of the feeder.

If the depth of the hatch end beams or coamings exceeds 15 inches, special means must be adopted to allow the grain to pass from the feeders to the holds. When the depth is 16 inches, 2 inches in diameter, and when 18 inches, 3½ inches in diameter feeding holes are sufficient when spaced not more than 2 feet apart.

- 20 4. In ships fitted with 'tween decks should the distance in the lower holds between the forward and after bulkheads in such hold and the nearest end of the hatchway feeder exceed 25 feet (unless in the opinion of the Port Warden the distance should be less) the vessel must have a supplementary feeder provided on each side of the 'tween decks forward and aft to feed the space in the hold below; the size of the supplementary feeder to be prescribed by the Port Warden. Provided that if supplementary feeders to the lower holds are not fitted the grain in the end spaces shall be levelled off and a proper platform provided and
30 4 tiers of bagged grain stowed on the platform to within 25 feet of the end of the main feeder. This rule shall apply to the lower 'tween decks in the case of 3 deck vessels when the compartment and the hold are loaded as one compartment.

5. When bulk grain does not completely fill the compartment in which it is carried and is secured by bagged grain or other suitable cargo laid on top of the grain in bulk, such bagged grain or other cargo shall be supported on platforms laid on the bulk grain and so stowed as to prevent the grain from shifting.

- 40 6. Platforms to consist of thwartship bearers spaced not more than 4 feet apart and 1-inch boards laid fore and aft spaced not more than 4 inches apart.

7. Vessels carrying parcels of grain in bulk in the lower holds exceeding one third of the capacity of such holds must have shifting boards to the top of the grain and the bulk grain must be covered with platforms as afore described before any other cargo

Exhibits.

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randum
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is stowed over it. When a partially loaded vessel does not carry other cargo to secure the bulk grain, shifting boards must be fitted and the grain be levelled off and covered with a suitable platform upon which shall be stowed not less than four tiers of bagged grain.

- 10 8. Partially loaded vessels proceeding to another port in the vicinity of Vancouver to pick up additional cargo to be laid on the bulk grain may proceed to such ports without securing the bulk grain provided such ports are to the eastward of Cape Flattery and south of the parallel 50° North; under similar conditions vessels may proceed from Montreal to Quebec.

- 20 9. Bagged grain stowed in the lower holds shall be secured by longitudinal shifting boards to extend from the beams at least four feet down from the lower edge of beams such shifting boards to be laid with not more than four inches between their edges and to be supported by uprights and shores spaced the same distances as laid down for bulk grain.

10. Shifting boards securing bagged grain in 'tween deck compartments and deck erections to extend from deck to under side of beams, edges to be not more than 4 inches apart and supported in the manner laid down for bulk grain.

- 30 11. Bagged grain cargo stowed on iron or on steel decks is to be properly dunnaged.

12. Where cargo battens are not fitted, bagged grain cargo must be properly dunnaged from the ship's side.

13. When grain cloths of approved quality are laid over the ceilings covering water ballast tanks to the approval of the Port Warden the caulking of the seams of the ceilings or the coverings of the seams with battens may be dispensed with.

- 40 14. In the case of vessels of modern construction with specially heavy ballast tank top plating in good condition without wooden ceiling, certificates may be granted to load bulk grain, provided the bilges and watercourses in the wings are sufficiently deep and that proper precautions are taken against overflow from the bilges and leakage from manhole covers, air and sounding pipes, etc.

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15. Paragraphs 11 and 12 do not apply to vessels loading cargoes of bulk grain when the grain in 'tween decks is bagged to comply with Loading Regulations only and which will ultimately be discharged in bulk; in which cases dunnage and vertical battens over 'tween deck sparring may be dispensed with. This not to affect in any way the requirements for protecting cargoes or consignments of Bagged Grain.

10

G.—LIGHT GRAIN

1. Light Grain may be carried in bulk in all between decks and lower holds subject to the requirements laid down in Sections A, B, C, D, E and F.

Hatch Webs and fore and afters to be secured in place.

20 2. *Feeders.*—(a) For single deck steamships, Section D, loading regulations will apply.

(b) For steamships having two decks, grain tight feeders in accordance with Section C (Loading Regulations) are to be erected in hatches and trunked in 'tween decks to feed the lower holds and to contain not less than 2½ per cent and not more than 8 per cent of the capacity of the holds they are designed to feed.

30 These trunk feeders must not interfere with or decrease the 2 per cent which is required to be carried within the hatch coamings to feed the 'tween decks.

(c) For steamships having three decks, regulations as outlined for feeders in two deck vessels will apply; to be erected in the upper 'tween decks to feed the lower 'tween decks and lower holds, hatches and trimming hatches in lower 'tween decks to be left off.

40 3. Light Grain may be loaded in bulk in 'tween decks over Heavy Grain in lower holds, provided that the above regulations are observed and that proper separation is made.

4. In steamships where 'tween decks and/or shelter decks are not subdivided, bulkheads are to be constructed as per Section C, Paragraph 4, to divide such shelter or 'tween decks into compartments of a maximum length of not exceeding 70 feet.

5. All Grain in Poop, Peaks or Bridge Space must be in bags; regulations for shifting boards and dunnage must be complied with.

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H.—SAFETY

Coal on Deck

- 10 No coal shall be carried on deck of steamers sailing between the 1st of October and the 1st of April, beyond such a supply as will be consumed prior to vessels reaching the open sea.

Security of Hatches

- 20 Port Wardens should pay special attention to the security of hatchways and other weather deck openings; they should satisfy themselves that the hatch covers and their supports are in good condition and that the steamer is provided with good and sufficient tarpaulins, cleats and wedges to enable the hatches to be properly battened down.

For winter passage, North Atlantic, additional security should be provided by the use of:—

- (a) Folding wedges, also known as double or fox wedges, or cleats set at an angle with ordinary wedges.
- 30 (b) Locking bars in suitable number and position to secure the hatch coverings, or
- (c) Wire cross lashings set up by screws or other equally effective means. At all times lashings are to be set up to ring bolts or permanent cleats, at the side of the hatches with suitable chafeing pieces to prevent cutting of tarpaulins.

- 40 WHEREAS it is provided by Section 453 of the Merchant Shipping Act, 1894, inter alia, that “Where a British ship is laden with a grain cargo on the coast of North America, the precautions to prevent the grain cargo from shifting set out in the Eighteenth Schedule to the said Act shall be adopted, unless the ship is loaded in accordance with Regulations for the time being approved by the Board of Trade:”

AND WHEREAS the Board of Trade on the 18th day of March, 1924, approved the Regulations for loading grain at certain ports in Canada, dated the 17th day of December, 1923:

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AND WHEREAS His Excellency the Governor General of Canada in Council has submitted to the Board of Trade Amended Regulations for loading grain at ports in Canada, dated the 19th day of July, 1929:

10 NOW THEREFORE the Board of Trade do hereby cancel their approval of the aforesaid Regulations dated the 17th day of December, 1923, and in pursuance of the powers vested in them by Section 453 of the said Act, and for the purpose only of giving effect to the provisions contained in Part V. of the said Act relating to the carriage of grain, the Board of Trade do hereby approve the Regulations made by His Excellency the Governor General of Canada in Council prescribing the manner in which cargoes of grain should be loaded at ports in Canada annexed hereto and dated the 19th day of July, 1929.

20 DATED THIS 20th DAY OF SEPTEMBER, 1929.

(Signed) H. P. HAMILTON,
A Secretary to the
Board of Trade.

I hereby Certify that this is a true copy of the original document of which it purports to be a copy having been examined therewith by me and found correct.

30 DATED THIS 4th. DAY OF MAY, 1932.

W. Carter,
An Assistant Secretary of the
Marine Department of the
Board of Trade.

40 I, Louis Joseph Lemieux, Agent-General for the Province of Quebec in Great Britain, do hereby certify and attest that Mr. Walter Carter who has subscribed on the 4th of May 1932 to the certificate endorsed on copy hereunto annexed of Board of Trade Minute relating to grain Cargoes and dated the twentieth day of September One thousand nine hundred and twenty nine is a person authorized to certify same.

L. J. Lemieux,
Agent-General for Quebec.

May 7th. 1932.

Quebec Government Offices. 2, Cockspur St. London,
S. W. 1.

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In the Privy Council.

No. 72 of 1933

ON APPEAL FROM THE COURT OF KING'S
BENCH FOR THE PROVINCE OF
QUEBEC (APPEAL SIDE).

BETWEEN

PATERSON STEAMSHIPS, LIMITED

Appellants (Defendants)

AND

CANADIAN CO-OPERATIVE WHEAT PR
DUCERS, LIMITED

Respondents (Plaintiffs)

RECORD OF PROCEEDINGS.

WILLIAM A. CRUMP & SON,

27, Leadenhall Street, E.C.3,

Solicitors for Appellants

MIDDLETON LEWIS & CLARKE,

22, Great St. Helens, E.C.3,

Solicitors for Respondents

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.