

5, 1930

In the Privy Council

No. of 1929

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN :

JAMES RICHARDSON & SONS, LIMITED,
(*Plaintiff*) APPELLANT,

AND

THE SHIP " ROBERT J. PAISLEY,"
(*Defendant*) RESPONDENT,

AND BETWEEN

CANADA STEAMSHIP LINES, LIMITED,
(*Plaintiff*) APPELLANT,

—AND—

THE SHIP " ROBERT J. PAISLEY,"
(*Defendant*) RESPONDENT.

RECORD OF PROCEEDINGS

BLAKE & REDDEN,
17 Victoria Street, S.W.1,

Solicitors for the Appellants.

THOMAS COOPER & CO.,
21 Leadenhall Street, E.C.3,

Solicitors for the Respondents.

TORONTO
THE HUNTER-ROSE COMPANY, LIMITED

1929

RECORD OF
PROCEEDINGS

In the Privy Council

No of 1929

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN :

JAMES RICHARDSON & SONS, LIMITED,
(*Plaintiff*) APPELLANT,

AND

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) RESPONDENT,

AND BETWEEN

CANADA STEAMSHIP LINES, LIMITED,
(*Plaintiff*) APPELLANT,

AND

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) RESPONDENT.

RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF CANADA

On Appeal from the Exchequer Court of Canada
Toronto Admiralty District

*In the
Exchequer
Court of
Canada.*

No. 1.

Statement
of the Case.

BETWEEN:

THE SHIP "ROBERT J. PAISLEY,"
(Defendant) Appellant,

—and—

JAMES RICHARDSON & SONS LIMITED,
(Plaintiff) Respondent.

10 AND BETWEEN:

THE SHIP "ROBERT J. PAISLEY,"
(Defendant) Appellant,

—and—

CANADA STEAMSHIP LINES LIMITED,
(Plaintiff) Respondent.

STATEMENT OF THE CASE

This is an appeal from the judgments at trial of The Honourable Mr. Justice Hodgins, Local Judge in Admiralty of the Exchequer Court of Canada, Toronto Admiralty District, delivered the 20th day of March, 1928, in favour
20 of the Respondents, condemning the Appellant and its bail in damages to be assessed by the Registrar, and in costs.

RECORD OF PROCEEDINGS

PART I.

WRIT OF SUMMONS IN REM

No. 867

In the
Exchequer
Court of
Canada.

No. 2.
Writ of
Respondent
James
Richardson
& Sons,
Limited.

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

JAMES RICHARDSON & SONS LIMITED,

Plaintiff,

—against—

“PAISLEY”

“THE SHIP”

10

ACTION FOR damage by collision.

George the Fifth by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

TO THE OWNERS and all others interested in “THE SHIP PAISLEY,” her cargo and freight.

WE COMMAND YOU, that within one week after the service of this Writ exclusive of the day of such service, you do cause an appearance to be entered for you in our said Exchequer Court of Canada, in the above named 20 action.

AND TAKE NOTICE that in default of your so doing the said action may proceed and judgment may be given in your absence.

GIVEN at Toronto in our said Court, under the Seal thereof, this sixteenth day of December, 1927 .

“JOHN BRUCE”

District Registrar

The Plaintiff as owner of cargo on board the ship SASKATCHEWAN, claims the sum of \$60,000.00 against the ship PAISLEY for damage occasioned by a collision which took place in Owen Sound Harbor on the eighteenth day of 30 January, 1927. And for Costs the sum of \$100.00.

This Writ was issued by CASEY WOOD & CO. of the City of Toronto, in the County of York, Solicitors for the Plaintiff whose head office is at the City of Kingston.

WRIT OF SUMMONS IN REM
IN THE EXCHEQUER COURT OF CANADA

*In the
Exchequer
Court of
Canada.*

No. 3.
Writ of
Respondent
Canada
Steamship
Lines,
Limited.

BETWEEN:

CANADA STEAMSHIP LINES LIMITED,

Plaintiff,

—against—

“ROBERT J. PAISLEY”

“THE SHIP.”

ACTION FOR damage by collision.

10 George the Fifth by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

TO THE OWNERS and all other interested in “THE SHIP” “ROBERT J. PAISLEY.”

WE COMMAND YOU, that within one week after the service of this Writ exclusive of the day of such service, you do cause an appearance to be entered for you in our said Exchequer Court of Canada, in the above-named action.

20 AND TAKE NOTICE that in default of your so doing the said action may proceed and judgment may be given in your absence.

GIVEN at Toronto in our said Court, under the Seal, this twenty-eighth day of December, A.D. 1927.

“JOHN BRUCE”
District Registrar

The Plaintiff's Claim, as owners of the S.S. SASKATCHEWAN the sum of \$7,500.00 for damages occasioned to the said S.S. SASKATCHEWAN as a result of a collision in the Harbour of Owen Sound, Ontario, on January 18th, 1927, caused by the negligence of the defendant Ship, her owners, servants or agents.

30 The Plaintiff reserves recourse against the Defendant for any amount additional to the amount claimed for which they may be liable as a result of the said collision. And for costs \$50.00.

In the
Exchequer
Court of
Canada.

No. 3.
Writ of
Respondent
Canada
Steamship
Lines,
Limited.

This Writ was issued by Rowell, Reid, Wright & McMillan, of the City of Toronto, in the County of York, Solicitors for the Plaintiff who carry on business at Montreal, Que.

All documents required to be served upon the said Plaintiff in the action may be left for him at 38 King Street, West, Toronto.

PRELIMINARY ACT OF THE RESPONDENT
James Richardson & Sons
Limited

No. 4.
Preliminary
Act of the
Respondent,
James
Richardson
& Sons,
Limited.

- | | | |
|--|--|----|
| 1. The names of the ships which came into collision, and the names of their masters. | S. S. SASKATCHEWAN, in charge of Wm. Cornett, Shipkeeper; SS. 10 ROBERT J. PAISLEY; (name of Master unknown). | |
| 2. The time of the collision. | January 18, 1927, at about 10:15 in the forenoon. | |
| 3. The place of the collision. | In Owen Sound Harbor, south of the elevator. | |
| 4. The direction and force of the wind. | None. | |
| 5. The state of the weather. | Clear. | |
| 6. The state and force of the tide, or, if the collision occurred in non-tidal waters, of the current. | None. | 20 |
| 7. The course and speed of the ship when the other was first seen. | The SS. SASKATCHEWAN was moored along the starboard side of the SS. DRUMMOND in the elevator slip in Owen Sound Harbor, heading about west by north. | |
| 8. The lights, if any, carried by her. | None. | |
| 9. The distance and bearing of the other ship when first seen. | A few feet off the starboard side of the SS. SASKATCHEWAN, being 30 backed away after the collision. | |
| 10. The lights, if any, of the other ship which were first seen. | None. | |
| 11. The lights, if any, of the other ship, other than those first seen, which came into view before the collision. | None. | |
| 12. The measures which were taken, and when, to avoid the collision. | None. | |

13. The parts of each ship which first came into collision.

The port anchor and/or port bow of the PAISLEY and the starboard side of the SASKATCHEWAN somewhat forward of amidships.

*In the
Exchequer
Court of
Canada.*

No. 4.
Preliminary
Act of
Respondent
James
Richardson &
Sons, Limited

(continued).

14. What fault or default, if any, is attributed to the other ship.

Failure to have proper or sufficient crew and equipment; failure to have steam to handle lines and anchors; failure to employ proper or sufficient tug or tugs; failure to properly direct the tug which was employed; failure to come to a proper understanding with the tug as to conduct of shifting operation; failure to secure the vessel to the elevator dock; negligent and improper handling of lines; navigating with anchor in improper position; failure to have an anchor or anchors ready to let go; failure to let go an anchor or anchors; failure to keep proper lookout; navigating improperly and at excessive speed; failure to keep clear; breach of the Rules of the Road of the Great Lakes, particularly numbers 37 and 38.

10

20

DATED at Toronto this 9th day of January, A.D. 1928.

CASEY WOOD & CO.,
330 Bay Street, Toronto 2,
Solicitors for the Plaintiff.

PRELIMINARY ACT OF THE RESPONDENT
Canada Steamship Lines Limited

30

1. The names of the ships which came into collision, and the names of their masters.

1. SS. "SASKATCHEWAN" — Wm. Cornett; SS. "ROBERT J. PAISLEY" — (Master's name unknown).

2. The time of the collision.

2. About 10:15 A.M., January 18th, 192 .

3. The place of the collision.

3. At the south end of the elevator slip at Owen Sound, Ont.

4. The direction and force of the wind.

4. No wind.

No. 5.
Preliminary
Act of the
Respondent,
Canada
Steamship
Lines,
Limited.

*In the
Exchequer
Court of
Canada.*

No. 5.
Preliminary
Act of
Respondent,
Canada
Steamship
Lines,
Limited.

(continued).

- | | | |
|---|--|---|
| <p>5. The state of the weather.</p> <p>6. The state and force of the tide or, if the collision occurred in non-tidal waters, of the current.</p> <p>7. The course and speed of the ship when the other was first seen.</p> <p>8. The lights, if any, carried by her.</p> <p>9. The distance and bearing of the other ship when first seen.</p> <p>10. The lights, if any, of the other ship which was first seen.</p> <p>11. The lights, if any, of the other ship, other than those first seen, which came into view before the collision.</p> <p>12. The measures which were taken, and when, to avoid the collision.</p> <p>13. The parts of each ship which first came into collision.</p> <p>14. What fault or default, if any, is attributed to the other ship.</p> | <p>5. Clear.</p> <p>6. None.</p> <p>7. "SASKATCHEWAN" moored along starboard side of SS. "THOMAS J. DRUMMOND" heading westerly on the south side of the elevator slip at Owen Sound.</p> <p>8. None.</p> <p>9. "ROBERT J. PAISLEY" not seen until after collision when she was being backed by the tug away from the "SASKATCHEWAN".</p> <p>10. None.</p> <p>11. None.</p> <p>12. No steps could be taken by the SASKATCHEWAN to avoid the collision.</p> <p>13. Bow and/or port anchor of the "ROBERT J. PAISLEY" came into collision with the starboard side of the "SASKATCHEWAN", slightly forward of amidships below the waterline.</p> <p>14. Negligent navigation; travelling at an excessive speed; failure to keep clear; failure to employ a proper and sufficient tug or tugs with proper and sufficient equipment; failure to properly direct the tug; failure to arrange with tugs the particulars of the manoeuvre; failure to take proper precautions to be in a position to secure vessel to elevator dock; failure to secure vessel to elevator dock; navigating with</p> | <p>10</p> <p>20</p> <p>30</p> <p>40</p> |
|---|--|---|

anchor in improper position; failure to have anchors ready to let go; failure to let go anchors; failure to properly man and equip vessel; improper lookout; violation of the Rules of the Road for the Great Lakes, particularly Numbers 37 and 38.

*In the
Exchequer
Court of
Canada.*
No. 5.
Preliminary
Act of
Respondent
Canada
Steamship
Lines
Limited.

10 DATED at Toronto, Ontario, this 9th day of January, A.D. 1928.
ROWELL, REID, WRIGHT & McMILLAN,
38 King St. West, Toronto,
Solicitors for the Plaintiff.

PRELIMINARY ACT OF THE APPELLANT

No. 10.
Preliminary
Act of the
Appellant.

- | | |
|---|---|
| (1)
The names of the ships which came into collision, and the names of their masters. | (1)
SS. "ROBERT J. PAISLEY", Master— not in commission; ship-keeper A. R. Penrice. SS. "SASKATCHEWAN", ship-keeper, Capt. William Cornett. |
| 20 (2)
The time of collision. | (2)
10.10 A.M., January 18th, 1927. |
| (3)
The place of collision. | (3)
Owen Sound harbour, east side, south of Great Lakes elevator. No apparent collision. |
| (4)
The direction and force of the wind. | (4)
Northerly. Light. |
| (5)
The state of the weather. | (5)
Clear day. |
| 30 (6)
The state and force of the tide or if the collision occurred in non-tidal waters, of the current. | (6)
Slight current from north to south. |
| (7)
The course and speed of the ship when the other was first seen. | (7)
Heading for elevator dock in tow of tug "Harrison". Dead slow. |
| (8)
The lights, if any, carried by her. | (8)
None. |
| (9)
The distance and bearing of the other ship when first seen. | (9)
About 2 points aft beam on star-board side. Width of harbour about 400 feet. |
| 40 (10)
The lights, if any, of the other ship which were first seen. | (10)
None. |

n the
Exchequer
Court of
Canada.
 No. 10.
 Preliminary
 Act of the
 Appellant.
 (continued).

(11)
 The lights, if any, of the other ship,
 other than those first seen, which
 first came into view before the
 collision.

(11)

(12)
 The measures which were taken and
 when, to avoid the collision.

None.

(12)

None possible. Vessel in charge of
 tug "Harrison". Endeavoured to
 make fast to elevator dock, but not
 close enough in, and breaking of 10
 tug's line allowed vessel continue
 forward. Had it been possible to
 moore at elevator dock, vessels way
 might have been stopped, but the
 distance and movement of vessel
 prevented this. There was no ap-
 parent collision between the vessels.

(13)
 The parts of each ship which first
 came into collision.

(13)

There was no apparent collision. If
 any, the port anchor of "PAISLEY" 20
 struck starboard side of "SASKAT-
 CHEWAN" slightly forward of amid-
 ships and below water line.

(14)
 What fault, or default, if any, is
 attributed to the other ship.

(14)

None, prior to alleged collision.
 Afterwards, failure to take reason-
 able and proper precautions to pre-
 vent sinking of "SASKATCHEWAN".

DATED at Toronto this 27th day of January, A.D. 1928.

GALT, GOODERHAM & TOWERS, 30
 49 Wellington Street East,
 Toronto.

IN THE EXCHEQUER COURT OF CANADA

*In the
Exchequer
Court of
Canada.*

THE HONOURABLE

MR. JUSTICE HODGINS

IN CHAMBERS

THURSDAY, the 12th day
of January, A.D. 1928.

No. 6.
Order for
pleadings and
directing trial
together and
on same
evidence

JAMES RICHARDSON & SONS LIMITED,
Plaintiff

—and—

THE SHIP "PAISLEY"

10

UPON the application of the Plaintiff in the presence of Counsel for the Defendant Ship ROBERT J. PAISLEY, and upon hearing what was alleged by Counsel aforesaid—

1. IT IS ORDERED that pleadings be delivered in this action, the Statement of Claim to be filed and served within one week from the date of this Order; the Statement of Defence to be filed and served within five days after the filing of the Statement of Claim, and the Reply, if any, to be filed and served within five days after the filing of the Statement of Defence.

2. AND IT IS FURTHER ORDERED that A. R. Penrice, Ship-keeper
20 of the Defendant Ship ROBERT J. PAISLEY, do attend before the District Registrar of this Court at his Chambers in the City Hall, Toronto, at a time to be appointed by the said District Registrar upon service of the said Registrar's appointment upon, and payment of the proper conduct money to, the Solicitors for the Defendant Ship at least five days before the date so appointed, and submit to be examined viva voce upon oath touching his knowledge of the matters in question in this action.

3. AND IT IS FURTHER ORDERED that this action, and the action
30 pending in this Court wherein Canada Steamship Lines, Limited, is Plaintiff, and the said Ship ROBERT J. PAISLEY is Defendant, be tried together and upon the same evidence so far as applicable in each case.

4. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

"FRANK E. HODGINS",
L.J.A.

Entered order Book No. 2,
Folio 188, January 10th, 1928,
"JOHN BRUCE",
Dist. Reg.

*In the
Exchequer
Court of
Canada.*

No. 7.
Statement of
Claim of
Respondent
James
Richardson &
Sons, Limited.

STATEMENT OF CLAIM OF RESPONDENT, JAMES RICHARDSON
& SONS, LIMITED.

IN THE EXCHEQUER COURT OF CANADA

JAMES RICHARDSON & SONS LIMITED,
Plaintiff

—and—

THE SHIP "PAISLEY"

1. On the morning of January 18th, 1927, the Steamship SASKATCHEWAN, a steel vessel of 1089 tons net register, owned by Canada Steamship Lines, Limited, was lying in the elevator slip in Owen Sound Harbor, moored 10 along the starboard side of the Steamship DRUMMOND, both vessels heading about west by north. The SASKATCHEWAN was laden with a cargo of 87198 bushels of wheat owned by the Plaintiff.

2. At about 10:15 on the morning of the said 18th day of January, 1927, the Defendant Ship "ROBERT J. PAISLEY" a steel steamship of 3130 tons net register, laden with a cargo of grain, was, with the assistance of the tug HARRISON, shifting from the C.P.R. dock to the elevator in the said Owen Sound Harbor.

3. The ROBERT J. PAISLEY during this manoeuvre came into collision with the SASKATCHEWAN, the port anchor and/or port bow of the PAISLEY 20 striking the starboard side of the SASKATCHEWAN somewhat forward of amidships, and damaging the SASKATCHEWAN below the water line so that she filled and sank, and her cargo was wet and damaged.

4. The collision and damage were caused by the default and negligence of the ROBERT J. PAISLEY and her owners and those on board and in charge of her.

5. The ROBERT J. PAISLEY was not properly or sufficiently manned or equipped, and had no steam up during the shifting operation.

6. The ROBERT J. PAISLEY was improperly moved without a second tug and without a tug sufficient and properly equipped for the purpose. 30

7. Those on board and in charge of the ROBERT J. PAISLEY failed to come to a proper understanding with the tug as to the conduct of the shifting operation, and failed properly to direct the conduct thereof.

8. Those on board and in charge of the ROBERT J. PAISLEY negligently failed to secure the vessel to the elevator dock.

9. Those on board and in charge of the ROBERT J. PAISLEY negligently and improperly handled the mooring and towing lines.

10. The ROBERT J. PAISLEY was navigated with her port anchor in a dangerous and improper position, namely; hanging about under the hawse pipe with the flukes below the water line, and the said anchor remained in such 40 dangerous and improper position until it was brought into collision with the SASKATCHEWAN.

11. Those on board and in charge of the ROBERT J. PAISLEY failed to have an anchor or anchors ready to let go, and failed to let go an anchor or anchors.

12. There was no proper lookout kept on board the ROBERT J. PAISLEY.

13. The ROBERT J. PAISLEY was navigated improperly and at excessive speed, and without due regard to the dangers of navigation and collision, and without the precautions required by the ordinary practice of seamen and by the special circumstances of the case.

14. The ROBERT J. PAISLEY negligently failed to keep clear of the SASKATCHEWAN.

10 15. The ROBERT J. PAISLEY violated the Rules of the Road of the Great Lakes, particularly numbers 37 and 38 thereof.

The Plaintiff claims:—

- (a) A declaration that it is entitled to the damages proceeded for;
- (b) Condemnation of the Defendant and its bail in such damage and in costs;
- (c) To have an account taken of such damage;
- (d) Such further and other relief as the nature of the case may require.

20 DATED at Toronto this 16th day of January, A.D. 1928,
 "CASEY WOOD & CO.",
 Solicitors for the Plaintiff.

*In the
 Exchequer
 Court of
 Canada.*

No. 7.
 Statement of
 Claim of
 Respondent
 James
 Richardson &
 Sons, Limited.

(continued).

STATEMENT OF CLAIM OF RESPONDENT, CANADA STEAMSHIP
 LINES, LIMITED.

No. 8.
 Statement of
 Claim of
 Respondent
 Canada
 Steamship
 Lines,
 Limited.

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

CANADA STEAMSHIP LINES, LIMITED,

Plaintiff

—and—

SS. "ROBERT J. PAISLEY",

Defendant

30

1. The Plaintiff is a Corporation duly organized and subsisting under the laws of the Dominion of Canada and Province of Ontario in that behalf, having its head office at the City of Montreal, Quebec, and was on January 18th, 1927, and still is the owner of the SS. "SASKATCHEWAN", a steel vessel of 1860 tons gross tonnage, 1089 tons net tonnage, 266 feet in length, 38 feet beam, and 23 feet moulded depth, registered at the town of Midland, Ontario.

40 2. The SS. "ROBERT J. PAISLEY" is a steel freighter of 3762 tons gross tonnage, 3130 tons net tonnage, 360 feet in length, 50 feet beam, and 28 feet moulded depth, registered at Fairport, Ohio.

3. On January 18th, 1927, the SS. "SASKATCHEWAN" was lying in the harbour of Owen Sound, Ontario, moored on the south side of the elevator slip along the starboard side of the SS. "THOMAS J. DRUMMOND", both vessels

In the
Exchequer
Court of
Canada.

No. 8.
Statement of
Claim of
Respondent
Canada
Steamship
Lines,
Limited.

(continued).

heading westerly into the slip. The "SASKATCHEWAN" was laden with a cargo of about 86,000 bushels of grain, and was drawing about 16' 9" forward and 17' 3" aft.

4. During the morning of January 18th, 1927, the defendant SS. "ROBERT J. PAISLEY", laden with a cargo of grain, was shifting with the assistance of the tug "HARRISON", from the C.P.R. dock to the elevator on the opposite side of the slip from where the "SASKATCHEWAN" was lying moored. During this shifting manoeuvre the defendant steamship came into collision with the plaintiff's vessel, damaging her starboard side forward of amidships, below the waterline, so badly that she sank. 10

5. The Plaintiff says that the "SASKATCHEWAN" was properly moored in a proper place and was properly manned.

6. The Plaintiff alleges that the collision was caused by the negligence of the defendant steamship, her owners, servants or agents, or those in charge of her, in failing to keep clear of the Plaintiff's vessel "SASKATCHEWAN".

7. The Plaintiff alleges that the defendant steamship, or those in charge of her, negligently operated or permitted to be operated the "ROBERT J. PAISLEY" with her port anchor hanging partly below the water in a manner that was dangerous in view of the proximity to other vessels during the shifting manoeuvre. 20

8. The Plaintiff alleges that the defendant steamship, her owners, servants or agents, or those in charge of her, negligently failed to secure for the shifting operation a tug or tugs sufficient for the purpose, having proper and sufficient equipment.

9. The Plaintiff alleges that those in charge of the "ROBERT J. PAISLEY" neglected or failed to take the proper precautions in approaching the elevator dock to ensure their being able to check the vessel and secure her to the dock, and were negligent in failing to check the vessel by securing a line to the elevator dock.

10. The Plaintiff alleges that those in charge of the "ROBERT J. PAISLEY" 30 were negligent in not having both anchors in a position ready to let go, and in failing to check the way of the vessel when a collision was imminent, by dropping an anchor or both.

11. The Plaintiff alleges that those in charge of the "ROBERT J. PAISLEY" were negligent in not warning the tug of the danger and in failing to properly direct the tug at all times prior to and during the manoeuvre.

12. The Plaintiff alleges that the SS. "ROBERT J. PAISLEY" was improperly and insufficiently manned and equipped and did not carry a proper lookout.

13. The Plaintiff alleges that the SS. "ROBERT J. PAISLEY" or those in 40 charge of her, improperly navigated said steamship and failed to observe the Rules of the Road for the Great Lakes, particularly Numbers 37 and 38.

The Plaintiff therefore claims:

1. Judgment for the damages proceeded for, reserving recourse to the Plaintiff against the defendant for any amount additional to the amount claimed for which the plaintiff may be liable as a result of the said collision.

2. A direction to the Registrar of this Honourable Court to assess the damages assisted by merchants.

3. Condemnation of the defendant ship and her bail in the amount of the Judgment and in costs and in interest.

The Plaintiff claims that this action be tried at the City of Toronto, Ontario.

DELIVERED this 18th day of January, A.D. 1928, by Rowell, Reid, Wright & McMillan, 38 King St. West, Toronto, Solicitors for the Plaintiff.

*In the
Exchequer
Court of
Canada.*

No. 8.
Statement of
claims of re-
spondent
Canada
Steamship
Lines
Limited.

(continued).

10 STATEMENT OF DEFENCE OF APPELLANT TO RESPONDENT,
JAMES RICHARDSON & SONS, LIMITED.

No. 9.
Statement of
Defence of
Appellant to
Respondent
James
Richardson &
Sons, Limited.

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

JAMES RICHARDSON & SONS LIMITED,
Plaintiff

—and—

THE SHIP "PAISLEY"

Defendant

1. The Defendant admits the allegations contained in paragraph 1 of the Plaintiff's Statement of Claim, and except as admitted, denies the allegations in the said Statement of Claim contained, and puts the Plaintiff to the strict proof thereof.

2. The Defendant says that the Steamship "ROBERT J. PAISLEY" was laid up in winter quarters in the harbour of Owen Sound, on or about the 11th day of December, A.D. 1926, laden with a cargo of about 190,000 bushels of winter storage wheat, the vessel being moored to the Canadian Pacific Company's dock on the East side of the harbour, and was in charge of a competent ship-keeper or watchman, the whole of her power plant, in accordance with the practice of good seamanship, being dismantled, and the vessel being left without navigating or propelling power of any kind.

3. At or about the time that the steamer was laid up in winter quarters as aforesaid, her owners, the Cleveland Cliffs Iron Company, entered into an agreement with John Harrison & Sons Co. Limited, a competent and experienced tug and towing Company, having its head office and place of business at the port of Owen Sound aforesaid, to have the tug "HARRISON" keep the harbour of Owen Sound clear of ice as long as possible and to move the three vessels of the said Cleveland Cliffs Iron Company laid up in winter quarters in the harbour, including the Steamship "ROBERT J. PAISLEY", to and from the Great Lakes elevator, as and when necessary to discharge their cargoes.

4. The said contract was made and completed by correspondence between the Great Lakes Elevator Company Limited of the Port of Owen Sound, the Cleveland Cliffs Iron Company of Cleveland, Ohio, and John Harrison & Sons of Owen Sound, extending over a period from November 6th, A.D. 1926, to 27th of December, A.D. 1926, and the Defendants will, at the trial

In the
Exchequer
Court of
Canada.

No. 9.
Statement of
Defence of
Appellant to
Respondent
James
Richardson &
Sons, Limited

(continued).

of this action, crave leave to refer to the said correspondence and to the agreement and contract made thereby with the said John Harrison & Sons Company Limited to move the said Steamship "ROBERT J. PAISLEY" to and from the elevator as and when required for the purpose aforesaid.

5. The Defendant alleges and the fact is that John Harrison & Sons Company Limited is a well known firm of harbour tug owners and operators of long experience in the harbour of Owen Sound and adjacent waters, and are the owners of the tug "HARRISON" a large tug sufficient for the purpose of moving the said vessel "ROBERT J. PAISLEY", and represented to have, and apparently, having proper and sufficient equipment for the purpose, and the said tug "HARRISON" had been employed in moving other loaded vessels of similar type, tonnage and capacity to and from the said elevator for some time prior to the 18th day of January, A.D. 1927. 10

6. On the 15th day of January, A.D. 1927, the tug "HARRISON" in accordance with the contract made by her owners with the owners of the Steamship "ROBERT J. PAISLEY", made necessary arrangements preparatory to moving the vessel to the elevator.

7. On the morning of January 18th, 1927, the said tug "HARRISON" under the command of her master, took entire charge of the Defendant ship and moved her from her berth at the Canadian Pacific Railway Company's dock to the Great Lakes elevator dock, those on board the vessel having no duties to perform except to make fast and shift the towing and mooring cables or lines, under the direction of the master of the tug, and all the towing cables or lines were the property of and furnished by John Harrison & Sons Limited. 20

8. The tug proceeded northerly up the harbour and outside the steamers "THOMPSON SCHNEIDER", "FRATER TAYLOR" and "HOME SMITH", towing the "ROBERT J. PAISLEY" stern first, and then ordered the cable to be let go, and, coming about, proceeded to the bow of the Steamship "ROBERT J. PAISLEY", then moving northerly in the harbour, and passed a manilla tow line to the "PAISLEY'S" bow, which was made fast through the starboard chock to bitts on the forward deck of the "PAISLEY", and the tug then proceeded to take the vessel in a southerly direction towards the elevator of the Great Lakes Transportation Company to enable the vessel to be moored at the elevator dock. 30

9. After the tow line was made fast as aforesaid, and as the vessel was proceeding southerly and before coming abreast of the said elevator and at too great distance from the line of the elevator dock to reach the same by means of mooring cable or line the master of the tug "HARRISON" directed the tow line to be carried to the port chalk of the "PAISLEY", and when about abreast of the elevator, but beyond mooring distance the two line parted, and there being no means available to check the way of the vessel, she was carried past the elevator dock and up to the starboard side of the "SASKATCHEWAN" although it was not apparent to those on board the Steamship "PAISLEY" that there had been any collision between the two vessels. 40

10. The collision and damage were not caused by any negligence on the part of the Defendant ship, her owners, or those on board and in charge of her, and if the breaking of the tow line or the headway of the vessel which carried

her past the elevator dock and up to the starboard side of the "SASKATCHEWAN" as aforesaid were caused by an act of negligence such negligence was that of those on board the tug "HARRISON" and in charge of her and not that of the Defendant ship, her owners or those on board the said vessel.

11. The Steamship "ROBERT J. PAISLEY" was properly and sufficiently manned and equipped, and was not proceeding under her own power, but wholly under power and equipment supplied under contract by the tug "HARRISON".

10 12. Those on board and in charge of the steamship "ROBERT J. PAISLEY" understood the instructions of the master of the tug "HARRISON" as to the shifting of the Steamship "ROBERT J. PAISLEY", but had no direction or control over the said vessel, or the tug or her equipment, including the tow line referred to, and no direction or control over the shifting operation.

13. Those on board the Steamship "ROBERT J. PAISLEY" consisting only of a ship-keeper and his helpers, had no opportunity to secure the vessel to the elevator dock before the tow line of the tug "HARRISON" parted, and in time to prevent damage to the "SASKATCHEWAN" but the mooring and towing lines on board the Steamship "ROBERT J. PAISLEY" were, throughout the operation, handled in a proper manner and without negligence on the part of
20 those on board the said vessel.

14. The port anchor of the Steamship "ROBERT J. PAISLEY" was hanging from the port bow with the flukes below the water line, under the direction and orders of the master of the tug "HARRISON" for the purpose of avoiding injury to the tug in her manoeuvres, and there was no danger or impropriety in the way in which the said anchor was carried, and no negligence in the position of the said anchor for which the Defendant ship is responsible, which caused or contributed to the accident herein.

15. Those on board the Steamship "ROBERT J. PAISLEY" had no orders to have an anchor or anchors ready to let go, and no reason to expect that an anchor or anchors would be required in the moving of the "PAISLEY" and to let go an anchor under the circumstances that existed at or before the time of the collision would not have been in accordance with the practice of good seamanship, and would have caused great danger to the Steamship "ROBERT J. PAISLEY" and an anchor could not have been let go in time to be of any service in preventing damage to the Steamship "SASKATCHEWAN".
30

16. The Defendant says that for the operation of shifting in the harbour the Steamship "PAISLEY" was properly manned and a proper look-out maintained on board, and that so far as those on board her had any duties to perform, the said duties were properly performed and with due regard to the dangers of navigation and collision, and with the precaution required by the ordinary practice of seamen and the special circumstances of the case.
40

17. The Defendant further says that the Rules of the Road for the Great Lakes did not apply to the Steamship "ROBERT J. PAISLEY" when laid up in winter quarters as aforesaid, and that she was merely a dumb barge in custody and under control of the tug "HARRISON".

18. The Defendant repeats the allegations contained in paragraphs 1 to 17 of the Statement of Defence, and alleges that the Plaintiff, after being

*In the
Exchequer
Court of
Canada.*

No. 9.
Statement of
Defence of
Appellant to
Respondent
James
Richardson &
Sons, Limited
(continued).

*In the
Exchequer
Court of
Canada.*

No. 9.
Statement of
Defence of
Appellant to
Respondent,
James
Richardson &
Sons, Limited
(continued).

advised of the injury to the Steamship "SASKATCHEWAN" and that the cargo on board her had been damaged by water, failed and neglected to take the necessary steps to remove the cargo from the said Steamship "SASKATCHEWAN", and to properly dry and care for it, and to prevent the further wetting and damage of the cargo, after the sinking of the vessel "SASKATCHEWAN" on the 18th day of January, A.D. 1927, herein referred to, and that the plaintiff could, by the exercise of reasonable and ordinary care, have greatly minimized the loss and damage (if any) consequent on the alleged collision between the said vessel and the Steamship "ROBERT J. PAISLEY" and that to the extent that the Plaintiff failed properly to care for the said cargo and to minimize the loss and damage thereto, they are themselves responsible therefore. 10

19. The defendant therefore claims that this action be dismissed as against the Steamship "ROBERT J. PAISLEY" with costs to be paid by the Plaintiff.

DELIVERED this 28th day of January, A.D. 1928, by GALT, GOODERHAM & TOWERS, 49 Wellington Street, East, Toronto Solicitors for the Defendant.

No. 11.
Statement of
Defence of
Appellant to
Respondent,
Canada
Steamship
Lines,
Limited.

STATEMENT OF DEFENCE OF APPELLANT TO RESPONDENT,
CANADA STEAMSHIP LINES, LIMITED. 20

IN THE EXCHEQUER COURT OF CANADA
BETWEEN:

CANADA STEAMSHIP LINES LIMITED,

Plaintiffs

—and—

THE SHIP "ROBERT J. PAISLEY",

Defendant.

1. The Defendant admits the allegations contained in paragraphs 1, 2 and 3 of the Plaintiff's statement of claim, and except as admitted, denies the allegations in the said statement of claim contained, and puts the Plaintiff to the strict proof thereof. 30

2. The Defendant says that the Steamship "ROBERT J. PAISLEY" was laid up in winter quarters in the harbour of Owen Sound, on or about the 11th day of December, A.D. 1926, laden with a cargo of about 190,000 bushels of winter storage wheat, the vessel being moored to the Canadian Pacific Railway Company's dock on the east side of the harbour, and was in charge of a competent ship-keeper or watchman, the whole of her power plant, in accordance with the practice of good seamanship, being dismantled, and the vessel being left without navigating or propelling power of any kind.

3. At or about the time that the said steamer was laid up in winter quarters as aforesaid, her owners, the Cleveland Cliffs Iron Company, entered into an agreement with John Harrison & Sons Company Limited, a competent and experienced tug and towing company, having its head office and place of business at the port of Owen Sound aforesaid, to have the tug "HARRISON" keep the harbour of Owen Sound clear of ice as long as possible, and to move the three vessels of the said Cleveland Cliffs Iron Company laid up in winter 40

quarters in the harbour, including the Steamship "ROBERT J. PAISLEY" to and from the Great Lakes elevator as and when necessary to discharge their cargoes.

*In the
Exchequer
Court of
Canada.*

4. The said contract was made and completed by correspondence between the Great Lakes Elevator Company Limited of the Port of Owen Sound, the Cleveland Cliffs Iron Company of Cleveland, Ohio, and John Harrison & Sons of Owen Sound, extending over a period from November 6th, A.D. 1926, to 27th December, A.D. 1926, and the Defendants will, at the trial of this action, crave leave to refer to the said correspondence and to the agreement and contract made thereby with the said John Harrison & Sons Company Limited, to move the said Steamship "ROBERT J. PAISLEY" to and from the elevator as and when required for the purposes aforesaid.

No. 11.
Statement of
Defence of
Appellant to
Respondent,
Canada
Steamship
Lines,
Limited.

(continued).

5. The Defendant alleges and the fact is that John Harrison & Sons Company Limited is a well known firm of harbour tug owners and operators of long experience in the harbour of Owen Sound and adjacent waters, and are the owners of the tug "HARRISON", a large tug sufficient for the purpose of moving the said vessel "ROBERT J. PAISLEY", and represented to have, and apparently, having proper and sufficient equipment for the purpose, and the said tug "HARRISON" had been employed in moving other loaded vessels of similar type, tonnage and capacity to and from the said elevator for some time prior to the 18th day of January, A.D. 1927.

6. On the 15th day of January, A.D. 1927, the tug "HARRISON" in accordance with the contract made by her owners with the owners of the Steamship "ROBERT J. PAISLEY" made necessary arrangements preparatory to moving the vessel to the elevator.

7. On the morning of January 18th, 1927, the said tug "HARRISON" under command of her master, took entire charge of the defendant ship and mover her from her berth at the Canadian Pacific Railway Company's dock to the Great Lakes elevator dock, those on board the vessel having no duties to perform except to make fast and shift the towing and mooring cables or lines, under the direction of the master of the tug, and all the towing cables or lines were the property of and furnished by John Harrison & Sons Limited.

8. The tug proceeded northerly up the harbour and outside the steamers "THOMPSON", "SCHNEIDER", "FRATER TAYLOR" and "HOME SMITH", towing the "ROBERT J. PAISLEY" stern first, and then ordered the cable to be let go, and, coming about, proceeded to the bow of the Steamship "ROBERT J. PAISLEY", then moving northerly in the harbour, and passed a manilla tow line to the "PAISLEY'S" bow, which was made fast through the starboard chalk to bitts on the forward deck of the "PAISLEY", and the tug then proceeded to take the vessel in a southerly direction towards the elevator of the Great Lakes Transportation Company to enable the vessel to be moored at the elevator dock.

9. After the tow line was made fast as aforesaid and as the vessel was proceeding southerly and before coming abreast of the said elevator and at too great a distance from the line of the elevator dock to reach the same by means of a mooring cable or line, the master of the tug "HARRISON" directed the tow line to be carried to the port chalk of the "PAISLEY" and when about abreast of the elevator, but beyond mooring distance the tow line parted, and there being no means available to check the way of the vessel, she was

carried past the elevator dock and up to the starboard side of the "SASKATCHEWAN" although it was not apparent to those on board the steamship "PAISLEY" that there had been any collision between the two vessels.

10. The collision and damage were not caused by any negligence on the part of the Defendant ship, her owners or those on board and in charge of her, and if the breaking of the tow line or the headway of the vessel which carried her past the elevator dock and up to the starboard side of the "SASKATCHEWAN" as aforesaid, were caused by any act of negligence, such negligence was that of those on board the tug "HARRISON" and in charge of her, and not that of the Defendant ship, her owners or those on board the said vessel. 10

11. The Steamship "ROBERT J. PAISLEY" was properly and sufficiently manned and equipped, and was not proceeding under her own power, but wholly under power and equipment supplied under contract by the tug "HARRISON".

12. Those on board and in charge of the Steamship "ROBERT J. PAISLEY" understood the instructions of the master of the tug "HARRISON" as to the shifting of the Steamship "ROBERT J. PAISLEY" but had no direction or control over the said vessel, or the tug or her equipment, including the tow line referred to, and no direction or control over the shifting operation.

13. Those on board the Steamship "ROBERT J. PAISLEY" consisting only of a ship-keeper and his helpers, had no opportunity to secure the vessel to the elevator dock before the tow line of the tug "HARRISON" parted, and in time to prevent damage to the "SASKATCHEWAN" but the mooring and towing lines on board the Steamship "ROBERT J. PAISLEY" were, throughout the operation, handled in a proper manner and without negligence on the part of those on board the said vessel. 20

14. The port anchor of the Steamship "ROBERT J. PAISLEY" was hanging from the port bow with the flukes below the water line, under the direction and orders of the master of the tug "HARRISON" for the purpose of avoiding injury to the tug in her manoeuvres, and there was no danger or impropriety in the way in which the said anchor was carried, and no negligence in the position of the said anchor for which the Defendant ship is responsible, which caused or contributed to the accident herein. 30

15. Those on board the Steamship "ROBERT J. PAISLEY" had no orders to have an anchor or anchors ready to let go, and no reason to expect that an anchor or anchors would be required in the moving of the "PAISLEY" and to let go an anchor under the circumstances that existed at or before the time of the collision would not have been in accordance with the practice of good seamanship, and would have caused great danger to the Steamship "ROBERT J. PAISLEY" and an anchor could not have been let go in time to be of any service in preventing damage to the Steamship "SASKATCHEWAN". 40

16. The Defendant says that for the operation of shifting in the harbour the Steamship "PAISLEY" was properly manned and a proper look-out maintained on board, and that so far as those on board her had any duties to perform, the said duties were properly performed and with due regard to the dangers of navigation and collision, and with the precaution required by the ordinary practice of seamen and by the special circumstances of the case.

17. The defendant further says that the Rules of the Road for the Great Lakes did not apply to the Steamship "ROBERT J. PAISLEY" when laid up in

*In the
Exchequer
Court of
Canada.*

No. 11.
Statement of
Defence of
Appellant to
Respondent,
Canada
Steamship
Lines,
Limited.

(continued).

winter quarters as aforesaid, and that she was merely a dumb barge in custody and under control of the tug "HARRISON".

18. The Defendant repeats the allegations contained in paragraphs one to seventeen of the Statement of Defence, and alleges that those on board the Steamship "SASKATCHEWAN" being servants or employees of the Plaintiff, acting within the scope of their duties and employment, could, by the exercise of reasonable and ordinary care, after the said collision, have prevented the sinking of the Steamship "SASKATCHEWAN", and have greatly minimized the loss and damage (if any) consequent on the alleged collision between the said vessel and the Steamship "ROBERT J. PAISLEY", and that if the Plaintiffs sustained loss and damage as alleged, they are themselves responsible there-
10 fore, and not the defendant ship.

19. The defendant therefore claims that this action be dismissed as against the Steamship "ROBERT J. PAISLEY" with costs to be paid by the Plaintiff.

DELIVERED this 30 day of January, A.D. 1928, by GALT, GOODERHAM & Towers, 49 Wellington Street East, Toronto, Solicitors for the Defendant.

*In the
Exchequer
Court of
Canada.*

No. 11.
Statement of
Defence of
Appellant to
Respondent,
Canada
Steamship
Lines,
Limited.

(continued).

REPLY OF RESPONDENT.

IN THE EXCHEQUER COURT OF CANADA

20 BETWEEN:

CANADA STEAMSHIP LINES LIMITED,

Plaintiff

—and—

SS. ROBERT J. PAISLEY,

Defendant

No. 12.
Reply of
Respondent,
Canada
Steamship
Lines,
Limited.

1. As to paragraph 2 of the Statement of Defence, the Plaintiff denies that the ROBERT J. PAISLEY was in charge of a competent ship-keeper or watchman, but the plaintiff alleges that in any event the ROBERT J. PAISLEY should have had suitable and sufficient officers and crew on board and on duty
30 for the purposes of the contemplated movement that she was about to make.

2. As to paragraph 5 of the statement of defence the plaintiff denies the allegations thereof and further alleges that the ROBERT J. PAISLEY should have had her own steam up and available and should have had an additional tug or at the very least a more powerful and suitable tug under all the circumstances for the movement in question.

3. That the Plaintiff should not have undertaken or permitted to be undertaken the movement in question in the waters in question in their then condition without having her own steam available and without having anybody on board but a ship-keeper, particularly in view of the vessel's
40 size and the cargo which she had then on board.

4. That if the ROBERT J. PAISLEY had had sufficient and competent crew on board the man at the wheel would have prevented the ROBERT J. PAISLEY from being beyond mooring distance from the elevator when passing it.

5. That if the ROBERT J. PAISLEY had had a competent man at the

In the
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Court of
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No. 12.
Reply of
Respondent,
Canada
Steamship
Lines,
Limited.

(continued).

wheel, then even after the towing cable broke, as the defendant alleges, the ROBERT J. PAISLEY could and would have been prevented from striking the SASKATCHEWAN.

6. No damage would have been done to the SASKATCHEWAN if the ROBERT J. PAISLEY had had her own steam available and a competent watch on duty in the engine room.

7. No accident would have happened if the PAISLEY had had a competent watch on duty on deck to get a line ashore.

8. No accident would have happened if the ROBERT J. PAISLEY had had a sufficient watch on duty on deck to let go her anchors when the towing cable broke as alleged.

9. The Plaintiff repeats the allegations contained in its statement of claim and joins issue with the defendant upon the allegations contained in its statement of defence.

DELIVERED this 31st day of January, 1928, by ROWELL, REID, WRIGHT & McMILLAN, 38 King Street West, Toronto.

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

JAMES RICHARDSON & SONS, LIMITED,

Plaintiff 20

—AND —

THE SHIP "PAISLEY,"

Defendant

No. 13.
Reply of
Respondent,
James
Richardson &
Sons, Limited

1. The Plaintiff denies that the ROBERT J. PAISLEY was in charge of a competent ship-keeper or watchman as alleged in Paragraph 2 of the Statement of Defence, and says that the ROBERT J. PAISLEY should have had on board and on duty competent, duly qualified and sufficient officers and crew for the purpose of the manoeuvre of shifting to the elevator dock.

2. The Plaintiff denies the allegations contained in Paragraph 5 of the Statement of Defence, and says that the ROBERT J. PAISLEY should have had steam up and should have had an additional tug to assist in the shifting manoeuvre. 30

3. The Plaintiff says that if the ROBERT J. PAISLEY had been properly prepared, officered and manned for the shifting manoeuvre, the collision could have been prevented by the use of the ROBERT J. PAISLEY's helm, by the operation of her engines, by the proper handling of her mooring lines, or by the dropping of an anchor or anchors.

4. The Plaintiff says that the shifting operation was conducted with the assistance of the tug HARRISON and under the direction and control of those on board the ROBERT J. PAISLEY. 40

5. The Plaintiff joins issue upon the Defendant's Statement of Defence. DELIVERED this 6th day of February, A.D. 1928, by CASEY WOOD & CO., 330 Bay Street, Toronto 2, Solicitors for the Plaintiff.

PROCEEDING AT TRIAL
PART II

IN THE EXCHEQUER COURT OF CANADA
TORONTO ADMIRALTY DISTRICT

BETWEEN:

CANADA STEAMSHIP LINES, LIMITED,

Plaintiff

— AND —

S. S. "ROBERT J. PAISLEY,"

Defendant

10

AND BETWEEN:

JAMES RICHARDSON & SONS LIMITED,

Plaintiff

— AND —

THE SHIP "PAISLEY,"

Defendant

Tried by Honourable Mr. Justice Hodgins, at Osgoode Hall, Toronto, commencing Wednesday, February 8th, 1928, at 11.00 A.M.

COUNSEL:

20

MR. A. R. HOLDEN, K.C., and MR. F. WILKINSON,
for Canada Steamship Lines.

MR. S. C. WOOD, K.C., and MR. G. M. JARVIS,
for James Richardson & Sons.

MR. R. I. TOWERS, K.C., and MR. O. S. HOLLINRAKE,
for The Ship "Paisley."

HIS LORDSHIP: These two cases, I suppose, are to be tried together, aren't they?

MR. WOOD: Yes, my Lord.

HIS LORDSHIP: They are not consolidated?

30

MR. WOOD: No, my Lord.

HIS LORDSHIP: Then I would like one of the Counsel for the plaintiffs to give me a very sketchy idea of what the action is about. If Mr. Holden will?

MR. HOLDEN: May it please Your Lordship, the accident occurred soon after ten o'clock in the morning of the 18th January, 1927, in the Harbor of Owen Sound. The plaintiff in one action, the Canada Steamship Lines, owns the Saskatchewan which was lying at her winter berth in the Harbor of Owen Sound with a valuable cargo of grain on board. The defendant in

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both actions is the Steamship Paisley. That ship was lying in winter quarters in the same harbor with a cargo of grain on board as well. She undertook to change her berth and to go to the elevator berth which was a good deal nearer where the Saskatchewan was lying than the Paisley's previous berth. In moving to her new berth she punched a hole in the side of the Saskatchewan with her anchor. The Saskatchewan, being full of grain, it took some time for the water to get in in sufficient quantity to sink her. In fact, the water was admitted into a cargo hold through the large hole punched in her side and in time she sank at her berth.

HIS LORDSHIP: Was this at night? 10

MR. HOLDEN: No, my Lord, it was 10.15 about in the morning.

HIS LORDSHIP: They could not stop the inflow of water?

MR. HOLDEN: Well they didn't know there was any water coming in. The hole was punched below the water line, there was ice and so on on the water, the 18th January, there was no evidence visible at that time under the circumstances of the damage that it turned out had been so done.

HIS LORDSHIP: Thank you. That is really all I wanted to know.

Now what about the other vessel, the Richardson? Are you for the Canada Steamship Lines?

MR. HOLDEN: Yes, my Lord, Mr. Wilkinson and I are for the Canada Steamship Lines. The other plaintiff, it is not another vessel, it is our cargo. 20

HIS LORDSHIP: Who represents that, Mr. Wood?

MR. WOOD: I appear with my learned friend Mr. Jarvis. We were the valuable cargo and were the ones that suffered the main damage, my Lord.

HIS LORDSHIP: I see. Well now have you a plan of the harbor?

MR. TOWERS: I appear, my Lord, with Mr. Hollinrake. My learned friend rather left it open as to whether the vessel moved under her own power or not.

HIS LORDSHIP: I will hear all that in the evidence. Have you a plan of the harbor? 30

MR. WOOD: Yes, my Lord.

MR. TOWERS: I told my learned friend yesterday I was not admitting any plans with soundings, my Lord.

HIS LORDSHIP: That is all right. But putting it up there on the board, Mr. Towers, won't do you a bit of harm.

MR. TOWERS: No.

HIS LORDSHIP: Well then, what about the witnesses? Do you want them in or out?

MR. WOOD: Speaking to that, my Lord, I think we ought to follow the usual custom and have them excluded. 40

HIS LORDSHIP: Then make out the usual list and have them excluded, please.

MR. WOOD: If the order is made that they all go out we don't need a list.

MR. TOWERS: Any objection to expert witnesses? There is Mr. Schneider, proving correspondence, and anything of that kind?

MR. HOLDEN: It is hard to make any distinction.

HIS LORDSHIP: I think Counsel might follow my suggestion, let the list be made out of the witnesses and let them go out. If there are any they agree to keep in, strike their names out; if they don't agree, out they go.

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MR. TOWERS: If the witness is an expert who will be of any service, my Lord, in the case, he should hear the evidence.

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HIS LORDSHIP: I know. Let us get the thing moving. There are certain witnesses to be excluded; let that be done and then if there is any dispute I will have to settle it, I suppose.

Was any order made in this case as to the trial?

10 MR. WILKINSON: Yes, my Lord, there is an Order for trial.

HIS LORDSHIP: Is there an order that it be tried together or what is the Order?

MR. WILKINSON: Yes, my Lord, it is a separate Order that they be tried together.

HIS LORDSHIP: There is an Order that they be tried together?

MR. WILKINSON: Yes, my Lord.

(Witnesses excluded).

CASE FOR PLAINTIFFS

WALTER P. MERRICK, Sworn.

20 Examined by MR. HOLDEN:

Q. Mr. Merrick, are you in the Department of Public Works?

A. I am.

Q. Will you please produce as Exhibit S-1, I suppose, my Lord, on behalf of the Saskatchewan, a blueprint of the Harbor of Owen Sound?

A. Yes. (Produced).

—EXHIBIT S-1: Blueprint of Owen Sound Harbor.

Q. Does this blueprint, Exhibit S-1, correctly show the details of the harbour?

A. It does.

30 Q. Are the soundings that are shown correct?

A. They are.

Q. What is the scale of the plan?

A. 100 feet to the inch.

Q. I understand you have no personal knowledge as to where the ships were at the time in question?

A. I have not.

CROSS-EXAMINED by MR. TOWERS:

Q. Are the soundings correct as of today?

A. I couldn't answer that question.

40 Q. Were they correct as of the 18th January, 1927?

A. They were correct as of the date November 4th, 1925.

Q. That is what you say. Further than that you don't say?

A. I don't know.

Q. Can you speak as to the state of the dock line from the elevator southerly on the 18th January, 1927?

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A. Under construction, in part.

Q. Well then when you say that this map correctly represents the state of affairs in the harbor what do you mean?

A. The soundings are correct.

Q. Well now we were through with the soundings. You say they were correct. You mean they were correct when they were taken?

A. Yes sir.

HIS LORDSHIP: He told you that. The point is that you want to know about the structures in the harbor, don't you?

MR. TOWERS: Yes.

Q. Did you take the soundings?

A. I did not.

Q. Why do you say they are correct?

A. Because I happen to know that they were taken by Mr. Ponchette of my office.

HIS LORDSHIP: Do you seriously object as to them being correct on November 4th, 1925?

MR. TOWERS: No, my Lord.

HIS LORDSHIP: Well then what is the use pursuing it?

Q. When you say that this was partly under construction on the 18th 20 January, 1927, what do you mean?

A. There was an extension carried on during 1927 to that work which had been formerly started.

Q. And has that now been completed?

A. Completed in this summer.

Q. But not completed on January 18th, 1927?

A. No.

HIS LORDSHIP: What was not completed?

MR. TOWERS: The dock from the south side of the elevator to the southerly end of the dock was not completed on January 18th, 1927. 30

A. (Contd.): Not up as far as the roadway at the end of the slip.

HIS LORDSHIP: I would just like you to point it out. I don't get any idea from your asking from the south side of the elevator to some other place. Let us indicate on the map.

A. (Contd.): Well, my Lord, in front of the elevator there is a concrete dock.

By HIS LORDSHIP: Q. The dock, you say, was completed from the south side of the elevator to where?

A. To the inner corner of the road.

Q. There is a road goes down to the end of the slip completed then—? 40

A. Summer of '27.

By MR. TOWERS: Q. Have you seen this harbor?

A. Oh yes. Know it well.

Q. Would this photograph which I show you correctly indicate the state of the dock from the southerly side of the elevator south to the end of the dock on the 18th January, 1927?

A. Yes, it does.

HIS LORDSHIP: What does it show, you say?

MR. TOWERS: The photograph which I produced, my Lord, indicates the state of the harbor line from the elevator south to the Saskatchewan.

A. (Contd.): I don't know the Saskatchewan.

HIS LORDSHIP: To the Saskatchewan or the road?

MR. TOWERS: To the point where she was lying.

WITNESS: I don't know where she was lying.

Q. To the south end of—what do you call it?

A. The road.

10 By HIS LORDSHIP: Q. Witness, is where the Saskatchewan was lying where you pointed out as the road?

A. I do not know, my Lord, where the Saskatchewan was lying.

Q. I wish you would pay attention then to the question that you are asked. You are asked what that photograph correctly showed and you said it showed correctly from the elevator to where the Saskatchewan was lying.

A. I misunderstood your question, my Lord. As far as the slip construction work is concerned the plan is correct.

By MR. TOWERS: Q. The photograph is correct?

A. The photograph is correct.

20 By HIS LORDSHIP: Q. I don't know what you said as to the rest of the harbor. Do I understand that all the rest of the harbor structures were completed on the 18th January, 1927, just as shown on the map?

A. No, my Lord, they were not completed until the summer of 1927.

Q. What were not?

A. The harbor structures were not completed in to the slip.

Q. I understood you to say that everything was completed from the dock except from the south side of the elevator to the corner of the road, that that only was uncompleted?

A. No, my Lord. There was 200 feet—

30 Q. I will have to ask you about it. Now just look at that plan; show me where the road is. Now from the road to the elevator?

A. From the road to the elevator is about 460 feet.

Q. 460 feet? A. About.

Q. Was that completed on the 18th January, 1927?

A. No, my Lord.

Q. Then was the elevator completed?

A. The elevator was, yes, my Lord.

Q. Then farther on past the elevator—?

A. 200 feet, roughly—

40 Q. No, no, on the other side of the plan?

A. There was dockage.

Q. That was all completed?

A. Except a small portion at the corner.

Q. At the corner between the elevator and what is that structure a little farther on?

A. Well, it is what we call the entrance channel.

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(continued).

Q. Now what is the structure shown sticking out in the middle of the channel?

A. It just has initials on it; it is a storage building.

Q. What are the initials?

MR. TOWERS: "J. H. & S. Co."

Q. It was completed from the elevator to the Harrison water lot?

A. No, to the Harrison building.

Q. Oh, that is a building, is it?

A. It is a building. The water lot is out there. (Indicating).

Q. It was completed between the elevator and that point? 10

A. With the exception of 16 feet at the corner.

Q. You don't know where the Saskatchewan was lying on that date?

A. No, my Lord.

HIS LORDSHIP: Is this photograph admitted?

MR. HOLDEN: Yes, my Lord.

MR. TOWERS: Will it be marked "P-1," my Lord? It belongs to the Paisley.

HIS LORDSHIP: I don't know what system of marking you want to adopt. If you want to distinguish those you put in I suppose it had better be P-1. 20

—EXHIBIT P-1: Photograph referred to showing elevator, Saskatchewan, etc.

MR. WOOD: In putting in that photograph, my Lord, there are some other photographs which are admitted by my learned friend, I understand, as going in.

MR. TOWERS: Yes.

HIS LORDSHIP: Are you cross-examining this witness too?

MR. WOOD: Yes, my Lord, but I haven't any questions to ask him, except I am pointing out that by arrangement with my learned friend Mr. Towers these other photographs showing the situation are to go in. 30

HIS LORDSHIP: We will call these "C," for "Cargo."

—EXHIBIT C-1

—EXHIBIT C-2

—EXHIBIT C-3

} Three photographs taken in Owen Sound Harbor.

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Henry Wm.
Morris.
Examination-
in-Chief.

HENRY WM. MORRIS, Sworn.

Examined by MR. HOLDEN:

Q. Mr. Morris, are you the Marine Surveyor of the Salvage Association, London? 40

A. Yes sir.

Q. For this district?

A. Yes sir.

Q. What is your district?

A. From Owen Sound, the Georgian Bay right down to Kingston.

HIS LORDSHIP: What is the meaning of being Surveyor of that Association?

Q. Will you tell His Lordship, please?

- A. I am to survey all damages, all ships that are reported as damaged.
- By HIS LORDSHIP: Q. What is the authority of the Salvage Association of London?
- A. Well they are the representatives. The representative appoints his surveyors for the district.
- Q. Is it recognized by the shipping companies here?
- A. Recognized by all hull underwriters.
- Q. What is that?
- A. They represent all hull underwriters.
- 10 By MR. HOLDEN: Q. The Salvage Association of London is the official representative of the Underwriters, isn't it?
- A. Yes sir.
- Q. And you are their surveyor for this district?
- A. Yes sir. I am one of the surveyors for this district.
- Q. Are you also a Marine Surveyor for the American Bureau?
- A. Yes sir.
- HIS LORDSHIP: For what?
- Q. What is the proper title?
- A. American Bureau of Shipping.
- 20 Q. What is that?
- By HIS LORDSHIP: Q. Is it different from the Shipping Board?
- A. It is a classification society.
- By MR. HOLDEN: Q. How long have you been in that kind of work?
- A. I am on my tenth year.
- Q. Before that were you afloat?
- A. Yes sir.
- Q. As what?
- A. Marine Engineer.
- Q. And did you have a Chief's ticket?
- 30 A. Yes, a Chief's, Board of Trade.
- Q. And how long were you a chief engineer?
- A. Between sixteen and seventeen years.
- By HIS LORDSHIP: Q. What papers had you?
- A. Chief Engineer's first-class.
- Q. From the Board of Trade, England?
- A. Board of Trade, England.
- By MR. HOLDEN: Q. And before going into the engine room department afloat did you serve your time in the ship yards—ship building?
- A. Yes.
- 40 Q. For how long?
- A. Five years.
- Q. Mr. Morris, as Surveyor for these two societies that you mention did you have any official responsibility with regard to the berth where the Saskatchewan lay?
- A. Yes sir.
- Q. What was your responsibility in that connection?

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(continued).

A. I was the appointed Surveyor for moorings for the closed season of navigation.

Q. For the winter period?

A. Yes.

By HIS LORDSHIP: Q. By whom?

A. By the American Bureau of Shipping.

By MR. HOLDEN: Q. And did that include the harbor of Owen Sound?

A. Yes.

Q. Did you then inspect and ascertain the berth and the mooring of the Saskatchewan? 10

A. Yes sir.

Q. Will you show His Lordship, please, where she was moored at her winter berth?

A. She was lying here. (Indicating on Exhibit S-1).

By HIS LORDSHIP: Q. Will you just take your pencil, if you can, and outline the ship, where she was lying?

MR. HOLDEN: I beg your pardon, my Lord, there were two.

A. There were two ships there.

MR. WOOD: Outline both of them.

HIS LORDSHIP: Yes. 20

By MR. HOLDEN: Q. Which way were they pointing, in or out?

A. In towards the land.

By HIS LORDSHIP: Q. Can you outline both ships?

A. Yes. This is not drawn to scale. The Drummond was there and the Saskatchewan was there. (Indicating).

By MR. HOLDEN: Q. Moored alongside of her?

A. Moored alongside of her and to her; they were touching each other.

By HIS LORDSHIP: Q. Just draw a line joining them in the middle and we will understand.

A. That is "S" and that is "D" for the Drummond. 30

MR. HOLDEN: My friend Mr. Wilkinson has handed me a little model to scale.

HIS LORDSHIP: Well, it is done now. Don't let us mess it up.

By MR. HOLDEN: Q. Do you remember when you inspected her moorings?

HIS LORDSHIP: With the aid of that scale would the ships come down a little farther into the harbor than you have indicated?

MR. HOLDEN: It is very close. Mr. Morris' guess was very close.

A. Yes sir, it would come.

By HIS LORDSHIP: Q. Hadn't you better just elongate that with 40 your pencil?

A. That would be about it. (Marking).

By MR. HOLDEN: Q. Did your official responsibility in connection with the Saskatchewan have anything to do with her manning?

A. Only to see that there is a competent ship keeper on board.

Q. Can you tell the Court when or about when you made your inspection in these respects?

A. Not offhand, but it would be in the latter part of December.

Q. 1926?

A. 1926.

By HIS LORDSHIP: Q. Was there a competent ship keeper on board?

A. Yes sir. To my estimation.

By MR. HOLDEN: Q. What was his name?

A. Captain Cornett.

Q. And how did you find her moorings and her berth?

A. Quite satisfactory.

10 Q. She then had her large cargo of grain on board?

A. Yes sir. The major proportion of the cargo.

By HIS LORDSHIP: Q. She hadn't it all on board then?

A. No, she had discharged some.

Q. She was loaded, was she?

A. No, she had discharged some when she came into port.

Q. She was partly loaded?

A. Partly loaded.

By MR. HOLDEN: Q. Am I right, Mr. Morris, she didn't take any
more on board?

20 A. No sir.

Q. She had discharged some of her original load?

A. Yes.

Q. And she had the same cargo then as she would have on the 18th
January following?

A. Yes.

Q. Now, Mr. Morris, after passing upon her mooring and berth and her
manning what was your next connection with the Saskatchewan?

A. I was called in by the representative of the London Salvage on, I
think it was on the morning of January 20th.

30 Q. 1927?

A. 1927.

Q. Why were you called in?

A. Well stating that the vessel was sunk in the harbor of Owen Sound.

Q. And did you go to her?

A. I went to her on the first available train.

Q. Where were you?

A. Toronto.

Q. Went to Owen Sound as soon as you could?

A. Yes.

40 Q. When did you get there?

A. The last train of the C. P. R., about 10.30 p.m.

Q. In the evening or morning?

A. In the evening.

Q. And you were there the following day, I presume?

A. Yes sir.

Q. Where and how did you find the Saskatchewan then?

A. She was resting on the bottom all full of water.

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(continued).

Q. At the same berth?

A. Other than the engine room. I shouldn't say all full of water; all other than the engine room.

Q. And had she sunk at her same berth where you saw her before?

A. Yes sir.

Q. And did they raise her? Tell His Lordship, if you please, what your connection then with this casualty was?

A. Previous to my arriving there or after I got there?

By HIS LORDSHIP: Q. No, on January 21st?

A. On January 21st, the night of January 20th and 21st they placed the 10 pumps; they had already pumped the engine room dry or practically dry before I appeared. Then at that time I got there I requested them, the engineers in charge—

Q. I know, but just tell us what was done under your eye, what you saw done?

A. Well we pumped the vessel dry.

Q. Well that is a simple answer, you pumped it dry.

By MR. HOLDEN: Q. And then were you able to see why she sank?

A. Yes.

HIS LORDSHIP: Is there any dispute as to the cause of her sinking? 20

MR. TOWERS: Well I don't think anyone knows exactly what happened, my Lord.

Q. Would you look at this photo, Mr. Morris?

A. Yes sir.

Q. Of the side of the Saskatchewan, my Lord, perhaps that will be S-2?

HIS LORDSHIP: Well what is it a photograph of?

Q. What does that show, Mr. Morris?

A. A photograph of part of the side of the ship.

By HIS LORDSHIP: Q. Does it show the damage?

A. It shows the hull and shows a puncture in one of the shell plates. 30

By MR. HOLDEN: Q. Did you see that hole?

A. Yes sir.

Q. What were the dimensions of that hole?

A. Roughly 5 inches by 3 inches.

Q. Where was the hole with reference to her water line as she lay loaded at her berth before the accident?

A. Well I didn't take the mark measurements of that; I only went by the draft forward and aft, but it seemed to me between 15 and 15 feet six.

Q. And would that be above or below the water as she lay at her berth?

A. That would be below the water. 40

HIS LORDSHIP: I see the Preliminary Act at No. 13 says: (Reads). There doesn't seem to be any dispute about what the cause of it was, Mr. Towers.

MR. TOWERS: Is that in the defendant's Preliminary Act?

MR. WILKINSON: Yes.

HIS LORDSHIP: Are you actively disputing the fact that whether negligently or not it was the anchor that drove the hole in?

MR. TOWERS: It is not known whether it was the anchor or the chain connecting the booms about the vessel, my Lord.

HIS LORDSHIP: Your Preliminary Act says the port anchor of the Paisley struck the starboard side.

MR. TOWERS: They were in collision.

HIS LORDSHIP: However, if you want to argue it was a chain instead of a fluke you are at liberty to do that, I think.

MR. TOWERS: Well, my Lord, it does make a difference in the domestic arrangements of the defendant, not so far as this action goes.

10 HIS LORDSHIP: I know, that is what I want to get at, what is the use of disputing a thing that is fairly obvious? If you have a serious reason for disputing it, very good, I am not preventing you.

MR. TOWERS: I have a serious reason for saying I don't know whether it was the chain or the flukes of the anchor that caused it.

Q. Mr. Morris, did you also see the Paisley at that time?

A. Yes, I saw the Paisley's bow.

Q. And did you see her port anchor?

A. Yes sir.

Q. Where was her anchor? Was it in the hawse pipe or hanging down?

20 A. It was hanging down, hanging down on the bow by a wire.

Q. On what?

A. On the port bow by a wire. A wire cable.

Q. And where was the crown of the anchor with reference to the water line?

A. About 15 feet 6, I think.

Q. That would be about the same level as the hole in the Saskatchewan?

A. Practically the same level.

HIS LORDSHIP: You mean where was the crown of the anchor in reference to the water?

30 MR. HOLDEN: The water line, yes.

HIS LORDSHIP: And he didn't answer that by saying it was above or below.

A. (Contd.): It is below.

Q. Below the water?

By HIS LORDSHIP: Q. How much below?

A. Well the draft of the Paisley and the draft mark on the Paisley—

Q. How much below the level of the water, is the question that is asked, was the crown of the anchor?

By MR. HOLDEN: Q. Approximately at any rate?

40 A. The Paisley's anchor was well clear of the water.

Q. But the crown of her anchor—?

A. Yes.

Q. Oh, when you saw her?

A. When I saw her.

Q. Oh, I see, her cargo—?

A. She had been partly discharged.

By HIS LORDSHIP: Q. Her anchor was clear of the water then?

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(continued).

A. Her anchor was clear of the water.

By MR. HOLDEN: Q. But the Paisley had been partially discharged since the accident?

A. Since the accident, yes.

Q. Well tell the Court, please, Mr. Morris, had that anchor suffered any injury itself? Did you see any break or any damage to the anchor?

A. Yes, there is a break in the crown of the anchor, a piece off the crown of the anchor about two and one-half and tapering down to nothing.

Q. Well now with your experience for so many years—?

MR. TOWERS: My Lord, I may be able to save a little time. There is no dispute that either the anchor hit the Saskatchewan or the anchor hit the boom and struck the Saskatchewan—or the vessel hit the boom and that the hole was made either by an anchor or a chain or a portion of the boom.

HIS LORDSHIP: Where was the boom?

MR. TOWERS: The boom lying around the Saskatchewan.

HIS LORDSHIP: There was a boom, a chained log?

MR. TOWERS: Single logs fastened together by a chain.

MR. HOLDEN: Only one log in width.

MR. TOWERS: Yes.

Q. Mr. Morris, when I tell you that the Paisley bumped the Saskatchewan will you please tell the Court whether in those circumstances the the injury to the Paisley's anchor's crown and the hole in the side of the Saskatchewan had anything to do with each other?

A. Well by the nature of the damage I found they correspond pretty well with each other.

Q. Well then what made the hole, in your opinion?

A. Well something—of course I am not—in my estimation it was something sharp, something similar to the Paisley's anchor.

Q. And where the damage was on that anchor, is that right?

A. Yes.

By HIS LORDSHIP: Q. You think the damage on the Saskatchewan and the damage to the Paisley's anchor correspond with one another and the anchor made the hole?

A. Yes, it is possible that the Paisley's anchor, the crown of the Paisley's anchor, would have done this damage.

Q. You only say it is possible. From your observation—?

A. From my observation.

Q. It is possible that the anchor made the hole, is that what you say?

A. Yes.

Q. Now what sort of anchor was it?

A. Stockless patent anchor.

Q. Have you a photograph of it?

MR. HOLDEN: Yes, my Lord.

Q. What do you call the crown of the Stockless anchor?

A. Well the part that goes across and binds itself with the flukes of the anchor. I could explain it better on a photograph.

30

40

By MR. HOLDEN: Q. Will you produce as Exhibit S-3 a photograph showing the bows of the Paisley with her anchors in view?

A. Yes sir. That shows the starboard anchor.

By HIS LORDSHIP: Q. Here is the anchor hanging?

A. Yes.

Q. Where is the crown of that?

A. This is the crown here. (Indicating). And this is the flukes running up from the crown. (Indicating).

By MR. HOLDEN: Q. Am I right that the crown is the lower part?

10 A. The lowest part of the anchor.

Q. Joining the two flukes?

A. Joining the two flukes in one casting.

—EXHIBIT S-2: Photograph previously referred to showing hole in plating of Saskatchewan.

—EXHIBIT S-3: Photograph above referred to showing bows and anchors of Paisley.

HIS LORDSHIP: This, I suppose, is not a picture having any relation to the damage?

MR. HOLDEN: I believe so, my Lord.

20 Q. You see the port anchor in the Exhibit S-3, you see how it is hanging?

A. Yes.

Q. Is that the way it was when you saw it after the collision?

A. That is the way after I saw it—after the collision.

Q. Two or three days after?

A. Well on January 22nd.

Q. Four days after?

A. January 21st to be exact.

By HIS LORDSHIP: Q. Is that the injured anchor?

A. This is the injured anchor here. (Indicating).

30 By MR. HOLDEN: Q. You are pointing to the one on the port bow?

A. Yes.

By HIS LORDSHIP: Q. Does it show the damage on that photograph?

A. No sir, you can't see the damage here.

By MR. HOLDEN: Q. I was told it did.

A. Well I can't. Of course you might be able to see it but I can't identify it from this photograph.

Q. Now, Mr. Morris, did you take soundings of the water around the Saskatchewan as she lay there?

A. Yes sir.

40 Q. Not in detail, but what water was there?

A. Well I sounded her forward and aft and amidships.

Q. Yes?

A. There was 19 feet to 19 feet 6 forward; I could not get an accurate sounding by the lead line there because there was a certain amount of deposit, mud, in the bottom—soft mud.

By HIS LORDSHIP: Q. Don't give us those details. You say 19 feet to 19 feet 6?

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tion-in-Chief.

(continued).

A. And 22 feet aft at the stern.

By MR. HOLDEN: Q. 22?

A. 22 or 22 feet 6, I couldn't get accurate soundings.

Q. Did you see any mark on the Paisley's side opposite her anchor?

A. On the bow, yes. Just on the bow there was a radius described like that.

By HIS LORDSHIP: Q. A what?

A. A radius—an arc, on the plating on the Paisley's bow.

By MR. HOLDEN: Q. Made by what?

A. Made by something rubbing against it in the side. 10

Q. Did that correspond with the anchor?

A. It was with that inner portion of the crown of the anchor.

Q. If the outer portion of the crown of the anchor made the hole in the Saskatchewan and got its own damage would that mark that you saw on the side of the ship correspond with the crown of the inner portion of the same anchor?

A. Yes sir.

HIS LORDSHIP: You have nothing, Mr. Wood, on this, I suppose?

MR WOOD: Well I have no questions to ask, my Lord.

HIS LORDSHIP: Of course it is natural that Mr. Holden should take 20 the burden of the inquiry as to how the accident happened.

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CROSS-EXAMINED by MR. TOWERS:

Q. When you inspected the berth and moorings of the Saskatchewan, Mr. Morris, did you also inspect the berth and moorings of the other vessels laid up in Owen Sound Harbor in the winter of 1926-27?

A. Yes sir.

Q. Have you a recollection of what those vessels were?

A. No.

Q. Perhaps if I remind you: The Presqu'ile?

A. The Presqu'ile, yes. 30

Q. The Paisley? A. Yes.

Q. The Thompson?

A. Yes.

Q. Snyder? A. Snyder, yes.

Q. C. Snyder. The Drummond?

A. Thomas J. Drummond, yes.

Q. The Senator?

A. Yes.

Q. The Home Smith?

A. The Home Smith, yes. 40

Q. Saskatchewan?

A. Saskatchewan.

Q. And Wakenda?

A. Wakenda.

HIS LORDSHIP: What is the object of this, Mr. Towers?

MR. TOWERS: I want to know the capacities, my Lord, and sizes of those vessels. They were all moved by this Tug Harrison.

HIS LORDSHIP: I know, but what has that to do with this action?

MR. TOWERS: The Tug Harrison moved our vessel and it is claimed she didn't have enough power to do it. She moved all these others. I don't want to go into details about their moorings.

HIS LORDSHIP: I don't suppose you want to get every other vessel in the harbor and show about her moving?

MR. TOWERS: No. I want to show that these vessels that the Harrison
10 moved were of equal or greater capacity and greater deadweight tonnage.

HIS LORDSHIP: You have alleged no negligence or fault prior to the alleged collision.

MR. TOWERS: No, but we say we were not negligent, my Lord; the ship Paisley was not negligent, that is our defence.

HIS LORDSHIP: Well that may be but how is it going to help you if this tug moved a lot of vessels that you say were there?

MR. TOWERS: One of the acts of negligence alleged against us is that we employed a tug that didn't have sufficient power to move the Paisley. I am seeking to show by this witness' full expert knowledge and particular
20 knowledge of what happened that winter that this tug moved larger vessels than ours to the same elevator.

HIS LORDSHIP: You didn't know that though, did you?

MR. TOWERS: Well she hadn't done it when we engaged her.

HIS LORDSHIP: I don't think it will help very much but if this witness can tell you that she moved some of those ships—

MR. TOWERS: All I wanted from him was the capacity and the size of the other ships. I wasn't going to ask him about the moving, just to know if these vessels were in the harbor and what their size and capacity was.

HIS LORDSHIP: They are all bigger than the Paisley, are they?

MR. TOWERS: I don't know that they all are, my Lord.
30

Q. Could you say as to that, Mr. Morris?

A. No sir. I am not interested in the capacities of vessels at all.

Q. Or their size? A. Nor their size, as long as there is a safe berth for mooring.

Q. You are not interested in whether these other vessels were larger. Do you know if they were larger vessels or not? A. Well I would know if I saw them, if I took particular notice.

Q. The Home Smith, for instance?

A. No, the Home Smith would be far smaller.

Q. Than the Paisley? A. Than the Paisley.
40

Q. What about the Saskatchewan herself?

A. The Saskatchewan would be smaller also.

Q. And the Presqu'ile?

A. I can't say. Practically about the same size, by observation.

Q. And the Thompson?

A. I have no recollection of the size of the Thompson.

Q. The Drummond?

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(continued).

A. The Drummond would be smaller.

Q. And the Senator?

A. The Senator would be— Well I can't say whether she would be larger or smaller, but about the same capacity I think, judging by appearances.

Q. Very good. Now then were you concerned in the nature of the bottom in which the Saskatchewan was lying?

A. Yes sir.

Q. And what is the nature of the bottom?

A. Mud bottom.

Q. Mud bottom?

A. Mud and I think a certain amount of clay below the mud but it is mud bottom on the surface.

Q. Then when you went back after the loss you represented the Salvage Association, I suppose the owners of both vessels, you didn't go back in the interests of either vessel?

A. No sir. I am acting without prejudice.

Q. And you found the Saskatchewan when you first examined her having had part of her cargo taken out at the elevator?

A. I don't understand you, sir.

Q. Well when you first saw the Saskatchewan I think you said to my learned friend that part of her cargo had been taken out, had been discharged?

A. Yes sir.

HIS LORDSHIP: Of the Saskatchewan?

MR. TOWERS: Yes.

HIS LORDSHIP: I thought that referred to the Paisley only.

MR. TOWERS: No, it was the Saskatchewan, when he first saw her, about December 20th.

A. (Contd.): About January 20th.

MR. HOLDEN: May I say this, that we are getting mixed up. As I understand it the witness said that he saw the Paisley after the collision, she had had some cargo taken out of her since the collision.

HIS LORDSHIP: Nothing was said about the Saskatchewan by him, and her cargo.

Q. I understood you to say when you first saw the Saskatchewan— when was that, in December, was it not?

A. December, yes.

Q. That part of her cargo had been taken out?

A. Yes.

Q. That is true?

A. Yes.

Q. And that is what you did say?

A. She was raised to 16 feet—9 draft.

Q. Part of her cargo having been taken out for that purpose?

A. Yes.

By HIS LORDSHIP: Q. What draft?

A. About 16 feet 9.

10

40

By MR. TOWERS: Q. Now do you issue instructions? Are there printed instructions to owners and masters for the laying up of these vessels?

A. Yes sir.

Q. Have you a copy with you?

A. No sir.

Q. Have you one in town?

A. Yes sir.

Q. Will you produce it?

A. Yes, I can produce it later.

10 Q. Later, yes. I show you this photograph?

A. Yes.

Q. Can you say if that was the condition of the Saskatchewan when you examined her about January 20th?

A. Yes, that is as near as I can say now.

Q. She is evidently resting on the bottom?

A. She is on the bottom.

—EXHIBIT P-2: Photograph of Saskatchewan referred to.

Q. She seems to be moored by a cable leading from a chock on the starboard side forward?

20 A. Onto the shore.

Q. Her starboard anchor seems to be hove partly up?

A. No, hove home.

Q. In the hawse pipe?

A. Yes.

Q. On the starboard side forward?

A. Yes.

Q. And her port anchor seems to be what?

A. Hanging. Hanging down. I take that this is the anchor. (Indicating).

Q. I take it so too?

30 A. Yes.

HIS LORDSHIP: The position of the anchor as shown, is it important?

MR. TOWERS: Yes, my Lord.

By HIS LORDSHIP: Q. Is it apparent from the photograph how else she was moored?

A. Yes. She seems to be moored quite in order.

Q. What are the things that that shows?

A. Well she is moored, this vessel is moored to the Thomas J. Drummond with the line from the bow to the shore.

By MR. TOWERS: Q. And does she appear to be, as far as her mooring goes, in the same shape as when you examined her in December?

A. I must look at my report of my mooring before I reply.

Q. Is that as to the mooring lines or the position of the anchor?

A. Yes.

Q. And have you your mooring sheets?

A. Yes, I have a copy.

Q. And have you a copy of the Paisley's mooring sheet also?

A. I think I have.

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Q. Will you bring them also then?

A. I will do that.

Q. I take it that you found the mooring of all these other vessels in the harbor satisfactory or you wouldn't have passed them?

A. Well I approved of them all.

Q. Then when you went on the 20th of January in answer to your summons had you any difficulty in finding the cause of the sinking?

A. No, not— It was late at night, sir. When I arrived there it was late at night and they were working in the engine room, the engineers were working in the engine room and trying the ballast tank. 10

Q. Pumping her out?

A. Well they seemed to be placing the pumps on.

HIS LORDSHIP: The question is a simple one; you needn't go on and elaborate on it.

Q. Had you any difficulty in finding the evident cause of the sinking, that is the hole?

A. Well, we had to look over the side of the ship.

Q. Outside you mean?

A. Both outside and inside, and take some hatches off.

Q. And did you do that at night?

A. No, the next morning, on the 21st—the mischief had been done. 20

Q. And whom did you see on board when you went there that night?

A. Oh, there was quite a lot of men there.

Q. Who was in charge?

A. Well, really Captain Cornett was in charge.

Q. And did he tell you where the hole was? Did he indicate to you where the hole was?

A. He didn't know.

Q. He didn't know?

A. He didn't know. He knew the locality but he didn't know exactly 30 where it was.

Q. When you say the locality, he knew the point of apparent contact between the Paisley and the Saskatchewan?

A. Yes.

Q. That is the locality?

A. Yes.

Q. Then in the morning you found the hole?

A. Yes, on the morning of the 21st.

Q. Have you any record?

A. Well, only my own regular wreck reports here. 40

By HIS LORDSHIP: Q. Were you able to find it before she was pumped out fully?

A. O, yes, sir.

Q. Was it during the pumping that you discovered it?

A. Yes. In the morning about 9.30, the following morning, the morning of the 21st, I went down.

Q. I say was it during the pumping that you found it?

A. Yes.

By MR. TOWERS : Q. Well, is this your report that you made on the wreck ?

A. That is a copy of my report sent to the Salvage Association.

HIS LORDSHIP : Are you putting that in ?

MR. TOWERS : Yes, I have no objection to putting it in, my Lord.

—EXHIBIT P-3 : Copy of wreck report on Steamship Saskatchewan above referred to.

10 Q. What time did you get down to the ship in the morning, do you remember ?

A. About nine in the morning.

Q. And about what time did you find the hole ?

A. It must be about half-past ten, on my recollection now, I wouldn't swear to that, you see.

Q. You took some hatches off ?

A. Or no, it would be half-past nine.

Q. Where did you find it first, outside or inside ?

A. Inside, sir.

Q. And had you to take the hatches off that morning ?

20 A. Yes, sir.

Q. Took the hatches off, and what assistance had you ?

A. Well, all the crews employed by the owners then.

Q. Whoever was there. But in thirty minutes you found it inside ?

A. Well, yes. I wouldn't swear to that.

Q. Was it under grain or above grain ?

A. Oh, under the grain. We heard the trickle.

Q. And was there much trouble in stopping the leak ?

A. No, not very much after we found it.

Q. Do those photographs, either of them, show the hole ?

30 A. Well, this plate here looks as if it was a new plate put on, to me; I can't locate the hole here.

HIS LORDSHIP : What do you want to show about this, Mr. Towers ?

MR. TOWERS : I don't want to put those in and cumber the record; they are not very clear.

Q. Does that indicate the hole ?

A. Yes, sir. This indicates the plate after it had been taken off the ship.

Q. And how far below the deck would that be ?

40 A. Well, really, I didn't take any measurement, but it would be about, roughly, about 6 feet below the deck; it is below the wale strake.

—EXHIBIT P-4 : Photograph showing plate and hole punched in same, above referred to.

Q. And how far below the water line ?

A. I should say about 6 feet. I will not swear to that.

Q. Well, you say the deck ?

A. Below the deck.

Q. And below the water line ?

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nation.

A. Below the water line.

Q. Well, then the water line and the deck must have been about even ?

A. Well, below the water line when I got alongside.

Q. This is when you found it, yes ?

A. Well, the vessel was then partly dug out.

By HIS LORDSHIP : Q. Look at this P-4 for a minute, the hole is shown there ?

A. Yes, sir.

Q. What is this vessel lying upon ?

A. This is the plate cut out of the ship; that is the inside of the plate. 10

By MR. TOWERS : When you say you approved of the vessels, that includes the Paisley, you approved the mooring of the vessels ?

A. All steel vessels and all loaded vessels.

Re-Examined by MR. HOLDEN : Q. Mr. Morris, the boom log has been mentioned that was afloat alongside the Saskatchewan ?

A. Yes.

Q. Did you see the boom log ?

A. No, sir.

Q. You know the kind of chains that would have ?

A. Yes, sir; as a rule, yes. 20

Q. Would the hole that you saw, or could it be made by such a chain ?

A. No, sir, impossible.

Q. Now here is a sketch, not to scale, but it is the nearest thing I have seen, this is Exhibit S-4; does it show quite roughly the distribution of the boats?

A. Not when I took the moorings, sir.

Q. It does not ?

A. No, sir. These were all loaded when I took the moorings; there was only one light ship in the harbor, that is the Wakenda.

Q. Do you know whether this is the distribution at the time of the accident ? 30

A. I don't know. I didn't take notice.

By MR. TOWERS : Q. With Your Lordship's permission, one question on that question my learned friend raised : Could that hole have been made by anything but the anchor ?

A. Oh, it is possible.

Q. It is possible, yes ?

A. Yes.

Q. You say it is possible to have been made by the anchor or a portion of the boom, not the chain ?

A. I don't think a boom could have done it. 40

Q. But you can't tell what object did make it ?

A. No, sir.

MR. HOLDEN : I mentioned this before in that way but I didn't file it because he said it doesn't represent it when he saw it, that is S-4.

HIS LORDSHIP : Yes.

MR. HOLDEN : So I should make that explanation, I have not yet filed S-4.

HIS LORDSHIP : No.

GEORGE WAUGH, Sworn

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George
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tion-in-Chief.

Examined by MR. HOLDEN :

Q. Captain Waugh, are you the Master of the Tug Harrison ?

A. I am, sir.

HIS LORDSHIP : Is this the Tug that moved the Paisley ?

MR. HOLDEN : Yes, my Lord.

Q. Did the Harrison move the Paisley on the morning of the 18th January, 1927 ?

A. She did, sir.

10 Q. Were you in command of the Tug at the time ?

A. I was.

Q. Before the Paisley left her berth that morning what communications did you have with those on board of her ?

A. Well, I am not altogether just clear in the exact conversation.

Q. Well, was there any conversation to speak of, any special conversation ?

A. Well, there naturally would be.

By HIS LORDSHIP : Q. Whom would that naturally be with ?

A. Well, Mr. Penrice, the man in charge.

20 Q. Who was Penrice ?

A. He was the man in charge of the Paisley.

By MR. HOLDEN : Q. The ship keeper ?

A. The ship keeper on the Paisley.

HIS LORDSHIP : Might I ask if this witness will point out on the map where the Paisley lay ?

Q. This blueprint, Captain, on the board, will you please show the Court where the Paisley lay before you shifted her ?

HIS LORDSHIP : Just let him outline it, Mr. Holden.

30 Q. This is approximately the scale of the exhibit (producing small model of Paisley) ?

A. She would be lying somewhere just about there. (Indicating).

By HIS LORDSHIP : Q. Now would you outline that with a pencil, please ?

A. Excuse me, but there was a row of boats, steamers, lying at the stern.

HIS LORDSHIP : Quite so.

By MR. HOLDEN : Q. When you say a row, they were abreast of each other ?

A. Yes. (Outlines the Paisley).

40 (Witness writes.) HIS LORDSHIP : Would you write "Paisley" inside that space.

Q. Captain Waugh, you shifted her on the morning of the 18th January ?

A. Yes, sir.

Q. Had you been over to her before that ?

A. Yes, sir.

Q. When ?

A. On the afternoon of the 15th.

Q. What happened then ?

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tion-in-Chief.
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- A. We took in her—— We furnished steam for his winch, for his anchor winch.
- Q. He had no steam on of his own ?
- A. None.
- Q. And you furnished steam from the Tug Harrison ?
- A. We connected our steam to his anchor winch and hove in the starboard anchor; the anchor was down.
- By HIS LORDSHIP : Q. You mean you raised it ?
- A. Raised it up.
- Q. And pulled it in ? 10
- A. Yes.
- By MR. HOLDEN : Q. That is to say it was brought right home ?
- A. Yes.
- Q. To the hawse pipe ?
- A. Right into the hawse pipe, into its proper place.
- Q. What happened to the port anchor ?
- A. The port anchor was hanging over the side on three parts of the cable, the wire cable, and the chain was unshackled, and took——
- By HIS LORDSHIP : Q. What do you mean by three parts of the wire cable ? 20
- A. The eye——. On the boat there is a chock, a hole, and there is a pair of bitts in on one side of that; well, they put the eye—it is one of the old mooring cables probably, or it might probably have been one in use in the summer—they put the eye over the bitts and they passed the bight out through this chock, passed it through the shackle on the anchor.
- Q. To the shackle of what ?
- A. To the shackle or ring on the anchor, to the anchor stock, and had it brought back in through, the bight of the cable, and put on the bitts.
- HIS LORDSHIP : Has anyone a photograph showing the mooring ? 30
- I would like to see if I could understand.
- MR. HOLDEN : It may be filed already.
- MR. WOOD : That shows the starboard anchor hove to, home.
- MR. HOLDEN : Here is exhibit S-3, my Lord.
- HIS LORDSHIP : Well, now does this show what this man is describing ?
- By MR. HOLDEN : Q. Just point out to His Lordship ?
- By HIS LORDSHIP : Q. You say it was hanging on three parts of the cable ?
- A. On four parts, I said the four.
- Q. Put the eye over the bitt. Now where is the eye ?
- A. The anchor, here is the anchor hanging down, there is a ring or 40 shackle or a place——
- Q. Call it a ring, that will do ?
- A. A ring. This shows——
- Q. I know. Where is the eye that you speak of ?
- A. Now the eye is the same as this, on the opposite side of the boat. You see here is a chock. This is the same on the other side; this is the starboard side, but it will show on the port side.

Q. I know. I have it here that you put the eye over the bitt. Now I want to know what that means?

A. Well, this means, my Lord, that inside of the boat back here a certain distance, I can't just say offhand how far it is, there is a pair of bitts.

Q. There is a pair of bitts inside? Now where is the eye?

A. Here is the chock that they cast the line over.

By MR. HOLDEN: Q. Is that what you mean by the eye?

A. Well—

By HIS LORDSHIP: Q. But the eye on anchor—?

10 A. Put the bight of the line out to the anchor, the ring.

Q. Bight on what?

A. Out through the chock, passed it through the eye of the anchor and brought it back up through the chock.

Q. You passed it out through the chock?

A. Out through the chock.

Q. And brought it back into the bight to these bitts, the same bight?

A. The same bight.

Q. Where is the bight?

A. You can see the cable hanging there. This is the cable that goes 20 through. (Indicating.)

Q. Brought back into the bight and on these bitts?

A. Onto these bitts.

HIS LORDSHIP: Now I think I understand something about that.

By MR. HOLDEN: Q. Now, Captain, did that port anchor jam?

MR. TOWERS: I think you should ask what happened.

Q. We haven't yet got the chain on the anchor. Just tell His Lordship what happened with that port anchor; not too much detail, but what happened? Why didn't they get it home?

A. About bringing the chain in?

30 Q. Yes, why didn't they?

MR. TOWERS: He didn't say that they didn't.

Q. Well you go ahead and tell your story, Captain?

A. I presume that you wanted me to tell where the chain—

By HIS LORDSHIP: Q. Why didn't they get the port anchor home, is the question. Now tell us why? A. Well you understand, Your Lordship, that the chain, they were using this port chain for a mooring chain on the dock. That is the reason they had to unshackle off of this anchor when we hove the starboard anchor in. You put the compressor on and take the friction off and put the friction into the port side of the winch to fetch in that port 40 chain. We hove in the port chain till it came down and hung immediately down beside the port anchor and he had a big shackle in to take and shackle this chain onto the port anchor.

Q. Where was the anchor then? A. The anchor is hanging still down the side of the boat.

Q. Where was it then—you said you hove it in? A. Hove in the chain.

Q. Till it hung by the anchor?

MR. WOOD: The chain had been used ashore.

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Waugh,
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tion-in-Chief.

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HIS LORDSHIP: I understand that but he said it was hove in till it hung down by the anchor. A. Well we hove it in with the steam; we furnished the steam, Mr. Penrice was operating this himself.

Q. I know, but tell us what happened, what was done with that chain and anchor? A. He got the big shackle and shackled the chain onto the anchor and he commenced to heave it in and he pulled it into the anchor pipe as far as this cable would allow it to come.

Q. How far was that? A. I would judge about a foot and a half; it may have been two feet. A foot and a half or something close to that.

Q. What do you mean by one foot? You said as far as this would allow it to go. How far was that? A. The cable would allow it to come in about a foot. 10

Q. The cable would allow it to come into what a foot? A. Come into the anchor pipe.

By MR. HOLDEN: Q. Allow what to come in? A. The anchor stock.

Q. In what position did that leave the port anchor? A. It left the port anchor sticking out at about that angle, out about five feet, straight out, almost straight out.

MR. TOWERS: An angle of about 80 degrees, was that? 20

HIS LORDSHIP: Almost straight, he says.

Q. Almost straight for about five feet from the ship's side? A. From the ship's side.

By HIS LORDSHIP: Q. I would just like to get the position when it stuck out. When it stuck out five feet what was the farthest point out? A. Well I don't just know what you would call it, whether it would be the anchor, where the flukes of the anchor would be exactly in, but this part of the anchor would be the furthest out, this part. (Indicating).

Q. What do you call that? Isn't that a cross-piece there at the top of the anchor? A. I don't know what we call that. 30

Q. We all know what an anchor looks like generally but there are different kinds of anchors?

MR. HOLDEN: Mr. Towers has handed me that photograph and that shows more clearly the shape of the anchor.

Q. What is that, running from there to there. (Indicating on photograph)? A. That is where the stock passes into that part of the anchor.

MR. HOLDEN: This one shows it in detail, my Lord, without being foreshortened. "S-4," may I mark that?

—EXHIBIT S-4: Photograph of "Robert J. Paisley" above referred to. 40

Q. Well now S-3: The point which stuck out five feet is at the top of the anchor, is it? The very top part of the anchor, isn't it? A. The bottom part of the anchor.

HIS LORDSHIP: I see what you mean.

By Mr. HOLDEN: Q. Is that what Mr. Morris called the crown? Oh, you were not here then.

By HIS LORDSHIP: Q. How were the two flukes, were they exactly level with the water, or did they stick up at an angle, one down and the other up? A. After they were pulled in?

Q. Yes? A. They had a tendency to droop down there so as to allow them to dip down.

Q. And did they droop down? A. They drooped down, yes.

Q. Is that shown on this Exhibit S-3? Can you see the flukes of the anchor on that? A. No. I can't see them on this, not on that.

Q. That one we have marked S-4 is a photograph showing clearly the 10 Paisley's port anchor? A. The Paisley's port anchor.

Q. Is that the way it was at the time you are speaking of? A. No.

By MR. HOLDEN: Q. This I am filing, I should state for the record, to show the shape of the anchor and not to show its position at the time you are speaking of? A. No.

HIS LORDSHIP: I think S-3 shows it as it was left.

MR. WOOD: With the exception, my Lord, that it had been lightened since. It was below the water.

HIS LORDSHIP: I understand, but that shows the anchor.

MR. WOOD: Oh yes.

20 Q. Now, Captain Waugh, did you see the anchor after the accident? A. After the accident?

Q. Again? A. Not closely.

Q. I mean did you notice her damage, the anchor got? A. No, I wasn't close to it.

Q. Now, Captain, at any time either on the 15th or on the 18th was anything arranged between you and Penrice or anybody for the ship as to where she would get her lines ashore? At what stage in the shifting operations was she to get her lines ashore? A. The understanding between—

30 Q. Would you mind answering my question, was there any arrangement made? A. How he was to get the lines ashore?

Q. Did you tell him he was to do it here and did he say? I will do it there?—was there any definite arrangement as to when and where the Paisley would get her lines ashore when she got near the elevator? A. No sir, there was no arrangements made.

HIS LORDSHIP: Do you mean after she had been moved to her new berth?

MR. HOLDEN: I mean really before moving her. Perhaps I should put that clearly:

Q. Before moving her at any time?

40 MR. TOWERS: If he said there was no arrangement made I don't think my learned friend should attempt to make it clearer.

HIS LORDSHIP: He is just simply repeating what the witness said, there was no arrangement made as to where she would be moored when she reached where she was going.

Q. I want to get that, Captain; Before she got to her moorings at the elevator over here what was done—?

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MR. TOWERS: Well now I want to protest. That is not proper. He said there was no arrangement made.

Q. I will put it this way: Captain, as the Paisley got near to the elevator where she was to be moored what had to be done with regard to her lines?

MR. TOWERS: That I submit is not a proper question.

HIS LORDSHIP: Better put it—Had anything to be done?

MR. HOLDEN: I beg your pardon.

Q. Had anything to be done with regard to getting the Paisley's lines ashore? A. The proper thing for him was to have his lines ready so as to get them ashore. A person that has charge of a boat, when they are coming 10 approaching a dock they get their lines ready for to get on it.

Q. And did he have his lines ready on the Paisley?

MR. TOWERS: Was he on the Paisley? Does he know?

MR. HOLDEN: My learned friend can cross-examine him on the answer.

MR. TOWERS: I am objecting to the form of my learned friend's examination.

HIS LORDSHIP: I think Mr. Holden is perfectly right, the witness can say, I don't know anything about it for I wasn't there. He may have some special knowledge. A. I am not prepared to swear that he didn't have 20 his lines ready, I wasn't close enough to see what lines he had, but it appears he didn't have them ready.

Q. Then after getting his lines ready was there anything else to do as he came near his berth? A. What do you mean, in getting the heaving line out or anything?

Q. Yes. Well would he wait till he got to his berth to put his lines ashore or should he put his lines ashore—? A. It is customary as soon as you get close enough to the dock get a heaving line ashore and get your line out as soon as possible.

Q. And did he do that? A. He didn't get a line out at all. He got a 30 heaving line through but no other.

Q. Was he close enough to get a line ashore? A. He was.

Q. Now will you show His Lordship on the chart—?

HIS LORDSHIP: Perhaps you had better get him to show you where she finally pulled up.

Q. May I ask, not in detail, but tell His Lordship, please,—you have shown us where he lay before you shifted him, what did you do first after she had cast off? Where did you take her? A. I had to pull her out this way.

Q. Because there were several vessels abreast of her? A. Three vessels 40 anchored astern of her.

Q. You had to pull her away from the dock? A. Away from the dock.

Q. Did you pull her away from the dock stern first or bow first? A. Stern first.

Q. And then what did you do? A. We swung down and pulled her down past these boats.

Q. Stern first? A. Stern first.

Q. It would have been, you might say, pulled her north? A. Yes.

Q. In a northerly direction? A. In a northerly direction.

By HIS LORDSHIP: Q. Were the three boats anchored behind one outside the other? A. One outside the other.

Q. So you had to pull her out of the side of the dock? A. Yes.

Q. To clear these vessels? A. Yes sir.

Q. You did that, pulling her stern first? A. We didn't pull her stern first until we pulled her out.

Q. You pulled her out and then you pulled her past these stern first? A. Yes.

10 By MR. HOLDEN: Q. And then how far did you take her stern first in a northerly direction? A. We pulled her down till I would judge she would be down probably about that far. (Indicating).

Q. There is a little building with "J.H. & S. Co." on it? A. That is one of our company's buildings.

Q. And then did you pull her down as far as that building? A. We pulled her stern a little past that building.

HIS LORDSHIP: Would you mark that?

MR. HOLDEN: It has got "J.H.S." on it.

Q. The stern is this far? A. Yes.

20 Q. Then what did you do, Captain, when you got her down that far stern first? A. When we pulled down this way we tried to keep her in the centre of this channel.

Q. Towards the north? A. Yes, in the direction of the centre of the channel, and in pulling her down she was inclined to go over towards this bank.

Q. The east bank? A. The east bank, yes.

Q. Inclined to go over towards the east bank? A. I swung the tug up this way—

Q. Don't say "this way" if you can help it? A. Swung her to the north-west and stopped her way towards the east.

30 By HIS LORDSHIP: Q. Just take it easy, and do one movement at a time. You swung her bow northeast? A. Her stern.

By MR. HOLDEN: Q. And then what did you do when you checked her swinging that way? A. Tooted the whistle to let go the stern line.

Q. That is the line from the stern of the Paisley? A. Yes.

Q. And then what did you do? Did they let go of that line? A. They let go the line.

By HIS LORDSHIP: Q. I can't hear the witness. You tooted to let go the stern line? A. Yes.

Q. Did they let go the stern line? A. Yes.

40 Q. And then what did you do? A. I turned the boat around.

Q. Yes? A. I guess I had better tell which way I turned the tug.

By MR. HOLDEN: Q. All right? A. I turned the tug on a star-board wheel, turned towards the port.

By HIS LORDSHIP: Q. To her port? A. Came around to her port bow—Her starboard bow.

Q. Which are you speaking of, the bow of your own boat or the Paisley?

A. Turned the tug around.

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Q. Turned the tug around to the port side of the Paisley? A. To the starboard side.

Q. Yes? A. Passed close on the starboard side of the Paisley with the tug.

Q. Yes? A. The man on the Paisley—I saw Jim Sykes standing out on the bow of the Paisley and he threw a heaving line down onto the stern of the tug from the Paisley's bow.

By MR. HOLDEN: Q. That is the light line attached to the cable? A. Yes.

By HIS LORDSHIP: Q. To your bow? A. At our stern. 10

Q. Yes? A. And my mate or deck hand, whatever you call him—he is my mate—

Q. What is his name? A. Mathewson. Took the heaving line and attached it to our line.

Q. Yes? A. And Jimmy pulled the line aboard the Paisley.

By MR. HOLDEN: Q. Who is Jimmy? A. Jimmy Sykes, the man on the Paisley.

Q. He pulled your line in, did he? A. Up to the Paisley. He was going to put it in on the starboard side through the starboard chock and I told him to put it around on the port through the port chock. 20

Q. Did he do so? A. Yes sir.

Q. And fastened it there? A. There was an eye on the line; he put the eye right over the bitts.

Q. Yes? A. I swung the tug back on a port wheel.

By HIS LORDSHIP: Q. Which way did the tug go, to port or starboard? A. She goes to starboard.

Q. Yes, and what? A. They let out about fifteen feet I think, as near as I can judge, about fifteen feet of line from the stern of our tug—The stern of our tug was about fifteen feet from the steamer.

Q. That is from the bow of the Paisley? A. The Paisley. 30

Q. Yes? A. When the mate got his line made fast—

Q. That is Mathewson? A. Mathewson. He sang out All right.

Q. Well? A. I went ahead on the tug. I pulled straight up for the elevator dock.

Q. Where were you heading there? Show me on the map? A. The bow of the Paisley would be heading about here. (Indicating).

Q. But you said you pulled right up to the elevator dock? A. First I was in that position. (Indicating).

By MR. HOLDEN: Q. Where is that elevator dock? A. It runs right along. (Indicating). 40

Q. And the rectangle on that is where the elevator building is? A. Yes.

By HIS LORDSHIP: Q. The tug then was really right east to west, wasn't she? A. She would be heading about a little bit more to the west, just probably a point more or less.

MR. HOLDEN: If it please the Court I would like Captain Waugh to make a good-sized cross on the elevator dock at the point where he says he was then pulling her right into the dock.

HIS LORDSHIP: He hasn't got that far yet. He said: When he got it fast he said—All right, I went ahead and pulled straight up to the elevator dock which would be about west; he hasn't got any place starting the tow to the dock.

MR. HOLDEN: But he pointed with his vessel to a certain part of that elevator dock.

By HIS LORDSHIP: Q. Where were you pointing on that dock? Where were you intending on that dock to land the Paisley? A. I was intending to land her along the dock.

10 Q. How far along? You must have had some definite idea where you were going? A. We were supposed to put her right at the elevator.

Q. To moor her?

MR. HOLDEN: I understand he was to bring her into the dock, before she got to her moorings to put a line ashore.

HIS LORDSHIP: Where were her moorings, at the elevator?

MR. WOOD: She was to be moored at the elevator eventually.

Q. Then you see that house that is marked "J.H.S." and the elevator. Now where were you heading to get her close in so that she could heave her lines out to the dock? A. I headed my tug about that place on the elevator.

20 Q. Well mark it now with a cross or something.

MR. HOLDEN: A cross with a circle around it, I think, my Lord.

HIS LORDSHIP: Yes.

By MR. HOLDEN: Q. Make a good cross, then put a circle right around it. That is where you were pointing for on the dock? A. Yes.

HIS LORDSHIP: And I understand doing that for the purpose of getting her close enough to shore to put her lines out before she got to the elevator.

MR. WOOD: Yes.

30 Q. Now how close in to the dock did you get the Paisley before she was abreast of the elevator? You didn't measure it, but tell His Lordship as near as you can what the distance was from the nearest part of the Paisley to the face of the dock just before she got to the elevator? A. When she was immediately northeast of the elevator she was within thirty feet of the dock as closely as I could go, or judge.

By HIS LORDSHIP: Q. Within thirty feet of that dock when she was northeast of elevator?

MR. WOOD: When her bow was, my Lord.

Q. That is her bow? A. Her bow.

40 By MR. HOLDEN: Q. How near does a ship like that need to be to get her line ashore, with the heaving line first and so on? A. Well I think it is practicable for—Well I shouldn't say I think; I know it is practicable for a man to get a heaving line ashore from a greater distance than that from the dock.

Q. How great a distance? A. Some men can put a heaving line further than others. They should be able to put a heaving line a hundred feet.

Q. Then did the Paisley get her line ashore when she was thirty feet off, about, before reaching the elevator, as you intended? Did she get a line ashore there? A. She didn't get a line ashore.

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tion-in-Chief.
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Q. Why? A. Search me! I don't know why.

Q. Did you notice whether they made any effort to at that point when you got them in far enough? A. I couldn't tell you from my vessel.

Q. You were too low down in the water? A. No, but the bow of the boat is between me and the man on the deck of the Paisley.

By HIS LORDSHIP: Q. Did you know whether she had got it out or not? A. I knew afterwards.

Q. But did you know then? A. No, I did not, sir. I expected he would get a line out.

By MR. HOLDEN: Q. And then what did you keep on doing, or 10
what did you do, keep on hauling? A. I kept on ahead with the steamer till we got past the elevator expecting that he was getting a line out.

HIS LORDSHIP: You kept on hauling the bow past the elevator.

Q. Expecting what, Captain, did you say? A. Expecting him to get a line on the dock.

Q. As you got abreast the elevator did you think she had a line on? You knew afterwards she hadn't but—? A. I expected he would get a heav-
ing line ashore, get his line out.

Q. And then what happened, Captain? A. I put the wheel hard aport, swung her stern out to clear the steamer and backed up on her. 20

Q. Swung her stern out, that is the tug's? A. The tug's.

Q. And then you backed up on the tug?

By HIS LORDSHIP: Q. Swung the tug's stern out and backed up
For what purpose? What was your object in that? A. We were supposed to back up and put her nose against the steamer and push her in to her moorings to the elevator.

Q. Well where would you push her in, at the bow or stern? A. Well it would depend on—

Q. What did you do? A. I didn't—I backed up and I saw that they didn't have a line out and the man on the bow of the Paisley—When I backed 30
up our men carried their line forward on the tug—

Q. Well? A. And Jimmy was going to let go our line.

By MR. HOLDEN: Q. That is Jimmy Sykes on the Paisley? A. Yes. And I saw they hadn't a line on the dock, when I got back far enough I saw there was no line on the dock and that the tow had to be stopped some way.

By HIS LORDSHIP: Q. So what did you do? A. So I sung out to Jimmy to not throw the line off; I told the mate to take a turn on the timber head forward on the tug.

Q. Do what? A. Take a turn on the line. 40

By MR. HOLDEN: Q. When you say you sang out, this is your line on the tug? A. Yes.

Q. That is your own mate? A. Yes.

Q. And then—? A. I backed up on the tug to check the Paisley.

Q. The Paisley was still going ahead, not enough to run ashore? A. The Paisley was still going ahead.

By HIS LORDSHIP: Q. And you backed up on the tug in order to put a pull on her? A. To stop her.

MR. HOLDEN: You see, my Lord, as she drifted ahead she was pointing right for the Saskatchewan.

By MR. HOLDEN: Q. And then what happened? When you tried to stop her what happened? A. Well I backed up on the line; the line commenced to slip on the timber head on the tug.

By HIS LORDSHIP: Q. The what? A. The timber head. It is a snubbing post. I went ahead on the tug again to give the mate a chance to make fast—The line by this time had all run out but about 4 feet.

Q. Yes? A. The mate—there was an eye on the inside end and he threw the eye over the timber head.

Q. Yes? A. I backed up on the tug again.

Q. Yes? A. And when she got the line tight—taut is a more nautical way of putting it—I rang up for full speed astern.

Q. Yes? A. And the line parted.

Q. Yes. And then you lost control? A. I proceeded to get another line on the steamer.

Q. Well did you succeed? A. Yes sir. The line lying on the deck.

By MR. HOLDEN: Q. Did you succeed promptly or how did it go? A. The mate picked the eye of the other line up and there was no person close on the Paisley and I sung out for to come and take our line.

Q. Should there have been somebody close?

By HIS LORDSHIP: Q. Excuse me. You tried to get another line on and I thought you said you succeeded? A. Yes, I did, but not—

By MR. HOLDEN: Q. But there was a delay? A. There was a delay.

Q. And the delay was caused by the Paisley not being ready to take the line? A. No man being close to put the line on. If a man had of come—

By HIS LORDSHIP: Q. I know. Was it hove out? Did you heave a line to the Paisley on chance or did you wait to see whether the man was there to take it? A. Well the mate was there standing with the line ready to pass through there.

Q. Well how did you succeed in getting it on? A. When the man came down and took the line we had to make sure that we wouldn't part the other line and we put a bight of it out, about three parts of that line out on the bits, and then we backed up slow till we got a strain.

Q. Yes. Well what happened? A. And then backed up hard.

Q. Yes. Did you bring her to a stop? A. Well between—when she went up to the ice beside the other boat and us backing on her she had stopped.

Q. She stopped due to the ice, the other boat and your pulling on her? A. Yes.

—2.00 p.m. RESUMED:

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By MR. HOLDEN:

Q. Captain Waugh, you were telling the Court about the port anchor of the Paisley. Did you have any conversation with Penrice, the ship keeper of the Paisley, about that anchor and getting it home? A. Yes sir.

Q. What was it? A. When he pulled the anchor up and it jammed we went up on top.

By HIS LORDSHIP: Q. Who did? A. Penrice and I went up on top and looked over the side and I said to Mr. Penrice that the anchor wouldn't do in that position. 10

By MR. HOLDEN: Q. What did he say? A. We went back down and he lowered the anchor back down to its former position.

By HIS LORDSHIP: Q. He lowered it down? A. He lowered it down.

Q. What was its former position? A. Hanging down in the water on the cable.

Q. In the water? A. In the water on the cable.

Q. Under the water or—? A. The crown of the anchor was under the water. 20

Q. And what about the top of it? What do you call the top of it? A. The stock?

Q. The stock?

By MR. HOLDEN: Q. Was that in the water, the stock? A. Well just part of the stock the lower part of the stock.

Q. Part of the stock and the crown were in the water? A. Were in the water.

Q. Is that the position that the anchor was in on the 18th when the accident happened? A. Yes sir.

Q. Now did Penrice say anything more about the anchor on the 15th? A. Yes. He asked me, "Is it in your way now?" 30

Q. Yes?

By HIS LORDSHIP: Q. When was this, on the 15th? A. On the 15th. I said No, it is not in my way. Meaning that it wasn't in the way of the tug, the idea that it wasn't in the way of manoeuvring the tug.

By MR. HOLDEN: Q. Is that all that was said? A. No, we went down below again.

By HIS LORDSHIP: Q. When, on the 15th? A. On the 15th, and we looked at the cable and I said to Mr. Penrice, "If you like we will take the cable off and take the anchor in." 40

By MR. HOLDEN: Q. That is to take it aboard? A. Take it right in home.

Q. It wouldn't be then a danger to anybody? A. He said "Is it in your way? And I said "No, it isn't in my way," again. And he said "To Hell with it then, we will leave it till spring and let them take it in, in the spring. That is the words he used.

Q. That was on the 15th? A. That was on the 15th.

Q. Why wouldn't the anchor be in the tug's way hanging there? A. Well it was hanging down so low that the guard of the tug keeps the tug away; it wouldn't touch the tug, our guard on the tug would catch the side of the boat before it would catch the anchor.

Q. Now when you came back on the 18th to shift her was there anything said then between you and Penrice? A. About the anchor?

Q. Yes? A. Nothing sir.

Q. Well about anything else? A. Well it is not just clear but a conver-
10 sation to me what occurred on the 18th about moving the boat, but it was understood between Penrice and I—

MR. TOWERS: Well I submit the understanding should not be given in evidence.

HIS LORDSHIP: Yes. The understanding isn't evidence, you know. Tell what was said about it.

Q. So you said nothing definite as to the plans of moving? A. Well it is a long time to remember just the exact words.

Q. At any rate you cannot remember to have said anything definitely
20 to Penrice on the day of the shift as to how it was to be done? A. I know one thing that was said, that I asked him if we would pull her down the same as we did the other boats, down the current, down the stream, down to the dock.

By HIS LORDSHIP: Q. What is it? I cannot catch what you are saying. You asked if you would pull the Paisley down? A. Stern first.

Q. Yes. As you had done the other boats? A. As we pulled the other boats. We had moved two other boats previously to this the same way.

By MR. HOLDEN: Q. That is all you can remember to have been said on the 18th, the day of the shift?

By HIS LORDSHIP: Q. Yes, but what did he say? You asked him
30 that; what did he say? A. He said, I suppose so, that is the only thing to do.

By MR. HOLDEN: Q. Is that all you can remember? A. That is all that was practically said before we pulled her down. It was understood that that is what we were to do.

By HIS LORDSHIP: Q. What were the other two boats' names?
A. The Senator and the Presqu'ile.

Q. How do they compare in size with the Paisley? A. I think the Presqu'ile is a little larger, longer than the Paisley, and I think probably the Senator might be possibly about the same length; I am not certain of that part of it. The Senator is not as long a boat as the Presqu'ile.

40 Q. She is about the same as the Paisley, you think? A. About in the same line.

Q. Were they both laden? A. Yes, Your Lordship.

By MR. HOLDEN: Q. You said, Captain, that after the cable parted between you and the Paisley the men on the Paisley were slow in tending the line. If they hadn't been slow—?

MR. TOWERS: Well now I must protest again.

HIS LORDSHIP: You haven't heard the question now.

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tion-in-Chief.

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MR. TOWERS: But I have heard enough to anticipate it, my Lord.

Q. Please don't answer till you hear the question. If they hadn't been slow would that have made any difference in the result?

MR. TOWERS: I object to that.

HIS LORDSHIP: Why?

MR. TOWERS: It is a leading question, suggesting the answer.

HIS LORDSHIP: He asked would there have been any difference.

MR. HOLDEN: If he says one thing it is decided in your favor and if he says the other it is decided in my favor.

HIS LORDSHIP: If they hadn't been so slow what would the consequence have been? 10

Q. If they hadn't been so slow what would the consequence have been?

A. Well the consequences was that every minute that was lost we were that much longer getting back there on the boat, stopping her way.

By HIS LORDSHIP: Q. What is that? A. The consequences would be that every minute lost was that many minutes lost in checking the boat.

By MR. HOLDEN: Q. I don't know any other way to put it; don't answer in case my learned friend objects; Would she have reached the Saskatchewan if those men had not been so slow?

All right, answer? 20

MR. TOWERS: It is so manifestly improper, my Lord.

HIS LORDSHIP: You might put it to him, Mr. Holden, what was the importance of the loss of the minute. Q. What was the importance of the loss of the minute, that is all? A. That she reached the Saskatchewan that much sooner, I suppose.

Q. Would she have reached the Saskatchewan at all if they had been prompt? A. I think she would have.

By HIS LORDSHIP: Q. Would have what? A. Have reached the Saskatchewan.

By MR. HOLDEN: Q. If what? A. If they had been right— 30

By HIS LORDSHIP: Q. She would have reached the Saskatchewan if they had been prompt? A. I don't think we could have checked her in time.

By MR. HOLDEN: Q. If you had checked her earlier what would have been the result as to the character of the blow that she gave the Saskatchewan? A. She would have struck her that much easier; or probably wouldn't have—might not have hit her as hard, but I don't think it would have prevented her from putting the trip of the anchor through the boat.

HIS LORDSHIP: That is it wouldn't have prevented the making of a hole. 40

By HIS LORDSHIP: Q. Now that is all based on the slackness when the cable parted? A. Pardon?

Q. That is all based, what you have been telling us now, on the parting of the cable and what happened after that, the slackness after that?

MR. HOLDEN: My submission, may it please the Court, is that it is all based on their failure to get a line ashore.

HIS LORDSHIP: Yes, but you prefaced your question by saying "You have told us when the cables parted they were slack."

MR. HOLDEN: Oh yes, I understand that.

By MR. HOLDEN: Q. Will you tell the Court, Captain, what was the approximate speed of the Paisley when you got her within thirty feet of the dock wall just before she reached the elevator? A. Well it wouldn't be—it wouldn't exceed a half a mile an hour.

Q. You told the Court that when you backed around you did see finally that they had no line ashore? A. Yes.

10 Q. Did you notice at that time where their line was, what condition it was in? A. Not to be able to swear to the condition of their line but it looked to me as if there was no line uncoiled off their drum.

By HIS LORDSHIP: Q. It looked what? A. As though they hadn't their cable uncoiled off their drum.

Q. I thought you told us before lunch you were not in a position to say anything about the line on board the boat? A. Not till after I got down along side.

MR. HOLDEN: He said this morning, my Lord, that when he backed around he then did see that she had no line out.

20 HIS LORDSHIP: Oh yes. "When I backed I saw no line out." It then looked, you say, like what?

WITNESS: As if the cable was still on the drum.

By MR. HOLDEN: Q. Where should it have been? A. It should have been uncoiled off the drum ready to take and put ashore.

Q. How about the Paisley dropping an anchor? A. They could have done that.

By HIS LORDSHIP: Q. When could they have done that, do you say? A. Any time when he saw he wasn't going to get a line out.

By MR. HOLDEN: Q. Was there anything said between you and 30 him about dropping an anchor? A. No sir. Not at that time there wasn't.

Q. When did you have any conversation about the anchor? A. Afterwards, after; probably a day or so after or probably the next day, he said he could have let an anchor go but he didn't know the conditions of the bottom.

Q. That was Penrice, was it? A. Penrice.

By HIS LORDSHIP: Q. He wasn't sure of the bottom, is that right? A. Yes sir.

MR. WOOD: I don't think I have any questions.

CROSS-EXAMINED By MR. TOWERS:

40 Q. Captain Waugh, how long have you been sailing out of Owen Sound? A. I have been sailing out of Owen Sound for—

Q. About how many years? A. Thirty—

Q. Yes? A. About. Sailing out of Owen Sound probably twenty-eight years.

HIS LORDSHIP: What is the name of his tug in this matter? A.

CONT'D: The Tug Harrison.

Q. How long have you been handling tugs in Owen Sound Harbor?

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A. Well more or less all that length of time.

Q. And you have been sailing tugs more than steamers? A. Yes sir.

Q. And how long have you sailed this particular tug, the Harrison?

A. I have sailed her since she was built, with the exception of two seasons. I think she is on her 19th season now.

Q. So that you have been in charge of her for approximately seventeen seasons? A. Seventeen seasons.

Q. And during the whole of that time has she been engaged in shifting vessels during the winter time in Owen Sound Harbor? A. No sir.

Q. How many seasons have you shifted vessels with her? A. Just two 10 seasons.

Q. Have you had many accidents? A. Not very many.

Q. Shifting them? A. Not many.

Q. What do you say as to her power for shifting this vessel?

MR. HOLDEN: Well I submit my learned friend should bring this in by his own witness if he wants to add other matters beyond cross-examination on the deposition.

HIS LORDSHIP: I see this is set up in their Preliminary Act, the failure to employ a proper and sufficient tug or tugs with proper and sufficient equipment. I should think that would cover it, wouldn't it? 20

MR. HOLDEN: All I had in mind, my Lord, was that I didn't ask this witness anything beyond the facts of the collision. Well, I don't know that it is serious.

HIS LORDSHIP: I think he can cross-examine in order to show that the tug wasn't of sufficient power.

Q. I will put it this way: Did you ever advise any of the owners or those aboard any of the vessels that you shifted that you hadn't sufficient power?

HIS LORDSHIP: That wouldn't be any help. You asked him a question as to the power of this tug as applied to the Paisley. 30

MR. TOWERS: I did ask him the question.

HIS LORDSHIP: He has not answered.

Q. What do you say as to the power of the Harrison to do the shifting necessary? A. I think she has got power enough equal to handle any boat in the harbor.

By HIS LORDSHIP: Q. That doesn't mean very much, any boat in the harbor. Do you mean that winter? A. Yes, or this winter. Any of those steamers that are there with winter cargoes.

HIS LORDSHIP: You didn't hear the names of them. Perhaps they had better be read out to him. 40

HIS LORDSHIP: Well then if he followed the same manoeuver it is for you to point out any differences they made, if you know any.

MR. TOWERS: That is just what I was asking.

HIS LORDSHIP: I know, but I don't see that we are obliged to listen to the whole course of the manoeuvring. He told you it is the same. Now having assumed it to be the same, according to his idea, you can put to him

any question now which indicates he did something different and that will be quite relevant.

Q. Then would you show me the course and position of your tug when you first took a strain forward on the Presqu'ile, on the chart? A. Why it was practically the same position as the other boat.

HIS LORDSHIP: Can't you put what you have in your mind and ask him the question?

MR. TOWERS: I just asked him to indicate on the map his course and position at a certain moment with the Presqu'ile and if my learned friend would
10 just let me do it I could have done it ten times in that time.

MR. HOLDEN: Don't let him mark on the chart.

MR. TOWERS: Well indicate it. My learned friend wouldn't even permit me to indicate it.

Q. Just indicate that with your pencil, not marking, lay your pencil on the map? A. The Presqu'ile was in practically the same position as the—

Q. I asked you the course and to indicate with your pencil, I mean laying your pencil on like that, you see (illustrating)? A. That is you want to know the position—

Q. When you first put a strain forward on the Presqu'ile? A. She
20 would be in that position. (Indicating).

Q. The Presqu'ile would be? A. Yes.

Q. And what would be the position of your tug? A. The tug would be in this position, (Indicating), carrying up practically the same track.

Q. Now when you say that position, that would be as I make it about due west?

HIS LORDSHIP: He has already indicated exactly what he did and you have the directions and the course; now he says it is practically the same and we spend a lot of time describing the same position over and over again.

MR. TOWERS: That is what I wanted to find.

HIS LORDSHIP: He said it is the same and you are entitled to take
30 it as what was described as the position—take the Paisley.

MR. TOWERS: Well it is of the utmost importance, my Lord, in order to get Your Lordship the true appreciation of what happened, that I be permitted to ask this witness some questions about his course and the position of his tug.

HIS LORDSHIP: Yes, but we have already got the position and the course and manoeuvres he took with the Paisley.

MR. TOWERS: Yes, my Lord. Now he says that is the same as the Presqu'ile.

HIS LORDSHIP: Yes, and you want him to plot it on the map.
40

MR. TOWERS: No, I didn't ask him to plot it.

HIS LORDSHIP: You want him to indicate it on the map, and then you go on to show where that was pointing and so on. That was all done in the Paisley's case; now why can't you accept that as the same if he says they are the same and put to him a point of difference that you have in your mind?

MR. TOWERS: Quite so, my Lord.

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Q. Then just hold your vessel in that position again showing the position of your tug in both these cases? A. (Witness indicates).

Q. Now the point of your pencil is right on the wall, the dock? A. Yes.

Q. Is the nose of your tug there? A. She is pointing that way.

Q. Was it there? A. No, not right there.

Q. How close did it get in? A. I pulled in close enough to the dock so that the tug wouldn't touch the dock or the clumps of pile along the dock.

Q. How far would they go? A. There is a clump of piles—

Q. How many feet? A. They would project out probably three and a- 10
half feet.

Q. How far—? A. I couldn't put the tug up against the dock because she was coming behind.

Q. I didn't ask you that. I asked you how far the stem of your tug would be from the dock when you put the strain on. A. When I put the strain on the stem of my tug was probably out there 50 feet.

Q. Well then you have got it marked nearly 150 feet? A. Well I don't know what scale that is on.

Q. Well it is a hundred feet to an inch, a very simple scale? A. The stem of the tug would be 50 feet; because the tug is 120 feet she would be 30 20
feet from that wall.

Q. The stem of your tug would be 50 feet from the dock? A. She would be 30.

HIS LORDSHIP: No, from the piles.

Q. 30 or 50? You said 50? A. When I put the line on?

Q. When you put the forward line on—put the strain on? A. I will say she was 50.

By HIS LORDSHIP: Q. When you put the strain on this Presqu'ile I understand your stem was 50 feet out from the line of piling? A. From 30
the line of piling.

MR. TOWERS: And that is 2 feet out from the dock.

HIS LORDSHIP: The tug is what?

MR. TOWERS: 120.

Q. And how far are the piles from the dock? A. These piles are just close up there, just outside, to protect the wall.

Q. How far would they extend out in the water? A. 3 feet.

Q. You were 50 feet then from these piles when you started to put the strain moving forward with the Presqu'ile? A. Yes.

By MR. TOWERS: Q. And then indicate the course of your tug again that you took? A. I pulled right up to that. (Indicating). 40

Q. Then it is fair to say that the stern of your tug was 170 feet from the dock?

HIS LORDSHIP: That is obvious. A. Yes.

Q. 170, is that right? A. Yes.

Q. Now had you 15 feet of tow line out in each case? A. 15 feet of tow line between the steamer and the tug.

Q. So that the bow of the steamer in each case would be approximately 185 feet away from the dock, is that right? A. In the start.

Q. And practically at a standstill? A. At a standstill.

Q. And that would be at a point about 250 feet northerly along the dock from the elevator? A. No, it wouldn't be northerly—northeasterly.

Q. Well northerly is northeasterly, is in a northeasterly direction? A. Northeasterly direction.

HIS LORDSHIP: How many feet?

MR. TOWERS: About 250 feet.

10 Q. Is that correct, Captain? A. Well that is supposed to be a correct chart, is it?

Q. Well it is sworn to as correct.

By HIS LORDSHIP: Q. Look at that X which you were pointing for; how far is X from the side of the elevator?

MR. TOWERS: About two and one-half inches, I make it. A. That would be 250 feet.

By MR. TOWERS: Q. Then it was at a standstill 250 feet away and you pulled about due east on her? A. Due—I said a point to the north of west.

20 Q. About due west? A. A point to the north of west.

Q. Well a point to the north of west is all right. It would be about in that direction (Indicating)? A. Yes.

HIS LORDSHIP: Is that north of west or a little south of west?

MR. TOWERS: This is west, my Lord, and a point to the north of west would be about that way. (Indicating).

WITNESS: Well, it would be about that.

Q. And with the bow of the vessel opposite that point, now let me be quite clear, you putting a strain on her at a standstill about a point north of west you expected to bring her bow to the elevator?

30 A. Yes, sir.

Q. Without changing your course? I am asking you without changing your course?

A. Without changing her course.

HIS LORDSHIP: What is the course of the tug with a heavy vessel behind it? Does it keep going straight on if it is trying to move the vessel's head around in a straight line?

MR. TOWERS: I merely asked for this reason, my Lord—

HIS LORDSHIP: You said changing his course.

MR. TOWERS: Well, without altering his helm up the other way.

40 Q. Without altering the helm?

A. Without altering the helm?

Q. Yes, without altering the helm, putting a strain on the bow of either the Paisley or the Presqu'ile—you said it was the same—and your tug heading about a point north of west 250 feet northerly or northeasterly from the elevator, you expected to bring the vessels in question, either one of them, to her berth, from a standstill to her berth to the elevator without altering your helm?

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A. I didn't expect to bring her on that one position. Couldn't possibly do it.

By HIS LORDSHIP : Q. What one position ?

A. By towing her straight and bring her opposite the elevator.

Q. What did you intend to do ?

A. To swing her into the elevator dock till we could get a line on her and then we would push her in.

Q. In order to swing her to the elevator dock you would have to bring her up to the elevator, would you not ?

A. Not to the elevator.

10

Q. Not to the elevator itself ?

MR. TOWERS : He says the bow of his vessel is 185 feet from this dock.

HIS LORDSHIP : And he is going to pull her into the dock, and you are asking him if he intended to get her into position under the elevator without changing the helm. A tug with that great attachment behind it on that helm, what course does it take her to get her into position under the elevator, that is the question.

By MR. TOWERS Q. When did you expect to get her bow into the elevator dock, at what point ?

A. About there.

20

Q. Well, that is 50 feet from the elevator. Is that about right ?

A. I didn't expect to land her there. (Indicating.)

Q. I am asking at what point you did expect to land her ?

A. About there. (Indicating.)

Q. That is 50 feet farther than it was the first time. Just mark it. But where did you expect to get—?

HIS LORDSHIP : I would like the witness to mark and then we can measure the plan. He knows this is a hundred feet to the inch.

A. I expected that the bow of the boat would come in some place between these two buildings, about there, (indicating), I couldn't figure to the foot. 30

Q. You are showing now about halfway; that would be 125 feet. Well, mark some place where you expected.

By HIS LORDSHIP : Q. Witness, you know that a half an inch on that is 50 feet. Now think it over in your mind and make a mark about where you think you were expecting to get head on and get the line out ?

A. I expected to get a line ashore some place there. (Indicating.)

HIS LORDSHIP : You had better mark that by a round circle, just a plain circle.

By MR. TOWERS : Q. Now you have indicated a point about 75 feet northeasterly from the elevator along the dock, is that about right ? 40

HIS LORDSHIP : Well, whatever it is he has marked it, and we have it down.

Q. Then what line did you expect to be gotten there, head line or breast line ?

A. I expected they would put out a breast line or head line, whatever line they could get out, they are supposed to get the line out, I didn't know what line they would get out.

Q. But you would bring the bluff of the bow——?

A. Bluff of the bow.

Q. At that point?

A. At that point.

Q. And either a head or a breast line would be carried ashore at that point?

A. At that point.

Q. Now did you change your helm at all? Do you change your helm at all to bring the vessel into that point from the point where you have indicated?

A. After I pulled towards that——

Q. I mean before they got the line there?

MR. HOLDEN : Let him answer, please.

MR. TOWERS : He wasn't answering.

MR. HOLDEN : He should understand, I think.

By HIS LORDSHIP : Q. No, a simple question, did you alter your helm to get her there?

A. To get her to that point?

Q. Yes. You were making for that point, did you have to alter your helm while you were getting there?

A. Yes, your Lordship.

By MR. TOWERS : Q. And in what way did you alter your helm?

A. I starboarded so that I could pull up as close to the dock as it was safe to pull and put my wheel to starboard and worked along the dock.

Q. So as to swing your bow what?

A. To port.

Q. At what point do you starboard?

A. I starboarded when I had my boat close to the dock when I think it is not safe to put a boat in farther in that direction.

Q. You mean when your tug gets there?

A. Yes.

Q. That would be when you go 50 feet you would starboard?

A. Well, less than that.

Q. Did the Presqu'ile get a line ashore at that point?

A. She got a line ashore. Yes, she got a line ashore somewhere at that point.

Q. Before she reached the elevator?

A. Before she went past the elevator.

Q. Well, before she reached the elevator?

A. Before she reached the elevator she got a line out.

Q. And was your tug leading? Was it on the starboard side then of the vessel, the Presqu'ile?

A. The tug?

Q. The tug?

A. She would be on the port side. At the time the bow of the Presqu'ile would be up to the dock she would be on the port side.

Q. That would be leading in a southerly direction?

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- A. Yes.
By HIS LORDSHIP : Q. What would be on the port side ?
A. The tug.
By MR. TOWERS : Q. So that you couldn't see whether she got a line out or not but you know she did get a line out because she made fast ?
A. Yes.
Q. But you couldn't see past the bow ?
A. I couldn't see past the bow.
Q. So that you couldn't say just where she got the line ashore ?
A. I couldn't say positively. 10
Q. But you do know that she got her line ashore ?
A. Yes.
Q. And her bow close in to the dock ?
A. Yes.
Q. Her stern would then be closer into the dock than the bow ?
A. Yes.
MR. HOLDEN : That is the Presqu'ile.
MR. TOWERS : That is the Presqu'ile.
Q. Now when you had the Paisley in tow and you followed the same course she would be heading the same way, her bow closer to the elevator 20 than her stern ?
A. Yes, sir.
Q. Closer to the dock than her stern. And were you on her port side ?
A. After we come up along the dock.
By HIS LORDSHIP : Q. After what ?
A. After I come up to the dock. As she goes in I have got to work away and I was working along the dock and I had to shift more to her port side than her starboard.
By MR. TOWERS : Q. So that you would be pulling her a little away 30 from the dock than to the dock ?
A. Along the dock.
Q. If you were on the port side you would be pulling her away rather than into it ?
A. Well, I would have to, I couldn't pull her unto the dock.
Q. Well, you would be pulling her a little away ?
A. I would be, a little out.
Q. When you passed the elevator at what point did you realize that no line had been got into the dock ?
HIS LORDSHIP : Now you are back to the Paisley.
MR. TOWERS : The Paisley, yes, my Lord. 40
Q. At what point ? About how far past the elevator ?
A. When I got about that far past there (indicating) I stopped and swung out and backed alongside of the Paisley and when I backed her—
Q. That is when you were about 50 or 75 feet south of the elevator ?
A. When I was 50 feet south of the elevator I swung out and backed along and when I got back clear of the house I could see they had no line.

Q. You swung out and backed on the Paisley. Did you put a strain on her—?

MR. WOOD : He didn't back on the Paisley.

Q. Backed on the tug ?

A. Yes.

Q. Did you take the slack off ?

A. When you back up on the tug that slacks your line.

Q. If you backed 15 feet, and if you continued it would tighten again ?

A. No, we backed up on the Paisley and carried the line forward on the

10 tug.

Q. Was your line fast to the stern bitts on the tug ?

A. Yes.

Q. When you got that distance past you let go your line on the stern bitts ?

A. Yes, sir.

Q. And carried that forward ?

A. Yes, sir.

Q. And you yourself backed alongside the Paisley ?

A. Alongside the Paisley.

20

Q. And the tug is about the same height as the waist of the ship ?

A. No, she would be three feet below.

Q. But from the tug you could look over the waist of the ship ?

A. Yes, on my boat—

Q. You are up in the wheelhouse, anyway, and when you got back there you saw no lines out ?

A. No lines out.

Q. Then you carried the line forward on the tug to the forward bitt now ?

A. Yes.

Q. And there was some delay in making fast there ? I mean she slipped ?

30

A. Yes.

Q. And you got that adjusted and then put the strain on and she broke ?

A. Yes, sir.

HIS LORDSHIP : Have you finished the comparison of the Presqu'ile and Paisley ?

MR. TOWERS : Almost, my Lord.

HIS LORDSHIP : Well, when you get through I would like very much to know what the difference between the two manœuvres is if you don't mind telling me, because I don't want to lose the benefit of your cross-examination. I suppose I have no right to ask you if you want to keep it to yourself till the

40 argument.

Q. There was some delay in making fast to your forward bitts. How long would that take, the slipping and the—?

A. Oh, a couple of minutes.

Q. And by that time, by the time your line slipped on the forward bitts how far past the elevator would the bow of the Paisley be ?

A. About that time she would be probably a hundred feet past.

HIS LORDSHIP : South.

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MR. TOWERS : A hundred feet southerly, yes.

Q. And still heading into the dock ?

A. Still heading along the dock—not into the dock.

Q. Well, you told me that her bow was closer to the dock than her stern ?

A. Yes.

Q. Well, had that position changed ?

A. The ice conditions makes a difference; there was ice between that boat and the dock and the ice had a tendency to keep breasting her off.

Q. And she would be about a hundred feet southerly ?

A. I would say so. 10

Q. Well, was her bow or her stern closer to the dock ?

A. Her bow was a little closer—not much difference at that time.

Q. Well, then, had there been no slipping on your forward bitts would you have taken the way off ?

A. Well, if the line hadn't parted.

Q. You think you would ?

A. Yes.

Q. And then when you did get a strain on her if the line hadn't parted do you think you would have held it from going down on the Saskatchewan ?

A. I think we could have stopped her. 20

HIS LORDSHIP : If what ?

MR. TOWERS : If that line had not parted.

HIS LORDSHIP : But he tried to get hold of her again and he says it slipped.

MR. TOWERS : That is before it parted, my Lord.

HIS LORDSHIP : You eliminate that ?

MR. TOWERS : No, he said if it hadn't parted and the line had held—

HIS LORDSHIP : The line went, so could he have stopped if the line hadn't parted ?

MR. TOWERS : That was after the slipping, my Lord. 30

HIS LORDSHIP : It didn't include that.

MR. TOWERS : I asked him first if the line had not slipped and had held if he would have been able stop her and he said he would.

By HIS LORDSHIP : Q. Do you think you could have stopped her if the line had not parted, but the slip had occurred, before that ?

A. Independent of the slip ?

Q. Yes ?

A. The slip—I think we could have stopped before she hit the Saskatchewan if the line had of held, hadn't of parted.

Q. A slip before wouldn't have prevented you stopping if the line hadn't parted ? 40

A. No. It would give us probably a couple of minutes.

By MR. TOWERS : Q. I understand you to say at one time to my learned friend that you in backing around intended to push her in by the nose of your tug. What point was that ?

A. That is when we backed up in the first place.

R: When you backed up ?

A. We supposed that he had a line on when we backed up in the first place.

Q. Yes.

By HIS LORDSHIP : Q. You did push her in, did you ?

A. Afterwards.

Q. No, no ?

A. Not at that time, your Lordship.

HIS LORDSHIP : I didn't understand the time you were speaking of then.

10 By MR. TOWERS : Q. I asked you at what point you became aware that they had not gotten their line out and I think you told me that the nose of the Paisley was about 75 feet south of the elevator when you became aware that they had no line on the dock ?

A. About that time.

Q. Then you said that you backed up after that ?

A. I backed up— I told you when I backed over to the forward house on the Paisley I was aware that they didn't have a line out; that is the first time I could see they didn't have a line out.

Q. What did you back up for ?

20 A. I backed up with the intention of taking my line off and nosing her into the dock, shoving her broadside into the dock.

Q. Shoving her stern in ?

A. Shoving the whole thing, whatever part was out.

Q. Which part were you going to shove in ?

A. It would depend on when I got my tug into position what part was needed. I generally go amidships.

By HIS LORDSHIP : Q. Did you ever shove the Paisley in this time ?

A. Not up to the present time I haven't—I hadn't.

Q. No, I thought not.

30 By MR. TOWERS : Q. I think you told me that when the bow of the Paisley was 75 feet south of the elevator you knew that she hadn't got a line ashore. Do you change that now ? Or did I misunderstand you ?

A. That is after I had backed clear of the house.

Q. I see ?

A. I didn't know they hadn't a line out till I backed.

HIS LORDSHIP : He said when she was 75 feet along the dock from the elevator that there is where he expected they would put out a line; he didn't realize they had not till afterwards.

40 Q. Was that when her bow was 75 feet south of the elevator you thought she had a line on ?

A. Yes, sir. Till I backed up clear of the house and I saw that they didn't.

HIS LORDSHIP : I have it a hundred feet past the elevator. Where did you get the 75 ?

MR. TOWERS : Perhaps it was a hundred, my Lord.

HIS LORDSHIP : You asked him when the line slipped where was the

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bow of the Paisley; he said about a hundred feet past the south wall of the elevator is all I have got.

Q. But she had moved sometime between the time you backed up and changed your line to the forward bitts and she slipped—how far had she moved?

A. Well, it is pretty hard to tell.

Q. And did you get any power on her at all before the line snapped, to check her way?

A. I must have got some. I must have got some. The strain would break the line, it would have a certain amount of check. 10

Q. Did it break very soon after the strain was put on?

A. Just when I pulled.

Q. Just when you first pulled?

A. Not when I first pulled; I pulled under check the first time.

Q. How long did you pull before the line gave?

A. When I backed the engineer backs her up slow and I pulled for more steam and backs her up; it would be probably a minute.

Q. And then when the line broke she continued on her course? A. She continued to go on.

Q. Did she change her course at all? There was nothing to change it, 20 I suppose? A. There was nothing to change, but the ice had a tendency to shift her away from the dock a little farther.

Q. So that she came away from the dock as she came on, did she? A. Came away from the dock as she came down.

Q. You think the ice she was plowing through was sufficient to shove her out? A. The ice—The tug is working on here and she gets the ice clear there but the ice down along in here it is sort of broken up but it is still filled in.

Q. Well now when she came in contact with the Saskatchewan did she rub along the boom? A. Yes, she rubbed along—I am not saying from what 30 I saw at that present time because I wasn't watching.

Q. Well did she rub along? A. Well from after appearances she did.

Q. Which way? A. Rubbed along towards the shore, kind of a glancing manoeuver.

Q. And the Saskatchewan is about 300 feet long, isn't she? A. Something about that.

Q. And of course she met the hull about amidships, wasn't it? A. No, it was further forward than amidships.

Q. How far forward? A. I guess it was between No. 2 and 3 hatch.

Q. 3 and 4? A. 2 and 3, wasn't it? 40

Q. I am told 3 and 4? A. Was it 3 and 4? I don't know how many hatches she has.

Q. Well it was a little forward of amidships at all events? A. A little forward of amidships.

Q. And that would be at least 150 feet from shore, wouldn't it, if the Saskatchewan is 300 feet long? A. How much do you say, 150?

Q. Well measuring it—? A. According to your scale if that is right

she would strike the Saskatchewan some place there; that would be a little less than a hundred, wouldn't it?

Q. It depends on the angle you measured, I suppose. At all events the bow would be at least a hundred feet off the dock at that point?

HIS LORDSHIP: Whose bow?

Q. The Paisley? A. Oh no, she wouldn't be that far. She wouldn't be that.

By HIS LORDSHIP: Q. What is your answer? Mr. Towers asked you if the bow of the Paisley at the time she struck the Saskatchewan would
10 be a hundred feet off the edge of the dock? A. She couldn't be, because there isn't that much room around there.

By MR. TOWERS: Q. Well then she wasn't? A. She wasn't.

Q. That is the answer, she wasn't. How far would you say the starboard bow of the Paisley would be from the line of the dock when she came into collision with the Saskatchewan?

MR. HOLDEN: Of course the line of the dock you see is irregular. I think my learned friend should indicate which line.

HIS LORDSHIP: You mean the line running southwest from the elevator.

20 Q. Taking that line? A. The starboard bow of the Paisley would be pretty close to that line.

By HIS LORDSHIP: Q. To what line? A. To the line of the dock.

MR. TOWERS: As shown on Exhibit 1.

By MR. HOLDEN: Q. The line of the elevator dock that you have been calling it? A. Yes.

MR. HOLDEN: You see, my Lord, the two ships were right in there, the Drummond and the Saskatchewan, side by side.

HIS LORDSHIP: Yes, I know.

By MR. TOWERS: Q. I show you Exhibit S-4, Captain, and it shows
30 the Paisley lying alongside of the Senator.

HIS LORDSHIP: Was this before or after the accident?

MR. TOWERS: After the accident, my Lord. She is lying, she had been unloaded.

Q. Will you say if the anchor is in the same position, as shown in Exhibit S-4, as it was on the 18th January, when you shifted? A. It is at the same position.

Q. Did you shift her over to this berth? Did you shift the Paisley to the berth as shown in Exhibit S-4 with the Harrison? A. This year?

Q. In 1927? A. Yes sir.

40 Q. With that anchor in that position? A. With that anchor in that position.

Q. About when did she leave the elevator? About when was she shifted?

A. I don't remember just when. It would be inside of four days.

Q. Four or five days afterwards? A. Sometimes they move those boats partly unloaded.

Q. At all events it was some days after? A. Some days after.

Q. And what position did she take up then? What dock is she lying at

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as shown in this photograph? A. At the C.N.R. dock on the west side of the river.

Q. C.P.R. dock? A. C.N.R. dock—Canadian National. On the west side of the river.

Q. When you shifted her back to the C.N.R. dock after she was unloaded did you have any discussion about the position of the port anchor with anyone on board? A. No sir.

Q. None?

MR. WOOD: When was this?

MR. TOWERS: A few days after the disaster. Q. The lines and all 10 the equipment used in this shifting all belonged to the tug? A. The lines on the tug, yes.

HIS LORDSHIP: When you say all lines used belonged to the tug, Mr. Towers, you don't mean those on the Paisley?

MR. TOWERS: I meant the tug lines, not the mooring lines.

RE-EXAMINED By MR. HOLDEN:

Q. Mr. Towers showed you Exhibit S-4. I show you Exhibit S-3 as well. You see the port anchor on these two photographs? A. Yes sir.

Q. Which is it, S-3 or S-4 that represents the position of the port anchor at the time of the collision with the Saskatchewan? A. The both of them do. 20

Q. Do you mean that they are the same, the port anchor? A. I don't think they have shifted them any more.

Q. Well look at S-3? A. No, that anchor is in the same position. The anchor is the same position.

Q. There? A. Yes.

Q. I didn't suppose they were. What does S-3 show? A. S-3 shows the—

Q. Is that the position at the time of the collision? A. That is the position at the time of the collision.

MR. WOOD: Can the Captain see? Ask him if he sees them. A. 30 If you are looking at them in a different position it looks as if it might be a little different; I couldn't see by the anchor plate they are hanging—

Q. Can you see the anchor stock? A. You can see the end of the anchor stock there, and here.

Q. Anyway does S-3 show it correctly at the time of the collision? A. Yes.

Q. I am asking you to produce, please, as S-5 another photograph of the Paisley. Will you tell His Lordship what that is? What does that show? A. It shows where she was low—it shows how low the anchor was below the water line when she was low. 40

Q. That white line we see just above the crown of the anchor, is that above where the water line was? A. Yes.

Q. And does that S-5 show the port anchor in the position it was in at the time of the accident? A. Yes sir.

MR. HOLDEN: It shows the water line better.

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HIS LORDSHIP: Just below the water line.

MR. HOLDEN: Yes.

—EXHIBIT S-5. Photograph above referred to of Robert J. Paisley
“taken in Owen Sound January 20th, 1927, J. James.”

Q. There is one other question I should have asked, Captain Waugh: Will you tell the Court what the boom log was? Is it a boom log they call it that was floating alongside the Saskatchewan? What is it? A. What it was used for or what was the reason—

Q. What was the size of it? A. The boom stick I don't know whether
10 His Lordship understands what it was for.

By HIS LORDSHIP: Q. You tell us what the size of it was, that is what we want to know? A. The size of it, it was about 10-inches at the butt and probably about 7-inches at the top.

By MR. HOLDEN: Q. And it floated along the ship, I understand? A. It was anchored or tied alongside the ship.

Q. What was it there for? A. It was put there out of our way; we had been using it for sweeping ice.

Q. And what was there in the way of chain on it? A. There was a hole in one end, about a two and one-half inch hole through, and there was
20 about a three eighth chain through that hole.

Q. $\frac{3}{8}$ inch? A. $\frac{3}{8}$ chain, made out of $\frac{3}{8}$ iron.

Q. Where was that boom stick lying? A. It was lying—it was tied up to the forward bitts on the Saskatchewan.

Q. The forward bitts? A. That is aft of the forward house.

Q. How far from the place where the hole was punched in her? A. Well the hole was punched in probably $\frac{2}{3}$ of the way up that stick.

By HIS LORDSHIP: Q. Up what? A. On the length of the stick.

By MR. HOLDEN: Q. Two-thirds of the way up? A. Yes.

Q. And where was the chain? A. The chain was in the end down to
30 wards the stern of the Saskatchewan.

Q. The chain then was two-thirds of the length of the stick away from the hole? A. That is from the hole in the boat, yes.

Q. How long was the stick, about? A. I think that the stick in the first place, if I don't mistake, the stick was somewhere around about 55 feet long I think when we got that stick first but we had broke some off and worn some off with the ice and I couldn't just say what the length was; it would be possibly 40 or 45 feet long at that time.

Q. 45 feet, $\frac{2}{3}$ of that would be 30 feet. The chain in the boom stick would be about 30 feet from the hole in the ship's side? A. Yes.

40 By HIS LORDSHIP: Q. I just want to ask you a question.

MR. TOWERS: With your Lordship's permission—not now but some-time—I omitted one question.

HIS LORDSHIP: Well you had better put it.

By MR. TOWERS: Q. Do you know the requirements for mooring these vessels required one anchor chain to be used as a mooring chain? A. If they required that?

Q. Yes? Did you know that they required that? A. Mooring ashore.

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Q. That the anchor chain be used for mooring? A. I don't know anything about the moorings of the boats at all; I have nothing to do with that.

Q. I asked you if you knew that that was one of the requirements—?

A. Of the insurance.

Q. Of the Underwriters? A. I did not.

Q. You did not know that? A. No.

Q. Did you find a mooring chain on these vessels, you moved, a lot of them, did you find a mooring chain ashore? A. I found one on the—

Q. Did you find one on the vessel? A. There was one on each one? 10

Q. On each one? A. I don't think each one. I think probably it was the Smith Thompson.

HIS LORDSHIP: What is the point in this?

MR. TOWERS: I want to know when they had their chain ashore how did they hold their anchor. A. CONT'D: On the Smith Thompson?

Q. Yes? A. I don't just remember what way this other anchor was.

Q. Did you hoist in any except the Paisley? A. That is all.

Q. That is the only one? A. We took in the chain off one of the other boats.

Q. The Thompson? A. I think it was the Thompson. 20

Q. You didn't shift the Saskatchewan at all, did you? A. The Saskatchewan, yes sir.

Q. After she was partly unloaded did you shift her into that berth where she lay? A. Yes, and shifted her in after she was partly unloaded.

Q. Well her port anchor was hanging the same way as the Paisley, wasn't it? A. Not quite the same.

Q. It shows in the photograph hanging down?

HIS LORDSHIP: If they all have them hanging down where they shouldn't be what difference does it make?

MR. TOWERS: If they all had been hanging where it was proper for 30 them to be, my Lord—

HIS LORDSHIP: If they all hung them where this particular one was hung, this particular one being the Saskatchewan, what difference does it make whether they were all in the wrong? You don't mean to argue that if you can show they were all hanging down it was all right?

MR. TOWERS: I am arguing, my Lord, it was all right in the case of the Paisley to have her anchor where it was.

HIS LORDSHIP: What difference does it make about the other boats?

MR. TOWERS: If others do it probably that might have some influence.

HIS LORDSHIP: That is only the custom. 40

MR. TOWERS: Does not the custom make a law, my Lord?

HIS LORDSHIP: It isn't the custom I am interested in, surely.

MR. TOWERS: It is a custom that experts can swear to, my Lord, to the correctness of it. I merely want to prove the fact.

HIS LORDSHIP: I don't think the fact that these vessels all had their anchors hanging the same way would make a rule. Do you expect him to

say that because they were improper and hanging down that would be a proper position?

MR. TOWERS: I would expect him to say that it was possibly under certain circumstances proper.

By HIS LORDSHIP: Q. Was the Saskatchewan's port anchor hanging the same way as the Paisley's, a similar way? A. It was hanging down where it shouldn't be.

Q. Well was it in the same way as the Paisley's? A. Not in the same position, Your Lordship.

10 Q. What is the difference? A. I can—I don't know—Will I tell them the reason that that anchor was hanging down, Your Lordship?

Q. Certainly, tell me anything you like. Here is the Saskatchewan?

A. Here is the Saskatchewan.

Q. I am trying to find if it hung in the same position. You say not in the same way? A. I understand, Your Lordship, that by the ship keeper or Master that was on the Saskatchewan that the reason the anchor was hanging down this way—

Q. Is this something you learned from him? A. Yes.

20 Q. That is not evidence. Tell me the difference in the way the Paisley and Saskatchewan anchors hung? A. The Saskatchewan anchor was partly pulled up into the pipe, the anchor pipe.

Q. Into the what? A. In the anchor pipe, where they pull the anchor, the hawse pipe.

Q. Why did you say it was hanging down in the same as this then?

MR. HOLDEN: I think my friend Mr. Towers suggested in the same way and the witness said not in the same way. He said it was hanging down but not in the same way.

30 HIS LORDSHIP: He did—to me. He said it was hanging where it shouldn't be; then I asked him what he meant by that, if he meant the same position, and he said no, not the same position.

Q. Very well, pulled up into the anchor pipe, is that right, now? A. Yes, Your Lordship.

Q. Just look at that now, is that the position of the Saskatchewan anchor you have reference to? A. Yes, this is the anchor I have reference to.

Q. That is Exhibit P-2 shows the position of anchor on Saskatchewan to which I refer—is that right? A. Yes, Your Lordship.

By MR. TOWERS: Q. When you spoke of taking the cables off the port anchor on the Paisley on the 15th and putting the chain on—?

40 HIS LORDSHIP: I do not recall the fact that he did; it was so long ago. Perhaps he may have said so.

Q. You spoke of that?

HIS LORDSHIP: What did he say about that?

MR. TOWERS: He said he told Mr. Penrice that he would take the cables off and put the chain on.

HIS LORDSHIP: He offered to.

MR. TOWERS: Yes, offered. A. The chain was on at that time.

Q. And you offered to take the cables off? A. Assist in taking them off.

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Q. That was on the 15th?

A. The 15th.

Q. There were only your own men and Mr. Penrice there? A. Yes.

Q. Just Mr. Penrice, and you had all the working men? A. Why I wasn't supposed to be doing anything at all towards it.

Q. You had hoisted the starboard anchor? A. I didn't have anything to do with lifting it only furnish the steam.

Q. And Penrice was alone there, wasn't he? A. Yes.

Q. Penrice was the only man there on the 15th? A. It wasn't necessary to have men there to do it. 10

Q. It would be necessary to have men take the cables off that anchor?

A. Well we offered—

Q. It didn't ask you that. It would be necessary? A. It would be necessary, yes.

Q. On the 15th? A. On the 15th.

Q. And you had the men there and Penrice had none, is that the fact?

A. We had our men there.

Q. On the 15th? A. On the 15th.

Q. And he had none? Is that right? A. That is right.

By HIS LORDSHIP: Q. I just want to ask you a question: Just 20 going back to when you were taking her across to the dock you said when you backed and saw no lines, we carried the line forward on the tug and Sykes was going to let go line on tug and I told Sykes not to and told mate to take a turn on the line and backed up the tug to keep the Paisley back, the line began to slip on the timber head on tug. Do you remember that? A. Yes sir.

Q. Is that the only slipping that occurred? A. That is all there, Your Lordship.

Q. Then it was after that then that the tug ran out on all but about 4 feet on the other part of it? A. Your Lordship, it ran out about 4 feet to the end of the line. 30

Q. It ran out all but 4 feet; when you got the line taut the line parted? A. No, Your Lordship, when we got the line taut, we backed up—

Q. Perhaps I had better read you what I have: The line began to slip on the timber head on tug; you remember that? A. Yes.

Q. I went ahead on tug so that I could make fast; the line by this time ran out all but 4 feet? A. Yes sir.

Q. Then the mate, I have, put it through on the fore timber head, is that right? A. He put the eye over the timber head.

Q. The mate put the eye over the timber head; then I backed up and when he got line taut I went full speed astern and the line parted? A. Cor- 40 rect.

Q. That is the sequence of events and the only time it slipped is what I have read? A. Yes.

Q. Then what did you mean by saying that when it slipped the bow of the Paisley would be a hundred feet past the south wall of the elevator? Is that right? A. Well that is just about right.

HIS LORDSHIP: That is all I wanted to know, thank you.

MR. TOWERS: Would Your Lordship ask him the length of that line?

HIS LORDSHIP: What line?

MR. TOWERS: The towing line, the total length of the line.

Q. Yes, what was the total length of the line, whether it was out or coiled up? A. The whole of the length of the line was about 120 feet long.

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EVERETT MATHEWSON, Sworn,

Examined by MR. HOLDEN:

Q. Were you Captain Waugh's mate on the tug Harrison?

A. Harrison.

10 Q. When the accident occurred on the 18th January last year? A. Yes
sir.

Q. How long have you been afloat?

A. About nine years.

Q. And while you were mate of the tug, I understand the tug's mate doesn't have any certificate?

A. No.

Q. As the Harrison was moving the Paisley up—after having towed her stern first northwards they brought her back—as she was coming back where were you on the tug?

20 A. I was standing at the tow post aft.

HIS LORDSHIP: At what time?

MR. HOLDEN: This is when they were bringing her forward again.

Q. This is when you were bringing her towards the elevator dock?

A. Towards the elevator dock.

Q. While you stood there at the tow post was there anything between you and the Paisley, anything to hide her from you? A. No, nothing to hide her from me.

30 Q. There was no deckhouse or anything else. Look at this chart, please, the elevator dock, the line of elevator dock to the northward of the elevator; will you tell the Court, please, how near the Paisley's starboard bow or starboard side got to the elevator dock before she came abreast of the elevator?

A. I would say right there she would be 30 feet.

Q. Right there, that is just before reaching the north wall of the elevator?

A. Just before reaching that.

By HIS LORDSHIP: Q. 30 feet what? A. Out from the dock.

MR. HOLDEN: Yes, my Lord, the bow of the Paisley just before reaching the north wall of the elevator. Q. Could you from where you stood see what they were doing on the deck of the Paisley?

40 A. No sir, I could not; I was too low.

Q. Her bows were too high from where you were. And when she was about 30 feet from the elevator dock just before reaching the elevator how fast was she going approximately, in your opinion?

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A. I would say half a mile an hour.

Q. Have you had occasion to cast a heaving line while you have been afloat?

A. I have cast one.

Q. How far could a vessel get a heaving line ashore in your experience? I mean at the farthest how far out would an ordinary sailor be able to get his heaving line ashore? A. I would say 80 feet anyway.

EXAMINED By MR. WOOD: Q. Were you present on the 15th when your tug, the Harrison, was over at the Paisley? A. Yes sir.

Q. And where were the anchors on the Paisley at that date when you 10 went over?

A. Well the port anchor was hanging off on a cable.

Q. Yes, whereabouts was the anchor with reference to the water? A. Well I can't say that for I never noticed.

Q. Yes. Then where was the starboard anchor?

A. I don't know whether we raised that anchor first or not. I forget that.

Q. When you went there, before you raised it where was it? A. The anchor was on the bottom.

Q. And that was raised, the Captain says, you supplying the steam from 20 your tug, is that correct?

A. That is correct.

HIS LORDSHIP: It was raised, was it?

MR. WOOD: Yes.

Q. And what was done with it? Was it fully housed?

A. Yes, it was put into ship-shape.

Q. Then speaking now of the port anchor, what was done as to it? Tell us in your own words what was done with that so that I won't have to ask you. Tell us what was done?

A. Well, Mr. Penrice went down to connect onto the anchor chain and 30 he was alone. I went down and gave him a hand.

By HIS LORDSHIP: Q. What had he gone down to do? A. To connect the chain onto the anchor.

By MR. WOOD: Q. That was after the chain had been taken off the dock?

A. After the chain had been taken off the dock.

HIS LORDSHIP: We haven't heard anything about that.

Q. Where was the chain when you got there that day, being used as a mooring line, the Captain said?

A. It was still on the dock.

Q. Yes? A. We took the chain off.

Q. Off the dock, and put it down through the hawse pipe, did you?

A. Yes.

Q. Down to where the anchor was?

A. Down to where the anchor was.

Q. And then it was connected up and shackled onto the anchor, is that right.? A. Yes sir.

Q. Then what was done?

A. Well they discussed—they heaved it up, the anchor up, and when they got it heaved up so that it was tight on the cable the anchor was swinging out where it would be dangerous for the tug working so Captain Waugh said it couldn't stay there, it was too dangerous for the tug, so they decided they would drop it.

By HIS LORDSHIP: Q. Who is "they"?

A. Captain Waugh and Mr. Penrice.

By MR. WOOD: Q. Where is it dropped from? How is it dropped?

10 A. Well I think it is dropped with the friction.

Q. And who dropped it? A. Penrice.

Q. And did you notice where it dropped to then?

A. No, I didn't; I was inside the boat.

Q. And then was anything further done with it?

A. Captain Waugh wanted to take—asked Penrice "What is the matter with taking the cable off and heaving it up into ship-shape?" Mr. Penrice said "It is too much trouble, to Hell with it, leave it and let the crew that comes onto the boat in the spring take it off."

20 Q. And that was all? Was there anything more done that day? A. I don't think there was, no.

Q. Well then when you came over on the 18th you were on the tug, were you not? A. I was on the tug.

Q. Was the Master on the tug too? A. Yes.

Q. Was there any conversation between the Master of the tug and Mr. Penrice?

A. I never heard of any.

Q. Were the lines off the dock? That is were all the Paisley's lines off the dock when you got there?

HIS LORDSHIP: Got where?

30 Q. Got to her on the 18th?

A. I can't say that; I don't know.

Q. How long after you got there did you pass your tow line to the Paisley's stern?

A. I don't know how long it would be. I never noticed the time.

CROSS-EXAMINED BY MR. TOWERS:

Q. When you started pulling the Paisley northerly outside the four boats you had a cable attached to the stern of the Paisley?

A. I am not sure whether we had a cable or not.

Q. Well it was either a cable or line?

40 A. Either one, yes.

Q. And you pulled her up to the range lights, about there, did you?

A. About there, yes.

Q. Her stern at the range lights or her bow.?

A. Her stern.

Q. Then her bow would be some 300 feet forward of that, south of the range lights, would it?

HIS LORDSHIP: Are those range lights showing here on Exhibit I?

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MR. WOOD: Here they are.

HIS LORDSHIP: Are they so marked?

MR. WOOD: Yes, marked "Range" back here, my Lord.

HIS LORDSHIP: Does that motion he gives come to where the word "Range Lights" appears on the plan?

Q. Do you come to the range lights showing on Exhibit I just below the direction symbols on the chart?

A. I never noticed the range lights at all. I would say somewhere here.

Q. Up to J. H. Harrison & Sons' storehouse?

A. I would say, yes.

HIS LORDSHIP: You have asked him did he pull the Paisley to a certain place, describing that. What is his answer to that, yes or no?

MR. TOWERS: The range lights are on the west side opposite—

HIS LORDSHIP: I know, but then you describe the range lights—

MR. TOWERS: My learned friend took us away up the river here when it has nothing to do with it.

HIS LORDSHIP: Let me get some idea what the question and answer is.

Q. Now I asked you if you towed the Paisley up about opposite the range lights, and the range lights are opposite Harrison & Sons' storehouse? A. Yes.

Q. Did you or did you not tow the—?

A. We pulled the Paisley back there.

Q. Then you came about on a starboard wheel?

HIS LORDSHIP: Swung her stern in to that building or her bow?

Q. The Paisley's stern or Paisley's bow up to the storehouse? A. The Paisley's stern would be about here, by the storehouse.

Q. And would her stern or her bow be closer to the west bank and the elevator dock?

A. Her stern I think would be closer to the east dock.

HIS LORDSHIP: Show me the east dock.

MR. TOWERS: There, my Lord.

HIS LORDSHIP: He says her stern was at the storehouse which is on the other side.

MR. TOWERS: Opposite.

MR. HOLDEN: I think the witness should tell the Court and not Counsel.

HIS LORDSHIP: I cannot follow it.

MR. TOWERS: They have two to interrupt me, my Lord, and I am only one, so it is impossible for me to get the thing clear.

HIS LORDSHIP: If you would just ask a question and get the answer to the question it would be all right. I don't know where the stern was towed to, perhaps you will find that out.

Q. When you pulled the stern of the Paisley northerly from her mooring berth where she was moored how far northerly did it go?

A. You mean how far northerly the Paisley was—

Q. The stern of the Paisley, about how far?

10

30

40

A. About 900 feet. From the corner of the elevator; from here. (Indicating).

By HIS LORDSHIP: Q. Put your finger on the map where you say it was, her stern?

A. Her stern would be about here. (Indicating).

Q. That is about opposite the storehouse?

A. That is about opposite the storehouse.

Q. 900 feet from the elevator, is that it?

A. About 900 feet from the elevator.

10 MR. TOWERS: About five, my Lord.

By MR. TOWERS: Q. You know this is 100 feet to the inch, this map plan. Now from the elevator to the storehouse I should say was not over 500 feet. Would you? A. Well it seemed to me to be about 900 feet.

Q. Then she must have gone about 400 feet north of the storehouse? It would be about three ship lengths, that is the way you would say?

A. You asked me how far it was and I said about 900 feet, I would say.

HIS LORDSHIP: Three ship lengths.

Q. Three ship lengths from the elevator? A. Yes.

20 Q. Now when she got to that point the tug shifted from the stern forward, is that correct?

A. That is correct.

Q. And would the Paisley be making headway or sternway at that time?

A. I don't believe she was.

Q. She was about stationary?

A. I believe she was stationary.

Q. And was her bow heading towards the elevator itself?

A. I think it would be, yes.

Q. Heading towards the elevator?

A. A little towards the elevator.

30 Q. So that it would be closer to the west bank than the stern of the Paisley? A. I believe the bow would be.

Q. Then it would seem that all that would be necessary would be to pull her straight ahead and she would go to the elevator dock?

A. Now I can't say that on that.

Q. Wouldn't it seem that way to you? If she was heading that way? Just take that pencil, for instance, and show us how she was heading?

A. I think there is about the way she was heading (indicating).

Q. That would be—?

HIS LORDSHIP: About southwest.

40 MR. TOWERS: About southwest at that point. Q. Well then it would be a very simple thing to pull her up to the elevator dock, wouldn't it, pulling straight ahead? A. Well that is where we took her, to the elevator dock.

HIS LORDSHIP: That isn't answering your question. You have asked him if it was a simple matter to pull her in a straight position to the elevator dock. Let him answer.

A. Cont'd: Yes, I think it was—

Q. Quite a simple matter?

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HIS LORDSHIP: You didn't let him answer the question.

MR. TOWERS: He said Yes.

By HIS LORDSHIP: Q. Is that what you say? A. It looked to me as if it would be an easy job to take her to the elevator.

By MR. TOWERS: Q. And will you say then how your tug headed back here? Just indicate there?

A. After we put the line on?

Q. After you put the line on?

A. We headed the tug for about in here some place; it would be that shape. (Indicating). 10

Q. Now that would be about 2 points south of west, wouldn't it? A. I think that would be about right. Of course I am standing on the stern, you see.

Q. You think that was the way, you could see the tug?

HIS LORDSHIP: He means pointing at that corner of the elevator, doesn't he?

A. I mean the tug was heading about up for there, for the elevator dock.

Q. For the corner of the dock. Well, then at your stern her position was 900 feet from the elevator and stationary, pointing to the elevator in about a south-westerly direction, your tug fast to her and the tug heading for the 20 elevator dock, that is about the way?

A. That is about the way I could see her.

Q. And what length of tow line had you between the tug and tow?

A. Well I would say that Paisley's bow was about 15 feet off the stern of the tug.

Q. Then you remained on the stern of the tug.?

HIS LORDSHIP: Excuse me. Did he say from the stern of the tug?

A. From the stern.

HIS LORDSHIP: The stem of the Paisley though. Q. Then what you say is that the tug maintained that course for the elevator? A. Well I 30 can't say to that. I couldn't see. I am standing on the stern.

Q. Of the tug? A. I am not watching where the tug is going.

Q. But you are on the tug, aren't you? .

A. I am on the tug, yes, but I am standing on the stern behind the house, the house is on the tug, and I can't see which way the tug is heading.

Q. Could you see any of those on the Paisley?

A. No sir. .

Q. And at what point did you see a heaving line thrown from the Paisley, or did you see it?

A. I didn't see a heaving line. 40

Q. At what point do you say she came within thirty feet of the elevator dock?

A. Well I say right about there. (Indicating).

Q. About halfway in on the elevator'?

A. Hardly halfway in.

Q. Just before halfway? A. Yes.

Q. Well which way was the Paisley heading then?

A. The Paisley was coming right on along there. (Indicating).

Q. Which way was she heading?

A. The Paisley was heading. (Indicates).

Q. Still about southwest?

A. The Paisley was heading about like that. (Indicating).

HIS LORDSHIP: Is that about southwest?

MR. TOWERS: A little south of west, my Lord. About west of south.

HIS LORDSHIP: No, south of west, isn't it?

MR. HOLDEN: I would think, yes.

10 Q. A little south of west. About in that position, almost southwest,
isn't it? You tell us, there is the compass?

HIS LORDSHIP: It is of course a little more to the west.

Q. Do you say she was heading right along the dock?

A. No, her stern is a little bit out and her bow would be a little closer.

Q. You have got her bow right on the dock?

A. She was 30 feet out from the dock.

Q. Her bow. And her stern how far?

A. I couldn't see her stern, how far it was.

20 By HIS LORDSHIP: Q. But her stern was out beyond the bow,
down the line of where the bow was? A. It would be, but I couldn't see that,
Your Lordship.

By MR. TOWERS: Q. Did she change her course at all before she went
up to the Saskatchewan?

A. Well I can't say. I don't know whether she did or not because that
was my busy time, you see, after the tug had passed there.

Q. After the tug had passed the elevator then what happened?

A. Well I had been standing right at the tow post.

30 Q. Yes? A. Watching after my own work. I was expecting a call
from the Captain to carry the line up, to move the line off the tow post.
At that time I thought they was getting a line out on the Paisley.

Q. And then what happened?

A. Well they got orders to carry the line up, the Captain told me he was
going to throw his stern out and back down on the port side of her.

Q. What for?

A. To get back in place ready to shove her into the dock.

Q. And then what happened her?

By HIS LORDSHIP: Q. The Captain said he was going to do what?

40 A. The Captain said he was—he told me to be ready to—He was going
to back the tug down on the port side of her and told me to be ready for to
carry the tow line up forward to the forward timber head.

By MR. TOWERS: Q. Where was the Captain, up at the bow of the
tug?

A. The Captain was up in the wheelhouse.

Q. A hundred feet away from you?

A. He could stand out there and call to me; I can go up any time he calls.

Q. Did he call you?

A. I happened to walk up the side.

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Q. I thought you said you stood at the bitts?

A. I did, but I walked up the side knowing that we had the Paisley up in its place.

Q. When you had the Paisley up to its place what did you have to walk up the side for?

A. To find out if the Captain— To get my orders to move this line.

Q. To get your orders to move the line. You knew what you would have to do with the line if you were up at your place, the same as you always do?

A. I knew what I had to do with it but I wouldn't do it until I was ordered.

Q. So that how many ships had you shifted up just that way? 10

A. I don't know how many it was before that.

Q. Twenty? A. No.

Q. Fifteen? A. No. I would say maybe three.

Q. That year. How about the year before?

A. Well we didn't shift any. That is the only time that I ever shifted.

Q. Well you shifted the Presqu'île?

A. Yes.

Q. And did you get her in the same place or did you bring her up a different way? 20

A. We brought her up as far as I can remember about the same way.

Q. Did you go forward to get your orders then?

A. No, I wasn't—I don't know just where I was standing, and anyway he hollers to me and I can hear, but after I had shifted a couple of boats I just knew what would be taking place.

Q. Yes. Well then you didn't need to go forward, he didn't call you to go up.

A. No, he didn't. But at the same time—

Q. No?

MR. HOLDEN: You interrupt him.

Q. He didn't want you to go up? 30

A. No; he didn't call me. I just stood waiting after we got up so far to the elevator and I expected they was getting the lines out on the Paisley, see, and I stood—walked up to see if he had anything to say to me in regards to the line, just right up and right back.

Q. You walked right up to the wheelhouse?

A. Oh no. No, I didn't. I can walk 10 feet from where I am standing or I could walk to the rail.

Q. I know, well he would be 90 feet away from you then?

By HIS LORDSHIP: Q. What did you do that day? How far did you walk? 40

A. I walked up, I remember I walked up the side, maybe I walked about 10 feet up the side; that would be 10 feet away from where I was working.

By MR. TOWERS: Q. Well then what happened? When you were 10 feet up how far away were you from the Captain?

A. Well he was up above me.

Q. He was 90 feet away from you.?

A. I don't know just how far.

MR. HOLDEN: I don't know where my learned friend gets his 90 feet. The towing post wasn't on the stern.

HIS LORDSHIP: But he knows the length of the tug.

MR. TOWERS: Yes, and he can say so.

HIS LORDSHIP: He can tell us whether it was 90 or 80 or 85.

MR. TOWERS: I am asking if the Captain called all this long message to him over that distance.

HIS LORDSHIP: He hasn't said anything about a long message. He 10 said he went forward expecting something from the Captain. What it was I don't know.

Q. What did the Captain say to you?

A. Told me to be ready to carry the line forward when he backed up on the tug.

Q. You had been on the Presqu'ile a few days before when she shifted?

A. I was.

Q. Did you carry the line forward from the stern bitts to the forward bitts?

A. Yes.

20 Q. You did? A. I believe we did, yes.

Q. Are you sure you did?

A. No, I am not—I don't remember.

Q. You are pretty sure you didn't, aren't you?

A. No.

Q. Well if anyone did it you would be the man, wouldn't you? A. I would be there, yes.

Q. And you want to leave that that you cannot say whether you did or whether you didn't?

A. I can't say whether we handled the Presqu'ile the same as the Paisley 30 or not; I can't say that.

Q. But you were the mate on that tug?

A. I was the mate on the tug.

Q. You won't say that you carried the line from the stern bitts to the forward bitts on the Harrison when you were handling the Presqu'ile?

HIS LORDSHIP: He said that. He said he cannot tell us.

Q. Did you see the Paisley come into collision with the Saskatchewan?

A. No sir.

Q. Where were you then?

A. I was on the tug back down alongside of the Paisley, possibly two 40 lengths of the tug back.

Q. Yes. That is after your line had broken?

A. After the line had broke.

Q. What were you doing there?

A. Well we was back there on the line, we had our line on the—

Q. On what line? A. The line on the Paisley.

Q. Not the one that had broken?

A. Well this was before—I mean before that this line broke.

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By HIS LORDSHIP: Q. You were asked if you saw the collision between the two?

A. No, I never seen the collision.

Q. Well that is long after the line broke, isn't it?

A. Yes, that is right, sir.

By MR. TOWERS: Q. Will you try and think. Did you see the Paisley when she hit the Saskatchewan? Did you see any part of her? Did you notice?

A. No, I didn't notice; I didn't know it.

Q. Did you know that she did come up to her?

10

A. I didn't know that she had hit.

Q. Did you know that she had approached her closely?

A. No, I didn't.

Q. You were on the tug but you couldn't tell that the Paisley came close up to the Saskatchewan?

A. That is right. I was on the tug but I couldn't tell you.

Q. Did you know that the Paisley had come to a stop?

A. No sir, I didn't. I couldn't tell. I didn't know it.

Q. Didn't know whether she stopped or not?

A. I couldn't tell, no.

20

Q. After you backed up around the port side of the Paisley what was done with the line?

A. When we carried the line up?

Q. Yes? A. It was made fast around the timber head.

Q. Forward? A. Forward timber head.

Q. Then what? A. The Captain backed up on the tug. I think at that time he knew that they were getting pretty close, and the line was left on and backed down there in case of emergency.

Q. In case of emergency? A. Yes.

Q. That is he knew the Paisley had passed the point where a heaving line should have been attached to a cable and a cable held her? A. I think—

30

By HIS LORDSHIP: Q. What do you think he knew? A. I thought that the Captain—

By MR. TOWERS: Q. Was aware by that time—?

HIS LORDSHIP: Why not let him answer? Q. All right? A. By the actions, by the way things was going I think the Captain thought they had a line out. Q. That what? A. That they had a line out, and he was backing the tug, he backed the tug down alongside the boat ready to nose this Paisley into the dock.

Q. What did he want to have a line then fast to the bow for?

40

A. Well they hadn't, nobody had come around to carry this line back for us nor shift the line back off the bow onto—back about amidships.

Q. That was after the line parted, wasn't it?

A. That was after the—

Q. Line parted? A. No, that was before the line parted.

Q. What emergency do you speak of? What did he have his line for, what emergency?

A. Well for fear she had come a little too ahead and he wanted her pulled back a little.

Q. I think you said that you thought that the Captain then was aware that they hadn't got a line ashore?

A. I don't know when the Captain found out that they hadn't a line out.

Q. Was there any conversation then between you and Sykes or Sykes and the Captain?

A. None that I heard of.

Q. That you heard?

10 A. I never heard.

Q. You know Jimmy Sykes? A. Yes.

Q. He was forward on the Paisley?

A. I can't tell you where Jimmy Sykes was at that time on the Paisley.

By HIS LORDSHIP: Q. You said that the Captain backed up and bow made fast and you think that he knew she was in pretty close and that you left the line there; then you said that you thought the Captain knew she had no line out. First said the Captain thought there was a line out and then the Captain had a fear that there was no line out. Which do you mean?—when you took the line forward you made fast and the Captain backed up?

20 A. When the Captain backed up on the tug I carried the line forward up to the timber head and he backed down alongside and I made the line fast around the timber head.

Q. Have you any idea what the Captain was thinking about? A. No, I haven't.

Q. Well you said one time that you thought they had a line out and another time they hadn't. You don't know now?

A. I think that the Captain thought that they had a line out from the Paisley onto the dock.

By MR. TOWERS: Q. Well then he told you to take the line for-
30 ward to the forward timber head?

A. Yes.

Q. What for? A. Well he was going to back down her port side and that is where we use our line to shove her into the dock; to shove the Paisley into the dock we use our line up forward.

Q. If you backed up on the line on the forward timber head you would pull back on the Paisley, wouldn't you? A. No.

MR. WOOD: My Lord, this witness has tried to tell on several occasions what his conceptions are. My learned friend has interrupted him on numerous occasions and we have never got the story. If he would let him tell
40 what he has in his mind we would get the story.

HIS LORDSHIP: That may be so to a certain extent but the witness has told two stories.

MR. WOOD: They relate to two different things entirely.

MR. TOWERS: All right, let us settle that.

Q. You say that the Captain told you to take the line from the after house bitts to the forward timber head? A. Yes.

Q. Did he tell you what for?

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A. No, he didn't tell me what for.

Q. He just told you to take it forward?

A. He told me when he backed up to carry the line forward.

Q. He didn't tell you his reason? A. No.

Q. And you did as you were told?

A. I did as I was told.

Q. And you took a turn around the timber heads?

A. Yes.

Q. And how much line did you pay out?

A. I can't say how much line we paid out. 10

Q. How long was that line?

A. I would say the line would be about 130 feet from end to end.

Q. Did it hold?

HIS LORDSHIP: How many feet of that did he pay out?

A. He would pay out about—it may have been about 110 feet or so of that.

Q. Did it hold on the timber heads?

A. Well it didn't hold when we backed up on her, it rendered around the timber head.

Q. Why was that? 20

A. I can't tell you that.

Q. Had you taken enough turns on it?

A. I can't tell you how many turns I had on it.

Q. Well there was no reason you couldn't take enough turns to hold her?

A. I think I had enough turns.

Q. But you hadn't? What size line was it.

HIS LORDSHIP: You are getting along a little too fast. He said he thought he had turns enough to hold it and you say that he hadn't and go on to something else. What does he say to that?

Q. You think you had taken enough turns on her to hold it? 30

A. Yes.

Q. Had you? A. I thought I did.

Q. You thought you did? A. I thought I had enough turns on the timber head to hold the—

By HIS LORDSHIP: Q. What happened then? Did it hold? A. No, it didn't. When he started to back up the line started to render around.

By MR. TOWERS: Q. What size of line was it? A. It was about a 7 inch line, I think.

Q. Well now when he was backing up and the line didn't hold he wasn't shifting the Paisley in toward the dock, was he? 40

A. No, not at that time.

Q. So that if he had backed up or started to back up on the Paisley or alongside the Paisley with the intention of shifting her into the dock he hadn't started to do it up to that time?

A. Well I think at that time—I think Captain Waugh at that time or after we had carried the line out, I think that he found out just where the boat was.

By HIS LORDSHIP: Q. Couldn't you answer that question? He hadn't then commenced shoving the Paisley into the dock?

A. No.

By MR. TOWERS: Q. And do you know when he changed his mind?

A. No, I can't tell you when he found out—or whether he got orders or not that the Paisley was too far ahead or not: I couldn't see.

Q. And you don't know when he became aware of it?

A. I don't know. I can't say to that.

Q. But you do know this, that before he started to back up he said:
10 "When I back up you carry the line forward?"

A. Yes.

Q. So that he had decided to carry the line forward before he started to back up, isn't that true? He told you to carry the line?

A. He told me when he started to back the tug up—he says: "When I start to back up you carry the line to the forward timber head."

Q. When I start to back you carry the line to the forward timber head?

A. That is right.

Q. Now we are agreed on that. And with the line on the forward timber head and fast to the bow of the Paisley it couldn't have any effect on shoving
20 her in towards the dock?

HIS LORDSHIP: That is perfectly manifest.

Q. Well then when the line was slipping what happened, or after it slipped?

A. Well I tried to get another turn on the line and I couldn't and I guess at that time as soon as I noticed the slipping he noticed it and he stopped the tug, and I turned around and the eye was right at my feet, I picked the eye up and put down over the timber head.

Q. What you wanted to do at all events was hold the Paisley back?

A. I wanted to hold the Paisley.

Q. And how was she pointing then? How was she heading?
30

A. She was heading—I think she would be heading about like that.
(Indicating).

Q. Right along the dock?

A. Her stern would be closer in to the dock at that time.

Q. Why was that? A. I can't tell you that, why it was, but—

Q. The bow was farther away?

A. I think the bow was further away at that time.

Q. How far would you think the bow would be at that time when the
line parted?

A. Well I can't say that because I couldn't see from where I was how far
40 or what kind of shape the boat really was in.

Q. When the tug started to back up which side of the Paisley was she on, the inside or the outside?

A. She was on the port side.

Q. How far was the stern of the tug from the dock?

HIS LORDSHIP: Started to back up, she was on the port side, do you
say?

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A. I don't understand you when—

Q. I asked you when the tug starts to back up?

A. While we were carrying the line up?

Q. When he said "When I back up you take the line forward," which side of the Paisley was the stern of the tug on?

A. The stern of the tug was on the port side.

Q. And how far was the stern of the tug from the line of that dock—there was no dock at all then—from the shore?

A. I can't answer that at all because it was my busy time right there.

Q. Then you cannot tell me how far the bow of the Paisley was at that time? A. Off the dock. 10

Q. Yes? A. No, I can't, not at that time.

Q. Well then were you busy shortly before that?

A. Before we started to carry the line? Before we started to shift her line?

Q. Yes. How far was the Paisley's bow off then?

A. Off the dock?

Q. Off the dock, away from that?

A. I couldn't say. I couldn't tell how far it was.

Q. Do you know that clump of spiles just south of the elevator? A. 20 Yes, I know the clump there.

Q. You know the clump where the fellow went out to try to get the heaving line? A. No, I don't know where the heaving line—

Q. You heard afterwards? A. Yes.

MR. HOLDEN: Every time my learned friend interrupts.

HIS LORDSHIP: It is very difficult of course to follow it but I can't help it.

Q. You know where that clump of spiles is?

A. Yes, I know where that clump of spiles is but I can't tell you how far the Paisley's bow was off there. 30

Q. When they passed there?

A. When they passed there, I can't tell you.

Q. You can't tell to within how many feet, a hundred feet? A. Oh I can't say. I can't say how far.

Q. It might have been a hundred feet?

A. I can't say that. I can't say how far.

Q. I ask you might she have been a hundred feet away from it, for all you know?

HIS LORDSHIP: That wouldn't be much use.

Q. Well you just can't say? 40

A. What is that?

Q. You can't say? A. I can't say how far it was.

Q. Well all right, you know where that clump is located, don't you?

A. Yes, I know.

Q. From the time the Paisley's bow passed that point was she heading out or in towards the dock?

A. I can't tell you that either because right then is when I thought they had a line out on the Paisley.

By HIS LORDSHIP: Q. Show me where that clump of piles is on the map?

MR. WOOD: The work was under construction then, my Lord.

A. There is a clump in here. (Indicating).

Q. Which one are you speaking of?

MR. TOWERS: He said the two clumps. Which one?

A. I thought you were referring to this one.

10 MR. HOLDEN: The one farthest south, a long way south of the elevator.

By MR. TOWERS: Q. There is more than one clump of spiles there, is there? I show you Exhibit P-1. Do you see the Paisley lying in front of the elevator there? A. Yes.

Q. And do you see the spiles close to her starboard bow?

A. Yes. The first clump.

Q. The first clump of spiles. Now I ask you if you can tell me when the Paisley's bow passed that clump nearest to the south of the elevator how far her bow would be from the elevator dock—out?

20 A. It would be about, I think about 40 feet out, this clump. I thought that was the clump you were referring to.

Q. You thought it was how much?

A. I would say about 40 feet off that.

Q. And how was she heading?

A. I can't say just how she was heading.

Q. So that you think she had come out about 10 feet from the time she was abreast the north side of the elevator to where she was when she passed the clump of spiles on the south side?

A. Well she looked to be about 40 feet out.

Q. But when do you say she was 30 feet off?

30 A. I said that she was 30 feet off when she was right—

Q. At the northerly end of the elevator?

A. The north end of the elevator, yes.

Q. And by the time she had reached the south end she was 40 feet out?

A. By the time she got down to that.

Q. Clump of spiles, yes. So that however close she was she was making a little headway out?

A. She may have been.

Q. Well according to you she must have been?

40 A. Well yes, I say that that was her closest place there and that she must have been.

Q. So clearly according to you she was making a little way out? That is true, isn't it? I mean it follows from what you say?

HIS LORDSHIP: Well if it is so you needn't follow it.

Q. And you were doing your best to hold her back?

A. With the line, yes.

Q. And would you say that you adopted the same measures when you had the Presqu'ile there?

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A. No, I can't say to that.

Q. Can you give me an idea of the angle at which the two boats came together?

A. No, I can't.

RE-EXAMINED by MR. WOOD:

Q. Mate, you have spoken several times, as my learned friend put it to you, the Captain said, When I start to back up you carry the line to the forward timber head. You remember that answer to him? A. Yes.

Q. And then you were going on to connect that up, as I understood, with the nosing in process? 10

A. Yes sir.

Q. Nosing the Paisley in. Now can you tell us just shortly what that manœuver of being ready to nose her in required? A. It required the end of the line that was on the bow of the Paisley to be carried back and put somewhere amidships on the Paisley; that is, we work ahead—

Q. What does it require in your tug?

A. Well we have to go ahead on the tug.

Q. No, but what does it require with your line; what do you do on your end of the line?

A. We take our line up as short as we can get it. 20

Q. Where do you take it from and to?

A. We take it off the timber head and pull in the slack—

Q. No, no?

MR. TOWERS: I must really object.

Q. What is your part of the operation so far as you, yourself personally, are concerned?

A. Just handling the line.

Q. Well then what do you do in handling the line?

HIS LORDSHIP: He told you he would take it from stern to forward.

Q. Where to? A. To wherever the Captain says. 30

Q. Where do you take it from?

HIS LORDSHIP: I think we had better stop and we will probably get it better in the morning. I understand this witness to say two or three times he would take the line from the stern and carry it forward.

MR. HOLDEN: Yes, my Lord.

—4.30 p.m., adjourned till 11.00 o'clock a.m., Thursday, February 9th, 1928.

—11.00 a.m., Thursday, February 9th, 1928, resumed.

ALL PRESENT:

EVERETT MATHEWSON continued. 40

By MR. WOOD:

Q. Mr. Mathewson, you are already sworn. I was asking you to explain the nosing in process you have spoken of. Now I want you to take it from the time that the tug was towing the Paisley and you got an order from your

Captain to be ready to carry your line forward, you said, when he started to back up?

HIS LORDSHIP: Do you understand that quite?

A. I do.

HIS LORDSHIP: You know just what he is talking about now. Well now listen to the question.

Q. Now what is the manœuver then?

A. When we are carrying our line forward on the tug they are carrying their line back on the barge. They put it on a fastening about amidships on the boat. We work ahead on that so as we can shove her into the dock.

By HIS LORDSHIP: Q. You do what?

A. We work ahead on that line.

Q. On what line? A. On the line they have from the forward timber head.

Q. I thought you said you carried your line forward on the tug? A. Yes.

Q. And they carried theirs back on the boat?

A. On the Paisley.

Q. Well then what line do you say you work on, that is what I want to get? Which one do you mean?

20 A. We use that line.

Q. Use what line?

A. The line we have out there.

Q. Your line or their line? A. Our line.

Q. What for? A. For when we are nosing into the dock it keeps the tug from slipping alongside of the boat.

Q. From doing what?

A. From slipping alongside of the boat.

Q. I suppose the line on the Paisley would hold that, wouldn't it? It would hold in the manœuver whatever it was? A. Yes.

30 By MR. WOOD: Just this one line you are speaking of? A. Yes.

Q. You move your line forward on the tug and the other end, which is on the port side forward of the Paisley—?

HIS LORDSHIP: Yes, I understand that. It is the one line, two ends of it, you see.

MR. WOOD: Yes.

MR. TOWERS: I would just like to follow that a little further.

HIS LORDSHIP: This is re-examination, isn't it?

MR. WOOD: Yes, my Lord.

HIS LORDSHIP: You have cross-examined yesterday.

40 MR. TOWERS: Yes, but I think I am entitled to ask on that point.

HIS LORDSHIP: Excuse me. You did discuss the whole thing with him as to what he did. What is it you want to ask him?

MR. TOWERS: This is entirely new.

By MR. TOWERS: Q. Did that actually happen in this case? Did they walk back with the line on the Paisley, is that what you mean the Court to understand?

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- A. I couldn't say where the line was on the Paisley from where I was on the tug.
- Q. You were carrying one end of it?
- A. I was carrying one end of it.
- Q. Got fouled in the stays didn't it?
- A. No, it didn't.
- Q. You were carrying one end and do you mean to say you didn't know where the other end was?
- A. I was carrying the line forward on the tug.
- Q. It was only 15 feet long when you started? 10
- A. Well the barge was laying—
- HIS LORDSHIP: The Paisley, you mean.
- A. (Contd.): I supposed that they were carrying the line from the bow of the Paisley back.
- Q. But you don't know whether they did or not?
- A. I can't say at that time whether they did or not.
- Q. Well then in a moment or two when you got that fast on the timber head and a strain was put on it it slipped or rendered?
- A. Yes.
- Q. You put it on the timber head? 20
- A. Yes, I put it on the timber head—
- MR. WOOD: This was all developed.
- HIS LORDSHIP: All this came out.
- Q. Where was the inboard end of the Paisley when the strain was put on and it slipped?
- Q. It was on the bow at that time.
- Q. Then it hadn't been carried back?
- A. Then it hadn't been carried back but I didn't know it at that time.
- Q. Well all right, it hadn't been carried back?
- A. It hadn't been carried back at that time. 30
- HIS LORDSHIP: Mr. Towers, in your cross-examination yesterday I have, I carried the line forward and made fast and Captain backed up.
- MR. TOWERS: Yes, my Lord.
- HIS LORDSHIP: That is the time to have brought out the fact he moved and the other didn't. It wasn't new matter, that is what I mean. However you have all you wanted, haven't you?
- MR. TOWERS: Yes, my Lord, but I thought he was saying then that it was carried back.
- HIS LORDSHIP: Oh no, he was asked what the manœuver was.
- MR. WOOD: What the manœuver would be. 40

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tion-in-Chief.

WILLIAM EDWARD CORNETT, Sworn.

Examined by MR. HOLDEN:

HIS LORDSHIP: Is he Captain of the Saskatchewan?

MR. HOLDEN: He was acting as her ship keeper at that time.

- Q. You were the ship keeper on the Saskatchewan when this accident occurred, were you not? A. I was.
- Q. Have you Master's papers?
A. Yes sir.
- Q. Since when did you get them?
A. 1915.
- Q. Canadian certificate, I presume?
A. Canadian certificate.
- Q. And you have been afloat a good many years, I suppose—how long?
10 A. Twenty-six years.
- Q. How long had you been ship keeper on the Saskatchewan before this accident occurred?
A. Well from when she tied up in the fall.
- Q. About when would that be?
A. I joined her on the 21st of Decemper.
- By HIS LORDSHIP: Q. And were you in command of her during the season? A. No sir.
- By MR. HOLDEN: Q. This was just a winter job, I understand?
A. Just ship keeping for the winter.
- 20 Q. Where were you when the accident occurred?
A. In the galley.
- Q. In the ship's galley? A. Ship's galley.
- Q. What part of the ship?
A. After part of the ship.
- Q. How long is your ship, the Saskatchewan, do you remember?
A. 266 feet.
- Q. Do you know how much grain she had on board?
A. At the time of the accident she had, oh, about 87,000 bushels.
- Q. That is admitted, my Lord—I should not have wasted time. Captain
30 Cornett, what was the first you knew of any accident?
A. Well I felt a bump up against the ship's side.
- Q. What were you actually doing when you felt the bump against the ship's side?
A. Mopping my floor.
- Q. Mopping the galley floor? A. Yes sir.
- Q. What time of day was that that you felt this bump?
A. Just after ten o'clock in the morning.
- Q. Do you remember the date? A. January 18th.
- Q. And then what did you do?
40 A. Well I went out to see what had caused it.
- Q. Well while mopping the floor did you have to get ready to go out?
A. I wasn't fully dressed.
- Q. And you completed dressing and went out? You got ready and went out, you said? A. Yes sir.
- Q. How soon after feeling the bump do you suppose it was that you got out onto the deck?
A. Oh not more than a couple of minutes.

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tion-in-Chief.
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- Q. And what did you see when you got out?
A. I saw the steamer Paisley up alongside.
- Q. How far do you think she was from your ship's side then? A. Well from where I was standing she appeared to me to be 15 or 20 feet away from us.
- By HIS LORDSHIP: Q. And where were you standing?
A. At the forward end of the boiler house on the port side.
- By MR. HOLDEN: Q. Is the boiler house right aft?
A. Yes.
- Q. The port side was the side that was against the Drummond, wasn't it? A. Yes sir. 10
- Q. And the Paisley lay on her starboard side?
A. On the starboard side of the Saskatchewan.
- Q. It bumped her on her starboard side?
A. It bumped her on her starboard side.
- Q. And when you came out you were on the port side of the Saskatchewan at first? A. Yes sir.
- By HIS LORDSHIP: Q. How far from the stern or bow?
A. I think that house is about 65 feet long.
- Q. And how far were you away from the stern or bow?
A. Well I would be immediately forward of that house, I suppose 5 feet 20 or more, 70 feet from the stern.
- By MR. HOLDEN: Q. And did you go over to the starboard side?
A. Not just then. After I saw the Paisley there I went back and got fully dressed and then I came out and went over on the starboard side.
- Q. You had to put something on first in order to get out?
A. Yes sir.
- Q. And then you went back and got what, an overcoat?
A. Well I went back and put on all my clothes.
- By HIS LORDSHIP: Q. You had taken two minutes to partly dress, you told us, and get out? 30
- A. Yes.
- Q. Then you went back again and took some more time?
A. Yes.
- Q. When did you go down to examine what had happened?
A. Well I just walked over to the starboard side just to see what I could see there.
- By MR. HOLDEN: Q. And could you see any damage? Could you see any damage? A. I couldn't see any damage, sir.
- Q. Was the Paisley moving then?
A. Well the last time I came out— 40
- By HIS LORDSHIP: Q. We haven't got that far. You are asked then when you came out to find the damage.
- By MR. HOLDEN: Q. You see this is the second time. Did you come out more than twice?
A. No, just twice I came out.
- Q. This second time was she moving? A. Yes sir.
- Q. Did you see her port anchor?

A. Not just then.

Q. When did you first notice her port anchor?

A. After she was back at the elevator dock.

Q. When and how long afterwards would that be?

A. Over an hour.

Q. Well then when you went over the starboard side and couldn't see any damage what else did you do?

A. I went back into my galley again and got a pail and went over to the elevator to get a pail of water and came back and I sounded the steamer.

10 Q. And was the sounding all right?

A. They were just the same as they were at eight o'clock in the morning.

By HIS LORDSHIP: Q. But answer that question, was it all right? We don't know what it was at eight o'clock in the morning?

A. Yes, it was all right.

By MR. HOLDEN: Q. Then this would be about what time? A. 11.45.

Q. A.M.—in the morning? A. A.M., sir.

Q. When did you first learn that she had, in fact had a hole punched in her? Well I mean she had in fact received damage that you hadn't been able to ascertain? When did you first learn that?

20 A. 4.30 on the morning of the 19th January.

Q. That night of the 18th did you sleep on board there?

A. Yes sir.

By HIS LORDSHIP: Q. 4.30 on what date?

A. January 19th.

By MR. HOLDEN: Q. Next morning? A. Next morning.

Q. How did you learn it? What happened at 4.30 on the next morning?

A. Well somebody rapped on the door.

Q. Your cabin door? A. My cabin door.

Q. Where is that, forward or aft? A. Aft.

30 Q. On the Saskatchewan? A. On the Saskatchewan.

Q. Were you in bed? A. I was in bed.

Q. And what did you do then?

A. I got up to see who was there and when I got to the door there was nobody there but I noticed the ship badly listed.

Q. The Saskatchewan badly listed? A. Yes sir.

Q. Which way? A. Starboard.

Q. Down by the starboard side? A. Yes sir.

Q. I forgot to ask you was the tug Harrison alongside of the Saskatchewan? A. Yes sir.

40 HIS LORDSHIP: When are you speaking of, not 4.30 a.m., was it?

MR. HOLDEN: Yes, my Lord.

Q. I should have asked you when did the tug Harrison come alongside of the Saskatchewan?

A. I think it was about five o'clock, or perhaps a little later, the night before.

Q. That is on the afternoon of the 18th?

A. The afternoon of the 18th.

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tion-in-Chief.
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Q. Why did she come alongside?

A. Well she was going to berth there for the night.

Q. She just took a berth alongside of the Saskatchewan?

A. Yes.

Q. There was the Drummond against the dock, the Saskatchewan against the Drummond and after five o'clock on the 18th the Harrison against the Saskatchewan?

A. Yes.

Q. Did you learn afterwards who it was rapped at your door?

A. I heard afterwards it was the watchman of the tug Harrison. 10

Q. Well you came out and saw her listing badly to starboard and what did you do then?

A. I went down in the engine room because I could hear the water coming in there.

Q. The engine room is right aft too, I understand?

A. Right aft too. I had walked into the engine room from the galley and I procured a wrench and tightened up the starboard gangway door and I tried—

Q. Tightened up what? A. The starboard gangway door.

HIS LORDSHIP: I am not going into the question of damages, you 20 know. He needn't give every detail he did, I suppose.

Q. Just broadly—you notified your owners as soon as you found you couldn't control it?

A. Yes sir.

HIS LORDSHIP: What couldn't he control? I didn't hear anything about that.

A. (Contd.): The water coming into her, sir.

By HIS LORDSHIP: Q. Did you go and see where it was coming in or could you tell?

A. Well it was coming in through the discharge pipe from the pump and 30 also through the gangway door.

Q. What pipe? A. Discharge pipe—ballast pipe.

MR. HOLDEN: Into the engine room, I understand.

Q. Then you were going to notify the owners?

A. Yes, just as soon as I could get them.

By MR. HOLDEN: Q. You first tried to get the Chief Engineer, didn't you? A. Yes sir.

Q. And where was he? A. He wasn't in town. He was out of town.

Q. His home is in—? A. Owen Sound.

Q. But he wasn't at home? A. He wasn't at home. 40

Q. And when did she founder, settle onto the bottom?

A. She finally came to rest about ten o'clock on the morning of the 19th.

Q. To rest, you mean she was actually on the bottom?

A. Yes, that is the deepest she went, to the bottom.

By HIS LORDSHIP: Q. There was nothing you could do to avert that, I suppose, yourself?

A. No.

By MR. HOLDEN: Q. Captain, when did you first learn that there was a hole in her side?

A. The next day.

Q. That is the 19th or the 20th? A. The 20th.

Q. How did you learn it?

A. Well we took a hatch off and I could see the water coming in through the hole in the side out through the grain.

By HIS LORDSHIP: Q. Was the water coming in through the hole?

A. Well it was seeping through the grain.

10 By MR. HOLDEN: Q. That hole in her side led into what cargo hold?

A. No. 2 cargo hold.

Q. And when you took the hatch off there you could see the water seeping through the grain? A. Yes sir.

By HIS LORDSHIP: Q. The hole was in that compartment? A. Yes sir. No. 2.

Q. And I suppose you cannot help us very much on what actually caused the hole, can you?

A. Personally I cannot, no.

Q. The holing of the vessel?

20 A. The damage?

Q. No, the holing of the vessel, what happened?

A. Well—

Q. Did you see any of it?

A. I didn't see any of it.

Q. Then you cannot help us.

By MR. HOLDEN: Q. Did you see the anchor of the Paisley? A. I saw the anchor of the Paisley.

Q. Did you see any damage that that anchor received?

A. Well there was some broken parts on the crown of the anchor.

30 Q. And how did the location of those broken parts compare with the location of the hole in your ship's side?

A. I just don't quite understand that.

Q. I mean was the broken part of the anchor in a place where it could have resulted from the same collision?

A. Oh yes, sir.

HIS LORDSHIP: What point are you taking up, Mr. Wood?

40 MR. WOOD: The question I wanted to take up is, the suggestion has been made by my learned friend as to the anchor which was out, as he points out, on the Saskatchewan, and the fact that this boat subsequently moved the Saskatchewan, and I am prepared to take that up now.

HIS LORDSHIP: Well then go on. You are on the same side.

EXAMINED by MR. WOOD:

Q. Captain, it has been pointed out that the port anchor of the Saskatchewan, that is the anchor lying between you and the Drummond, was in a certain position as shown on—?

HIS LORDSHIP: The port anchor of what vessel?

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tion-in-Chief.
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MR. WOOD: Of the Saskatchewan.

Q. Of the vessel of which you were ship keeper. Do you remember your port anchor? A. Yes sir.

Q. According to these photographs? A. Yes sir.

HIS LORDSHIP: What photographs?

MR. WOOD: P-1 and P-2.

HIS LORDSHIP: What is the question you are asking?

MR. WOOD: How did that anchor come to be in that shape?

HIS LORDSHIP: You mean that position?

MR. WOOD: That position.

10

Q. How did it? A. Well, sometime before she was laid up in the fall of the year in some manner her anchor windlass was broken and the anchor was up like that while she was making one part of her last trip.

HIS LORDSHIP: How is this material to show what happened on the port side of the Saskatchewan about her anchor? Has that anything to do with this damage?

MR. WOOD: No, no, except, my Lord, my friend Mr. Towers pointed out that she was moved with her anchor in that position and the argument or the assumption would be that, because we are complaining of the Paisley's anchor while here was your own anchor in this shape, it has no bearing.

20

HIS LORDSHIP: But that didn't cause any damage to anybody.

MR. WOOD: No, my Lord.

HIS LORDSHIP: What has that to do with it?

MR. WOOD: Because I believe he is going to allege some practice or alleged practice on that.

HIS LORDSHIP: You just want to ask him why your anchor was hanging down.

Q. The photograph shows a part of the stock was in the hawse pipe?

A. Yes sir.

Q. And it was on its chain, was it?

30

A. It was on its chain.

Q. And you say one of the links or something had got bent?

A. No, the anchor windlass was broken.

By HIS LORDSHIP: Q. Why was it hanging down, is the question, as far as that down?

A. Because when the anchor windlass broke the anchor went down that far and it was never hove home.

By MR. WOOD: Q. Well was it on the compressor?

A. It was on the compressor.

Q. And was it capable of being dropped?

40

A. Yes, you could use it.

By HIS LORDSHIP: Q. Never hauled up. How do you say it was used? How would it be used, to drop it?

A. You could drop it down, sir.

By MR. WOOD: Q. And part of the stock was in the—? A. In the hawse pipe.

Q. And if that came in contact, the anchor, with anything, what would be the effect on it?

HIS LORDSHIP: What possible difference does that make to us about what happened here? If you show that this anchor made this hole I don't see that because another anchor was at some distance on the other side of the boat and could have done something like that if it had hit something would make any difference.

Q. Well then my learned friend has raised a question as to the Harrison moving the Saskatchewan. Would you tell us that operation? You were
10 moved subsequently by the Harrison?

HIS LORDSHIP: I don't want to try anything more than I have to try. Now I don't understand that these details of the moving of the Saskatchewan are going to affect us or affect the liability here.

MR. WOOD: Except as informative to Your Lordship on this case as to what the arrangement was made with the tug before they undertook the operation and the provision made and the precautions taken by this boat when she was moved. If Your Lordship does not think it is material—

HIS LORDSHIP: Well what is the attack?

MR. WOOD: There is no attack on us on that but our attack is that they
20 were negligent in their operations.

HIS LORDSHIP: Surely then that is what you have to show. Supposing you show that this tug was negligent in dealing with the Saskatchewan, how much further is that going to get us?

MR. WOOD: I should think it might be of assistance to Your Lordship in this though to show what our ship, my co-plaintiff's ship, thought necessary in that harbor.

HIS LORDSHIP: I am afraid it would have to be expert evidence on that if it is going to be of any use to me. The Saskatchewan might have run it with a crew of thirty or forty men, and everything would go smoothly
30 because two or three men would attend to every job but that wouldn't help me. Was this man in charge of the moving?

MR. WOOD: Yes, my Lord.

HIS LORDSHIP: Can't you deal with it generally? We could get a whole voyage of the Saskatchewan from one dock to the other. All that you have established here is that the men on the Paisley didn't get their line out.

MR. WOOD: Probably if I might recall this witness in Reply on that point.

HIS LORDSHIP: I think that would be reasonable; if you have to meet any attack to which that would properly be rebuttal I don't object but I
40 don't see how you need it in chief.

CROSS-EXAMINED by MR. TOWER:

Q. You said in answer to His Lordship that you couldn't do anything to repair the damage or prevent the sinking. Do you mean that if you had known that you could do nothing?

A. If I had known of it I could have done something.

By HIS LORDSHIP: Q. What could you have done?

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A. I could have put something in the wound.

By MR. TOWERS: Q. You could have closed the hole, could you?

A. Yes sir.

By HIS LORDSHIP: Q. Then I judge you don't have any method of sounding the vessel when it is laid up afloat in the winter to see if anything has happened from day to day?

A. Sounding the tanks of the vessel?

Q. Yes. A. Yes, we sound them twice a day.

Q. When did you sound them on the 18th?

A. I sounded eight o'clock in the morning, the first soundings. 10

Q. Yes? A. I sounded at 11.45.

Q. 11.45 the same day? A. Yes sir. I sounded at three, or about three in the afternoon.

Q. Yes? A. I sounded 4.30; I sounded at 7.30; and once again about 11.20 at night.

Q. And nothing was disclosed?

A. No, not very much. There was a slight difference in the soundings.

Q. Well nothing to alarm you?

A. No, nothing to alarm me, no.

Q. Then of course you were aroused before there were any further soundings, is that right? A. Yes sir. 20

By MR. TOWERS: Q. Then I show you Exhibit P-1 and it shows— It is a photograph which shows both anchors of the Saskatchewan? A. Yes sir.

Q. Does it correctly show the position of those two anchors?

A. Yes sir.

Q. On the day on which it was taken, I think January 28th, the vessel was then resting on the bottom?

A. Well that is the position the anchors were in.

Q. The vessel at the time the photograph was taken was resting on the bottom—this was after the sinking? 30

By HIS LORDSHIP: Q. You ought to know because you see where this port anchor has got to?

A. But she was afloat at that time.

Q. At what time? A. At the time that that picture was taken.

Q. Then it is sometime after, is it?

A. The 28th.

By MR. TOWERS: Q. Well now had that anchor been moved from the time she was laid up in the fall, that is the port anchor? A. No.

Q. Well then where would her crown come on the Saskatchewan, about 40 where?

A. Well I think that would be just above her 20 foot mark.

Q. Well but that is when she was fully loaded and before she was lightened at all what would she draw, do you remember?

A. We lightened her up about a foot and after we got her lightened she was drawing 16-9 forward and 17-3 aft.

Q. So that when she was fully loaded in the position in which that anchor was it would be a little above the water line, would it? A. A little above the water line.

HIS LORDSHIP: What have you got from him?

MR. TOWERS: Just that the anchor hadn't been changed; it had been left.

By HIS LORDSHIP: Q. What draft did you have after being lightened and what before?

By MR. TOWERS: Q. You think she was lightened about a foot?

10 A. About a foot.

By HIS LORDSHIP: Q. Give me the feet?

A. 17-9 forward and 18 feet 3 aft.

Q. Does that show the condition at the time of the accident between the elevator and the Saskatchewan, the position of the shore line? A. Yes sir.

Q. There is really no dock there?

A. There was no dock there at that time.

By MR. TOWERS: Q. My friend Mr. Wood has handed me this photograph taken January 20th, 1927. Does that correctly show the position of the Saskatchewan on that date? A. The 20th, yes sir.

20 Q. She would not be raised up by that time?

A. No sir.

MR. HOLDEN: May we mark that S-6, my Lord?

HIS LORDSHIP: Yes.

—EXHIBIT S-6 photograph referred to showing Saskatchewan; also the Drummond.

Q. That is showing the Saskatchewan on the bottom, is that right?

A. Yes sir.

MR. TOWERS: On the 20th January, 1927.

30 By HIS LORDSHIP: Q. And the anchors, I suppose that shows where the anchors go, correctly?

A. Yes, that shows the anchors correctly, my Lord.

By MR. TOWERS: Q. I show you another photograph. Would you look at it? That shows the Saskatchewan in a sunken condition and the Drummond beside her taken from the starboard side of both vessels. Does that correctly represent the position of the vessels on the 28th January when this photograph was taken, or possibly before the 28th? Would you say the Saskatchewan had been raised?

HIS LORDSHIP: You said the 28th and then you said before the twenty—

40 A. Well she looks to me to be still sunk or partly sunk.

By HIS LORDSHIP: Q. What do you say about that showing the condition correctly after she was sunk?

A. Well that shows her position correctly.

By MR. TOWERS: Q. Apparently she has not been completely raised? A. Yes.

By HIS LORDSHIP: Q. P-5 shows the position on the 28th January, 1928? A. 1927.

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Plaintiffs'
Case.

No. 25.

Wm Edward
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Cross-
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(continued).

Q. That shows, does it, the vessel sunk? A. Yes.
—EXHIBIT P-5 photograph referred to showing the Saskatchewan in
sunken condition.

By MR. TOWERS: Q. Did you see the Paisley when she was in touch
with the Saskatchewan?

A. Not when she was in touch with the Saskatchewan.

Q. Close to her? A. Yes.

Q. How close? A. From where I was standing, as I said before, the
forward end of the boiler house, she looked to be perhaps 20 feet away.

Q. Do you see that place there where the ice is broken, in this P-5, it 10
appears to have been broken as if a path or something had come up here?

A. It looks like it there.

Q. What would you say, that was the path of the Paisley coming in?

A. No, I wouldn't say that.

Q. Where would you say she came in?

A. If that was taken on that date, the 20th, as I remember the situa-
tion there was no ice or very little ice in the slip.

Q. I am told that she went through a considerable portion of ice before
striking the Saskatchewan?

A. Well just the floating ice, sir; it wasn't solid. 20

Q. And you think this was taken afterwards. When exactly was the
Saskatchewan raised?

A. We had her up thirty-six hours after she finally came to rest at ten
o'clock in the morning of January 19th, 1927.

Q. Well then it is quite clear that I am wrong and you are wrong when
you say that this photograph would have been taken on the 28th because she
was raised?

A. I don't think that photograph could have been taken on the 28th
because her discharge pipe was still under water.

Q. So that you say then this photograph was taken within thirty-six 30
hours of the 20th?

A. Of the 19th.

HIS LORDSHIP: Within thirty-six hours after the accident.

MR. TOWERS: Yes.

HIS LORDSHIP: Well then that applies also, Mr. Towers, to S-6
which shows her on the bottom on the 20th, is what the evidence is.

MR. TOWERS: I think she was on the bottom, my Lord, but the wit-
ness said no, she wasn't on the bottom.

HIS LORDSHIP: The witness however said that S-6 shows the Sas-
katchewan on the bottom on the 20th January. 40

MR. TOWERS: He said within thirty six hours of that morning.

HIS LORDSHIP: Show him S-6.

Q. That is of the two boats together?

A. It is absolutely on the bottom there.

By HIS LORDSHIP: Q. I thought she was raised on January 19th?

A. No, she was sunk; she finally came to rest at ten o'clock in the morn-
ing of January 19th.

Q. She was sunk completely?

A. She was right on the bottom then.

Q. I thought you said raised?

A. No, my Lord.

Q. Sunk completely thirty-six hours after the accident, which would be 10 a.m., January 19th?

A. No sir.

Q. Well then what is it.?

A. Well she was struck on January 18th.

10 By MR. TOWERS: Q. At ten in the morning?

A. At ten in the morning, and she finally came to rest on the bottom, sunk, January 19th about ten o'clock.

Q. About twenty-four hours?

A. Yes, about twenty-four hours; then thirty-six hours afterwards we have a photo.

By HIS LORDSHIP: Q. What is P-5? That is Position within thirty-six hours after the accident, is that right? Have I got that right? What does that show?

A. That shows steamer before she was fully raised.

20 Q. Within thirty-six hours after accident and not raised. Well that is P-5. What other one is there?

MR. TOWERS: P-1.

By MR. TOWERS: Q. Is she in a sunken condition in P-1?

HIS LORDSHIP: Yes, he said that, resting on the bottom.

RE-EXAMINED BY MR. WOOD:

Q. Captain, what does that photograph show?

A. She is sunk there.

Q. That will be S-7, and that is another view.

By HIS LORDSHIP: Q. S-7 shows what?

30 A. She is sunk in that, sir.

—EXHIBIT S-7 photograph showing Saskatchewan sunk.

By MR. WOOD: Q. And this S-7 is just another view taken at the same time that P-5 was taken? A. Yes.

Q. Or taken the same day?

A. I think this is a little later than this one.

Q. P-5 is a little later than S-7?

A. It seems to me that way.

MR. HOLDEN: That, my Lord, is the case of the Canada Steamship Lines Limited, owners of the Saskatchewan.

40 HIS LORDSHIP: Now, Mr. Wood, are you putting your case in?

MR. WOOD: I have nothing further at this stage, my Lord.

HIS LORDSHIP: You are closing your case too?

MR. WOOD: Yes.

HIS LORDSHIP: Well, Mr. Towers, does this call for a defence?

MR. TOWERS: My Lord, there is some correspondence which I understood my learned friends were admitting.

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Plaintiffs'
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Wm. Edward
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No. 25.

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(continued).

HIS LORDSHIP: Before you go into it, see if they are admitting it.

MR. HOLDEN: I thought when we were doing that that we agreed that this would be admitted to be the correspondence it purports to be, I don't know what the custom is here, but we are not admitting any relevancy, but we are not putting our opponents to the proof of the documents.

HIS LORDSHIP: The only thing is that if they are not relevant they are not admissible. Do you want us to have them put in subject to your right to object to their relevancy?

MR. HOLDEN: This correspondence, my Lord, as I understand it refers to the relations between the tow owners and the tug owners. 10

MR. TOWERS: Yes.

MR. HOLDEN: And we submit it won't help Your Lordship in the question of what happened on that morning.

HIS LORDSHIP: I won't admit any correspondence that isn't relevant unless by consent, subject to objection.

MR. TOWERS: I will call Mr. A. E. R. Schneider, my Lord.

*Defendant's
Case.*

No. 26.

*A. E. R.
Schneider.
Examina-
tion-in-Chief.*

D E F E N C E

ALBERT E. R. SCHNEIDER, Sworn.

EXAMINED by MR. TOWERS:

MR. TOWERS:

Q. Mr. Schneider, you are the General Manager of the Cleveland Cliffs Iron Company? **A.** Yes, Manager of the Marine Department. 20

Q. And is that company the owner of the Steamer Robert J. Paisley?

A. No sir.

Q. Are they the operators? **A.** Operating Managers.

Q. And were in January 1927? **A.** Yes sir.

By HIS LORDSHIP: **Q.** Operating Managers of the Steamer?

A. Yes, my Lord.

Q. Who are the owners of the Steamer? **A.** The Steamer is owned by the Paisley Steamship Company, and the Cleveland Cliffs Iron Company operate her. 30

Q. And you operate for them? **A.** Operate for them.

By MR. TOWERS: **Q.** And in January, 1927, the vessel was laid up in winter quarters in Owen Sound Harbor? **A.** Yes sir.

Q. Having been placed there about when? **A.** In the latter part of 1926, along about the close of the season.

Q. And she was loaded with grain? **A.** Grain.

Q. Did you have some correspondence with the Harrison Tug Company with regard to—?

HIS LORDSHIP: That is admissible, that he had correspondence; that is as far as we can get. 40

Q. Did you have some correspondence with the Harrison Tug Company?

A. Yes sir.

Q. As to the—?

MR. HOLDEN: My learned friend should not discuss it.

HIS LORDSHIP: No, just that you had correspondence with the Harrison Tug Company. With regard to what?

Q. With regard to a contract under which the Tug Company would shift your vessel under the Great Lakes elevator as and when required to remove her cargo? A. Yes sir.

MR. HOLDEN: I want to object.

MR. TOWERS: That is the subject matter of the contract.

HIS LORDSHIP: That is a fact anyway.

10 Regarding a contract under which the Tug Company would shift the Paisley to discharge her cargo, is it?

MR. TOWERS: To discharge her cargo of winter storage wheat.

HIS LORDSHIP: Having now got the fact that he has correspondence—

MR. TOWERS: Then I would ask him if he did make a contract.

HIS LORDSHIP: What is the relevancy of that as to the defendant?

MR. TOWERS: Really the defence is at the time of this occurrence the Cleveland Cliffs Iron Company or the owners of the vessel—

HIS LORDSHIP: No, they are operators.

20 MR. TOWERS: Yes, but my Lord, the Cleveland Cliffs Iron Company or the owners of the vessel, neither the Cleveland Cliffs Iron Company nor the owners of the vessel had any charge or control over her, that she was being shifted under a contract made with the Tug Company by the Tug owners and operators.

HIS LORDSHIP: Well assuming that is so, what difference does it make in an action in rem?

MR. TOWERS: Well it would make the difference, my Lord, that without proof of negligence on the part of the owners or the operators, who are undoubtedly the owners' servants, without proof of that negligence there can be no recovery.

30 HIS LORDSHIP: No recovery against the ship?

MR. TOWERS: No, my Lord.

HIS LORDSHIP: Why? Just give me your proposition of law now.

MR. TOWERS: I was about to read the law as laid down in—

HIS LORDSHIP: Here we have, as I understand the conditions, the Paisley when being moved by somebody ran into the Saskatchewan and hurt her. Now they are suing the Paisley.

MR. TOWERS: Yes, my Lord.

40 HIS LORDSHIP: And do you say that unless they can prove negligence in the Paisley Steamship Company—I suppose a foreign corporation—that there can be no recovery of that damage here?

MR. TOWERS: Yes, my Lord, and I think that is unquestionably so. I call Your Lordship's attention to *Riverwear Commissioners v. Adamson*, 2 A.C., Page 743, at Page 677; Lord Blackburn laid in down in 1877 and that case has been followed consistently down to 1926.

HIS LORDSHIP: And the negligence of those on board has nothing whatever to do with it? Of those who are moving her?

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MR. TOWERS: No, my Lord, the Tug Company were moving her.

HIS LORDSHIP: You come here and say "Well the owner has nothing to do with this, we hired a tug, the tug did the damage, therefore we are not responsible."

MR. TOWERS: That is true, my Lord.

HIS LORDSHIP: Well I will hear argument on it, I think, before I admit any evidence.

MR. TOWERS: Very good, my Lord. I will read Lord Blackburn's Judgment and I can only say to Your Lordship that—

HIS LORDSHIP: If it is the law I suppose Mr. Holden and Mr. Wood 10 will agree with you.

MR. TOWERS: I think perhaps they will.

MR. HOLDEN: I think you are a bit hopeful.

HIS LORDSHIP: I don't remember it being raised in a great many cases.

MR. TOWERS: My Lord, in the Knight Errant in 1912 a tug and tow were going up the Mersey and it was held at the trial that the tow came up too quickly, on a port wheel I think it was, and that both tug and tow were liable for the collision with a lighter but on appeal it was held that the tow was not in fault, they were completely exonerated, the tug had towed them into 20 the lighter. I can see no distinction between that case and this, my Lord.

HIS LORDSHIP: Is it sufficient for your purpose, apart from the correspondence, for this gentleman to say that I made a contract with the Harrison Tug Company under which this movement was made?

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: Is that all you want to prove?

MR. TOWERS: By this gentleman.

HIS LORDSHIP: That is all you want to prove?

MR. TOWERS: By him. And what the contract is.

HIS LORDSHIP: And put the contract in? 30

MR. TOWERS: I wish to put it in.

HIS LORDSHIP: That is all you wish to do by this man, the correspondence has nothing to do with it after the contract had been made?

MR. TOWERS: He wrote the letters and so on.

HIS LORDSHIP: I know, but can you prove that, what you call the contract, to be the contract between these two parties?

MR. TOWERS: Oh yes.

HIS LORDSHIP: Well then if that is all you want to prove by it, subject to the question of the law that arises out of the contention, is there any objection to proving it? 40

MR. HOLDEN: Well I submit that my friend and I for the Saskatchewan and her owners should place it on record now it is put in subject to our objection, because contrary to my learned friend's hopeful suggestion that we would admit it, my respectful submission and contention is that our ship having been pierced by the anchor of the other ship when the other was manoeuvring about the harbor would place the burden of proof upon the Paisley, not upon the tug or upon any contracting party but upon the ship that did

the damage to prove that it was force majeure, as we call it in our Province—proof it was impossible for her to have prevented or avoided her. Now that is the situation. That is not a question of under what arrangement she was being moved or anything of that kind; she made a hole in our side; has Your Lordship proof to satisfy himself that it was inevitable so far as she was concerned.

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HIS LORDSHIP: Supposing the Paisley had been moving and another vessel had hit her and shoved her into you wouldn't it be permissible for them to show that?

10 MR. HOLDEN: Oh yes, my Lord, all the facts as to the occurrence, and then Your Lordship's responsibility, I submit, is to decide whether there is such a set of circumstances that she, that is the ship, that made the hole in the other, could not have avoided doing so.

HIS LORDSHIP: Well then do you think the facts that are quite sufficient are that the Paisley made the hole and she was in charge of a tug at that time?

MR. HOLDEN: I think one element of that is that she was in charge of a tug.

20 HIS LORDSHIP: Would it not be fair to allow the conditions under which she was in charge of the tug?

MR. HOLDEN: I, for one, certainly don't want to try to insist if Your Lordship decides that it may throw some light on the whole situation.

HIS LORDSHIP: I don't want to shut out anything that is material to Mr. Tower's argument but I am discussing it because I want to confine it to what I think is probably the only distance he can go. Of course I am open to be convinced but I don't know that I can accept at present Mr. Tower's proposition, but if in order to found that proposition before me he wants to show that the tug had the contract with the Paisley owners to do this and was doing it in pursuance of that contract I don't see that it will do anybody
30 any harm. I don't think the terms of that contract can possibly affect you.

MR. HOLDEN: Because my friend was good enough to let me have a look at it, I see there is a reference to a possible alternative of using more than one tug, having more than one tug available. It may be of some help to us in other aspects. All I had in mind was it doesn't affect, the contractual relations between the boat that pierced our side and the tug that was towing it, are of no help to Your Lordship. In having made that statement I don't want to shut it out if there is any doubt, I want my learned friend to have the full latitude.

40 HIS LORDSHIP: Then it will go on subject to your objection, and I think that I will agree to your putting in the contract if this witness testifies that is the contract, and he I suppose can say that, having made the contract, things were left to the tug to move.

MR. TOWERS: Quite so.

HIS LORDSHIP: Then you may put in the contract and I will have to consider whether any of the details of the contract affect the defence.

MR. TOWERS: Without going into the whole argument, my Lord, if Your Lordship would—

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HIS LORDSHIP: I won't hear argument because I am admitting it now and you may labor upon the basis of it later. Put in the contract and ask the witness if that is the contract under which the tug was acting on the 18th January, 1927.

Q. I show you copies—were admitted to be copies, I think?

MR. WOOD: Oh, I think so.

Q. Of correspondence, Mr. Schneider, which is said to have passed?

MR. WOOD: There was no written contract; it was all by correspondence.

HIS LORDSHIP: Do you all agree it is necessary to put in copies of 10 these letters to prove the contract?

MR. WOOD: Yes.

HIS LORDSHIP: Letters between what companies, the Cleveland Cliffs—?

MR. TOWERS: Letter from the Great Lakes Elevator Company first, my Lord.

HIS LORDSHIP: I don't want that; I want to get the contract between the tug and the owners or operators in the first place.

WITNESS: John Harrison & Sons Company.

By HIS LORDSHIP: Q. Letters between whom? 20

MR. TOWERS: Letters and telegrams. A. John Harrison & Sons Company.

Q. And whom? A. Cleveland Cliffs Iron Company.

MR. TOWERS: The Marine Department.

HIS LORDSHIP: You are putting in letters between those people between what dates?

MR. TOWERS: November 6th, 1926, my Lord, and January 28th, 1927.

HIS LORDSHIP: You have the letters between them. You wanted to put in some more, do you? 30

MR. TOWERS: No, my Lord. There is one letter in which the Great Lakes Elevator Company wrote to the Harrison Company.

HIS LORDSHIP: What date is that?

MR. TOWERS: What date is that?

MR. TOWERS: Great Lakes Elevator Company Limited, November 6th, 1926.

HIS LORDSHIP: To whom?

MR. TOWERS: To Cleveland Cliffs Iron Company.

HIS LORDSHIP: Now these letters go in subject to objection of Counsel for both plaintiffs. 40

—EXHIBIT P-6: File of correspondence above referred to.

HIS LORDSHIP: Will you please prove by this witness that those constitute the contract?

MR. TOWERS: Yes, my Lord.

By MR. TOWERS: Q. Did you by means of these letters make an arrangement with John Harrison & Sons Limited to keep the harbor free from

ice for the purpose of your boats and to move your vessels in the harbor of Owen Sound for the purpose of discharging their winter storage cargoes and take them back to their moorings?

HIS LORDSHIP: That is not all necessary; there is the contract which you put in before me.

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: Isn't the only question this gentleman can say anything about that that constitutes the contract under which the Paisley was moved?

10 MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: I will have to look at that; there is no use going into details.

MR. TOWERS: No. Your Lordship asked me to prove what contract was made.

HIS LORDSHIP: No, I asked you to prove that these papers constitute the contract under which the Paisley was moved.

WITNESS: Yes.

Q. They do? A. Yes.

HIS LORDSHIP: Under which the Paisley was moved by whom?

20 Q. By what company was the Paisley moved? A. John Harrison & Sons Company.

Q. Using what tug? A. Well whatever tugs they had. It was up to them.

HIS LORDSHIP: You know that. I suppose it is admitted that belonged to the John Harrison & Sons Company?

MR. HOLDEN: Yes, my Lord.

Q. From the date of the making of the contract up to the 18th January, 1927, what if any control was exercised over the vessel by Cleveland Cliffs Iron Company?

30 HIS LORDSHIP: That depends on the contract.

MR. TOWERS: Well, my Lord, this is after the contract was made. I am asking the Manager of the Company if they take any control.

HIS LORDSHIP: I think it discloses the contractual relationship between them which would include the control and the moving of the tug.

MR. TOWERS: Yes, my Lord, but the contract was made three weeks before this date and I wish to show that during that period, other than giving directions possibly as to unloading (and I don't know if that were done) that there was no official control over the vessel assumed by the defendants.

40 HIS LORDSHIP: Well that is a different question. You may put that question.

Q. After the making of this contract and up to the 18th January, 1927, did the Cleveland Cliffs Company or the owners of the vessel assume any control over her?

MR. HOLDEN: One moment, may it please the Court. I would understand it if my learned friend asked this witness "Did you have your boat after, appoint your ship keeper, for instance?" I mean the contracts as I read them don't say anything such as this question would imply. It is

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a general question, as I understand it, to cover a broad situation. The fact is, as I am instructed, that the owners and their operating agents alone had the responsibility for the care of the ship and everything except that they got a tug to move her around rather than get her own steam on.

MR. TOWERS: Perhaps that is what the witness will say if he is permitted to.

HIS LORDSHIP: The contract speaks for itself, as I understood it, and I think the question that Mr. Towers can put is whether the owners or operators assumed any direct control after the making of the contract.

MR. TOWERS: As to the movements of the ship. 10

MR. HOLDEN: Oh, that is all right. The question was wider.

MR. TOWERS: It was wider, that is right.

Q. I am speaking now of the movement of the ship, Mr. Schneider. Do you remember the question or shall I repeat it? A. I remember the question. No, they did not have any control of the movement of the boat.

By HIS LORDSHIP: Q. And that includes the owners of the boat? A. Yes.

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CROSS-EXAMINED by MR. HOLDEN:

Q. This Exhibit P-6, you have had a look at it, have you? A. Yes.

Q. I mean I would like to ask you this, and take your time to see what the answer is: Does that constitute and cover all the correspondence between those companies in this connection? A. Yes, I think it does. I haven't gone over the file personally to see but I would say that it covers all that. 20

By HIS LORDSHIP: Q. You have gone over that enough to see that that is quite sufficient for your purposes? A. I haven't gone into it to take up the terms.

By MR. HOLDEN: Q. No? A. As I say it is sufficient for my Company's purposes.

Q. What else was there between those companies with regard to this movement in writing? A. I don't know of anything. 30

Q. Well when it came along to the time when she was to be moved do you mean to say that there was no written communication between your company and the tug owners or anybody else with regard to the movement? A. Oh naturally, when the elevator would say they want the boat.

Q. Well why isn't that here? A. Well that may have been done by telephone.

Q. No, but I am asking you was it done by wire or letter or anything that there is a record of? A. Well there may be, as I say, a telephone call about that.

Q. You say maybe. I think it is due to the Court when you come here and file certain documents as stating the arrangements made between your company and the tug owners that you should file all that remained, and particularly that part of it which referred more particularly to the movement. Will you now file whatever else there was? 40

HIS LORDSHIP: Do you know, Mr. Towers, whether there was any correspondence or anything in writing as to when and how this vessel was to be moved?

MR. TOWERS: I do not.

HIS LORDSHIP: Would your client like to look over the correspondence before he answers Mr. Holden's question so that we can go on with another witness while he is doing that?

MR. TOWERS: I would like very much if he would. So that my learned friend and Your Lordship won't think I was taking any correspondence
10 out of the file, I was merely trying to prove a contract.

HIS LORDSHIP: Quite so. That is probably something that might not occur to the witness.

MR. HOLDEN: Perhaps I can go ahead and shorten it:

Q. I am handing, Mr. Schneider, a copy of a telegram sent by you and addressed to the tug owners dated January 14th, the day before the tug started its communications with the ship, reading: "Elevator ready to unload Steamer Paisley. Place accordingly and notify A. R. Penrice Ship Keeper."

Did you send that telegram on that day?

That is not in P-6, I understand.

20 **MR. TOWERS:** No.

A. I think I did; it looks like it; it looks perfectly in order.

Q. Would you mind verifying it and letting the Court know before this trial is over if you did? I have no doubt you did? **A.** I wouldn't state I did not. I would say yes.

—**EXHIBIT S-8:** Copy of telegram above referred to. January 14th.

Q. This A. R. Penrice whom you told the tug owners to notify, who was he? **A.** He was the ship keeper on the Paisley.

Q. Placed on the Paisley by whom? **A.** By us.

Q. As the operating agents for the owners? **A.** Yes.

30 **By HIS LORDSHIP: Q.** Was he placed there at the beginning of the season? **A.** I don't remember. It seems to me there was a shift made.

Q. But at all events he owes his appointment to you? **A.** Yes. I believe he was on another boat at the beginning and he shifted over; there was some shift over made, as I recollect; on account of the rooms he found it more convenient to stay on one ship and we let him.

By MR. HOLDEN: Q. Your company had more than one ship in the Harbor of Owen Sound that winter? **A.** Yes, we had four.

40 **Q.** And the man on the ship he represented you as the operating owners in looking after the movements of all four? **A.** Not looking after the movement, I beg to differ with you; he was just our representative there to see and watch the property, see that it was being cared for, and if anything happened to report.

Q. Well was he representing you and your owners during the movement as well as before and after the movements? **A.** Just under those conditions, as I said.

Q. But he was your representative during the movement? **A.** He was our representative, yes.

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Q. And he went aboard—am I right that he, Penrice, went aboard the other ships when they were being moved? A. I believe he did.

Q. And he was aboard the Paisley when she was being moved? A. Yes sir.

Q. Did he have other men on board the Paisley when she was being moved? A. I don't know.

Q. Well did you pay for any other men, your company, for the assistance of any other men that Penrice got to help him when the Paisley was being moved? A. I would have to look in the records and see. I could get that.

Q. Well excuse me, sir, you are the Manager—?

MR. TOWERS: Yes, we did; there is no question about that.

Q. Your Counsel says you did pay for other men. Are you the Manager? A. Manager of the Fleet, yes.

Q. I gather then from your previous answer you left all that to Penrice, he would engage whom he thought he needed to help him during the movement and you paid for whomsoever he got? A. Well a certain number of men, he might have, yes.

By HIS LORDSHIP: Q. You said you were something of the Fleet. What was that? A. Manager.

By MR. HOLDEN: Q. Manager of the Fleet of four vessels that were wintering in Owen Sound Harbor, one of which was the Paisley? A. Twenty-three vessels, to be exact.

Q. But not—? A. Of those four boats, yes.

Q. Four of the twenty-three were in Owen Sound?

A. Of these four there, different companies represent them.

Q. And you were manager of twenty-three? A. Yes.

Q. And those four were amongst them. And you left it to Penrice to get what help he needed and to do whatever he thought best in connection with the movement of the Paisley? A. He had nothing to do with the movement of the boat.

Q. I want to know and would prefer if you could give it to the Court an answer yes or no, did you leave everything to him so far as that is concerned?

A. Well in what respect leave things to him?

Q. With respect to the movement of the ship that you were managing and the valuable cargo that there was aboard of her? A. Not the movement of the boat, no.

Q. Do you mean to say your owners for whom you were acting and your cargo owners who had their goods on board had nobody representing them during the movement of the ship? A. We had our man there, yes, on board, but he did not direct the movement of the boat.

By HIS LORDSHIP: Q. Who was the man? A. Penrice.

By MR. HOLDEN: Q. And did Penrice himself select and procure, hire and pay whatever men were on board with him during the movement? A. Yes sir.

Q. And did the other three boats that were in Owen Sound Harbor have ship keepers aboard? A. Yes sir.

Q. And did Penrice over their heads, as their superior in your employ, look after your interests and your owners' and your cargo owners' during the movement of those other three boats? A. Yes sir.

Q. My associate, Mr. Wilkinson, points out that that letter has nothing to do with it. (Showing). Is that right?

MR. TOWERS: Is that the last letter?

Mr. HOLDEN: The last letter.

MR. TOWERS: I submitted this correspondence a week or more ago to my learned friend.

10 HIS LORDSHIP: Well now you see the consequences.

MR. TOWERS: Yes, they object to its insufficiency and think it is too much.

A. That has got nothing to do with it. I don't know what that is in there for.

MR. TOWERS: An inquiry as to the size of lines, that is all.

Q. What is the meaning of it'?

A. I don't know what is the meaning.

MR. TOWERS: You may take it off if you like.

20 Q. This is the one we are speaking of; you might just take it off, if you will?

A. I don't see any connection with it. (Witness detaches from Exhibit P-6).

RE-EXAMINED BY MR. TOWERS:

Q. You said to my learned friend that you had some twenty-three boats? A. Yes.

Q. And do you have ship keepers for all of them?

A. Yes sir.

Q. Do they all sign a contract as ship keeper for the year? A. Yes sir.

30 Q. Did Penrice in this case? A. Yes sir.

Q. Will you produce that contract? A. I will.

By HIS LORDSHIP: Q. Have you got that here? A. No I haven't. I will have to get it.

MR. HOLDEN: We ought to see that.

MR. TOWERS: There is a similar one if you want to inspect it. The original will be here this afternoon.

MR. HOLDEN: I understand this is a contract for this present winter.

MR. TOWERS: This is just the form.

40 MR. HOLDEN: I am much obliged to my learned friend for showing us but the original would have to be put in.

HIS LORDSHIP: You cannot give me evidence except on the original but if you like to accept that for the purpose of trial in the meantime you may.

MR. HOLDEN: I understand Mr. Schneider will be here this afternoon when it is produced.

MR. TOWERS: Oh yes. It may not be here till late.

WITNESS: It may not be here till tomorrow.

*In the
Exchequer
Court of
Canada.*

Defendant's
Case

No. 26

A. E. R.
Schneider
Cross-
examination

(continued).

Defendant's
Case.

A. E. R.
Schneider.
Re-Exami-
nation.

*In the
Exchequer
Court of
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Defendant's
Case

No. 26

A. E. R.
Schneider
re-examina-
tion

(continued).

Discussion as
to admission
of Exhibit P7.

HIS LORDSHIP: That is as far as you can get with that?

MR. TOWERS: Unless my learned friend is willing to accept that subject to my producing the original later.

HIS LORDSHIP: You have shown it to him and offered it to him but the formal proof will have to be given later. What is your next question? They may do as they like on re-examining on it.

Q. Did Penrice actually sign the contract for that year? A. Yes.

Q. And we have undertaken to produce that? A. Yes.

By HIS LORDSHIP: Q. Then, Mr. Schneider, when you get that you will produce it? A. Yes.

By MR. HOLDEN: Q. You will be here when the contract is produced, won't you?

A. Oh sure.

MR. TOWERS: By consent, my Lord, we are putting in Mr. Morris'—

MR. HOLDEN: I don't think it is by consent. I think my learned friend got Mr. Morris to produce it. He asked him to produce it and here it is.

HIS LORDSHIP: What is it?

MR. TOWERS: Winter mooring orders for 1926-27 which I asked Mr. Morris if he would produce yesterday morning. Mr. Morris, the surveyor, the second witness.

HIS LORDSHIP: What do you want to do with that?

MR. TOWERS: I would like to put that in, my Lord. I understood from my learned friend Mr. Wilkinson that was agreed upon.

HIS LORDSHIP: What authority are they?

MR. TOWERS: The Salvage Association directs the laying up of these ships and all parties agree to the authority of the Salvage Association.

MR. HOLDEN: My Learned friend isn't giving evidence.

HIS LORDSHIP: Mr. Morris swore he was Surveyor of the Salvage Association of London for this district and he represented all hull underwriters. And those were the instructions he issued?

MR. TOWERS: Yes; they direct the laying up, mooring and berthing of these vessels.

MR. HOLDEN: I thought this was the other Association he represented two associations. The American Bureau of Shipping was his other Association and my learned friend asked him to produce this document and he hadn't that with him and he has since sent it up.

HIS LORDSHIP: Are they issued by the Salvage Association of London?

MR. TOWERS: No.

HIS LORDSHIP: He didn't say whom they represented.

MR. HOLDEN: All he said was they were a classification society. I am afraid Mr. Morris isn't here, my Lord.

HIS LORDSHIP: Well he said that he represented all hull underwriters as the Surveyor of the Association of London but he didn't say that for the American Bureau of Shipping.

MR. HOLDEN: No. That was another one. I think Your Lordship will find in your notes he was the Surveyor for the Salvage Association of

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London which Association represented all hull underwriters and he said that he was also representative for this district for the American Bureau of Shipping which is a classification society in the United States.

HIS LORDSHIP: Yes, I think I remember that.

MR. TOWERS: Under which the Paisley is classified.

HIS LORDSHIP: But not moored or moved.

MR. TOWERS: Yes, my lord, this deals with the winter mooring 1926 and '27.

HIS LORDSHIP: I know, but the question is the authority of these.
10 If they are published by the Salvage Association of London, under the evidence that you have given I could admit them, but not the other.

MR. TOWERS: I will have to call Mr. Morris then because I consented to him going home yesterday on the understanding that Mr. Wilkinson admitted these.

MR. HOLDEN: I am not objecting if it is going in because he brings this here, but I am objecting to the relevancy.

HIS LORDSHIP: You had better put them in under those circumstances.

MR. HOLDEN: And it is a letter from the American Bureau of Shipping.

20 HIS LORDSHIP: It is a letter by the Bureau of Shipping to the Underwriters?

MR. HOLDEN: Just a circular letter by the Bureau of Shipping with the heading "Winter mooring 1926-1927."

HIS LORDSHIP: No date?

MR. HOLDEN: No date.

HIS LORDSHIP: Admitted subject to objection.

—EXHIBIT P-7 document referred to, "Winter mooring 1926-1927."

HIS LORDSHIP: Where does Mr. Morris live?

MR. TOWERS: In Toronto, my Lord.

30 HIS LORDSHIP: You will be able to get him?

MR. TOWERS: Yes.

HIS LORDSHIP: I would like to clear that up.

AMBROSE EDWARD TELLIARD, Sworn,

EXAMINED BY MR. TOWERS.

Q. Mr. Telliard, how long have you sailed as engineer?

A. Twenty-one years.

Q. And in the season of navigation of 1926 what boat were you in?

A. Chief Engineer of the Steamer Paisley.

40 Q. What duties has the Chief Engineer after the boat ceases her navigation for the season?

A. Why after the boat ceases running in navigation season we generally lay up, drain all water from all things and prepare her for— Of course we prepare our boats to go in the spring.

Q. That is, in your parlance, you fit out immediately after laying up?

A. We lay up first and then fit out so that we can go.

*In the
Exchequer
Court of
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Defendant's
Case.
Discussion as
to admission
of Exhibit P7.

(continued).

Defendants'
Case.

No. 27.

Ambrose
Edward
Telliard.
Examina-
tion-in-Chief.

*In the
Exchequer
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*Defendant's
Case.*

No. 27.

*Ambrose
Edward
Tellard,
Examina-
tion-in-Chief.*

(continued).

Q. Was that done on board the Paisley at the close of the season of navigation in 1926? A. Yes sir.

Q. And she was laid up in Owen Sound Harbor?

A. Yes sir.

By HIS LORDSHIP: Q. What papers have you as Chief Engineer?

By MR. TOWERS: Q. What are your papers? A. Chief Engineer of Ocean steamers of any type.

By HIS LORDSHIP: Q. Issued where?

A. At Cleveland, Ohio.

Q. Papers for ocean steamers, etc. I will put. Those are United States 10 papers, are they?

A. Yes sir.

By MR. TOWERS: Q. The Paisley is a United States vessel? A. Yes sir.

Q. And would these ocean-going papers cover the—?

A. Take anything. Take any ship that is under the American flag.

By HIS LORDSHIP: Q. Take the Leviathan?

A. Under the American flag, of course.

HIS LORDSHIP: Well that is under the American flag.

By MR. TOWERS: Q. Then the Paisley, were her engines laid up in 20 the Harbor of Owen Sound at the close of navigation in 1926? A. Yes sir.

Q. And that would be completed about when?

A. About the 15th of December.

Q. Do you recollect when you left the ship?

A. The 15th. About the 15th.

Q. When you left what was the condition of the power, the steam or anything like that?

A. When I left everything was laid up, there was no power aboard the ship.

Q. Anything about her steering gear? 30

A. The steering gear was laid up.

Q. Would it be possible to use it unless her fitting out was completed and she was put in commission?

A. No, it would be impossible to use it.

MR. HOLDEN: May I have that whole question again? Q. Would it be possible to use the steering gear unless the fitting of the vessel was completed and she was in commission? A. She wasn't under steam.

MR. HOLDEN: Had she been fitted out?

HIS LORDSHIP: He said the steering gear couldn't possibly be used.

MR. HOLDEN: Steam steering gear, was it? 40

MR. TOWERS: I was proceeding to ask him to deal with the steam, and the hand gear if any.

A. CONT'D: There was no hand steering gear on the steamer.

Q. Do you know Captain Waugh?

A. Why I have met the man twice—two or three times.

Q. Who was he? A. Well he was Captain on the tug in Owen Sound.

Q. Do you know the name of the tug?

- A. I didn't—The Harrison, I believe.
- Q. Where is your home, by the way? A. In Cleveland.
- Q. Before leaving Owen Sound on or about December 15th, 1926, did you have any interview with Captain Waugh? A. Yes.
- Q. Just tell the Court?
- HIS LORDSHIP: What date?
- Q. About when? A. About the 13th or 14th, a day or so before; I don't recollect just when; I was notified that the Captain was aboard and wanted to see me and I went up forward and he was on the up No. 1 hatch.
- 10 Q. Who was? A. The Captain was on No. 1 hatch.
- Q. The Captain? A. The Captain of the tug.
- By HIS LORDSHIP: Q. Give us his name, will you? A. Captain Waugh was on the No. 1 hatch, and I said Good morning—
- Q. Don't give us all these complimentary things?
- A. He said—I wanted to know what he was aboard the boat for—he said, I want to go over and find out what facilities you had arranged for me to raise these anchors up in order to shift the boat over. That is he was going to shift the boat and he wanted to find out. So I went back and got the key and opened up the room and showed him.
- 20 By MR. TOWERS: Q. What room would that be?
- A. The hallway, on the port side.
- Q. Leading to the windlass room? A. To the windlass room.
- Q. Forward? A. Forward.
- Q. Below the upper deck? A. Below the upper deck. And I showed him the anchor windlass as it was fitted out.
- By HIS LORDSHIP: Q. You showed him the hallway on the port side to the windlass room?
- A. To the windlass room.
- By MR. TOWERS: Q. The hallway on the port side on the main deck
- 30 below the upper deck? A. Yes sir.
- Q. Forward? A. Yes sir.
- Q. And showed him first your windlass? A. The windlass.
- Q. The windlass itself? A. The windless itself.
- Q. What is the purpose of the windlass?
- A. To raise the anchors.
- Q. And you showed him the windlass and what else?
- A. And the way I had it cleared for him to raise them anchors.
- Q. Now what would it be necessary for him to do to use the windlass?
- A. Why he would have to connect it up for steam; he couldn't work
- 40 it by hand.
- Q. Well then there were arrangements made so that he could connect it?
- A. I had an inch and a half steam line running to it over to the deadlight on the port side.
- By HIS LORDSHIP: Q. A what? A. An inch and a half.
- By MR. TOWERS: Q. Steam pipe connected up to the windlass and carried over to the deadlight? A. Carried over to the deadlight so that he could connect on a steam hose, and a two inch—

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No. 27.

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tion-in-Chief.

(continued).

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Ambrose
Edward
Tellier,
Examina-
tion-in-Chief
(continued).

Q. The deadlight being where? A. Be about five feet above the deck.

Q. The deadlight being an aperture covered by a door? A. A glass.

Q. And where is the door, in the side of the vessel? A. Yes.

By HIS LORDSHIP: Q. And a two inch what? A. A two inch exhaust line running over the side.

Q. What is an exhaust line? A. For the escaping steam after it had been expanded in the engine, expend it in the atmosphere.

By MR. TOWERS: Q. So that when he connected up to the inch and a half steam line the steam would then pass through an engine, would it?

A. Yes sir.

Q. And operate the engine, which would operate the windlass and then the steam would be exhausted and carried away? A. Out in the atmosphere.

Q. Outboard?

By HIS LORDSHIP: Q. It was all ready to work the windlass when he attached the steam? A. It was.

By MR. TOWERS: Q. Did you show him anything else? A. I showed him where the locking apparatus was and the bars to manipulate it with; there is bars, you have to throw in dogs to manipulate from one side of the wildcat to the other. And I explained to him where the bars could be found.

Q. Was there anyone with him? A. No sir, he was alone; there was nobody with him.

Q. Well what else if anything? A. Well then I asked him to when he got through—

By HIS LORDSHIP: Q. What is that? A. I asked Captain Waugh, I said "When you are through with this anchor windlass will you please run it for a few moments to work the water out of it and, I said, then shut her off and she will be all right, no danger of the frost breaking her," and he said "All right," he would, and we walked out and that is the last I seen him until I met Captain Waugh here."

By MR. TOWERS: Q. At the time of this conversation was there any ship keeper aboard? A. No, there was no ship-keeper aboard.

Q. Was there any conversation between you and Captain Waugh with regard to any person in charge of the boat or to be in charge of the boat? A. I don't know of any. In fact it was two days after—

Q. I say was there any conversation between you and Captain Waugh about that? A. No.

Q. And it was two days after what—? A. It was two days after before I got the communication after to find out if they were going to have a ship keeper, the last day I was in Owen Sound.

Q. Did you fit out the ship the next spring? A. I did not.

CROSS-EXAMINED by MR. HOLDEN:

Q. When you left the Paisley was there anybody looking after her?

A. Why there was a ship keeper was sent from the Steamship Fleming; I do not recollect his name.

Q. But there was one? A. There was a ship keeper arrived that afternoon.

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By HIS LORDSHIP: Q. What afternoon? A. The afternoon that I left, of the 15th.

Q. What was that date? A. The 15th of December.

By MR. HOLDEN: Q. That you left the ship or Owen Sound? A. That I left the ship.

Q. And was it that day that you saw Captain Waugh? A. No, I seen him previous to that.

Q. Well then a ship keeper came before you left. Did you tell him what you had arranged with Captain Waugh? A. No, I did not.

10 Q. Did you tell anybody? A. I told nobody.

Q. When you say that there was no hand steering gear on the Paisley, if you don't mind I would like to see if I understand you right for the Court's information: Am I right that if the steam steering gear on my ship goes out of commission I get the tiller from wherever it is stowed away and ship it onto the rudder post? A. That is the only way you can do her on the Paisley, and handle her with block and falls.

Q. There was a tiller? A. There was a tiller.

20 Q. And they could have steered her by hand with that if they had placed the tiller on the rudder post? A. Well laying up the mate generally puts a cable through that tiller and fastens it to both sides of the ship to the rail so that it would be impossible for the ice or anything to shift that in the winter.

Q. Well then let me see if the Court has the full information: Were you the last of the ship's company to leave the Paisley? A. I was.

Q. And when you left you dismantled or disconnected the stem steering gear? A. Yes sir.

Q. So she wouldn't steer by steam? A. No.

Q. And somebody tied up the tiller in such a manner that she couldn't be steered by hand? A. By hand.

30 Q. Did you know that she was to be shifted with her large cargo of grain? A. Well as we weren't laying at the elevator why I would take that that she would have to go to the elevator to unload so they would have to shift her.

By HIS LORDSHIP: Q. Had you that in mind when you were finishing up laying her up? A. Why that is why I made provisions for Captain Waugh to raise the anchor windlass. If she was going to lay there all winter we wouldn't need that.

By MR. HOLDEN: Q. Who was the Master of the Paisley that fall? A. Captain Olaf Nelson.

40 Q. And did Captain Nelson tell you to tie up the tiller as well as disconnect the steam steering gear so that nobody could steer her when she was being shifted? A. Of course I had nothing to do with the tying of the tiller. All I have is the power equipment.

Q. But you do know that the tiller was tied up? A. Yes.

Q. Do you? A. It generally is in the fall.

Q. Do you know whether the tiller was tied up on the Paisley that time?

A. I think it was; I am pretty sure it was.

Q. Where was your home? Where did you go? A. Cleveland, Ohio.

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Edward
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(continued).

Q. So you weren't available then if you were to get up steam on the 18th January even if they had wanted to? A. No sir.

Q. Were you on her this past summer? A. No sir.

Q. You didn't have anything to do with her the following spring? A. I had nothing to do with her the following spring.

By MR. TOWERS: Q. You say you had nothing to do with laying up the steering gear. Had you anything to do with laying up the anchors or either of them? A. No sir. I have absolutely nothing to do.

Q. The shackles or anything of that? A. No, no! Absolutely nothing, no shackles of any description, outside of power machinery. 10

By MR. WOOD: Q. Just one question to clear up: You spoke of laying up and fitting out. What does that mean? Were they done at the same time? A. No, you go—When we were to our winter quarters we take down our machinery and any overhauling that we have to do with it we overhaul it at that time, we send the parts to the shop, we drain all water from all piping and any place that is liable to do any damage to the ship.

Q. But the fitting out is done in the spring? A. No, we do our fitting out in the fall. Then we have everything put in condition so that in twenty-four, fourteen or eight hours we can go and fill our boilers and be on our way.

MR. WOOD: That is what I wanted to get; I think that is sufficient. 20

By MR. HOLDEN: Q. And that is what you did that fall? A. That is what we did that fall.

Defendants
Case.

No. 28.

Albert W.
Ziem.
Examina-
tion-in-Chief.

ALBERT W. ZIEM, Sworn,

Examined by MR. TOWERS:

Q. Mr. Ziem, how long have you sailed?

A. Well a period of twenty-five years.

Q. Thirty-two to thirty-five? A. Twenty-five.

Q. And what papers do you hold?

A. I hold Masters inland for all the lakes except Ontario. 30

By HIS LORDSHIP: Q. Why don't you get that? A. Because the company I am working for have no boats on this lake. The company I am working for does not operate boats on this lake.

By MR. TOWERS: Q. Just above the canal?

A. Above the canal, yes sir.

Q. Mr. Ziem, were you mate on board the Steamer Robert J. Paisley in the season of 1926?

A. Yes sir, all season.

Q. And at the close of navigation in December 1926, did you in your capacity as mate superintend the laying up of the vessel? A. Yes sir. 40
Through instructions of the Captain.

Q. Where is the Captain now?

A. I believe he is not here. I understand he is in Florida.

By HIS LORDSHIP: Q. His name?

A. Olaf Nelson.

By MR. TOWERS: Q. Who actually superintends the work of laying up as far as the forward end goes?

A. Well I generally superintend the work. That is as far as, I had the men that were doing the work were under my instructions.

Q. Well how as to the tiller? Did you superintend the laying up of the tiller?

A. Of the tiller?

Q. The tiller, was it lashed?

A. I don't remember if it was or not, but I know—I think it was, yes, because we took the wheel chains off to send them to Kennedy's shop. I am not sure about that though but I think it was.

10 By HIS LORDSHIP: Q. What was it lashed with? A. I think it was lashed with pieces of line, small line.

By MR. TOWERS: Q. Then what about the wheel chains, are you sure of that?

A. I know we took the wheel chains off and sent them to Kennedy's Iron Works shop to be repaired.

By HIS LORDSHIP: Q. So that the wheel couldn't have been used at all to operate the rudder with the chains off could it?

A. I don't know. I don't think it could. It has no steam steering gear anyway.

20 By MR. TOWERS: Q. Using it by hand, that is the question, could it be operated by hand the way you left it. A. No, I don't think it could be operated by hand; I think it would be too heavy, sir.

By HIS LORDSHIP: Q. But these chains were off. You couldn't supply any power to the rudder, could you?

A. Well if they were off.

Q. Well you said they were off? A. Yes.

By MR. TOWERS: Q. Could you operate?

A. But listen, I am not sure of whether— We have an extra set and I am not sure whether we put that extra set up or not.

30 Q. Up where? A. Up in place.

By HIS LORDSHIP: Q. I know, but you just said now these chains were sent off some place to be repaired?

A. Yes, but we have an extra set.

Q. Are you guessing that you had another one there or are you stating that you remember it?

A. I don't remember if I did put them up then or in the spring, because I am not sure, because I know that when the ones came back in the spring I got the ones which came back up again.

40 Q. And when you put them on again in the spring did you have to take others off?

A. Yes, I think I did. They were on.

Q. Now is that a sure case of memory, you remember taking those off?

A. I remember taking them off. I took the one set off and put the other set on.

By MR HOLDEN: Q. But I understand the wheel chains have nothing to do with steering by hand; when you ship the tiller you don't need the chains, do you?

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Ziem,
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tion-in-Chief.*

(continued).

A. When you shift the tiller?

Q. When you put the tiller in place so as to steer her by hand do you still need these chains? A. Yes sir.

Q. Oh, you do? A. Because they are connected to the emergency hand wheel.

By MR. TOWERS: Q. Did you lay up the anchor?

By HIS LORDSHIP: Q. You need these chains when you are operating by hand? A. Yes sir.

—1.00 o'clock p.m. adjourned till 2.00 o'clock p.m.

—2.00 o'clock p.m. Resumed:

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ALBERT W. ZIEM continued:

By MR. TOWERS:

Q. Mr. Ziem, before the adjournment you told us about laying up the steering gear of the Paisely in December 1926. Did you also have charge of laying up the windlass and anchors forward? A. Yes sir.

Q. Just tell the Court how you laid them up, what was done? A. Well—

Q. Take the starboard anchor first?

A. The starboard anchor was the last one we laid up.

Q. Well take the port anchor first?

A. On account of the steamer Paisley only having one deck engine on 20 each end of her, the case as I understand, as the Captain stated it—

By HIS LORDSHIP: Q. Just tell what you did?

A. Well we unshackled one, the port anchor, and fastened the chain on the dock, hanging the port anchor off from the chock from the windlass room on the port side.

Q. You mean you—?

A. We used the chain as a mooring chain.

By MR. TOWERS: Q. And the anchor was slung then? A. Was hung off from the chock in the windlass room.

By HIS LORDSHIP: Q. By What?

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A. By about four or five parts of the mooring cable.

By MR. TOWERS: Q. And what was done with the shackle? A. The shackle was placed in the hole and I put a tag on it so that the men who had instructions to shift the vessel or take that anchor or chain in would be able to find it and know just where it belonged.

By HIS LORDSHIP: Q. Where did the anchor itself hang—how far down? A. It hung down about 2 feet below the chock and the bottom of it was just clear of the water.

By MR. TOWERS: Q. The bottom of it just clear of the water?

HIS LORDSHIP: That is the crown of the anchor, as I understand it? 40

MR. HOLDEN: Which part of it was clear of the water?

A. The lower end of the crown just clear of the water.

By MR. TOWERS: Was there any ship keeper aboard when you left?

A. No sir.

CROSS-EXAMINED By MR. HOLDEN:

Q. What had she on board when you left in the way of cargo?

A. Loaded with grain.

Q. She was loading or loaded? A. Loaded with grain.

Q. Did she get more after? A. I don't understand you.

Q. Did she get more grain on board after?

A. No sir, not as far as I know.

Q. You don't know of any more? A. No sir.

Q. When did you leave her? A. Either the 6th or 7th December,
10 along about that time.

Q. Who was there when you left?

A. The engineers, the Chief and second engineer and his crew were there laying up the engine room department, and the Captain was also there.

By HIS LORDSHIP: Q. What was his name again?

A. Captain Olaf Nelson, Cleveland, Ohio.

Q. Will you look at the Exhibit S-5, the photograph; that shows the anchor there on the port bow in S-5. Is that the way you left it? A. No sir.

Q. Oh, it isn't? A. There is some grain taken out of her there; the anchor was closer to the water.

20 Q. I didn't mean with regard to her draft. You say her draft had changed? A. Yes sir, the draft had changed.

Q. I meant is the anchor in the place where you left it on the ship, I don't mean with reference to that?

A. No sir.

Q. The anchor has been moved since you left it? A. Yes sir.

Q. In what way? A. It is hanging off the hawse pipe here and when I left it it was hanging off that chock up there.

Q. Show me the chock, please? A. (Witness indicates).

Q. The chock is in the next plate—?

30 By HIS LORDSHIP: Q. Where is the hawse hole that it was in, you say it was hanging against?

A. A part of the cables hung off that way leading into the hawse pipe.

Q. Where? A. Parts of the cable were leading into the hawse pipe here.

By MR. HOLDEN: Q. You left her hanging from the chock? A. I left her hanging from the chock.

Q. The chock would be there, would it (indicating)?

A. Yes.

HIS LORDSHIP; Am I right, the chock is in the next plate above?

40 A. Yes.

By HIS LORDSHIP: Q. You say it is not hanging from the hawse pipe. I will put a nought there. You left it at "X" didn't you? A. Yes sir.

HIS LORDSHIP: And now hanging from the hawse pipe here which is marked "O."

By MR. HOLDEN: Q. And how far below the chock is the hawse pipe hole, roughly?

A. It must be at least five or six feet.

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(continued).

By HIS LORDSHIP: Q. That is five or six feet lower down?

A. Lower down.

By MR. HOLDEN: Q. So that after you left they changed the anchor from the chock where it had been hanging when you left so that it then hung out of the hawse pipe hole, five or six feet lower on the bow?

A. Yes sir.

Q. Your ship, the Paisley, had steam steering gear, you have told me?

A. Yes sir.

Q. And had she an emergency gear? I am not talking about the tiller that would be put on the rudder post, I mean had she emergency gear in con- 10
nection with the steam steering gear?

A. The emergency gear consisted of the tiller, relieving tackles—

By HIS LORDSHIP: Q. Had she an emergency steam gear? A. No
sir, no emergency steam gear.

By MR. HOLDEN: Q. The tiller is a long wooden bar that is placed on the rudder post, is that right?

A. It was iron. It was placed—

Q. Iron bar on a big ship like that? A. Yes.

Q. An iron bar, and what are the relieving tackles that you speak of?

A. The relieving tackles are the tackles on each side which hook on at 20
the extreme end of the tiller.

Q. I see, in connection with the tiller there are tackles to make the moving of the rudder plate easier by means of the tiller? A. Yes sir.

By HIS LORDSHIP: Q. Must the tiller then be worked by hand?

A. It may be worked by hand with the tackles but I am afraid that they would have some job.

Q. Yes, I know. Then if it has no steam steering gear and the tiller must be worked would it be worked by hand? A. Well if the boat had no steam on they would have to work it by hand. If there was steam they could use the end of the tackles to the steam capstan. 30

Q. With steam on could be worked by what?

A. By the capstan, the tackles and the capstan.

By MR. HOLDEN: Q. Where was the steering engine located?

A. The main steering was located in the after part of the engine room.

Q. So that your ship while she had steam on could be steered either by the steam steering gear from the wheel in the wheelhouse or by the capstan?

A. Could be steered as an emergency gear on the capstan.

Q. And if there hadn't been steam on her steering engine she could be steered by hand by the tiller? That is what the tiller is for, isn't it? 40

A. That is what it is for, yes sir.

Q. Now when you left the ship for that winter where was the tiller?

A. The tiller was on the rudder post; left there at all times.

Q. And you mean to say that when this accident occurred the Paisley's tiller was on the rudder post?

A. Yes sir. It was in place, as far as I know.

Q. So that if she had enough men or considerable men they could have used the tiller to try to steer her?

A. Yes sir, with the tackles.

Q. Were the tackles there?

A. There were tackles there but they were laid up along with the rest of the gear.

By HIS LORDSHIP: Q. What is the meaning of that? Were they accessible?

A. Along with the rest of the lines and tackles and gear.

Q. Were they accessible, could they be got at?

A. Yes, they were accessible, sir.

10 By MR. HOLDEN: Q. Those who were on board the Paisley at the time she was moved and just before she was moved could have got the relieving tackle and could have put it in place, could they? A. Yes sir.

Q. And then they could have attempted to steer her by hand if anything happened? That is true, is it?

A. Yes sir.

Q. Where were you living that winter?

A. Alpena, Michigan.

Q. So you were out of reach on the day that they shifted her? A. Yes sir.

20 CROSS-EXAMINED By MR. WOOD:

Q. And the ship was loaded with grain when you left? A. Yes sir.

Q. And you knew there might be occasion to move her?

A. Yes sir.

Q. And that, you told us, was why you left the shackle on? A. Yes sir, in the windlass room, properly tagged. The windlass room or hall rather.

Q. So that they would have it to use when they came to shift her?

A. Yes sir, so that they would have it to use when they came to shift her, and to connect the chain onto the anchor again.

RE-EXAMINED By MR. TOWERS:

30 Q. In steering her by hand how many men would you have to have on the tiller? A. Well sir, I imagine if there was no steam on the steering engine, and the engine to turn over with the chains in her engine room would take quite a few men, unless the tackle were disconnected either from the engine or the quadrant.

Q. Were the chains at Kennedys, didn't you tell us?

A. Yes sir, one pair I took down and sent to Kennedy Brothers' Iron Works for repair and I think I put the other set up. I am pretty sure I put the other set up.

40 Q. Before you could steer with the other would you have to have those put up? A. I put the spare set up.

Q. You think they were in place? A. Yes sir.

Q. Then what was left then that you would have to get, the tackles, did you say?

A. The relieving tackles.

Q. How long would it take to get them and put them in place? A. It wouldn't take but a very short time to get them.

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Q. And then when you had all those in place—your tiller is below decks aft, isn't it?

A. No sir, it is above decks, on the main deck, aft.

Q. And you think it would take quite a few men to do it? A. Yes sir.

By HIS LORDSHIP: Q. What is the meaning of quite a few men?

A. I mean several men.

Q. Yes, well how many is several?

A. Well between five and six men at least.

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Norman
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Re-Exami-
nation.

NORMAN DAULT Sworn,

EXAMINED By MR. TOWERS:

10

Q. Mr. Dault, were you working at the Great Lakes Elevator in Owen Sound the month of January a year ago, 1927? A. Yes sir.

Q. How long had you been working at the elevator?

A. I had been working there two years.

Q. And what is your duty around the elevator as a rule?

A. Distributor.

Q. That is you control the distribution of grain?

A. Yes.

Q. Where does the grain come from to the elevator? How does it get there? A. From the boats? 20

Q. Well I mean it is brought to the elevator in boats, isn't it? A. Yes.

Q. Well now during that two years did you do anything as the boats were coming to the elevator? Had you any duties to perform there?

A. Just in the winter time.

Q. And do you remember the 18th January a year ago when the Paisley came up? A. Yes.

Q. What duties did you perform before that time when vessels were coming to the elevator in the winter time?

HIS LORDSHIP: What has that to do with it?

MR. TOWERS: I just want to know what his duties were, my Lord. 30

HIS LORDSHIP: But if he tells you what he did with regard to the Paisley that is what you want to know, isn't it?

MR. TOWERS: I thought possibly what he did on former occasions would have some bearing on what he did on this occasion.

HIS LORDSHIP: He might have changed his procedure completely when it came to the Paisley. Start with that anyway.

MR. TOWERS- With the Paisley, my Lord?

HIS LORDSHIP: Yes.

Q. Well you remember when she came up? A. Yes.

Q. Where were you on that day? 40

A. Just before she came up I was around at the back and we were sent around to take her lines.

Q. And who were with you? A. Mr. Ney, Mr. Colquette, and Mr. Yeo.

By HIS LORDSHIP: Q. You were behind the elevator with these people? A. Yes sir.

By MR. TOWERS: Q. And you were sent around to take her lines?

A. Yes.

Q. By whom? A. Mr. Richardson.

Q. Who was he? A. The Superintendent at the elevator.

Q. To take the lines? A. Yes.

Q. And did you go alone or someone with you?

A. Well Mr. Key and I was first there.

Q. Which part of the elevator did you go to?

A. I went out to about amidships of the elevator.

Q. Does that Exhibit C-2 show the elevator? A. Yes.

10 Q. And the Paisley lying in front of it? A. Yes.

Q. I think that photograph was taken sometime after, or shortly after the accident. So you say you went about amidships of the elevator, you mean about halfway down? A. Yes.

Q. And did you see the Paisley coming? A. Yes.

Q. Now anyone with you at the middle of the elevator?

A. Yes, Mr. Ney.

Q. And where was the Paisley when you came there, when you first came around?

A. North of the elevator.

20 Q. Coming in what direction? A. Well that would be southwest.

Q. Coming southwest. Did her bow come up and pass you then?

A. Yes.

Q. Did you stay where you were?

A. No, we come out—there is a door right at the centre of the elevator and we come out the door and we stayed there for a few minutes and then we went around to the south end of the elevator.

By HIS LORDSHIP: Q. You said that you and Ney went out amidships? Did you stay amidships?

A. Yes.

30 Q. You came out amidships of the elevator? A. Yes.

Q. Did you shift your position while the Paisley was coming? A. Yes.

Q. Where to? A. To the south corner.

By MR. TOWERS: Q. Before you shifted your position did you expect to get a line?

A. Well not at that time; she was too far away to look for a line.

Q. The vessel was too far away to look for a line while you were amidships of the elevator? A. Yes.

Q. Well then when you went to the south end of the elevator was there any change in the position?

40 A. No, there wasn't.

Q. Did you look for a line there?

A. No, she was too far away to look for a line.

Q. Looking again at this Exhibit C-2, it would appear that the elevator dock proper did not extend past the south end of the elevator at that time?

A. No. It isn't complete.

Q. I understand that it has since been completed?

A. Yes.

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tion-in-Chief.
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Q. Well then if she was too far away for a line at the south end of the elevator where could you expect to get a line, if at all?

A. Well in fact we weren't looking for a line at the time.

Q. Why not? A. She was too far away.

Q. Well did you then look for a line at any time?

A. No, we didn't look for a line till there was a line thrown to us.

HIS LORDSHIP: What does that answer mean? She was too far away for him to look for a line. Does that mean that a line was thrown?

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: He ought to say so. 10

Q. When if at all was the line thrown?

A. When was it thrown?

Q. Yes? Where were you when it was thrown?

A. We were out at these spiles when the line was thrown to us.

By HIS LORDSHIP: Q. At the spiles? Well then you moved off or on farther to the spiles? A. Yes.

By MR. TOWERS: Q. So you were on the spiles? Does that photograph show the spiles that you were on? A. Yes.

HIS LORDSHIP: Is that a new photograph?

MR. TOWERS: Yes, my Lord. 20

A. (Cont'd): Yes, we were on that shore there right in front of that little office.

By HIS LORDSHIP: Q. Just indicate where you were?

A. (Witness indicates).

MR. TOWERS: Would you must show His Lorship?

MR. HOLDEN: It is already in.

MR TOWER: It is C-3.

Q. Just show me again. You were here (indicating)?

A. Yes.

Q. Then I will put an "X" there. You see the X? 30

A. Yes. (Lower left corner)

Q. On C-3. Then you went around to where?

A. Down to here, down in front of the office.

Q. That office there? A. Yes. That was the old office.

Q. Near that post, or where?

A. We were right in front of that building there.

Q. Just put your finger where you think you stood?

A. Right about there.

Q. I will put a round circle there; that is where you stood? A. Yes. 40

Q. And was that where the line was thrown to you?

A. Yes, the line was thrown.

Q. Where are the piles? A. (indicating). There.

Q. Just out in front of that? A. Yes.

Q. Opposite the office at "O;" had come from point "X;" that is right?

A. Yes.

By MR. TOWERS: Q. Well when you were at point O what happened? I mean when you were up there in front of the office after you had gone around—I suppose you walked around on the ground, did you? A. Yes.

Q. And when you got up to the little office what happened about any line or anything?

A. Well we were following the boat down there from where I left that X mark.

By HIS LORDSHIP: Q. At the office at O what happened? A. There was a heaving line thrown to us there.

By MR. TOWERS: Q. Where did it light?

A. It fell on the piles; the end of the line fell on the piles, and Mr. Yeo went out to pick it up.

10 By HIS LORDSHIP: Q. Yes? You had gone with Mr. Yeo as well as Mr. Ney then, had you?

A. Well by that time Mr. Yeo was out.

Q. He had gone with you too? A. He didn't come out onto the dock with us.

Q. I mean when you moved to this point O? A. Yes.

Q. Yeo and you and Ney were together? A. Yes. We were. And Colquette.

By MR. TOWERS: Q. Did he get the line? A. Yes.

By HIS LORDSHIP: Q. The heaving line only? A. Yes.

20 By MR. TOWERS: Q. Did he get it on the piles?

A. No, he had to bend down onto the rock to pick it up. He run out onto the piles and he had to bend down on that rock to pick it up.

By HIS LORDSHIP: Q. What did he do with it?

A. Well he just held it there, I guess, until he decided, I guess, that there wasn't any use putting the other cable.

Q. He didn't pull it in? A. No. That is the cable, he didn't have hold of the cable.

Q. Did he hold the end of the heaving line?

A. Yes, he held the end till the man aboard had hold of the other end of 30 it.

Q. He held the end till the man on board did what?

A. Well he must have let go; I can't say to that.

Q. Well did the end come away?

A. No. Just held the end, he had an end of the heaving line.

Q. He held it till the man on board did something. What did he do?

A. The man on board?

Q. Yes? A. I can't say what the man on board did.

Q. Did he let it go or hang on?

A. I can't say.

40 Q. Well what became of the line between those two people?

A. I can't say what became of it. The fellow on the shore took hold of the heaving line and drew the slack up and then I can't say what happened after that.

Q. It is very curious. Was he pulling the slack up?

A. Yes, because I was going to make an effort to go out and help him to pull the cable off.

Q. Did he stand there just pulling it and then stop and look at it?

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tion-in-Chief.

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tion-in-Chief.

(continued).

A. Well yes— No, he hauled it and the fellow on the boat asked for another heaving line, he was going to attach another heaving line to it.

Q. How do you know that? A. I heard him ask for another line.

Q. Ask someone on the boat for a heaving line? A. Yes.

Q. Well did he get it? A. No, he didn't.

Q. And then what happened?

A. Well that is when he decided there wasn't any use in putting a cable out.

Q. Well what happened, I say? A. The boat was too far down.

Q. And what happened to the line that your man was holding? A. Well 10
he must have let go, I guess. I never noticed what he done with it.

Q. Who had hold of that, Mr. Yeo? A. Mr. Yeo

HIS LORDSHIP: Very well.

By MR. TOWERS: Q. When you were walking down there and from the time the Paisley came along about how fast would you say she was going?

A. Well that is pretty hard to say, how fast she would go.

Q. How fast did you walk?

A. Well I couldn't say how fast I was walking.

By HIS LORDSHIP: Q. Was she going faster than you? A. Well 20
I was kind of following the boat along.

Q. Was she going faster than you? A. I couldn't say.

Q. Did you keep exactly opposite the same part of the boat all the time you were walking?

A. Well I wouldn't say any exact part.

Q. You don't know whether the boat beat you or whether you beat the boat?

A. Well you see I was amidships of the boat at this time when the line was thrown to me and I guess I come about abreast of it.

Q. She was going at the same rate as you were then?

A. Yes. 30

By MR. TOWERS: Q. And how would you say you were walking, walking fast or slowly?

A. Well I wasn't going very fast.

Q. Were you walking your usual walk?

A. I would say so, yes.

Q. Did you form any opinion as to whether it was any use to try and get a cable out there or not at the time that line was thrown? A. No, I didn't.

Q. You didn't form any opinion? A. No.

Q. What do you say now as to whether it would have been any use or not to try and get a cable to stop the boat there? A. Well at the distance the 40
boat was away from the first piling I don't think they could have done it.

Q. The distance the boat was away, it being opposite this first piling?

A. Yes.

By HIS LORDSHIP: Q. What has the piling to do with it? A. We had to go out there to get the heaving line.

By MR. TOWERS: Q. If a cable had come in where would that have had to be carried?

- A. It would have to be carried to the south, to that ballard there.
 MR. TOWER: Next to the post which shows opposite the little office.
 HIS LORDSHIP: Mark that place, will you? We will call that post "A."
 Q. It would have to be carried to the post A?
 A. Yes.
 HIS LORDSHIP: This is on Exhibit what?
 MR. TOWERS: S-7 I think it was.
 Q. How far would you say it would be from that post or ballard as you
 call it to those piles? Have you an idea? A. It would be about 65 feet.
 10 By HIS LORDSHIP: Q. Now how far had the bow got beyond you,
 where you were standing, before you heard the man call for another heaving
 line, on board?
 A. About amidships of the boat.
 Q. You were just about opposite amidships? A. Yes.
 By MR. TOWER: Q. Was the bow coming in closer to the shore all
 the time or heading out?
 A. I would say she was heading in a little.
 Q. Then I suppose you didn't see the tug or what she was doing, did you?
 A. No, I did not.
 20 Q. Did you see the vessel go on down and up to the Saskatchewan?
 A. Yes.
 Q. Did you follow her on up? A. No, I did not.
 Q. How far do you live from the elevator?
 A. I would say about six blocks.
 Q. And do you still work at the elevator?
 A. Yes.
 Q. What would you say about it being a mile or half a mile—?
 HIS LORDSHIP: About what being half a mile?
 MR. TOWER: How far he lives from the elevator.
 30 Q. Do you live a mile away? A. Well hardly.
 Q. Very nearly? A. It is pretty hard to say.
 Q. Well how long does it take you to walk? Do you walk every day
 to your work? A. Yes.
 Q. How long does it take you? A. About ten minutes.
 HIS LORDSHIP: For how long?
 MR. TOWERS: Something less than a mile.
 HIS LORDSHIP: You are going to found a calculation on that?
 MR. TOWERS: Well it is six blocks, my Lord. It would depend how
 long the blocks are.
 40 HIS LORDSHIP: Don't leave it that way if you intend to argue anything
 from it.
 Q. Is it half a mile? A. I think it is about half a mile.
 Q. And you do it in about ten minutes? A. Yes.
 Q. Have you taken lines from other boats coming in?
 A. I have in winter time.
 Q. How do they come in as a rule?
 Well it is pretty hard to say; they don't always put them in the same.

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 tion-in-Chief.

(continued).

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tion-in-Chief.
(continued).

Q. How have you taken lines from them?

A. Taken lines from one vessel, you mean?

Q. Yes? A. In the north end usually.

Q. From the north end of the elevator? A. Yes.

Q. And how close would the bow come in to the north end?

A. Well sometimes it would be right on top of the dock and other times between three and four feet away, and other times maybe ten feet away.

Q. Do you know any vessels coming in there in the two years or three years that you have worked there and taken lines more than 10 feet away?

A. I don't think so.

Q. And that would be at the north end of the elevator?

A. Yes.

10

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CROSS-EXAMINED By MR. HOLDEN:

Q. Mr. Dault, I understood you to say that you came out to the centre door of the elevator? A. Yes.

Q. After leaving the back of the elevator? You had been inside the elevator? A. Yes.

Q. When you were at the back of the elevator what were you doing there?

A. We were bagging grain.

Q. Bagging it? A. Yes.

Q. When you say at the back you mean inside? Were you inside the building? A. Yes, it was inside the building.

Q. You were inside the building in the back part of it?

A. Yes.

Q. And Superintendent Richards told you all four to go?

A. Yes.

Q. He told all four of you to go? A. Yes.

HIS LORDSHIP: Were there four? I thought there were only three.

MR. HOLDEN: Only three went, my Lord, but there were four there.

A. (Cont'd): No, four of us went.

Q. And what did he tell you to do?

A. To go and take lines off the Paisley.

Q. And in going you didn't have to go out of the elevator, I believe, until you got to the centre door in front, is that right? A. No, we had to go out of the elevator. We have to go out from the back end of the elevator and go in a side door and come out at the front.

Q. What you did was, after he told you that you went out of the back of the elevator? A. Yes.

Q. And around on the south side, or the north side?

A. On the south side.

Q. Around on the south side and into a side door?

A. Yes.

Q. And then through the elevator and through the centre door in front?

A. Yes.

Q. And before you came out of that centre door in front did you look out? A. No, there was no way of looking out.

40

Q. You couldn't see out until you got through the centre door? A. We couldn't see out till we got to the dock.

Q. And when you came out of the centre door where was the Paisley?

A. At the north of the elevator.

Q. And where was her tug? A. Never noticed.

By HIS LORDSHIP: Q. Well when you say the Paisley was north of the elevator you don't mean the whole of the Paisley? A. Yes.

Q. The whole of the Paisley had got past the north of the elevator? A. Yes.

10 By MR. HOLDEN: Q. Now where was her stem? Was it to the north side of the elevator? A. Yes.

Q. Then you don't know if she had a tug?

A. Well she must have but I never noticed what the tug was doing.

HIS LORDSHIP: I did not catch the answer to that question. You say first where was the bow?

MR. HOLDEN: It was to the north side.

Q. Well tell the Court where was her bow when you came out of the centre door?

A. Her bow was north of the elevator.

20 By HIS LORDSHIP: Q. Yes, but you said the whole vessel was past the elevator?

A. No, she was coming from the north, coming down to the elevator.

By MR. HOLDEN: Q. And her bow had not yet reached the north side of the elevator? A. No.

By HIS LORDSHIP: Q. The bow had not passed the north of the elevator? A. No.

MR. HOLDEN: No, my Lord, it was coming from the north and her bow hadn't yet reached the north side.

30 By MR. HOLDEN: Q. You surprise me, Mr. Dault, you say that you didn't notice her tug then. That is true, is it? A. Yes.

Q. You did not notice her tug? A. No.

Q. What were you doing? A. What was I doing?

Q. Yes, were you talking to anybody or any of the others?

A. Well we noticed the boat so far down we went around to the south corner.

Q. Oh now, let us see, you came out of a door in the centre of the elevator facing the water? A. Yes.

Q. And looked and saw that the nose of the Paisley had not yet reached that north side of the elevator?

40 A. Yes.

Q. So you and, who was with you then?

A. Mr. Ney.

Q. You and Ney went around—?

A. The corner.

Q. To the south side? A. Yes.

By HIS LORDSHIP: Q. Went around the corner?

A. Well it was a very cold morning so we were getting out of the wind.

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Q. But what corner? A. The south corner.

By MR. HOLDEN: Q. That is the corner away from the Paisley?

A. Yes.

Q. And how far around the corner did you go, how far back from the front of the elevator to get out of the cold wind?

A. How far?

Q. Yes, roughly? A. Well just a couple of feet from the corner.

Q. Did you sit down there? A. No, we didn't.

Q. And you and Ney were the only ones who had come out of the centre door of the elevator so far? A. Yes. 10

Q. When did any of the others come?

A. Well I never noticed when they came out.

Q. And how long did you and Ney hide behind the corner away from the cold wind? I don't mean hid, I am not criticizing you, but how long did you stay under shelter there? A. Well we stayed under shelter till the bow of the boat was coming past us.

Q. So that you came out of the centre door and you saw the Paisley's how still to the north of the north side of the elevator? That is right? A. Yes.

Q. And you went along towards the south corner and around the corner far enough to be in shelter? A. Yes. 20

Q. And you stayed there until the bows of the Paisley had passed right across the front of the elevator? A. Yes.

Q. Well how far to the south of the south side of the elevator had the bows of the Paisley got before you came out of cover? A. Well as soon as she come out just we come out of cover.

Q. Had she a tug then? A. I never noticed.

Q. Well, Mr. Dault, you undertake to try to tell the Court pretty accurately distances and other things that suited my opponent—

MR. TOWERS: Your Lordship, please, I don't like to interrupt my learned friend but some of his witnesses are in the room. The rule has been 30 so strictly enforced against me that I have reason to complain.

MR. HOLDEN: The ones who were examined were they to be excluded?

HIS LORDSHIP: You may ask to have them go out now.

MR. HOLDEN: I don't believe, Mr. Towers, there are any except those that have been examined already.

MR. TOWERS: I asked for some exceptions that were not granted.

HIS LORDSHIP: What exceptions?

MR. TOWERS: Some expert witnesses.

MR. HOLDEN: We have no objection to their withdrawing at all.

MR. TOWERS: Yes, I wish they would. 40

MR. HOLDEN: The engineer of the Paisley, I presume, will follow suit; he is here too.

MR. TOWERS: Of course.

HIS LORDSHIP: Now if there are any witnesses in Court now we won't hear them if they are called, if they are going to remain in Court.

Are you quite satisfied that all the witnesses have gone out?

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: Are you, Mr. Holden?

MR. HOLDEN: Yes, my Lord.

HIS LORDSHIP: And are you, Mr. Wood?

MR. WOOD: Yes.

HIS LORDSHIP: Well any one who is in Court now we won't hear their evidence.

Q. You undertook, Mr. Dault, to tell the Court at my learned friend's request certain distances and you now say that you actually didn't notice whether she had a tug? That is right, is it?

10 A. Well I noticed that she had a tug but I never noticed what she was doing.

Q. You didn't notice the tug? A. No.

By HIS LORDSHIP: Q. I thought you said you saw no tug?

MR. HOLDEN: That is what he did say.

A. I never noticed it, what the tug was doing.

Q. Did you see the tug? A. Yes sir.

By MR. HOLDEN: Q. How many snubbing posts are there along the dock to the north of the north side of the elevator? A. I couldn't say. I couldn't tell you how many there was.

20 Q. You don't know the number? A. No.

Q. Well how long do you think you were under shelter around the south corner of the elevator?

HIS LORDSHIP: He said two or three minutes.

MR. HOLDEN: Oh, he did say? I am sorry.

Q. Then, Mr. Dault, when did you first notice the other two men who had also been told by the Superintendent to get out in front and look after this boat?

A. Well I never noticed them till the line was thrown ashore or thrown onto the piles.

30 Q. Did they stay inside the building?

A. Yes, they were inside the building. They were looking for something else.

Q. They were what? A. They were looking for something else, some clothing.

Q. They wanted to get more warmly dressed before they came out?

A. Yes.

Q. You say a heaving line was thrown ashore as you have described. Did you see any efforts to get a heaving line ashore before that? A. No.

Q. And how far to the south of the elevator is that spile, approximately?

40 A. Be about a hundred feet.

Q. A hundred feet south along that dock from the south side of the elevator? A. Yes.

HIS LORDSHIP: To what point?

MR. HOLDEN: To the spile where they did throw a line ashore.

By HIS LORDSHIP: Q. Did you say that the other two stayed inside the building and didn't come out?

A. Yes. They were looking for some clothing to put on.

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Q. And when did they join you?

A. Well I never noticed when they came out. When I first noticed them is when this Mr. Yeo made an effort to get this line.

CROSS-EXAMINED By MR. WOOD:

Q. I show you a photograph C-10 the elevator is shown there and the shore down nearly to the Saskatchewan? A. Yes.

Q. And the Paisley is lying in front of the elevator. The elevator is about a hundred feet across, isn't it?

A. About that. Between 90 and a hundred feet.

Q. And there is shown a little house where you were standing, you say? 10

A. Yes.

Q. And is this the spile? A. Yes.

Q. Mark that little spile, will you?

HIS LORDSHIP: I will mark it.

A. Well which spile do you mean?

MR. TOWER: Where the rope was.

By HIS LORDSHIP: Q. Just come over here and show what you are speaking of. Where is the pile where the rope was thrown? A. Right there. (indicating).

Q. Rope thrown, is it? A. Yes. 20

HIS LORDSHIP: I will mark that "B."

By MR. WOOD: Q. And then the spile that you referred to, or the snubbing post, is it?

A. The nearest one, do you mean?

Q. Yes, the one which you say it would have to be taken to? A. That one there, sir (indicating).

HIS LORDSHIP: Well now that is similar to snubbing post A on S-7.

MR. WOOD: The other is a misleading photograph.

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RE-EXAMINED By MR. TOWERS:

Q. When these other boats came up on the north side how fast do they 30 come? How fast are they going when you take the line?

HIS LORDSHIP: What is that?

MR. TOWER: He says they come on the north side there; I was asking at what speed they came to the dock there.

A. I couldn't give you any speed.

Q. How do you get the lines from them?

A. Well there is a heaving line thrown.

Q. I mean the ones that are three or four feet away, or even ten feet?

A. Well they throw a heaving line.

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Colquette.
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tion-in-Chief.

WILLIAM ROBERT COLQUETTE Sworn, 40

EXAMINED By MR. TOWERS:

Q. Were you working at the Great Lakes Elevator a year ago this month —January 1927? A. Yes sir.

Q. And do you recollect the 18th January, the day that the Paisley came along by the elevator and went up to the Saskatchewan? A. Yes sir.

Q. What time of the day was it that she came along?

A. It was about ten o'clock in the forenoon.

Q. And what was drawing her, if anything? What was towing her?

A. The Tug Harrison.

Q. Have you worked long at the elevator?

A. I worked since it started, sir.

Q. That is some years ago? A. Yes.

Q. And in the winter time when vessels are coming to the elevator do you do anything about the lines? Do you help sometimes? A. Sometimes,
10 sir, yes.

Q. What is your occupation in the elevator?

A. I am a weigh man, sir.

Q. Well on this particular morning do you recollect being asked to go out to help look after lines from the Paisley? A. Yes sir.

Q. Who asked you to do that?

A. I am not any too sure who asked. We were out in the room at the back.

Q. Someone did? A. Someone did.

Q. And where were you when you were asked to go?

20 A. I was out in the bagging shed at the back.

Q. With whom? A. With the——

Well there was the rest of the elevator gang.

Q. Mr. Yeo? A. Mr. Yeo, Mr. Dault and Mr. Ney.

Q. Well what kind of morning was that, as far as the weather went? Was it cold, do you remember, or hot?

A. Well it was a cold morning.

Q. Well when you were asked to go what did you do?

A. I came down out of the bagging room at the back and went in the side door into the basement of the elevator.

30 Q. What did you go in there for, Mr. Colquette?

A. For a pair of mitts as far as I can remember, sir.

Q. And before you went into the side door had you seen the Paisley?

A. No sir.

Q. Then how long were you in there?

A. Oh I don't just remember, sir.

Q. And when you came out was the Paisley in sight?

A. Yes sir.

Q. Where was she then? A. Her bow was down past the elevator dock.

Q. When you say "down" do you mean southerly?

40 A. Southerly, sir, yes.

HIS LORDSHIP: When he came out the bow was past the south side of the elevator?

A. (Cont'd): Yes sir.

By HIS LORDSHIP: Q. How far past?

A. Oh I couldn't just say.

MR. HOLDEN: About how far past?

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Q. How far past had the bow got on the south side of the elevator when you came? A. Oh possibly 75 feet, sir, about.

By MR. TOWERS: Q. Were there any lines ashore from her? A. Not as far as I know, sir.

Q. Did you expect to get a line then?

A. No, I can't say that I did, sir.

By HIS LORDSHIP: Q. She was moving, wasn't she?

A. She was moving, sir, yes.

By MR. TOWERS: Q. Why did you not expect a line?

A. Well she wasn't right against the dock, for one reason. 10

By HIS LORDSHIP: Q. You mean she was too far out?

A. Well she was farther out than usual, sir.

Q. Do you mean she was too far out for you to take the line? A. Yes sir.

By MR. TOWERS: Q. Then what did you do? Which way did you go? A. I went down the bank in a southerly direction.

Q. Was the vessel moving? A. The vessel was moving, sir, yes.

Q. In that direction? A. Yes sir.

Q. How did her rate of speed compare with yours?

A. Oh I don't remember, sir.

Q. How fast would you say she was moving? 20

A. I wouldn't care to say, sir; I don't know how fast.

By HIS LORDSHIP: Q. Why did you go south on the bank at all for?

A. Well the boat was moving in that direction, sir, and of course I was going down that way with the intention of getting a line eventually.

Q. Well where would the line that you expected come from?

A. It would come from the bow of the boat.

Q. Well she had 75 feet the advantage of you; did you run down to catch up to her or walk down?

A. I don't remember, sir.

Q. Did you catch up to the bow? 30

A. I didn't come out at the front of the elevator, sir, you see; I came out on the south side or southeast side of the elevator and I angled over.

Q. Well, I know, but did you catch up to the bow?

A. Yes sir, I believe I did.

By MR. TOWER: Q. Did you see the tug?

A. I don't remember seeing the tug just at that time, sir.

Q. Did you at a later point of time?

A. I seen just the upper works of the tug, sir.

Q. What was she doing?

A. Well I couldn't just tell that, sir. 40

Q. Where was her line? Did she have a line attached to the steamer when you saw her before it broke?

A. There was a line. I didn't see the line before it broke, sir, no.

Q. Did you see the end of it break? Did you see it fly?

A. I saw the end of it fly, sir, yes.

By HIS LORDSHIP: Q. Could you see the tug beyond the near side of the tow, between the boat and the dock?

A. The tug was on the other side of the dock.

Q. Could you see across the dock?

A. I could see the upper part of it.

Q. Could you see the lines on the main deck?

A. Well the one line that when it broke I noticed the end of it fly up, sir.

By MR. TOWERS: Q. And that was before the heaving line was thrown, wasn't it?

A. Yes sir.

Q. Well then did you see the heaving line thrown?

10 A. No sir, I didn't see the heaving line thrown.

Q. Where did you go after the tug line broke?

A. Sir, I was about—oh, I was just up the bank just past this cluster of spiles.

Q. And you didn't see the line thrown, at all events?

A. I didn't see the line thrown, sir, no.

Q. Did you get any line yourself? A. No sir.

Q. Did you expect any at any time after that? A. No sir.

Q. You have handled lines for other boats at the elevator, quite a few of them, have you? A. Yes sir.

20 Q. How do they come in as a rule?

A. As a rule— Of course the tug gets them up fairly close to the dock.

Q. How close? A. Sometimes right against the dock, sir; sometimes within a few feet.

Q. And what speed do they come in at after the tug brings them up?

A. Oh I couldn't say that, sir; it just shoves them up to the dock.

Q. Which side of the dock, north or south, do their noses come if they are coming that direction; I suppose the most of them do?

A. Most of them—

Q. Head south? A. Head south, yes sir.

30 Q. And where do they come to the dock—about?

A. Well it depends on the tug.

Q. Well as a rule? A. Oh possible at the north side of the elevator.

Q. Could you suggest anything that those on board the Paisley should have done that they didn't do?

MR. HOLDEN: Surely that is objectionable.

MR. TOWER: I will withdraw the question. If he could I would like him to suggest it.

CROSS-EXAMINED By MR. HOLDEN:

40 Q. Mr. Colquette, the side door that you came out of is at the south side of the elevator, isn't it? A. Yes sir.

Q. About how far back from the front wall?

A. I don't know the length of the elevator, sir; it would be, oh, two-thirds of the way back.

Q. What do you think is the length?

HIS LORDSHIP: You may measure it on that plan.

MR. HOLDEN: Yes, that is a hundred feet to the inch.

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(continued).

MR. WOOD: That only shows the front.

MR. HOLDEN: No it shows the depth of it.

MR. TOWERS: About 200 feet.

Q. Anyhow it is two-thirds of the way back?

A. Approximately, sir.

Q. And when you came out, tell me if I am right, of the south door about two-thirds of the way back on the south side of the elevator, you saw the Paisley with her bows to the south of you? A. Yes sir.

Q. About how far to the south along the dock wall?

A. The bow of the boat, sir? 10

Q. Yes? A. Oh possibly 75 feet, sir; around that.

Q. And were you alone or was anybody with you?

A. I don't remember of anybody being just right there, sir.

Q. You don't know whether you were alone?

A. I came out of the door alone; out of the side door.

Q. You don't remember whether there was anybody with you?

A. No, I don't remember, sir, no.

Q. And you don't remember noticing the tug at that time?

A. No sir, not just then.

Q. You don't remember noticing them get a heaving line ashore from the 20 Paisley?

A. I seen the man on the deck with the heaving line but I didn't see him throw it, sir.

Q. Let me see, what else could there be that you might have noticed: Mr. Colquette, did you stay at the door on the south side of the elevator?

A. No sir.

Q. Did you walk away from the door parallel to the wall or did you walk along the wall—parallel to the dock or along the wall towards the dock or where did you go?

A. I angled from the door across towards the dock. 30

Q. So you didn't go right to the nearest point on the dock? A. No sir.

By HIS LORDSHIP: Q. Did you go north?

A. I was going southerly.

By MR. HOLDEN: Q. Did you run or walk or how did you go?

A. I don't remember what speed I was going, sir.

Q. You don't remember? A. No sir.

Q. And then about how far down the dock to the south of the wall were you when you reached the dock wall, or did you go as far as the wall of the dock?

A. Well the bank was cut away. 40

Q. The bank then, did you go?

A. I went to the bank, sir, yes.

Q. And how far south of the elevator were you when you got to the bank? A. I was possibly a hundred feet.

Q. You hadn't seen anything of the Paisley before you went out of the side door of the elevator? A. No sir.

By HIS LORDSHIP: Q. I would like to know how could you see it if you were two-thirds back with the elevator between you and the Paisley, you couldn't have seen it till you got to the bank, could you?

A. Well there was nothing between me and the dock, sir.

HIS LORDSHIP: When he came out her bow had passed 75 feet.

MR. HOLDEN: Yes.

HIS LORDSHIP: Yes, that is right.

By MR. HOLDEN: Q. So you were about a hundred feet back from the face of the dock; what I mean is you had no possible way of knowing how far she was off the dock, that is the whole thing? A. No.

MR. TOWERS: That is all, thank you.

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(continued).

THOMAS EDGAR NEY Sworn,

EXAMINED By MR. TOWERS:

Q. Mr. Ney, were you employed at the Great Lakes Elevator at Owen Sound in January last year?

A. Yes sir.

Q. Do you recollect January 18th, the day that the Paisley came up?

A. Yes sir.

Q. What is your position in the elevator? A. Foreman.

20 Q. And were you asked to go out to help look after the lines? A. Yes
sir.

Q. By whom? A. Mr. Richards, our Superintendent.

Q. And did you go out? A. Yes sir.

Q. Whom did you go out with? A. I took Mr. Dault, Mr. Yeo, and Mr. Colquette.

Q. Were you in time to take a line if one had been passed to stop the Paisley? A. Yes sir.

Q. What part of the elevator did you go out to?

30 A. I went down through the basement and went out a front door on the
dock.

Q. Was there any line thrown to you from the Paisley as she passed?

A. No sir.

Q. Did you form any estimate of speed as she passed, how fast she was going? A. No, I did not.

Q. Well can you now give us any idea, reasonably—you know how fast you walk? You watched her pass?

A. Yes, I watched her pass.

Q. What would you think? A. Oh I would say around two miles or three.

40 Q. Now did you expect a line from the vessel ashore as she passed?

A. No, I did not.

Q. Why? A. Well we had an idea she was out too far.

Q. Was she coming in or heading out a little as she passed? A. I didn't notice that. I thought she was going pretty well straight.

Q. Was a line finally thrown, a heaving line? Did you see that? A. Yes
sir.

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tion-in-Chief.

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Q. The one that Mr. Yeo picked up? A. Yes sir.

Q. Did you form any estimate of the distance that that had to be thrown?

A. Oh I would say it would be 50 feet anyway.

Q. And how far past the elevator would that be?

A. From the—

Q. From the south end of the elevator?

A. It is around in the neighborhood of 150 feet, I would say.

Q. Then how close does a ship usually come into the dock so that they can heave a line?

A. They as a rule come right in. 10

Q. And at what part of the elevator generally speaking, north or south, assuming that they are heading south?

A. Well is that when they are under steam?

Q. Well when a tug is bringing them in?

A. Oh it brings them in by that cluster.

Q. But suppose they are going south, what part of the dock would they bring the nose into? At that time the south dock wasn't completed? A. No. They bring in pretty well to the centre of the elevator, crowd it in.

Q. That is where the nose would come in?

A. As a rule, yes. 20

Q. To touch the dock? A. Yes.

Q. And at what speed? Faster or slower than the Paisley?

A. Oh it would be slower.

HIS LORDSHIP: Slower than what?

MR. TOWERS: Than the Paisley.

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Q. Where was the Paisley coming when you came out of the centre door?

A. Down northeast of the elevator.

Q. Had she reached the north wall yet?

A. Her nose was down—she was down past the north wall. 30

Q. Past the north wall? A. Yes.

Q. How far do you think her nose had passed the north wall when you first noticed her? Approximately how far?

A. Well I didn't notice very much there.

Q. I know you weren't noticing much apparently, but I would like you to give the Court your impression; how far do you think, in thinking it over, that the stem of the Paisley had passed south of the north wall of the elevator before you noticed her?

A. Passed south of the north wall?

Q. Yes, you said she had passed the north wall going south? 40

A. She was north of the wall when I saw her.

Q. Here she is going south, you see; there is the elevator and there is your north wall (illustrating)?

A. When I saw her she was down around here some place.

By HIS LORDSHIP: Q. I thought you said she was past the north wall?

A. That is the north wall here. (Indicating).

Q. Had her nose reached opposite the north wall when you came out?

A. You mean her nose come here?

A. Yes? A. No, she had not.

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By MR. HOLDEN: Q. Well then where was she when you and Dault went around to the south side to get out of the cold? A. She was back near the centre of the slip.

HIS LORDSHIP: That doesn't tell us anything. Q. Had her nose reached the north wall of the elevator, had it come opposite the north wall of the elevator when you and Dault went around to the south side to get out of the cold? A. No.

MR. TOWERS: Would Your Lordship let him finish that answer?

Q. Have you finished your answer?

A. Yes, the centre of the slip.

HIS LORDSHIP: Don't have any discussion; let the examination go on and you may ask that in re-examination.

Q. You came out of the centre door with Dault, didn't you? A. Yes sir.

Q. How soon after coming out of the centre door did you go around to the south side—right away?

A. Right away. Practically right away.

Q. Did you stop at all before going around?

A. We just came out and looked and we saw it was too far away and we walked around out of the wind.

Q. You didn't walk towards the north at all?

A. No.

Q. Is the door in the centre or nearer the one side or the other? A. It is nearer the south corner.

Q. How many feet do you suppose from the south corner is that door?

A. Twenty-five or thirty feet.

Q. Did you discuss it at all with Dault or did you just look and then walk out to the south of the building?

A. I don't remember discussing it at all; we just walked around south out of the wind.

Q. You just took a look north and walked around out of the wind?

A. Yes sir.

Q. And then where was she when you saw her next?

A. Her bow coming up past the south corner.

By HIS LORDSHIP: Q. That is she came past? You stood behind the south wall until you saw the bow pass? A. Yes sir.

Q. And then you started, is that right?

A. Yes, we started to walk over next the office.

By MR. HOLDEN: Q. In which direction?

A. Southerly direction.

Q. Did you notice the tug particularly?

A. No, we could not see the tug, very much of it; we were down on the ground and the boat was between us and the tug; the tug was on the port side.

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Q. That is after she passed south of the elevator?

A. Yes.

Q. I mean just when you took a glance north?

A. We didn't notice where the tug was.

Q. You did not notice? A. No.

By HIS LORDSHIP: Q. Mr. Towers says you made some reference to the slip. What was it you were saying? What was your answer about the slip? The middle of the slip, I think you said?

A. Well when we saw her she was down in the middle of the slip here, just to the north of the elevator. 10

Q. You said she was northeast?

A. Well that slip don't run exactly north and south.

Q. Pretty well in the middle? A. Pretty well out.

By MR. HOLDEN: Q. You didn't notice as a matter of fact where she was at that time? A. Yes, I saw her.

Q. You didn't notice her tug. Will you now say that you did notice the tug? A. No, I did not; I wouldn't say exactly where the tug was, exactly.

By HIS LORDSHIP: Q. You say she was in the middle or out what—?

A. Out pretty well the centre of the slip.

By MR. HOLDEN: Q. The slip is how wide? 20

A. I couldn't say.

Q. Well here is a scale of 100 feet to the inch; how many inches do you think it is across that?

A. Five inches.

Q. Five inches would be 500 feet. So you are ready to testify to this Court that the Paisley when you came out of the centre door was 250 feet off that dock, is that your story? A. Well yes, pretty well.

By HIS LORDSHIP: Q. You mean to say now that when you came out you said that the vessel was to the northeast of the elevator, is that right? 30

A. Yes sir.

Q. And 250 feet out in the water?

A. Practically. Pretty well out in the centre of the slip, yes.

Q. Do you accept 250 feet as being about the centre of the slip—100 feet to an inch? A. Yes, that would be about.

Q. And how was she heading then?

A. Well she seemed to be about straight on the slip. But she was standing still.

Q. Do you mean parallel to the slip?

A. Yes, pretty well.

Q. That is to the dock wall? A. Yes. 40

Q. She was heading parallel to the dock wall and 250 feet away from it?

A. Yes.

By MR. HOLDEN: Q. And you said just now but she was standing still?

HIS LORDSHIP: I understood that.

Q. What did you mean by saying she was stading still?

A. Well we thought she was standing still, you see; I don't know what he was doing.

Q. You turned your back and went down and walked to the south?

A. Well it was very cold.

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Q. Of course, you were getting out of the cold, but just listen to the question. How could you tell that she was still in the water if you turned away from her and walked south away from her?

A. Well we came out the—

Q. You couldn't possibly tell that she was standing still in the water unless you stood there and watched her? A. Well we stood for the instant.

Q. In an instantaneous glance you came to that conclusion? A. Yes.

10 Q. Well you said, I think, that the usual vessels coming that way— I think it was you said they came in close to the dock, about the centre of the elevator, the vessels usually did that?

A. They usually, yes, nose them in there, yes.

Q. Tell this vessel, the Paisley, according to you, wasn't heading for the dock at all?

A. Not at the time I saw her.

Q. And is that why you went off to the south and waited till she got her nose closer in? A. Yes.

Q. And where was her nose? How close was it in?

20 A. Quite a ways out; I could hardly see.

Q. Was she still about the same distance off?

A. I couldn't hardly say on that.

By HIS LORDSHIP: Q. Hadn't she got in closer to the dock, the elevator?

A. Yes, she had come some closer.

Q. I mean to the elevator, had she got any closer?

A. Yes.

Q. How much closer? A. Well I couldn't hardly answer that.

30 Q. Well you seem to be very sure about 250 feet. Can't you give an idea after you stepped in from the cold and saw her nose appearing whether it was the same distance out or half the distance out or a quarter?

A. I wouldn't like to say just how much.

By MR. HOLDEN: Q. Was she 25 feet closer? A. Oh yes.

By HIS LORDSHIP: Q. Why wouldn't you like to?

A. I don't know what move he made after I noticed him first but I think he would be—

40 Q. You took an instant picture of him and he was then 250 feet out; now here is another instant picture, you are standing for some time and the bow shows past there and you couldn't tell whether she was 250 feet or a hundred feet out?

A. She was in closer than when I saw her before.

Q. I daresay, but how much closer?

A. Well I would say she was over half as close anyway.

By MR. HOLDEN: Q. Half of 250 is 125?

A. Over half as close.

Q. Over half which way, more than half off the dock or more than half off the original position?

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A. To the dock.

By HIS LORDSHIP: Q. Give us the figures. She was 250 feet when you saw her out there and you say she was about half closer; how many feet out would she have been? A. Well approximately about maybe 75 or 100 feet.

By MR. HOLDEN: Q. So your testimony to the Court is that they got the heaving line off to the pile when the Paisley was 75 to a hundred feet off?

A. No.

Q. Well what is your testimony? 10

By HIS LORDSHIP: Q. How far out was she at the pile? A. Well she was I think somewhat closer.

Q. How much closer? A. I would judge she would be around about 50 or 60 feet along by the pile.

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RE-EXAMINED By MR. TOWERS:

Q. Looking at C-1, Mr. Ney, directly across from the elevator on the 18th January what was there lying as shown by this photograph, C-1?

A. Over on the east side?

Q. No, directly across? A. The Saskatchewan and Drummond.

Q. Directly across from the elevator was there anything lying across 20 here, I mean (indicating on Exhibit S-1)? Were there any vessels? Where were the four vessels lying? A. Along here some place.

Q. I mean would that narrow your idea of the slip any?

HIS LORDSHIP: That is rather suggestive.

MR. TOWERS: I won't pursue it, my Lord, but I think the witness is trying to give his evidence frankly.

HIS LORDSHIP: Yes, I know, but he has given very curious evidence in one way.

By HIS LORDSHIP: Q. You said you saw the heaving line thrown? 30

A. Yes.

Q. And you said you thought it was about a 50-foot throw?

A. Yes.

Q. When you say that when she was at the piles she was something like 50 or 60 feet out?

A. Well, practically; I couldn't judge to 10 feet.

Q. I daresay, but then you judged 50 feet for the throw of the line. Do you want to change that now?

A. I said 50 or 60, my Lord, didn't I?

Q. You said at the piles she was closer, 50 to 60 feet? 40

MR. TOWERS: That is she was at that distance?

HIS LORDSHIP: Quite so, that far away from the piles.

Q. But you said when you saw the heaving line thrown it was about a 50-foot throw. Now which was right?

A. Well, I couldn't say to ten feet.

Q. Well, it may have been 50 to 60 feet there?

A. Yes, it may have been 50 to 60 feet there.

Q. Very well, I will change my notes of your evidence. That is just your guess, I would say, isn't it?

A. Yes.

By MR. HOLDEN: Q. There is another question I forgot: When you and Dault came out of the door in the front of the elevator and took your glance up and saw the ship if they had hailed you to come up north instead of going around south behind the wall of the elevator would you have gone? A. Surely, yes.

10 Q. If they had called from the ship for you to come up to their side of the elevator, you and Dault would have gone up there? Would you have gone if they had asked you to go? A. Yes, we would go. We were there for that purpose.

By MR. TOWERS: Q. If your Lordship will permit me: What use would it have been going up there?

MR. HOLDEN: That is for the Court, may it please the Court.

HIS LORDSHIP: You may ask him that if you really want to.

Q. I mean had you gone to the north immediately instead of going south, what, if anything, could you have done towards taking a line?

A. Nothing at all.

20 RICHARD YEO, Sworn.

EXAMINED by MR. TOWERS:

Q. Mr. Yeo, I think in January last you were employed by the Great Lakes Elevator Company at Owen Sound?

A. Yes sir.

Q. And do you recollect the 18th day of January when the Paisley was brought over? A. Yes.

Q. About ten o'clock in the morning, was it?

A. It was around ten o'clock.

30 Q. What is your position in the elevator?
A. Weigh man.

Q. And on the morning in question were you asked by anyone to go and help with the Paisley lines?

A. Yes, our Superintendent came around and we were out at the back.

HIS LORDSHIP: Just answer yes or no.

A. (Cont'd): Yes.

Q. And in the winter time is it customary for you to assist with the lines on vessels coming to the elevator dock? A. Yes sir.

40 Q. Then on the morning in question when your Superintendent asked you to go, will you please tell the Court just what you did? A. Well, I come down out of the bagging room and went into the basement and stopped to get a pair of mitts and then I come out after and came around to the dock.

By HIS LORDSHIP: Q. Where did you go out?

A. Out of the side entrance.

Q. Which side entrance? A. The south side.

By MR. TOWERS: Q. Who was with you, if anyone?

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(continued).

- A. Well, I don't think there was anybody at the time.
- Q. And when you came out was the Paisley or any part of her in view? A. Yes. About the pilot house.
- By HIS LORDSHIP: Q. You came out of the door on the south side? A. Yes.
- Q. Could you see the Paisley then? A. Yes.
- Q. You could see her? A. Yes, she was past the elevator when I came out.
- By MR. TOWERS: Q. Her pilot house was in view? A. Yes.
- Q. And where did you go? A. I went out to the dock. 10
- By HIS LORDSHIP: Q. That is not continued down beyond the elevator, is it?
- A. Yes, it is continued down a little piece.
- By MR. TOWERS: Q. And when you got to the dock did you expect a line to be thrown to you?
- A. No. We weren't looking for one just then.
- Q. Why not? A. Well, the boat was out further than usual.
- Q. Then I show you Exhibit S-7, does that correctly represent the situation? A. Yes sir.
- Q. South of the elevator? A. South of the elevator, yes. 20
- Q. The bank fell away, the dock was not completed? A. No.
- Q. So that when you say you went to the dock you went to the elevator dock north of the northern part of the piling shown on S-7, up here?
- A. Up in here. (Indicating).
- Q. But the boat, you say, was too far away, that you didn't expect a line? A. No, we wouldn't expect a line.
- Q. Then where did you go? A. Well, I stood there for a while till the boat went on down past.
- Q. Was she moving? A. Yes, she was moving then.
- Q. Then did you walk down with her? A. Yes. 30
- Q. Did you walk faster than she went or did she go faster than you?
- A. I couldn't say exactly.
- Q. And at all events was a line thrown?
- A. Yes sir.
- Q. Will you indicate on S-7 the point about where it fell? A. Right across that cluster of piles.
- Q. I have put a round blue circle there.
- HIS LORDSHIP: Hadn't you better let me mark it?
- Q. Will you indicate to his Lordship where—?
- HIS LORDSHIP: Why don't you show him the other one where it 40 is marked?
- MR. TOWERS: I don't think we marked where the rope fell.
- HIS LORDSHIP: But we marked piles though. Here it is. Will that suit your purpose?
- MR. TOWERS: Yes, my Lord.
- Q. I show you then Exhibit C-1 on which there is marked "piles where rope thrown B." Is that correctly marked, according to your recollection?

A. Yes.

Q. Would you say you went there to those piles?

A. Yes, I went up on them.

By HIS LORDSHIP: Q. Did you get it?

A. Well, it fell over a rod and I picked it up.

By MR. TOWERS: Q. And than what?

A. Well, I gathered it up and then the boat was going on down past and Mr. Penrice he was making up forward and then he hollered for to let go of it, never mind it, it was too late.

10 By HIS LORDSHIP: Q. He hollered to you, did he?

A. Yes, to let go.

Q. Who was it hollered? A. Mr. Penrice.

Q. Just said "let go," I suppose? A. Yes.

By MR. TOWERS: Q. You said something about it being too late?

A. Well, I think he did mention too it was too late.

Q. What do you say as to it being too late?

A. Oh, I couldn't say. I couldn't say anything about the line he had there or how far he could go up the deck with it.

Q. If you had had a cable there where would you have had to snub it?

20 A. Back beside the old office.

Q. How far back? A. Oh, I guess it is around 65 feet.

By HIS LORDSHIP: Q. Is that shown there? A. Yes.

Q. How far would that be? A. About 65 feet.

Q. That is to the snubbing post? A. Yes sir.

Q. On S-7? A. Yes.

CROSS-EXAMINED By MR. HOLDEN:

Q. Where was Penrice on the Paisley when he threw the heaving line?

A. He was about amidships.

Q. Could he have done it any better from the after part of the ship?

30 A. I don't think so. He would have had to run away back down there.

Q. I mean if he had been there instead of where he was?

A. I wouldn't like to say whether he could or not.

Q. I thought you had already said that he could have done it better?

A. No. Not to my knowledge, I don't think I said that.

Q. Where he was was there a winch?

A. I couldn't say whether there was a winch amidships or not; I don't hardly think so, though.

Q. At any rate, when you first saw the Paisley, her pilot house was visible to the south of the south wall of the elevator? A. Yes sir.

40 Q. And am I right that all you had done between the time the Superintendent told you to go out and the time you saw her was to get your mitts?

A. Oh, I might have stopped in there for a minute or so.

Q. I think you must have. At any rate you were not in a position to see her before that? A. No.

Q. You didn't see the Paisley before that?

A. No, I did not.

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CROSS-EXAMINED By MR. WOOD:

Q. Which was the closer, the bow or the stern?

HIS LORDSHIP: To where?

Q. To the line of the shore?

HIS LORDSHIP: And when?

Q. When you saw her? A. Oh, I couldn't say. I don't know as I took any notice just at the time.

Q. Well, did you form a judgment later when you were out near the piles? A. I don't think so. It would be pretty hard to make a judgment on water. 10

Q. But you couldn't tell us which was closer?

A. No, I could not.

Q. Mr. Yeo, you were interviewed by somebody representing either the ship or the cargo, were you not, in Owen Sound?

A. Well, we were interviewed by different ones and I couldn't say who it was.

Q. I am not complaining at all about that. That would be just around the time of the accident, wouldn't it?

A. Yes, shortly after.

Q. Within a day or two or three or four days, wasn't it? 20

A. Yes, around there.

Q. Now, is this your signature attached here (showing)?

MR. TOWERS: Am I entitled to a copy of that before my learned friend uses it?

HIS LORDSHIP: No, I don't think so.

A. Yes.

Q. And is that your writing in the statement?

A. No, it is not.

Q. Did you read it over before you signed it?

A. I couldn't say now. That there one when I signed that we were 30 working and very busy at the time; I don't remember whether I read it or not.

Q. Was it read over to you? A. I don't know. I don't think it was. Just taken down as the gentleman asked me.

Q. Just as you told him? A. Yes. He asked me and I told him.

By HIS LORDSHIP: Q. But you didn't read it over?

A. No, I did not.

Q. You were too busy, I suppose? A. Yes, we were very busy.

By MR. WOOD: Q. Now that statement, you look at it with me, 40 will you, as I read it:

"Richard Yoe, 1136 Second Ave. West, Owen Sound, Ont., says he is employed on the Great Lakes Elevator. He was called when the Paisley was part way across the river to take the lines of the ship. He came out and got on a cluster of spiles in front of the office and the mate, Penrice, threw a line to him. He got this line and Penrice ordered one of the men to get another heaving line. The ship was moving ahead at that time and before he got the line the ship struck the Saskatchewan. Penrice

was in charge of the shifting of the boat. Her stern was closer to the dock than the amidships section and he could have gotten a line out from the after winch. Where he was there was no winch and he should have been aft where he could have checked the forward movement of the ship. The tug was on the opposite side of the ship so I cannot tell anything about his movements. (Sgd.)

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“Richard J. Yeo.”

You are asked today which was the closer to the line of the dock.

10 HIS LORDSHIP: What are you doing with that statement? You have proved it now; are you going to put it in?

MR. WOOD: Yes, I think so, my Lord.

EXHIBIT C-4, statement of Richard Yeo above read.

Q. Now, what is there that accounts for your not being able to tell us today and being so indefinite?

A. In what way do you mean?

Q. Well, I mean when you are interviewed in January right after the accident you are willing to state that the stern—?

MR. TOWERS: I submit my learned friend should submit questions to the witness.

20 HIS LORDSHIP: I think he is not offending against any rule I know of.

Q. You are willing to admit that the stern of the Paisley was closer to the line of the dock than the amidships section. Today you are uncertain; you couldn't say. Now what has happened that all the elevator men have taken to cover and won't say?

HIS LORDSHIP: That is not a proper question. The question is why he has made any change if you think there is a change in the statement.

Q. Why do you change it now?

A. Well the only reason I see for that statement there when he asked me if Mr. Penrice had of been aft he might have got the line out then.

30 Q. If he had been asked? A. If he had been aft at the winch.

Q. Your judgment was he could have got the line out?

A. Yes, if he had been down there, sir.

By HIS LORDSHIP: Q. You adhere to what is in the statement now?

A. Yes, about that after winch.

Q. No, the whole of the statement? A. Certainly.

Q. Was there anybody aft on the Paisley?

A. Well I couldn't tell you now.

RE-EXAMINED by MR. TOWERS:

40 Q. Do you handle a good many boats at the elevator, Mr. Yeo?

A. Yes, there is quite a few there.

Q. And do you help with the lines?

A. Well not always.

Q. Sometimes? A. Yes. Sometimes we do.

Q. Now did you ever have to go out on the piles before to get a line?

A. No sir, never did.

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tion
(continued).

A. And you must have been out there before Penrice threw the heaving line? A. Yes. Mr. Penrice hollered for somebody to take the line and I ran down out on the piles.

Q. Now where was he when he hollered on the ship?

A. I think he was coming down from up forward.

Q. With the heaving line? A. With the heaving line.

Q. Naturally to check a ship coming into a dock if you are going to heave a line where would you heave it from, what part of the ship? A. Well the closest.

Q. But I mean under ordinary circumstances, a vessel coming to dock, 10 would you heave it from forward or aft?

A. Forward.

Q. And so he apparently was forward with the heaving line and called to you to get it? A. Yes sir.

Q. Now why did you go out on the piles 25 feet?

A. Well that was the closest place to get around.

Q. And did he make a good heave?

A. Well he landed it all right.

Q. And the vessel was still going forward? A. Yes sir.

Q. And he walked aft on the vessel, keeping opposite you, I suppose? 20

A. No, he started back up forward. To go back up forward on the boat.

Q. After you got the heaving line Penrice started forward on the boat.

Is there a winch forward?

A. Yes sir.

Q. Could you say how fast the boat was going at that time?

A. No, I could not.

Q. Did he get up as far as the winch forward?

A. Well no, he did not.

Q. Then what did you hear him do or say?

A. He hollered for somebody to bring him a line, another heaving line, 30 and then when he didn't get it he told me to let go.

Q. Do you mean by this statement that he could have gotten a line out from the after winch to you?

A. Well I guess I was as close as anybody around aft.

HIS LORDSHIP: That isn't the question now. Just answer what you are asked.

Q. In this statement, whether you recollect or not, you said her stern was closer to the dock than the amidships section and he could have gotten a line out from the after winch. Do you mean he could have walked back with the heaving line that you had and gotten a line? 40

A. No sir.

Q. He couldn't have done that? A. No sir.

MR. HOLDEN: He said, if he had been at the after winch.

MR. TOWERS: But he said he couldn't have walked back.

HIS LORDSHIP: What does the statement say?

MR. TOWERS: He says her stern was closer to the dock than the amidships section and he could have gotten a line out from the after winch.

Where he was there was no winch and he should have been aft where he could have checked the forward movement of the ship.

HIS LORDSHIP: I would like him to answer that question you put to him.

Q. After you caught the heaving line could he have walked back with his end of the heaving line to the after winch and got a line out in time to prevent the collision with the Saskatchewan? A. No sir.

Q. You say he could not.

By HIS LORDSHIP: Q. Whom could he have got it to then? A. He
10 couldn't have got it to anybody from walking where he was if he threw me the line.

MR. HOLDEN: What the statement says is that he should have been aft; not that he should have walked aft. The statement is Penrice should have been aft when he could have got it. Mr. Towers' question is, could he have walked aft, instead of being where he should have been, could he have got there at the eleventh hour. That was too late.

By MR. TOWERS: Q. When was this statement made? Do you remember that at all? Do you remember signing it? A. Yes.

Q. Where? A. Yes, that was made in the basement of the elevator.

20 Q. When? A. Well I couldn't just tell you.

Q. Who got you to sign it, do you know?

A. I couldn't tell you the gentleman's name at all.

Q. He doesn't witness it? A. No.

Q. And you don't know whether you read it over?

A. No, I am sure I didn't read it over.

Q. And you don't know whether he read it over to you?

A. I believe he read it over to me all right.

Q. Well what you say is that you are employed in the Great Lakes
Elevator. That is true? A. Yes.

30 Q. That you were called when the Paisley was part way across the river?

HIS LORDSHIP: It was read over to him and he told me that he adhered to it now. Do you want to point out anything in it that he doesn't adhere to now?

MR. TOWERS: For instance, he says—

HIS LORDSHIP: If you want to ask him about it all right, but there is no use reading the whole thing over.

Q. "Penrice was in charge of the shifting of the boat." You mean that he was—?

MR. HOLDEN: Don't tell him; ask him, What do you mean?

40 Q. What about that? A. Well I imagine that Penrice was in charge on account of him being the ship keeper.

Q. Any other reason in your mind which indicates that?

A. No.

Q. Then, "He should have been aft." What do you mean by that? Was it proper for him to be forward?

A. Well as a general rule there is two of them at each end. I don't think I sanctioned that Penrice should have been there himself.

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MR. HOLDEN: Somebody.

Q. Do you know whether there was anybody there?

A. No, I couldn't say.

Q. You don't mean that Penrice should have been aft; you mean that somebody?

A. As a general rule there is two or three there.

Q. And as a general rule when boats are brought in to the elevator from the south where do they come to the dock?

HIS LORDSHIP: I don't think this is re-examination. I don't think either of the cross-examining Counsel said anything about that. 10

MR. TOWERS: Very good, my Lord.

By MR. HOLDEN: Q. The witness made one new statement. You stated that after you had got the heaving line Penrice asked for another?

A. Yes. He hollered for somebody—

Q. And not getting it he told you to let go?

A. Yes.

Q. How did you know he didn't get it?

A. Well I could see him.

Q. Did he swear a bit about it or did he get impatient?

A. Well I couldn't say. 20

Q. He asked for something from his companions on board the ship and did not get it? A. Yes sir.

Q. If he had got it the results might have been different? At any rate he didn't get what he asked for?

A. No, he did not.

By MR. TOWERS: Q. With your Lordship's permission: On this photograph C-2 will you be good enough to mark the spiles on which you got the rope?

HIS LORDSHIP: I will mark that if he will indicate. A. Right there. (Indicating). 30

HIS LORDSHIP: I will call that C.

Q. And when you say that the stern was closer in than the bow are you taking into account that the bank falls away?

A. Yes, the bank falls away.

Q. Do you think if the bank had continued in a straight line as it is now, what would you say about the bow or the stern being closer?

HIS LORDSHIP: That is not important.

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Henry Wil-
liam Morris.
Recalled and
re-examined.

HENRY WILLIAM MORRIS recalled.

EXAMINED by MR. TOWERS:

Q. Mr. Morris, you are already sworn in this case? 40

A. Yes sir.

Q. And I am showing you what is marked P-7. Will you say what those are, what that document is, perhaps?

A. Instructions to owners and masters of vessels.

Q. Issued by what body? A. Issued by the Manager of the American Bureau of Shipping, Great Lakes Department.

Q. What if any connection has that Bureau with the London Salvage Association? A. None whatever, sir.

Q. Are you the representative here of the American Bureau of Shipping?

A. Yes sir.

Q. Has the American Bureau of Shipping any authority over American vessels trading in the Upper Lakes, such as the Paisley? A. Yes sir, provided they are classified by the American Bureau of Shipping.

By HIS LORDSHIP: Q. What authority have they? A. Well as far as the classification is concerned for insurance purposes.

10 By MR. TOWERS: Q. American vessels?

A. Both American and Canadian.

HIS LORDSHIP: For purposes of classification.

MR. TOWERS: For purposes of insurance.

By HIS LORDSHIP: Q. Classification and for insurance?

MR. TOWERS: For insurance.

HIS LORDSHIP: I am asking the witness.

A. Yes.

20 By MR. TOWERS: Q. If they are not classed for insurance are they permitted by law to carry cargo?

A. Well yes sir.

Q. If the cargo shipper wishes to ship it and they wish to carry it they can carry it? A. Yes.

Q. So that these rules—?

HIS LORDSHIP: Let him describe the rules.

A. Well these rules don't bind anybody at all only those vessels that wish to be covered for winter mooring risks. These particular rules. But if they don't comply with these rules—

MR. HOLDEN: Their insurance is upset.

A. (Contd.): Their policies really fail, usually they can cancel their policies.

30 By HIS LORDSHIP: Q. Those are the terms on which the American Bureau of Shippers will insure them in the winter, is that right? A. American Bureau of Shipping, sir, not Shippers; those are the rules that they bind their policies.

Q. If they comply with those rules they would be insured through the American Bureau of Shipping, wouldn't they?

A. No sir.

Q. Insured how? A. The Underwriters or the insurance companies will take the American Bureau standard.

Q. Well that is what I am saying? A. Yes.

40 Q. Though perhaps I put it wrong in saying through them. From their Underwriters they can get their insurance provided they adhere to these regulations?

A. Yes.

Q. But they are not bound by it? A. No sir.

HIS LORDSHIP: Any questions?

MR. HOLDEN: No thanks, my Lord.

MR. WOOD: No, my Lord.

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ALVIN ROY PENRICE, Sworn.

EXAMINED by MR. TOWERS:

Q. Mr. Penrice, were you employed by the Cleveland-Cliffs Iron Company in the season of navigation of 1927?

A. I was.

Q. And what were you doing through the season of navigation? A. Acting in the capacity of second mate.

Q. Then did you get any orders or sign any agreement as ship keeper for the winter?

A. I signed no agreement whatsoever prior to going on the boat. 10

Q. Did you afterwards? A. Pardon?

Q. Did you afterwards sign an agreement?

A. Later on I signed an agreement.

By HIS LORDSHIP: Q. How much later on?

A. I can't state it.

Q. Was it before or after this accident which occurred with the Paisley?

A. I don't know.

By MR. TOWERS: Q. We will have the date of it; it should be here, my Lord, this afternoon.

HIS LORDSHIP: All right, go on. 20

Q. At all events did you go on the Paisley as ship keeper?

A. I did.

By HIS LORDSHIP: Q. About what time?

A. About the 15th or 16th of December.

Q. After that you signed an agreement? A. Yes sir.

HIS LORDSHIP: You will produce that agreement, will you, Mr. Towers?

MR. TOWERS: Yes, my Lord. We have wired to Cleveland for it. If it comes. We wired yesterday. I will produce it in any case if it can be found. 30

By MR. TOWERS: Q. And were you ship keeper on board on the 15th January? A. I was.

Q. Up to that time what if any word had you about the vessel shifting?

A. Regarding the Paisley, you mean?

Q. Yes, regarding the Paisley shifting, before the 15th January? A. Well a few days before that I was speaking to Mr. Richards, the elevator Superintendent and he informed me that the Paisley would be the next boat to go to the elevator.

Q. Yes, and you were lying— First had you any other notice from any other source than Mr. Richards prior to the 15th? A. I don't recollect of any other notice. 40

Q. Then at the time you got this notice where was the Paisley lying?

A. At her winter moorings.

Q. And where was that, which side of the harbor?

A. On the east side of the harbor.

Q. Heading which way? A. Heading up stream, approximately south— southerly direction.

Q. Well then what was the next that you heard about her shifting?

A. To the best of my knowledge the Captain of the tug came aboard.

By HIS LORDSHIP: Q. What was his name?

A. Captain Waugh, I believe.

By MR. TOWERS: Q. When was that?

A. That was on Saturday.

By HIS LORDSHIP: Q. What was the date of the Saturday?

A. January 15th.

By MR. TOWERS: Q. About what time of day did he come? A. It
10 was in the afternoon.

Q. Did the tug come over, come alongside?

A. I think it did.

Q. Anybody come aboard with him?

A. Oh Captain Waugh and some of his crew.

Q. And what did he tell you? What did he say?

A. To make arrangements whether we would shift or heave up the
anchors.

Q. Was there anybody aboard in charge of the machinery at that time
except yourself? A. There was not.

20 Q. Any engineer aboard? A. There was no engineer aboard.

By HIS LORDSHIP: Q. What about the anchors? Did you talk
about them? Or what was it you said about that, that he wanted to do some-
thing about the anchors?

A. Yes, the tug was going to furnish steam and they would heave up the
anchors.

By MR. TOWERS: Q. Was there any arrangement to that effect
mentioned?

A. No definite arrangement that I recollect.

30 Q. I mean did he say that he had spoken to anybody about it or anybody
had spoken to him, Captain Waugh?

A. Well I opened the door for them to come in and then he informed me
that he already knew the windlass room.

Q. That what? A. That he had spoken to the Chief Engineer, Mr.
Telliard, before the Chief left in the fall and Mr. Telliard had explained all
that was necessary to Captain Waugh regarding heaving in the anchors.

Q. What if any preparations appeared to have been made?

HIS LORDSHIP: This has all been described, hasn't it?

MR. TOWERS: Yes, my Lord.

Q. Well then what was done with the starboard anchor?

40 HIS LORDSHIP: He has only just got Captain Waugh aboard now
and taking him about, that is all.

By HIS LORDSHIP: Q. Was there anything done with it? A. The
tug connected up, or furnished steam for our windlass by means of connections
that had been left there that fall.

By MR. TOWERS: Q. Then what did you do?

A. The starboard anchor was hove home and connected up—the steam
turned on and hove it home.

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- Q. How many of the Harrison's crew were aboard, do you remember?
A. I can't state definitely. There was a matter of three or four of them.
Q. Was their engineer there, do you know?
A. Through the operation at some time the engineer was aboard.
Q. Well all right, you heaved the starboard anchor home, was that the first thing done?
A. Well the port anchor was the first thing done, the port chain.
By HIS LORDSHIP: Q. Which one is?
A. The port chain.
Q. I thought you said the starboard anchor was? 10
MR. TOWERS: He didn't say first, my Lord, I asked him.
HIS LORDSHIP: The starboard anchor was hauled home, was it?
A. During the heaving operations it was. The port anchor.
Q. It was done that afternoon? A. Yes.
Q. Very well then, what about the port anchor?
A. The port chain being on the dock was disconnected from the dock and we hove in the slack.
By MR. TOWERS: Q. Who disconnected it?
A. I undertook the operation and I had trouble and I believe one of the tug men helped me. 20
Q. And got it disconnected? A. I got it disconnected and it was hove in.
Q. On the Paisley's windlass with steam from the Harrison?
A. Correct.
Q. Then what? A. Then the chain was connected to the anchor and then the steam was turned on and the anchor was hove as far as it could be, as far as the windlass would heave it, until it brought up, speaking nautically.
Q. Where did it bring up?
A. It was about two feet of the anchor stock in the hawse pipe.
HIS LORDSHIP: And what about the rest of it? 30
A. And how long is the anchor stock?
A. Well I don't know the exact measurement of the anchor stock.
By HIS LORDSHIP: Q. Oh yes, you can tell now pretty well?
By MR. TOWERS: Q. I show you Exhibit S-4, does that show the port anchor? A. Yes sir.
HIS LORDSHIP: He knows the length of the anchor stock, doesn't he?
Q. About what is the length of the anchor stock?
A. Oh it would be 6 feet—around 6 feet.
Q. And about 2 feet of it was in the port hawse pipe?
A. Yes. 40
Q. Well then what if anything was said about it or what was done?
A. Well we examined it then.
Q. Who examined it? A. Why I had a look at it; Captain Waugh had a look at it.
Q. Yes? A. I don't know who else.
Q. And what was said about it and who said it?

A. Well Captain Waugh said that we should lower it down so it was lowered down.

Q. Did he say why he wanted it lowered down?

A. Because it would be in the road of his tug, the tug might become fouled in doing the operation of shifting the boat; at least that is why I understood, the reason he wanted it down.

Q. And then it was lowered down? A. It was lowered down.

Q. And then what? A. That side was disconnected and the starboard side was connected and the starboard anchor hove home.

10 Q. And when it was lowered down how was it left?

A. In approximately the same position as it had been when swung off on the cables.

By HIS LORDSHIP: Q. Well that doesn't tell us what that position was?

A. Well, the crown of the anchor was about 2 feet or 2½ feet below the water.

Q. The Paisley was then full loaded? A. She was.

By MR. TOWERS: Q. And then was there anything said as to its being in the way of the tug?

20 HIS LORDSHIP: What is that?

Q. After it was lowered was there anything said about it being in the way of the tug?

A. As near as I can remember Captain Waugh was satisfied with it that way. There might have been something said, I don't just remember what it was.

By HIS LORDSHIP: Q. You remember there was something said, do you? A. I think there was, yes.

By MR. TOWERS: Q. About it being satisfactory?

A. Satisfactory.

30 By HIS LORDSHIP: Q. But you can't remember what?

A. I couldn't say the exact words.

By MR. TOWERS: Q. Then it was disconnected—you say you can't say the exact words but that it was satisfactory to Captain Waugh?

A. I believe it was satisfactory to Captain Waugh.

HIS LORDSHIP: He believes there was something said, but he can't remember the words, but says Waugh was then satisfied.

Q. Then it was disconnected, you mean the windlass?

A. Yes, the heaving part of the windlass was disconnected.

Q. And the starboard anchor, which was on the bottom, hove up?

40 A. Correct.

Q. Do you know the character of the bottom there? Did you observe the character of the bottom there at all?

HIS LORDSHIP: Where? Where she was lying?

MR. TOWERS: I think when he heaved his anchor.

HIS LORDSHIP: Where she was lying?

MR. TOWERS: Where she was lying.

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A. All I can say to that is from seeing the anchor when it came up there was practically no mud or anything on it; it came up clean.

Q. Well then, that was on the 15th. Was there anything else done that day? A. That completed the operations for that day.

Q. Anybody from the Paisley except yourself engaged in those operations that day? A. No.

Q. And you say you don't remember how many from the Harrison, but you do know the Master and the Engineer?

A. And his mate. The mate was aboard.

Q. Then when was the shifting done? 10

A. On Tuesday, January 18th.

Q. Did you have any duties in connection with the shifting?

A. Well, I had no definite instructions regarding my duties.

By HIS LORDSHIP: Q. From anybody?

A. From no person.

Q. Well, that isn't answering the question?

A. I always considered—I had heaving lines ready and hatches ready, swept off.

Q. Hatches off? A. Hatches swept off, and any other things necessary in the unloading operation, preparing the boat for unloading. 20

By MR. TOWERS: Q. You say hatches swept off. Was there much snow?

A. Oh, there was some; now just how much I couldn't say.

Q. Did you have them swept off?

A. Yes, our hatches were cleaned off.

MR. TOWERS: With regard to Mr. Schneider, he was to produce that contract and he is anxious to get back. I was wondering if you would allow the contract to be produced and sworn to by some other official. It is being mailed and it will be here tomorrow morning.

MR. HOLDEN: May it please the Court, this contract is apparently 30
the basis of what we feel is a surprising attempt to escape responsibility. I am not going to tell my learned friend what course to take; I am going to argue the best I can in my client's interests that he has not shifted the burden.

HIS LORDSHIP: I cannot put anybody on terms.

MR. TOWERS: Mr. Penrice can prove it.

MR. HOLDEN: That is my learned friend's responsibility.

4.30 p.m. adjourned till 10.30 a.m. Friday, February 10th, 1928.

—10.30 a.m., Friday, February 10th, 1928, Resumed.

ALL PRESENT: 40

ALVIN ROY PENRICE Continued:

MR. TOWERS: I am tendering in evidence Mr. Penrice's contract with the Cleveland-Cliffs Iron Company, dated December 22, 1926.

HIS LORDSHIP: I don't suppose there is any objection to that, is there?

MR. HOLDEN: I don't see there is any reason why we should make a legal objection, my Lord. They had to do their duty in having a proper

man to look after their ship and they appointed this man evidently. It says in the beginning of the second paragraph to look after the ship.

HIS LORDSHIP: I suppose you want to prove this.

MR. TOWERS: Yes, my Lord.

By MR. TOWERS: Q. Is that your signature, Mr. Penrice?

A. It is.

Q. And what is that document?

A. This is my agreement with the Cleveland-Cliffs Iron Company to act as ship keeper of the Steamer Paisley.

10 Q. Dated when, 22nd day of December?

A. 22nd December, 1926.

—EXHIBIT P-8: Mr. Penrice's contract to act as ship keeper of the Paisley, dated December 22, 1926.

By HIS LORDSHIP: Q. Is that the contract under which you were acting on the 18th January, 1927?

A. Yes sir.

Q. And previous to that? A. And previous to that.

By MR. TOWERS: Q. Now you have told us about the anchors being hove up on the 15th January. Then what was your next communication about shifting the vessel?

A. On Tuesday, January 18th.

Q. Yes? A. The tug came over in the forenoon and Captain Waugh came aboard bringing with him a short piece of chain and said he was going to shift us to the elevator that morning.

By HIS LORDSHIP: Q. What do you mean by a short piece of chain? One you had never seen before?

A. I had never seen this piece of chain before. I went with Captain Waugh to the stern of the Paisley and he put this chain around the bitts on the stern of the Paisley.

30 Q. He put this chain around what?

A. Around the bitts.

Q. Where was the bitt? A. On the fan tail of the stern of the Paisley. I asked Captain Waugh what the chain was for.

Q. You had no idea, I suppose?

A. I didn't know what he was going to use that for. He said that was to hook his towing cable into. He made the chain fast. The cable was pulled aboard from the tug, the towing cable, and made fast to this chain.

By MR. TOWERS: Q. Was that in the forenoon?

A. It was before noon, January 18th.

40 Q. Had you any men besides yourself on board then?

A. I had one man when the tug came. Shortly after the tug arrived my other two men.

By HIS LORDSHIP: Q. The towing cable from the tug was made fast to this chain?

A. Made fast to the chain.

Q. Then what was done with the chain, left on the bitts?

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A. Left on the bitts. After that was done the lines were taken in; that is, the mooring lines.

Q. That is of the Paisley? A. On the Paisley.

Q. That means she was afloat then, does it?

A. Yes sir.

By MR. TOWERS: Q. You said you had some other men on board. Who were they?

A. Mr. Sykes and Mr. Holmes and Mr. Bechard.

By HIS LORDSHIP: Q. Employed under you?

A. I arranged to have them.

Q. Employed under you? A. Yes sir.

By MR. TOWERS: Q. For what purpose did you have them?

A. To assist me in handling lines, taking off hatches and principally to sweep out the boat when she arrived into the elevator and was being unloaded.

By HIS LORDSHIP: Q. Were they aboard this morning?

A. They wire.

By MR. TOWERS: Q. Well, then once you were afloat, what happened? A. The tug pulled our stern out away from the dock and then straightened us out and pulled us down the harbor, that is northward.

By HIS LORDSHIP: Q. Stern first, I suppose?

A. Stern first.

By MR. TOWERS: Q. What part of the boat did you stay on?

A. Stayed on the stern.

Q. What for? Did you stay on the stern—?

MR. HOLDEN: Wait a moment. My learned friend asked him a question, "What for?" And then commences to suggest the answer.

By HIS LORDSHIP: Q. What does he do on the stern? What did you do there?

A. Why I always considered—

Q. Never mind what you considered; you say you stayed on the stern. What did you do?

A. I stayed there and watched the tow line and watched the operations.

By MR. TOWERS: Q. This is a little cardboard model of the Paisley drawn approximately to scale. Would you just show us the course of the vessel?

HIS LORDSHIP: There is no dispute about the course, is there? You got her stopped and moved this way, can't you say?

Q. You were towed north? A. Yes sir.

Q. How far north did your stern get?

HIS LORDSHIP: Put that model the farthest you got to going stern foremost.

A. (Indicating). Approximately in a position like that.

Q. The stern would be a little north of that? A. Yes.

MR. TOWERS: Harrison & Son's store house.

HIS LORDSHIP: Yes.

By MR. TOWERS: Q. Then when you got there what happened?

A. The tug checked her momentum some.

Q. What length of line had you out there on the stern or had the tug out, rather?

A. Oh, perhaps 30 or 40 feet.

By HIS LORDSHIP: Q. That is including this chain that was on you, was it?

A. Well, that would be from the Paisley's stern, from our chock, about 30 or 40 feet.

By MR. TOWERS: Q. To the stern of the tug?

10 A. To the stern of the tug.

Q. Then when you got out there you say the tug checked the momentum of the vessel some? A. Yes.

Q. And then what? A. Then he ordered—yelled out on the boat to let go the tow line.

Q. Was that done? A. Yes.

Q. Then what did he do? A. He brought his tug up the starboard side of the Paisley, up to the starboard bow I understand, I didn't see—

HIS LORDSHIP: Don't tell us what you understand, if you didn't see it.

Q. Where did you remain? A. I remained on the stern of the Paisley.

20 Q. Then where did the vessel go?

By HIS LORDSHIP: Q. You saw the tug going southwards, did you?

A. I did.

Q. Then you lost sight of her? A. Yes sir.

Q. Still on the stern, you were? A. Yes sir.

By MR. TOWERS: Q. Then what happened?

A. Well, I didn't see anything of the operation up forward then as I remained on the stern of the steamboat.

Q. Well, what happened to the steamboat? Where did she go?

30 A. Her stern tended to get over toward the eastward, that would be over this way (indicating), and I remained on the stern until such time as the Paisley started to go up ahead.

Q. Then what did you do?

A. After she was going ahead with a fairly good way on her I came up the starboard side of the Paisley up forward.

Q. Where were you then in relation to the elevator dock?

By HIS LORDSHIP: Q. Where was the bow of the Paisley then in relation to the elevator dock?

A. The bow of the Paisley would be about abreast of the elevator.

Q. Yes, but what part of the elevator?

40 A. I don't understand that.

By MR. TOWERS: Q. What part? A. About the centre of the elevator, that would be the leg.

Q. And how far away? A. Well, I don't exactly know; I didn't pay any attention to that part of it. Be quite a distance anyway.

By HIS LORDSHIP: Q. It is no use to say, you know, "Quite a distance"; that might be 10 feet under certain circumstances. Can't you give any idea of the distance she was out at that time?

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- A. Well, she would be a hundred feet out.
- Q. How long is that pier there, 250 feet, is it?
- A. No, something over—about 380, I think.
- Q. Well, then the distance would be about a quarter of its length?
- A. Between a quarter and a third.
- By MR. TOWERS: Q. Then what did you do?
- A. I looked to see, to make sure if the lines was ready for mooring.
- By HIS LORDSHIP: Q. You did what?
- A. I looked at the winch to make sure that the forward line was ready for mooring purposes. 10
- Q. Where had you got to? You only said you came forward up the star-board side. Where did you get to?
- A. I came forward to about No. 1 hatch, between No. 1 and No. 2.
- By MR. TOWERS: Q. Where was your forward windlass? A. My forward windlass was in the windlass room and the mooring winch was between No. 1 and No. 2 hatch.
- Q. The mooring winch? A. Yes sir.
- By HIS LORDSHIP: Q. That is the one you looked at, is it? A. Yes sir.
- By MR. TOWERS: Q. What did you look at it for? 20
- A. To make sure the line was ready to heave a line for mooring purposes.
- Q. And was it there? A. It was.
- Q. Did the situation cause you any thought—?
- HIS LORDSHIP: Why suggest that to him? Just get what was done. If he was under any apprehension that is what he will tell you.
- Q. We have got the mooring line there; you saw it was all right, did you? A. Yes sir.
- Q. What next? A. Went from there onto the fore-castle, onto the bow.
- Q. What did you see there?
- A. Saw the tug pulling on us. 30
- Q. At that time? A. At that time.
- Q. Pulling in which direction? A. Well I don't quite understand that question.
- Q. Well in which direction was the tug pulling you?
- By HIS LORDSHIP: Q. Towards the elevator or away from it?
- A. Well he was pulling us about like that. (Indicating).
- Q. That is parallel to the dock line, is it?
- A. Practically parallel.
- By MR. TOWERS: Q. Well how long did that continue? 40
- A. Oh maybe two or three minutes.
- Q. And did you stay there during that time? A. I did.
- By HIS LORDSHIP: Q. Did you say anything to anybody on the tug? A. I remember of—as the bow of the Paisley at this time was past the elevator, considerably past—
- MR. HOLDEN: Past the south side?
- A. (Cont'd.): The south side of the elevator, and I passed the remark that it was time—

Q. I know, did you pass it to the men on the tug?

A. No.

Q. I don't care what you talked among yourselves?

A. That was amongst ourselves. I had no communication with the tug whatsoever.

By MR. TOWERS: Q. Up to that time had you made any attempt to get a line ashore?

A. I had not.

Q. Why? A. I couldn't. It was too far away.

10 Q. Had any other man on board to your knowledge made such attempt?

A. They had not.

By HIS LORDSHIP: Q. Did you give any instructions to the men at this time? You saw the mooring winch was all right and the mooring line was there and you saw the tug pulling you along and you said something to them on board. Did what you said include any order to them? A. No order to the tug at all.

By MR. TOWERS: Q. To any of your men on the boat?

A. No, it did not include any orders.

Q. Well then what happened?

20 A. The tug stopped pulling and backed across our bow, that would be from the starboard bow to the port, slackening up his tow line.

Q. Did you see that? A. I saw that.

By HIS LORDSHIP: Q. She backed across your bow?

A. Across our bow, and the men on the tug disconnected the tow line from the stern of the tug and carried the bight of it forward on the tug.

Q. Did you see that? A. I saw that operation.

Q. You saw it perfectly. With any difficulty or without difficulty?

30 A. They got the bight of the line forward and they seemed to have trouble in getting sufficient turns on it; the speed of the Paisley going and the tug going astern they didn't have enough slack in their line to make it fast around the bitts, it was surging or rendering on them.

By HIS LORDSHIP: Q. The tug was backing, the Paisley going on, is that right? A. Correct.

Q. And the result? A. The men could not handle the tow line.

Q. They could handle it all right; you said something about they couldn't get sufficient turns?

A. Sufficient turns on the snubbing post forward.

Q. That is what you saw, or was that what you thought?

40 A. Well I saw that and they also had trouble carrying the line past the stays on the side of the tug.

Q. Past what? A. The stays.

By MR. TOWERS: Q. Well then what, if anything, did you do?

A. When I saw them having trouble getting the line by I left the fore-castle and went down on deck where my mooring line was on the forward winch.

By HIS LORDSHIP: Q. That is the main deck? A. Main deck.

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tion-in-Chief.
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By MR. TOWERS: Q. You went to the mooring winch? A. Well down on the starboard side, that would be abreast of the mooring winch, picked up a heaving line and endeavored to pass it ashore.

By HIS LORDSHIP: Q. What did your endeavor consist of, throwing it? A. Throwing it.

By MR. TOWERS: Q. What distance would you say you threw it?

A. Oh I threw it 75 feet.

Q. And where did it light? A. The end of the line lit on these spring spiles, the furthest spiles to the south'ard on the dock.

By HIS LORDSHIP: Q. Did you pay it out then? A. Well I had no 10 more to pay out, sir. I had the end of the line in my hand.

By MR. TOWERS: Q. Well then would the Paisley going ahead carry it off at once?

A. Well it would tend to do that but I walked down the Paisley towards amidships so it wouldn't be pulled off these spring spiles.

Q. I show you Exhibit C-2 where "piles where Yeo got heaving line" are shown. Is that correct?

A. That is correct.

Q. Then what? A. One of the elevator men secured the end of the line; by this time I was nearly amidships on the Paisley; I called for another heaving 20 line intending to tie the two of them together and make it fast to the cable.

By HIS LORDSHIP: Q. Whom did you call to?

A. One of the two men I had on the boat, Mr. Bechard.

Q. For another heaving line? A. Yes.

A. And—? A. He was bringing me the heaving line and I sized up the situation and decided I couldn't get a line ashore, that is a cable ashore.

Q. Yes, and—? A. And I told Mr. Yeo on the dock to let it go.

By MR. TOWERS: Q. Had you seen anything more of the tug in the meantime? A. I had not; I was busy endeavoring to get that line out.

Q. And why did you decide you couldn't do it? 30

A. Oh it was impossible for—

By HIS LORDSHIP: Q. Yes, but why? Why was it impossible? You must have had some reason for making up your mind? A. Well the winches were dead, had no steam, I couldn't pull them out; I had experience with that with the other boat.

Q. Well but I thought you said the winch was all right, the mooring winch? A. It was ready; what I mean by that, sir, the cable was out and through the chock and on the deck to take a heaving line there, but to get that line out you have to pull it out by man power.

Q. Yes, well? A. And that is a very slow operation when there is no 40 steam on a winch.

By MR. TOWERS: Q. Those were the conditions under which you started, were they?

A. They were.

Q. Now you say that you sized up the situation and decided you couldn't get a cable ashore. Now just elaborate the reasons that made you come to that conclusion? A. Well it was too far off, firstly.

Q. Yes? A. To pull a cable and get it to a spile.

Q. Yes. Next? A. And the fact the winches were dead, it is a very slow operation getting the cable out.

Q. Yes? A. And also the amount of cable I would have had to put out to reach a spile would be a considerable left.

By HIS LORDSHIP: Q. A great weight, I suppose?

A. A great weight, and would take a long time to pull it out there.

Q. Any other factor? Any other reason?

A. Well that is about all I know of.

10 By MR. TOWERS: Q. How close was the nearest spile it could be put on? A. Oh it would be 125 or thirty feet from the line.

By HIS LORDSHIP: Q. From where?

A. From the mooring cable that I had ready.

By MR. TOWERS: Q. You don't mean that these piles are the ones that the mooring cable was to be put on? A. No, you couldn't put that on them, they were no good.

Q. And the other one was no good?

A. Yes; 65 or 70 feet from that.

20 Q. Now you had this mooring cable ready and passed through the chock and lying on deck, you say?

A. Correct.

Q. How did you expect to manoeuvre the boat when you left your other berth? A. Well I expected the tug would put us right to the dock and I would pass the eye of the cable on the dock.

By HIS LORDSHIP: Q. You expected the tug to do what? A. To put the Paisley alongside of the dock.

Q. Without any lines being thrown from your ship?

A. Without throwing any heaving lines, yes sir.

30 By MR. TOWERS: Q. Had you been on any other boat previously that was moved to the elevator? A. I was.

Q. Did you move it?

By HIS LORDSHIP: Q. Give us the name of it?

A. Steamer Presqu'ile.

By MR. TOWERS: Q. Who moved it?

A. The Tug Harrison.

Q. And how did you get your mooring lines ashore then?

A. In that case we had to pass heaving lines ashore on account of a lot of ice being between us and the dock.

Q. How far would you have to pass your heaving line?

40 A. Oh about 15 feet I should think.

Q. And how was the ice condition this day?

A. Practically no ice between the Paisley and the dock; the tug had swept that all out the day before.

Q. Well then you decided you couldn't get a heaving line ashore or get a cable ashore in the position where you then were. What then happened?

A. I heard some person yell "The tow line has parted."

By HIS LORDSHIP: Q. Where were you then?

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A. When I heard that I was about amidships.

Q. You mean on board your ship? A. On board the Steamer Paisley.

Q. Was the shout on board your ship?

A. I don't know. So then I started forward.

Q. The cable had parted, was it?

A. The tow line.

By MR. TOWERS: Q. About where was the bow of the Paisley then when you heard that and started forward?

A. Oh it was away south of the elevator about a hundred feet from the Saskatchewan. 10

Q. A hundred feet from the Saskatchewan. And you say you started forward? A. Yes sir.

Q. What, if anything, did you do? When you started forward what if anything did you do?

A. I started to go down into the windlass room, that is the forward end of the boat, corner No. 1 hatch, but I didn't go. I thought of dropping an anchor.

HIS LORDSHIP: What did you do, is the question.

Q. What did you do?

A. When I got forward as far forward as I could get on the main deck, 20 I looked over the side of the Paisley, that is the starboard side, and I saw we were practically speaking right on top of the Saskatchewan then.

Q. What effect would dropping an anchor have at that time? A. At that time it wouldn't have had any effect, or very little.

By HIS LORDSHIP: Q. Which do you mean, no effect or very little?

A. No effect.

Q. At what time? Do you mean when you got forward?

A. When I got forward.

Q. That is the time you refer to? A. Yes sir.

By MR. TOWERS: Q. What effect if any would it have had at the 30 time you heard that the tow line had parted? A. I don't think that it would have had any effect on the Paisley, by the time we got the anchor down and sufficient chain on; we couldn't then get enough out to do any good.

Q. Could you have gotten a line ashore from the stern of the vessel at any time?

A. Absolutely not. The stern is further out in the channel than the bow.

Q. When you say that are you making allowance for the fact there was no dock south of the elevator? Do you mean that the stern was farther from the line of the elevator dock? A. The line of the elevator dock. At the time the tow line parted there was a dock abreast of the stern of the boat then but 40 it was further out, the boat was too far out to get a line on it.

Q. Can you suggest anything that you could have done that you did not do to avoid this collision?

A. I don't know of anything I could have done.

Q. Both plaintiffs charge that the collision and damage were caused by the default and negligence of those on board the Paisley. What do you say as to that?

MR HOLDEN: May I submit that that is somebody else's responsibility? I submit Your Lordship has that to find.

HIS LORDSHIP: I have no doubt he will truthfully deny it. I don't think that will help us.

MR. TOWERS: No. Perhaps I should not have asked that question.

HIS LORDSHIP: If you ask me that I will promise to give you an answer later on.

Q. Well then they also charge that the vessel was not sufficiently manned. Is that the same objection?

10 MR. HOLDEN: I submit my learned friend should say what men had you on board, or how was she manned, and then I submit Your Lordship himself has the responsibility.

HIS LORDSHIP: Well I presume he means when he says that you say that it wasn't sufficiently manned he is asking him, I suppose, to tell what men he had on board.

A. I had three other men besides myself. I considered that sufficient.

HIS LORDSHIP: I think Mr. Towers intends to ask him whether in his judgment he had enough men on board.

20 MR. TOWERS: Yes. He says now he considered them sufficient, my Lord.

Q. Then it is also said that she was not properly equipped, for this operation I presume. What do you say as to the equipment necessary? What equipment did you require?

HIS LORDSHIP: He has not helped us on that; the engineer can. He hasn't suggested anything at all about equipment.

MR. TOWERS: Except mooring lines, that is all.

Q. How many mooring lines had you ready?

A. Two wire cables and two manilla lines.

Q. Ready to put ashore? A. Yes.

30 By HIS LORDSHIP: Q. For what purpose?

A. For tying up the Paisley when she arrived at the dock.

By MR. TOWERS: Q. Would it have made any difference if you had had more men? Could you have tied her up under the circumstances?

A. No, not if I had had a hundred.

Q. Would it have made any difference if you had had more lines or more equipment of any kind?

A. I can't see how it would.

Q. Well then, what is your answer? A. No.

Q. Do you know this tug, Harrison? A. I do.

40 Q. How long have you sailed? A. Eight years.

Q. Then what would you say as to the Tug Harrison being sufficient for the purpose of moving the Paisley?

HIS LORDSHIP: Sufficient in what way?

MR. TOWERS: Power.

HIS LORDSHIP: Does he know what her power is?

A. I don't know the Harrison's horsepower.

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Q. Well, can you say or can you not whether the Tug Harrison had insufficient or had sufficient power to move the Paisley? A. To the best of my judgment she was.

By HIS LORDSHIP: Q. Though you don't know her horsepower you think she had enough to move the Paisley? A. I do

Q. What do you base that on?

A. Well, the fact she moved a larger boat.

Q. What is the name of the larger boat?

A. The steamer Presqu'ile.

By MR. TOWERS: Q. It is said that you didn't have a proper under- 10
standing as to your duties during this operation. What were your duties? What did you consider your duties to be?

A. Which operation do you mean, sir?

Q. In the moving, the shifting, what were you duties in the shifting?

HIS LORDSHIP: What is the object of this examination? He has told you what he did.

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: You can ask him if her performed his duties to the best of his ability, I suppose that is allowable. The other may be allowable but it is quite useless, to my mind. 20

MR. TOWERS: Quite so, my Lord.

Q. Did you perform your duties on this occasion to the best of your ability? A. I certainly did.

By HIS LORDSHIP: Q. You did your best, you think?

A. I did my best.

By MR. TOWERS: Q. There is one question, my Lord: There was something said yesterday about the port anchor and there was some conversation of which you didn't have any very distinct recollection.

HIS LORDSHIP: A conversation with whom?

MR. TOWERS: Captain Waugh, I think, my Lord, or some of the 30
men from the tug. A. Yes.

HIS LORDSHIP: Well, if you say he hadn't much idea of it yesterday perhaps you will find out if he has any more today without putting anything further to him in the meantime.

MR. TOWERS: I wasn't going to ask him as to the conversation, my Lord; I was going to ask him as to the point of time, if he had any recollection.

Q. Can you say at what point of time in the moving of the port anchor or in relation to the handling of the port anchor, which was the first anchor dealt with by Captain Waugh and his men, at what point of time did this 40
conversation take place about it?

A. That is when the anchor was first hove into the hawse pipe.

By HIS LORDSHIP: Q. No, you are asked—you had a talk about handling the port anchor and you are asked when did that conversation take place, what time of the day?

MR. TOWERS: No, he said, my Lord, when the port anchor was first hove into the hawse pipe which is when the conversation took place.

HIS LORDSHIP: Were they talking about the port anchor then?

MR. TOWERS: I believe so, my Lord.

Q. And then you do remember some of the conversation at that time?

HIS LORDSHIP: Just let me see what I have. There is no use going over it again if we already have it.

MR. TOWERS: No, my Lord; it is just a point of time I want to get at.

HIS LORDSHIP: (Reads from his notes of Mr. Penrice's evidence). That is all he says; he doesn't say anything about a conversation from what I have got.

Q. At that time then when the anchor was hove up and partly into the hawse pipe was there some conversation between you and Captain Waugh?

A. There was.

Q. What was it as far as you recollect?

HIS LORDSHIP: Which anchor is this that was left hanging down?

MR. TOWERS: The port anchor, my Lord.

HIS LORDSHIP: Well then, I should go on a little further. He said he examined it then and Waugh said to lower it down and it was lowered down so that it was out of the road of the tug and left down two and one-half feet below water. Waugh then satisfied. Believe there was something said about being satisfied, but cannot remember the words. That is it. Well, now you want to say he has thought it over during the night? Just ask him if he has talked it over with anyone?

Q. Have you talked about this with anyone since last night, of what was said or not said?

A. About the conversation.

Q. Yes?

MR. HOLDEN: Since he gave his evidence, you mean; you said since last night.

Q. Since you gave your evidence?

HIS LORDSHIP: It isn't a very difficult question.

A. Well, I was talking to you this morning and some of the other gentlemen.

By HIS LORDSHIP: Q. About this conversation?

A. If I remembered anything about it.

Q. Who was the other gentleman you mention that you talked it over with?

A. I believe it was Mr. Garry. I believe it was.

Q. Yes, well? A. I don't think I can definitely name any person else.

By MR. TOWERS: Q. Have you any recollection? As to the conversation I understand you haven't, but as to the time of any conversation?

A. There was a conversation between Captain Waugh and I when that anchor was hove into the hawse pipe, I remember that. Of course, there was more or less conversation all the time.

By HIS LORDSHIP: Q. Mr. Towers wants to know when that took place?

MR. TOWERS: And if there was any conversation after that.

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tion-in-Chief.

HIS LORDSHIP: Yes. Why not give him a chance to give one thing at a time?

A. Well, the conversation I had with Captain Waugh was after the anchor was hove into the hawse pipe the last time before he lowered it down, that is the time I had the conversation with him as far as I can remember.

By MR. TOWERS: Q. And can you say if you had any conversation with him after it was done except what you have told us, that he said he was satisfied or words to that effect?

A. No, I can't remember anything definitely as to that.

Q. When either anchor is hove home into the hawse pipe, how far does it project from the side of the vessel? 10

A. Oh, at least 2 feet.

Q. And in the position in which the port anchor was carried on this occasion how far would that project?

A. Oh, I don't think not over three.

HIS LORDSHIP: Now there have been different distances given. Can't this witness be a little more definite than saying he thinks about three? That is his ship and I suppose he saw what—

MR. TOWERS: Well, it is shown in this photograph.

HIS LORDSHIP: I know, but if you are giving his answer as to how far it projected I would like to have something definite from him. 20

Q. Can you say any more definitely than to say that it couldn't be more than three?

MR. HOLDEN: I object to that.

By HIS LORDSHIP: Q. Can't you be more definite as to how far it did in fact project? After you and Waugh had hauled it into the hawse hole, or rather let it down from the hawse hole, how far did it project?

MR. TOWERS: As shown in Exhibit S-4.

A. Well, I don't clearly understand that question yet, your Honour.

HIS LORDSHIP: Perhaps you will read the Question. 30

Q. (Reporter reads Question). "And in the position in which the port anchor was carried on this occasion, how far would that project?"

A. That is when it was into the hawse pipe.

Q. As it is now—as it was carried on this occasion?

A. I should say about 3 feet.

Q. I daresay you would, but I want your definite statement if you can give it as to how far it projected?

A. I didn't measure it. I couldn't give a definite statement how far.

By MR. TOWERS: Q. What makes you think it was only 3 feet?

A. Well, I have a general impression of the anchor, being around 40 anchors—

Q. Did you every go and look at it after the accident?

A. Yes, I looked at it a couple of days afterwards.

Q. Can't you tell how far it projected?

A. I could not, not definitely.

Q. How was the Paisley heading as she came up to the Saskatchewan?

A. On an angle to the Saskatchewan.

Q. At what angle, about what angle?

A. Well, angling abaft her beam. I think I could show you better than I could explain that. About like that. (Illustrating).

Q. Take that paper and assume that it shows the line of the Saskatchewan; there were two boats lying there?

A. (Witness indicates).

By HIS LORDSHIP: Q. That is just about amidships; you said abaft the beam?

A. What I meant, she was angling from abaft the beam.

10 By MR. TOWERS: Q. The angle you show is about 45 degrees. Would that be about right?

A. 45 or 50 degrees.

By HIS LORDSHIP: Q. Just on amidships of the Saskatchewan is what you showed there?

A. Well, I didn't mean that.

Q. Well, I know. Put that right there now. I will hear all sorts of arguments about this afterwards, so get exactly the way you mean to put it?

A. (Witness indicates).

Q. That is forward of the beam?

20 A. Well, yes.

Q. You were asked if she was heading on an angle to the Saskatchewan and you said she was heading from abaft the beam? A. Yes.

Q. And how far forward of amidships?

A. Oh, I don't know the exact distance forward, sir.

Q. You ought to. There are hatches on the boat, aren't there? Don't you know how many hatches there are and what amidships means?

A. She was heading in around No. 3 and 4 hatch.

Q. Anyway forward of amidships? A. Forward of amidships.

30 Mr. Towers? Assuming those are two ships lying side by side?

A. (Witness indicates).

Q. Now I would like you to mark with a pencil a line indicating the starboard side of the Paisley; you just hold it there and somebody will run a line down? A. Yes.

Q. May I see that line? A. Yes sir.

HIS LORDSHIP: All right, thank you.

By MR. TOWERS: Q. About how far aft of the stem of the Saskatchewan would you say the point of collision was?

HIS LORDSHIP: How far what?

40 MR. TOWERS: How far from the stem. He says she was pointing on the third or fourth hatch, forward of amidships.

Q. How far would that be, the point of collision, in your opinion?

A. Oh, about 125 feet or so.

Q. How much? A. About 125 or 130 feet.

By HIS LORDSHIP: Q. The Saskatchewan is 260 feet; you think she was struck 125 feet from the stem? A. Yes sir.

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CROSS-EXAMINED By MR. HOLDEN:

- Q. Mr. Penrice, I understand you had a pilot's license at the time?
A. Yes sir.
- Q. And a mate's ticket? A. Well, that includes mate's—an American license.
- Q. How long had you had it? A. Three years.
- By HIS LORDSHIP: Q. Includes the mate's, does it?
A. Yes sir.
- Q. Do you mean to say that certificates are issued to you as pilot and mate? A. No, the tickets are issued first class pilot, sir. 10
- By MR. HOLDEN: Q. Why do you say that includes the mate?
A. Well it entitles you to ride mate, that is all, allow me to ride mate.
- Q. You could be engaged as mate, could you, under that certificate?
A. Yes sir. In fact I was mate previous to that, sir, for a while.
- By HIS LORDSHIP: Q. And is it a pilot's license for the Great Lakes?
A. Yes.
- By MR. HOLDEN: Q. How long have you been afloat, Mr. Penrice?
A. Well I had been afloat about eight years.
- Q. And you had often taken part in unmooring and shifting and mooring and unloading vessels before, I have no doubt? A. Not during winter 20 operations I hadn't.
- Q. Had you had any previous winter experience?
A. Once.
- Q. I don't mean that winter; any previous winter?
A. The year before that.
- Q. And then you had some previous experience this same winter, hadn't you? A. Yes sir.
- Q. Tell me if I am right; I understand you were in charge of the Paisley throughout?
A. I couldn't say that, no. 30
- Q. Well who was? A. Well I wasn't.
- Q. Wasn't it you that engaged those three men?
A. Yes, I was in charge of those three men.
- Q. Well did you put any one of them in charge of the Paisley? A. No.
- Q. Well was anybody in charge of the Paisley when she cast off and when she was shifted and when she was intending to moor again?
A. Why the tug was in charge of her as far as I know.
- Q. Oh well now, Mr. Penrice, you don't mean to tell this Court that the tug had anything to do with your getting your lines off? A. Oh no, I had to do that; I took the lines in. 40
- Q. You had to? A. That is what I understood.
- Q. Well who was in charge of getting the lines in?
A. Oh, I was.
- Q. I see. The Court knows that the ship didn't have her own steam up so that something else had to move you, but if during the movement it became necessary to attempt to steer your boat who was in charge of any such operation as that?

A. Well I don't know. I don't think I could have steered her.

Q. I am not asking whether you could or couldn't. As a hypothetical question, if it had become necessary you were the person to look after that, no doubt? Is that true? A. I suppose I would have been.

Q. If it had become necessary to drop an anchor for any reason it was you duty to see that it was done, I have no doubt? Is that right?

A. Well I don't know about that.

Q. Well you tell me, I am inquiring, whose duty was it then?

I don't suppose you would tell this Court that those on the tug could in any
10 way control the dropping her anchor? A. They couldn't do it.

Q. Well then who could do it if it became necessary?

A. Why the men on the Paisley would have to do that operation.

Q. Then who was in charge of the men on the Paisley?

A. I was.

Q. Then tell me if you don't mind—I am a landsman and I would like to see that your deposition makes these points clear to this Court; In the first place you knew while you were lying at your winter berth that it was the intention of your owners to get you over to the elevator and discharge your grain during the winter, didn't you? A. Yes, I thought that is what would
20 happen.

Q. And you knew that in order to do that you had to in the first place cast off at the right time from your then berth, your winter berth? That is right, isn't it?

A. Yes sir.

Q. And after being moved to make fast to the elevator berth, that is right, isn't it?

A. That is correct.

Q. Where did you intend to make fast to the elevator berth? First, when you arrived at your elevator berth what hold were you going to get the
30 leg of the elevator into first?

A. Why No. 2 hold. Now that is hold, not hatch.

Q. What hatch goes into that hold?

A. There is three hatches to that hold.

Q. Which hatch did you intend to get the leg into first?

A. Well I didn't know. I knew we had to land it for No. 2 hold.

Q. You surprise me, sir. Let us go back a little further: In this enterprise of getting rid of your cargo into the elevator, tell me if I am right, please, I understand there were three elements; there was the ship that had the cargo aboard her and wanted to get rid of it, there was the tug that was going to move
40 her because they didn't want to get their own steam up and there was the elevator that was going to receive the cargo? That is right, isn't it?

A. Yes, that is correct.

Q. Was there anybody else on behalf of the owners of the Paisley than yourself who took a hand in the preparations for this combined enterprise? Was there anybody else?

A. The men I had engaged on the Paisley; and also the tug assisted; that is they also helped some on the boat.

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Q. Was there anybody but you representing the owners of the Paisley?

A. Well I don't know whether I was representing them or not.

Q. Well do you know of anybody else that was?

A. No, I do not.

Q. Then tell His Lordship what did you do in the first place beforehand. You told him that you with the tug Captain borrowed steam enough to do certain things to your own anchors on the 15th January? That is right, isn't it? A. Yes, the tug furnished steam.

Q. You borrowed the tug's steam and did certain things with your anchors and you have described that fully. What did you do with regard to making arrangements with and at the elevator? Before you got there in the shifting I presume you saw somebody and did something to see that things would be ready for you, is that right? 10

A. No, I didn't make any arrangements at the elevator dock.

Q. Well when you got at the proper place to get your lines ashore before making fast at your discharging berth who did you expect would take your lines when you threw the heaving line ashore?

A. Some of the elevator men.

Q. What did you do beforehand to see that they would be ready and to see that they would be at the proper point north of the elevator and that they were suitable men and that there would be enough of them and anything else that to a seaman forms part of the important job of getting your mooring lines ashore? That is a pretty long question? 20

Q. Did you know that the Saskatchewan was lying close by offering her stern if you didn't stop at your berth?

A. Yes, I saw her; I knew she was at that winter berth.

Q. And you left it to chance whether anybody would be at the proper place and ready to receive your lines when you got near the elevator?

A. Not really to chance, no.

Q. Well then, tell his Lordship what you state you did? What did you do to arrange to have suitable men at a proper place to take your lines? 30

A. Didn't make definite arrangements; I knew they would be there from previous operations, shifting the Presqu'ile, from boats that had been moved.

Q. Did you have your heaving lines ready to throw—?

By HIS LORDSHIP: Q. You said previous operations—which one do you refer to?

A. Steamer Presqu'ile.

Q. Yes? A. And that was what I understood—

Q. No no, you said that—?

A. Well then, the Steamer Presqu'ile.

Q. Previous operations, did you say that?

A. In shifting the Presqu'ile, that is what it was then.

Q. That is the previous operation? A. Yes.

MR. HOLDEN: That is not in the plural.

HIS LORDSHIP: No, seemingly.

By MR. HOLDEN: Q. Mr. Penrice, did you have your heaving lines ready to throw ashore?

A. I did.

Q. Well, now I am at a loss to see why you would have heaving lines ready when you told his Lordship a moment ago that the tug should have brought you in close enough that you wouldn't need heaving lines?

A. That is always safety first. In approaching any dock the mate will have heaving lines ready.

Q. You did expect you might have to use them?

10 A. In the operations I had had to use them. It was a possibility.

Q. Then your only preparation for having suitable men at the right place to receive your heaving line or a mooring line was that you knew on one previous occasion some men had been handy for that purpose, is that right? A. Yes.

Q. Now, how many snubbing posts are there along the elevator dock north of the elevator?

HIS LORDSHIP: North of the elevator?

MR. HOLDEN: Yes, my Lord.

20 Q. As you came up—after backing north you came back to the south-ward and you passed along or would pass along properly to that dock; how many snubbing posts are there before you would get to the north wall of the elevator?

A. Oh, I don't know definitely how many there are. Very few anyway.

Q. Well, Mr. Penrice, did you not even have a look around to see what facilities there were to get your lines on as you approached your berth?

A. Well, I knew what ones there were there at the time, but I couldn't state now how many there were. You asked me to swear and I couldn't say that.

Q. You don't know? A. No; I know there was some there.

30 By HIS LORDSHIP: Q. Would there be a dozen?

A. No, I don't think there would.

Q. Would there be half a dozen?

A. I would estimate them around four or five.

Q. You would estimate? A. Yes.

By MR. HOLDEN: Q. But you can't tell His Lordship how many?

A. No, I couldn't say definitely how many.

40 Q. Then apart from the men who were to take your lines and the posts that might be used in checking her way and getting her to her berth, warping her in, what else was there for you to prepare for with the elevator and its staff? A. I had to have the tarpaulins off of the hatches.

Q. No, but you wouldn't have to communicate with them. Well, I might ask you this, Mr. Penrice: What did you arrange with the elevator staff as to which hatch would be uncovered first?

A. I don't think there was any arrangement, that is definite arrangement, made.

Q. Well, did you say anything to anybody representing the elevator before you cast off from your winter berth intending to shift over there?

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A. Oh, some time previous to this I had been talking to the elevator Superintendent.

Q. How many days before?

A. Oh—

By HIS LORDSHIP: Q. About this ship Paisley? A. About the Paisley. I asked him when he was going to take her in.

By MR. HOLDEN: Q. How many days before the 18th would that be? A. Oh, that would be six or seven days before the 18th.

Q. I see, say about the 11th or 12th, you asked the Superintendent of the elevator when he was going to take her in? A. Correct. 10

Q. What did he say? A. The end of the week, or the first of next.

Q. And is that the last conversation you had with anybody representing the elevator in connection with this shifting and mooring at the elevator?

A. To the best of my knowledge it is.

Q. I see, well so much for the elevator. And then, Mr. Penrice, another element as I call it of this enterprise, was the tug that was to move you seeing you were not to use your own steam. Tell the Court, please, what arrangements you made with the tug owners or Captain before taking her line that morning of the 18th?

A. I didn't make any arrangements with him; he was doing it. That 20 is the way I looked at it.

Q. What is the way you looked at it?

A. That the tug was doing it; it wasn't necessary for me to make any arrangements.

Q. Nobody on board the tug could be on board the Paisley at the same time, could they? A. That is true.

Q. Then what arrangements did you make as between this valuable vessel with her valuable cargo and the tug that was to move her as to the whole operation? You said that you made no arrangements.

A. There was no arrangements made. 30

Q. Then seeing you made no arrangements with them what did you arrange yourself aboard the Paisley? For instance, did you have the tiller in place and unshipped to steer her by hand or attempt to if it turned out to be advisable? A. I didn't do anything to the tiller.

Q. Did you know what the condition of the tiller and her relieving tackle—did you know whether things were in shape for you and your assistants to endeavour to steer her if it turned out to be advisable?

A. I don't think you could steer her.

Q. No, but would you mind answering my question first and then express your opinion afterwards? Did you know at the time whether things 40 were in shape to make an effort to steer her if you wanted to?

A. No, I can't say as I did.

Q. You didn't know? A. No.

Q. Did you know at the time whether the anchors, both the anchors, were ready to drop, either of them, if that turned out to be advisable?

A. One anchor was ready, the other one you couldn't drop it.

By HIS LORDSHIP: Q. Which anchor was ready?

A. The starboard anchor.

By MR. HOLDEN: Q. When you heaved up the starboard anchor did you put the compressor on the chain?

A. Yes sir, it was put on; I don't know who put it on.

Q. Am I right that when you heave her up you lock the windlass and then put the compressor on?

A. No, you put the compressor on and then unlock the windlass.

Q. The windlass locks itself?

A. No sir, it has got to be locked and unlocked.

10 Q. Yes, that is what I thought, and was it unlocked after the compressor was put onto the chain?

A. Yes, it was.

Q. Did you do it? A. I don't know who did it, I couldn't say definitely, but I know it was unlocked because the windlass was turned over and they worked the steam through the windlass afterwards and it would have to be unlocked.

20 Q. So you could have at any time from when you passed a good position north of the elevator for getting your lines ashore, any time after that you could have dropped your starboard anchor just by opening the compressor or whatever you call it? Opening, is that the expression? A. Release it.

Q. Release the compressor? A. Yes sir.

Q. That would have been just a second or two, is that right? A. It would have taken a few seconds; sometimes it is a little hard to work.

Q. You mean out of order? A. No no. What I mean, a boat lying cold, no steam on, it would be more or less stuck, iron would tend to stick.

By HIS LORDSHIP: Q. Takes three seconds, does it?

A. Yes, three seconds, sir.

30 By MR. HOLDEN: Q. And did you try to let it go at any time after your bows commenced to pass the north side of the elevator? A. No.

Q. Or at any time at all?

A. Didn't try to let the anchor go at any time.

Q. You told His Lordship in your deposition in chief that not having steam on it would have been difficult to get the mooring line itself ashore because it had to be handled by man power? That is true, is it?

A. That is true.

Q. How many men did it require in order to do that as expeditiously, as promptly and quickly as possible by man power? How many men were needed?

40 A. Well, two men could put it out and three men could do it more quickly; the more power you have the quicker you can put it out.

Q. And there were four of you?

A. There were four of us.

Q. But you didn't try to get it out?

A. No. I couldn't get the line out.

Q. Then did you see any of these elevator men who did come to the front of the elevator, as you were coming along—did you see any of them?

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A. I saw several men there; I couldn't name them definitely; at that time I didn't know all their names.

Q. And where was your ship, the bow of your ship, when you first noticed these men?

A. It would be abreast or a little south of the elevator, at the south side of the elevator.

A. A little south of the south side of the elevator? A. Yes.

Q. And I think you intended to moor, get fast at your moorings, with the hatch, one of the hatches of No. 2 hold under the leg of the elevator, is that right? 10

A. That is where we were going to moor to unload.

Q. Well, then when you were at that berth, if you had got there as you intended, with the hatch of No. 2 hold under the leg, where would the bow of your ship be with regard to the south side of the elevator?

A. Well, if we went to No. 3 hatch on the Paisley, the after side of the forward house of the Paisley would be just about even with the south side of the elevator.

By HIS LORDSHIP: Q. Where would the bow be? A. Do you mean the real stem?

By MR. HOLDEN: Q. Well, the stem, let us say the actual stem? 20

A. It would be 35 or 40 feet past the south side of the elevator.

Q. Well, when you first noticed that there were elevator men there, had your stem got 30 or 40 feet past the south side of the elevator?

A. It was pretty close to that.

Q. What were you doing before that?

A. I was on the stern of the Paisley.

Q. Whom had you told, of your ship's company of four men, whom had you told off to keep an eye open, keep on watch for the men who were going to take the lines and hail to them and see that they were in the proper place and so on? Who of you four was to do that while you were on the stern 30 of the Paisley and were approaching the elevator?

A. I didn't give any person any definite orders for that; it wasn't necessary.

Q. Well, that is for somebody else than you, sir, to decide?

A. Well, that is what I thought at the time, sir.

Q. Were any of those three men with you on the stern of the Paisley at that time?

A. What do you mean by at that time? I don't understand you.

Q. Well, just before you went forward. I asked you when you were approaching the north side of the elevator where you were personally and 40 you said you were on the stern of the Paisley? A. That is correct.

Q. Was anybody with you there?

A. No, there was not.

Q. Where had you placed the other three men?

A. I had sent them forward.

Q. What were your instructions to them?

- A. Told Mr. Sykes to go forward; and then after we had let go of the tow line I sent Mr. Holmes, Mr. Bechard.
- Q. Let us take Sykes. You told Sykes to go forward?
- A. That is correct?
- Q. That is all you told him?
- A. That is all I recollect of saying.
- Q. You didn't say how far forward?
- A. Well, forward means forward end of the boat.
- Q. Did you say how far forward? A. No.
- 10 Q. Did you tell him on which side of her he was to be when he went forward?
- A. No, I did not.
- Q. Did you say what he was to do when he went forward?
- A. I don't recollect of giving him any definite orders what he was to do.
- Q. All right, that is Sykes. What did you tell Holmes?
- Q. All right, that is Sykes. What did you tell Holmes? This is when you are still on the stern of the Paisley and her bow is approaching the north side of the elevator, did you say anything to Holmes?
- 20 A. Well, my instructions to Holmes was in conjunction with Mr. Bechard, to those jointly.
- Q. What did you say to the two of them?
- A. Boys, you had better go forward, stand up forward, they may need a hand up there.
- Q. That is all you said? A. That is all I said.
- Q. Did they go forward? A. They did.
- Q. At the same time as Sykes?
- A. No, they went after Sykes went.
- Q. How long do you suppose roughly?
- 30 A. Oh, maybe fifteen or twenty seconds—a minute.
- Q. How far forward did they go?
- A. Well, now, I can't say that. I didn't see exactly how far they went.
- By HIS LORDSHIP: Q. Did you not find any of them when you left the stern and went forward?
- A. I did.
- Q. Where? A. They were forward just around No. 2 hatch.
- Q. On what side of the ship? A. I don't remember.
- By MR. HOLDEN: Q. When you went forward your bows were already south of the south wall of the elevator, I understand?
- 40 A. Her stem was south.
- Q. Her stem was south of the south wall when you went forward?
- A. Yes sir.
- Q. Well, now, am I right that the important thing was for you and your men to be at stations long before that so that as your stem was approaching the north wall of the elevator from the north you would be ready, if possible,

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to get your lines ashore there, and then if it wasn't possible, to do whatever was necessary to make it possible? Am I right that that was the proper thing to do?

A. Well, it is customary to be in positions.

Q. Well, why weren't you?

A. Because it wasn't time yet, the boat was out too far; I had three men forward and I was aft and watching her distance off, intending to go forward, which I did.

Q. You went forward after her stem had passed south of the south wall of the elevator?

10

A. No, I was forward when her stem passed there. I arrived forward when her stem was—

Q. How far was her stem past, south of the south wall of the elevator when you arrived forward?

A. Oh, it was a few feet, I couldn't say exactly.

Q. And how wide do you make the elevator?

A. Between 90 and 100 feet, I think.

Q. Now, you said you had no arrangements with the tug before casting off. During the shifting would you at times hail those on the tug about the matter?

20

A. I did not.

Q. If anything had seemed to you to be not going right would you have yelled to them?

A. I might have and I might not have. It would depend on the situation.

Q. Well, I put it to you, sir, and just listen carefully before you answer, please—I put it to you that if you had found that, as you now testify, you were too far out to get a line ashore you would have hollered to them to get you farther in or you would have done something other than you did? Have you any answer to make to that—I was going to say accusation, but I would say suggestion? Have you any answer that you would like to make to that?

30

A. Yes, I have.

Q. Make it, please?

A. I think he had us too far out and was pulling us ahead too fast and I passed that remark too, not to the tug but some of the men on the boat, but I did not have any communication with the tug regarding that.

Q. To whom did you pass that remark?

A. To some of my helpers on the boat, I couldn't say which one.

Q. Well, Mr. Penrice, that is very unsatisfactory, I would submit, for the Court. You don't know who it was?

HIS LORDSHIP: He had sent all the men away by that time.

MR. HOLDEN: I understood so, yes, my Lord.

Q. When was that that you say now that you passed a remark to somebody about the tug taking you both too far out and at too fast a speed?

A. Well, I was on the forecastle when I said that, sir, and that is right up near the stem.

By HIS LORDSHIP: Q. That is when you went forward, is it?

A. Yes sir.

By MR. HOLDEN: Q. Your stem had already passed south of the south wall of the elevator?

A. Yes sir.

Q. That seems to me to have no reference to what I had in mind; I am speaking of long before that when your stem was still north of the north wall of the elevator; my submission to the Court will be that if you had then thought you were too far out or going too fast or anything else that the tug was guilty of you would have yelled to the tug and you didn't do so and therefore there was no such condition. Now that is what I put to you?

A. Well I didn't pass any remark there; I was on the stern then.

Q. You said when you were examined already before the Examiner—page 34, question 288 on the previous page; the answer is at the top of page 34—you said when you were on the stern of the Paisley, "I watched back there to see that the "Paisley's" stern did not get into it"—that is into the bank, I suppose?

A. Yes, the east side of the bank.

Q. "and if it came too close I was going to yell to the Tug Captain."

20 You said that, didn't you?

A. I believe I made some statement like that.

Q. Well, I am reading what the official record of what you said is?

A. Yes, I said that.

MR. TOWERS: Would my learned friend read the following?

HIS LORDSHIP: He needn't read anything; he may put any questions he likes and you have the right to supplement it.

Q. I have read what I refer to and I ask you now, Mr. Penrice, if you would yell when it was too close why wouldn't you yell because it was too far away? It seems to me a simple conclusion. Have you any answer to make to that? A. Well, in case of being too close it might be damage; too far away couldn't damage anything.

Q. Well, it did. That is your explanation for damaging very seriously a valuable boat called the Saskatchewan and her cargo of thousands of bushels of grain, so your answer is not correct, sir, I submit. Then the other thing I would like to ask you as a result of your statement, why was it necessary to watch that the Paisley's stern didn't get into the bank if you were so far out from the bank as you now pretend?

A. Well, the reason I watched the Paisley's stern, if any damage was done I knew it would be an inquiry from my employers and I wanted to know why it was done and I was there to watch things.

Q. That is the only answer you have to make?

A. That was my real reason for doing that.

Q. Isn't it true, Mr. Penrice, you suddenly woke up to the fact that you were passing the elevator when you thought you hadn't yet got that far south and you then went forward instead of having done so at the time you intended, much earlier, before her stem reached the north wall of the

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elevator? Isn't that true now? Just think that over, I don't want to you answer hurriedly?

A. No, that is not true.

Q. Why didn't you go forward so as to be at your lines at the time and place when you say it was customary and proper to get a line ashore, namely, before your stem reached the north wall of the elevator?

A. I can't say that it was customary to get a line ashore there. I never experienced that before.

Q. I think you do say that. Well, when you were going to make a berth with a hatch of No. 2 hold under the leg of the elevator, how far before getting to that berth should you be at your station ready to get your lines ashore so that they could be carried along by those ashore and put on posts to check her and so on, warp her into position? How far before reaching your actual berth should you be at your station? 10

A. What would be the speed of the boat in that case, sir?

Q. I will leave it to you. Whatever the conditions when should you be at your station at the heaving line and the mooring line so as to attend to your duties? You cannot wait till you get to your berth?

A. No, that is true.

Q. How long before getting to your berth? 20

A. Well, I don't know as I can say any definite time.

Q. I am not asking you time. Here her stem will be in a certain position when she gets to the berth where she is going to unload; how far back of that position would her stem be when you and the other men should take your places at your own stations by the lines in order to be ready to do your duty? How far back? I don't mean time, I mean in space, in distance?

A. Well sir, I couldn't really answer that truthfully.

Q. Well, I wouldn't do it at all then?

A. I mean clearly.

Q. I mean, if you can't, I certainly think you are right not to. Well, 30 is any of the other three men better able to tell His Lordship the answer to that question, any of the other three men who were employed by the owners of the Paisley?

A. Well, I couldn't say about that; I don't know.

Q. Well, when you employed me to help you and were on board the Paisley during this movement intending to moor, did you ask anybody how far before getting to your berth you ought to be at your stations to get a line ashore? A. I did not.

Q. Did you ever give it a thought?

A. No, I did not. 40

Q. You don't pretend that the tug Captain or crew or anybody from from the tug was going to get on board the Paisley and handle her lines, do you?

A. No, not when we are out afloat, out like that.

Q. When was it that you, as you stated to His Lordship, thought of dropping an anchor? Where was your stem then, about?

A. It would be about—when I thought of dropping the anchor it would be about 50 or 75 feet from the Saskatchewan.

Q. Was it the result of anybody's suggestion? Was it because somebody suggested to you you might drop an anchor? Was that what made you think of it?

A. No, that popped into my own mind.

Q. Was there anything said about it at all?

A. No, there wasn't.

10 Q. When you did go forward, her stem then being a little south of the south wall of the elevator, what instructions did you then give to your three men?

A. I came forward and went up on the forecastle and—oh, there was a conversation; I don't remember anything definitely, only I do remember this: That I passed the remark He has got us going pretty fast, he had better check us pretty soon now. It was more speaking my own mind out loud than anything else.

Q. Then am I right that you intend to tell His Lordship that you didn't give any special instructions?

A. That is correct, I didn't give any special instructions.

20 Q. And at a certain moment after getting forward you passed the general remark He has got us going pretty fast?

A. Correct. Better get us into the dock.

Q. Better check us pretty soon?

A. He better check us, get us into the dock.

Q. To whom did you say that?

A. Well, I can't state any man's name definitely. I passed the remark, a couple of the other men I had employed was on the forecastle at the time.

Q. Was there one of them or two of them or three of them?

A. Well, I know only one was there, Mr. Sykes, I know he was there.

30 Q. And you mean by that you don't know whether either of the others was there or not?

A. No, I couldn't say whether they were or not.

Q. Well, sir, then your story—will you follow carefully, please—your story to this Court is that you were in charge for the owners, you employed these three men, you don't know where they were at the time that you were already passing the berth you intended to make and at the time that you thought your tug was towing you too fast and you had no idea where two out of your three assistants were at that time, is that right?

40 A. Well, I had an idea but I couldn't state definitely right where they were. You asked me definitely, sir, and I couldn't say that.

Q. Then what was your idea as to where they were?

A. I felt quite confident that they were on the main deck behind—either on the forecastle there with me or on the main deck right behind the forward house, up probably where the winch, by the forward winch.

Q. They are different levels, aren't they?

A. Yes. Just raised about that high. (Indicating).

Q. Which place should they have been?

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A. I don't think there is any special place for them to be forward, on the forward end, and when I speak of the forward end in this case I mean from there, No. 2 hatch, to the stem.

By HIS LORDSHIP: Q. What side were you on at that time?

A. At that time I would be right in the stem, right behind the stem of the boat, athwartships, I should say.

Q. At that time where were you?

A. When I passed this remark? I was standing right in the fore-castle right close to the stem of the boat.

Q. And did you look around? Could you see the men from there? 10

A. I might have been able to see them; I don't remember—

Q. Did you look around to see where they were?

A. Not the other two, I didn't. Mr. Sykes was right beside me; I remember seeing him.

By MR. HOLDEN: Q. When you say you were right at the stem of the boat how far would that be from the forward house?

HIS LORDSHIP: In the fore-castle head right on the stem.

MR. HOLDEN: Yes.

Q. Tell me if I am right, the fore-castle is the bow deck, right up forward? 20

A. The bow deck.

Q. And the forward house, the ship's forward house is at the after part of that fore-castle, is that right?

A. Yes sir.

Q. And what is the space between the stem and the forward part of the forward house?

A. Well I don't know whether there is any special name for it; I always call the whole thing—

Q. No, but what is the distance from the stem to— When you were on the stem, as you say now, how far were you forward of the forward house? 30

A. Fifteen or twenty feet.

Q. Forward of the forward house?

A. Of the forward side of the forward house.

Q. And how deep is the forward house, on the fore and aft line?

A. Maybe back from the stem twenty-five feet.

Q. And then how deep is it? Oh, you mean the back of the after part of the forward house?

A. I mean the forward side of the forward house and the stem. That is an estimate.

Q. And how far is the after wall of the forward house from the forward wall? How deep is that fore and aft? 40

A. I couldn't say exactly.

Q. You can tell His Lordship approximately?

A. Well an estimate of 25 or 30 feet; 35 feet, something around there. 25 or 35, it might be more than that.

Q. Anywhere from 50 to 60 feet or more from the stem is the after wall of the forward house?

A. It may be more than that; that is only an estimate; I couldn't say.

Q. And at page 38 of your deposition before the Examiner, and if I read you right you testified then that when you went forward—answer to question 323: “I was up back of the forward house on the “Paisley,” down by Number One Winch.

Q. Anybody with you?

A. I don't remember.

HIS LORDSHIP: When was this that you are reading of?

MR. HOLDEN: That is when, as I understand him, it isn't awfully clear as I read it, but when he was forward.

10 HIS LORDSHIP: “Where were you when you first noticed the Tug had shifted,” that is the point he was talking on there.

Q. You tell me if I am right, sir. When you stated to the Examiner in the answer to question 323 “I was up back of the forward house on the Paisley, down by Number One Winch,” what period of time does that refer to?

HIS LORDSHIP: He tells you in the previous question that that is when he first noticed the tug had shifted.

Q. Perhaps I should put it this way: How soon after you had got forward did you notice that the tug had shifted?

A. Two or three minutes—a couple of minutes.

20 Q. And during those two minutes had you always been back of the forward house? Had you been down by Number One Winch back of the forward house during those two or three minutes? A. Only when I came forward and I just stopped and went right up onto the forecastle.

By HIS LORDSHIP: Q. I thought you noticed the tug as soon as you came forward, is that right?

A. Well it would be practically—

Q. How did you come to notice the shift of the tug?

A. Well which shift do you mean, sir? I am not clear on that point.

30 Q. The first shift? A. Oh, the first shift from our starboard bow was when I first started up forward.

By MR. HOLDEN: Q. I like to be careful and as fair as I can, Mr. Penrice: On page 37, question 316 before the Examiner:

“Q. I want you to give me your best guess as to where your bow was when you took the strain off that line?

A. Well our bow was past the elevator; that is the best I can give you; I could not say exactly.

Q. Have you any idea how far?

A. No, I have not; I could not say exactly.

Q. And how far off the elevator dock, measured at right angles?

40 A. Oh, seventy-five or one hundred feet.

Q. Still? A. Yes.

Q. Had it got further away?

A. Approximately the same as it was before.

Q. How was it that it had not got closer with the tug pulling that way?

A. Well I don't know why he did not get closer.

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Q. And how far were you from the "Saskatchewan" taking it in the direction you were going, you were heading?

A. I can not answer that because I did not see the tug take the slack off that line, so I don't just know when he took the slack off.

Q. Where were you when you first noticed the tug had shifted?

A. When the tug first shifted?

Q. Yes.

A. I was up back of the forward house on the "Paisley," down by Number One Winch?"

HIS LORDSHIP: That would be forward though, wouldn't it? 10

MR. HOLDEN: In the forward part of the ship, yes, my Lord. According to the witness I have understood that would be at least 60 or 70 feet abaft the stem.

WITNESS: Yes sir.

Q. Had you been there up to that time from the moment you had got forward or had you been farther forward and come abaft the forward house again, or what had you done?

A. No, I came from aft and just stopped there momentarily.

Q. But you say momentarily and you told His Lordship just now it was two or three minutes from the time you got forward, if I understood you, up 20 to the time when the tug shifted?

HIS LORDSHIP: Perhaps you had better just take his movements, from the time he starts and let us get it in sequence. He is on the stern.

MR. HOLDEN: Yes.

Q. Am I right that when the tug shifted from the stern of you to go ahead of you, that is to say when she ceased to drag you stern first towards the north, at that time you were on the stern of the Paisley?

A. That is correct.

Q. Then she makes past up forward but you remained at the stern? 30

A. Aft.

Q. You remained aft on the Paisley? A. Correct.

Q. What were you doing aft? Why did you remain aft?

A. As I explained before, to see that her stern didn't get into any difficulties.

Q. Along the bank? A. Yes.

Q. Along the bank? A. Correct.

HIS LORDSHIP: Take him forward from the stern and see where he went.

Q. May I ask you this: You didn't intend to put any lines ashore from the after part of the ship? 40

A. Never considered that.

Q. You were staying there to see that your stern didn't foul the bank. Now when and why did you leave the stern and go forward?

A. After I saw the Paisley was moving forward, had forward momentum, I come around the starboard side of the after house, the after cabin.

By HIS LORDSHIP: Q. Would you mind starting from the stern?

A. That is where I am, sir.

Q. And telling us exactly where you walked and where you stopped?

A. I left the stern of the Paisley, came around the starboard side of the cabin.

By MR. HOLDEN: Q. That is the after cabin?

A. That is the after cabin, that is the side next to the dock; naturally from there I could see the distance off so I took my time walking up forward.

By HIS LORDSHIP: Q. Just stick to what you did. You walked then—

A. I walked forward.

10 Q. Now how far did you get before you stopped?

A. Well I don't remember stopping—say "stop," slowed up, when I come along by the winches, that is the forward winches.

Q. Yes, you got to the forward winches?

A. Forward winches.

Q. Did you stop there?

A. I don't remember of stopping.

Q. Slowed up? A. Slowed up.

Q. And where did you go then?

A. I went from there right on up forward and up on the bow.

20 Q. Right up to the stem? A. And I may have paused an instant before I started up on the forecastle, I don't remember that.

Q. You were then up on a higher level? A. Yes sir.

Q. Then at that time you were forward of the forward house? A. No, I could go on the forecastle and not go forward of the forward house.

Q. I thought you went right up to the stem?

A. I went up on the forecastle and from there on up to the stem.

Q. Yes, well then when you got to the stem you were forward of the forward house? A. Yes, then.

Q. Then when does it come that you went aft of the forward house?

30 A. Down on deck again?

Q. Yes? A. That was after the tug shifted across our bow in changing the tow line.

Q. Well then you remained in the same place as you were?

A. Well around on the forecastle; I didn't stay there all the time, sir.

Q. But you remained on the forecastle?

A. I remained on the forecastle.

Q. For how long? A. Well until such time as the tug went back across our bow backing up; I don't know how long that was.

Q. Till the tug shifted from one side to the other?

40 A. Shifted from the starboard side to the port and changed his line.

Q. Well then when did you get aft of the forward house?

A. I went down during the tug having the trouble with his line.

Q. Was that when it parted?

A. Not just when it parted. It was after that it parted when I saw them having trouble I went down on deck.

Q. Now when was it you passed this remark to this man?

A. When I was on the forecastle.

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Q. Before you went down and on the deck?

A. Yes sir, before I went down and on the deck abaft the forward house again.

Q. And you were on the fore-castle how long, did you say?

A. Oh I don't know. While the tug was shifting from one side to the other, I don't know just how long.

Q. How long would that take—five minutes?

A. I might have been up there three minutes, four minutes, five minutes, somewheres around there; I might have been a little longer.

Q. You did make a considerable pause there?

A. Oh yes, I was there for—

Q. And then you passed that remark. And at that time where was the bow of your vessel in relation to the elevator, the north side of the elevator?

A. Oh, it was in by the south side when I passed that remark.

Q. The bow then past the south side, and how far past?

A. The nearest estimate I could give you, sir, the bow was somewhere opposite the spring piles shown in that picture there.

Q. How many feet? A. Oh it would be 60 or 70 feet.

By MR. HOLDEN: Q. South of the south wall?

A. South of the south side of the elevator when I passed that remark.

HIS LORDSHIP: Now I understand what he means.

By MR. HOLDEN: Q. Tell me, sir—I understand when the Paisley ceased going astern, when she ceased going astern you started forward, am I right?

A. No sir, not exactly; I remained back there a few minutes.

Q. And had the tug started to tow her forward through the water when you started to walk forward?

A. Well she must have because the boat was going forward, had considerable way on her; I knew she had.

Q. I thought I was wrong but I guess I was right. When you stayed aft to see that she didn't get afoul of the bank that was after the tug started to tow her forward?

A. Oh no, I stayed back there during the whole operation it was still going astern and it was while it stopped and till the Paisley started ahead again and had good way on her, well clear of everything.

Q. How far forward had the Paisley made across as it was again going forward, how far do you suppose she had made before you started to walk forward on the Paisley? I know you didn't measure it, but the Court wasn't there and you were; about how far had she gone forward again before you started to walk forward on the ship?

A. Now you want that in relationship to the bow, I suppose?

Q. No, any part of the ship; she moves as one mass?

A. Yes.

Q. How far had she moved before you started to walk forward? A. Oh I should think as near as I can remember the Paisley's bows would be up somewheres around abreast of the elevator; now that is as near as I can do, gentlemen, I can't name it any closer.

10

20

40

Q. Now, Mr. Penrice, let me see. After carefully thinking it over your evidence is that the Paisley's stem was about abreast of the elevator before you commenced to walk forward from her stern, is that right?

A. Yes, somewhere around in there; away out in the river, of course.

Q. As the tug was towing you along the tug Captain told us there was about 15 feet of towing line between his stern and your stem. Do you agree with that?

A. In which case?

Q. When he was towing you forward, after having towed you stern first to the northward he came around and took a line from your post and towed you bow first?

A. Well, is that the first time he took hold of us or the second?

Q. I understood him to say all the time— Well what is your idea? I don't know that we need to quote from him. How much line was there between the stern of the tug and the stem of the Paisley as you came along after he commenced to tow you to the southward again?

A. What I actually saw I would say there was 50 or 60 feet of line clear between his stern and our stem.

By HIS LORDSHIP: Q. That is when you came up to the forecastle?

A. Yes sir.

By MR. HOLDEN: Q. And that is your estimate? A. Yes.

Q. And after he shifted from one bow to the other do you mean that it was then shorter?

A. Well, I didn't see them shorten at all. I have my idea when that was, but—

Q. But you didn't see it? A. I didn't see it.

Q. All right, sir. Now, you said that at one stage you had an idea, and I think it was when you got forward on your ship, you had an idea where Bechard and Holmes were but you didn't know definitely. Did you learn definitely at all at any time before the accident where those two men were? Did you see anything of them up to the time that you were stopped by the Saskatchewan?

A. Well, I can't say as I can remember definitely of seeing them. May I change that?

Q. Yes, go ahead? A. I just thought. I do remember seeing Mr. Bechard because before the accident happened—it is the collision you mean?

Q. Yes. A. I gave him orders to stand by the forward winch; that is during the throwing the heaving line operation; I came off the forecastle and he was somewhere in that neighborhood and I said Stand by the winch,

40 Ose.

Q. Why did you want him to stand by the winch?

A. Because I was going to endeavor to get a line ashore if I could reach it. I didn't think I could reach it—try to anyway.

Q. And did you notice Holmes, too?

A. No, I don't remember just where Mr. Holmes was.

Q. Now the Exhibit P-8. Am I right that this Exhibit P-8 is the docu-

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ment that you referred to yesterday when you said you didn't know when you had signed it?

A. Yes sir.

Q. Well, now having thought that over can you say when you signed it?

A. I can't say the definite date. I can give you a good estimation.

Q. Well, about when? A. Oh, it would be—that is dated the 22nd at the office, it would be somewhere about the 24th or 25th or maybe the 26th December.

Q. It shows that you started to keep the ship on the 16th?

A. That is correct. That is the time my time starts. 10

Q. And it states in the second sentence your regular duties will be to look after the boat you live on as well as other vessels of this company that may be near you. What other vessels of that same company were near you?

A. Well, at what time? During the winter at the finish we had four of them put up together side by side, or two side by side and two ahead.

Q. Tell me, as you lay at your winter berth before shifting there were three or four vessels abreast of each other astern of you, weren't there?

A. Yes sir.

Q. Now, if one of those vessels had belonged to your owners, had, been, in the words of your contract "another vessel of this company," would you have felt it your duty seeing you were to look after those vessels as well as your own to see that you didn't collide with her as you left your berth? 20

A. I think you have a mistaken idea of what that means there. We had ship keepers on each boat there.

Q. I think the Court will decide what it means. I am asking you as a question of fact if astern of you as you pulled out there from your winter berth there had been amongst those vessels that were moored at the dock abreast of each other one of your company's own vessels, and, seeing you were told by this Exhibit to look after the boat you live on as well as the other vessels of this company that may be near you, would you have felt it your duty to have done what you could to avoid striking this other vessel of the company? 30

A. Well, naturally I would try to keep from doing any damage I could, that is as near as I can answer that, I think.

Q. But the same thing didn't apply to our client's boat, the Saskatchewan, or did it?

A. Why, naturally I tried to do all I could to keep from hitting the Saskatchewan; I would do that in any case.

Q. Well, Mr. Penrice, I didn't understand and in case the Court may be in the same position I would like to ask you then after you got your heaving line onto the spiles, was it—got it ashore somewhere—you called for another heaving line? A. Correct. 40

Q. Where was the man that you called to?

A. Standing at the winch, Mr. Bechard.

Q. How far away from you, approximately?

A. Oh, be about 30 or 35 feet.

Q. And where was the other heaving line that you expected him to give you? A. Well, it was either on the corner of either No. 1 hatch or No. 2, I can't state which it was, but on the starboard side of that.

Q. I thought you said you had them ready?

A. They were ready.

Q. But you don't know where they were?

A. I know they were right close to the eye of the cable which I had bent back on deck.

10 Q. About the winch, how far would Bechard have had to go to get that other heaving line?

A. To secure the heaving line he would have to go straight up from the winch to the starboard side.

Q. How far is that?

A. Oh, he would have to go about 20 feet from the winch to get to the heaving line, whichever side it was on, that is whichever corner of the hatch.

Q. Did he give it to you?

A. No, I didn't receive the line in my hands.

Q. Well, that sounds mysterious. What happened?

20 A. Well, before he got to the line and got it to me I had already told the man on the dock to let go; I was pulling in the other line so I didn't use the line that Bechard was bringing to me.

Q. But you said he didn't bring it to you. Do you want to change that answer?

A. Well, he was bringing it, but I didn't receive it, that is the operation wasn't completed.

Q. Well, I am trying to make the facts clear to His Lordship. Did he or did he not bring you the heaving live when you told him to?

A. He was bringing it.

30 By HIS LORDSHIP: Q. Did he bring it to where you were standing, or did he drop it halfway?

A. No sir, he was within a couple of feet of me and turned and walked back up the deck; two or three feet—close to me.

By MR. HOLDEN: Q. And then when he got that far took it away again?

A. Went back up the deck with me and he carried the heaving line back up forward with me.

40 Q. Then am I right that you in charge of those on board the Paisley had the duty to get your ship moored at her berth if possible—that is right so far anyway, isn't it? A. Yes, the tying up operations.

Q. And all you did to discharge that duty was in the first place you remained aft to see that her stern wouldn't foul the bank until her stem was commencing to pass south of the south wall of the elevator, when you went forward—is that right?

A. No, that is not— Unless you are going to say more, that isn't all correct.

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Q. I want you to say more, please, I don't want to mislead you, I want it right. What do you think should be said more to make that correct?

A. Well, you said is that all I did.

Q. No, I didn't say that, did I?

A. That is what I understood you.

Q. The next thing you did?

A. I want to try to make the Court understand exactly what I did too, that is what I want to do.

Q. After staying aft there, staying on the stern of the Paisley watching to see that she didn't foul the bank, you went forward, that is right? 10

A. Yes, I went forward from the stern, that is correct.

Q. And when you got forward her stem was where?

HIS LORDSHIP: He has already told us that.

Q. When you got forward your stem was south of the south wall of the elevator? A. Yes.

Q. Well, then all you did—this is where my all comes in—let me see if you agree with me:

All you did to get a line ashore was that after the Paisley's stem had passed the south wall of the elevator you threw a heaving line, you called for another heaving line to make fast to the end of that one and then changed 20 your mind and then decided not to use it and you made no effort, you or your men, to get the mooring line ashore, no other effort? Now, is that right?

Would you like to hear that read again? A. I would.

Q. (Previous question read to the witness)?

A. At that time, no. That is correct.

Q. Mr. Penrice, am I right that the reason that you didn't make any effort to get the mooring line ashore was because that line was on the drum? Is that true?

A. No, that is not true. That is not the reason.

Q. Well, is that the fact? 30

A. One end of the line was all wound around and the other out through the chock ready to put out.

Q. If all four of you fellows had been handy there at that time you could have made an effort to bend a heaving line onto it and get it out?

A. I couldn't bend a heaving line onto it.

Q. Why? A. If I had she would be onto the dock—

Q. A heaving line is what, twenty fathoms?

A. Oh, about 18 fathoms.

Q. About 18 fathoms, and if you had bent the second heaving line onto the end of the first line and the end of it onto the mooring line—? 40

A. That could have been done.

Q. If you had all been handy there you would have been wise to make the attempt, wouldn't you?

A. No, I don't think we would have been.

By HIS LORDSHIP: Q. You say it could have been done? A. We could have fastened the heaving line onto the cable, yes, I said Yes to that question, that is the second heaving line.

Q. Well, if you had done that why do you say you couldn't have made use of it?

A. In time the cable could have been pulled ashore.

Q. What is that? A. I say in time we could have tried, the men on the dock could have pulled the cable ashore, or they could have tried to pull that.

By MR. HOLDEN: Q. If you four men had been handy there at the mooring line to do your share on board after bending the second heaving line onto it and the men had worked ashore you might have got that mooring line ashore in time to check her way enough to prevent the accident?

A. No, I could not have.

Q. Well, that is for the Court to say. You didn't try anyway, did you?

A. I didn't try to put that line ashore after the first attempt with the first heaving line.

Q. Going back to the 15th of January, I may have misunderstood you but I got the impression that you intend the Court to understand that it was at Captain Waugh's request that you left the port anchor hanging with her crown in the water the way you have described? A. Yes sir.

20 Q. Well, isn't it true that the request and suggestion was to heave it home and then when that was abandoned the next best thing was done, in his opinion, with regard to the tug, putting her lower down as she hung there—wasn't it his intention and request and suggestion that you should heave it home, the port anchor?

A. It may have been his intention; I don't remember of his suggesting it. That was the first operation.

Q. I understood him to testify that it was. If he testified that here would you contradict him?

A. No, I don't understand exactly what his intention was.

30 Q. No, but I mean if he stated that to you, that it ought to be brought home?

A. Well, I couldn't recollect that, sir, whether he did or not.

By HIS LORDSHIP: Q. Well, would you contradict him, is the question, and I didn't catch your answer?

A. You mean whether I would say no or yes, is that the idea?

Q. Would you contradict him, that is what he asked you; what is your answer?

A. No, I couldn't contradict the man.

40 By MR. HOLDEN: Q. Nor you wouldn't contradict, I presume, this evidence of his that the port anchor was fouled, he offered you to remove the cable after it had been let down, he offered to remove the anchor cable in order that it could be brought home and you refused that suggestion emphatically? Would you contradict him in his evidence to that effect?

A. At that time, yes.

Q. Would you? When was that then that you refused his suggestion to do that?

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A. That was during the first part of the operation when the anchor came in into the hawse pipe, as near as I can remember.

Q. Well, what suggestion of his did you refuse then?

A. Well, I didn't refuse any of his suggestions.

Q. Well, you said, Mr. Penrice—try and be frank and let us get it clear—I said did you refuse his suggestion and you said not at that time; what do you mean by that answer? A. I didn't pass any remarks, that is the way I guess I should state it to the Court.

Q. I am not asking what remarks you passed; I am putting it to you that Captain Waugh has testified that he offered to take the cable off so that you could get the anchor home and you emphatically refused that suggestion. Do you contradict him that he made that offer? 10

A. I do.

Q. Well, what was said or suggested with regard to taking the cable off the anchor?

HIS LORDSHIP: So as to let it get home.

A. Why Captain Waugh said We will take the cable off.

Q. Yes, that is what I thought, so far. All right, and why didn't he?

A. And I passed some remark about oh, to Hell with it, let the crew do it in the spring, or something like that leave her that way. 20

Q. That is what I thought happened?

A. And he didn't do that.

Q. I am sorry I didn't make my question clearer, that is what I meant to learn from you?

A. Well that is the way you stated your question, sir, I couldn't—

By HIS LORDSHIP: Q. You said to leave it that way and he didn't what?

A. No sir, he didn't.

Q. He didn't what? A. He didn't leave it that way. His statement or his words were— 30

Q. How did he leave it?

By MR. HOLDEN: Q. Do you mean he didn't leave the anchor in its then position?

A. Yes sir, that is what I mean.

By HIS LORDSHIP: Q. What do you mean?

A. It was lowered down out of the hawse pipe again.

Q. Who lowered it? A. Well now I can't say just who did it; we did it under Captain Waugh's directions; he directed it.

Q. You or your men lowered the anchor?

MR. TOWERS: He hadn't any men. 40

Q. You or the men on board the ship lowered the anchor?

A. Well that was a two-man operation; there was a couple of us at that.

Q. You were at it, were you?

A. Yes, I was around there and likely I had a hand in it.

Q. Well then did you leave it after it was lowered, did you leave it for it to be brought home by somebody in the spring as you had suggested or did you do anything more?

A. It was left to be brought home in the spring, that is correct.

HIS LORDSHIP: Has Mr. Wood any questions?

MR. WOOD: I think not, my Lord.

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RE-EXAMINED By MR. TOWERS:

Q. And after it was lowered, speaking first of this anchor, after it was lowered, what if anything was said by you to Captain Waugh or by Captain Waugh to you?

HIS LORDSHIP: About it, I suppose.

Q. About the anchor, or its position?

10 A. As near as I can remember "that is all right; heave in the starboard anchor now."

By HIS LORDSHIP: Q. Who said that?

A. Well now I can't say definitely, sir, who said that but I feel—

Q. You mean somebody just started up, neither you nor Waugh, somebody else started up and said It is all right? Just think a moment what you are talking about?

A. Well I couldn't say who said it.

Q. After it was lodged and you had had all this conversation was anything further said about it? He means by somebody there present?

20 A. It seems to me that Captain Waugh said "That is all right, it is clear of my tug."

Q. Is that all you mean to say?

A. That is about all I remember.

Q. You are not any clearer than that?

A. And We will heave up the starboard anchor.

Q. That is all right, clear of what?

A. "That will be clear of my tug."

Q. You said "It seems to me." Have you any recollection about that?

30 A. Yes, to the best of my judgement I can recollect that that remark was passed.

Q. I don't see why you say to the best of your judgment; you can say that is your recollection?

A. Well that is my recollection, I will put it that way.

Q. People generally when they remember things say so without having to qualify them in that way. Now we have found out what you really mean about it. However you say that is your recollection? A. Yes sir.

40 By MR. TOWERS: Q. Then you said to my learned friend that you were at the stern of the Paisley as she moved northerly up the harbor. How far from the towing cable at that time would you be when you were at the stern, the inboard end of the towing cable made fast to the chain over the stern bitts?

HIS LORDSHIP: How far would he be from that?

MR. TOWERS: Yes, my Lord.

A. Well I was right in close quarters to it; you don't stand perfectly still, you walk around.

Q. I know, but you were close to it?

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A. I was right there in close quarters with it.

Q. Then you said you were watching some piles, was it?—or riff-raff, I think you called it at one time?

A. Yes, I believe that is the word I used.

Q. Where were they?

A. That was on the east side of the channel right in this here where this little break comes in there, that is as near as I could say.

Q. And did you know that the stern was going in there when you left your berth?

A. No, I didn't know. 10

Q. Well then you were standing on the stern—?

MR. HOLDEN: Now then, let me say my friend should ask questions.

HIS LORDSHIP: He told him once or twice he was standing on the stern going into that bank there or what he called riff-raff which caused him to go to the stern.

MR. TOWERS: That is just a wrong impression I am trying to correct.

HIS LORDSHIP: All right then.

Q. Did you know when you left your berth, when the Paisley left her berth, that her stern was going near any riff-raff? A. I didn't know it then.

Q. Then when did you go to the stern? 20

A. I was on the stern at the time the Paisley moved from her berth.

HIS LORDSHIP: He said on this examination:

"A. Well I don't know if there was any stones; I know there was a lot of old spiling—

Q. Sticking up, more or less?

A. Yes, and I watched back there to see that the "Paisley's" stern did not get into it; and if it came too close I was going to yell to the Tug Captain." I thought that is why he went back there?

MR. TOWERS: Well, my Lord, that is just what I was clearing up.

Q. Is that why you went back? 30

A. I didn't go back; I was already there, sir.

Q. Already there? A. I was there.

By HIS LORDSHIP: Q. Well you stayed there then, for that?

A. I stayed there.

Q. Why did you go back to the stern to begin with?

A. I went back in that towing operation. Naturally somebody had to be around, if the tow line should go or anything like that they would want to pass another line aboard.

Q. You went to the stern because you were being towed at the stern?

A. That is the idea, because we were being towed at the stern. 40

Q. And stayed there, as I read it to you, that question, is that right, "I watched back there to see that the "Paisley's" stern did not get into it; and if it came too close I was going to yell to the Tug Captain," is that why you stayed there?

A. After the tug left that was one of the reasons I stayed there.

HIS LORDSHIP: I am only quoting the answer which was read to you by Mr. Holden; I am not quoting anything else. I have no doubt there is a lot more there.

—1.00 o'clock p.m. adjourned till 2.00 o'clock p.m.

—2.00 p.m. resumed:

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ALVIN ROY PENRICE continued:

BY MR. TOWERS:

Q. When did you first observe this piling or riff-raff, as you call it?

A. When the Paisley's stern was down, oh, around the rear range light,
10 I should say.

Q. And was anyone with you on the stern at that time?

HIS LORDSHIP: I think he said Mr. Sykes was.

A. Yes, Mr. Sykes was there.

Q. And did you have any communication with the tug about this riff-
raff? A. I had no communication with the tug.

Q. My learned friend read question 288 and the answer. You were afterwards asked at question 290: "And if you thought that something was going to happen, you would tell the tug?"

Do you remember what you answered to that when you were examined?

20 A. No sir.

HIS LORDSHIP: You may read it to him if you want to.

Q. You said "not necessarily; that was up to him; if the damage was done I wanted to know how it was done?"

A. That is correct. That was my idea.

Q. Then the question 291:

"Why did you say a moment ago that you would yell to the tug?— You would, would you not?—

(Stenographer reads answer to question No. 288.)

That is what you would have done, is it not?

30 A. I presume I likely would have; this line up forward, I did not see that, the first part of it; as I said, I remained aft—."

HIS LORDSHIP: I don't see any object in reading these things to him further. He has explained his reason, unless there is some further explanatory reason.

MR. TOWERS: Quite so, my Lord.

Q. Then you told my learned friend that when you had heaved the heaving lines ashore and had told one of your men to get another heaving line that he brought it toward you but you did not take it from him and I think
40 you said the reason was that you had told the man he was to let go and you were heaving in your heaving line. Then he asked you if you had had plenty of men there and had fastened the two heaving lines together and made the attempt you might have gotten the cable out to hold the Paisley and you answered "No." Is that correct?

A. That is correct.

MR. HOLDEN: Why do you say he answered no? May it please the Court, there was a vague answer, I insisted and he answered "Yes," that he

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could have, if he had had his other three men handy and had bent the first heaving line onto the second one and the second onto the cable, his answer was Yes, I could.

MR. TOWER: As I recollect, he could have fastened the heaving line to the cable.

MR. HOLDEN: He said he could have made the attempt.

Q. Will you just explain exactly what you mean there?

A. Yes, I could have fastened the heaving line to the cable but it would have been impossible to get the cable out onto a pile, the pile was too far; another thing, the boat was going too fast. 10

Q. How fast was the boat going?

MR. HOLDEN: My learned friend has told this story, may it please the Court, and we have cross-examined and I submit his re-examination should be limited to what is legal in that respect and he should not go over the details hoping to get them better in—

MR. TOWER: No, I don't hope to. There is one particular question that I had in mind, a question of my learned friend's.

HIS LORDSHIP: There is no use arguing; we will have the Reporter hunt it up and read it.

(The Reporter then read questions and answers from pages 329 and 330, 20 commencing p. 329, L. 18. "Mr. Penrice, am I right that the reason" and, to end of answer at line 28, page 330: "I didn't try to put that line ashore after the first attempt with the first heaving line.")

Q. There is one question there to which you answered "No, I could not have"—that is in answer to my learned friend's question that had you all been there—

HIS LORDSHIP: You got an answer to that, that the boat was going too fast, that is what he said, that is why he couldn't do it.

Q. Were there any other reasons why you could not do it?

A. Too far away. If the length of cable had been sufficient to get it 30 on the closest pile it couldn't have been pulled out there if we had had twenty-five men on deck; it would only come out so fast that they could take it from the dock.

Q. And I think you said to my learned friend that you had some cable off the drum?

A. I had some cable off the drum, yes.

By HIS LORDSHIP: Q. You mean some part of the cable off the drum and part of it on the drum?

A. Yes sir.

By MR. TOWERS: Q. How much did you have off the drum? A. Oh 40 35 or 40 feet.

By HIS LORDSHIP: Q. And how much on the drum?

A. I can't say the exact length of the cable on the Paisley; I know it was a good fair length of the cable.

Q. About the same length?

A. Oh no, the cable on the Paisley on the forward drum would be around 300 feet I should think anyway.

Q. And 35 or 40 in addition would be off?

A. Yes.

By MR. TOWERS: Q. Had you had more cable off the drum would it make any difference in your view as to the possibility of holding the vessel at that time?

A. No, it would not.

Q. Then my learned friend asked you about the men being at stations at lines in time to pass the lines to the dock—?

MR. HOLDEN: I submit that this form of question is not proper in re-
10 examination. It is not what I may have asked him that my learned friend should discuss with the witness, that is the facts that I may have brought out, or submit as a statement the facts that I may have brought out that were new facts that didn't come out in examination-in-chief. He suggests my question in order, as I submit, to point out the kind of answer he wants to have. It is not proper, in my respectful submission to put the re-examination questions in that form.

MR. TOWERS: I think that was new. At least my recollection is.

MR. HOLDEN: Yes, what I mean is my learned friend can ask him
20 That you made a statement, but it is not proper, my respectful submission is, with his client's main witness who was in charge at the time to point out where I may have succeeded in putting him in default. It should be a re-examination on the facts.

(Reporter reads Question appearing at lines 18-24, page 341.)

HIS LORDSHIP: Well, as it was read to me it was merely recalling to the witness what you asked him about in order to found his question. What part of that question do you think is suggestive?

MR. HOLDEN: The fact that I brought out that he had nobody at
30 stations. I submit respectfully his re-examination should be Did you have anybody at stations, and not to remind him what I may have elicited. What I meant to make clear is that re-examination, in my submission, is not properly aimed at indicating to the witness where he may have done his side harm; it is to correct any facts that he may have brought out wrongly that were new facts, is my respectful submission. Whether I showed that he did or didn't have men at their stations is not what my learned friend should draw to his attention, is my submission.

HIS LORDSHIP: You mean he should not recall to the witness' attention the fact that you questioned him on that?

MR. HOLDEN: Yes.

HIS LORDSHIP: I think that is going rather far. I think myself
40 that it would be possible to take up the topic without saying in each case You were asked about this, but I don't think I can rule that it is inadmissible in that form.

MR. TOWERS: I will try to put it in such form in other questions. I had no intention other than to direct the witness' attention to the topic.

Q. Well, you say—?

HIS LORDSHIP: He has said something about it. Now are you going to put that to him?

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MR. TOWERS: I was going to ask him to say, subject to Your Lordship's permission, if his men were properly placed to handle these lines.

HIS LORDSHIP: Of course, he will say Yes to it but I don't think that would be a fair question in re-examination. If you want to go over it again and find out where they were—he has gone into it in a lot of detail—if he can throw any more light on it why ask him.

Q. Where were the lines?

HIS LORDSHIP: If you want to know where the men were placed ask him where they were placed.

MR. TOWERS: Perhaps I should ask where the lines were first. 10

Q. There was one on the forward winch?

MR HOLDEN: Don't tell him, please.

HIS LORDSHIP: There is no reason why you shouldn't ask Where were the lines, if you want to ask him with a view of correcting that, but to tell him where they were and ask him if that is right is not a proper question.

Q. There was one line at the forward winch?

A. Right.

Q. A cable? A. A cable.

Q. Where was your other cable, you said there were two?

A. The other cable was on the after winch. 20

Q. Was it prepared? A. It was.

Q. What other lines were there?

A. Manilla line on the fore-castle and a manilla line ready on the fan tail.

Q. You had your men aboard?

A. I did, three men and myself.

Q. Where were their stations so far as these lines were concerned?

HIS LORDSHIP: Do you mean what stations were they at?

MR. TOWERS: Where would they naturally be expected to be.

HIS LORDSHIP: Where ought they to be. 30

Q. Where ought they to be in order to efficiently handle those lines to bring your vessel to the dock?

A. I never considered the men handling the lines to bring our vessel to the dock. Once we got there so I could get a line on at either end, whichever was closer that I could get a line out—

By HIS LORDSHIP: Q. Never considered their stations?

A. No definite place. Whichever end of the boat—

Q. You never considered that, that is what I wanted to get, never considered their stations? A. No definite station.

MR. TOWERS: My Lord, I understood him to say that he didn't 40 consider that with regard to getting this line to the dock.

A. (Cont'd): That is what I mean to convey.

By MR. TOWERS: Q. What are the lines used for?

A. Tying up when the vessel gets to the dock.

Q. Did you or did you not anticipate the necessity of steering the vessel? Don't answer that till we see how it is ruled on.

HIS LORDSHIP: That is all right.

Q. What do you say to that?

A. Never anticipated any need of steering the boat at all.

Q. And under what circumstances if any would you have attempted to steer the vessel during this movement?

A. I would never have attempted to steer it.

Q. Under any circumstances?

A. Under any circumstances. I know it couldn't be done—at least in my opinion.

Q. If it could be done, if you had had a perfectly good rudder there and the stock in your hands would you have steered it? A. Pardon?

Q. If you had had a means of steering the vessel would you have done any steering?

HIS LORDSHIP: I don't really see how this is going to affect his answer. He said he never would have attempted to steer it.

MR. TOWERS: That is all, thank you..

By HIS LORDSHIP: Q. Now I would like to ask you a few questions myself. Just look at the map there. Now I understand you were lying at the point opposite that little house, weren't you?

A. Were moored, you mean?

Q. Yes? A. Up in here some place. (Indicating).

Q. Up there; and of course there were two vessels behind you and you had to be hauled on clear of them and then down the harbor? A. Correct.

Q. Now, as I understood you, you naturally went to the stern to see where you were going. Now, when did it occur to you to remain on the stern because of these piles or riff-raff or rough bank to the east of that channel there?

A. Well, when I saw them, when I got in down about this position.

(Indicating.)

Q. That is, generally speaking, opposite the little Harrison house?

A. Pretty near.

Q. Or about the range lights?

A. Just about opposite where the Paisley was stopped.

Q. Then you watched those, did you?

A. Yes, till we were clear.

Q. When you stopped your watching for that and felt satisfied about that what was the position of your boat with regard to the line of the dock that the elevator was on? How was it pointing?

A. As near as I can remember, sir, she would be up in about here.

(Indicating).

Q. That is almost parallel, isn't it? A. Yes.

Q. A little to port of being parallel, is that right?

A. Yes sir. The bow was out a little bit.

Q. Had the stern got as near as you show it there?

A. Well, now how far is that off, will you tell me, sir?

MR. TOWERS: It is about 200 feet, I would submit, 2 inches.

A. (Continued): I should say about like that, sir. (Indicating).

Q. Well, how far off would the stern be?

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MR. HOLDEN: An inch and a quarter. I thought you meant the nearest part of the ship.

HIS LORDSHIP: I meant the stern. The line of the dock on which the elevator was, but I am asking him now how near had the stern got to that riff-raff stuff.

MR. TOWERS: That was on the east side, my Lord.

WITNESS: Yes.

By MR. TOWERS: Q. How close had it come to this riff-raff, that is the point?

A. Oh, it got within I should say 25 or 30 feet at one time and then the 10 boat started to go ahead.

By HIS LORDSHIP: Q. Then you answered Mr. Towers that you wanted to see if anything happened at that point, that is in reference to running into this riff-raff? A. Yes.

Q. And if you thought that something was going to happen you wouldn't necessarily tell the tug because that was up to him? That is right, is it?

A. Yes sir, that is correct.

Q. Well then, nothing did happen? A. Nothing happened.

Q. And you remained there on the stern after that for some time, didn't you, till the tug had cast off and gone around to the bow? A. Yes. 20 I was there after the—

Q. But you continually kept drifting onto the riff-raff during the time of the shifting of the tug?

A. Yes sir.

Q. And fetched up about 25 or 30 feet off? I mean it stopped going at that distance off?

A. Well, the stern was a little further off the riff-raff when it actually stopped; then when it started ahead the bow was being fetched in a little and that threw the stern towards the riff-raff.

Q. Well then, when that danger was over did it occur to you to see 30 what course the vessel was taking?

A. Well, I could tell by standing on the stern about how she was heading.

Q. And where were you making for?

A. Making for the elevator dock.

Q. Well, then just put the vessel in the same position that you had it in a little while ago. Now, if it kept on that way would it touch the dock?

A. No, it wouldn't.

Q. How much of a turn had it to make to starboard before it would be in the position where it ought to go in order to reach the proper part of the 40 dock?

A. If it would be brought in, properly sir, and the way I expected she would be brought in—

Q. No no, I am asking you the actual fact. There is where you were?

A. Yes sir.

Q. When you have got through your anxiety about the riff-raff?

A. Yes.

- Q. How far would she have to turn to starboard before she was going on the right course for that dock where she should have fetched up?
- A. Oh, she would have to turn and be heading like that. (Indicating).
- Q. Now, you said you could tell her course from where you were on the stern. Did she make that turn?
- A. She did not.
- Q. Did it occur to you that you couldn't get there going the way she was going?
- A. Well, she couldn't get into the dock going the way I was going.
- 10 Q. You didn't want her stern to run into the riff-raff, and did you want her bow to run into the Saskatchewan, or any other vessel?
- A. No, I did not.
- Q. Then, did you make any effort to find out why she was continuing that course without shifting to the starboard? She would have to make quite a perceptible shift, wouldn't she?
- A. Yes sir, in order to have her heading in to the dock.
- Q. You were on the boat. Did you take no concern with where the bow was going at that time?
- A. No sir.
- 20 Q. Why not? A. Well, the tug was up at the bow, I wasn't worrying about the bow; my biggest worry then was the stern.
- Q. Well, but you had got over that. Didn't you commence to worry about the bow?
- A. Not at that time.
- Q. Or the course she was taking?
- A. Not then.
- Q. Then when did you wake up to the necessity of seeing what happened, whether she was going to get into the dock at all?
- A. That is when they had trouble with the tow line on the tug is when
- 30 I first anticipated she wasn't going ahead into the dock.
- Q. When was it the tow line got into trouble? How far past the south side of the elevator had she got?
- A. Oh, she was nearly a length.
- Q. Nearly a length? A. Nearly her length.
- Q. That is 360 feet?
- A. 380, I think, sir.
- Q. 360. Past the south side of the elevator?
- A. Yes sir.
- Q. Well, what did you anticipate they were going to do if that line
- 40 hadn't broken?
- A. Stop us.
- Q. When she was in that position, a full length past the southside of the elevator, what did you think the tug could do with her?
- A. Stop her with his tug here, by means of the tow line.
- Q. Within what distance would she have stopped?
- A. Well, I don't hardly know, sir, how far it would take to stop her.

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Q. Well, how far would it be to the Saskatchewan from where she was, a full length past the south side of the elevator?

A. Oh 150 or 200 feet.

Q. You think the tug could have stopped her in that distance?

A. If the line had been all right.

Q. You think it could?

A. I think so.

Q. Do you know anything about it?

A. Well I don't know; I am no judge of that.

Q. Then she would have had to back the ship up into the dock and the 10 stern would have reached the dock first then, wouldn't it?

A. If she had stopped here, sir—

Q. If she had stopped her beyond the elevator would she have to back up?

A. The boat would eventually have had to be backed up to bring it in here all right.

Q. Did you think there was any possibility of berthing her 360 feet south of the elevator?

A. There was no dock there.

Q. She had to be shifted back?

A. She had to be shifted back alongside of the elevator. 20

Q. Is that your idea what she would do?

A. Yes sir.

Q. Why were you standing away aft with that line instead of at the stem?

A. With a line?

Q. Yes? A. I had no line aft.

Q. I say why did you go aft at that stage, at the point she would reach the dock first by? What was going to happen—?

A. The stern of the Paisley wouldn't reach the dock until after she was stopped. 30

Q. I understand? A. She would have had to stop going forward.

Q. And then go back? A. Yes sir.

Q. What were you standing on the bow for when the line parted?

A. Well I wasn't on the bow when the line parted, sir.

Q. Where were you?

A. I was down getting the heaving line out.

Q. You had been up there?

A. I had been up there and saw the trouble with the tow line on the tug and come down on deck.

Q. What was your idea getting a heaving line, going to heave it out from 40 the bow? A. Yes sir.

Q. What was there to heave it to?

A. To one of the men—some one of the men on the dock.

Q. Well they had left the dock?

A. Well those spring piles or spiles, there was still those, you see.

Q. Could you see them running off to there?

A. Well I know there was men came out there because I know a man got the line; I don't just remember seeing them coming.

Q. You said two or three times you were a great deal too far away to make it of any use?

A. Well I endeavored to get it out you see.

Q. Well then you couldn't have thought that when you saw that there was trouble— Or rather just before you saw the trouble you couldn't have anticipated mooring her by a line thrown out at the bow, could you?

10 A. I tried to get the line out to assist—there was a possibility. I understand a tow line on a tug, at least I think I do, and I seen them having trouble.

Q. Had you made any preparation to dock her, the stern arriving there first?

A. No sir. Well I had lines ready but I didn't anticipate she would land there at the first manoeuvre.

Q. You didn't seem to indicate that it made any difference to you how you got to the dock, or the elevator, how you were to place your ship at the dock to get the grain in. Did you not know what hold you were going to empty first?

A. Not at that time I didn't.

20 Q. Is that all done after you are made fast to the dock?

A. Well I expected that when the boat got close to the dock before the tug let go of us that some of the elevator men at that time would tell us what hold to spout her for; that was customary.

Q. That is what you intended to do, leave it till you were docked, was it?

A. Until we arrived at the dock.

Q. Until you were made fast?

A. Well not necessarily made fast, sir. When we got within good spouting distance, they would likely tell us where they wanted her.

30 Q. You said, I think, to Mr. Holden that you left the port anchor on January 15th where Waugh wanted. Why did he want it hanging down below?

A. Well I understood that he didn't want it in the first position and he wanted it in this other on account of his tug manoeuvring around the bow.

Q. Didn't want it in the first position? A. No sir.

Q. Why didn't he? A. It was sticking out in the line of the hawse pipe, that is the same angle as the hawse pipe runs in the boat.

Q. It was sticking out to the danger of what?

A. To the danger of his tug manoeuvring around.

Q. I suppose his tug hasn't much freeboard, has it?

40 A. Oh not an awful lot.

Q. Well then how much did you lower it down, how many feet?

A. We lowered it down till the crown of the anchor was about 2 feet below the water; she was loaded 18-4.

Q. How did that get it out of the way of the tug?

A. Well that made it lay up parallel against the ship's side, the stock, flukes and all.

Q. And that, according to you, was 3 feet?

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A. That was the crown, yes sir. Before, in the other position it stuck out more?

Q. Wouldn't it hurt the tug then?

A. Captain Waugh seemed to think it wouldn't.

Q. What did you mean by saying he wanted it in that position is what I don't understand. What did he want it there for?

A. Well he wanted it some different position than what we had first had it when we hove it in the pipe.

Q. What was his reason for wanting it in a different position?

A. Well he said it would foul his tug and tow line working around there. 10

Q. Wouldn't it foul it working around there—wouldn't it injure him as it was hanging?

A. Well it might have, but I don't think it would have though.

Q. Don't you think you are trying to shift the responsibility onto him instead of yourself? Why did you say "To Hell with it and leave it that way?" Why was that expression used? That doesn't indicate that you were trying to help him, conform to his wishes?

A. Well I have quite a habit of using an expression like that. I often use it, sir.

Q. I don't care a bit about the profanity, but you say "Leave it that way." Why did you? 20

A. I thought it was all right that way.

Q. Why did you have anything to say about it? That was the way Waugh wanted, why did you suggest leaving it that way and say so?

A. Well, that wasn't the way Captain Waugh did want it.

Q. But I don't understand you then?

A. Well, that remark was made when it was sticking out from the hawse pipe, sir.

Q. I see, that is when that—?

A. That is when that remark was made. And then we changed it. 30

Q. And Captain Waugh didn't agree with you there?

A. He didn't agree with me.

Q. He thought that was too dangerous a place?

A. Dangerous for his tug.

Q. And then it was lowered down?

A. And then it was lowered down.

Q. And you didn't say anything more about it?

A. I didn't say anything more about it.

Q. Is that what you mean by saying Waugh wanted it there?

A. Yes sir. 40

Q. Did you think it wasn't dangerous too any other thing you might encounter?

A. Well, it being the inboard anchor there was nothing we would encounter in the ordinary shifting.

Q. Is it a safe thing to leave an anchor dangling from the bow of the ship, sticking out from it?

A. I couldn't say to that, sir. It is customary. In all my experience that is customary.

Q. To leave anchors hanging?

A. To leave anchors hanging that way on the cables.

Q. Did you know any other?

A. I saw a boat shifted, sir, just before I came down to this Court, sir, with it hanging that way.

Q. Are there quite a number that have them hauled part of the way into the hawse pipe?

10 A. Yes sir, I know of a boat laying at quarters now that has got her anchor halfway in.

Q. And those are vessels which are laid up, aren't they?

A. The one with the anchor halfway in is. Well, the other one is too, now she is laid up.

Q. Have you ever had anything to do with manoeuvring a ship with an anchor down like that?

A. Not previous to the Paisley.

Q. And you don't want one again?

A. No, I will say not!

0 HIS LORDSHIP: That is all.

JAMES ALBERT SYKES, Sworn.

EXAMINED By MR. TOWERS:

Q. Mr. Sykes, you, I understand were ship keeper on board the Home Smith, one of the Algoma Central Fleet in the harbor of Owen Sound in January, 1927, is that correct? A. Yes sir.

Q. And do you remember the 18th day of January when you were asked to go on board the Paisley when she was being shifted to the elevator? Do you remember that day?

A. Yes sir.

30 Q. What time did you go aboard the Paisley?

A. Oh, in the neighborhood of eight o'clock in the morning. Shortly after eight o'clock in the morning.

Q. And will you tell us then what was done after you went aboard?

A. Well, when I went on board the men were busy at taking in some of the lines; I helped with that. Then the tug towed us away from that berth.

Q. Took the lines in and then the tug towed you away from the berth?

A. Yes.

Q. Which direction did she tow you?

A. Stern first toward the entrance to the harbor.

40 Q. And how was the tug made fast?

A. Well, I can't just remember whether they had a manilla line or a cable.

Q. At all events she was fast by the stern?

A. Yes sir.

Q. And towed you stern first? A. Stern first.

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Q. Where were you while the vessel was proceeding stern first, which I take to be northerly up the harbor?

A. I was around the stern most of the time.

Q. Had you on other occasions been on vessels being towed to the elevator dock at Owen Sound?

A. I had. I don't remember now whether I had before that or not, but I have been on several occasions.

Q. Well, would you indicate to His Lordship the course that the Paisley took, as you remember it, assuming that represents the Paisley?

MR. HOLDEN: I think on the first part of it, as I understand it, he 10 was towed up north.

HIS LORDSHIP: I don't see any reason in following that up.

Q. The tug did come about and went to the bow, is that true?

A. Yes.

Q. Now, where were you when she reached the vessel's bow?

A. I was on the vessel's bow when the tug was there.

Q. When the tug reached it? A. Yes sir.

By HIS LORDSHIP: Q. What do you mean?

A. I was on the bow of the Steamer Paisley when the Tug Harrison came alongside the bow of the Paisley. 20

Q. Alongside which bow? A. The starboard bow.

By MR. TOWERS: Q. And would you indicate about where her bow was at that time, the Paisley's bow, as you remember it? This is the elevator; this is where you were coming from (indicating)? This is the other side of the harbor?

A. Yes. Somewhere in that position. (Indicating).

By HIS LORDSHIP: Q. That is where she was then when she came alongside the starboard bow?

A. Remember, that is not exactly; that is approximate.

HIS LORDSHIP: I know, but just be careful about it now. 30

By MR. TOWERS: Q. Do you know how wide these are? A. No I don't know how wide they are.

MR. HOLDEN: May I see the actual measurements?

MR. TOWERS: No, my learned friend will get the opportunity later.

HIS LORDSHIP: He is only going to tell him how far it is. It is as much in your interest as his.

MR. HOLDEN: It is less than half an inch. Before he moves his hand away all I wanted to do was read the actual distance, and it was less than half an inch.

HIS LORDSHIP: The witness ought to be informed of the scale of the 40 map and given an opportunity to show you the distance.

MR. TOWERS: When I do that my learned friend interrupts.

MR. HOLDEN: I think it is only fair before he moves his hand to say that it was less than half an inch.

MR. TOWERS: No, not when he doesn't know the scale.

Q. The scale of this map, Mr. Sykes, is 100 feet to the inch.

By HIS LORDSHIP: Q. You can understand that measurement, can't you? A. Yes.

Q. You can measure from that map, can't you?

A. I think so.

By MR. TOWERS: Q. That is a hundred feet, you see?

A. What is it you want me to measure?

Q. To give us an idea how far from the dock, what position the Paisley was in when the tug reached her bow? When the tug reached the Paisley's bow?

10 A. And you want to know the distance the Paisley was from the dock.

Q. Now you have the scale?

By HIS LORDSHIP: Q. Put her just in the water where she was. You may use the rule to measure it and make up your own mind?

A. (Witness indicates).

HIS LORDSHIP: Now, will somebody kindly mark that.

Q. Before it is completed I want the distance from the dock that you are measuring given bow and stern?

By MR. TOWERS: Q. Now, how far out is that bow?

A. The bow is approximately an inch and a quarter.

20 By HIS LORDSHIP: Q. Well then, 125 feet out? A. Yes.

By MR. TOWERS: Q. And the stern?

A. Is an inch.

By HIS LORDSHIP: Q. How much? A. One inch.

Q. That is 100 feet out? A. Yes.

Q. And is that the proper line of her course?

A. According to my recollection.

HIS LORDSHIP: Now, will someone outline that, please. Better mark inside that "Sykes," will you please?

30 By MR. TOWERS: Q. Then after the tug came alongside of the starboard bow and you were there what took place?

A. I gave the tug an end of the heaving line—I gave the tug a heaving line, hanging on one end, he fastened it to his tow line and I pulled it aboard, placed it on the starboard bitts on the bow deck.

Q. You brought it aboard and placed it on the starboard bitts. What happened then?

A. I don't know whether the tug took a pull from that position or not.

By HIS LORDSHIP: Q. You don't know what?

A. Took a strain in that position or not.

Q. Why don't you know?

40 A. Because I understood from the men on the tug that they wanted it at the other bow and I wasn't able to get it there myself, I was looking for assistance.

Q. I don't understand you. You took a line on and you gave him one?

A. No no, I gave him a small line, a heaving line, Mr. Towers, and then I pulled a heavier line and fastened the end of it on the towing post or bitts.

Q. Of what? A. Of the Paisley.

*In the
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Court of
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Defendant's
Case

No. 35

James Albert
Sykes
Examination-
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(continued).

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Case

No. 36

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Q. You drew in a line from him, is that it?

A. Yes.

By MR. TOWERS: Q. Through the starboard chock, you mean; then you put that on the bitts on the Paisley, did you? A. Yes.

By HIS LORDSHIP: Q. So you weren't looking forward to see what he was doing on the tug?

A. When I got that on there I heard, I think it was Captain Waugh—

Q. Tell us what you did; never mind what you heard?

MR. TOWERS: They gave him orders, my Lord.

A. I was listening for orders because I didn't think that was the proper 10 thing.

Q. You weren't looking over the side of the tug?

A. No.

Q. That is what I wanted to get. Now go on?

A. And when this man came we changed that line around to the starboard bitts on the port side.

Q. To the forward bitts on the port side? A. Yes.

Q. You said starboard? A. Yes.

HIS LORDSHIP: I will just leave Mr. Towers to ask it; I cannot make head nor tail out of your story, that is all. 20

By MR. TOWERS: Q. As I understand you, Mr. Sykes—?

MR. HOLDEN: Let him tell it again. I submit my learned friend should just ask him to tell his own story.

MR. TOWERS: His Lordship asks me to find out properly.

HIS LORDSHIP: I failed to get any intelligent answer as to what he did; that is what I want to know, not what he had heard.

Q. You, as I understand it, Sykes took the tow line—?

HIS LORDSHIP: Just let him tell his story; see if you can get him to tell an intelligent story.

MR. HOLDEN: And don't tell him for us. 30

Q. Just tell us what happened from the time you landed the heaving line onto the tug?

A. I dropped him the end of the heaving line and he made it fast to his tow line and by means of that heaving line I pulled the end of his tow line aboard the Paisley. Is that clear, may I ask?

Q. You pulled the tow line in and you made it fast on the starboard bitts? A. On the starboard bitts.

Q. Which would be the bitts on the forward deck of the Paisley on the starboard side. Having it there, what orders if any did you receive, and from whom? 40

A. Some person on the tug, I think it was Captain Waugh, asked to have that line changed.

Q. Changed where? A. To the forward bitts on the port side.

Q. And were you able to do that?

A. Not without assistance.

Q. Did you get assistance? A. I did.

Q. Did you do it?

A. I did; or rather we did.

Q. You all got it done. And when you had finished where was the line?

A. On the port bitts on the forward—on the bow deck of the Paisley.

By HIS LORDSHIP: Q. And how did it reach the tug?

A. Through the forward chock.

By MR. TOWERS: Q. On the port side?

A. Of the Paisley.

Q. The tug was on the starboard side? A. Yes.

10 Q. Subject to this being proven—?

HIS LORDSHIP: What do you want that for?

MR. TOWERS: To show the chock and the position it points to at the bow of the ship.

MR. HOLDEN: The photographs show it.

Q. The tug was still on the starboard side?

A. On the starboard side and a little bit ahead of the Paisley.

Q. I understood you to say that you didn't think that the starboard chock was the right chock for the line? Did you say that? A. I said that.

Q. Would you explain to the Court why?

20 A. Because if the tug was going to put us alongside the elevator, starboard side to it would be, she couldn't pull us that way as well as she could shove us because she would be between the vessel and the dock when we came to moor or tie up.

By HIS LORDSHIP: Q. Why did you fasten it on the starboard bitts then?

A. Because I couldn't without help get it around the bow of the Paisley to the port.

Q. Then you fastened it to the wrong place in your own judgment?

A. I fastened it to the only place that I could.

30 Q. That you could, but that was the wrong place in your judgment?

A. In my judgment, yes.

Q. Then you got assistance and shifted it after you heard from the tug?

A. Yes.

By MR. TOWERS: Q. Then when you had it on the port bitts you thought that was the right place? A. I did.

Q. How much line was out then?

A. Oh, possibly 60 feet, in the neighborhood.

Q. Had the vessel at that time stopped her northerly way?

HIS LORDSHIP: That is going stern foremost. A. I think so.

40 HIS LORDSHIP: She must have if you placed her correctly; you have got her away up by the elevator.

MR. TOWERS: Had stopped her northerly way, yes.

Q. But she hadn't started to proceed forward?

HIS LORDSHIP: Why don't you ask him, Mr. Towers? You are suggesting and telling this witness exactly what answer you want.

MR. TOWERS: Well, I really hadn't that in mind at all, my Lord, only that. I beg your pardon.

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tion-in-Chief.

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tion-in-Chief.
(continued).

HIS LORDSHIP: I know you hadn't.

MR. TOWERS: I wasn't concerned about whether she was correctly placed or not.

HIS LORDSHIP: I quite realize that but still the form of the question is objectionable.

MR. TOWERS: I beg Your Lordship's pardon.

Q. Now, you say she had stopped her northerly way, or did you say that?

A. I think she had.

By HIS LORDSHIP: Q. Have you any doubt about it, witness? 10
Just apply your mind to what you are being asked about. You put her at a considerable distance near the elevator; do you think she wasn't going forward or is she still backing up?

A. Well, she isn't backing up. If anything I think she is moving forward.

By MR. TOWERS: Q. Well, I am speaking now of the time that you have her line from the tug, that is the first time you took the line from the tug, was she moving forward then?

A. If she was moving it was forward, I think.

Q. What would make her move forward? 20

A. The tug had already checked her, if I remember rightly, from moving astern before she shifted her.

By HIS LORDSHIP: Q. The tug had already checked her what?

A. From moving northerly.

Q. How had she checked her?

A. With the cable that she had fast to the Paisley's stern.

Q. Before she left the stern? A. Yes.

By MR. TOWERS: Q. Well then, after she was fast to the port bow what happened?

A. She began to pull her forward and trying to pull her toward the 30 elevator dock.

By HIS LORDSHIP: Q. Tried to pull her where? A. Toward the elevator dock as well as ahead.

By MR. TOWERS: Q. And where did you remain?

A. On the bow or in the forward part of the vessel.

Q. Did she get her to the dock? A. No sir.

Q. Do you know why? Can you say why?

HIS LORDSHIP: Oh, answer the question, witness, do you know why?

A. Well, I can't say why. 40

Q. Where did you remain?

A. In the forward part of the vessel.

Q. Up to what point did the tug continue to tow the Paisley ahead before she made any other shift, before the tug made any other shift?

MR. HOLDEN: He didn't say she was towing her ahead.

MR. TOWERS: I mean ahead first. My learned friend suspects me.

A. Pardon me, Judge, if I am right, I think I said towing her towards the elevator dock and ahead in my statement.

Q. Up to what point did the tug continue to tow the vessel before the tug shifted its position or altered its position?

A. Till she was placed in line with the southern edge of the elevator, the southern wall of the elevator.

Q. Just in line with the southern wall of the elevator? Then what if any—

By HIS LORDSHIP: Q. Is that the bow of the vessel?

10 A. Yes sir.

Q. Is that what you mean? A. Yes sir.

By MR. TOWERS: Q. Then what if any change was made by the tug?

A. She back the tug.

Q. Backed up? A. Backed up.

Q. What effect would that have, if any, on the tow line?

A. She altered the position of the tow line—

HIS LORDSHIP: I wish you wouldn't look at the map when you are answering a question.

20 A. She altered the tow line from the stern to her bow.

Q. Did you watch that operation?

A. Not closely.

Q. Do I understand that you still were on the bow of the vessel?

A. Yes; at least in the forward end.

MR. HOLDEN: You didn't remain on the bow deck?

By HIS LORDSHIP: Q. Did you remain on the bow deck? A. I can't say whether I remained on the bow deck or not during all that time.

Q. Where else were you?

A. I may have been just aft of the bow deck on the main deck.

30 By MR. TOWERS: Q. And was anyone with you on the bow deck?

A. When the tug was changing her line?

Q. Yes? A. Yes, there was one man and I think two mostly.

Q. Who were they? A. Holmes was the one, I think, was there, and Bechard part of the time.

Q. What happened after this line was changed? Or did anything happen while it was being changed that you saw?

A. I saw them working at passing that line around the stays. I can't say that that followed but I saw them working at passing it.

Q. Where did they put it after they got it past the stays?

40 A. On the forward bits of the tug.

Q. And then what happened if anything?

By HIS LORDSHIP: Q. Did you see anything happen?

A. I saw the tug going astern.

Q. Well, go on, tell us what went on in your view?

A. Well then, when she went, I lost sight of the deck of the tug. there was some strain on the line; well, I saw the tug moving astern; the next I saw was one end of their line flying in the air.

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tion-in-Chief.

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Q. What does that mean? A. It means it either let go of the tug or broke.

By MR. TOWERS: Q. Then what happened after that?

A. I, with the assistance of Bechard and Holmes pulled the line aboard.

Q. Did you take any steps to—?

HIS LORDSHIP: What did he take steps to do is the question you should ask.

Q. What other than pulling the line aboard did you do, if anything?

A. I thought of attempting to get a line out but I heard Mr. Penrice say something to that effect, I don't remember what, and Mr. Bechard went 10 to help him—went to his assistance.

HIS LORDSHIP: Which means that he did nothing.

Q. What could you have done at that moment?

HIS LORDSHIP: We have got all this, there is no dispute about it, what happened on the vessel. You are asking now what could have been done?

Q. What could have been done?

A. An anchor could have been dropped.

Q. And did you make any attempt to drop an anchor?

A. No sir. 20

Q. And what if anything could have been done about getting a line ashore? A. Well, if we were close enough we might have got a line ashore and checked the vessel.

Q. If they were close enough?

A. If they were close enough and the vessel didn't have too much way on her.

Q. Then she went on up towards the Saskatchewan?

A. The Paisley did. Yes.

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CROSS-EXAMINED By MR. HOLDEN: 30

Q. When you passed the heaving line down to the tug was the tug lying off the starboard bow of your ship? A. Yes.

Q. Close in against the side?

A. Well, not right close; it was a distance, I would judge, of maybe 15 feet.

Q. And you were on the starboard side of the bow deck when you passed it over? A. Yes.

Q. Well, would you tell the Court why the tug would place itself on the wrong side? I don't follow that and I would like you to tell us. You stated to the Court that that was the wrong side to make a line fast from the 40 tug, is that right?

A. That is right.

Q. And yet you passed the heaving line over to the tug over that side of your bows? Is that right?

A. That is right.

Q. Why did you pass it over on the wrong side?

A. Because that is where the tug was.

Q. And if the tug had been astern of you would you have gone astern and passed it out to her although you wanted her ahead?

A. Well, it was the tug that wanted the line, I would give it to him wherever he wanted it.

Q. And you passed the line over although you knew it was the wrong side of the Paisley's bows; you passed the heaving line over in order that they should make it fast to the towing line?

A. I did.

By HIS LORDSHIP: Q. Was that because of the situation of the
10 tug?

A. Yes, that was because of the situation of the tug.

Q. If the tug had been in another position would it have been the right place? I mean if the tug had been on the other side of the vessel?

A. On the port side?

Q. Yes? A. That would have been, I think, yes.

Q. Would have been what? Would the starboard have been the right side? A. No sir.

Q. But the position of the tug had nothing to do with it as to whether it was the right or wrong side?

20 A. For that line to be placed on the deck of that. No.

By MR. HOLDEN: Q. You knew that when you passed the heaving line over to the tug, that the tug should be on the other side of your bows, is that right?

A. I thought the port side was where she should have been.

Q. What did you say to Penrice about it before you passed the heaving line down?

A. In the first place?

Q. Well, when you saw the tug on the wrong side and before you passed the heaving line down to her what did you say?

30 A. I don't know where Mr. Penrice was at that time, I didn't see anything of him.

Q. If he had been there overlooking the job would you have told him She is on the wrong side?

A. I might have. I might have said, "I think she is."

By HIS LORDSHIP: Q. Why was she on the wrong side? What was wrong about it?

A. I think the tug meant to go up there and back down on the other side, that is what I think.

Q. Back down on the port side? A. Yes.

40 By MR. HOLDEN: Q. And did you say Why don't you back down on the port side? A. No.

Q. Then, how long did she remain on the starboard bow, the tug remain on the starboard bow, after you made the towing line fast there before the change was made?

A. Would you repeat that?

Q. How long did the tug remain with her towing line fast onto the starboard bow before she shifted over to the other side? A. A short time.

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- Q. What do you mean? About how long?
 A. Oh, I don't think that I can give an accurate estimate of how many minutes it was, but it was not long.
 Q. Two or three, four or five or what? Eight or ten?
 A. I couldn't give an accurate estimate; it would be no more than five anyway.
 Q. Not more than five minutes? Could you tell the Court about how far she towed you before she shifted over?
 A. I have already said that I don't know whether he towed us from that position or not. 10
 Q. You don't know whether he moved you any?
 A. In that position.
 Q. Well, where was Penrice when you passed the heaving line over the starboard bow?
 A. I can't say that.
 Q. Well, who was in charge on board the ship?
 A. Mr. Penrice. Mr. Penrice was the man I was working for.
 A. Until they came to give me assistance in the bow.
 Q. And when you went forward did you know you would have to take a towing line up from the tug? 20
 A. I expected I would.
 Q. Why didn't you tell Bechard and Holmes to come forward with you for that purpose?
 A. I had no authority.
 Q. Why didn't you ask you boss, Mr. Penrice, to send them forward with you?
 A. I expected that he would either come or send some person.
 Q. You expected Penrice would either come himself or send someone?
 A. Yes.
 Q. And he didn't? He didn't in time, I mean? 30
 A. He didn't in time.
 Q. He did later? A. Yes.
 Q. But they weren't there in time to help you with the first line?
 A. No.
 Q. How soon after you got the line fast on the starboard bow did Holmes and Bechard turn up?
 A. Shortly after.
 Q. Well, how many minutes or about how long?
 A. Oh, it may have been one, it might have been three.
 Q. You have no idea what they were doing in the interval? 40
 A. I have not.
 Q. What were the three of them doing aft when you left them to go forward? A. I can't say.
 Q. Were they sitting down or standing up or what were they doing?
 A. Well, there were two, I don't remember which two, was standing there and the third one was out of my sight.

- Q. You were working for Mr. Penrice. When had you last seen him before that?
- A. When I left the stern.
- Q. Where was the tug when you left the stern?
- A. It was at the stern.
- Q. Why did you leave? A. Because I figured that his next move or next work would be done at the upper end of the boat.
- Q. The tug's next work would be up forward?
- A. That is it.
- 10 Q. Did anybody tell you to go forward?
- A. I don't remember whether I was told or not.
- Q. I understand you to say to His Lordship that when you took the towing line and put over the starboard bow you would have taken it over to the port bow if you had had anybody to help you? Did I understand you aright?
- A. I said I could have if I had had assistance; I couldn't alone.
- Q. Why didn't you have assistance? A. I don't know.
- Q. What were the other two men doing?
- A. I don't know.
- 20 Q. When had you seen them last?
- A. When I left the stern of the boat.
- Q. Where were they when you left the stern of the boat?
- A. They were on the stern of the boat.
- Q. Did you leave both Holmes and Bechard aft with Penrice when you went forward? A. I did.
- Q. You are quite sure of that, are you?
- A. Yes, I am sure of that.
- Q. And that is the last you had seen of them?
- Q. Well, were they doing any work or were they chatting together?
- 30 A. I think they were standing there expecting to throw that stern tow line off.
- Q. Was there any fire there in that part of the ship where they could keep warm?
- A. There was a fire in the galley.
- Q. How far away were they from that fire?
- A. They were on the opposite side of the ship to what the galley was.
- Q. The man that was out of sight, was he in the galley?
- A. I think he was on the stern of the vessel; I don't know.
- Q. Was there any open fire or any other fire about the decks apart
- 40 from the galley fire?
- A. I don't think there was at that time.
- Q. You are not sure?
- A. I wouldn't swear, no.
- Q. Well, you say "at that time" with an emphasis; when had you noticed an open fire about the decks?
- A. When we were being towed stern first.

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Q. I see. Well, you weren't being towed stern first so very long, I suppose? How long did that operation take?

A. Oh, possibly ten or fifteen minutes, I don't remember.

Q. Who built the fire?

A. Mr. Penrice built part of it and I built part of it.

Q. You and Penrice built a fire? Where did you build it?

A. We built it with oily rags and waste around the capstan aft, we wanted to get the frost out.

By HIS LORDSHIP: Q. What capstan?

A. The capstan that they use in moorings on the stern of the vessel. 10

By MR. HOLDEN: Q. And was that fire going when you left the stern end of the vessel?

A. Mr. Penrice was working on it— At least, no, I may be wrong there; when I left the stern of the vessel I couldn't say where Mr. Penrice was; when I left why I could not say that he was working on it.

Q. That is keeping it going, do you mean, or what was he doing?

A. I don't know whether he was keeping it going or just watching it till it died out.

By HIS LORDSHIP: Q. Was he standing beside it?

A. Yes, that is right, he was standing there close to it. 20

By MR. HOLDEN: Q. And one of the men was with him and the other one you couldn't see?

A. No.

Q. Is that right?

A. From where I left Mr. Penrice I went up the side of the vessel and the cabin hid him from my view, but I could see the other man.

By HIS LORDSHIP: Q. There was another man standing beside the fire with him when you left?

A. Beside Mr. Penrice? He was alone I think and the other two men were on the side of the cabin where I could see them as I went up. 30

By MR. HOLDEN: Q. Were there any other open fires about the decks?

A. Not that I remember.

Q. Do you know what temperature it was that morning?

A. No. I can't say what temperature it was but it was a fine morning.

Q. Well, before they came and helped you with the towing line did you call for them or go for them or anything?

A. No, I didn't call for them or go for them; I didn't see them.

Q. And had you started to work at the shifting operation before they 40 turned up?

A. I think I was looking for another heaving line when they came.

Q. You were looking for another heaving line?

A. Yes, around the bow.

Q. And did they both turn up together or one at a time?

A. Well, they came one after the other but close together.

Q. When the ship Paisley would be in position you meant to carry that towing line back from the forward bitts to a position farther aft as they were nosing her in?

A. No, I changed no line.

Q. I didn't ask you whether you changed the line. I am asking you what the operation would be if you had carried on and got your line ashore on the starboard side and the tug had nosed you in from the port side; you would have to take the towing line off from those forward bitts to other bitts, isn't that true?

10 A. You mean after we had the one end of the vessel with the line on the dock.

Q. Yes. A. Well, he would have let go that line to us—

Q. You don't know what you would have to do with that line that you got first on the starboard bow and then over on the port bow, what you would have had to do later with it?

A. Well, he could push her in without using that line at all if he wanted to.

Q. Do you know what you or the other men had to do with regard to that line as the operation continued, if it had continued? Did you know?

20 A. I didn't know what he wanted to do with it, that is right.

Q. Had anybody at any time told you anything about what you were to do as that vessel was making her berth?

A. No. The understanding was I was to go over there and give assistance if I was needed.

Q. Are you a navigator, a sailor?

A. I have a license.

Q. As what? A. I have an inland Master's license.

Q. Since when? A. Last winter.

By HIS LORDSHIP: Q. Inland what?

30 A. Inland Master's license.

Q. And is that this winter or last winter?

A. Winter a year ago. Approximately.

By MR. HOLDEN: Q. Had you assisted before in moving ships to the grain elevator back in the winter?

A. I assisted in several last winter; I don't know whether that was the first one or not but I had assisted.

Q. Oh yes, you said that before; I beg your pardon.

By HIS LORDSHIP: Q. Did you get the license before this accident?

A. I got the Master's License after that.

40 Q. What had you before?

A. I had a mate's.

By MR. HOLDEN: Q. Well, isn't it true that Captain Waugh saw you were going to shift that towing line as a matter of fact and he stopped you? A. No sir.

Q. That isn't true?

A. That is not true that I ever attempted to shift the line.

Q. I didn't say you attempted to; you were going to and he said not to?

*In the
Exchequer
Court of
Canada.*

Defendant's
Case.

No. 35.

James Albert
Sykes.
Cross-
Examination

(continued).

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Exchequer
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James Albert
Sykes.
Cross-
Examination
(continued).

A. I was prepared to do what he wanted me to do.

Q. Did he say anything to you about not doing it?

A. Yes, he said Leave it there.

Q. How did he come to say Leave it there?

A. I don't know.

Q. And you have no other reason to suggest why he would say Leave it there?

A. He may have presumed or thought that I intended changing it.

Q. He evidently did, didn't he?

A. He evidently did, yes.

Q. Well, did you have anything by way of a conference or conversation with Bechard or Holmes before nearing the berth that you were making as to what would be done on your ship?

A. I don't remember any.

Q. You got a ticket soon afterwards and Mr. Penrice had a pilot's license before; were the other two men licensed men?

A. I understand they were not.

Q. So Penrice told us he said nothing by way of instructions and you hadn't either, is that right? A. I didn't.

Q. I beg your pardon? A. I didn't.

HIS LORDSHIP: Anything to ask, Mr. Wood?

MR. WOOD: No questions.

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Re-Exami-
nation.

RE-EXAMINED By MR. TOWERS:

Q. Had the tug come out on the port side instead of the starboard would there have been any more difficulty in taking the line from the port side as you did on the starboard?

A. It would have been as easy to put the line on the port side had the tug come up on that side as it was to place it on the starboard side.

Q. You say you had no conference with these other men on board. Did you say anything to Mr. Penrice?

A. I remember telling Mr. Penrice that I had had some heaving lines coiled and distributed in different parts of the ship, but there was nothing as to any station that I would take.

Q. You told him what about heaving lines?

A. That I had coiled them ready for use in different parts of the ship.

Q. Did Penrice come forward at any time after you went forward?

A. Yes, he did.

Q. Did you say anything to him then about the operation?

A. I passed some remarks. I don't remember that—it wasn't—I didn't ask him what he expected me to do.

Q. What do you remember saying to him and he to you?

A. I remember saying that we were going a pretty good rate of speed at the time.

By HIS LORDSHIP: Q. Going what?

A. A good rate of speed, or words to that effect.

Q. That is after he came forward? A. Yes.

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OSE BECHARD, Sworn.

*In the
Exchequer
Court of
Canada.*

Defendant's
Case.

No. 36.

Ose Bechard.
Examina-
tion-in-Chief.

EXAMINED By MR. TOWERS:

Q. Mr. Bechard, were you employed on the Paisley in January 18th, 1927, when she shifted over to the elevator? A. Yes sir.

Q. And when she got up a certain distance north the tug let go her stern and came around to her bow, is that correct? A. Yes sir.

Q. Where were you when the tug came around to the bow?

A. I was— Well, you mean that was before they let go that?

Q. No, after they let go aft and came up to the bow and passed the
10 manilla line?

MR. HOLDEN: Have you any objection to starting at the beginning?

MR. TOWERS: Only that His Lordship thought it wasn't necessary to waste all that time.

MR. HOLDEN: I thought you were asking him where he was and whether he was getting warm at the fire or anything.

Q. When the tug let go at the stern where were you?

A. I was back aft.

Q. And did you see the tug let go the cable?

A. Mr. Holmes and I think Mr. Penrice let go— Or Mr. Sykes let
20 go of the after.

Q. They let go of the after cable?

A. Yes.

Q. Was there a fire back aft there?

A. No sir. Well, there was in the galley but we wasn't in there.

Q. You weren't? A. No.

Q. And there was some talk of a fire having been built on the deck around a capstan. Did you see anything of that? A. Well, that was to keep it in shape.

HIS LORDSHIP: But was there a fire?

Q. Was there a fire at the capstan?
30

A. Well, not as I remember. It is generally the case to have little fires underneath the gear.

Q. That is generally the case? A. Yes.

Q. Well, then after that where did you go, after the tug let go?

A. Well, we were following up the deck and Mr. Penrice give me and Mr. Earl Holmes orders to proceed to the forecandle to help Mr. Sykes with the lines up there.

Q. Did you do that?

A. Yes sir. I went right forward.

Q. Where was the line when you got up there?
40

A. Well, Mr.— The line was on the bitts up there.

Q. On which side?

A. On the starboard side.

Q. And what did you do about it?

A. Well, I didn't have to give any assistance in that.

Q. Who did? A. Mr. Sykes already had the line on there up forward.

Q. And was it changed after you went up there?

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tion-in-Chief.

(continued).

- A. It was changed by orders of the tug and Mr. Holmes let that
line go.
- Q. So you didn't have to help?
- A. No, I didn't have to help.
- Q. Then where was the ship at that time?
- A. Well, the ship was, just as I remember, she was forward of us.
- Q. I beg your pardon?
- A. Just forward of us, forward of the bow.
- Q. You mean the tug? A. Yes.
- Q. But where was the Paisley? 10
- A. Well, she was on the north side of the elevator.
- Q. Far away, or near?
- A. Well, she was—I couldn't judge the distance but she was—
- Q. You couldn't judge the distance?
- A. No, I couldn't judge the distance.
- Q. Well, was she moving?
- A. Well, not to—not as I know of when she was there.
- Q. At that time? A. Yes, at that time.
- Q. Then did she move afterwards?
- A. Well, she moved afterwards when he got the pull on the bow, after 20
he got the line on the bow; that was before he let go.
- Q. And where was he taking her? Where was the tug taking her?
- A. Well, he was taking her to her berth to the elevator.
- Q. Did he get her there?
- A. Well, she was too far out; she had been going past the elevator,
you see.
- Q. Then what happened to the line, if anything?
- A. Was this before we shifted?
- Q. No, later on what happened after you passed the elevator? What
happened to the line, the tug line, the towing line? 30
- A. Well, at the elevator the line was shifted to the port side.
- By HIS LORDSHIP: Q. At the elevator?
- A. Well, about the elevator there, around about the elevator there,
some place there, I couldn't just remember.
- By MR. TOWERS: Q. And what did the tug do after that?
- A. Well, now, I couldn't—I don't just remember what the tug done
then.
- Q. And what happened to the tow line finally? Did you see anything
happen to it?
- A. Well, the tow line parted when it took the strain on it to check.
- Q. To check? A. Yes. 40
- Q. And where did the Paisley go?
- A. The Paisley was still travelling along. Going slowly.

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Cross-
Examination

CROSS-EXAMINED By MR. HOLDEN:

- Q. What do you mean by slowly? About how fast?
- A. Well, she was going about on a slow walk.

Q. A slow walk? A. Yes.

Q. That is when she was about the elevator, as you have said? A. No, after, the line parted.

Q. She had then passed the elevator, had she?

A. She had then passed the elevator.

Q. What is your usual job, yourself?

A. Fireman.

Q. Afloat? A. Yes, on a steamboat.

Q. Who employed you to go on the Paisley?

10 A. Mr. Penrice.

MR. HOLDEN: All right, that is all.

HIS LORDSHIP: Any re-examination?

MR. TOWERS: No, my Lord.

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Cross-
Examination

(continued).

EARL HOLMES, Sworn.

EXAMINED By MR. TOWERS:

Q. You were on board the Paisley on January 18th, 1927, Mr. Holmes?

A. 1927?

A. A year ago? A. Yes sir.

Q. The day she was shifting from the east side of the harbor over to
20 the elevator dock?

A. Yes sir.

Q. Well now, would just tell us what happened?

A. Well, in what way?

Q. Well, from the time you left the dock and the tug shifted you?

HIS LORDSHIP: Start him after they started to go forward to the
elevator.

Q. The tug shifted you up northerly and then let you go and came up,
didn't it, on the starboard side?

A. You mean from the stern.

30 Q. From the stern to the bow?

A. Yes. Turned around between the boat and the dock to the bow of
the Paisley.

Q. Yes? A. Yes.

Q. And then what happened?

A. Well, I didn't know about then.

Q. Well, was there a line brought aboard, a tow line?

A. From off of the—?

Q. From the tug? A. Well, not as I know of.

Q. Where were you?

40 A. I was back aft.

Q. And how long did you stay aft?

A. Oh, I guess about a minute or two.

Q. Then where did you go?

A. Walked up and down the deck for a while.

Q. And then did you see a tow line between the—?

MR. HOLDEN: My friend should ask What did he see.

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Earl Holmes.
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tion-in-Chief.

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Earl Holmes,
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tion-in-Chief.

(continued).

- Q. What did you see between the tug and the vessel?
A. Between the tug and the vessel?
Q. Yes, after that? Did you see anything between them?
A. No, I did not.
Q. Did the vessel move? A. It did.
Q. Which direction? A. Forward.
Q. What made it move forward?
A. Well, I couldn't say.
Q. Was there any steam up on the vessel?
A. No. 10
Q. Then what do you think moved it forward?
A. I think it was the tug.
Q. And how would it move it?
A. With the line.
Q. Did you see the line?
A. Well, after I let go of it I did.
By HIS LORDSHIP: Q. After what?
A. When I first went up forward there, there was a line up on their drum; I was coming back up forward.
By MR. TOWERS: Q. Did you do anything to it? 20
A. When they hollered to leave go from the tug I grabbed hold of it and let it off.
Q. Which side was that from?
A. Starboard side.
Q. What happened?
A. I don't know whether they hollered from the tug to throw down a heaving line or did they holler up to catch one, but whichever way it was Bechard and Sykes pulled the line up and they took it across the bow of the Paisley from the starboard side to the port side and I put my hand out on the port side and pulled it through the chock and put it on the bitts. 30
Q. Then after that what happened?
A. Well, I couldn't just say.
Q. How long a line was that? How long was it pulled up? After you put it on the port bitts what distance ahead did the tug go? A. Well, I couldn't exactly say that either.
Q. Well, about how far?
A. Well, I would say about a hundred feet.
Q. And then what happened?
A. Well, I think he backed up, if I am not mistaken, and while they was backing up they was trying to make for to bring the line up to the forward 40 snubbing post on the tug and it busted.
Q. The line busted? A. Yes sir.
Q. Then where did the vessel go?
A. I think the vessel went towards the amidships.
Q. On what? A. Towards the amidships of the Paisley.
Q. You mean the tug went? A. The tug.
Q. Where did the Paisley go after the line bust?

- A. The Paisley went on ahead.
 Q. And where did she pull up?
 A. She pulled up against another boat.
 Q. What is your occupation? Are you a sailor?
 A. Well, I have done a little bit but not very much.
 Q. Have you helped around the harbor there, Owen Sound Harbor?
 A. A little.
 Q. Have you helped to shift other boats in the winter time? A. Yes.
 Q. And do you understand handling lines and that sort of thing?
 10 A. Well, I am not very good on it.
 Q. When you helped shift what did you do usually?
 A. Do anything you are told to do.
 Q. Well, have you handled lines? A. Yes.

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Case.
No. 37.
Earl Holmes.
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tion-in-Chief.
(continued).

CROSS-EXAMINED By MR. HOLDEN:

- Q. When you put your hand through on the port side through the chock
and drew in the towing line from the tug was your boat, the Paisley, moving?
 A. Yes sir.
 Q. When you pulled the line in when she came across your bow?
 A. Yes sir.
 20 Q. She came across the bows from the starboard side to the port side,
did she?
 A. Yes sir.
 Q. She must have been going very slowly then?
 A. Well, I think she was going about say a mile and a half.
 MR. HOLDEN: You think a mile and a half.
 HIS LORDSHIP: Mr. Wood?
 MR. WOOD: No, my Lord.

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Earl Holmes
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Examination

JAMES D. MONTGOMERY, Sworn.

EXAMINED By MR. TOWERS:

- 30 Q. Where do you reside, Captain Montgomery?
 A. Collingwood.
 Q. And how long have you sailed upper lake vessels?
 A. Since 1912.
 Q. As Master? A. Yes sir.
 Q. Are you familiar with the harbor of Owen Sound?
 A. Yes sir.
 Q. And other upper lake harbors, I presume?
 A. Yes sir.
 Q. Do you know the steamer Robert J. Paisley?
 40 A. Yes sir.
 Q. She was laid up in the winter quarters in the Harbour of Owen
Sound in the year 1926-27. You didn't have occasion to see her there,
did you?
 A. No sir.
 Q. In laying up vessels in winter quarters what is the usual procedure?

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Jas. D.
Montgomery.
Examina-
tion-in-Chief.

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tion-in-Chief.

(continued).

HIS LORDSHIP: How is this relevant?

MR. TOWERS: I just wanted to know if the manner in which this vessel was laid up conformed to the best practice.

HIS LORDSHIP: Has there been any question about how it was laid up?

MR. TOWERS: Possibly not, my Lord.

Q. Then having been laid up, as a matter of fact I think perhaps I may tell you she was laid up with her mooring lines ashore and one anchor chain ashore. Do you know the tug of John Harrison & Sons? Do you know the members of that firm?

A. Some of them, sir.

Q. Do you know the Tug Harrison?

A. Yes sir.

Q. An arrangement had been made with the Tug Harrison to shift the Paisley from the east side of the harbor as shown on Exhibit S-1 to the elevator on the west side and the Paisley lying heading south was taken by the tug and pulled first northerly and then southerly in an attempt to reach the elevator. The vessel was in charge of a ship keeper whose contract is here and is shown as Exhibit P-8.

What would the duties of the ship keeper be in connection with the moving? 20

MR. HOLDEN: Before the Captain answers I submit the expert evidence ought to be as to what should be done. I don't know if my learned friend meant anything by showing this contract.

MR. TOWERS: No.

MR. HOLDEN: It has nothing to do with any paper that happened to pass between Penrice and his employers. Your Lordship's question, I submit, and our clients' interests are to know from this gentleman and other experts if necessary what they should do on board the ship.

MR. TOWERS: That is what I asked him.

MR. HOLDEN: I was objecting to the reference to the contract for 30 fear it meant something.

HIS LORDSHIP: I don't know that he ever had heard of a ship keeper before or not.

MR. TOWERS: He hasn't seen the contract as far as I know.

Q. Captain Montgomery, when a vessel is laid up in winter quarters, an upper lake freighter loaded with winter storage, what is the custom as to taking care of her?

MR. HOLDEN: I object.

HIS LORDSHIP: That is not the point, is it?

MR. TOWERS: Your Lordship said he didn't know whether he had 40 ever heard of a ship keeper.

HIS LORDSHIP: This man may be perfectly capable, nothing has been said about that, but here is an operation that—

MR. TOWERS: I understood Your Lordship to say you didn't know whether the Captain ever heard of a ship keeper.

HIS LORDSHIP: I don't know yet.

MR. TOWERS: I am asking.

HIS LORDSHIP: I think I would ask him if he ever heard that expression before and what it means.

MR. TOWERS: Then I would be found fault with for leading.

HIS LORDSHIP: Oh no, you wouldn't.

Q. Do you know what a ship keeper is? A. Yes sir.

By HIS LORDSHIP: Q. What is it?

A. A ship keeper is a man left on a steamer to look after her during the winter.

By MR. TOWERS: Q. Then if that steamer has to be shifted as the Paisley had to be shifted what are the duties of the ship keeper?

HIS LORDSHIP: Has he any knowledge of that, any experience of that? How is he qualified to tell us?

Q. How many years have you been familiar with ship keepers and their duties in the Upper Lake ports?

A. Possibly ten years.

Q. As Master? A. Yes.

Q. And before that in what capacity?

A. With regard to ship keepers?

Q. Yes, had you known of them before ten years?

A. Yes, I have known of them ever since I have steamboated.

Q. And how long is that? A. Possibly twenty-five years.

HIS LORDSHIP: I don't understand that a Master Mariner had anything to do with a ship keeper so far as the evidence came out here; it was the business managers of this boat that had all to do with it.

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: They made a contract with him. Now do you want to give evidence from Captain Montgomery on the basis of that contract or what the duties are generally? And if so I would like to know what his experience with them is.

MR. HOLDEN: And might I say, my Lord, with regard to that question that I respectfully submit that Penrice the ship keeper is not a defendant nor is he owner of the ship. Then the question isn't what were Penrice's duties; the question is what should the owners or operating managers or anybody responsible to the owners and their neighbors in the harbor and so on have provided for and arranged for and done on board and in that ship before and during and after her shifting.

HIS LORDSHIP: Well, that is the question I have to decide.

MR. HOLDEN: Yes; and experts can suggest, I presume, whether a prudent owner would provide, whether it is a ship keeper or anybody, and what that man should do.

HIS LORDSHIP: But you see that is not being dealt with by him. He is being asked what the duties of a ship keeper are and in order to answer that properly I have to know that as a Master Mariner he has had to deal with that question.

MR. HOLDEN: What I meant was it is not as ship keeper he was looking after the owner's interest when they were shifting her, it was during the movement.

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Jas. D.
Montgomery,
Examina-
tion-in-Chief.

HIS LORDSHIP: That is a question of law. We are trying to find out what a ship keeper's duties are.

Q. Now, Captain, you say you have steamboated for twenty-five years? A. Yes sir.

Q. And have you ever been a ship keeper yourself?

A. No, I have never been a ship keeper myself.

Q. Have you had ship keepers under you, under your orders?

A. Well, only the general orders we would leave with him when we left our steamer in the fall.

HIS LORDSHIP: Well, that is an individual captain's orders. 10

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: And they may have different standards, which is just what I want to guard against, what he would have done or thought was proper, which wouldn't bind anybody.

Q. Are the duties of ship keeper when ships are being shifted in winter storage well understood by Master Mariners?

A. Why, yes?

Q. Well, do you think that you understand what the duties of a ship keeper are in connection with the shifting of a vessel loaded with winter storage to an elevator? Are you familiar with those duties? 20

A. Yes sir.

HIS LORDSHIP: I would like to have some evidence of his qualifications. At present, I wouldn't admit the evidence unless he is able to make a better case as to his experience on that and his experience generally in the trade. I put to you what my difficulty is.

MR. TOWERS: Quite true, my Lord.

HIS LORDSHIP: The business managers of this company have done all that has been done with regard to a ship keeper. The Captain of the vessel left it there and this man was put on by the business heads of the firm. Now I don't understand the Captains of these vessels have anything to do 30 with the ship keeper's duties; that is the manager of the business, his part of the concern.

MR. TOWERS: Then may I withdraw this witness for the moment, my Lord, without taking up the time of the Court to settle that question? I could decide whether I would recall him or not, if Your Lordship would permit me, and call Captain Rydholm who made the contract with this man.

HIS LORDSHIP: All right, you may call anybody you like. I am not ruling on it, I am only saying that I must be better satisfied than I am now that his experience is one which fits him to interpret the duties of a ship keeper. 40

MR. TOWERS: I would discuss that with Captain Rydholm, I think. That is all for the moment, thank you, Captain.

CARL O. RYDHOLM, Sworn.

EXAMINED By MR. TOWERS:

Q. Captain Rydholm, is that your signature on P.8?

A. It is.

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tion-in-Chief.

Q. I think it is already in evidence that that is the contract under which Mr. Penrice acted as ship keeper of the Steamship Paisley in the Harbor of Owen Sound in the winter of 1926-27?

A. Yes sir.

Q. That is correct? A. That is correct.

Q. What is your position with the Cleveland-Cliffs Iron Company, Captain?

A. Called Fleet Captain in our fleet.

Q. Have you any duties in connection with the appointment and super-
10 intence of ship keepers?

A. Why, place him. That is I personally superintend that.

Q. And what length of experience have you in that particular branch of the business?

A. Active superintendence since the spring of 1920.

Q. And then had you sailed before that, Captain?

A. I have.

Q. And what certificates do you hold now?

A. Master for the Great Lakes.

Q. But since 1920 you, among other things, had charge of the appoint-
20 ment and superintendence of ship keepers?

A. Yes sir.

Q. How many vessels had the fleet a year ago?

A. A year ago?

Q. To lay up?

A. Last year we got rid of four. Twenty-seven.

Q. And the Paisley with three other of your vessels was in Owen Sound Harbor?

A. Yes sir.

HIS LORDSHIP: Excuse me interrupting you if you want any expert
30 evidence in: Having put this man in who made this contract is it necessary to give any expert evidence? Surely whatever he and the other man arranged is disclosed from that and I suppose will be proved by him quite as well as by any expert, if such an explanation is admissible. I think if you put in this man and prove what this man's duties were that expert evidence would not be admissible in contradiction.

MR. TOWERS: The expert evidence was more directed to the movement to the dock and that sort of thing, my Lord.

HIS LORDSHIP: Yes, but you didn't get that far. You didn't put to him any navigation questions.

40 MR. TOWERS: No.

Q. Captain Rydholm, will you say then if you are familiar with the duties of a ship keeper in the event of the vessel shifting under an elevator to take out winter storage?

A. The ship keepers are requested to assist in every way possible when the movements of vessels are desired to the elevator or about the harbor or into dry docks and so forth.

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tion-in-Chief.

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tion-in-Chief.

(continued).

Q. Will you say what direction or control they are authorized or expected to exercise, if any?

A. They have no charge as far as the movement of the vessel. Very often when it is necessary to have a man with authority we send a man aboard the ship.

Q. Under what circumstances would that be considered necessary?

A. Why, in congested harbors like Buffalo, when they have currents and where shifting is done in ice or there is an hourly charge or where there is a tariff rate or it is necessary to keep track of time, where sometimes a vessel strikes bottom, as a recent case.

10

By HIS LORDSHIP: Q. And similar cases, I suppose?

A. Yes. A Master is there to protect our interests so as to be able to make a protest.

By MR. TOWERS: Q. I think Mr. Schneider conducted the correspondence with the Harrison people, the tug people?

A. I had nothing to do with it.

Q. Do you know the Tug Harrison?

A. I do.

Q. What do you say as to her sufficiency and power and equipment to shift the Paisley in her loaded condition?

20

A. The Tug Harrison is a very good tug.

Q. What would you say as to her sufficiency in this particular instance?

A. She had more than ample power as required for such service.

Q. Well, then did you tell me what duties a ship keeper performed in the shifting and unloading? What particular duties would he have?

A. Oh, he assists probably—he has the keys to the various parts of the ship and he sees that the doors are open and that the men can have access to all parts, and probably assisting with hatches and lines and makes himself useful about the boat.

Q. What about her navigation?

30

A. He has nothing to do with that. A vessel without steam is a dead boat and he has nothing to do with her control.

Q. And her equipment, as far as for use in navigation, what has he to do with that?

A. We expect that the equipment will be in good shape and ready for use insofar as it can be done under the circumstances. Of course, anything of the steam machinery or electrical he has nothing to do with that; pumps are laid up, he cannot do anything with that equipment.

Q. Could he steer her if he wanted to?

A. No sir, he cannot, the Paisley, in her condition.

40

HIS LORDSHIP: How can he possibly say that? Why couldn't he steer her?

Q. Are you familiar with the means on the Paisley for steering her, at this particular time?

By HIS LORDSHIP: Q. I don't mean his authority at all. You are not asked as to his authority, but the question is if he thought it was advisable and necessary to use a rudder could he do it?

A. It would be impracticable, Your Honour, because the steamer is equipped with steam steering apparatus and having no steam they could not use it. She did not have a hand steering gear.

By MR. TOWERS: Q. In this particular case, Captain, the vessel is said to have been towed northerly for a certain distance shown on Exhibit 1 and then to have been towed in a southerly direction until her bow was some distance past the south line of the elevator, at Owen Sound. Have you been in Owen Sound Harbor?

A. Yes sir.

10 Q. And you know where the elevator is?

A. I do approximately, yes.

Q. Now, have you heard the story of how the vessel passed the elevator some distance out? Are you familiar with that?

A. Yes sir.

Q. Have you investigated?

A. From our reports, yes sir.

Q. What do you say as to the possibility after the tug was in trouble, possibly before the line parted but at about that time, from your understanding of it—?

20 HIS LORDSHIP: You mean before or after?

Q. Before the line parted but when the line was slipping around the timber heads, are you familiar with that phase of the situation?

A. I understand that point, after the vessel passed the elevator.

Q. And before the line parted?

A. Yes sir.

Q. Now at that point will you say what your view is as to the possibility of checking the way of that vessel by means of getting a line ashore at that point?

30 A. That would have been impossible. Even if they had got a line ashore it couldn't have been used by the time they got it on the ballards or pile or whatever they had there for that purpose; they had to take in the slack by hand, a cold winch, then they would have it operating on compressor and by that time the damage would have been done.

Q. Then at the time the line parted what would you say as to the feasibility or advisability or use of dropping an anchor?

A. At that time they wouldn't have had time to fetch up on the chain. You would have to have proper lead on the soft bottom.

Q. You said something about a lead?

40 A. You have your depth of water there and the boat has nearly 20 feet of load so they must have had probably a foot under her and you would have to have proper lead ordinarily in good holding ground.

By HIS LORDSHIP: Q. What is proper lead?

A. That is the angle of the chain onto the anchor so that the flukes—the flukes are about a 45 degree angle—so that they could catch into a good holding ground, Your Honour; and before that happened you would have to have at least around 5 times the depth in order for that to have any effect at all; and that would be on good holding ground or clay bottom to have an

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effect on the vessel; but where you have a momentum of the ship and soft bottom it takes some little time to check the vessel.

Q. You mean the anchor wouldn't catch?

A. Yes. It would go right through it, just drag right through it like so much silt.

By MR. TOWERS: Q. Then can you suggest anything that could have been done by those on board the Paisley when the tug got into trouble, either before the line parted or at the time it parted or after?

A. Well they did the only means when our ship keeper endeavored to get a heaving line ashore. He did so and as I understand he did not think he could get there but he did make that effort; in fact he backed up to the middle line of the ship and took a line to get ashore and somebody picked up the end; then he endeavored to get another line because it wasn't long enough, and this line is generally about 18 fathoms, there is about a hundred feet of line and it wasn't long enough; it is the usual, you wouldn't have any better. 10

MR. HOLDEN: That is hardly expert evidence. It is hearsay.

HIS LORDSHIP: It is very good reasoning.

Q. Now do you make arrangements with the underwriters' representatives about the laying up of these vessels, what their requirements are?

A. After the vessel is laid up we notify the American Bureau that vessels are laid up and would like to have her examined, have the moorings examined. 20

HIS LORDSHIP: There is no question about the mooring.

MR. TOWER: No, my Lord.

Q. Then is it or is it not required that one of the anchor chains should be used for mooring?

A. Yes sir.

Q. Well then what is done with the anchor?

A. The anchor is hung off on a wire sling above the water line.

Q. And in shifting the vessel to move to an elevator who would have charge of any movement of that anchor? 30

A. No one except the person that is going to move the vessel; has charge of moving the vessel.

Q. And no one else? A. And no one else.

Q. And what is the custom as to raising steam on the vessel itself to shift in winter quarters?

A. It is never done except in extreme cases when it is a blockade or some such thing. I know one case a year ago in Buffalo.

HIS LORDSHIP: You needn't give that.

Q. It is never done—?

A. Except in extraordinary cases. 40

Q. Then to what do you attribute the disaster that happened here?

MR. TOWER: I don't want to stop that answer if Your Lordship would prefer to hear it but I do submit it is not a legal question. He didn't see it and he is here and has given his opinion on theoretical questions.

HIS LORDSHIP: He hasn't heard the evidence in this case.

MR. TOWERS: He has made an investigation.

HIS LORDSHIP: But he hasn't heard the evidence in this case which I have heard. If Mr. Holden will not press his objection I will not interpose. If he presses it I think I will have to rule it out.

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MR. HOLDEN: I am from a distance. I do submit that any evidence which is not proper should not take up the time of this Court.

HIS LORDSHIP: How do you expect to make it admissible?

MR. TOWERS: Well I will have to go over the evidence with the Captain, my Lord.

HIS LORDSHIP: If you wish to get an expert opinion.

10 MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: Do you think you can do that in ten minutes?

MR. TOWERS: No, my Lord.

HIS LORDSHIP: Then I think it would be a good time to adjourn. It will have to stand over sine die.

—4.20 p.m. adjourned sine die.

IN THE EXCHEQUER COURT OF CANADA
Toronto Admiralty District

Hearing
Resumed
March 8th
1928

CANADA STEAMSHIP LINES, LIMITED,
S. S. "ROBERT J. PAISLEY,"

Plaintiff,
Defendant;

20 JAMES RICHARDSON & SONS LIMITED,
THE SHIP "PAISLEY,"

Plaintiff.
Defendant,

Trial by Honourable Mr. Justice Hodgins, L. J. A. continued at
—10.30 a.m. THURSDAY, MARCH 8th, 1928.

PRESENT:

MR. A. R. HOLDEN, K.C., and MR. FRANK WILKINSON,
for Canada Steamship Lines.

MR. G. M. JARVIS,

for Jas. Richardson & Sons.

30 MR. R. I. TOWERS, K.C., and MR. O. S. HOLLINRAKE,
for The Ship "Paisley."

MR. JARVIS: My Lord, before we resume, may I explain that Mr. Wood unfortunately has been detained in Ottawa on the argument of an appeal and therefore I shall have to carry on as best I can.

HIS LORDSHIP: You mean the Grammer case?

MR. JARVIS: It is still proceeding.

HIS LORDSHIP: I think when we were here before we got in the middle of somebody's evidence. Carl Rydholm, is he here now?

MR. TOWERS: Yes, my Lord. I call him, my Lord on behalf of the defendant.

40 HIS LORDSHIP: Do you want to read what he has already said so you won't have to go over it?

MR. TOWERS: I have it here, my Lord.

HIS LORDSHIP: We won't have to go over it then; you may take him then at that.

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CARL O. RYDHOLM resumed,
EXAMINED BY MR. TOWERS:

Q. Captain Rydholm, when we adjourned I had been asking you some questions among others about the anchors on the Paisley. I show you a small model of an anchor. Can you say if that is essentially the same type of anchor that was used? A. It is the same except for the tripper. This tripper was a little narrower.

Q. When you speak of the tripper you mean the broad—?

A. This, when it hits the hawsepipe flange trips it up. (Indicating).
And this was a little bit narrower. 10

Q. The broad shoulder which when it engages with the hawsepipe flange trips the anchor up alongside?

A. Yes sir.

By HIS LORDSHIP: Q. Is this model the same as the anchor of the Paisley? A. With that one exception of the tripper, yes sir.

Q. What is the one exception? A. May I show you, sir? This shoulder which would be called the tripper it is narrower on the Paisley and when it catches the hawsepipe it allows it to trip up alongside of the ship. For instance, going up like this it hits the top and engages itself in here. (Illustrating.) 20

Q. Do you mean that the flukes would go into the hawsepipe?

A. No, just outside against the shell of the ship. This part would go inside. (Indicating).

Q. You mean it allows the flukes to lie closer to the ship?

A. Yes.

Q. When the shank is pulled up into the hawse pipe?

A. Yes sir.

Q. And permits the flukes to bury themselves? A. Yes.

Q. Where is the crown of that anchor? A. The bottom. (Indicating).

Q. The stock? A. Your Honour, right across here. (Indicating). 30

Q. That is the shank? A. Yes.

HIS LORDSHIP: Thank you.

EXHIBIT P-9. small model of anchor above referred to.

By MR. TOWERS: I show you Exhibit S-5. Does that show the anchors of the type similar to Exhibit P-9 on the Paisley? A. Yes sir.

Q. And in the Exhibit S-5 the starboard anchor is shown hove home as you call it? A. Yes sir.

Q. In the hawsepipe on the starboard side. While the port anchor is shown hanging on what?

A. On the anchor chain. 40

Q. On the anchor chain from where? A. The port hawsepipe.

Q. Can you see the other articles shown on the port bow? Hanging from the upper deck what is that?

A. That is a Jacob's Ladder.

Q. That would be used in this instance for what?

A. Shackling the shackle onto the anchor.

Q. Shackling the shackle onto the anchor when the anchor chain was hove in on January 15th? A. Yes sir.

Q. That ladder would be there for a temporary purpose only?

A. That is all, I assume.

Q. Then what else is shown on the port bow, from the chock in the windlass room? A. There is a wire sling that was used for hanging off their anchor.

Q. In the photographs what do you say, are they taut or slack?

A. They are slack.

10 HIS LORDSHIP: What is it you are speaking of now?

MR. TOWERS: Parts of a cable, my Lord, that were used by Ziem to hang the port anchor off when the vessel was laid up on December 15th.

HIS LORDSHIP: I know, but I think you had better let me see that.

MR. TOWERS: The cables hung there then. They are shown there. One goes into the hawsepipe on the anchor chain and the other is hanging down.

HIS LORDSHIP: Has anyone a magnifying glass, because I see this ladder hanging down there seems to hang a considerable distance down. If you are making any point about that I want to see what they are you are talking about.

20 MR. TOWERS: This may be a little clearer, my Lord. My friend has been good enough to give me S-5. It is bowed out. (Indicates to His Lordship on Exhibit S-3).

By HIS LORDSHIP: Q. This is a different thing. You mean the anchor chain is outside, is it?

A. The anchor chain itself is swinging. These are wires, sir.

Q. And these two wires that are shown in this Exhibit S-3 the two of them disappear into the hawsepipe but they are both attached to the ring?

A. Yes sir.

HIS LORDSHIP: The other hanging down.

00 By MR. TOWERS: Q. The point I was making now, Captain, is that appeared to be slack in Exhibits S-3 and S-5 and not taut? A. Yes sir, that is right.

By HIS LORDSHIP: Q. What does that mean? What does that appearance indicate?

A. Do you wish me to answer that, sir?

Q. Yes? A. That means that the anchor is hanging on the anchor chain sir. It formerly was hanging on the wire.

HIS LORDSHIP: Yes, all right.

40 By MR. TOWERS: Q. Then at page 196 of the evidence, line 16, Albert W. Ziem is giving evidence. Do you know Ziem? A. I do, sir.

Q. How long have you known him? A. Several years.

HIS LORDSHIP: Who was Ziem?

MR. TOWERS: The first mate, my Lord, on the Paisley.

Q. His Lordship asks him:

“Q. Just tell what you did?

A. Well we unshackled one, the port anchor, and fastened the chain on the dock, hanging the port anchor off from the chock from the windlass room on the port side.

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(continued).

Q. You mean you—?

A. We used the chain as a mooring chain.

By MR. TOWERS: Q. And the anchor was slung then?

A. Was hung off from the chock in the windlass room.

By HIS LORDSHIP: Q. By what?

A. By about four or five parts of the mooring cable.

By Mr. TOWERS: Q. And what was done with the shackle?

A. The shackle was placed in the hole and I put a tag on it so that the men who had instructions to shift the vessel or take that anchor or chain in would be able to find it and know just where it belonged. 10

By HIS LORDSHIP: Q. Where did the anchor itself hang—how far down? A. It hung down about 2 feet below the chock and the bottom of it was just clear of the water.

By MR. TOWERS: Q. The bottom of it just clear of the water?

HIS LORDSHIP: That is the crown of the anchor, as I understand it?

MR. HOLDEN: Which part of it was clear of the water?

A. The lower end of the crown just clear of the water."

Now in Exhibit S-3 and S-5 what would you say about the crown of the anchor there in relation to the water in the photographs—? 20

HIS LORDSHIP: Surely we can see that ourselves.

Mr. TOWERS: Yes, my Lord, but I should like it on the record.

HIS LORDSHIP: You have got it on the record. These are Exhibits, aren't they?

MR. TOWERS: Exhibits, yes.

MR. HOLDEN: I think it should be clear—perhaps it is, my Lord—those photographs don't show the draft at the time of the accident.

HIS LORDSHIP: Of course that is the point. It is quite clear that this hangs above the water here.

MR. HOLDEN: In these photographs, yes, but the evidence is clear 30 also it was below the water at the time.

MR. TOWERS: That is what I am trying to get from the witness. I am prepared to admit that the draft was 18 feet 4.

Q. Then from those photographs would you understand that the crown of the anchor had been below the water before the vessel was shifted? A. Yes.

HIS LORDSHIP: I don't understand that because what you have read is that he left that clear of the water. Now he says from the photographs here it was under water.

MR. TOWERS: Yes, my Lord, and I just wanted to ask him how he 40 accounted for that.

HIS LORDSHIP: All you want is an explanation of the Exhibit. What Ziem said has nothing to do with that.

By HIS LORDSHIP: Q. What is the explanation of this Exhibit? You say it must have been at one time under the water? A. Originally it was above the water but somehow or another it got below the water, sir—just at the surface of the water.

Q. Do you know anything about that?

A. The pictures indicate that.

Q. How do they indicate that? A. Here is the draft mark and 18 feet 4 this anchor shows—indicating at the 17 foot mark—that shows on the boat at present depth she was below the 18-4 so that would mean she was below the water.

Q. How do you know unless something was said about she was submerged?

A. That is perfectly clear; you look at the anchor there and see where it is; I don't need to have evidence of that; there it is; but where do you draw from that a conclusion something very different to what Ziem says, that is the point? A. It was stated by some of the witnesses it was below the surface of the water.

HIS LORDSHIP: No, you were not read anything about that; you were read that Ziem said it was clear of the water.

By MR. TOWERS: Q. Then what if anything must have happened if what Ziem says is true before the anchor could get in the position in which it is now?

A. The cables must have been slackened.

Q. What would slacken the cables?

20 A. The clips.

Q. I beg your pardon? A. Cable clips.

HIS LORDSHIP: We have evidence here that it was deliberately lowered by somebody, not that there was a slip in the cable. Are you prepared to give evidence there was a slip in the cable that nobody has sworn to?

MR. TOWERS: No. The evidence is—

HIS LORDSHIP: Didn't you hear the evidence of Penrice and Waugh?

MR. TOWERS: Yes, I think I did.

HIS LORDSHIP: Well they both say so and if you are disputing it and saying it was a mere slip—

30 MR. TOWERS: No, my Lord, I am content if that is the evidence. What struck me was the slack appearance of these cables and I just wanted the explanation made that they must have been slackened.

Q. Now there was also filed a contract proved, P-8; that was the Penrice contract—?

HIS LORDSHIP: What do you want to ask him about that?

MR. TOWERS: I just want to ask him if there were any other instructions or any changes in that contract between the time it was signed and the 18th January.

A. No sir, there were no changes.

40 Q. Did you ascertain where the line parted in relation to the tug and the vessel? Was it at either chock or was it in the middle?

HIS LORDSHIP: What line?

MR. TOWERS: The towing line.

MR. HOLDEN: Was he there?

MR. TOWERS: He could ascertain if he saw the rope.

A. It was in the middle of the line.

Q. Did you see the rope? A. I saw the rope, yes sir.

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Q. It was said to be 120 feet long, and where do you say it parted?

A. Away from the side of the ship.

By HIS LORDSHIP: Q. Away from the side of the ship? From what ship? A. The Paisley. The line did not part when in contact with the ship. For instance, sir, if the line was made—

Q. It comes from the Paisley, away up on the bow of the Paisley, to the tug? A. Yes sir.

Q. You say it didn't part close to the side of the ship or at the side of the ship? A. Yes sir.

Q. Can you give me any idea whereabouts in the cable's 120 feet it did part? A. Fairly close up to the hull of the vessel.

MR. TOWERS: About how far from either end?

Q. Just me understand: Here is a vessel and from the bow down to the tug would take the line away from the hull of the vessel all the time. What do you mean by close to the hull? A. Some place between the tug and the bow.

Q. Oh yes. Well that is not close to the hull, to the bow, is it? A. Well very often it parts right up in contact with ships but this is away from the ship.

By MR. TOWERS: Q. But taking the anchors of the Paisley hove home into the hawespipe how far out would they project? A. Two and one-half to three feet.

Q. And hanging down as the anchor shown in the Exhibits S-3 and S-5 how far would they project?

A. 20 inches about.

By HIS LORDSHIP: Q. S-5 it projects 20 inches. What projects? What part of it projects?

A. The outside part of the anchor, sir, away from the hull.

Q. How do you describe it? What projects?

A. The outboard crown of the anchor.

Q. Here it is shown coming to a point, do you see, a sharp point? There is a point projecting, what is that? 30

A. That is called a tripper. That would be the outboard.

Q. Let me see the small anchor again. Just show it to me on that?

A. This outboard point would be right here. (Indicating).

Q. Has that a sharp point? A. No sir. That is where I say there is an error, this is broad here. (Indicating).

Q. You mean it came to a point on the Paisley's anchor?

A. Yes, and very narrow.

Q. What do you call that? A. We call this the tripper.

Q. The tripper on the Paisley anchor is narrower than model, and the point is shown on Exhibit S-5, is that right? 40

A. Yes sir.

HIS LORDSHIP: I see, narrower so as to form a point.

MR. HOLDEN: Yes, my Lord.

By MR. TOWERS: Q. Captain, I think you gave us your years of experience, you have had quite a long experience?

HIS LORDSHIP: You must have asked that before.

MR. TOWERS: Yes, I did, my Lord.

Q. How many ships do you say you laid up in the winter of 1926-7?

HIS LORDSHIP: He told us that, I think.

Q. Twenty-seven? Is twenty-seven correct?

A. Yes.

HIS LORDSHIP: In this harbor?

MR. TOWERS: No, my Lord.

Q. How many in this harbor? A. In this harbor there was three or four—four I think at that time.

10 Q. Who employed the ship keepers for those twenty-seven vessels?

A. That was my duty, sir.

Q. Did you have one on each vessel?

A. Not always.

HIS LORDSHIP: I am not going to go into all of his operations. He may have laid up a hundred vessels elsewhere but what has that got to do with the Paisley? He laid up the Paisley and appointed a keeper to it.

MR. TOWER: I was going to ask him, with Your Lordship's permission, how many of his ship keepers were men with certificates—sailors?

HIS LORDSHIP: Well I object to that. That is quite irrelevant.
20 This man that he put on there said he had a mate's certificate.

MR. TOWER: Would it not be important, my Lord, as showing the general duties of ship keepers? What I want to show is they are not necessarily men with certificates.

HIS LORDSHIP: I don't know that that is relevant.

MR. TOWERS: If a man is supposed to steer a vessel and if he happened to be a carpenter.

HIS LORDSHIP: You have already proved the contract and you cannot give any evidence about the contract when all the evidence is that these men aboard did nothing it would seem in the navigation except they handled
30 the lines, and kept a lookout, I suppose.

MR. TOWERS: No, the tug I believe is the lookout, my Lord.

HIS LORDSHIP: I know, but I say the duties must be summed up between that document that he put in and what those men did, all of which has been gone into.

Q. Then in the exercise of good seamanship, Captain, what is demanded or required of the owners or charterers of a vessel laid up in winter quarters loaded with winter storage having no steam or power aboard and having secured the services of a tug for the shifting operation which the owners or agents in charge of the vessel were entitled to assume was sufficient for the purpose
40 and had proper and sufficient equipment?

HIS LORDSHIP: I think that is for me to say.

MR. TOWERS: I was merely asking what the duty of the owner was, my Lord.

HIS LORDSHIP: Here is a ship laid up in the harbor. What is the duty of the owner? No duty at all, I suppose, except to take care of her.

MR. TOWERS: Well the plaintiffs claim we should have had steam or power aboard.

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tion-in-Chief.
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HIS LORDSHIP: But you hadn't.

MR. TOWERS: No. I wanted to ask if we should have had and didn't have.

HIS LORDSHIP: That is a different thing, but I don't want to go into all the details of the questions in connection with this matter.

MR. TOWERS: I was just going to ask as to steam and power now.

Q. Was it the duty of the owners to have any steam or power aboard?

A. No sir.

Q. Well then what was their duty to be as to providing means for steering? A. We don't attempt to steer a vessel because we don't have any men 10 aboard for that purpose. Ship keepers are only caretakers.

Q. Was Penrice living alone on board this vessel?

A. He was, with his wife.

Q. And what would the duty of the owners be as to the management of anchors in a vessel in that position?

HIS LORDSHIP: I don't see that you are advancing your case at all. The duty as to anchors.

MR. TOWERS: If they had any.

HIS LORDSHIP: I think I have to settle that, haven't I?

MR. TOWERS: I supposed that this man who has had long experience 20 could say what duties in the shifting of a vessel would be—

HIS LORDSHIP: I suppose he will tell us if we go on long enough that everything that happened was perfectly all right, that the Paisley was not to blame in the very slightest.

MR. TOWERS: I wasn't going to go that far, my Lord.

HIS LORDSHIP: That wouldn't help me. Apparently they haven't set out any duties for this man except in the most meager way and you want to supplement that by showing, I suppose, that what the men did that were on board they had no business to do.

MR. TOWERS: No, I wanted to show that as to mooring lines they 30 were charged with the duty of handling mooring lines.

HIS LORDSHIP: How can you make that out? I understand the vessel was laid up.

MR. TOWERS: Yes.

HIS LORDSHIP: And all this comes long after she was moored.

MR. TOWERS: I am asking when she came to shift.

HIS LORDSHIP: You haven't put it that way at all. If you want to ask him when they came to shift what was proper to be done with the mooring lines that is a different thing. All that was done with the mooring lines was done by the tug men, not by these men at all. 40

MR. TOWERS: The mooring lines, my Lord?

HIS LORDSHIP: Yes.

MR. TOWERS: I didn't so recollect the evidence.

HIS LORDSHIP: That is the way I recollect it. Penrice had nobody there and his men did it. That is in the evidence of Waugh.

MR. TOWERS: Then I won't pursue that question, my Lord.

HIS LORDSHIP: I don't think it is worth while.

Q. Then you are familiar with the evidence that has been given in this case, Captain? A. I have read it, yes.

Q. And Mr. Penrice says that when someone called that the tow line had parted, he didn't know who, the vessel's stem was 75 or 100 feet from the Saskatchewan. Is that your recollection of that evidence? A. Yes sir.

Q. What would you say as to the necessity or the good judgment of dropping an anchor at that time?

HIS LORDSHIP: We have gone into that.

MR. TOWERS: On this evidence?

10 HIS LORDSHIP: Yes. I remember it very distinctly.

MR. TOWERS: I remember him saying he would need five times the depth of water.

HIS LORDSHIP: He said before the anchor would not have had time to fetch up on the chain and you would need proper lead in good holding ground; in soft bottom it would drag through the light silt; those on board could do nothing else than they had. There is no use going into that; we have had that.

MR. TOWERS: Then I will just put the one question as I put it before:

Q. To what do you attribute the disaster that happened in this case?

20 HIS LORDSHIP: Is that going to have him give a different answer than what he gave before?

MR. TOWERS: Well, my Lord, he didn't answer before, he wasn't familiar with the evidence.

Q. You are familiar with the evidence and to what do you attribute this disaster?

MR. JARVIS: May I object, my Lord. I would submit that this is for the Court to say.

30 HIS LORDSHIP: Yes, I think it is too. But there is no harm in telling what he attributes it to on reading the evidence. It is probably wrong but may be right.

A. Not getting the tow close enough to the elevator dock, too much speed, improper handling of the tow line.

By HIS LORDSHIP: Q. Not getting close enough to dock. What is the other? A. Too much speed or way, sir.

Q. Yes? A. Improper handling of the tow line.

Q. By whom? A. By the tug men.

Q. You mean that the evidence discloses the improper handling, but that has been left a mystery as far as I am concerned as to what did happen and why that happened?

40 A. Yes.

Q. What do you find that was improper in the tug men's handling the line? A. The tow line rendered, sir. That is it was allowed to slip and if it was properly fastened it wouldn't render and after it was slipping they couldn't stop it, they threw the eye over and of course it fetched up with a jerk.

Q. That is what you say is the improper handling?

A. Yes sir.

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Cross-
Examination

CROSS-EXAMINED By MR. HOLDEN:

Q. As Fleet Captain for The Cleveland-Cliffs Iron Company was it your duty to see that whatever was necessary was done and prepared and carried out in connection with this shifting of the Paisley?

A. With our contract we didn't have to pay any attention to that, sir, except that everything was left in good condition aboard vessels for the movement.

Q. I would suggest to you, sir, that the Court is entitled to a more direct answer. If there was such a duty were you the person that had to discharge it? A. Yes sir. 10

Q. If there were any instructions to give to Penrice or to anybody else with regard to the shifting and mooring and unmooring and all the manoeuvres in question were you the person that should give them? A. Yes sir.

Q. Would you mind telling me if I am right: I see by Exhibit P-8, which is your contract you negotiated with Penrice—? A. Yes sir.

Q. I see by that if I read it rightly that it refers simply to the care of the Paisley while she lay in winter quarters moored to a dock? Is that right?

A. Yes, that is right, yes sir.

Q. There is nothing there with regard to a shifting movement?

A. No sir. 20

MR. TOWERS: My learned friend will pardon me. I think there is.

A. CONT'D: Well that is just to assist.

MR. HOLDEN: The witness says no.

Q. You may change your answer. Will you show me if you think there is anything? I would rather have your opinion?

HIS LORDSHIP: If Mr. Towers thinks there is anything—

MR. HOLDEN: It is the witness' opinion I want and not my learned friend's.

Q. Is there anything there except with regard to the care of the ship while she lies at her berth in winter quarters? 30

A. May I read this, please?

Q. If you don't mind reading after you answer. You said no, there isn't. Do you wish to change that answer?

A. I meant in regard to keeping charge because where we have ships where we have men charged with special instructions we send a master.

Q. If you don't mind I would like yes or no to my question. This Exhibit P-8, does it refer to anything other than the care of the Paisley as she lay at her berth in winter quarters?

By HIS LORDSHIP: Q. Is there anything in that contract beyond that, care of the vessel lying up attached to the dock? A. Is is a little of 40 everything, sir.

Q. I know, but answer the question. Is there or is there not anything in that contract relating to matters beyond the mere care of the vessel when she was lying motionless?

A. Not as I understand it, no sir.

By MR. HOLDEN: Q. And am I right in stating that it is a very different proposition to move a loaded ship, particularly in winter conditions,

than it is to be a ship keeper while she lies idly at her winter dock? It is a very different proposition?

A. Well it depends in what harbors they are too, sir.

Q. Anywhere? Do you mean to tell this Court it is not a very different proposition to shift a loaded ship from one berth to another than it is to leave her safely lying moored to her winter dock? A. Oh yes, that is different.

Q. Very different? A. Yes.

Q. Produce before the Court, please, what instructions you gave to Penrice in that regard? We have in P-8 his instructions while she was lying
10 idle. Kindly file now your instructions to him in this very different proposition of moving her from one berth to another?

A. The only instructions the ship keeper received—

Q. Have you anything to produce? Is there anything in writing?

A. I have not, sir, except this contract.

Q. P-8. There were no written instructions of any kind to Penrice with regard to the shifting? A. No sir.

Q. Now you wanted to add something, did you? You commenced to answer when I interrupted you, did you want to add anything? A. Only
20 what was on there, that is what I meant.

Q. On P-8? A. Yes.

Q. Well were you there yourself when she was shifted?

A. No sir.

Q. Well whom did you have there to look after everything that had to be looked after on and in connection with that ship, the Paisley, when she was shifting?

A. The Tug Harrison and her owners with whom we had a contract.

Q. Do you seriously mean to tell this Court that the Tug Harrison and her owners were to handle the mooring lines on board the Paisley? A. The
30 tug owners they were to assist and our ship keeper was to get enough men just to handle hatches, sweep up cargo and assist in getting out lines when the boat arrived at the elevator.

Q. Do you mean to tell this Court that the tug and her owners were to help handle the mooring lines on board the Paisley? A. Not according to their contract, no sir.

Q. I am not talking of contracts at all. As a matter of common sense and navigation and the truth in the matter, had those on the tug or her owners anything to do with handling the mooring lines aboard the Paisley?

A. On board the Paisley, no sir.

Q. Had they anything to do with letting go the anchor on board the
40 Paisley if that should become necessary?

A. Yes sir.

Q. Those on the tug and the tug's owners had something to do with letting go the anchor? A. They would call out if necessary, would call out to our men— You mean the actual operation of letting go the anchor.

Q. I mean, sir, this: If an emergency arose and the proper thing to do was to let go the anchor, to do whatever is necessary who should do it, anybody on the tug? A. Yes sir, the man on deck.

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Q. On deck of the Paisley? A. Yes sir.

Q. The tug and those on board the tug had nothing to do with that operation? A. No sir.

Q. Well whom did you on behalf of the owners of the Paisley instruct and appoint and delegate to look after whatever was necessary from the Paisley?

A. The ship keeper was to keep tab on everything that was done there there so that we would know for our own records what had been done.

By HIS LORDSHIP: Q. Keeping tab is not the question you were asked. To whom did you delegate the doing of these duties which had to be done on the Paisley? 10

A. We didn't delegate anybody, sir.

Q. Putting out the lines and anchoring if necessary, you didn't delegate it to anybody? A. No sir.

Q. Then do I understand you that the tug had no duties in connection with it and Penrice had no duty in connection with it, either of those two?

A. Well as I understand the question the one he wanted it—

Q. I am asking you do I understand your answer to me that the tug master and his crew had nothing to do with the lines that were on board the Paisley putting in to the dock and with regard to anchoring if it should be necessary? 20

A. The tug was in charge of the vessel, sir, and I believe they should have had a man aboard the ship the same as we had at Port McNicholl and other ports.

Q. That is not very consistent with what you have told us a few minutes ago as to the fact that those on the Paisley were to handle the lines coming into the dock and to anchor if necessary. How do you account for the difference in your answer?

A. Well what I think in this case that when the men aboard the Paisley at this time were our men— 30

Q. Certainly? A. And they should do everything in their power to help to avoid an accident and therefore I believe our men should drop that anchor if they were there.

Q. But now you are stating that the tug and their people should have put men on in addition? A. Yes sir.

By MR. HOLDEN: Q. How many men should the tug people have put on board in addition to your four?

A. They should have had a man in charge—

Q. Would you mind answering first? How many men in addition to the four that were there should the tug people have put on the Paisley before shifting her? 40

A. They should have had on at least one officer to direct the movements.

Q. Would you show me in the Exhibits that your Counsel has filed with regard to your arrangement with the Harrison Company where they undertook to put an officer on board the Paisley? Just show me? You may see the exhibits. Would you mind consulting with your Counsel if necessary? I

want you to show the Court where the tug owners undertook to put an officer on board the Paisley? (Shows witness Exhibit P-6).

HIS LORDSHIP: I don't think he needs spend very much time over that; it isn't in the correspondence of course, I have read that all over.

Q. I thought there was not. Am I right, there is nothing of the kind you have now just suggested in your company's arrangements with the tug owners?

A. No, I don't recall that point.

10 Q. I am right, there is nothing? A. No sir, I don't recall seeing any-
thing they should put a man aboard.

Q. I want to show this Court, sir, and that is why I asked you to look at that, that you are not correct when you try to suggest that her owners had undertaken to put an officer on board the Paisley during the shifting movement. Now if you think I am not right in that statement I challenge you now to show the Court that I am wrong?

HIS LORDSHIP: Well Mr. Towers' perusal of the correspondence from end to end, does that suggest anything?

MR. TOWERS: No, my Lord.

HIS LORDSHIP: I don't think there is anything.

20 A. I don't recall anything, no sir.

Q. Then the sum and substance of your evidence on that point is that the Paisley needed at least one more man, namely an officer, in charge of the shifting movement, and she didn't have one? A. For the benefit of the tug who had the contract moving the vessel, that is what I mean.

Q. Isn't it the case for the greater benefit of the Saskatchewan in whose side the Paisley punched the hole? The whole thing, sir, you have just said to the Court that the tug should have put an officer on board the Paisley to take charge on board the Paisley of the shifting movement? Is that right?

A. Yes sir, I said that, yes sir.

30 Q. Now I will leave it at that. Where were you, sir, yourself at the time that this shifting movement took place? A. I don't recall unless I was in the office at Cleveland.

Q. What steps did you take to make sure that before your ship with her cargo on board was shifted she had a suitable officer on board in charge of the movement, wherever he came from? What steps did you take to make sure of that?

A. The only steps I had taken was that the ship keeper was to look after the boat while she was there under the arrangement that was made.

40 By HIS LORDSHIP: Q. Which means you took no steps to see that there was an officer on board to direct the movement? A. No sir.

By MR. HOLDEN: Q. Now, Mr. Rydholm, you stated during the last session of the Court and it is contained on page 400 of the transcription of the evidence, at the top of the page, that you had investigated this matter from your reports. Will you show me what reports you received in this connection?

A. I haven't any such reports with me, sir.

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Q. Why? Where are they? A. A letter. And then I made a visit to Owen Sound.

Q. What letter was there?

A. Accident reports, that is all I know.

Q. Where are they?

By HIS LORDSHIP: Q. From whom did you get them?

A. From the ship keeper. We went up there and we would have a wire or telegraphic or telephonic conversation from our owners that evening to investigate and I went up there personally.

By MR. HOLDEN: Q. All that I want is that this Court should have 10 before it whatever written reports were made. Will you now produce them?

By HIS LORDSHIP: Q. You can get them over by telegraphing, can't you? A. I think we can get them; anything we have I will get it, yes sir.

Q. You are asked to produce it now?

By MR. HOLDEN: Q. Haven't you got everything here, either in your hands or your Counsel's?

A. I haven't anything, sir, excepting blueprints and the like.

Q. No, but Mr. Rydholm, all I want to know is are the reports that you refer to now in Toronto, either in your hands or your Counsel's or anybody else's? Are they here? 20

A. I do not know, sir.

Q. Will you find out, sir? A. I will do that.

Q. Can you do it now, sir? A. I don't know whether I can do that or not.

Q. Will you try? A. Yes.

Q. Thank you very much.

MR. TOWERS: The only statements I have, my Lord, are those made in preparation for trial.

HIS LORDSHIP: The question is "Q. Have you investigated?

A. From our reports, yes sir." Now Mr. Holden asks where are those 30 reports and Mr. Rydholm says that he got a telegram and reports from the ship keeper and then went and investigated personally. Now I think Mr. Holden is entitled to have those reports produced.

MR. TOWERS: Whatever there is in that way I will help get that. I personally haven't seen that.

HIS LORDSHIP: But Mr. Rydholm is a perfectly intelligent business man and he knows exactly what he meant by his reports and knows where they are so it isn't a question of whatever you may find. He wants to either produce those reports or explain away his answer, that is all.

Q. What are you going to do about producing these reports? A. Col. 40 Towers just said he will do what he can do to get them.

Q. I am asking you, sir, you are the Fleet Captain of the defendant's fleet. I want you to tell me now so we will understand what are you going to do about producing to His Lordship the reports in question?

A. We will endeavor to get those as quickly as possible.

By HIS LORDSHIP: Q. Do you know what you meant when you answered the question "from our reports?"

A. What I meant, of course there has been so much going on, sir, we got a telegram. I know that we got a telegram.

Q. I am asking you if you knew what you meant when you said that you had investigated from your reports? Did you know what you referred to?

A. Not any particular item or thing, no sir.

Q. Don't you understand the meaning of a report of an accident?

A. Yes sir, we got an accident report.

Q. Very well, was that what you meant? A. Yes sir.

Q. Was that the only thing you meant?

10 A. And in our investigation up there when we went up.

Q. Mr. Towers asked you "Q. Have you investigated?" And you said "From our reports, yes sir." You got an accident report from Penrice?

A. Yes sir.

Q. Did you get anything else from him or from anyone else?

A. There was a considerable telephoning at the time and I can't just recall what they were or how they were.

Q. Did you know what you were referring to when you answered that "From our reports?" A. May I explain, sir—

20 Q. Did you know in your own mind what you referred to when you called them reports? A. Not any particular thing;—no sir, because that goes down through the management and our accident clerk.

Q. That is a very careless way of answering, you know. You say "from our reports" but you don't know what you meant at the time? A. Yes sir.

Q. However I think you will have to produce that report you got from Penrice and you had better as soon as you leave the box telegraph for it?

A. Yes.

By MR. HOLDEN: Q. Did you as Fleet Captain know beforehand when the Paisley was going to be moved?

A. I did not, no sir.

30 Q. Who did? On behalf of the owners of the Paisley?

A. Unless it is through the manager's office, Mr. Schneider.

HIS LORDSHIP: I think there was a letter there referred to.

Q. Am I right that you as Fleet Captain were the head of that department of the company's business? A. Yes.

Q. And your department handled any shifting of the vessels while in winter quarters? A. Yes sir.

Q. Well did you take any interest at all as head of that department in the fact that they did propose to move the Paisley, or did you leave it all to the ship keeper?

40 A. We left it to the ship keeper and the people who had the contract for taking care of her.

By HIS LORDSHIP: Q. You mean the tug people?

A. Yes.

By MR. HOLDEN: Q. Is there anybody between you and the ship keeper in the organization of your company?

A. Our manager, Mr. Schneider is.

Q. He is under you as well? A. He is over me.

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(continued).

Q. You misunderstood my question. Is there anybody between you and the ship keeper? A. No sir.

HIS LORDSHIP: I think there is a letter which was detached, perhaps it was that, about the movement, from the Superintendent of the elevator or somebody; it was attached originally on that P-6 but was detached because it had nothing to do with the arrangement with the Harrison people.

MR. TOWERS: It was a letter about the size of lines, I think.

HIS LORDSHIP: No. It was another, I think. Here is the one, January 14th, John Harrison & Sons, elevator ready to unload Steamer "Paisley." Place accordingly and notify A. B. Penrice Ship Keeper—A. E. R. Schneider." 10
That is Exhibit S-8.

Q. Mr. Rydholm, I have been searching Exhibit P-6 to find anything more—as a question of fact and not of law, I reserve my contention on the legal point—as a question of fact to find anything more than a mere towing of the Paisley as might be required; that is to say giving her a line and pulling her through the water because she had not her own steam. You have intimated all kinds of other duties and responsibilities which you say fell on the tug and its owners and in order to reserve all my objections on the legal point I ask you and I put you in default now to produce anything that suggests anything of the kind, if you can? 20

By HIS LORDSHIP: Q. Is there anything more you can think of except this correspondence throwing light on what the duties of the tug were?

A. There is just the contract or letter, that is all we have.

By MR. HOLDEN: Q. That is all. All right, sir. Now have you ever shifted a ship yourself in winter quarters? A. Yes sir.

Q. From one berth to another in the same harbor?

A. Yes sir.

Q. Did you arrange to have somebody available at the new berth to take your lines when you got near that berth?

A. Depending where the shift was made to, sir. 30

Q. Would you mind saying yes or no to that, if you can, because it is a simple question? Did you when you made that shift arrange to have somebody at the new berth to take your lines in good time? A. Yes sir.

Q. Were you the ship keeper at the time? A. No sir.

Q. You were the equivalent of the officer that you have told the Court should have been on the Paisley, were you?

A. No sir, not exactly, no sir.

Q. What was your capacity at the time?

A. I have done several shiftings.

Q. But I mean take the one— Had you one in mind just now, a winter 40 berth? A. No sir, nothing in particular.

Q. You have done it several times, have you?

A. Yes sir, dry docks and so forth.

Q. Had you shifted a ship of the size of the Paisley. I mean of approximately the same size, with approximately the same cargo in winter quarters from one berth to another? A. Not in winter quarters with grain, no sir.

Q. Well when you said to the Court that the Paisley should have had an officer in addition to the four men she had on board, if you had been there yourself would you have had an officer on board as well as yourself?

A. No sir.

Q. You would have been the officer in question?

A. Not in the meaning— You and I have two different meanings.

Q. Go ahead? A. May I explain?

Q. Certainly. I would like you to explain?

A. In Georgian Bay ports, sir. May I mention names?

10 A. Anything you like, sir, I would just like to understand your evidence?

A. In Georgian Bay ports the shifting and handling of the boat is done by the per bushel basis and boats at Midland, Port McNicholl, Tiffin, the contractor or the tug man or one of the Burke Brothers gets right aboard the vessel and directs the operation.

By HIS LORDSHIP Q. The owners or the contractors of the tug do what? A. The owner or the management of the tug goes right aboard.

Q. You said something about the contract in these different places?

A. Georgian Bay ports, yes sir.

20 Q. Do you mean that the contract made in these ports is for one to go aboard the vessel?

A. No sir, but they do that.

By MR. HOLDEN: Q. You say generally, if I understood you?

A. Yes.

Q. When they don't do it do you put an officer yourselves?

A. No sir.

Q. You take the risks then? A. Yes sir. The man aboard the boat—the boat loaded with grain is an inert floating mass, you have got to handle her just like a scow, they either have the officer aboard the tug or on the boat and they place her where they want to put her.

30 Q. We don't need to go over the same ground, Mr. Rydholm, I am referring to the obligations of the tow to get her lines ashore before she reaches her berth or drop an anchor if necessary and to hail the tug if necessary and do whatever may arise or should be done for any reason on board the tow, if the officer you have referred to had been other in addition to the men that were there I understand from you he would have looked after those things?

A. He would have assisted, perhaps.

Q. Is that right? A. Yes.

40 Q. I would like to ask you as Fleet Captain why didn't you see before she left her old berth that there was such an officer? A. Because with this contract and Owen Sound being a safe harbor and not congested, it was a very easy shift to make and should have been safely done.

Q. When you say "With this contract" you have nothing further in mind than what has been filed as Exhibit P-6?

A. That is all I know, sir, yes sir.

Q. Tell me if I am wrong; I understand you to say when you shift boats yourself in winter quarters preferably from one berth to another in the same harbor you do see beforehand that there is somebody ready and avail-

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able to take your lines when you get near your new berth, do you? A. We notify those on duty; we never wait till we are coming in to get the boat to the elevator.

Q. You do notify them? A. Yes sir. So as to have a berth for us.

Q. Did you tell Penrice to notify the elevator men before he left his old berth? A. I did not, no sir.

Q. Did you ascertain in your investigation that he had not done that?

A. I didn't ascertain on that but I asked whether was there men there to handle the lines and he said yes, there was men to handle the lines.

Q. He has told this Court he didn't do so? 10

A. He said there was men to handle the lines at the elevator.

Q. But he told this Court he didn't notify the elevator or make arrangements with the elevator beforehand in that connection. Did you learn that in your investigations?

A. I didn't learn that part, no; just that there were men there, that is all.

Q. Now when you shifted vessels in winter quarters from one berth to another in the same harbor did you have something to say to the tug Captain or Captains before casting off from your old berth as to how to do the job and where to land and where you wanted to put your lines ashore and so on?

A. The only thing is this, when a boat is dead— 20

Q. I am asking you what you did and then you may add all the explanations? A. They were different vessels, sir, under different conditions and circumstances.

Q. Do you mean to tell this Court that you never when you were in charge of a vessel that was being shifted at a dock had anything to say to the tug captain before you left your berth as to how it was going to be done?

A. No sir, we just said Take her to the dock, such and such a dock.

Q. That is something? A. Yes sir.

Q. But in all the shifts you have done you never made any sort of plan with your tug captain or anybody on behalf of the tug as to the manoeuver? 30

A. No sir.

Q. That may explain? A. Under those conditions, winter conditions.

Q. I am not saying under anyconditions, I am asking you a general question, did you ever when your ship was going to be shifted by a tug have some kind of reasonable arrangement before the shift commenced with the tug as to what was going to be done?

A. Sometimes, yes sir, if you put it that way.

Q. And why not always? A. It depends on the berth, sir. Now for instance;—may, I explain fully?

Q. You don't need to apologize, you may add all you like, sir; go ahead? 40

HIS LORDSHIP: The only thing is don't take up too much time.

A. The tug companies, tug captains and everybody concerned, they know themselves what is going on about the harbor; if we have a boat that is up there put in winter moorings and we are going to take her to a drydock why we say Take us for such and such a time and when you get up there—if it is in a congested place the difference will be stern first (and they know when they get to

the shipyard) or it has got to go in head first—we do not give any instructions if the boat is dead the tug takes her in charge.

Q. The question is whether you had a conference or chat with the tug's captain before you cast off as to what you were going to do, where he was going to put your lines ashore or anything else? Do you have some kind of arrangement with your tug before you cast off?

A. No sir, just that when we are casting off and we are ready to move.

10 Q. Well that may be the explanation. If you are under way and you think you are too far off your berth or you think your tug is going too fast or anything else bothers you that the tug can remedy, if you are on board in charge of the tow do you hail the tug and tell them what you want or what you think? A. If we are too close to a bridge or something like that we do, yes sir.

Q. Why do you make that distinction? Why wouldn't you in other cases, if there was any occasion to speak to him why wouldn't you speak to him?

A. Some places is very congested and we are always rubbing along some boat or some abutment or making a sharp bend—

Q. Except in those cases you would hail the tug?

20 A. Yes.

By HIS LORDSHIP: Q. Yes, but what about? What would you hail the tug about? A. Well if it were going down head first or stern first, whatever it may be, and we see that the side of the ship is not going to make an abutment or something we generally warn him.

Q. I know, but I wanted to know something about this particular condition which you were under here. What would you have hailed the tug about in this particular trip?

A. I don't know, sir.

30 By MR. HOLDEN: Q. Well if you were coming along towards the point where you thought you ought to get a line ashore, you thought that the tug ought to get you in nearer, wouldn't you hail him and say Get in nearer?

A. Very often we do.

Q. Yes. And if you thought he was going to fast as you came along near your new berth wouldn't you say, with strong language probably, Don't go so fast?

A. No, not always, no sir.

Q. Not always, but sometimes? A. Depends on circumstances.

Q. You might and you might not? A. Yes.

40 Q. And if you thought you were getting past your berth or anything else that bothered you and the tug could remedy wouldn't you hail him and say so?

A. It all depends if he has got control of her or not.

Q. I thought the whole basis of your story was that the tug had control of her? A. We wouldn't warn any tug unless we saw a danger.

Q. Exactly. A danger of missing your berth even, wouldn't that be the occasion?

A. You mean going by or some such thing.

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Q. Going by or too far out or too fast or anything else?

A. We don't always, know just how the tug wants to berth a boat.

Q. Why not inquire then if you had any doubts?

A. Because that is left to the tug to handle her, especially with a dead boat. Some of them take a long and wide berth and nose a boat in sideways when they get to their objective; others slide along the dock.

Q. So if you were in charge of the tow, the vessel being towed, and you had doubts as to something the tug could remedy do you mean to tell this Court you wouldn't say anything more to the tug, you would just leave it to the tug to do right or wrong as the case may be?

A. In the case of a dead boat I would let the tug alone, he would handle her in her own way.

Q. And you wouldn't say we are not in close enough, we are too far out?

A. I would say "You are too far out" if he could not see it himself.

Q. Did you know that the Paisley—beforehand, you have learned it since, I have no doubt—that during this shift the Paisley had her port anchor hanging down with the crown awash? A. I didn't know it, no sir, beforehand.

Q. Am I right that an anchor ought to be either hove home or ought to be low enough to be below the ship's forefoot? Is that right? A. I don't just quite get that. The forefoot would be low down. The ship's forefoot, that is right down at the bottom of the boat.

Q. If you wouldn't mind saying yes or no first and then add all you like. Am I right in that regard?

A. Not as far as the forefoot is concerned.

Q. Where should the anchor be?

A. It should be either slung off or on the hawsepipe.

Q. What do you mean by "slung off"?

A. If it has been slung off in the winter time complete it slings up above the water.

Q. What do you mean? Would you either have it hove home or deep enough down so that if the vessel rubbed against anything the anchor wouldn't injure that thing, that is my whole point? Is that the truth? A. Yes sir. To keep clear of anything.

Q. That is why I said below the forefoot? A. Yes sir.

Q. Isn't that a good safe place to hang it and isn't it often done? A. We do not like to have an anchor down below the forefoot of a vessel loaded, sir, because we don't know whether it is going to hit the bottom or what it is going to hit.

Q. It depends on the shape of the vessel how low you have to hang the anchor? A. Yes sir.

Q. So that if the vessel rubs anything the anchor won't tear it? A. Yes sir. That is the narrowest part of the ship, yes sir.

CROSS-EXAMINED BY MR. JARVIS:

Q. I just would like to understand perfectly, Mr. Rydholm, what you meant by it when you said that the Paisley was turned over to the Harrison

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Tug Company? I understand that that is what you say was done? A. There was a contract about going and placing her at the elevator, yes sir.

Q. Just forget the contract and deal with the situation as you wish us to understand it?

HIS LORDSHIP: That has been very fully gone into, the contract is there, and the extent to which he dealt with it has been gone into.

MR. JARVIS: Not just in this way, if I may trouble Your Lordship.

HIS LORDSHIP: There is no use going over the same thing you know.

MR. JARVIS: I don't wish to repeat and I will shorten it as much as I

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(continued).

10 can.

Q. But it is your understanding that the Paisley was turned absolutely over to the Harrison Tug Company for the purpose of the shifting operation?

A. Yes sir.

Q. And for that time? A. Yes sir.

Q. And that they were in full and absolute charge? A. Yes sir.

Q. And Penrice was there with the keys to give them possession for that time? A. Yes sir.

Q. And Penrice could not give any orders or instructions as to the course? A. No sir.

20

Q. Or as to the lines to be used for checking the way as distinguished from mooring her after she was in her place? A. He had the lines, yes sir.

Q. But I understood you and Penrice to say that those lines were to be used as mooring lines, not as checking lines? A. Of course there are two lines, two wire cables, two sets of lines, wire cables and manilla lines; the wire cables are attached in one place to the deck winches fastened to the deck of the vessel, they can be only used in their respective places.

HIS LORDSHIP: What is the object of your cross-examination? He told you she was handed over to the tug and you elicit that Penrice had no other instructions in connection with the lines, is that right? Do I understand it that is what he said?

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MR. JARVIS: I am not just quite clear what he said on that yet, my Lord.

HIS LORDSHIP: He has already made an answer. You asked him if Penrice would give any instructions and he said no.

MR. JARVIS: As to the course, my Lord.

HIS LORDSHIP: Did you say that?

MR. JARVIS: Yes, my Lord, and he said no. Then I am asking him as to the lines.

40

HIS LORDSHIP: You asked if Penrice could give instructions as to the lines. If so, specify what lines you mean.

Q. I am asking whether Penrice had any control as to the lines to be used on board the Paisley to check her way if that situation should arise?

A. He would check his way, if he could possibly get a line out he would check it with the cable, with the mooring cable.

Q. If he could get it out? A. Yes.

Q. Now who would say when that should be done?

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A. When the boat is in alongside of the elevator or dock it is always understood that the men on the boat handle the lines, and in fact they were prepared to handle the lines.

Q. And who would say just when the lines would be used?

A. In placing at the dock he would say, Penrice, he would say, Now all right, I will tie her.

Q. Supposing you get a situation you are passing a dock, you are not close to it and you are not stopped, and the situation arises where the lines can be used for stopping her to assist the tug in that, who is in charge of the lines for that purpose? A. You mean in case that he saw there was danger 10 or something or just an ordinary manoeuver?

Q. Let us take it that it is an ordinary manoeuver and he is some distance off the dock and a situation arises where lines may be used for stopping her?

A. Under the circumstances he wouldn't try to get a line out until he was in to the dock.

Q. And, I assume, in his place, is that right?

A. Yes sir.

Q. Then if there was danger or reason to fear that they were getting into danger, then—?

A. He would make an effort and get a line out. 20

Q. And on whose instructions?

A. He would take that himself.

Q. And you would say it would be his duty to make that effort? A. I think it should, yes.

Q. On whose behalf? A. Of all concerned.

HIS LORDSHIP: That question he cannot determine. It is his duty to make it in the interests of the safety of all; now it is a matter of law who benefits by it or who was responsible for that.

Q. Then I understood you to say that Penrice would have no authority to say where the anchors would be? 30

HIS LORDSHIP: Don't go over what Mr. Holden has elicited. If you have any doubt as to an answer that he has given Mr. Holden ask the question but if he told Mr. Holden that take it for granted that is what he means and if you have any question about it on that basis ask him.

MR. JARVIS: Possibly I overlooked that, my Lord.

Q. Then would Penrice have anything to say as to where, what point on the dock, the elevator dock, the Paisley should be made fast? A. No sir.

Q. Nothing whatever? A. No.

Q. Then just to go back a moment, you have told me that the duty of Penrice is to give possession of the ship? A. Practically. 40

HIS LORDSHIP: That is entirely a matter of law, Mr. Jarvis. He cannot tell you whether Penrice was to give possession of the ship. The contract is there.

MR. JARVIS: I wanted his interpretation of it, my Lord.

HIS LORDSHIP: Supposing he gives it, he has no business to interpret a contract; that is for me.

RE-EXAMINED By MR. TOWERS:

Q. I understood you to say in answer to my learned friend Mr. Holden that you thought the man on that ship should have let go the anchor. What did you mean by that?

A. I didn't say that, did I?

Q. I think you did?

HIS LORDSHIP: Oh yes, you did say that.

MR. HOLDEN: My learned friend should not suggest anything.

Q. What do you mean by that?

10 MR. TOWERS: May I ask him what is meant by it?

MR. HOLDEN: I am not objecting to that but I thought you were going further.

MR. TOWERS: If it could be read to the witness so that he would recollect it.

HIS LORDSHIP: No, it isn't necessary to hunt it up. Ask him when he did say so what he meant by it.

Q. You said you thought the men on board that ship should have let go the anchor. What men were you saying?

20 A. If you put that that way, I didn't mean it that way; they could let go of the anchor if it done any good, there is nothing to prevent them from letting to the anchor; it takes quite a while, you know.

Q. I think my learned friend was asking you about the respective duties of the men on the tug and the men on the ship?

HIS LORDSHIP: He was asking them whether if they had to anchor, and this witness said yes, he could give anchor but the men on the Paisley would have to do it, that is what he said.

Q. You mean under the circumstances as they existed this day? A. Yes the men on the Paisley would have to do it.

Q. Why? A. If they had to drop an anchor, that is what I meant, yes.

30 Q. Did you mean to say that they should have dropped one on this day?

A. No sir, I didn't mean it that day.

Q. Then in this P-8 I understood you to say to my friend that there was nothing in it except about the vessel being moored. I am reading now from the—

HIS LORDSHIP: I don't think you can take his interpretation of it. You can call my attention to anything which in law shows he was mistaken but his interpretation won't help us a bit.

MR. TOWERS: No, except that at my learned friend's suggestion he said there was nothing in this. Of course it is quite plain when one reads it.

40 HIS LORDSHIP: It is quite obvious if it is there and his saying would not remove it. It will take some ingenuity to decide it, as I remember, reading it, that is all.

Q. Now you said something to my learned friend Mr. Holden that sometimes you did have an officer aboard these vessels. When? A. When we are shifting in congested places where we have no arrangements with tug companies or any other parties to move vessels.

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By HIS LORDSHIP: Q. Do you say in difficult places? A. In congested places.

By MR. TOWERS: Q. Are you familiar with the condition of Owen Sound Harbor in this winter in question?

A. Yes sir, fairly well, sir; I was over there.

Q. What do you say as to being or not being a congested place? A. It is not a congested place.

Q. And then my learned friend asked you some questions referring to the duties of getting lines ashore before the vessel reaches her berth. Is there anything in good seamanship—?

HIS LORDSHIP: Was that Mr. Jarvis' question?

MR. TOWERS: No, my Lord. Mr. Holden's question. He said, I am asking about the situation as to getting lines ashore before she reaches her berth and dropping an anchor if necessary.

MR. HOLDEN: Those were different questions, not the same.

HIS LORDSHIP: He has answered however he wouldn't attempt to get a line ashore, unless near a berth.

Q. Then under what circumstances would you hail the tug?

HIS LORDSHIP: He already told us that—in case of danger.

Q. And my learned friend Mr. Jarvis spoke of lines for checking the way of the vessel. What do you say as to that? A. You mean this gentleman. With the cable?

Q. Yes, checking the vessel's way. Was that part of the use of these lines?

A. When you are alongside the dock you sometimes check the way of the vessel, hold on.

Q. When you are alongside of a dock? A. Yes.

Q. But under ordinary circumstances, out from the dock?

A. The lines couldn't check her.

HIS LORDSHIP: Obviously if she was away out from the dock.

By HIS LORDSHIP: Q. You spoke of anchoring by the men on the Paisley. Of course they would have to do it if they were aboard, and did you contemplate the tug having anything to do with it?

A. With the anchor, sir?

Q. Yes? A. No sir. I didn't because they wouldn't have any men on the boat, but I thought if they had a man on the boat—

Q. A tug officer could tell these men what to do, couldn't he? A. Yes.

Q. Did you have that in your mind at all? To whom must it appear necessary to anchor before an anchor should properly be let down? A. Either the men on the tug or the men on the vessel.

Q. Either one or the other? A. Yes sir.

Q. Then Owen Sound is safe, do you think, a safe harbor, and not a difficult harbor? A. Yes sir.

Q. And did I understand you, to say that it would be unnecessary to have an officer aboard? No difficulty?

A. Yes sir, I thought that.

Q. I thought you had in your former evidence indicated that the tug should have had an officer aboard?

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MR. HOLDEN: Yes sir, he said that.

Q. Were you applying that in this particular case to Owen Sound?

A. I thought for the benefit of the tug that they really should have a man aboard to move the vessel, probably assist in handling the lines and see that our men did it.

Q. But can't you just get down to the simple point? Were you suggesting that that was necessary for the tug to do in this particular harbor in this particular movement?

A. No, I didn't figure it would be necessary but I thought it would be necessary for the tug, yes sir.

Q. In speaking of the anchor hanging down you said something about in the case of a loaded vessel you didn't like it near the forefoot. What was the reason?

A. Well the forefoot is right at the bottom—fairly on the bottom of the ship, yes sir, we would be afraid it would hook into something if it got into shallow water or something like that.

Q. How high should it be left above this forefoot if it is under water at all? A. It should be left where they could get it conveniently and shackle onto it.

Q. I know, but how far above the forefoot?

A. Well I figure always anywhere near the stem is the safest place for it, that is the foremost part of the ship, sir.

Q. How low, I am speaking of? A. It all depends on the draft of the vessel, sir.

Q. I know it does. Having regard to the draft of the vessel and the water line, where should it be, where is the lowest it should be?

A. I like to always have it so that you can see some part of the anchor.

A. So that if you just see the ring it would be all right, would it? A. Yes sir, to see that it isn't hooking into anything.

Q. I say if you only see the ring it would be all right, would it? A. Well the ring and part of the shank, say that, sir, yes.

Q. Well in your examination I thought it would bring it pretty near to the forefoot, would it?

A. When the boat is light, yes sir.

Q. And is it safe when the boat is light to have it hanging as low down as that near the forefoot?

A. It is sometimes safer down there, sir, on account of projections in abutments of bridges. Up above it might happen to catch on the bridge iron or something and rip the bow of the ship.

Q. When the vessel is loaded would it make a difference? A. Well we always like to see the anchor; we don't like to have the anchor hidden.

MR. HOLDEN: There was one new question my learned friend asked, the question of the congestion.

HIS LORDSHIP: Very well.

By MR. HOLDEN: Q. You stated that Owen Sound Harbor was not congested at the time of this shift. How many vessels were there there?

A. I can't recall. Perhaps eight or nine.

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Q. Perhaps fifteen or twenty? A. No sir, I think about—
Q. You don't know definitely? A. I don't know definitely right on that day.

Q. Where were they all? A. Well some were up in the slips, the river, and some of them were across from the elevator and two at the head of the elevator.

Q. Can you sketch out for the Court a plan of the harbor with all the vessels that were there?

A. I can get you such a sketch.

Q. But can you? You have expressed an opinion. I want to test what 10 your opinion is based upon as to the congestion of that harbor, how many vessels in that harbor— Now then let me ask you then, how big is the harbor, what is the area? A. I couldn't state that.

Q. Then you can't state how many vessels there were there?

A. About eight or nine.

Q. You can't state exactly how many vessels there were there? A. No sir, not exactly, no sir.

Q. And you can't state the size of these vessels? Naturally seeing the vessels you can't give the tonnage at the time? A. Not the tonnage, but I can give approximately. 20

Q. Have you made any special investigations to ascertain the conditions in order to answer whether it was congested?

A. Yes sir. That harbor—

Q. Did you make any special investigations? A. No sir.

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Edward
Nichols Smith
Examina-
tion-in-Chief.

EDWARD NICHOLS SMITH Sworn;

EXAMINED By MR. TOWERS:

Q. Where do you reside, Mr. Smith?

A. I reside at Buffalo, New York.

Q. And you are the President of the Buffalo Drydock? 30

A. I was President of the Buffalo Drydock.

Q. And are now—? A. Marine Surveyor.

Q. How many years' experience about building and repairing vessels and inspecting them have you had?

A. Over a quarter of a century.

Q. Did you make an examination of the Steamship Saskatchewan after the 18th day of January, 1927, when she was lying in Owen Sound Harbor?

A. I did.

Q. At what time did you make that examination? 40

A. Beginning on January 20th.

Q. And did you find the cause of the water entering the hull of the vessel?

A. I did.

Q. What was the cause? Did you find the hole?

A. The hole in the shell, yes.

Q. You say the shell. How was the shell for strength?

A. It was indented and broken.

Q. I say what was its strength?

A. She was a classification vessel, pretty strong, yes.

Q. And you found the hole through which the water entered which caused her to sink? A. I did:

Q. Where was that located? A. At frame station 53.

Q. And plate? A. I will have to look that up.

Q. Perhaps we won't require it. Frame station 53, how far would that be from the stem of the vessel?

A. That would be 106 feet from the stem aft.

Q. Measured along the hull? A. Measured along the hull.

10 Q. Measured along the center line, pardon me, not along the hull, and how high up of the draft?

A. It was about eighteen inches under the load water line. As she was loaded then.

Q. What was her loaded water line? Did you ascertain that?

A. I did. The vessel drew 16 foot 9 forward and 17 feet 3 aft.

By MR. HOLDEN: Q. That is when you saw her?

A. That is when I saw her, yes sir.

By MR. TOWERS: Q. And was that the same as her load water line at the time of the accident, do you know?

20 A. Well this was before the accident.

Q. Before the accident? A. Before the accident.

By HIS LORDSHIP: Q. This is January 20th; wasn't the accident on the 18th? A. On the 18th.

By MR. TOWERS: Q. Could it have been January 20th then? Was that December 20th?

HIS LORDSHIP: He examined her on the 20th and found the puncture.

A. Your Lordship, I will have to correct that, I stayed there from January 20th to February 15th.

By HIS LORDSHIP: Q. Well we are not interested in that. You 30 are asked if you examined the Saskatchewan and found the puncture. What is the date of that?

A. The date that I found the puncture.

Q. Yes. It is not very important, you know, but you are asked a question. If you can, give an answer to it, if it was shortly after January 20th that is good enough to say so? A. It was after the dry grain was off but I don't quite know the exact date when the dry grain was out.

MR. HOLDEN: About the date?

Q. After January 20th? A. After January 20th; I don't know the date.

40 Q. Then are you giving us these figures as to her draft on the day you found the puncture?

A. No.

Q. Well when? A. That was the draft before the vessel was sunk. That was the dipped draft after the cargo had been dipped at the elevator for winter laying up.

MR. HOLDEN: I think he is not telling now of his own knowledge.

By MR. TOWERS: Q. Where did you get that information?

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A. From the log book.

MR. HOLDEN: I think, my Lord, he should only speak as a result of his own information, his own investigations after the accident.

MR. TOWERS: Isn't that the same draft as on this occasion?

MR. HOLDEN: I don't know.

Q. Now I show you Exhibit S-3, Mr. Smith, and you will notice that the starboard anchor is hove home on the Paisley? A. Yes.

Q. And the port anchor is hanging on the anchor chain out of the hawsepipe? A. Yes.

Q. Are you familiar with the construction of the hawsepipes on the Paisley? A. I examined them. 10

Q. And if the port anchor were drawn into the hawsepipe, hove into the hawsepipe as far as those cables would let her with a foot and half or two feet of the stock in the hawsepipe, how far would the outboard part of the anchor projection? A. Ajaeng about thirty degrees.

Q. That is thirty degrees with the hull of the vessel?

A. Making an acute angle with the frame stations.

Q. Yes, of thirty degrees?

HIS LORDSHIP: But how far?

Q. And how far would that be projecting out from the side of the vessel? 20

A. About thirty-four inches.

Q. About three feet? A. Three feet.

HIS LORDSHIP: That is assuming it was hauled in as far as it would go.

Q. With the cables on and about two feet of the anchor shank in the hawsepipe?

A. Is this what you mean, with the cables on as they were, as I see the cables?

Q. Yes? A. I question whether it could be put in there at all.

Q. Well the evidence was it was hauled in maybe a foot and a half or two feet of the shank in the hawsepipe? 30

HIS LORDSHIP: He doesn't know. He doubts that it could be at all.

Q. Assuming that, how far out would the rest of the anchor project?

A. A foot and a half and the shackle been on the anchor?

Q. Yes? A. That would project out over three feet.

HIS LORDSHIP: Instead of thirty-four inches it would be over thirty-six inches.

MR. TOWERS: Yes.

By MR. HOLDEN: Q. How much over?

A. It would be a pure guess. It might be four or five feet out.

By MR. TOWERS: Q. Were you able to determine from an examination of the hole in the side of the Saskatchewan what had caused the hole? 40

A. No sir. I am in doubt today as to exactly what caused the hole, frankly.

Q. Are you able to say that one or two or three caused it, in your opinion?

A. Yes sir.

Q. What? A. The anchor or the tie chains on the boom, the tie chains on the ice boom that was laying alongside of the Steamer Saskatchewan.

By HIS LORDSHIP: Q. Or what?

A. Or nothing. That is all, sir.

By MR. TOWERS: Q. Either the anchor or the tie chains?

A. Yes sir.

CROSS-EXAMINED By MR. HOLDEN:

Q. What do you know about the tie chains? How big were they, for instance?

A. The tie chains were about two and one-half—

10 Q. Not “were about?” A. I went down and examined them, every-
thing was covered with ice, you couldn’t do accurate measurement, they were heavy log chains.

Q. How far from the end of the boom were the tie chains?

A. About eighteen inches.

Q. Did you measure? A. I didn’t measure it with a ruler, no sir.

Q. When was it you had a look at them?

A. The exact date I can’t give it but possibly on the 24th or 25th January.

Q. You have no knowledge yourself of where the boom and the chains were at the time of the accident?

A. I didn’t see them alongside the boat at the time of the accident

RE-EXAMINED By MR. TOWERS:

20 Q. Can you say how close the tie chains were to the hole or the locality of the hole?

MR. HOLDEN: He says he doesn’t know. I submit that that isn’t competent.

MR. TOWERS: I did not catch that.

HIS LORDSHIP: He doesn’t know where they were at the time of the accident.

EDWARD BURKE Sworn,

EXAMINED By MR. TOWERS:

30 HIS LORDSHIP: Who is this witness?

MR. TOWERS: A tug master, owner or operator, an expert, with headquarters at Midland.

Q. Captain Burke, you live at Midland, Ontario.

A. Yes sir.

Q. And you are the owner of what tug line?

A. The Burke Towing & Salvage Company.

Q. How long have you handled tugs? A. Oh about thirty years.

Q. And in harbors shifting to and from elevators?

A. Yes sir.

40 Q. At Midland? A. Midland.

Q. And other harbors? A. Not very many other harbors.

Q. Midland has quite a few elevators? A. Yes.

Q. Now do you make contracts with vessel owners to shift their vessels with winter storage under the elevator?

A. We do.

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Q. For how many years have you been doing that?

MR. HOLDEN: I don't know at what stage I should object, but I do submit—

MR. TOWERS: I knew my learned friend would soon.

MR. HOLDEN: It has no bearing.

HIS LORDSHIP: It isn't doing any harm so far. He makes contracts to shift vessels.

MR. HOLDEN: I don't want to be forestalled.

Q. In the exercise of good tugging practice, engaged in that service?

HIS LORDSHIP: "Good tugging practice" I don't understand. Good navigation of a tug I do understand. You must make it quite clear you are dealing with navigation. 10

Q. If you have made a contract to shift a vessel loaded with winter storage to an elevator under winter conditions, say in the month of January, 1927, what would you say as to the necessity of the vessel having steam or power on board herself, her own steam or her own power? A. Not necessary.

Q. What do you say about steering the vessel during the operation?

A. Well we steer her with the tug.

Q. What about the carrying or management of the anchors?

A. Well in our place up there the anchor is generally hove up. 20

Q. And if they are to be lowered or carried in any different position who has the say about that?

A. Well I think we would ourselves.

Q. When you say "we" you mean—?

A. The company. The towing company.

Q. Then as to the tying up or carrying lines on the boat?

MR. HOLDEN: May I submit this, my Lord: I do submit it has no bearing but in case it might have on something I miss I submit the only way he can show what he wishes would be to produce his contract which may be quite different. I would object also to its production, but if this evidence is admissible I submit— 30

HIS LORDSHIP: I think Mr. Towers abandoned the question of the contract and was asking as to tug navigation and shifting a dead vessel, or a vessel.

MR. HOLDEN: He said if the anchor would be lowered or raised who would do it? Now that depends I suppose on the arrangements between the tug and the tow. That is my whole contention and I won't have to interrupt again.

HIS LORDSHIP: He said it was generally hove up but the tug would say if it had to be lowered. That would be I suppose before the tow started. 40

MR. HOLDEN: Yes. While I don't want to take time objecting yet I do submit—

HIS LORDSHIP: I will continue to hear that subject to your objection, if Mr. Towers doesn't ask any more inadmissible questions. What is the next question, Mr. Towers?

Q. In the navigation of the tug how is the tow brought to her mooring berth?

A. Well we come alongside of the steamboat and shove her into the dock in some cases and in some cases we have to go ahead part of the way and get her bow up again the dock.

HIS LORDSHIP: I think Mr. Towers wants to know when you have brought her near enough to the dock how does she get tied up there.

Q. When the tug has brought her near enough to the dock how does she get tied up there?

A. Well we put out her cables when we get her close enough.

Q. From the tug? A. Off the steamboat.

10 Q. But I thought you were on the tug?

A. Yes. The tug would be along side of the steamboat and we would shove the steamboat in along side the dock.

Q. Then how do the lines get out on the steamboat?

A. We have men aboard the boats to put the lines out.

Q. That is the tugmaster puts men on board, does he?

A. Yes sir.

Q. Have you sailed upper lake carriers, Captain Burk, as well as tugs?

A. I have done a little of it.

20 Q. Have you done enough of it to offer an opinion as to how soon a patent stock anchor such as I show you, Exhibit P-9, would bring up a vessel loaded, such as the Paisley? Are you familiar with the Paisley?

A. Yes, I have seen her.

HIS LORDSHIP: You are not laying very much of a foundation, "A vessel such as the Paisley, loaded". Find out if he knows anything about the holding power of these anchors on the big vessels by experience.

Q. Can you say from your experience the holding power of an anchor of this type, or of the Paisley's anchors if you are familiar with her, in the harbor of Owen Sound, mud bottom, fully loaded and proceeding head on at a speed from half a mile to a mile or mile and a half an hour?

30 A. Yes.

Q. You can say from experience, can you?

A. Yes, I can say from experience.

Q. About how much line would you figure you would have to have out before you would have any effect on the vessel's way?

A. Well you would have to have a hundred or 125 feet of chain out.

Q. And that would be from the—?

MR. HOLDEN: Let him say where from?

Q. Where would the chain leave the ship? At what point would it leave the ship?

40 A. Well leave the ship up here, her bow.

HIS LORDSHIP: You are speaking of the length of chain that would be required to run out before the vessel stopped?

MR. TOWERS: No, he said before it would have any effect on her way.

MR. HOLDEN: That was in your question. You cannot say what he meant.

Q. Would that stop her?

A. It would begin to check her after the hundred feet began to take up.

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Edward
Burke,
Examina-
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Edward
Burke.
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tion-in-Chief.
(continued).

Q. And that chain would leave the ship some distance back from the bow, wouldn't it?

A. Yes, two or three feet.

HIS LORDSHIP: Where would it be fastened?

MR. TOWERS: It would leave the boat from the hawsepipe.

The dimensions of the Paisley, in case we haven't that before, my Lord, are: 380 feet long, 50 feet wide,

HIS LORDSHIP: Are you reading from her certificate?

MR. TOWERS: The figures have been given. 380 feet long, 50 feet beam over all. Cargo of 5500 tons. 10

HIS LORDSHIP: How many bushels?

MR. TOWERS: 194,000.

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Edward
Burke.
Cross-
Examination

CROSS-EXAMINED By MR. HOLDEN:

Q. Under reserve of my objection, may I just ask this: You told the Court that in Midland the tug people put men on board the ship that is to be shifted?

A. Yes sir.

Q. How many do you put on board?

A. Sometimes we have five—four. Four and five. 20

Q. And how many would there be on board the ship in addition to that help or at the time?

A. There would be just the ship-keeper.

Q. So there would be five or six altogether?

A. Yes. About five or six men.

Q. When you say "about", sometimes more?

A. No. We never hire any more. There may be some other men off the elevators come around there. We shift them very often with four men.

Q. You haven't done any shifting in Owen Sound Harbor, have you? 30

A. No.

By HIS LORDSHIP: Q. What sort of men would these be that you say you put on four or five men in addition to the ship-keeper who was on there? What class of men are they? Mariners?

A. Some of them may be mariners. They are just handy fellows we can pick up. We pay them by the hour and when we are through we pay them off.

Q. Are any of them not mariners at all?

A. Some of them are not.

Q. Do you always have some that are?

A. Yes, we try and get one or two anyway.

Q. But if you don't get them do you go on without? 40

A. Yes, we can go along without.

HIS LORDSHIP: That is all, thank you.

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nation.

RE-EXAMINED By MR. TOWERS:

Q. May I ask one question I forgot to, my Lord? You said that a hundred feet of chain would begin to check the vessel. Can you say about when it would be likely to bring her to a stop?

A. Well that would all depend on the bottom. Soft bottom she drags quite a long ways. She would gradually ease up but it wouldn't stop her very quickly.

Q. Can you give any idea how far it would drag?

A. Oh she may go perhaps the length of her.

HIS LORDSHIP: Mr. Jarvis, I don't always call on you because I am hoping you won't find anything to ask, but you have the right to ask any questions.

MR. JARVIS: Quite so, my Lord. I am endeavoring not to do so unless
10 I think I can add something.

FREDERICK WATSON Sworn,

EXAMINED By MR. TOWERS:

Q. Where do you reside, Captain?

A. St. Clair, Michigan.

Q. And your occupation? A. Sailor.

Q. Master Mariner? A. Yes sir.

Q. Carrying a certificate for the Upper Lakes?

A. Yes sir, Duluth, Chicago and Buffalo.

20 Q. And how many years' experience?

A. As Master?

Q. Well as Master, yes?

A. For the last twelve years.

Q. And I suppose before that sailing, for how many years?

A. Sixteen years.

By HIS LORDSHIP: Q. Sixteen years before or altogether? A. Sixteen years before that, sir; since 1900.

By MR. TOWERS: Q. And have you sailed the Steamship Paisley?

A. Yes sir.

30 Q. How many years did you sail her?

A. Parts of two different seasons.

Q. Then you know her dimensions, about 380 feet over all?

A. 380 feet keel, sir.

Q. And about fifty feet beam?

A. Fifty feet beam.

Q. And her draft loaded between eighteen and nineteen feet?

A. According to the depth of water.

Q. And she would carry about 5500 tons of grain?

A. Somewhere in that neighborhood, yes sir.

40 Q. And her gross tonnage about 3000?

A. I think it is thirty-one—thirty-three.

Q. Do you know the harbor of Owen Sound? Have you ever been there?

A. I haven't been there since it has been improved, no sir. I was there
in 1895.

Q. Now if the Paisley loaded is being towed to an elevator and the bottom is soft, a depth of water about twenty-two feet, she is loaded between eighteen and nineteen feet and proceeding at from half a mile to mile an hour, how soon

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from your experience would you say that an anchor dropped would have any effect on her way? How much chain would you have to have out?

A. I would say that we ought to have at least a hundred feet or more, nothing less than a hundred feet.

Q. Are you familiar with the Paisley's anchors?

A. Yes sir.

Q. I show you Exhibit P-9. Is that the type of anchor on the Paisley?

A. Why it operates or works on the same principle and everything only the Paisley's anchor is a little bit different shape.

HIS LORDSHIP: He says it would be effective not less than a hundred 10 feet. When would she fetch up or noticeably slow?

Q. How soon would you expect her to fetch up?

A. The anchor to stop the boat you mean?

Q. Yes? A. Well I think she would go along the length of herself before she would be stopped, or maybe more. That would depend a good deal on the bottom.

Q. And the harder the bottom—?

A. And the harder the bottom, that is the better holding ground, the better clay in your bottom the sooner she would stop.

Q. And on a mud bottom? 20

A. On one of these soft mud bottoms why the anchor wouldn't have very little power at all until you get a whole lot of chain out.

By HIS LORDSHIP: Q. On what kind of bottom?

A. Good stiff clay bottom—

Q. Would be all right, but when you say soft enough you would have that to get out?

A. On soft bottom, what is called a silt bottom.

By MR. TOWERS: Q. Now have you ever been a ship keeper your- self? A. Yes sir.

Q. And in charge of ships in upper lake harbors with winter storage? 30

A. No sir. My experience was in Cleveland with winter storage.

Q. Well they have winter at Cleveland too, don't they?

A. Yes.

Q. When you come to shift to the elevator how do you get there?

A. Well I had all the responsibility when I was keeping ship in Cleveland and the boat was moved to the elevator, I had to go and employ the tugs and employ men to handle the boat and everything.

By HIS LORDSHIP: Q. You hired the tug?

A. Yes sir. I notified them that we wanted them, at what time.

By MR. TOWERS: Q. Were you master of the ship yourself then? 40

A. No sir. I had been master of another ship in the same line though.

Q. Then after you got your tugs arranged for—? You have also I am told had experience in the River St. Clair and other places in charge of vessels that were laid up?

A. Yes sir.

By HIS LORDSHIP: Q. As ship keeper?

A. No sir, not as ship keeper.

By MR. TOWERS: Q. As shore captain?

A. Yes sir.

Q. And once a tug is arranged for how does the vessel get to the elevator?
What power?

A. The tug altogether. We have no other power.

Q. And what about steering your vessel?

A. We don't try to do any steering.

Q. What about the anchors, carrying them?

A. I never change the position of the anchors at all. They were left
10 just as I found them when I went on board the boat.

Q. You never had occasion to change them?

A. No sir.

Q. Either as ship keeper or in charge?

A. No sir.

Q. And then when you get to the mooring berth tell us how you are
stopped, how you get there? Describe the operation, putting the boat there
in charge of a tug?

A. Well I have always had the tug put her bow into the dock and have
the boat going very slow so that when we got to where we wanted to stop we
20 would manage to stop to the dock on our own line.

Q. When you say put her nose into the dock you mean the nose of what?

A. The nose of the steamboat.

By HIS LORDSHIP: Q. Going slow enough to do what?

A. To land the steamboat at the dock without any damage to the dock
so that we could hand our lines ashore—

Q. Which are you speaking of now, a tug captain or those aboard the
ship?

A. On board the ship, sir.

By MR. TOWERS: Q. You hand the lines ashore you say? A. Yes
30 sir.

Q. Do you use heaving lines?

A. On some occasions.

Q. For what distance?

A. Oh thirty to forty feet.

Q. On what occasions would they be?

A. Well the only occasion I remember of at present was of landing the
Paisley this winter at her berth in Point Edward at the elevator; there was
several boats, three boats to be correct, on the south side of the slip and it
didn't leave us room to shove up in past the elevator and the current kept
40 sucking us down the southard and the tug shoved her bow over to the elevator
and that left our stern off at least a hundred feet from the north line of the slip
and in order to get over to the elevator we had to put out lines and heave the
bow up to the elevator to keep from hitting the other boats and then the tug
backed down there and shoved her stern up.

HIS LORDSHIP: What has that to do with this case?

MR. TOWERS: Well, I didn't know about it before, my Lord. I
didn't intend to. This is so different from this case, but he said he generally

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heaved lines at a distance and I wondered how it happened and it seems it is our old friend, the Paisley again.

By HIS LORDSHIP: Q. Is that an unusual distance, thirty or forty feet? A. No sir. I think that would be—anyone would be perfectly safe in trying to get a heaving line ashore at thirty feet even in the winter time.

Q. You said thirty to forty feet? A. Yes.

Q. Would you make it forty?

A. Well, I don't know— Every man wouldn't make it at forty feet in the winter time. And we always managed to get heaving lines ashore. Of course, our bow was up close to the dock. 10

Q. I don't see why you related this story about the Paisley unless it had some bearing on the question?

A. This was at Point Edward.

By MR. TOWERS: Q. You say that is the only occasion you know where they had to heave lines thirty or forty feet?

A. Yes.

Q. Usually how far do you have to pass lines?

A. Usually the tug will put the boats up to the dock so that you can hand the lines out, reach the lines out with your hands.

Q. Throwing a heaving line, apart from this winter storage or any 20 thing of that kind, if a man is standing on the level how far would you call a good throw with the heaving line?

A. Well, that would depend a whole lot on the conditions. If it was cold weather he couldn't throw it as far as he could with warm weather.

Q. Usually cold weather in January?

A. If a man would throw a heaving line fifty feet when he was bundled up to keep warm he would be doing well.

HIS LORDSHIP: What is the object of going into that? He says it is unusual to have to throw them over thirty or forty feet. How is this going to help me? 30

MR. TOWERS: My learned friend says we should get a line out to that dock when she was seventy-five or one hundred feet.

Q. You say thirty or forty feet?

A. Yes sir.

Q. A good throw, and fifty is a long one?

A. I would consider it so.

MR. HOLDEN: No questions.

MR. JARVIS: No questions.

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James D.
Montgomery,
Examina-
tion-in-Chief.
Resumed.

JAMES D. MONTGOMERY, Continued.

40

EXAMINED By MR. TOWERS:

Q. Captain Montgomery, you are already sworn in this case?

HIS LORDSHIP: By whom?

MR. TOWERS: He was sworn and I was asking some questions about ship keepers and it was thought possibly he wasn't quite qualified.

HIS LORDSHIP: Just wait a minute till I find out what his evidence was. Was it part of the defence?

MR. TOWERS: Yes, my Lord, page 389 of the evidence. I am not going to ask him about the ship keeper's duties, my Lord.

HIS LORDSHIP: What then? He stood down for some reason.

MR. TOWERS: What he stood down for, Your Lordship said: "All right, you may call anybody you like. I am not ruling on it, I am only saying that I must be better satisfied than I am now that his experience is one which fits him to interpret the duties of a ship keeper."

HIS LORDSHIP: Never been a ship keeper himself.

MR. TOWERS: No.

10 Q. Do you know Owen Sound Harbor, Captain Montgomery?

A. Yes sir.

Q. And the nature of the bottom?

A. Yes sir.

Q. And how many years have you sailed? Have I already—

HIS LORDSHIP: Yes. Since 1912.

Q. As a Master since 1912? A. Yes.

Q. And do you know the Paisley?

A. I know of her, yes sir. I know the Paisley.

20 Q. What chain in the Owen Sound Harbor, depth of twenty-two feet, vessel going between half a mile and one mile per hour, loaded—?

MR. HOLDEN: The depth?

Q. I am asking you to assume that. How much anchor chain would you have to get out on the Paisley in your opinion to have any effect on her way?

A. From fifteen to twenty fathom.

HIS LORDSHIP: How many feet is that?

MR. TOWERS: Ninety to 120 feet.

HIS LORDSHIP: Before what?

30 MR. TOWERS: Before the anchor would have any effect on the way of the Paisley.

Q. Is that what you understand?

A. Yes sir.

Q. And when would you expect that anchor to bring her to a stop if there was nothing else to stop her?

A. Why, she would possibly go the length of herself.

Q. Have you had experience in shifting vessels to elevators with winter storage?

A. We have shifted them, yes sir.

Q. Under what power?

40 A. Generally with a tug or with car pullers at the elevators.

Q. And when shifting with a tug who does the steering?

A. Why, the tug.

Q. Who keeps the lookout? A. The tug.

Q. And who manages the anchors?

A. We never use them.

MR. TOWERS: You haven't had occasion to use them.

MR. HOLDEN: No questions, my Lord.

MR. JARVIS: No questions.

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No. 44.

Henry Lavers
Examina-
tion-in-Chief.

HENRY LAVERS, Sworn:

EXAMINED By MR. TOWERS:

- Q. How long have you sailed, Captain?
A. Eighteen years.
Q. And you have had Master's papers for how long?
A. Oh, must be about nine years.
Q. What are you in now?
A. I sailed the freighter Taylor last.
Q. That is one of the Algoma Central Line boats? A. Yes sir.
HIS LORDSHIP: Is he on her now? 10
Q. Are you on her now? You were on her?
A. I was on her last season, yes.
Q. Then I suppose your vessels sometimes have winter storage cargoes?
A. Yes.
Q. There are just the four vessels in your fleet, or there were four?
A. Yes.
Q. Three now; the Agawa is gone. I understand that when you are shifting to an elevator you make a practice of going yourself? The master of the vessel goes, does he not?
A. Yes sir, I am ordered there. 20
Q. In this year 1927, a year ago, where was the freighter Taylor laid up? A. Owen Sound.
Q. And can you say if your owners made a contract for the tug Harrison's owners to shift her?
A. I understand they did, yes.
Q. And when was she to be shifted?
MR. HOLDEN: Does he know?
MR. TOWERS: He says he always goes himself.
HIS LORDSHIP: What difference does the date make?
MR. TOWERS: It makes a little difference, my Lord. 30
Q. About when was she to be shifted, do you know?
A. Well I can't just tell you the date now.
Q. I know, but did you have any notice?
A. Yes, we were notified beforehand.
Q. What month? A. January.
Q. And did you start to go there?
A. Yes sir, I went there.
Q. And what if anything had happened before you got there?
A. Well my boat had been moved to the elevator.
Q. By whom? A. By the tug Harrison. 40
Q. Master who? Who was the master of the tug?
A. Captain Waugh.
Q. And was that or was it not contrary to your expectations when you got there?
A. Well I figured she would be at the elevator because I didn't get there till late in the day.
Q. So you thought they would have her over?

A. Yes.

Q. Now then did you or your owners superintend your shift at all to the elevator on that occasion?

A. No.

Q. When a vessel is being shifted in harbor, I am speaking now of a vessel in winter storage and under ice conditions where the conditions are a tug is employed, who supplies the steam or power to shift her?

A. Why the tug.

Q. And what about the steering, a big vessel?

10 A. The tug would do that too.

Q. And what about the lookout?

A. They wouldn't have a lookout.

Q. They wouldn't have a lookout?

A. No. I think the tug—that would be up to the tug.

Q. You are speaking now of winter conditions of vessels, a dumb barge or a vessel without her crew?

A. A dead boat.

CROSS-EXAMINED By MR. HOLDEN:

20 Q. Captain, does the Court understand aright that you intended to take charge of the freighter Taylor on that shift in January just as you had done at other times? You said you went to shift her?

A. I went to Owen Sound to supervise the unloading of the boat—unloading of the freighter Taylor.

By HIS LORDSHIP: Q. And the shift as well?

A. Well to supervise the shifting of her, yes. I would think.

By MR. HOLDEN: Q. As you had done on other occasions?

A. Well that is the only time I had to shift a boat that had winter storage. That is the only occasion I had.

30 Q. Did I understand aright you said your company had the habit of having the master on board when they were shifting? A. Yes.

Q. And how many others?

A. Oh four or five men.

Q. Four or five others in addition to the master. And are the ships you have in mind about the same size as the Paisley?

A. Well the Taylor is a ten hatch boat, about 347 feet long.

Q. And they just told us the Paisley was 380?

A. I am talking of the Taylor.

40 Q. I know, and they just told us the Paisley was 380, so she was a little shorter. When you say the master would go on board to supervise that operation and would have four or five others with him would those four or five others include the ship-keeper or would he be additional to them?

A. Oh he would be one of the five.

Q. He would be one of them?

A. One of the men, yes.

HIS LORDSHIP: Does this close the defence?

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MR. TOWERS: That is the defence, my Lord, subject to Your Lordship's permission to putting in as many photographs as Exhibits that I have that are properly admissible.

HIS LORDSHIP: You had better put them in if you have any.

MR. HOLDEN: Do I understand my learned friend to say that he has some more exhibits?

MR. TOWERS: I am not sure.

MR. HOLDEN: I would prefer to have them all before we go on.

HIS LORDSHIP: You had better put them in now as part of your case if you want to. Are there any more witnesses to call? 10

MR. TOWERS: No, my Lord, no, that is the defence.

HIS LORDSHIP: Mr. Holden and Mr. Jarvis, have you any witnesses to call?

MR. HOLDEN: Yes, my Lord.

MR. JARVIS: I can't say, my Lord. I think none.

MR. HOLDEN: I think I have three. At the most I would think three.

MR. JARVIS: I may possibly have two, my Lord, but I don't know.

11.00 o'clock P.M. adjourned till 2.00 P.M.

20

2.00 P.M. Resumed:

REPLY

OLAF GULBRONSON Sworn,

EXAMINED By MR. HOLDEN:

Q. Captain Gulbranson, have you any connection with the Canada Steamship Lines or any of the parties in this case?

A. No sir.

Q. What is your occupation? A. Master Mariner.

Q. How long have you had a Master's ticket?

A. Seven years. 30

Q. And you have been afloat how long, about?

A. About fifteen years.

Q. With what ship owners are you now associated?

A. Matthews Steamship.

Q. What is your capacity there?

A. At the present time?

Q. Yes? A. I am Acting Shore Captain, Port Colborne Harbor.

Q. And before that what were you?

A. I sailed the Steamer Yorkton in the season of navigation.

Q. You have had experience afloat and ashore? 40

A. Yes.

Q. Captain, will you tell us, please, what experience you have had with regard to shifting vessels with winter cargoes on board, storage cargoes, in harbors in the winter in Canada?

A. I have last winter and the present winter in Port Colborne Harbor—three winters ago I was in Port Colborne; 1921 and 1922, that winter, I was in Midland; 1913 and 1914 in Depot Harbor.

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tion-in-Chief.

Q. And in each of those winters in those places did you have occasion to shift vessels during the winter?

A. Yes sir. In all cases.

Q. More than one each winter?

A. Yes sir. I have been in charge in Port Colborne for the three winters and have had several boats to discharge—shift.

Q. Well then do you know the Paisley?

A. I know the steamer.

10 Q. When she lay at her winter berth on the east or southeast—on that side of the Owen Sound Harbor (indicating)—loaded with 190,000 odd bushels of wheat, how many men did she require on board her during the operation of being towed over to the elevator by the Tug Harrison?

A. I would say not less than eight.

Q. Well you would say this from your experience?

A. From my own experience, not less than eight. It is customary for myself to have ten men on that class of boat.

MR. TOWERS: I would like Your Lordship's ruling if that is not properly evidence in chief.

HIS LORDSHIP: He knows the Paisley.

20 MR. TOWERS: But it is not evidence in chief; this is in reply. That is part of my learned friend's case, that the Paisley was not sufficiently manned.

HIS LORDSHIP: I don't know. You brought out a great deal with regard to the manning, the men and the responsibility of the men.

MR. TOWERS: The responsibility, quite so, yes, my Lord.

HIS LORDSHIP: And I think your Defence has opened this up.

MR. TOWERS: If Your Lordship so rules.

HIS LORDSHIP: I think one of your witnesses stated there should be at least five.

MR. TOWERS: That was in cross-examination, my Lord.

30 HIS LORDSHIP: It doesn't make any difference. He was asked that question. Did you not ask any questions about that?

MR. TOWERS: I think not, my Lord.

MR. HOLDEN: I submit it is proper.

HIS LORDSHIP: You certainly opened it up with regard to what were not your duties.

MR. TOWERS: Duties is one thing, my Lord.

HIS LORDSHIP: I know, but I see no particular objection to giving me the evidence. I suppose Mr. Holden is going to ask him what the ten men were for.

40 MR. HOLDEN: Yes.

HIS LORDSHIP: I think so. That would be perfectly proper in reply. Your objection will be noted and that will take care of it.

Q. What would the ten men be for, Captain?

A. Well I consider it takes that number of men for to handle these lines and handle them efficiently.

By HIS LORDSHIP: Q. What lines?

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A. The lines that you were going to moor that vessel with when you get her to the dock.

By MR. HOLDEN: Q. That is having no steam on your ship?

A. Having no steam on your ship.

Q. It is harder, of course we know, to handle the lines by hand than by steam? A. Considerably.

Q. Now, Captain, let me ask you before I leave that, how many tugs would you have for the Paisley if you had four men on board? How many tugs would you need for the Paisley to shift her?

A. I wouldn't consider moving the Paisley at all without two tugs. 10

MR. TOWERS: Well then, my Lord, we are starting the whole case over again because this is the first evidence—

MR. HOLDEN: I still submit that would help. I am not going to labor the point, because my submission is that my learned friend's evidence in Defence is that we don't need to do anything, we got a tug and we therefore could ignore every responsibility of the tow. Now I am saying that there were things that they could not ignore. They did, it is true; they said they did, but they should not have and this is rebuttal to their contention in defence, is my submission.

MR. TOWERS: Paragraph 8, my Lord, of the plaintiff's Statement of Claim alleges that the defendants steamship failed to secure for shifting operations a tug or tugs sufficient for that purpose. Now he didn't put in any evidence in chief on that. It may have come out in the cross-examination on the examination in chief that the tug was sufficient, considered sufficient; then in defence we show that the Harrison was sufficient. Now he purposes to show that we should have had two tugs. Surely that is evidence in chief, my Lord; we have no opportunity to reply to that. 20

HIS LORDSHIP: You are raising the question that the tug was an independent contractor and freed the tow altogether.

MR. TOWERS: Quite so, my Lord. 30

HIS LORDSHIP: And doesn't that open up the question as to what these men were doing on the Paisley and what they had to do?

MR. TOWERS: The question my learned friend sets up is we should have had two tugs.

HIS LORDSHIP: Yes.

MR. TOWERS: Well I don't see how that opens up the question.

HIS LORDSHIP: Why not? You gave evidence to that effect, that the tug was efficient and sufficient; he had a right to reply to that.

MR. TOWERS: But he had the right to say in the first place that it was not sufficient. 40

HIS LORDSHIP: He did, and you undertook to show it was sufficient. In fact owing to your defence it was necessary for you to prove it was an efficient tug.

MR. TOWERS: Quite so, my Lord.

HIS LORDSHIP: You see your vessel ran into the Saskatchewan.

MR. TOWERS: Oh that is quite true, my Lord.

HIS LORDSHIP: And you defend on the ground that the tug was an independent contractor and, secondly, being such it was quite sufficient and efficient for the task. I think he has a right to point out that it was not. You will have the benefit of your objection, Mr. Towers.

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Q. Now, Captain, having your tugs and your men on board what should you do with regard to having somebody at the new berth to take your lines?

A. Well I would have at least had two men there.

Q. Would you do anything before you cast off from the old berth to make sure that they would be there?

10 A. I would arrange to have men ready for to take those lines at the new berth.

Q. When would you make that arrangement?

A. I would make those arrangements before I cast off at all.

Q. Now having done that would you have any conversation or communications with the tug captain or the tug captains before you cast off?

A. Well I would talk it over with the captain or captains of the tug people telling them what I wanted done.

Q. Is that necessary before casting off?

A. Well I consider it absolutely necessary.

20 If you are going to do one thing and the tug captain is going to do something else I don't know where you are going to be at.

Q. Now having done all that and having cast off, the tug drawing you towards your new berth— Let me ask you, are you familiar with the elevator built on the elevator dock at Owen Sound?

A. I am not acquainted in Owen Sound outside of charts of Owen Sound Harbor. I am not acquainted in the harbor.

Q. Well the reason I asked you, there is an elevator built near the edge of the elevator dock?

A. Yes.

30 Q. And if you intended to get the leg of the elevator into your No. 2 hold, the leg being about the middle of the building, how far would your stem be short of that building when you should get your first line ashore?

MR. TOWERS: At the risk of delaying the matter I protest, my Lord, that this is not in reply to what we brought out in our defence.

HIS LORDSHIP: I want to see the pregnancy of your objection. Would you just state it again?

40 MR. TOWERS: This evidence should be confined to reply evidence, under all recognized rules of evidence, for the reason that if the plaintiff in reply is allowed to make a new case where the defendant has no chance to answer it then the defendant is placed at a very serious disadvantage.

HIS LORDSHIP: I understand the rule of evidence. What is your objection to this particular question?

MR. TOWERS: The question is, my Lord, as I understand it, at what point coming to that dock should the men on the Paisley have arranged to get their lines out?

HIS LORDSHIP: No, the question was if he wanted to get the leg over the particular hold how far have you to bring your vessel past the elevator?

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MR. HOLDEN: Short of it, my Lord, before reaching it.

HIS LORDSHIP: Yes. Why should you object? Now that has been gone into by both sides, Mr. Towers.

MR. TOWERS: Yes. If that is the question it is leading up to a question—

MR. HOLDEN: No, that is all there is to it.

Q. Do you understand the question, Captain?

A. I think I do.

Q. Will you answer it, please?

A. I would say that the bow of the boat should be brought to the dock 10 at about the position her stern would be at when she was landed or moored for the leg to be in that hold.

Q. That is where the first line should be got ashore?

A. Yes sir.

MR. TOWERS: Well now, surely.

MR. HOLDEN: All right, I am sorry. I thought it was perfectly clear.

MR. TOWERS: I knew perfectly well you were leading up to that.

HIS LORDSHIP: I think I would disallow that question, Mr. Holden.

MR. HOLDEN: No, I went too far. I didn't realize it. I am sorry.

Q. Captain, will you look at this photograph, Exhibit S-5. That shows 20 the Paisley at the elevator in question. Do I understand you aright then that the point where her stern lies in that picture would be the point where her bow should be at the dock in order for her to get her first line ashore?

A. Yes sir, that is what I mean exactly.

MR. TOWERS: Well I understand His Lordship disallowed that question.

MR. HOLDEN: No no, I thought it was my leading question that followed it.

MR. TOWERS: The question of where he should have got his first line ashore was disallowed, I thought. 30

Q. Now, Captain, if you were supervising it on board the Paisley and you thought the tug hadn't brought you close enough to the dock as you came along approaching the elevator what would you do? What should you do?

A. I would try—

MR. TOWERS: Is that not for the Court? I submit that that question is not proper for him "What should you do?"

MR. HOLDEN: It is all aimed at this: My learned friend said there were no duties on the Paisley at all, she is absolutely free from responsibility or duty or obligation or performance or anything and I am trying to show how far wrong they are in that all these things should have been done on board the 40 Paisley, by expert evidence.

HIS LORDSHIP: You put it as a fact, what was the duty, this man being in charge on board; he is a skilled mariner, apparently.

MR. HOLDEN: May I change it this way: Q. The Paisley is being towed toward the elevator. If whoever is on board the Paisley thinks the tug hasn't brought him near enough what should that person on the Paisley do?

A. Well I would get—

MR. TOWERS: That is deciding the whole question of control. I submit that is an objectionable question.

Q. What should that person do?

A. Well I would try and get in communication with the master of the tug, instruct him what to do.

Q. How would you get in communication?

A. Well generally a man can talk for thirty feet—forty feet.

Q. Well whatever the distance is that is what you would do?

A. Yes sir.

10 Q. If instead of being in his opinion not close enough, if in his opinion the tug was towing him too fast should he do anything about it?

A. I would communicate with him and get him to slow down.

By HIS LORDSHIP: Q. Isn't that all based on the fact that you are a skilled navigator in charge of the Paisley? Here is a man who is a ship keeper with two or three men that were hired. Are you raising these things as the duty of those men, however unskilled they might be in navigation?

A. I don't get your question, Your Honour.

20 Q. I say are you relating these duties that you would do as if they pertained to men on board the boat who are not skilled navigators, simply a ship keeper and his employees?

A. I am putting those things as in my opinion they should be done.

Q. And that is of course on your experience as a navigator?

A. Yes.

By MR. HOLDEN: Q. Perhaps I should have put the question—what I meant really, my Lord, and witness, is this: The owners of a tow, the Paisley for instance, what should their representative on the Paisley do in these various circumstances? Is that what your answers applied to? A. Yes, that is what I am coming at.

Q. Well now, Captain, if when the—?

30 MR. TOWERS: That answer is objected to, my Lord.

HIS LORDSHIP: That last one?

MR. TOWERS: Yes, my Lord.

HIS LORDSHIP: I don't think myself it helps us very much one way or the other because it is based on an assumption which may not exist in the case of these men on the Paisley.

MR. HOLDEN: All I meant was that they were not suitable. There should have been suitable people there.

HIS LORDSHIP: Quite so, and if they had been these are things they should have done.

40 MR. HOLDEN: Yes.

Q. Now, Captain, if the Paisley misses her berth and is driven or being towed by it and the tug tries to check her and the towing line breaks so that the Paisley is continuing on and is some way on towards the Saskatchewan or any vessel moored ahead of her, what should those on the Paisley do?

A. Should let go an anchor at once.

Q. Say they were a hundred or 150 or 200 or 250 feet from the Saskatchewan, does that make any difference?

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A. If they were twenty-five feet, in my case I would let go an anchor.

Q. Why? A. If it didn't stop the boat it would have a tendency to slow her up and do less damage.

Q. When the Paisley left her winter berth and started for the elevator, or any vessel in those circumstances, where should her anchors be? I should add that there are other ships at various berths in the same harbor.

MR. TOWERS: I should really like to have Your Lordship definitely rule on this line of examination.

HIS LORDSHIP: What is that question again?

MR. HOLDEN: Where should her anchors be? I don't know, perhaps 10 I should not attempt to ask that; perhaps that is not in rebuttal. I think I will withdraw that question.

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CROSS-EXAMINED By MR. TOWERS:

Q. I did not catch your full name, Captain? A. Gulbranson.

Q. Are you familiar with the type of anchor, Exhibit P-9?

A. Yes sir.

Q. Described as a patent stock anchor?

A. Yes sir.

Q. About what weight would an anchor be that the Paisley would carry? 20 What would you expect a ship of that class?

A. On boats of that class I would think around 3600 pounds, in that neighborhood.

Q. And about the weights, I think the weight of the ship and cargo is in evidence, somewhere around 5500 tons of cargo and about 3000 tons of ship; that would be about 8500 tons, and this would be about one and three-quarter tons, we would expect? A. Approximately.

Q. Well now assuming that that vessel has way on her of half a mile an hour, one and three-quarter tons of weight will not retard the movement even at a very slow speed of 8500 tons unless the one and three-quarter tons catches 30 on something to hold, will it?

A. No sir.

Q. Now then you say that twenty-five feet you would drop an anchor. The anchor I presume would go straight down as it is dropped? A. Yes.

Q. If your vessel is going even a mile an hour would it not? It would go perpendicularly down?

A. Yes.

Q. Will you take Exhibit P-9 and show me just in what position then it would drop and reach the floor of the harbor, the bed of the harbor? Which 40 way would these flukes be pointing?

A. Well if the anchor went straight down they would be pointing east, away from toward the boat, that way. (Indicating).

Q. Just wait. Are you assuming that your ship is pointing, saying that it goes west?

A. Yes, going that way. (Indicating.)

Q. The anchor then drops to the bed of the river and the crown touches the bed, is that right?

A. Yes sir.

Q. Now from the time you want to stop your way and as you are heading west which way should your flukes point?

HIS LORDSHIP: Everybody knows how they should point.

A. They should naturally point that way when you let them go. (Indicating.)

Q. What depth of water are you assuming in Owen Sound Harbor when you speak of the Paisley dropping her anchor?

A. Around twenty feet or so.

10 Q. Well twenty-two. Now at what angle after the anchor strikes perpendicularly are those flukes pointing forward, about.

A. Those are around 45 degrees, possibly not that much.

HIS LORDSHIP: Couldn't you get him to say that that would drop with the flukes pointing forward? He said the other way.

MR. TOWERS: Aft, my Lord?

Q. How do your flukes point when your anchor drops? Which way are your flukes pointing? A. That way.

Q. Which way? A. The way they are now.

By HIS LORDSHIP: Q. Is that forward or aft?

20 A. That is forward.

Q. Do they always fall forward?

A. Well when they leave the hawsepipe they do as a general thing.

By MR. TOWERS: Q. Then your flukes point forward?

A. Yes sir.

Q. And at about an angle of 45 degrees?

A. Yes.

Q. Then will you tell me what angle your chain must be at, your anchor chain, to the line of the drop before the flukes touch the bed of the river?

A. It would possibly be at an angle of 45 degrees.

30 Q. Isn't it more than 45? They are touching now, aren't they (illustrating)? A. Yes.

Q. Wouldn't you say that was more than 45, the first touch?

A. I would, with that anchor.

Q. Is this anchor not a correct model? Do you mean to say that doesn't properly show?

A. No, I am not saying that.

MR. HOLDEN: But I am, may it please the Court.

40 MR. TOWERS: We heard here a minute ago that these flukes when it dropped were 45 degrees of an angle, when it dropped, the crown of the anchor.

MR. HOLDEN: My learned friend should point out to the witness one witness pointed out the tripper on each side was more pointed than this and that would make a possible difference in catching.

Q. I will tell you then the Paisley's anchor was—?

HIS LORDSHIP: Just let him see the photographs showing that, S-3 and S-5.

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Q. Now looking at S-5, and you may take the starboard anchor—or better still take S-4 and see the port anchor. Now will you tell me how the anchor of the Paisley did this, from Exhibit P-9, with regard to the angle at which its stock and chain must be before your flukes engage the ground?

A. Of course I can't tell you from a photograph, sir.

Q. You couldn't do that? A. No sir.

MR. HOLDEN: My learned friend should also mention the nature of the ground, because it makes a great difference whether it is soft mud.

HIS LORDSHIP: This witness is testifying. He ought to know the conditions. 10

MR. HOLDEN: My learned friend didn't say in that ground, I didn't think.

HIS LORDSHIP: I presume he is testing him with regard to Owen Sound Harbor.

Q. Well then are you prepared to say that P-9 does not correctly show as you operate it and bring your flukes to the level on which the crown of your anchor is, are you prepared to say that that P-9 does not correctly indicate the line of your anchor chain, the angle of your anchor chain to the ground when the flukes first touch the bottom of the harbor?

A. I don't understand your question. 20

Q. You have told us that when you drop the anchor the flukes are pointing forward? A. Yes sir.

Q. And that the anchor drops practically perpendicularly going at that speed? A. Yes sir.

Q. Then as the vessel goes forward the flukes come down to the bed of the river, don't they?

A. Yes sir.

Q. Not entering it but come to it; they must come to it before then enter the ground, must they not?

A. Yes sir. 30

Q. When they arrive at this point where the flukes touch the bottom your anchor stock and chain are at a certain angle to the bottom, are they not?

A. Yes sir.

Q. Will you say if P-9 approximately correctly shows what that angle would be as I show it to you, the stock and chain? You say it does; is that approximately the way it should be? A. Yes, approximately.

Q. Then will you tell me about what that angle is as nearly as you can judge?

A. About thirty degrees. The way it is there now.

Q. Now if you have twenty-two feet of water and a line running from 40 any point up to the top of that water at an angle of thirty degrees about how much chain would that be? If it comes straight up it is twenty-two feet?

A. It would be about thirty-five feet I suppose, somewhere close to there.

Q. That is to the top of the water. Then you would have another angle, thirty degree angle, up the side of your ship to the hawsepipe, would you not?

A. The hawsepipe on that class of a ship is I believe pretty close to the water. When the boat is loaded the bottom part of the hawsepipe sometimes is under.

Q. Then does it make any difference what the character of the bottom is how soon your anchor will have any influence on the way of your vessel?

A. Oh it makes a big difference.

Q. Well now which is best?

A. For holding?

Q. Yes? A. Clay.

Q. Well do you know Owen Sound Harbor? Do you know the bottom, the nature of the bottom?

A. The nature of the bottom is soft mud, I understand.

10 Q. Well then that wouldn't be good holding ground?

A. Not good holding ground, no.

Q. Well then say you have forty feet of chain out?

A. Yes.

Q. And your flukes are just touching the bottom, is that right? Your flukes just touching the bottom, is that right?

HIS LORDSHIP: What is the question?

A. When that anchor—

Q. Let me ask the question; you answer. Say you have forty feet of chain out—would you have forty feet out?

20 A. I wouldn't think that much.

Q. Well it looks to me as if you would have more?

HIS LORDSHIP: Does it make any difference whether it is forty or fifty?

Q. Forty or fifty feet, you say the soft bottom is not good holding?

A. It is not the best, no.

Q. If it is not good you said it makes a great difference?

A. It would make a great difference if it is not good.

Q. And it wouldn't have any influence on the way of the vessel in soft bottom as compared to hard bottom?

30 A. No, not in comparison.

Q. Well then with a hard bottom in order to get your flukes to touch you must have forty or fifty feet of chain? A. Yes sir.

Q. Maybe more? Wouldn't you think you would have to have more?

A. You are assuming twenty-five feet from the object.

Q. No, never mind where you are? A. Oh.

Q. Well in twenty-five feet clearly it could have no effect? A. No.

Q. Nor in fifty, on a hard bottom. Now in fifty feet would it have any effect?

40 HIS LORDSHIP: This is all preliminary to some question you are going to ask of him, I presume.

MR. TOWERS: The improvement, my Lord, if at fifty feet.

HIS LORDSHIP: I know, you are asking him.

MR. TOWERS: On a hard bottom—

HIS LORDSHIP: No matter what kind of bottom. He has given the angle of the chain and the flukes and the length of the anchor chain; this is all leading up to something that is important, I suppose.

MR. TOWERS: Yes.

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Q. At fifty feet with fifty feet of chain out and a hard bottom what if any influence would your anchor have—it is fifty feet now—on the way of your ship in twenty-two feet of water?

A. Well it would have a tendency to slow the ship once there was a strain on the chain no matter what the distance is or what bottom.

Q. But you wouldn't expect in a hard bottom to get a strain on within fifty feet of chain, would you—twenty-two feet? Isn't it the rule you must have five times the depth of your water? Did you ever hear that rule? A. Yes I have heard that rule.

HIS LORDSHIP: What is that? 10

Q. You must have, before you get a strain on your anchor, with a patent stock anchor such as this, you should have a length of chain equal to five times your depth of water, that is the rule, isn't it?

A. That is what they claim. I wouldn't say—

Q. Yes?

MR. HOLDEN: Let him answer.

MR. TOWERS: Please let me—excuse me—

MR. HOLDEN: May it please the Court, my learned friend shouldn't interrupt the witness in the middle of his answer.

HIS LORDSHIP: It is very hard for me to get a connected answer when 20 that is done.

Q. You wouldn't say? A. No.

MR. HOLDEN: He was saying something.

Q. Do you wish to finish that answer?

A. No.

Q. That is what "they" claim. Who claims?

A. I have heard that claimed amongst steamboat men.

Q. Did you dispute it?

A. Yes, I would dispute it.

Q. Did you dispute it to the steamboat men when you heard it? A. No. 30 I dispute it here though.

Q. I am asking though if you heard it among steamboat men?

A. Yes.

Q. What steamboat men?

A. Oh different men in my experience. I couldn't mention them off-hand. They often talk about things.

Q. Could you mention one of them?

A. No, I couldn't.

Q. Were you ever told about it by an instructor?

A. No, I was not. 40

Q. And you have heard it mentioned by steamboat men but you don't know who? A. No.

Q. And you don't know whether they were as good men or better informed men or worse men than you?

A. I couldn't say.

Q. And will you dispute it now? A. Yes sir.

Q. And on what ground do you dispute it?

A. From practical experience.

Q. And what length of chain do you say? Not five times, how many times do you say?

A. I have seen us use chain—

Q. I didn't ask you that?

A. It is pretty hard for me as a steamboat man to answer questions the way you put them.

HIS LORDSHIP: That is the real answer, of course. The lawyer puts the question but you have got to remember that you are a professional man
10 as well as he is and you should realize what he means and try to answer it properly and correctly.

WITNESS: That is what I am trying to do.

Q. You have told me, Captain, that you have heard different steamboat men claim—men who were Master Marines, I suppose?

A. Most likely. I would associate with those mostly.

Q. That in order to get a strain on any—?

HIS LORDSHIP: He said, I dispute it from practical experience and your next question was, What was that experience? That is what he wanted to get.

20 A. Is that your question?

Q. How many times the depth of water do you say, if you dispute the five rule? Do you say four?

A. My experience is that when the anchor is on the bottom that it has a tendency to slow your ship.

HIS LORDSHIP: That is not the question at all.

A. (Cont'd): I can't understand your question.

By HIS LORDSHIP: Q. Oh yes you can; you told him you disputed it; if other people claimed that it would take five times the depth of water for the chain?

30 MR. TOWERS: And you dispute that.

Q. You disputed it from experience. You are asked what your experience was and how many times the depth of water you would say?

By MR. TOWERS: Q. Have you any particular experience in mind?

MR. HOLDEN: Let him answer.

Q. Let me see if we can get an answer for that: Have you any particular experience in mind?

A. In the use of an anchor, you mean?

Q. Any particular occasion when you used an anchor and slowed your vessel with less than five times the depth of water of chain in it?

40 A. I have slowed the vessel with twice the length of chain.

Q. Twice the length of chain?

A. Yes sir.

Q. On what kind of bottom?

A. On a drilled bottom of crushed rock and stuff.

Q. Twice the length. Your flukes wouldn't be touching a level bottom, would they?

A. No.

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Q. And on a soft bottom then, a mud bottom, level, how many lengths would you say?

A. The same.

Q. Two? A. Yes sir.

Q. You mean then that the weight of one and three-quarter tons would slow 8,500 tons with the flukes not engaging at all?

A. I mean, you understand—

Q. Now wait—?

MR. HOLDEN: If you would let him say what he wants.

Q. All right, go ahead? 10

A. I mean that any friction has a tendency to slow the vessel. Any friction.

Q. I want to know if you want this Court to understand that with double the length of chain out that the depth of your water is, that is forty-four feet length of chain out, when your flukes cannot engage—that is true, isn't it? A. Yes.

Q. On a mud bottom, an anchor of one and three-quarter tons will appreciably slow a vessel of 8500 tons, is that what you want us to believe?

A. Yes sir, that is what I want you to believe.

Q. All right. Well I am inclined to believe you, You couldn't give us 20 any experience of that in a mud bottom, could you, with a loaded vessel?

A. Not with a fully loaded vessel.

Q. Do you mean then that this is not intended to apply to a fully loaded vessel, your last statement?

A. You mean that it would not appreciably slow up a loaded vessel?

Q. Yes? A. I certainly mean it would slow it up.

Q. And in what distance of time with just that length of chain out would it stop it? What distance?

A. It all depends on your bottom and your holding.

Q. And mud bottom, poor holding? 30

A. Depends on the speed of your vessel.

Q. One mile an hour, fully loaded, 8500 tons, bad holding, mud bottom, now how soon would it stop the vessel, nothing else to stop it?

A. I wouldn't answer that question.

Q. Well give us an idea? You dispute the word of all the ancients in the profession?

HIS LORDSHIP: Give him a chance to answer now.

Q. All right, how soon do you think it would completely stop it?

A. Possibly a couple of hundred feet.

Q. 200 feet? A. About that. 40

Q. Did you ever have experience of that? A. No.

Q. So that is just guessing, isn't it?

A. What is that?

Q. Just guessing, in a mile an hour?

A. Yes. I have nothing else to go by, sir.

Q. That is going a hundred feet a minute roughly. So that the friction of a one and three-quarter ton anchor not holding on anything would stop 8500 tons in two minutes, would it? A. It is holding on something.

Q. Well it isn't, because the flukes are not down in the bed, don't you see that? The flukes are not catching?

A. When an anchor drops in the mud don't it hold something with the flukes?

Q. I am asking, the flukes are not holding?

A. All right then.

Q. Just the friction? A. The friction.

Q. And you think in 200 feet that one and three-quarter tons would stop 8500? A. I think so.

10 Q. Where is your boat laid up this year?

A. Port Colborne Harbor.

Q. Is that a big harbor? A. Yes sir.

Q. And do you know the Tug Harrison?

A. I have seen her.

Q. 120 feet long. What horsepower would you think she would have?

A. I haven't any idea.

Q. What tugs do you have at Port Colborne, the Manley and Hector?

A. We have the Manley and Hector. The Manley is the tug we generally

use.

20 Q. Are they big tugs?

A. The Manley is a very good sized tug.

Q. And the Boone Construction Company own her, don't they?

A. Yes sir.

Q. About how long would she be?

A. Oh I couldn't say. 150 feet possibly.

HIS LORDSHIP: What is this directed to, Mr. Towers?

MR. TOWERS: If Your Lordship would just permit me:

Q. 50 feet? A. I said possibly 150 feet. She is a long tug.

Q. Well perhaps she is about the same class of tug as the Harrison?

30 A. I don't think she is quite as big a tug as the Harrison.

Q. And you usually use her? A. Yes sir.

Q. And does she do her work well? A. Yes sir.

Q. Well with what kind of vessels, light or loaded?

A. Both. We unload vessels there in the winter time all winter.

Q. Do you? A. Yes sir.

Q. And the Manley brings them over and takes them away?

A. Fetches them to the elevator and takes them back.

Q. And how many vessels are there in your fleet over there this year?

A. We have about ten over there I guess.

40 Q. Have you unloaded most of them?

A. We have unloaded two.

Q. The Manley did the shifting?

A. Yes sir.

Q. Were you there when she did it?

A. Yes sir.

Q. Any other tug to help her?

A. Not the first boat we shifted.

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Q. Then what do you mean by coming and telling this Court you wouldn't undertake to shift a vessel under any circumstances without two tugs?

A. Excuse me, I did not say that.

Q. I so understood you?

A. I said with four men on board I would not shift with one tug.

Q. You mean with four men on board you wouldn't shift with one tug?

A. Yes sir.

Q. How many vessels has the Manley shifted over there alone this year?

A. This year?

Q. Yes, not yours but all craft?

A. All the boats that are in Port Colborne Harbor this winter.

Q. Moved with the Manley? A. Yes sir. That has been moved.

Q. And the Manley has done them all?

A. Yes sir.

Q. And you say you have had more men on board?

A. Yes sir.

Q. Well then how many did you have? Five?

A. Well I have from ten to twenty men. Never less than ten.

Q. All right. What difference would it make if you had two tugs as to 20 the number of men?

A. Two tugs can moor your boat alongside the dock and you don't have to check her in with lines. The tugs put your boat along side of the dock and hold her there till you can make her fast.

Q. And that is what the Harrison did with the other boats up at Owen Sound, so they say?

A. I don't know. I don't see how one tug could do it with a boat of that class.

Q. Well the Harrison did it with the Presqu'ile, a larger boat?

A. Well I can't argue that.

Q. Then you say you are not familiar with Owen Sound Harbor?

A. No sir.

Q. Well we will look at a picture of it. What two boats have you shifted at Port Colborne?

A. The Steamer Barrington and Steamer Riverton.

Q. What is the capacity of the Barrington?

A. The Barrington is about an 8000 ton steamer.

HIS LORDSHIP: What does that mean?

MR. TOWERS: He is speaking of that handling.

Q. That is a much larger boat than the Paisley?

A. Oh yes.

Q. Double the size? A. I think around 460 feet. The Paisley I understand is, or I believe is about 365 or 370, or somewheres in there.

Q. And I suppose the smaller the boat the easier she is for the tug to handle? A. Naturally.

Q. Now will you look at Exhibit S-1? Do you see the elevator?

A. Yes sir.

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Q. And you see it marked here roughly where the Paisley was lying?

A. Yes.

Q. She is a boat the class of which you know. Now the evidence is that the Harrison towed her up until her stern came up around the range lights here, towed her stern first, you see?

A. Yes.

Q. And then she was brought dead in the water, you see?

A. Yes.

Q. And the evidence of Captain Waugh is that she was about 250 feet
10 away from the elevator at that time when she was still? A. Yes.

Q. Now the tug went to her bow. Will you say what would prevent the tug taking the nose of that vessel into the elevator? She is still in the water and it is a calm day? A. I can't see anything.

Q. You can't see anything? A. No.

Q. Just a question of how carefully and quietly you towed her in, isn't it?

A. Yes sir.

Q. So that there should not have been any trouble with a good tow line to put the Paisley up to the elevator dock?

A. It shouldn't be.

20 MR. HOLDEN: My learned friend should also point out that Waugh did say that they did tow her within thirty feet of the dock. That is the evidence, of which he knows a part of it.

MR. TOWERS: My learned friend can bring that out.

Q. You spoke about the men on the dock to take lines. If there were four elevator men there or three, that would be enough, wouldn't it, a vessel the Paisley's size?

A. Yes.

Q. And do those eight or ten men you have mentioned handle the lines ashore as well as inboard?

30 A. They handle the lines on the ship.

Q. How many lines do you have?

A. Well you need four lines for to hold a ship.

Q. Then you bring them into the dock, the nose about where their stern should be, where the stern finally would be?

A. Yes sir.

Q. Then you allow about the length of the ship?

A. About the length of the ship.

Q. And then just tow the nose of her quietly along the dock?

A. Along the dock and the stern fetches in.

40 Q. And the tug does that? A. Yes.

Q. And one tug can do it just as well as two unless there is some special circumstance, Captain, towing ahead quietly?

A. Well he can't do it as good as two.

Q. You mean the other tug would go and push the stern in perhaps?

A. Yes, and he would stop the vessel.

Q. You can stop a vessel if you don't put too much way on it, can't you. A. Yes.

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Case—reply.
No. 45.

Olaf
Gulbranson.
Cross-
Examination

(continued).

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(continued).

Q. That is why you can't stop a vessel, it has got too much way on it, isn't that it?

A. Well I should think so.

Q. And if the tug is the only power then it is the tug that has put too much way on her, isn't it? Doesn't that follow?

HIS LORDSHIP: Well that is obvious enough.

Q. You spoke also of those on board the Paisley giving instructions to the tug. Now that is assuming that the tug is hired by you. Do you hire the tugs for instance?

A. I am in charge of them. 10

Q. In charge of the tugs?

A. I am in charge of the man that is in charge of the tug.

Q. You don't belong to that line, you hire this tug, do you?

A. I hire the tug.

Q. Is it your own man you put on the tug?

A. No sir.

Q. But the tug captain has got to take his orders from you?

A. That is what I am coming at, the tug captain takes his orders from me.

Q. And of course then you must be a Master Mariner to give orders to another Master Mariner, musn't you? 20

A. I wouldn't say that.

HIS LORDSHIP: It wouldn't make much difference unless there is some sort of etiquette about it. He has hired a vessel and they would have to take this man's orders.

Q. That is the way you do it, you are in charge and you hire the tugs and tell them what to do and if they don't do it you hire some other tug?

A. Well you can't get any others.

HIS LORDSHIP: Any questions, Mr. Holden?

MR. HOLDEN: No, my Lord.

ALEXANDER J. MACPHERSON Sworn, 30

EXAMINED BY MR. HOLDEN:

Q. Captain Macpherson, are you a Master Mariner?

A. Yes sir.

Q. How long have you held a Master's ticket?

A. Eighteen years.

Q. That is a United States certificate?

A. Yes.

Q. For what waters? A. Buffalo, Gary and Duluth, Lake Michigan, Lake Erie, Lake Huron, Lake Superior, Lake St. Clair.

Q. And how long have you been afloat? 40

A. I beg your pardon?

Q. How long have you been on the water altogether?

A. About thirty years.

Q. Have you any connection with any of the parties in this suit or any interest in it? A. No sir.

Q. What experience have you had with regard to shifting boats in their winter quarters from one berth to another?

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Alex.
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Examina-
tion-in-Chief.

A. I have charge of all the boats of the Great Lakes Transit Corporation.

Q. And what is your fleet?

A. Great Lakes Transit Corporation.

Q. I mean how many boats in the fleet?

A. Twenty-four.

Q. I interrupted you. You were going to say what other experience that you had?

A. That has been all my experience.

Q. How long have you had charge?

10 A. Ten years.

HIS LORDSHIP: Ten years what?

Q. In charge of this fleet of the Great Lakes Transit Corporation, is that right?

A. Yes sir.

Q. Is it you that does all the winter shifting?

A. Yes sir.

Q. What harbors principally?

A. Buffalo, Erie and Chicago.

Q. Have you personally been on board when they were shifted, some-
20 times?

A. Yes sir.

Q. Do you shift under their own steam or with tugs?

A. With tugs.

Q. Without their own steam?

A. Without any power in the winter time.

Q. Do you know the Paisley? A. I have seen the ship, yes sir.

Q. She is somewhere around 380 feet long and she had 190,000 bushels of grain on board. How many men should be on the Paisley when a tug undertakes to tow her from one berth to another across the harbor?

30 MR. TOWERS: May my objection be noted again, Your Lordship?

Q. Will you answer how many men should be on board?

A. Eight.

Q. And what would they be there for?

A. For handling cables, lines, hatches and anything.

Q. If there were occasion to drop the anchor would that be part of their duty? A. Yes sir.

Q. If you only had four men on the Paisley when she was being shifted how many tugs would you need?

A. Well if I only had four men?

40 Q. Four men on the Paisley, a loaded vessel, and she is going to be shifted, how many tugs would you need to shift her? A. Two tugs.

Q. How many do you use in your operations?

A. Two and sometimes three.

Q. Do you ever use one? A. No sir.

Q. Have you boats of about 380 feet long?

A. Yes sir.

Q. And any shorter than that?

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tion-in-Chief.

(continued).

A. Yes sir, we have them shorter.

HIS LORDSHIP: How short?

Q. What is your shortest?

A. I think about 360 over all.

Q. Now having your tugs and your men on board the vessel to be towed would anybody on her behalf arrange for men at the new berth to take her lines?

A. I would arrange for one to take lines or send two of my own men to take lines.

Q. Well you would do that duty before the shift was made. Before 10 the shift, before you cast off would you have any communications—would the people in charge supervising your vessel to be moved have any communications with tug captain or captains?

A. Oh yes. We always tell the tug men where to spout the boat.

HIS LORDSHIP: Perhaps he also is in charge and hires tugs and puts the tug men over the men on the boat. You had better find that out.

Q. What arrangement is it that your tugs work for you under? In general terms what is the arrangement between the tug owners and your company?

A. Well we engage the tugs to tow the ship and find out from the elevator 20 which part of the ship they want to work first.

Q. And in engaging the tug to tow the ship who navigates the tugs? Who looks after the manoeuvring of the tugs? A. The captain of each tug.

Q. Are those tug captains, when you have your tugs to tow your ship are those tug captains under the orders of the people on board the ship?

A. Yes, we tell them where to take the ship.

Q. I mean apart from that as to their navigation and manoeuvring?

A. They do their own manoeuvring.

By HIS LORDSHIP: Q. Are they under the orders of anybody on board the tow as to what they shall do during the movement? 30

A. Not unless you would see that they were doing something wrong and call their attention to it.

Q. I know, but I wanted to have that cleared up: Are they under the orders of the men on board the tow and they tell them what to do and they are bound to obey it?

MR. HOLDEN: That is, my Lord, apart from locating their new berth.

Q. In the movement between the two?

A. That is under their own jurisdiction.

Q. Then supposing you thought the men on board, that they were doing wrong and called out to them, is that an order that they are bound to obey 40 no matter what they think about it? A. No sir, not with two tugs.

HIS LORDSHIP: You don't use one tug so I suppose there is no use asking you what would be the course with one.

By MR. HOLDEN: Q. If your man on board your ship, you if you were there or your man if you weren't there, although the tugs are not under his orders, if he saw that they were not bringing him in close enough or that they were going too fast or anything else that they could remedy, should he keep silent about it?

A. Call their attention to it.

Q. How?

HIS LORDSHIP: I don't think that helps us a bit, Mr. Holden.

MR. HOLDEN: Except that Penrice said he thought they were too far out and that they were going too fast and admitted that he said nothing.

HIS LORDSHIP: That may be so.

MR. HOLDEN: That is what I meant.

Q. Now, Captain, if during or near the end of the shift your vessel is going along past your berth and the tug in trying to check her way with the towing line and your vessel is pointing for another vessel lying ahead of her at her berth two or three hundred feet off, what should be done on your vessel?

A. I would drop an anchor, in the event of it doing some damage, serious damage.

Q. You are pointing right for another ship?

A. Yes.

MR. HOLDEN: Thank you.

CROSS-EXAMINED By MR. TOWERS:

Q. Captain, if you were drawing, if your vessel was drawing eighteen 20 feet six and the bottom was twenty feet would you drop an anchor?

A. Yes sir. If I was going into another ship.

Q. Whether there was any danger of running over your own anchor or not? A. Yes.

Q. And have you experience with these anchors? Have you heard the rule that at five times the depth of water the anchor engages with the bottom?

A. No sir, I have never heard it.

Q. What is the harbor of Erie like? Is it far from Buffalo? A. Yes sir.

Q. It is in Pennsylvania? A. Yes sir.

Q. Is it a large harbor? A. Yes sir.

30 Q. Many of their boats lay up there?

A. We have five there this winter.

Q. What company does the tugging around there?

A. The Great Lakes Towing Company.

Q. Is the Buffalo one of their tugs?

A. She is not there this winter—she was. .

Q. She was there this winter?

A. No, she was there.

Q. What tugs have they this winter?

40 A. I think the New York and— The New York and something, I don't recall the other one.

Q. Did your boats lay up there when the Buffalo was there?

A. Yes sir.

Q. Last winter for instance? Not this present winter but a year ago?

A. Yes sir, we had boats there a year ago.

Q. Was the Buffalo there? A. I didn't see her.

Q. Two years ago was the Buffalo there?

A. I didn't see her two years ago.

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(continued).

- Q. When did you ever see her there?
 A. Why it seems to me it is four years since the Buffalo was there in the winter.
 Q. And what other tugs did they have with her that time?
 A. Not any that I know of.
 Q. Well now, Captain, four years ago at the Port of Erie the Tug Buffalo was the only tug in harbor in the winter?
 A. As near as I can remember.
 Q. How many vessels did you have?
 A. I couldn't say. Three I would say then. 10
 Q. And the tug, one tug, the Buffalo, shifted them?
 A. I didn't shift any.
 Q. Didn't the tug shift any vessels in harbor that winter?
 A. She probably did, but not ours.
 Q. So four years ago the Tug Buffalo in the Harbor of Erie of which you speak now shifted a number of vessels under the elevator?
 A. I don't know that.
 Q. What was her purpose there in the winter time then?
 A. Her purpose was to take boats to the elevator.
 Q. So that we can get this far, that she was there four years ago and there were vessels to be shifted to the elevator and she was the only tug in the harbor? 20
 A. That is all I know of. There may have been more.
 Q. As a matter of fact until quite recently owing to certain decisions in the American Courts vessels were shifted frequently in Buffalo and other ports with one tug? A. I can't say as to that, sir.
 Q. In your experience hasn't that been done?
 A. No sir.
 Q. How many years of experience?
 A. About ten.
 Q. Well ten years seems quite recent to us sometimes. It gets to seem more though. Your vessels, you have package freighters and passenger vessels? 30
 A. Yes sir.
 Q. You have lake carriers also of the larger type?
 A. No sir, we have not, sir.
 Q. Well of course there is a difference of type, there is the package freighter and passenger vessel, is there not? A. Yes.
 Q. More freeboard, higher above water?
 A. Yes.
 Q. Manoeuvring from one end to the other they would need two tugs more than—? Can't see from one end to the other, they would need two tugs more than—? 40
 A. You can see from one end to the other, sir.
 Q. I suppose you could, but the vessels themselves would hide some view?
 A. I don't believe our ships are any higher than any other ships.
 Q. Don't you think—? A. Our passenger ships.

Q. I think the Utica and some of these boats are a good deal higher, they are double deck?

A. Yes sir, they are double deck, they have what they call between decks. The Utica is the exception; she may be a little higher.

Q. Do you mean to tell me that all the upper lake carriers in the American waters are moved by two tugs now?

A. No sir, I am not saying all.

Q. You merely say that your vessels, which are passenger vessels and package freighters of different types, that you have always moved them with
10 two tugs?

A. Yes.

By HIS LORDSHIP: Q. Your vessels are all package freighters?

A. Yes sir.

By MR. TOWERS: Q. But you do know that upper lake carriers—and a 360 foot carrier is not a very big boat—are frequently moved in the winter harbors with winter storage under the elevator by one tug?

A. I have never seen them, sir.

Q. You have never seen them?

A. No sir.

20 Q. Don't you know as a matter of fact that has been done?

A. Oh I don't say that has not been done, sir, but I haven't seen it.

Q. Isn't your best judgment that it is frequently done?

A. Not in the harbor of Buffalo.

Q. Oh no, I am not saying Harbor of Buffalo, because they have a local
rule against it there, have they not.

A. Yes sir.

Q. And when was that local rule passed?

A. I couldn't say.

Q. Well not many years ago?

30 A. It is quite a while ago, sir.

Q. But prior to the passing of that local rule it would seem quite clear that they had been moving them with one tug, otherwise they wouldn't have had to pass the rule, would they?

A. Well you wouldn't necessarily trust all your property to one tug in the Harbor of Buffalo, sir, with no power.

Q. I think probably in the Harbor of Buffalo that is quite right. Buffalo is a very congested harbor?

A. Yes sir.

Q. Particularly with the big stone plants and all that sort of thing there?

40 A. It is congested with ships.

Q. And the amount of traffic? A. Yes sir.

MR. HOLDEN: Is Mr. Schneider here?

MR. TOWERS: No, he is not in town.

MR. HOLDEN: Perhaps Mr. Rydholm can tell me. Would you mind stepping in the witness box, Mr. Rydholm?

MR. TOWERS: I have another question or two.

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(continued).

Q. When a vessel is in charge of a tug or tugs, having no power on board, laid up in winter storage, I am speaking of a lake carrier now—?

A. Yes sir.

Q. What do those on board the vessel do with regard to steering that vessel as she is being shifted?

A. The steamer with one tug?

Q. One or two? A. Well two tugs, the one tug is what they call the steering tug; the one tug does the steering.

Q. You mean she splashes alongside?

A. No sir, she takes a stern line and she can go from either side to steer 10 the ship.

Q. Well then the ship doesn't do any steering?

A. Absolutely no, she has no motive power of any kind.

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No. 47.

Carl O.
Rydholm.
Re-Exami-
nation.

CARL O. RYDHOLM recalled and examined by

MR. HOLDEN: Q. Am I right that Mr. Schneider is no longer here?

A. He is not here, no sir.

Q. Well if you don't mind I will ask you in his absence. He produced P-6, copies of a good deal of correspondence, and the sixth sheet of that exhibit purports to be a copy of a letter to Mr. A. E. R. Schneider dated December 20 11th, 1926, and signed by John Harrison & Sons Co. Limited. Where is the original of that letter? Have you it here?

A. I can't answer that, sir, I don't know.

MR. HOLDEN: May I ask my learned friend if he has it?

MR. TOWERS: No. This file seems to start with 1927.

MR. HOLDEN: I will state the reason I am asking Captain Rydholm. The copy that was furnished by you or your associates to my client, my learned friend who acts for the plaintiff contains this sentence that is not in the exhibit, "It is understood this work will be done at Owner's risk and that your Ship-keeper will direct the mooring of the Steamers after being unloaded, the 30 Harbor Master to settle any dispute as to location."

MR. TOWERS: And that is not in the exhibit?

MR. HOLDEN: That is just what I have pointed out. I have compared the sixth page of Exhibit P-6 with the copy of that letter which was given to us and it reads just the same in all other respects but that this sentence stating that this work will be done at Owner's risk is not included in the exhibit.

MR. TOWERS: Well I suppose the fact that we furnished it to my friend shows we were not trying to conceal it.

MR. HOLDEN: No, I don't insinuate anything.

MR. TOWERS: No, I quite understand. I am sorry. I don't know whose 40 typing that is.

HIS LORDSHIP: Are you going to put it in now?

MR. TOWERS: Oh yes, I am quite sure it must be correct.

Q. Then will you produce as Exhibit S-9 the copy of that letter of the 11th December, 1926, that I have just read from? A. I do.

EXHIBIT S-9 copy of letter referred to, John Harrison & Sons Co. Limited to A. E. R. Schneider, December 11th, 1926.

MR. HOLDEN: (Reads letter to His Lordship). I have not underlined this paragraph now; it was underlined before we realized it wouldn't be in the exhibit and we didn't underline it for the purpose of producing it.

MR. TOWERS: The original is here and that sentence is in the original.

MR. HOLDEN: Thank you.

That is all our case, my Lord.

HIS LORDSHIP: All right, Mr. Jarvis?

MR. JARVIS: I have nothing to add, my Lord.

HIS LORDSHIP: Then the case for the cargo is closed.

10 MR. JARVIS: Yes, my Lord.

Perhaps I should say I was taking it for granted that I simply stand on the evidence that is in; I am not offering any additional evidence.

HIS LORDSHIP: Of course. I was asking if you had any evidence to give.

MR. HOLDEN: I understand the evidence is common to both plain-
tiffs.

HIS LORDSHIP: Yes.

MR. JARVIS: I so understood throughout.

HIS LORDSHIP: Oh yes.

20 3.30 P.M. evidence concluded and argument of Counsel proceeded with.

Certified correct,
R. L. Baldwin,
Reporter.

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Exhibit No. 48
S-1.
Blue Print of
Owen Sound
Harbour, 1925

RECORD OF PROCEEDINGS
(PART III)

EXHIBITS

Exhibit S-1.

Blue print of Owen Sound Harbour, 1925.
(Not Printed)

Exhibit No. 65
P-7.
Circular Letter
American
Bureau of
Shipping.

Exhibit P-7.

Circular letter American Bureau of Shipping
WINTER MOORING 1926-1927.

Cleveland, Ohio. 10

Gentlemen:—

“WINTER MOORING”—1926-1927-

Referring to the following clauses in your policies on your steamers:
“Warranted to have the vessel insured under this policy, properly moored
in a safe place and under conditions satisfactory to the representatives
of the underwriters.

Warranted no claim owing to vessel being moored in the outer harbor
of Buffalo after close of navigation, unless mooring specially approved
by underwriters, and additional premium paid if required.”

As representatives of the underwriters, especially appointed for the pur- 20
pose of inspection of winter moorings, we hereby beg to notify you, on behalf
of the underwriters on said policies, that special limitations and restrictions
have been issued, as set forth hereinafter, which shall apply at various ports
where winter mooring is considered hazardous.

GENERAL REQUIREMENTS

All vessels shall use one of the anchor chains for mooring, carried to the
dock with a long lead and made well fast, in addition to good wire cables or
manila lines, forward, midship and aft, in sufficient number to adequately
secure the vessel, in a manner satisfactory to the nspector.

In places subject to freshets or heavy currents, vessels shall be moored 30
singly to the dock, no two allowed to be moored abreast, and in addition to
the fastening specified above, one anchor shall be dropped in the water, with
a good lead of chain.

Winter mooring of vessels will not be approved at wooden elevators;
they may be taken to the elevators for prompt loading or discharging, neither
of which shall be unduly prolonged, and on completion, they must be moved
well clear of the elevator and properly moored for the winter.

All vessels must have a competent shipkeeper aboard at all times, except where proper day and night watchmen are in charge on the dock, whose duty it is to watch the vessels moored thereat. Where two vessels of one fleet are moored close together, one shipkeeper will be considered sufficient for the two vessels.

At all docks and docks where piling is poor, mooring will not be approved unless new piling is driven, in a manner satisfactory to the Inspector.

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Circular Letter
American
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(continued).

WINTER MOORING UNDER BUFFALO BREAKWATER

10 Both light and loaded vessels mooring under the breakwater at Buffalo, shall be moored head to and at right angles to the breakwater spaced approximately 150 feet apart.

Moorings will be approved under the North breakwater from berth No. 12 to berth No. 66 inclusive, only. Under the south breakwater from berth No. 20 to berth No. 70 inclusive, only. The above berth numbers refer to the numbers now painted on the wall.

Forward Fastening each vessel to be moored with three anchors ahead with 45 fathoms of chain payed out on each anchor. The two regular bow anchors to be dropped as close to the wall as possible, the vessel then to be hove astern until 45 fathoms of chain is payed out.

20 A third anchor of approximately the same weight as the bow anchors to be provided, attached to 45 fathoms of chain, (taken from the bow anchors) to be dropped close to the wall and the chain carried through one of the bow chocks and made well fast to the large timber heads in the windlass room.

The three anchors to lead as straight ahead as possible.

Under the North breakwater, where attachment to the rings in the wall is possible, the third bow anchor may be eliminated, provided two good 8" Manila hawser (same being approximately new) are run from the ship's bow to the rings in the breakwater, made well fast to both the wall and the ship.

30 After Fastening. All vessels to be provided with one stern anchor, approximately the same weight as the bow anchors, attached to 45 fathoms of chain (taken from the bow anchors). The chain to be made well fast to the stern timber heads, run out through the stern chock and the anchor dropped astern as far as the chain will permit.

Moorings cables or wirelines to be run from one vessel to another, whenever, in the discretion of the Inspector, it is expedient to do so.

Under no circumstances shall a vessel not permanently moored, moor alongside or make fast to another vessel already permanently moored.

All vessels must at all times have at least one licensed officer aboard.

40 The above conditions shall be carried out under the supervision of the American Bureau of Shipping who shall direct the mooring and location of the vessels. For further particulars apply to local office of American Bureau of Shipping, Prudential Bldg., Buffalo, N.Y.

Should it be found expedient to moor vessels under the breakwater in a manner other than above specified, or should further fastening be required,

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P-7
Circular Letter
American
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(continued).

same shall be carried out under the supervision and direction of the underwriters' representative, whose decision in such matters shall be final.

If it be found necessary to move any vessel after mooring, written notice shall be given the underwriters' representative, at least 24 hours before the vessel is moved, and the moving and remooring shall be done under his direction.

When the above stipulations are carried out in a manner satisfactory to the underwriters' representative, and payment of fee for inspection is made, certificate of approval will be issued.

Where vessels are moved and remoored after certificate is granted, it will be necessary to have re-inspection made, and approval of same made by endorsement of certificate, upon payment of fee for reinspection.

WINTER MOORING AT PORTS OTHER THAN UNDER BREAKWATER AT BUFFALO, N.Y.

BUFFALO, N.Y.

Winter moorings will not be approved in Buffalo Harbor as follows.

Extreme south end of Lehigh Valley iron ore slip, west side (Tift Farm) unless good mooring piles and enough of them are driven not less than 150 feet back from channel bank, or sufficient number of deadmen buried deep in the ground at same distance from bank.

In main river, above Ohio St. Bridge, at American Malting Co.'s Elevator.

Boats loaded to over 15 feet draft shall not moor in east side of Union slip at extreme end of slip. This refers to the slip which has Susquehanna furnaces on West Side and Pennsylvania R.R. Dock on east side.

Boats shall not moor on North side of Barge Canal Terminal Dock No. 1, Erie Basin.

ERIE, PENN.

Mooring will not be approved at the following docks:

West side of State Street concrete dock.

Dock facing bay, between State Street concrete dock to slip on east side of old Scott Coal Dock and West of the Y. & O. Coal Dock.

Mooring in the bay will be approved, providing vessels are moored in groups of at least three and not more than five, with two or three vessels headed East and one or two headed West, with all anchors down and full length of chains out and vessels laced together with their mooring cables. All vessels moored in slip must have anchor chain made fast to dock and where no piling is available, anchor must be buried or chain fastened to deadmen.

CLEVELAND, OHIO

Winter mooring will not be approved in the main river below the Lake Shore bridge.

20

40

Mooring in the slips on the Lake Front will be approved, providing not more than two vessels are moored in one slip. Vessels to be moored head to the Lake with both anchors down, with a good long lead of chain out.

*In the
Exchequer
Court of
Canada.*

Exhibit No.65
P-7.
Circular Letter
American
Bureau of
Shipping.

Mooring will not be approved at the East side of East 9th street pier.

Mooring of vessels will be approved under the breakwater, providing they are moored in the following manner.

(continued).

Vessels shall moor singly, head to the breakwater not less than 150 feet apart, with two anchors down forward, and two anchors aft, the same weight as bow anchors, with 45 fathoms of chain out to each anchor. The location of each mooring to be referred to the underwriters' representative before vessels are permanently moored, or they may be moored as set forth under "Winter Mooring under Buffalo Breakwater."

LORAIN, OHIO

Vessels mooring above the Nickel Plate bridge along the river banks, to have one anchor carried well in shore and buried, or suitable deadmen buried and anchor chain properly connected to same.

One anchor to be dropped in the river with good lead of chain.

All possible lines to be put out and connected to good fastening ashore.

FAIRPORT, OHIO

20 Permanent mooring will not be approved at the elevator dock on the Richmond side in Fairport Harbor.

ASHTABULA, OHIO

Mooring will not be approved at the No. 11 Coal Dock or below the Coal Dock in Main River.

TOLEDO, OHIO

Winter Mooring will be approved at the following docks, as outlined under "General Requirements," namely, Toledo Ship Building Co., Ohio Central, New Hocking Valley dock slips, Furnace Co., Lagoon, and B. & O. ore dock.

30 At the old Hocking Valley dock, vessels may lay shingled to the dock with one bow chain lead well ahead and one chain abreast to separate deadmen and to lap on each other not over 100 feet forward of the boiler house.

At the old Wabash dock, West side of river below Lake Shore R.R. bridge, light vessels only may lay shingled to the dock, providing good deadmen are installed well back from the dock front, not over 100 feet apart.

The bows of the shingled vessels must be close to the dock with one anchor chain lead about 200 feet ahead and the other chain lead abreast to separate deadmen.

*In the
Exchequer
Court of
Canada.*

Exhibit No. 65
P-7.
Circular Letter
American
Bureau of
Shipping.

(continued).

In addition to the bow fastening, all shingled vessels are to be well secured together where they lap and breastlines run out wherever possible to make good fastening.

MILWAUKEE, WIS.

Mooring will not be approved below the Broadway Bridge in the main river or below South Shipyard in Kinnickinnic River, unless application be made by the owner for permission to moor in this location, under the first supervision of the underwriters' representative.

Mooring will not be approved in the outer harbor.

MANITOWOC & RACINE, WIS.

10

Mooring will not be approved below the first bridge in the main rivers.

WAUKEGAN, ILL.

Mooring will not be approved at this port.

GREEN BAY, WIS., & MENOMINEE, MICH.

All vessels mooring other than at a good dock shall have both anchors down with an extra lead of chain to each, or suitable deadmen buried ashore with anchor chains properly connected to same. In addition all possible lines to be run out and connected to good fastenings ashore.

Vessels moored at good docks shall use one of the anchor chains for mooring, same to be lead well ahead and secured to good piling or bitts. The other anchor to be dropped in the water, with a good lead of chain. Good lines and cables to be run out forward, amidships and aft, made well fast to good fastenings on the dock. 20

Not more than two vessels shall be abreast at the docks and in such cases, both vessels must be amply secured to the dock. Mooring of one vessel to another will not be approved.

SHEBOYGAN, WIS.

Mooring will not be approved, unless application be made by the owner for permission to moor in this harbor, where same shall be carried out under the direct supervision of the underwriters' representative and to his satisfaction. 30

SOUTH HAVEN, MICH.

Mooring will not be approved in the harbor of South Haven, Mich.

INDIANA HARBOR, LAKE MICHIGAN

Winter mooring will not be approved at this port below the Lake Shore Railroad Bridge. In what is known as Indiana Harbor Canal above the Lake Shore Railroad Bridge, mooring will be approved, providing proper mooring piles are driven, sufficient in number and located satisfactory to the inspector and the mooring carried out under his direct supervision.

*In the
Exchequer
Court of
Canada.*
Exhibit No. 65
P-7.
Circular Letter American
Bureau of
Shipping.
(continued).

DETROIT, MICH.

10 No vessels to lie two abreast anywhere on the waterfront and those in designated positions where not sheltered by a job in the dock line must have their anchors down. All vessels moored on the waterfront shall have their bows pulled into the dock to prevent the ice getting between the vessel and the dock, and possibly wedging them away and parting the forward lines. It is recommended that sidewheel steamers exposed to the current should have their outboard wheel buckets removed below the water line.

PORT HURON, MICH.

Vessels may moor at Port Huron above the Black River at the Lumber Dock and Reid's Dock, but vessels shall not moor above this point. When moored to these docks, vessels shall have both anchors carried well ahead to allow a good lead on chains.

20 Vessels may moor from the mouth of the Black River down to and including Miller's Coal Dock, but the mooring of vessels will not be approved in the space between Miller's Coal Dock and the upper end of the Foundation Company's Dry Dock unless sufficient clusters of piles are driven to keep the vessel off the bank.

All vessels moored in the above localities must moor singly, except at the Foundation Company's plant where two vessels may moor abreast.

All vessels to have both anchors dropped well ahead to allow a good lead on the chains. All vessels must have ample lines out to the dock, well distributed among the piles.

30 The mooring of loaded vessels will not be approved above the Grand Trunk elevator, unless this space is properly dredged to allow vessels to lay close to the dock.

SARNIA, ONT.

Mooring will not be approved in the main river below the ferry dock. Not more than two vessels to moor abreast above the ferry dock and when so moored, they shall be placed head and tail with both anchors down on both vessels and 45 fathoms of chain out of each anchor.

Mooring will be approved in Sarnia Bay under the following conditions, namely—

*In the
Exchequer
Court of
Canada.*

Exhibit No. 65
P-7.
Circular Letter
American Bureau of
Shipping.

(continued).

Vessels to be moored in pairs, head and tail, with both anchors down on each vessel, with at least 45 fathoms of chain out on each anchor.

Vessels may moor singly, providing both head anchors are dropped with 45 fathoms of chain out on each anchor, and an additional anchor of same size as bow anchors, run out astern with 45 fathoms of chain well secured aboard the vessel.

GODERICH, ONT.

Winter mooring will be approved in this harbor under the following conditions:

NORTH SIDE OF HARBOR

10

The mooring of three vessels abreast will be approved, providing the vessels next to the wharf or bank are without cargo and those outside of the vessels moored to the wharf or bank are lightered to 15' 6" draft. The above being subject to mooring piles being driven as indicated on blue print dated March 4, 1924 of the Public Works of Canada.

SOUTH SIDE OF HARBOR

The mooring of three vessels abreast will be approved at the Goderich Elevator dock and its extension, also at the dock of the Canada Flour Mills.

Loaded vessels shall be lightered to 19 feet draft providing the proposed dredging to 23 feet is completed.

20

The vessels moored to the wharf or bank to have one anchor chain carried ashore and made well fast, and one anchor dropped in the harbor with a good lead of chain, together with good wire lines of manila hawsers to the piles on the dock.

The vessels moored outside of these close to the dock to have both anchors down with a good lead of chain together with good wire or manila lines run out either to the adjoining vessels or to the dock.

DULUTH, MINN.

Mooring of vessels at M.P., Great Northern docks in Allouez Bay and Pittsburg No. 7 Dock will be permitted only after special consideration of the necessity of such mooring by the underwriters' representative. Permission to moor at said docks must be obtained before a vessel is located at these docks.

30

AMERICAN BUREAU OF SHIPPING
Great Lakes Department.

"H. G. HERRIMAN,"
Manager.

EXHIBITS P-6.

FILE OF CORRESPONDENCE WITH REGARD TO SHIFTING OF
S.S. "PAISLEY."

THE GREAT LAKES ELEVATOR CO., LIMITED.
OWEN SOUND, ONTARIO.

November 6th, 1926

Cleveland Cliffs Iron Co.,
Cleveland, Ohio.
Gentlemen:

10 With reference to our 'phone conversation yesterday in connection with the handling of winter storage cargoes.

I have taken the matter up with John Harrison & Sons Co., of Owen Sound, who have a good Tug, and they are writing you to-day in connection with the handling of any steamers you may favor us with. The rate for this work last year at other Bay Ports was 3/8c. per bushel, but we know the work can be taken care of cheaper here, depending largely upon the number of steamers we have to handle, but if conditions are such that steamers can be handled without the assistance of a tug then the cost would be considerably lower, for instance, last year we did not use a tug and the
20 steamers were handled at less than 1/6c. per bushel figured on a wheat basis.

Ice conditions are generally very favorable here, our harbor usually being the last to freeze over, and among the first to open up in the Spring, and we know the handling will be cheaper here than at other ports. Every assistance possible will be given steamers, and if you can see your way clear to favor us with a share of this business we feel that we can take care of same to your entire satisfaction, and that it will turn out to be a mutual benefit.

Yours very truly,
THE GREAT LAKES ELEVATOR COMPANY, Limited.
Per (Signed) W. M. Richards,
Superintendent.

30

JOHN HARRISON & SONS COMPANY, Limited.
Owen Sound, Ont., November 6th, 1926.

Messrs.
Cleveland-Cliffs Steamship Co.,
CLEVELAND, Ohio.

Dear Sirs:

Mr. Richards of the Great Lakes Elevator Co., here advises you were making enquiries as to probably cost of handling Winter Storage Cargoes at
40 this port.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 63.
P-6.
File of cor-
respondence
with regard to
shifting of S.S
"Paisley."
Nov. 6th—
Dec. 20th,
1926.

*In the
Exchequer
Court of
Canada.*
Exhibits
No. 83.
P-6.
File of cor-
respondence
with regard to
shifting of S.S.
"Paisley,"
Nov. 6th—
Dec. 20th,
1926.

(continued).

We estimate could keep tug "HARRISON" and another tug in commis-
sion for this purpose during the Winter at a cost of not to exceed 3/8c. per
bushel; however, if there should be a good sized fleet to handle so that the
expense could be distributed, the cost per bushel will be less. We did think
of making an offer to supply the "HARRISON" and another tug at a flat
cost of say \$200.00 per ship, plus a reasonable rate per hour while working
on them.

In any event, we believe you will be able to get as good or perhaps better
service here as any port and good comfortable quarters; in addition to this,
Owen Sound Bay usually opens earlier than North Shore Ports, so that your
steamers can usually get away early if you want them. 10

Please advise prospects and give us particulars soon as your Charters
are arranged; also say probable draft of the Steamers you expect to have here
and oblige.

Yours very truly,
JOHN HARRISON & SONS CO. LTD.

EJH:BDT.

JOHN HARRISON & SONS COMPANY, Limited.

Owen Sound, Ont., November 29th, 1926. 20

Messrs.

Cleveland-Cliffs Iron Co.,
CLEVELAND, Ohio.

Dear Sirs:

Attention: Mr. A. E. R. Schneider, Manager.

As yet we have received no reply to our letter of the 6th, re supplying
Tugs for moving steamers with Winter Storage Cargoes to and from Elevator
here.

You will understand we cannot keep tugs in commission unless something
definite is arranged and would at least like to hear from you in reference to this. 30

Yours very truly,
JOHN HARRISON & SONS CO. Limited.

EJH:BDT.

THE CLEVELAND CLIFFS IRON CO.

Postal Telegram
John Harrison & Sons
Owen Sound, Ontario, Canada

December 1, 1926—3.55 P.M. Prepaid

Your letter November twenty-ninth. Wire how much you will charge
each of our three boats moving to elevators during winter. 40

A. E. R. SCHNEIDER

AERS-R

JOHN HARRISON & SONS CO., Limited.

Owen Sound, Ontario, December 2, 1926

Mr. A. E. R. Schneider
Cleveland-Cliffs Steamship Co.
Cleveland, Ohio.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 63.
P-6.
File of cor-
respondence
with regard to
shifting of S.S.
"Paisley,"
Nov. 6th—
Dec. 20th,
1926.

Dear Sir:

Your telegram of last night, asking what we will charge for moving your three steamers to Elevator during the Winter, received.

10 Being interested in the Elevator Company, we are anxious to give you satisfactory service here so that you will be disposed to charter for this Port more frequently.

As to the cost of handling your Three steamers to and from the elevator, it is, as you know, difficult to estimate this at present. Our plan is to keep two tugs in commission and keep the Harbor open at least until the Bay freezes over. Not knowing what the Weather is going to be, it is rather difficult to say how long will be able to do this, but under ordinary conditions, we should be able to keep the Harbor practically clear until latter part of January. This expense should be divided fairly among the different Steamers to be
20 moved with Storage Cargoes and we hope you will be satisfied to allow the definite fixing of charges to stand until last of the Winter Fleet has arrived. We are hoping to be able to keep moving charges below that of other Bay Ports and as you have had long experience in this trade, wish you would be good enough to advise us what you think would be fair.

(continued).

Yours very truly,
JOHN HARRISON & SONS CO. LIMITED.

EJH:BDT.

30

JOHN HARRISON & SONS CO., LIMITED.

Owen Sound, Ont., December 11th, 1926.

Mr. A. E. R. Schneider
Manager
Cleveland Cliffs Iron Co.
Cleveland, Ohio.

Dear Sir:

40 Now that the Winter Storage Fleet has been chartered with fair prospects of all being able to get here, we are prepared to undertake the moving of your Steamers with Storage Cargoes to and from the Elevator here at a flat average Rate of One quarter cent (1-4c.) per bushel, as per Lake Bills, (that is on a Bushel Basis), to include keeping the ice clear so long as possible.

This must be subject to immediate acceptance by Owners of *all* storage Cargo Vessels in this Port; Otherwise, we cannot undertake it.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 63.
P-6.

File of cor-
respondence
with regard to
shifting of S.S.
"Paisley,"
Nov. 6th—
Dec. 20th,
1926.

(continued).

In event of any of the Steamers being on the bottom and requiring lightering, there will of course have to be an extra charge for this, but we do not anticipate anything of this kind.

We have already incurred considerable expense keeping Harbor open and notwithstanding the cold weather we have had, the Harbor is today entirely free of ice.

If all concerned are willing to give us instructions to undertake this work on above basis, we intend keeping Tug in commission and the Harbor clear of Ice as late as possible. If any of the Owners are not satisfied with this offer, we will lay up the "HARRISON" immediately.

Be good enough to telegraph us one way or the other not later than Tuesday, the 14th, and upon receipt of the acceptance of all the Owners, we will confirm this arrangement promptly.

Yours very truly,
JOHN HARRISON & SONS CO., LIMITED.

EJH:BDT.

NB—same letter going to all Owners.

Postal Telegram Cleveland-Cliffs Iron Company
Dec. 13, 1926—11 A.M. Prepaid. 20

John Harrison & Sons Co.
Owen Sound, Ontario, Canada.

Your letter December eleventh. Disappointed in your rate. Did not expect flat charge over three sixteenths per bushel wheat basis. Your previous letter indicated two hundred dollars boat with slight additional charge. Advise.

A. E. R. SCHNEIDER.

AERS-R.

Captain of Senator advises expect eleven boats at Owen Sound for the Winter. 30
ARRD.

PAISLEY
PRESQUE ISLE
S. THOMPSON
C. SCHNEIDER
DRUMMOND
SENATOR

Due
HOME SMITH
SASKATCHEWAN
WAGANDA
(?)
(?)

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 63.
P-6.
File of cor-
respondence
with regard to
shifting of S.S.
"Paisley,"
Nov. 6th—
Dec. 20th,
1926.

(continued).

Postal Telegram
Owen Sound, Ont., Dec. 13, 1926—2.06 P.M. Blue

A. E. R. Schneider
Cleveland, Ohio.

Telegram received. Will require favourable weather conditions and no mishaps to break even at our offer. Sorry you are dissatisfied. Cannot figure out at any way of reducing costs further. Anxious give you good service here or would not undertake the work at offer contained in our letter eleventh. Please wire.

10 JOHN HARRISON & SONS

Postal Telegram

The Cleveland-Cliffs Iron Co.
Dec. 13th, 1926—2.35 P.M. Prepaid.

John Harrison & Sons
Owen Sound, Ontario, Canada

Message received. Will accept your offer one quarter cent per bushel wheat basis with hopes your operation may justify reduction later.

A. E. R. SCHNEIDER

20 AERS-R.

JOHN HARRISON & SONS COMPANY, Limited
Owen Sound, Ontario
December 20th, 1926

Mr. A. E. R. Schneider
Manager
Cleveland-Cliffs Iron Co. Ltd.
CLEVELAND, Ohio.

Dear Sir:

30 We duly received your telegram accepting our offer to have tug "HARRISON" keep Harbor clear long as possible and move your Steamers to and from Elevator, for which we thank you.

The Harbor is clear of ice and your Steamer "PRESQUE ISLE" is under the Leg today. Do not know whether they will be able to take all the cargo out at this time or not.

Presume your Charter covers that Shippers or Cargo will pay expense of more than one move. Please send us copy of your Charters, for our information, with reference to this and also give your wheat capacity of each Steamer for our records and oblige.

40 All owners have accepted this arrangement, with exception of the Paterson Steamship Line; they have only one small boat here and we think surely they will be satisfied to come in.

EJH:BDT

Very truly yours,
JOHN HARRISON & SONS CO. LTD.

December 23, 1926.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 63.
P-6.
File of cor-
respondence
with regard to
shifting of S.S.
"Paisley,"
Nov. 6th—
Dec. 20th,
1926.

(continued).

John Harrison & Sons Co., Limited
Owen Sound, Ontario

Gentlemen:

Your letter of December 20th in reference to the Steamer PRESQUE ISLE.

It is our understanding that you would move the boats to and from the elevators, as required, for 1-4c. per bushel, wheat basis.

The charter says nothing about more than one move although it is customary for the shippers to pay for any extra moves.

Very truly yours,

Manager Marine Department

AERS-R.

December 27th, 1926.

John Harrison & Sons Co. Ltd.
1417 Second Ave. W.,
Owen Sound, Ontario, Canada

Gentlemen:—

In our letter of December 23rd, answering yours, of the 20th, we neglected to give the wheat capacity of our vessels which you requested.

The Steamer R.J. PAISLEY'S cargo consists of 190,658 bus. wheat.

The Steamer SENATOR has 196,830 bu. wheat.

The Steamer CLETUS SCHNEIDER has 157,400 bu. oats scalplings and 1414 tons screenings. The wheat basis for this vessel is 200,000 bu.

The Steamer PRESQUE ISLE has 220,000 bu. of corn. The wheat basis for this vessel is 210,000 bu.

Yours very truly,

Manager Marine Department

SZ C

30

JOHN HARRISON & SONS COMPANY, Limited
Owen Sound, Ont.

December 27th, 1926.

Mr. A. E. R. Schneider,
Manager Marine Department
The Cleveland-Cliffs Iron Co.,
CLEVELAND, Ohio.

Dear Sir:

Your letter of the 23rd received.

Please give us the Wheat Capacity of your Steamers now in Harbor here. Our understanding is that the rate for one move to and from the

40

Elevator will be one-quarter (1-4c.) per bushel on the Wheat Capacity of each Steamer. Other owners have arranged in this way and wish you would be good enough to give us the figures so that there will be no misunderstanding.

Thanking you in advance for this and wishing you the Compliments of the Season, we remain.

Yours very truly,
JOHN HARRISON & SONS CO. LTD.

EJH:BDT

*In the
Exchequer
Court of
Canada.*
Exhibits
No. 63.
P-6.
File of cor-
respondence
with regard to
shifting of S.S
"Paisley,"
Nov. 6th—
Dec. 20th,
(continued).

10

EXHIBIT S-9

COPY OF LETTER JOHN HARRISON & SONS CO., LIMITED,
TO A. E. R. SCHNEIDER—December 11th, 1926.

JOHN HARRISON & SONS CO., Limited.
Owen Sound, Ont., December 11th, 1926.

Exhibit No.69
S-9.
Copy of letter
John Harrison
& Sons, Ltd.,
to A. E. R.
Schneider,
Dec. 11th,
1926.

Mr. A. E. R. Schneider
Manager
Cleveland-Cliffs Iron Co.
Cleveland, Ohio.

Dear Sir:

20 Now that the Winter Storage Fleet has been chartered with fair prospects of all being able to get here, we are prepared to undertake the moving of your Steamers with Storage Cargoes to and from the Elevator here at a flat average Rate of One-Quarter Cent (1/4c.) per Bushel, as per Lake Bills, (that is on a Bushel Basis), to include keeping the ice clear so long as possible.

This must be subject to immediate acceptance by Owners of *all* Storage Cargo Vessels in this Port; Otherwise, we cannot undertake it.

In event of any of the Steamers being on the bottom and requiring lightering, there will of course have to be an extra charge for this, but we do not anticipate anything of this kind.

30 We have already incurred considerable expense keeping Harbor open and notwithstanding the cold Weather we have had, the Harbor is today entirely free of ice.

It is understood this work will be done at Owner's risk and that your Ship-keeper will direct the mooring of Steamers after being unloaded, the Harbor Master to settle any dispute as to location.

If all concerned are willing to give us instructions to undertake this work on above basis, we intend keeping Tug in commission and the Harbor clear of ice as late as possible. If any of the Owners are not satisfied with this Offer we will lay up the "HARRISON" immediately.

In the
Exchequer
Court of
Canada.

Exhibit No. 69
S-9.
Copy of letter
John Harrison
& Sons, Ltd.,
to A. E. R.
Schneider,
Dec. 11th,
1926.

Be good enough to telegraph us one way or the other not later than Tuesday, the 14th, and upon receipt of the acceptance of all the Owners, we will confirm this arrangement promptly.

Yours very truly,
JOHN HARRISON & SONS CO., LIMITED

EJH-BDT.

N.B.—Same letter going to all Owners.

(continued).

Exhibit No. 67
P-3.
Contract
between A. R.
Penrice and
Cleveland
Cliffs Iron Co.
—22nd Dec.,
1926.

CONTRACT BETWEEN A. R. PENRICE AND CLEVELAND
CLIFFS IRON CO.,—December 22nd, 1926. 10

THE CLEVELAND-CLIFFS IRON CO.,
CLEVELAND, Ohio
December 22, 1926.

Mr. A. R. Penrice
Owen Sound, Ontario

Dear Sir:

You are hereby appointed shipkeeper on the Steamer R. J. PAISLEY. Your salary is to be \$65.00 per month.

Your regular duties will be to look after the boat you live on, as well as 20 other vessels of this Company that may be near you. The shipkeeper should sound all tanks, peaks, and engine room well; record all movements of vessel and work done in connection with loading or unloading storage cargoes; get vessel ready to inspection or fumigation; look after repairs, and perform such work as chipping, scraping rust, painting, removing snow from hatches, as well as any other work called on to do, without extra compensation.

The shipkeeper is to report in writing to The Cleveland-Cliffs Iron Company's office, 1460 Union Trust Bldg., Cleveland, Ohio, every Monday 30 morning.

This contract to terminate at any time the owners or their representatives are not satisfied with the services or conduct of the shipkeeper.

"C. O. RYDHOLM,"
The Cleveland-Cliffs Iron Co.

COR-C

I hereby agree to the above contract:

"A. R. PENRICE,"
Shipkeeper.

Dec. 16th, 1926—Date commenced keeping ship.

1000 2nd Ave. E.,
Mailing Address
Owen Sound, Ont.

Please sign the above and return to this office, keeping the copy. 40

COPY OF TELEGRAM FROM A. E. R. SCHNEIDER
TO JOHN HARRISON & SONS—Jan. 14th, 1927.

*In the
Exchequer
Court of
Canada.*

Canadian Pacific Railway Company's Telegraph.
29 RN R 14

Exhibit No.64
S-3.
Copy of tele-
gram from A.
E. R. Schnei-
der to John
Harrison &
Sons, 14th
January, 1927

CLEVELAND, Ohio, Jan 14th, (1927)

John Harrison & Sons
O.SD.459P.

Elevator ready to unload Steamer "PAISLEY". Place accordingly
and notify A. R. Penrice Ship keeper.

10

A. E. R. Schneider.

Red's 4.55 P.M.

EXHIBIT P-1

Exhibit No.49
P-1.
Photograph
showing eleva-
tor and S.S.
"Saskatche-
wan."

PHOTOGRAPH SHOWING ELEVATOR AND S.S. "SASKAT-
CHEWAN."

(Not Printed)

EXHIBIT C-1

Exhibit No.50
C-1.
Photograph
taken in Owen
Sound Har-
bour showing
S.S. "Saskat-
chewan" and
elevator.

20 SS "SASKATCHEWAN" AND ELEVATOR.

(Not Printed)

EXHIBIT C-2

Exhibit No.51
C-2.
Photograph
taken in Owen
Sound Har-
bour showing
S.S. "Saskat-
chewan" and
elevator from
a different
angle.

PHOTOGRAPH TAKEN IN OWEN SOUND HARBOUR SHOWING
SS "SASKATCHEWAN" AND ELEVATOR FROM A DIFFERENT
ANGLE.

(Not Printed)

EXHIBIT C-3

Exhibit No.52
C-3.
Photograph
taken in
Owne Sound
Harbour
showing S.S.
"Saskatche-
wan," dock
wall and office

30 SS "SASKATCHEWAN" DOCK WALL AND OFFICE.

(Not Printed)

*In the
Exchequer
Court of
Canada.*

Exhibit No.53
S-2.
Photograph
showing hole
in plating of
S.S. "Sas-
katchewan."

EXHIBIT S-2

PHOTOGRAPH SHOWING HOLE IN PLATING OF S.S. "SASKATCHEWAN."

(Not Printed)

Exhibit No.54
S-3.
Photograph
showing bows
and anchors
of S.S.
"Robert J.
Paisley."

EXHIBIT S-3.

PHOTOGRAPH SHOWING BOWS AND ANCHORS OF S.S. "ROBERT J. PAISLEY." 10

(Not Printed.)

Exhibit No.55
P-2.
Photograph
showing S.S.
"Saskatche-
wan."

EXHIBIT P-2.

PHOTOGRAPH OF S.S. "SASKATCHEWAN."

(Not Printed.)

Exhibit No.57
P-4.
Photograph
showing plate
from S.S.
"Saskatche-
wan" with
hole punched
in same.

EXHIBIT P-4.

PHOTOGRAPH SHOWING PLATE FROM S.S. "SASKATCHEWAN" WITH HOLE PUNCHED IN SAME. 20

(Not Printed.)

Exhibit No.59
S-5.
Photograph
showing S.S.
"Robert J.
Paisley,"—
20th Jan.,
1927.

EXHIBIT S-5.

PHOTOGRAPH SHOWING S.S. "ROBERT J. PAISLEY," DATED 20TH JANUARY, 1927. 30

(Not Printed.)

Exhibit No.60
S-6.
Photograph
showing S.S.
"Saskatche-
wan" on
bottom along-
side S.S.
"Drummond"
20th Jan.,
1927.

EXHIBIT S-6.

PHOTOGRAPH SHOWING S.S. "SASKATCHEWAN" ON BOTTOM ALONGSIDE S.S. "DRUMMOND," 20TH JANUARY, 1927. 40

(Not Printed.)

Exhibit No.61
P-5.
Photograph
showing S.S.
"Saskatche-
wan" in sun-
ken condition.

EXHIBIT P-5.

PHOTOGRAPH SHOWING S.S. "SASKATCHEWAN" IN SUNKEN CONDITION.

(Not Printed.)

EXHIBIT S-7.

PHOTOGRAPH SHOWING S.S. "SASKATCHEWAN" AFTER SINKING. Not dated.

(Not Printed.)

*In the
Exchequer
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Canada.*

Exhibit No.62
S-7.
Photograph
showing S.S.
"Saskatche-
wan" after
sinking.

EXHIBIT S-4.

PHOTOGRAPH SHOWING S.S. "ROBERT J. PAISLEY" ALONG-SIDE S.S. "SENATOR."

(Not Printed.)

Exhibit No.58
S-4.
Photograph
showing S.S.
"Robert J.
Paisley,"
alongside S.S.
"Senator."

10

EXHIBIT C-4.

STATEMENT OF RICHARD YEO

Exhibit No.66
C-4.
Statement of
Richard Yeo.

Richard Yeo, 1136 Second Ave. West, Owen Sound, Ont., says he is employed in the Great Lakes Elevator. He was called when the Paisley was part way across the river to take the lines of the ship. He came out and got on a cluster of spiles in front of the office and the mate, Penrice, threw a line to him. He got this line and Penrice ordered one of the men to get another heaving line. The ship was moving ahead at the time and before he got the line the ship struck the Saskatchewan. Penrice was in charge of the shifting of the boat. Her stern was closer to the dock than the amidship section and he could have gotten a line out from the after winch. Where he was there was no winch and he should have been aft where he could have checked the forward movement of the ship. The tug was on the opposite side of the ship, so I cannot tell anything about his movements.

"RICHARD J. YEO."

EXHIBIT P-9.

SMALL MODEL OF ANCHOR.

Exhibit No.68
P-9.
Small model
of Anchor.

30

EXHIBIT P-3.

COPY OF WRECK REPORTS ON S.S. "SASKATCHEWAN" 7TH MARCH, 1927.

Exhibit No.56
P-3.
Copy of
Wreck
Reports in
S.S. "Saskat-
chewan," 7th
March, 1927.

WRECK REPORT ON S.S. "SASKATCHEWAN."
of Midland, Ont. 1860 Gross Tons Register.
Disaster of Jan. 18th, 1927. In attendance Jan. 20, 21, and 22/27.

THIS IS TO CERTIFY that the undersigned Surveyor, acting on instructions from Mr. R. Parry-Jones, Representative of the Salvage Asso-

In the
Exchequer
Court of
Canada.

Exhibit No. 56
P-3.
Copy of
Wreck
Reports in
S.S. "Saskat-
chewan," 7th
March, 1927.

(continued) 1

ciation and the underwriters concerned did proceed to Owen Sound, Ont., there to attend the Steamer "SASKATCHEWAN" of Midland, on the 20th day of January, 1927, she having sunk in Owen Sound Harbour, through being struck, it is alleged, by the Steamer "ROBERT J. PAISLEY" on the 18th day of January, 1927, while lying at her winter quarters and loaded with storage grain. All under circumstances more fully set forth in the statement of W. E. Cornett, Shipkeeper.

The undersigned hereby reports that he boarded said vessel at Owen Sound at 10.30 p.m. January 20th, 1927. Upon

EXAMINATION

found her resting on the bottom in about twenty-two feet of water, with all 10 ballast tanks full and about 13 feet of water in all three holds. The engine room had previously been pumped out by the Owen Sound City fire pumps and her own ballast pump, steam being supplied by a temporary steam line from the Tug "HARRISON" until steam was raised on the ship's boiler. On the Steamer's arrival at Owen Sound and before laying her up for the Winter she was lightened to 16' 9" draft with the ballast pump discharge well above water and the discharge afterwards plugged up with a wooden plug and the usual precautions and preparations were taken in lying the Steamer up for the Winter.

The Shopkeeper states that while in the Ship's galley at about 10.00 a.m. 20 on January 18th, he felt a severe bump, he immediately went out on deck and saw the Steamer "ROBT. J. PAISLEY" in tow of the Tug "HARRISON" of Owen Sound, backing away from the "SASKATCHEWAN." He then looked over the ship's side, but found no marks of any damage above the water line. He sounded the ballast tanks and found the sounding the same as on previous days. He again sounded the tanks later in the day and found soundings of the tanks changing and vessel making water.

At 4.30 a.m. on January 19th he found that the ship had a heavy list to starboard and sinking. He immediately went to the engine room and found water rushing in through a gangway door on the starboard side. Eventually 30 the ship sunk with engine room full of water and all ballast tanks full, at about 10.00 a.m. on that date. The Owen Sound City fire pumps were requested to render assistance and they brought their fire pump and hoses to the nearest approach of the ship, but on connecting up their hoses found them too short. The ship's ballast pump was then closed up and steam supplied by the Tug "HARRISON" which was alongside. The ballast pump was got to work for a short while until the steam connections were under water and then was of no further use until the engine room was pumped out. The City fire pumps were again requested to render assistance and was placed on the Barge "DAVID- 40 SON" and brought alongside the Steamer and eventually pumped out the engine room. In the meantime one of the ship's main boilers was closed up and filled with hot water from the Tug "HARRISON" and steam raised by 3.00 p.m. on January 20th and the services of the Tug "HARRISON" and Barge

"DAVIDSON" were dispensed with at 5.00 p.m. and from then on steam was supplied to the ballast pump from the ship's own boiler until she was finally discharged of all her cargo.

On the undersigned boarding the vessel at 10.30 p.m. on the 20th day of January, the engine room had been pumped out. He then had the ballast pump tried on the ballast tanks and with sluices open from holds to engine room (this being the only means of pumping out any water gathering in the cargo holds) had both tanks and holds pumped out.

At 8.30 a.m. on the 21st of January he had the hatch covers of No. 2
 10 hold opened out and discovered water amongst the cargo, with one plate on the 2nd strake below sheer abreast of No. 3 hatch on the starboard side punctured at about the 15' 0'' draft mark with water rushing in through a hole about 5'' x 3'' in the plate. A pillow was placed in to the hole and later a diver placed a patch over the hole and all ballast tanks and holds were eventually pumped dry, the ship being well afloat by noon on January 22nd and fit to go under the Elevator to dispose of the dry portion of her cargo. From January 22nd to February 4th the ship's ballast pump was kept on the bilges, taking care of any drainings from amongst the cargo, at which time the main boiler was blown down and both boiler and pump were laid up for the
 20 balance of the Season.

The ship was ordered to proceed under the elevator on January 26th, and at about 4.00 p.m. the Tug "HARRISON" took her in tow and placed her under the elevator by 6.00 p.m.

At 8.00 a.m. January 27th commenced unloading the dry portion of the grain and at 5.50 p.m. on the same day this was completed and from this time to 3.00 p.m. On January 29th ship was waiting for orders as to where to dispose of the damaged grain.

The Steamer in tow of the Tug "HARRISON" left the elevator dock at 3.00 p.m. on January 29th, arriving at the Canadian National Railway dock
 30 at 5 p.m., where she remained until the damaged cargo was completely discharged at 5.15 p.m. on February 15th, 1927.

It is estimated that about 60,000 bushels of grain was damaged in consequence of the ship sinking.

The undersigned further reports that he boarded the Steamer at Owen Sound on the 17th day of February, 1927, and there made an examination of the damage to the hull and equipment and found No. 8 plate on the second strake below sheer punctured. This plate will have to be renewed, the engine room to be washed down and painted, electrical installation in engine room overhauled and tested. Engine room platform rearranged and repaired,
 0 magnesia covering on steam pipes renewed, ballast donkey overhauled and main boiler cleaned out. The three cargo holds to be thoroughly washed out and ballast tanks ventilated.

Owing to the presence of gasses in the ballast tanks the undersigned was unable to make an examination of the double bottom to ascertain whether any damage was sustained through the vessel resting on the bottom. The vessel apparently making no water.

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 Exchequer
 Court of
 Canada.

Exhibit No.56
 P-3.
 Copy of
 Wreck
 Reports in
 S.S. "Sas-
 katchewan,"
 7th March,
 1927.

(continued).

*In the
Exchequer
Court of
Canada.*

The above particulars noted without prejudice and on behalf of all underwriters concerned.

Exhibit No.56

P-3.

Copy of
Wreck
Reports in
S.S. "Saskat-
chewan," 7th
March, 1927.

Toronto, Ont, March 7th, 1927.

.....
Underwriters' Surveyor.

(continued).

PART IV

REASONS FOR JUDGMENT AT TRIAL

IN BOTH ACTIONS—DELIVERED 20TH MARCH, 1928

REASONS FOR JUDGMENT

*In the
Exchequer
Court of
Canada.*

No. 72.

Reasons for
Judgment in
both cases.
(Hodgins,
L.J.A.)

Action for damages by the owners of the SS. SASKATCHEWAN, and of her cargo against the SS. PAISLEY due to a collision which occurred in Owen Sound harbour on the 18th January, 1927.

10 The PAISLEY was being shifted from her berth on the east side of the harbour to the elevator dock on the west side where she was to discharge her cargo. She had been laid up in the harbour since the close of navigation. She had no motive power and was moved by the tug HARRISON. Owing to the breaking of the tow line at one stage of the movement the PAISLEY continued her forward movement past the elevator and reached the south end of the harbour where the SASKATCHEWAN was laid up, puncturing the latter steamer under the water line by an anchor left hanging down on the port bow of the PAISLEY and being partly underwater.

The defence of the PAISLEY is practically that the responsibility for what happend does not lies upon her as she had nothing to do with the navigation being in that respect wholly under the control of the tug.

20 The PAISLEY having been laid up in the harbour was put in charge of one Penrice, who is called "ship-keeper." He signed an agreement with the Cleveland Cliffs Iron Company, Marine Department, who were operating the PAISLEY for the owners, the Paisley Steamship Company. That agreement was put in evidence, and is dated 22nd December, 1926 (signed 24th or 25th December, 1926). The terms of that agreement are given later. Penrice employed three men to sweep out the vessel, tidy up and handle the lines when the ship was being moved. He spoke to Richards, the elevator superintendent, on the 15th of January, 1927, with regard to removal and was told that the PAISLEY was next in order. The Captain of the
30 HARRISON, Waugh, came aboard the same day and talked to Penrice about the contemplated movement. The tug which he commanded was owned by the John Harrison & Sons Co., Ltd., which firm was engaged by the Cleveland Cliffs Iron Company to move the ship. The importance of the interview lies in regard to what was then done as to the port anchor. It seems that the chain cable of this anchor had been, as appears to be usual, unshackled and used as a mooring line to the dock. This cable was taken in as a mooring line by Penrice, with the assistance of the tug men and drawn in through the hawse hole on the port side and left hanging down beside the anchor, which had been hanging down the port side by wire cables. The
40 chain was then shackled on to the anchor which was drawn in to the hawse hole as far as the cable would allow the anchor stock to go. About a foot and a half or two feet got into the anchor pipe, the crown of the anchor sticking out about five feet according to Waugh, and about two or three feet

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(continued).

according to Penrice, at an angle of around 80 degrees. This left the flukes drooping down. The parties differ somewhat as to what was said at the time concerning the anchor. Waugh says that he did not like the position of the anchor when hauled up, as it was dangerous, and that Penrice dropped it down till the crown was about 2 feet or 2½ feet under water as well as part of the stock. The crown of this particular anchor is shown as having a rather sharp point outwards as indicated in Exhibit S-4. Waugh says that at the time he offered to take the cable off and bring the anchor in. He had his men there and Penrice had none. Penrice, however, replied, with a certain amount of blasphemy, that he would leave it as it was till spring and let "them" take it in. Penrice does not to my mind satisfactorily contradict Waugh's statements. Indeed, he refused to controvert many of them and where they conflict I accept Waugh's testimony as to what was done and said at this time. Penrice, after lowering the anchor asked Waugh if it would be in his way, and Waugh answered "No," meaning it was not in the way of manoeuvring the tug. As a consequence the anchor was left hanging down as I have described and was in that position on the 18th January, 1927 (See Exhibits S-3 and S-4 and S-5) and in my view the responsibility for its position rests equally upon Waugh and Penrice. 10

No arrangements were made or discussed then or later between Penrice and Waugh as to how or where the ship would be moored when the PAISLEY reached the elevator dock. 20

The PAISLEY was lying across the harbour from this dock and to the south of and forward of two other vessels in the harbour, with her stern to them, and so was hauled out and towed stern first down the harbour to the northward. When far enough down and with her stern beyond the house marked on the chart "J.H.S." the tug swung the ship's bow toward the west and her stern to the east and then cast off from the stern and went to the bow. Penrice and his three men, Sykes, Holmes and Bechard, were at the stern when the tug cast off from it. Penrice says he sent the men forward when the tug left, but only one of them seems to have obeyed at once, the others following later. Penrice maintained his position at the stern, fearing, as he said, that his vessel might, while being backed up, run into what he called "riff raff," a term which I understand him to use in reference to the condition of the margin of the harbour at that place, where spiles and rocks made it dangerous to vessels. The tug having gone forward, took up its position on the starboard bow of the PAISLEY. A heaving line from the PAISLEY was thrown to the stern of the tug by Sykes. This was taken by Mathewson, mate of the tug, and was attached to the tug's line, which was hauled aboard by Sykes and by him put through the starboard chock and on the bitts on that side of the vessel. There was no one there to assist him, otherwise he says would have carried the line over to the port side, which according to him, was the proper place for it to go, and he adds that the tug should have been on the port instead of the starboard bow. Having got assistance, the line was shifted to and through the port chock and to the bitts on the port bow, and after letting out 15 feet of line the tug commenced its movement straight ahead for the elevator dock at a point marked X on the chart. 30 40

Waugh says he got the PAISLEY's bow to about 30 feet from the dock, her speed then being, according to him, about one-half a mile an hour. Mathewson corroborates both these statements. Waugh expected the men on the PAISLEY to heave a line ashore then and says it could easily have been done but he could not see as the bow of the ship was between him and those on the deck of the PAISLEY. He kept on ahead hauling the bow past the elevator and then put the tug's wheel hard aport, swung her stern out to clear the steamer and backed up to the port side of the PAISLEY to put the tug's nose against the PAISLEY and push her in. The men in the tug when it backed up carried the line forward on the tug. Waugh, seeing that the PAISLEY had not got any line to the dock, hailed Sykes not to cast the line off and told his mate to take a turn on the timber head forward on the tug so as to back up and stop the PAISLEY. The tug did back up but the line on being moved from the stern of the tug to its bow ran out all but four feet and began to slip on the timber head. The tug went ahead to give a chance to make fast, while the mate put the eye of the line over the timber head. When taut the tug went full speed astern, and the line parted. The mate picked up another line and sang out for the PAISLEY to take it, but no one board her was ready. When a man came and took it, the tug backed slowly so as not to part it but the PAISLEY forged ahead and got into the ice and ran into the SASKATCHEWAN. As the PAISLEY continued her way a heaving line was thrown from her to the shore by Penrice, but it only reached some piles beyond the south face of the elevator where it was caught by Yeo, who had reached that point and caught it there, but it was not long enough to reach a snubbing post, the nearest being some 65 feet away. Penrice called for another line to attach and lengthen it, but due to the delay in getting it and the movement of the vessel he abandoned it. The PAISLEY went on and struck the SASKATCHEWAN in the way I have described.

I find as a fact that the damage to the SASKATCHEWAN was done by the PAISLEY's anchor and not by the boom which had drifted or been put alongside the SASKATCHEWAN.

Under the circumstances which I have outlined the questions arise whether the action of the PAISLEY was due to the negligence of those on board her, or whether the negligence causing the accident was that of the tow and tug jointly or if by the tug alone whether the PAISLEY is liable for the damages so caused.

The contract under which the tug undertook to move the PAISLEY is contained in the correspondence put in as Exhibits P-6, the final letter of which is dated December 27th, 1926, from John Harrison & Sons Company, Limited, the owner, to Mr. Schneider, Manager of the Marine Department of the Cleveland Cliffs Iron Company of Cleveland. It is as follows:

"Dear Sir:

Your letter of the 23rd received.

Please give us the wheat capacity of your steamers now in harbour here. Our understanding is that the rate for one move to and from the elevator will be one-quarter cent per bushel, on the

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No. 72.

Reasons for
Judgment in
both cases.
(Hodgins,
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(continued).

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Reasons for
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(Hodgins,
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(continued).

wheat capacity of each steamer. Other owners have arranged in this way and wish you would be good enough to give us the figures so that there will be no misunderstanding.

Thanking you in advance for this and wishing you the compliments of the season, we remain,

Yours very truly,
JOHN HARRISON & SONS CO. LTD."

It is, I think, unnecessary to refer to the previous correspondence which began on the 6th November and is contained in Exhibit P.6, except to say that in the letter from the tug Company of December 11th, 1926, (Exhibit S-9) in which it is stated that their offer is to move steamers with storage cargoes to and from the elevator, there is a paragraph reading:

"It is understood this work will be done at owner's risk and that your ship-keeper will direct the mooring of steamers after being unloaded, the harbour master to settle any dispute as to location."

In the telegram of December 13th the tug Company say "Will require favourable weather and no mishaps to break ever at our offer." The offer was accepted on the same day. The tug HARRISON was in the correspondence designated by the Harrison Company to do the work in question. 20

It was urged by the Plaintiff's counsel that the words "Owner's risk" prevented the Defendants from asserting that the tug Company was an independent contractor so as to absolve the PAISLEY from liability. Whatever its meaning and effect may be as regards the tug and tow *inter se* I am unable to see how it affects or increases the right of the Plaintiffs under the circumstances of this case.

I think that this must be considered to be a towage contract or in the nature of a towage contract because the service required would be to transfer the PAISLEY from one dock to another, a movement which necessitated that the operation should be conducted under the sole power of the tug and by means of lines between the tug and the PAISLEY and from the PAISLEY to the elevator dock. The incidents of a towage contract, of course, vary, but substantially the contract here seems one that should be judged by the ordinary relationship of tug and tow, especially as the events which happened occurred while the PAISLEY was in fact under the control of the tug as to motive power, and being towed from one deck to another. 30

The exact position of Penrice the ship-keeper of the PAISLEY and his helpers is not easy to determine. They were not a navigating crew and their actions must be considered in the light of what they necessarily had to do and did or did not do, having regard to the fact that the whole operation while under the control and direction of the tug master was a joint one. 40

Penrice in his evidence says that the purpose of having the three men he employed was "to assist me in handling the lines, taking off hatches and principally to sweep out the boat when she arrived into the elevator and was being unloaded."

The contract between the operating agents of the PAISLEY and Penrice is Exhibit P.8, which is as follows:

Cleveland, Ohio, December 22, 1926.

Mr. A. R. Penrice,
Owen Sound, Ontario.

Dear Sir :—

You are hereby appointed shipkeeper on the Steamer *R. J. PAISLEY*. Your salary is to be \$65.00 per month.

Your regular duties will be to look after the boat you live on, as well as other vessels of this Company that may be near you. The shipkeeper should sound all tanks, peaks, and engine room well; record all movements of vessels and work done in connection with loading or unloading storage cargoes; get vessel ready for inspection or fumigation; look after repairs, and perform such work as chipping, scraping rust, painting, removing snow from hatches, as well as any other work called on to do, without extra compensation.

The shipkeeper is to report in writing to The "Cleveland-Cliffs Iron Company's office, 1460 Union Trust Bldg., Cleveland, Ohio, every Monday morning.

This contract is to terminate at any time the owners or their representatives are not satisfied with the services or conduct of the shipkeeper.

C. O. Rydholm,
The Cleveland Cliffs Iron.

"Cor C

"I hereby agree to the above contract :

" A. R. Penrice,

" Shipkeeper.

"Dec. 16th, 1926

" Date commenced

" keeping ship.

1000 2nd Ave. E.

Mailing address

Owen Sound, Ont."

It is a matter of some difficulty in such a case as this where the tow is a large steamer entirely deprived of her motive power and laden with a heavy cargo, without a navigating crew, but with men on board who must play some part in the operation, to say whether, the tow having run into and damaged a moored ship under the circumstances I have outlined, a maritime lien can be established against her by reason of what happened. Was the Harrison Company, the owner of the tug, an independent contractor, so as to absolve the owners of the *PAISLEY* and consequently the *res* from liability for the negligent navigation of the tug, or can the owners and the *res* be held liable by reason of the fact that their employees in the *PAISLEY* took part in the enterprise, and by negligently doing, or omitting to do something which contributed to the accident?

In the Canadian Dredging Company *v.* Northern Navigation Company (1923) Ex. Cr. page 189, I had to consider the position of a large vessel and a tug which was moving her and the responsibility of both. I there held that as the *Huronic* was not under her own power, but was moved by that of the tug *Sarnia*, the operation of taking the *Huronic* from the dry dock to the passenger

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dock at Port Arthur in the harbour of that name was a joint or combined operation and not one in which either vessel could be said to have had exclusive charge or control. I found both vessels negligent because in performing their part of the joint operation the crew of each omitted certain precautions which if taken would, in my judgment, have prevented the collision. I think this case is somewhat similar because although the men on the PAISLEY were not a navigating crew they were undoubtedly during the movement required and bound to do certain things, such as co-operating with the tug in relation to handling lines both from and to the tug and the dock to which they were making.

10

See also the *Socrates & Champion*, 1923, P. 76.

In *Cory v. France Fenwick* (1911) 1 K.B. 114 (see p. 130) Kennedy, L. J. says:

“The towage is a joint undertaking, and both and tow are bound to take reasonable care, and use reasonable skill, a duty which cannot be removed by the terms of the towage contract. Such a duty is independent of contractual duties, and is in accordance with the general duty which rests upon everybody, whether using a river or a road, to take care not to omit anything which is reasonably necessary for the protection of others, and to do nothing which will by reason of want of care inflict injury upon others.”

20

There is also the statement of Bruce J. in *Penny's case* (1898) 2 Q. B. 212 quoted by A. L. Smith, L. J. in the *Snark* (1900) P. 105 as follows:

“When a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken, and that, if necessary precautions are not taken, he cannot escape liability by seeking to throw the blame on the contractor. *Pickard v. Smith* (1861, 10 C. B. N. S. 470) is an authority for the proposition that no sound distinction in this respect can be drawn between the case of a public highway and a road which may be and to the knowledge of the wrongdoer probably will in fact be, used by persons lawfully entitled so to do.”

30

As to this statement. Smith, L. J., says:

“I subscribe to every word of this passage as being the law.”

The relationship between tug and tow which causes them to be regarded as one vessel is confined to their navigation and with regard generally to third parties. But when the tug alone or the tow alone injures a third vessel then questions arise as to the responsibility of the one which did not itself collide with or injure the third vessel. In this case, the tow only is before me and claims to be an innocent ship and the tug to be the sole cause of the collision. I do not think it is necessary for me to pursue the question of independent contractor further. The tug is not a party defendant, and if those on the PAISLEY in the course of the joint operations were negligent to such an extent

40

as to make them the sole, or part of, the cause of the accident, then, as I understand the law, the ship would be liable for the whole of the damages, nor if negligence is to be imputed to them it would also be useless to discuss the very intricate and at present unsettled question discussed in the cases of the Ripon City (1897) P. 226 by Gorell Barnes J., and the Sylvan Arrow (1923) P. by Hill J.

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(continued).

I may note in passing that the following extract from the judgment of Gorell Barnes J. in *The Ripon City* (1897) P. 226, is quoted with approval in *Sandhill v. Hodder Co.* (1926) S.C.R. 685:

10 “This right (a maritime lien) must therefore in some way have been derived from the owner either directly or through the acts of persons deriving their authority from the owner It does not follow that a right to a personal claim against the owner of the *res* always co-exists with a right against the *res*.”

This must, I think, now be read as subject to the questions raised in that case and in the *Sylvan Arrow*.

20 The harbour of Owen Sound in winter is a long and narrow one in which many vessels are moored, and their movement to the elevator from the docks at times directed by the superintendent of the elevator by a tug or tugs may not in itself suggest conditions in which peril was likely to be encountered. But I must determine whether in what was done antecedent to and in the course of that navigation those on the PAISLEY did or omitted anything which might constitute negligence, for in that case the *res* and the owners of the PAISLEY would be subjected thereby to a maritime lien in favour of the Plaintiff.

30 Those on the PAISLEY were clearly servants of the owners of that vessel, and I am satisfied that the contract with Penrice makes no difference in determining his or their obligations and duties during the movement of the vessel. The *Niobe*, 13 P.D. 55. The work outlined in it was that proper to a ship-keeper merely, but I think it is a reasonable inference to draw that his owners expected him to use his knowledge as a master and his previous experience in moving vessels, and he admits he had some, and that those whom he employed should take their part in the navigation of the ship so far as called upon by the tug master or such part as could only be rendered by them in the operation undertaken. Indeed, the transfer of the ship to the elevator dock necessitated their assistance on board her, and I think demanded that they should render such service as was within their power. They were under the orders of the tug master when he needed them to give assistance on the PAISLEY, but none the less were they taking their part as employees of the owners during that time and could not be discharged by the tug owner. See *Fenton v. City of Dublin, S. Packet Co.* (1838) 3 Ad. & E. 835. The tug might have put a crew or men on board, but finding men there they dispensed with that necessity and the owners of the PAISLEY must accept whatever responsibility their presence and actions entailed.

40 The general scope of the duty of those on the PAISLEY may be described in the words of Lord Loreburn L. C. in *Owners of Lightship Comet and owners of W. H. No. 1* (1911) A. C. 30, in speaking of a hopper barge:

In the
Exchequer
Court of
Canada.

No. 72.

Reasons for
Judgment in
both cases.
(Hodgins,
L.J.A.)

(continued).

“It is the duty of the barge to do her part under all circumstances to avoid collision.”

There are several circumstances which the Plaintiffs urge would render the PAISLEY liable by reason of the acts or omissions of Penrice and his men, notwithstanding the fact that the motive power and the direction of the movement of that vessel was the tug, and I will consider them as put forward by Mr. Holden.

It is plain upon the evidence that Penrice, if judged by what was his reasonable co-operation under the proved circumstances, pursued a course which it is hard to reconcile with the idea of a joint operation. 10

I have already outlined what occurred between him and Waugh regarding the port anchor and expressed my view that both are responsible for its position. As it was intended to move the vessel with the anchor so placed, it added an element of danger to the movement contemplated, in that it became a menace to other ships laid up in a narrow harbour, and possibly hampered the movement or position of the tug when at the bow of the PAISLEY. Its placing was not merely a wrongful act such as occurred in *Currie v. McKnight* (1897) A.C. 106, nor one negligent but not in navigation, see the *Alde* (1926) O. 211, but was one which though antecedent to the movement of the vessel yet in the events which happened not only aggravated the damage, but in fact caused it to happen as the result of the negligent navigation. I think in this regard it altered the situation radically and made the navigation of the PAISLEY when undertaken, one in which the duty spoken of in *Cory v. France and Penny's case* (ante) arises when danger may or ought reasonably to be anticipated. Waugh, captain of the tug, was to tow the PAISLEY, which when afloat would be under his charge, and he was to cause her to move across the harbour and place her close enough to the dock to enable her to be moored in safety. In that manoeuvre she would have to be moved both backward and forward under the steam power of the tug, and I think the duty of seeing that everything was shipshape on the vessel that he was to tow rested primarily upon the tug master. Had he chosen to exercise his authority or insist on doing what he said he offered to do, namely, to take the cable off and raise the anchor properly into the hawse hole, he could have accomplished it without difficulty for he had his men there and Penrice had none, and Penrice would not and could not have withstood him if he had insisted upon so doing. Neglect to do this might be such a default on his part that in the subsequent movement of the ship under his command, his negligence would consist in towing a vessel in a confessedly dangerous condition and so a case of negligent navigation. The *Six Sister* (1900) P. 302. This, however, cannot be finally determined as the tug is not before me. But so far as Penrice's responsibility is concerned what he did in his position as ship-keeper was to urge and persuade Waugh to allow the anchor to occupy a dangerous position and to take part in leaving it so. The safe stowing of this anchor was, if not specifically covered by the contract, within its scope and purpose. As I understood him at the trial, the stowing of this anchor was part of his duties in assisting in safely moving 20 30 40

the PAISLEY across the harbour, and in the events that happened his neglect and that of Waugh jointly became the cause of the damage.

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(continued).

The next allegation is that when the tug cast off from the stern and went to the bow, the men on the PAISLEY were not promptly despatched, or did not go at once, to receive the lines at the bow. Penrice says he ordered the men forward, but either through their neglect, or possibly because Penrice did not order them as he said he did, only one of them was at the bow when the line was heaved from the tug to the PAISLEY, resulting in a delay which Sykes said might be from 1 to 3 minutes. When Sykes got to the bow he says the PAISLEY's bow was 125 feet out from the dock and the stern about 100 feet. This indicates a more or less parallel course. The towing continued according to him until the bow of the PAISLEY had got as far as the south side of the elevator.

I accept the stories of Waugh and Mathewson that they got the bow of the PAISLEY within 30 feet of the dock, and that the course taken would throw the stern in, and I have no doubt that had those on her been ready and proper arrangements made to have men at the dock to receive them, they could have got their lines out in time to have helped to check the steamer and with the shoving of the tug to safely dock her. This had been done shortly before on the PRESQU'ILE, which the tug HARRISON had shifted in precisely the same way, Penrice being aboard her as I understood from his evidence. The vessel was somewhat larger than the PAISLEY and had 30,000 bushels more of grain on board. The tug seems to have pursued proper methods in what she did and it does not occur to me that her navigation in this regard was at fault.

At the same time lack of arrangement beforehand lies at the door of the tug master, as well as at that of Penrice. They should together have concerted measures both as to having men ready and properly stationed and on the look out on the elevator dock at the proper time and as to the position and duties of those on the PAISLEY to co-operate both with the crew of the tug and the shore men at the elevator, and to be early on the look out and prompt to heave out the lines.

There is no doubt that the absence of any arrangement with the superintendent of the elevator or the men there to be on hand at some definite time to handle the lines was a most serious omission. The result is seen in the tale told by these men themselves. They were warned only when the vessel was moving towards the dock. Two emerged from the door of the elevator facing the harbour and seeing the PAISLEY to the north of the elevator and the day being cold, went round the south-east corner of the building to get out of the wind, thus losing sight of the PAISLEY, until they saw her bow passing the south side of the elevator behind which they were sheltering. These two, Ney and Dault, say the vessel when they first saw her was some distance off the elevator. Ney says 250 feet away and in the centre of the slip and standing still.

The other two men came out of the door in the south wall of the elevator which was back two-thirds of the way from the front of the elevator, and were only in time to see the PAISLEY's bow pass the line of that wall

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(continued).

by about 75 feet, as Colquette says. Yeo ran to some piles 50 feet south of the elevator and caught a line, but could do nothing at that time as the nearest snubbing post was 65 feet away. Penrice found the line he had passed to Yeo was too short and not being able to get another line in time, to fasten to it, desisted from his efforts to heave it ashore.

As to what was done on the PAISLEY when she was afloat, the story is equally unsatisfactory. The evidence discloses the following. Penrice went to the stern of the PAISLEY and remained there while she was being towed northerly stern foremost up the harbour. This was proper enough, but when the northward movement was over and that southward was begun, he still remained there while the tug and her tow were nearing the elevator dock and until the bow of the PAISLEY was abreast of the elevator. There was at this time no real necessity for staying on in disregard of a much more pressing need. He admits that he expected that the tug would put the PAISLEY at the dock without any lines being thrown, and in this belief he allowed himself and his men to do little or nothing. He looked up to see where they were going he says, not when the forward movement began, but only when there was trouble with the tug line. He had then got as far as amidships and started forward when the line parted, and when he got there he found the bow of the PAISLEY was 60 or 70 feet past the south side of the elevator and about 100 feet from the SASKATCHEWAN. This was about twice the distance which the bow should have been south of the elevator if the PAISLEY had been safely docked. He later says that when the trouble with the line occurred the PAISLEY was a full length past the elevator and 150 to 200 feet from the SASKATCHEWAN. His reason for staying aft was to watch the stern in relation to the eastern bank, but he admits he did not give a thought to his duty to go forward before the PAISLEY got to the dock.

In other respects he falls short of any standard of reasonable care and forethought.

He had, as I have stated, made no arrangements at the elevator with the superintendent for men to take the lines or with the men themselves, nor as to when the PAISLEY would arrive. He never consulted with the tug master as to how the movement was to be made, how the vessel was to be docked and what his men were to do. He thought he had mooring lines ready, but he gave no definite orders or instructions to his crew of three men to be ready or alert, did not assign them any station nor did he know where they were when wanted. He has a ticket, as he expresses it, as pilot, which includes a mate's standing, from the American authorities and had some previous winter experience in moving vessels. All this exhibits complete indifference, or incompetence and apparent disposition to let the tug do everything and himself and his men nothing but what might be forced on them.

The real fault to my mind was that when the PAISLEY was cast off by the tug as she shifted to the port side to nose her in, there was no one to heave lines ashore from any part of the ship and no one to receive them. I do not believe the young men who came out of the elevator, when they assume to give the PAISLEY's distance north of the dock. I think Waugh and

Mathewson are more correct and that the vessel had got within 30 feet of the dock at the bow when it was passing the centre of the elevator and while she was going about half a mile an hour, its stern being probably somewhat further out—Mathewson says she passed the piles to which the line was thrown within 40 feet and that she was then heading a little out. There is nothing to show where Dault and Bedard were and it is clear that Penrice did not get forward to amidships until the bow was past the south side of the elevator. Even if the line had not parted this absence of all effort to get a line out to the dock and of all preparation to receive it is not, to my mind, excusable in any way. Penrice's only explanation is that he expected the tug to put the PAISLEY into her position at the dock without being assisted thereby by those on board or on the dock.

The tug master frankly admits that the earlier delay in shifting the line from the starboard side of the PAISLEY's bow to the port side, while causing delay, had no appreciable effect in causing or contributing to the accident and that the parting of his line was the effective cause. But the failure of those on the PAISLEY to do what in them lay to get lines out to the dock in time threw everything upon the ability of the tug to retard the vessel's progress and the strength of its line and when that failed the collision was inevitable.

I blame both the tug master and Penrice for the absence of any pre-arrangement regarding the presence of men on the dock at the critical time, and also as to the proper stationing of the men on the PAISLEY and their duties at the same moment. This was negligence in navigation as I held in *Canadian Dredging Co. v. Northern Navigation Co.* (ante).

A further complaint is made that the starboard anchor, which could have been dropped easily and in three seconds according to Penrice, was not dropped to retard the vessel's course. In the statement made by Sykes he says that Penrice admitted that he could have done this, but was not sure of the bottom. From what was stated by the fleet captain of the Cleveland Cliffs Iron Co.'s fleet (Rydholm) and not I think, successfully met, I should think that the anchor would not have had time to sink in the bottom of the harbour, so as to fetch up on its chain, and would have dragged through the surface of the bottom, instead of holding the vessel. It becomes a question whether the effort should have been made. It might have been successful in retarding the way of the PAISLEY. But I cannot persuade myself that the omission was negligence in view of the fact that no one could foresee just what the result of dropping the anchor would be, and it might, as has been pointed out, have been a matter of considerable risk to the ship itself. There was no request or order from the tug, and I am not convinced that, failing that, Penrice could be blamed for his inaction.

It is also argued that the hand-steering gear should have been ready for use and used during the movement of the PAISLEY. I have already expressed in *Poplar SS. Co. v. The Charles Dick*, 1926 Ex. R. 46, my views as to the necessity of a crew standing by an alternative steering gear under certain circumstances and need not repeat them. The question of responsibility in that respect, however, depends upon whether it was the duty of

*In the
Exchequer
Court of
Canada.*

No. 72.

Reasons for
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both cases.
(Hodgins,
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(continued).

the tug master to have insisted upon steering gear being available, or whether the crew under Penrice, or Penrice himself, was bound to have made that provision. I cannot say that the same vigilance and responsibility in this respect can be required from those on the PAISLEY as would be expected from a regular crew of seamen. The men on the PAISLEY were there to assist in any movement which the tug had caused her to make, and if the captain of that tug, knowing the conditions, did not insist before he started the operation, on the hand-steering gear, which was stowed away, and really almost inaccessible, being got ready and available, I cannot see that it became, under the circumstances, the duty of those on the PAISLEY to uncover it and have it ready for use. 10

It is further contended that the four men on the PAISLEY were insufficient for what they had to do and that one tug was not enough to safely handle so large and heavy a vessel. I think the first proposition is, upon the evidence, borne out and that the owners of the PAISLEY should have foreseen this. But I am not satisfied that the tug employed was not powerful enough to undertake and safely carry out the shift to the elevator. It had accomplished that task with the PRESQU'ILE alone and besides it was the tug accepted for that purpose by the operators of the Paisley SS. Co.

There is no doubt that where a vessel at anchor or moored at a dock is run into by another vessel, the onus is upon the moving vessel to justify or excuse her actions; Yosemite, 4 Canadian Exchequer Reports, 241; Hatfield v. Wandrian, 38 S.C.R. 431; H. M. Wrangells v. SS. Steel Scientist, 1926, Can. Ex. R. 202. In this case that onus is cast upon the PAISLEY as she was the vessel which did the damage. I have come to the conclusion, though I must admit, with some doubt, that in the respects I have mentioned that onus has not been discharged. 20

The case of the cargo owners is identical with that of the Plaintiff, and of the vessel in which it was carried and the recovery of both Plaintiffs can be against the PAISLEY although the tug is not jointly used. See The Devonshire, 1912 P. 68, 1912 A.C. 634; Can. Dredging Co. v. Northern Navigation Co. (ante). 30

Judgment will therefore be entered for both Plaintiffs, condemning the Paisley. Reference to the Registrar of this Court at Toronto to assess the damages, with costs of action and reference.

DELIVERED March 20, 1928.

*In the
Exchequer
Court of
Canada.*

No. 70.
Judgment.
James Richardson &
Sons,
Limited

JUDGMENT AT TRIAL

IN THE EXCHEQUER COURT OF CANADA

<p>THE HONOURABLE MR. JUSTICE HODGINS.</p>	}	<p>TUESDAY, the 20th day of March, A.D. 1928.</p>	40
<p>JAMES RICHARDSON & SONS LIMITED,</p>			

—AGAINST—

THE SHIP "PAISLEY"

This action coming on for trial before this Court at a special sittings held at the City of Toronto on the 8th, 9th and 10th days of February, and

the 8th and 9th days of March, A.D. 1928, in the presence of Counsel for both parties; upon hearing read the pleadings, and upon hearing the evidence adduced and what was alleged by Counsel aforesaid, **THIS COURT WAS PLEASED TO DIRECT** this action to stand over for judgment, and the same coming on this day for judgment—

*In the
Exchequer
Court of
Canada.*

No. 72.

Judgment.

James Rich-
ardson &
Sons.
Limited

(continued).

1. **THIS COURT DOTH DECLARE** that the Plaintiff is entitled to the damage proceeded for, and doth condemn the Defendant and its bail in the amount of such damage, and in costs of the action and of the reference hereinafter directed.

10 2. **THIS COURT DOTH ORDER AND ADJUDGE** that it be referred to the District Registrar of this Court at Toronto, to ascertain and report the amount of the said damage, and that all accounts and vouchers with the proofs in respect thereof, be filed and given at such time and in such manner as the said Registrar may direct.

3. **THIS COURT DOTH FURTHER ORDER** that the Defendant and/or its bail do pay to the Plaintiff the amount of the said damage forthwith after confirmation of the said Registrar's report and the costs of this action and of the said reference forthwith after taxation thereof.

Entered Decree Book

20 No. 2 Folio 476

March 24, 1928

“JOHN BRUCE”

District Registrar

“JOHN BRUCE”

Dist. Regr.

JUDGMENT AT TRIAL

THE HONOURABLE
MR. JUSTICE HODGINS,
Local Judge in Admiralty.

TUESDAY, the 20th day of
March, A.D. 1928.

*In the
Exchequer
Court of
Canada.*

No. 71.

Judgment.

Canada
Steamship
Lines
Limited

CANADA STEAMSHIP LINES LIMITED

30

Plaintiff

—AGAINST—

ROBERT J. PAISLEY

The Ship

40 **THIS** action having come on for trial before this Court at a special sittings held at the City of Toronto on the 8th, 9th, and 10th days of February, and the 8th and 9th days of March, A.D. 1928, in the presence of Counsel for both parties, and upon hearing read the pleadings and the evidence adduced, and upon hearing what was alleged by Counsel aforesaid, **THIS COURT WAS PLEASED TO DIRECT** that this action stand over for judgment, and the same coming on this day for judgment:

*In the
Exchequer
Court of
Canada.*

No. 71

Judgment
Canada
Steamship
Lines
Limited

(continued).

1. THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff is entitled to the damage proceeded for, and that the defendant ship ROBERT J. PAISLEY and its bail be and they are hereby condemned in the amount of such damage and in costs; and that it be referred to the District Registrar of this Court at Toronto to ascertain and report the amount due to the plaintiff in respect of the damage sustained by reason of the collision in the pleadings mentioned; and that all accounts and vouchers, with the proofs in respect thereof, be filed within such period as the Registrar may allow.

2. AND THIS COURT DOTH FURTHER ORDER AND AD- 10
JUDGE that the defendant ship ROBERT J. PAISLEY and/or its bail do pay to the plaintiff such sum as the said Registrar may find the plaintiff entitled to as damages aforesaid forthwith after the confirmation of the said Registrar's report, and the costs of this action and of the said reference forthwith after taxation thereof.

JOHN BRUCE, District Registrar

NOTICE OF APPEAL

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

JAMES RICHARDSON & SONS LIMITED,

Plaintiff 20

—AND—

THE SHIP PAISLEY

TAKE NOTICE that the Defendant herein intends to appeal and does hereby appeal to the Supreme Court of Canada from and against the judgment of the Local Judge in Admiralty, Toronto Admiralty District, given by the Honourable Mr. Justice Hodgins on the 20th day of March, A.D. 1928, and that the said Defendant intends to prosecute an appeal to the Supreme Court of Canada aforesaid in accordance with the practice of this Honourable Court and of the Supreme Court of Canada aforesaid, and the Defendant has this day deposited with the Registrar of the Supreme Court of Canada the sum of Fifty Dollars (\$50.00) by way of security for costs upon the said appeal and in accordance with the Exchequer Court Act and amend- 30
ments thereto.

DATED at Toronto this 18th day of April, A.D. 1928.

GALT, GOODERHAM & TOWERS,
Solicitors for the Defendants.

To MESSRS. CASEY WOOD & Co.
Solicitors herein for the Plaintiffs,
and to the REGISTRAR OF THE EXCHEQUER COURT.

*In the
Exchequer
Court of
Canada.*

No. 14.

Notice of
Appeal to
Respondent
James
Richardson &
Sons, Limited

NOTICE OF APPEAL
IN THE EXCHEQUER COURT OF CANADA

In the
Exchequer
Court of
Canada

No. 15

Notice of
Appeal to
Respondent
Canada
Steamship
Lines,
Limited.

BETWEEN:
CANADA STEAMSHIP LINES LIMITED,

Plaintiffs

—AGAINST—

THE SHIP ROBERT J. PAISLEY

10 TAKE NOTICE that the Defendant herein intends to appeal and does hereby appeal to the Supreme Court of Canada from and against the judgment of the Local Judge in Admiralty, Toronto Admiralty District, given by the Honourable Mr. Justice Hodgins on the 20th day of March, A.D. 1928, and that the said Defendant intends to prosecute an appeal to the Supreme Court of Canada aforesaid in accordance with the practice of this Honourable Court and of the Supreme Court of Canada aforesaid, and the Defendant has this day deposited with the Registrar of the Supreme Court of Canada the sum of Fifty Dollars (\$50.00) by way of security for costs upon the said appeal and in accordance with the Exchequer Court Act and amendments thereto.

DATED at Toronto this 18th day of April, A.D. 1928.

GALT, GOODERHAM & TOWERS,
Solicitors for the Defendants.

20 To Messrs. ROWELL, REID, WRIGHT & McMILLAN,
Solicitors herein for the Plaintiffs,
and to the REGISTRAR OF THE EXCHEQUER COURT.

CERTIFICATE

No. 16.

Certificate of
Payment of
Security.

"B" No. 516

THE BANK OF MONTREAL

19th day of April, 1928.

Can. Steamship Lines Ltd. v.
Ship "Robert J. Paisley."

\$50.00

30 THIS IS TO CERTIFY that Messrs. Galt, Gooderham & Towers, has this day paid into this Bank, to the credit of the account of the Registrar of the SUPREME COURT OF CANADA and one of the Judges thereof the sum of Fifty Dollars.

FOR THE BANK OF MONTREAL.

"C. D. MATHESON"

Accountant.

In the
Exchequer
Court of
Canada.
No. 17.
Certificate of
Payment of
Security.

CERTIFICATE

"B" No. 517

THE BANK OF MONTREAL

19th day of April, 1928

Jas. Richardson & Sons v.
Ship "Paisley"

\$.....
THIS IS TO CERTIFY that Messrs. Galt, Gooderham & Towers
has this day paid into this Bank, to the credit of the account of the Registrar
of the Supreme Court of Canada and one of the Judges thereof, the sum of 10
Fifty Dollars.

FOR THE BANK OF MONTREAL,
"C. D. MATHESON,"
Accountant.

In the
Exchequer
Court of
Canada.
No. 18.
Order of the
Registrar.

ORDER OF REGISTRAR

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA,

TORONTO ADMIRALTY DISTRICT

Before the ACTING REGISTRAR } WEDNESDAY the 25th day of
IN CHAMBERS. } August, A.D. 1928. 20
BETWEEN:

THE SHIP "ROBERT J. PAISLEY"

(Defendant) Appellant

—AND—

JAMES RICHARDSON & SONS LIMITED,
(Plaintiff)

Respondent

AND BETWEEN:

THE SHIP "ROBERT J. PAISLEY"

(Defendant) Appellant

—AND—

30

CANADA STEAMSHIP LINES LIMITED

(Plaintiff) Respondent

Upon the application of the Appellants, all parties consenting thereto:
(1) IT IS ORDERED that these actions wherein

THE SHIP "ROBERT J. PAISLEY" (Defendant) is Appellant

—AND —

JAMES RICHARDSON & SONS LIMITED (Plaintiff), is Respondent
and

THE SHIP "ROBERT J. PAISLEY" (Defendant), is Appellant

—AND —

CANADA STEAMSHIP LINES LIMITED (Plaintiff), is Respondent
pending in this Court, be consolidated and heard together.

(2) It is further ordered that one Appeal Case only be printed and
10 that the time for filing the said Case be extended to September 20th, 1928.

(3) It is further ordered that the time for depositing the Factums
herein be extended to October 1st, 1928.

(4) It is further ordered that the printing of Exhibits herein, S1, P1,
C1, C2, C3, S2, S3, P2, P4, S4, S5, S6, P5, S7, be and the same is hereby
dispensed with and that there be deposited nine copies of each exhibit for
the use of the Court.

(5) It is further ordered that the printing herein may be in accordance
with the rules required for the printing of Cases on Appeal to the Privy
Council.

(6) It is further ordered that the Case be inscribed for the October
20 Session.

(7) It is further ordered that the costs of this application be costs in
the cause.

ARMAND GRENIER,
Acting Registrar.

Ent'd Fol. 102
O.B. No. 7
G.A.A.

*In the
Exchequer
Court of
Canada.*

No. 18.

Order of the
Registrar.

CONSENT AS TO CONTENTS OF CASE

*In the
Exchequer
Court of
Canada.*

No. 19
Consent as
to Contents
of Case

The Parties hereto by the undersigned, their attorneys, hereby consent and agree that the printed case shall consist of the following:

1. Writ of Summons of the Respondent, James Richardson & Sons Limited.
2. Writ of Summons of the Respondent, Canada Steamship Lines Limited.
3. Preliminary Act of Respondent, James Richardson & Sons Limited.
4. Preliminary Act of Respondent, Canada Steamship Lines Limited.
5. Preliminary Act of the Appellant.
6. Order directing trial together and on same evidence.
- 10 7. Statement of Claim of the Respondent, James Richardson & Sons Limited.
8. Statement of Claim of the Respondent, Canada Steamship Lines Limited.
9. Amended Statement of Defence of the Appellant to the Respondent James Richardson & Sons Limited.
10. Amended Statement of Defence of the Appellant to the Respondent Canada Steamship Lines Limited.
11. Reply of the Respondent, Canada Steamship Lines Limited.
12. Reply of Respondent, James Richardson & Sons Limited.
- 20 13. The evidence taken before the Honourable Mr. Justice Hodgins, Local Judge in Admiralty of the Exchequer Court of Canada, Toronto Admiralty District, in Court at Toronto on the 8th, 9th and 10th days of February, and on the 8th day of March, 1928.
14. Exhibits numbered P-3, P-6, P-7, P-8, S-8, S-9, C-4.
15. Formal Decree of Local Judge in Admiralty in Claim of Respondent James Richardson & Sons Limited.
16. Formal Decree of Local Judge in Admiralty in Claim of Respondent Canada Steamship Lines Limited.
17. Reasons for Judgment.
18. Notices of Appeal to the Supreme Court of Canada in each case.
- 30 19. Certificates of Bank of Montreal with security on appeal in each case.
20. Order of the Registrar of the Supreme Court of Canada.
21. Consent as to contents of case.
22. Statement of the Case.

DATED at Toronto this 11th day of September, 1928.

GALT, GOODERHAM & TOWERS,
Solicitors for Appellant.

CASEY WOOD & CO.,
Solicitors for Respondents,
James Richardson & Sons Limited.

40

ROWELL, REID WRIGHT & McMILLAN,
Solicitors for Respondents,
Canada Steamship Lines Limited.

FORMAL JUDGMENT OF SUPREME COURT OF CANADA
IN THE SUPREME COURT OF CANADA.

In the
Supreme
Court of
Canada.

Formal
Judgment
5th Feb., 1929

TUESDAY THE FIFTH DAY OF FEBRUARY, A.D. 1929.

PRESENT :

THE RIGHT HONOURABLE F. A. ANGLIN, P.C., Chief Justice,
THE HONOURABLE MR. JUSTICE MIGNAULT,
THE HONOURABLE MR. JUSTICE NEWCOMBE,
THE HONOURABLE MR. JUSTICE LAMONT,
THE HONOURABLE MR. JUSTICE SMITH.

10 BETWEEN :

THE SHIP "ROBERT J. PAISLEY,"
(Defendant) APPELLANT,

AND

JAMES RICHARDSON & SONS, LIMITED,
(Plaintiff) RESPONDENT,

AND BETWEEN

"THE SHIP ROBERT J. PAISLEY,"
(Defendant) APPELLANT,

AND

CANADA STEAMSHIP LINES, LIMITED,
(Plaintiff) RESPONDENT.

20

The appeals of the above named appellant from the judgment of the Honourable Mr. Justice Hodgins, Local Judge in Admiralty, pronounced in the above cause on the twentieth day of March in the year of our Lord one thousand nine hundred and twenty-eight, having been consolidated and having come on to be heard before this Court on the fifth and sixth days of December in the year of our Lord one thousand nine hundred and twenty-eight, in the presence of counsel as well for the appellant as the respondents, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeals should stand over for judgment, and the same coming on this day for judgment, this Court did ORDER AND ADJUDGE that the said appeals should be and the same were allowed and the said actions dismissed.

30

And this Court did further ORDER AND ADJUDGE that the said respondents do pay to the said appellant the costs incurred by the said appellant in the said actions as well before the Local Judge in Admiralty as in this Court.

(Sgd.) E. R. CAMERON,
Registrar.

REASONS FOR JUDGMENT IN THE SUPREME COURT OF
CANADA.

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT,

v.

JAMES RICHARDSON & SONS, LIMITED,
(*Plaintiff*) RESPONDENT,

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT,

v.

CANADA STEAMSHIP LINES, LIMITED,
(*Plaintiff*) RESPONDENT.

10

NEWCOMBE, J. (Concurred in by the Chief Justice and Mignault, Lamont
and Smith, JJ.)

The steamship "Saskatchewan," owned by the Canada Steamship Lines, Limited, while lying moored in the harbour of Owen Sound, Georgian Bay, laden with grain, on 18th January, 1927, sustained damage in collision with the defendant steamship, "Robert J. Paisley," in consequence of which, on the following day, she sank at her moorings, and her cargo, which belonged to James Richardson & Sons, Ltd., was also thereby damaged. The owners of the ship and cargo respectively brought these two actions *in rem* in the Exchequer Court in Admiralty, to recover their damages against the "Paisley." The actions were, by consent, tried together, as to the question of liability. There are some differences, though not, I think, very material, upon the facts, and there is also a question of law to be determined, arising out of the fact that the "Paisley" was, at the time, being navigated by the tug "Harrison," which belonged to and was under the direction of John Harrison & Sons, Ltd. 20

The "Paisley" is of 3,762 tons gross, length 366 feet, beam 50 feet, and moulded depth 28 feet, registered at Fairport, Ohio; and she was, at the time, engaged in the Canadian grain trade. It would appear that her owners had entrusted the management of the vessel to the Cleveland Cliffs Iron Company, of Cleveland, Ohio, of which Albert E. R. Schneider was the General Manager, and that, on 6th November, 1926, William Richards, the Superintendent of the Great Lakes Elevator Co., Ltd., which has a grain elevator at Owen Sound, wrote to the Cleveland Cliffs Company, referring to a telephone 30

conversation of the previous day, and informed the company that John Harrison & Sons, Ltd., of Owen Sound, had a good tug, and would write the Cleveland Cliffs Company in connection with the handling of any steamers which the latter company might send to the elevator. Mr. Richards represented that ice conditions were favourable at Owen Sound, that harbour being usually the last to freeze over and among the first to open in the spring; that the handling would be cheaper there than at other ports, and that every assistance possible would "be given steamers, and if you can see your way clear to favor us with a share of this business, we feel that we can take care of

10 same to your entire satisfaction, and that it will turn out to be a mutual benefit." Following this, upon the same date, Harrison & Sons wrote the Cleveland Cliffs Company, at the suggestion of Mr. Richards, and further correspondence ensued. On 2nd December, the Harrison Company wrote Mr. Schneider that they were interested in the Elevator Company, and were anxious to give satisfactory service at Owen Sound, "so that you will be disposed to charter for this port more frequently," and they put forward their views "as to the cost of handling your three steamers to and from the elevator," and suggested delay in fixing the charges until the last of the winter fleet should have arrived. By letter of 11th December, the Harrison Company

20 wrote Mr. Schneider, stating that,

"Now that the winter storage fleet has been chartered with fair prospects of all being able to get here, we are prepared to undertake the moving of your steamers with storage cargoes to and from the elevator here at a flat average rate of one-quarter cent ($\frac{1}{4}$ c.) per bushel, as per Lake Bills (that is on a bushel basis), to include keeping the ice clear as long as possible.

"This must be subject to immediate acceptance by owners of all storage cargo vessels in this port; otherwise, we cannot undertake it.

30 "In event of any of the steamers being on the bottom and requiring lightering, there will of course have to be an extra charge for this, but we do not anticipate anything of this kind.

"We have already incurred considerable expense keeping harbour open and notwithstanding the cold weather we have had, the harbour is to-day entirely free of ice.

"It is understood this work will be done at owner's risk and that your Ship-keeper will direct the mooring of the steamers after being unloaded, the Harbour Master to settle any dispute as to location.

40 "If all concerned are willing to give us instructions to undertake this work on above basis, we intend keeping tug in commission and the harbour clear of ice as late as possible. If any of the owners are not satisfied with this offer, we will lay up the "Harrison" immediately.

"Be good enough to telegraph us one way or the other not later than Tuesday, the 14th, and upon receipt of the acceptance of all the owners, we will confirm this arrangement promptly."

There was some further discussion as to the rate, but by telegram of 13th December, Mr. Schneider accepted the Harrison Company's offer of $\frac{1}{4}$ c. per

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bushel, and on 20th December, the Harrison Company wrote him as follows :

“We duly received your telegram accepting our offer to have tug “Harrison” keep harbour clear long as possible and move your steamers to and from elevator, for which we thank you.

“The harbour is clear of ice and your steamer “Presque Isle” is under the leg to-day. Do not know whether they will be able to take all the cargo out at this time or not.

“Presume your Charter covers that Shippers of Cargo will pay expense of more than one move. Please send us copy of your Charters, for our information, with reference to this and also give your wheat 10 capacity of each steamer for our records and oblige.

“All owners have accepted this arrangement, with exception of Paterson Steamship Line; they have only one small boat here, and we think surely they will be satisfied to come in.”

It was upon the terms so disclosed that the towing operations were undertaken and carried out by the Harrison Company.

The owners of the “Paisley” having received the assurances and made the arrangements set out in the correspondence, the “Paisley” took up her winter quarters at Owen Sound, and was moored on the east side of the harbour and somewhat to the southward of the elevator, which was situate on the 20 opposite side of the harbour; her bow pointing southerly, or inwards, and immediately below her several other ships were lying moored, alongside of each other. The “Paisley’s” engines and steering gear were “laid up”; the ship was generally put into condition for the winter; the officers and crew were discharged, and left the ship.

On 14th January, Mr. Schneider telegraphed the owners of the tug :

“Elevator ready to unload steamer “Paisley.” Place accordingly and notify A. R. Penrice, Ship-keeper.”

Mr. Telliard, the chief engineer of the “Paisley,” who was the last of her officers to leave, and who quitted the ship on the morning of 15th January, 30 tells us that, on 13th or 14th January, Captain Waugh, of the tug, came on board the “Paisley” to find out about raising her anchors. Mr. Telliard unlocked the windlass room and explained how it was fitted and cleared, and how the windlass should be worked with steam power supplied by the tug, and gave him further requisite information. Captain Waugh then left the ship, and, on the 15th, the ship-keeper arrived, and the engineer went home.

The ship-keeper was Alvin Roy Penrice. He was employed by the owners of the “Paisley” and, according to their agreement, which was dated 22nd December, 1926, and sets forth the terms under which he was acting from the time he took charge as ship-keeper, he was to receive \$65.00 per 40 month, and his regular duties were to look after the boat he lived on, which was the “Paisley,” as well as other vessels of the company, that might be near him,

“to sound all tanks, peaks and engine room well; record all movements of vessel and work done in connection with loading or unloading storage cargoes; get vessel ready to inspection or fumigation; look after repairs,

and perform such work as chipping, scraping rust, painting, removing snow from hatches, as well as any other work called on to do, without extra compensation.”

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And he was to report in writing to the Cleveland Cliffs office, at Cleveland, every Monday morning; the contract to terminate at any time the owners or their representatives were not satisfied with his services or conduct.

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Mr. Richards, the Superintendent of the elevator, had informed Penrice that “the ‘Paisley’ would be the next boat to go to the elevator.”

10 Captain Waugh, with his tug came alongside on the afternoon of 15th January, and raised the “Paisley’s” anchors, supplying the power from the tug and using the ship’s winch in the manner which had been explained by her engineer. The tug had a crew of three or four men, and Penrice assisted with the anchors. Both anchors were brought up into their hawse-pipes, but there was trouble with the stowing of the port anchor, and Captain Waugh considered that it projected so far as to interfere with the navigation of the tug, and it was accordingly lowered again, and permitted to remain suspended and partially submerged.

Penrice gives the following evidence as to the commencement of the towing operation, about which there is no dispute :

20 Q. Now you have told us about the anchors being hove up on the 15th January. Then what was your next communication about shifting the vessel ?

A. On Tuesday, January 18th.

Q. Yes ? A. The tug came over in the forenoon and Captain Waugh came aboard bringing with him a short piece of chain and said he was going to shift us to the elevator that morning.

By HIS LORDSHIP : Q. What do you mean by a short piece of chain ? One you had never seen before ?

30 A. I had never seen this piece of chain before. I went with Captain Waugh to the stern of the Paisley and he put this chain around the bitts on the stern of the Paisley.

Q. Where was the bitt ? A. On the fan tail of the stern of the Paisley. I asked Captain Waugh what the chain was for.

Q. You had no idea, I suppose ?

A. I didn’t know what he was going to use that for. He said that was to hook his towing cable into. He made the chain fast. The cable was pulled aboard from the tug, the towing cable, and made fast to this chain.

40 By MR. TOWERS : Q. Was that in the forenoon ?

A. It was before noon, January 18th.

Q. Had you any men besides yourself on board then ?

A. I had one man when the tug came. Shortly after the tug arrived my other two men.

By HIS LORDSHIP : Q. The towing cable from the tug was made fast to this chain ?

A. Made fast to the chain.

Q. Then what was done with the chain, left on the bitts ?

A. Left on the bitts. After that was done the lines were taken in; that is, the mooring lines.

Q. That is, of the Paisley? A. On the Paisley.

Q. That means she was afloat then, does it?

A. Yes, sir.

By MR. TOWERS : Q. You said you had some other men on board. Who were they?

A. Mr. Sykes and Mr. Holmes and Mr. Bechard.

By HIS LORDSHIP : Q. Employed under you?

A. I arranged to have them.

Q. Employed under you? A. Yes, sir.

By MR. TOWERS : Q. For what purpose did you have them?

A. To assist me in handling lines, taking off hatches and principally to sweep out the boat when she arrived into the elevator, and was being unloaded.

By HIS LORDSHIP : Were they aboard this morning? A. They were.

By MR. TOWERS : Q. Well, then once you were afloat, what happened?

A. The tug pulled our stern out away from the dock and then straightened us out and pulled us down the harbour, that is northward.

By HIS LORDSHIP : Q. Stern first, I suppose?

A. Stern first.

At this point, according to the chart in evidence, the general direction of the harbour, going inward, is southwesterly, and the direct distance from the "Paisley," as she lay at her moorings, to the elevator on the opposite side of the channel, is about 700 feet. The course was unobstructed, but, owing to the fact that other vessels were lying at the stern of the "Paisley," the master of the tug found it advisable to tow her out in a northerly direction, and so he made fast to his cable, which he had attached to the chain affixed to the stern bitts of the "Paisley," and proceeded outwards on a northerly course for a distance of about 1,000 feet, which brought the ship to a position about mid-channel, or perhaps somewhat closer to its western side, and to the northward of the elevator, where those on the ship, by the tug's direction, cast off the cable from the ship's stern, and the tug passed upward between the western shore and the starboard side of the ship, and sent up a cable to Sykes, one of the men on board, to make fast to her bow. There was some unimportant delay here, because Sykes attached the cable to the "Paisley's" starboard bitts, whereas the tug-master desired to use the bitts on her port bow, and, this direction having been executed, the tug proceeded towing the ship southwesterly by a tow-line the length of which, as between tug and tow, is stated to have been fifteen feet, and with the intention, no doubt, of bringing the ship in some manner to the elevator. At the same time, Mr. Richards, who was in charge at the elevator, sent out four of his employees, who were engaged at storage, to attend to what would be necessary upon the part of the elevator in securing lines and in the mooring of the tow, when she came to her station alongside of the dock. It is here that a difference develops in the

testimony as between the tug-master and his mate, on the one hand, and those at the dock and on board the ship, on the other hand.

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Captain Waugh had given no directions to the ship-keeper, and there was no arrangement or understanding between him and Penrice, or any of the men on the ship, as to the mooring of the ship when she was brought to the dock; but Penrice seems to have supposed that it would be his duty to see to the mooring, and he had his mooring lines and cables on deck, ready for the purpose. There is no apparent reason why the tow should not have been brought directly up to the dock, as her course was nearly parallel with
10 the dock's face, and the lines would then naturally have been passed over to the elevator employees, who were waiting on the dock to receive them. Captain Waugh, who was the plaintiffs' witness, indeed, says, in answer to the question, "Where were you intending, on that dock, to land the Paisley?" "I was intending to land her along the dock. Q. How far along? You "must have some definite idea where you were going? A. We were supposed "to put her right at the elevator." What happened, however, according to Captain Waugh, was this :

Q. Now how close in to the dock did you get the Paisley before she was abreast of the elevator? You didn't measure it, but tell His
20 Lordship as near as you can what the distance was from the nearest part of the Paisley to the face of the dock just before she got to the elevator?

A. When she was immediately north-east of the elevator she was within thirty feet of the dock as closely as I could go, or judge.

By HIS LORDSHIP : Q. Within thirty feet of that dock when she was north-east of the elevator?

MR. WOOD : When her bow was, my Lord.

Q. That is her bow? A. Her bow.

By MR. HOLDEN : Q. How near does a ship like that need to be to get her line ashore, with the heaving line first and so on?

30 A. Well, I think it is practicable for—— Well, I shouldn't say I think; I know it is practicable for a man to get a heaving line ashore from a greater distance than that from the dock.

Q. How great a distance?

A. Some men can put a heaving line further than others. They should be able to put a heaving line a hundred feet.

Q. Then did the Paisley get her line ashore when she was thirty feet off, about, before reaching the elevator, as you intended? Did she get a line ashore there?

A. She didn't get a line ashore.

40 There was, at the time, no order or gesture by the tug that any attempt should be made to heave a line, although the tug-master says that

"I kept on ahead with the steamer till we got past the elevator, expecting that he was getting a line out."

Then, having passed the elevator, the tug manoeuvred in the following manner:

Q. And then what happened, Captain?

A. I put the wheel hard aport, swung her stern out to clear the steamer, and backed up on her.

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Q. Swung her stern out, that is the tug's ?

A. The tug's.

Q. And then you backed up on the tug ?

By HIS LORDSHIP : Q. Swung the tug's stern out and backed up. For what purpose ? What was your object in that ?

A. We were supposed to back up and put her nose against the steamer and push her in to her moorings to the elevator.

Q. Well, where did you push her in, at the bow or stern ?

A. Well, it would depend on—

Q. What did you do ?

10

A. I didn't—I backed up and I saw that they didn't have a line out and the man on the bow of the Paisley—when I backed up our men carried their line forward on the tug.

Q. Well ? A. And Jimmy was going to let go our line.

By MR. HOLDEN : Q. That is Jimmy Sykes on the Paisley ?

A. Yes. And I saw they hadn't a line on the dock, when I got back far enough I saw there was no line on the dock and that the tow had to be stopped some way.

By HIS LORDSHIP : Q. So what did you do ? A. So I sung out to Jimmy to not throw the line off; I told the mate to take a turn on the timber head forward on the tug. 20

Q. Do what ? A. Take a turn on the line.

By MR. HOLDEN : Q. When you say you sang out, this is your line on the tug ? A. Yes.

Q. That is your own mate ? A. Yes.

Q. And then ? A. I backed up on the tug to check the Paisley.

Q. The Paisley was still going ahead, not enough to run ashore ?

A. The Paisley was still going ahead.

By HIS LORDSHIP : Q. And you backed up on the tug in order to put a pull on her ? A. To stop her. 30

MR. HOLDEN : You see, my Lord, as she drifted ahead she was pointing right for the Saskatchewan.

By MR. HOLDEN : Q. And then what happened ? When you tried to stop her what happened ?

A. Well, I backed up on the line; the line commenced to slip on the timber head on the tug.

By HIS LORDSHIP : Q. The what ? A. The timber head. It is a snubbing post. I went ahead on the tug again to give the mate a chance to make fast— The line by this time had all run out but about 4 feet. 40

Q. Yes ? A. The mate—there was an eye on the inside end and he threw the eye over the timber head.

Q. Yes ? A. I backed up on the tug again.

Q. Yes ? A. And when she got the line tight—taut is a more nautical way of putting it—I rang up for full speed astern.

Q. Yes ? A. And the line parted.

In consequence, the tow, detached from the tug and deprived of power and steering capacity, pursued her course, and, although another line was substituted and made fast, it was too late to prevent the collision, the "Saskatchewan" being moored, as depicted on the chart, not more than 350 feet above the elevator, and, as was said in one of the above extracts, directly athwart the "Paisley's" course, as set by the tug. There is a suggestion that they were rather slow on the tow in receiving or making fast the substituted line, but Captain Waugh answered, in his examination-in-chief, that the collision and the consequent breach in the "Saskatchewan's" bow could not have been prevented, even if the delay which he alleges had not occurred.

10 The evidence of Mathewson, the mate of the tug, who was also the plaintiffs' witness, is in substantial accord with that of his captain, although he says he could not see very well, as he was standing low, at the stern of the tug. He says that when they cast off from the stern of the "Paisley," and commenced to tow her forward by the port bitts, she was stationary, and that "it looked to me as if it would be an easy job to take her to the elevator";

20 that at that time their course was due west, two points south, which would bring them almost directly to the land; that he thinks the "Paisley's" bow came within thirty feet of the elevator dock when she was less than half-way in to the elevator, heading south-west, her stern being further out than her bow, and that he did not know whether she changed that course before striking the "Saskatchewan." He makes the following important statement, however, which is consistent with his captain's evidence :

Q. After the tug had passed the elevator, then what happened ?

A. Well, I had been standing right at the tow post.

Q. Yes ? A. Watching after my own work. I was expecting a call from the Captain to carry the line up, to move the line off the tow post. At that time I thought they were getting a line out on the Paisley.

30 Q. And then what happened ?

A. Well, they got orders to carry the line up, the Captain told me he was going to throw his stern out and back down on the port side of her.

Q. What for ? A. To get back in place ready to shove her into the dock.

Q. And then what happened her ?

By HIS LORDSHIP : Q. The Captain said he was going to do what ?

40 Q. The Captain said he was—he told me to be ready to—He was going to back the tug down on the port side of her and told me to be ready for to carry the tow line up forward to the forward timber head.

By MR. TOWERS : Q. Where was the Captain, up at the bow of the tug ?

A. The Captain was up in the wheelhouse.

Q. A hundred feet away from you ?

A. He could stand out there and call to me; I can go up any time he calls.

Q. Did he call you ? A. I happened to walk up the side.

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Q. I thought you said you were at the bitts ?

A. I did, but I walked up the side knowing that we had the Paisley up in its place.

Q. When you had the Paisley up to its place, what did you have to walk up the side for ?

A. To find out if the Captain—to get my orders to move this line.

Q. To get your orders to move the line. You knew what you would have to do with the line if you were up at your place, the same as you always do ?

A. I knew what I had to do with it, but I wouldn't do it until I was 10 ordered.

In addition, Captain Waugh gives the following answers in his cross-examination :

Q. Well then, had there been no slipping on your forward bitts, would you have taken the way off ?

A. Well, if the line hadn't parted.

Q. You think you would ? A. Yes.

Q. And then, when you did get a strain on her, if the line hadn't parted, do you think you would have held it from going down on the 20 Saskatchewan ?

A. I think we could have stopped her.

* * * * *

By HIS LORDSHIP : Q. Do you think you could have stopped her if the line had not parted, but the slip had occurred, before that ?

A. Independent of the slip ?

Q. Yes ? A. The slip—I think we could have stopped before she hit the Saskatchewan if the line had of held, hadn't of parted.

Q. A slip before wouldn't have prevented you stopping if the line hadn't parted ?

A. No, it would give us probably a couple of minutes. 30

It seems therefore to be a necessary inference that, from the beginning, the project must have been to stop the progress of the tow by reversing the tug, and that this manoeuvre was adopted, not by reason of any emergency, nor because of any failure of anticipated action by the tow to put her mooring lines ashore, but because it was a part of the towing operation, as deliberately designed and attempted by the tug, that the towing should be reversed when the tow had reached the point beyond the elevator where the tug-master had directed his mate to shift the tow-line. Admittedly neither he nor his mate knew, nor had tried to ascertain, whether or not any line had been put ashore by the tow, nor had either of them made the ship-keeper aware of any 40 intention or desire on the part of the tug that the ship should, in the circumstances, endeavour to heave a line.

Now, as to the distance at which the "Paisley" passed the elevator dock going southerly, and as to whether those on board could reasonably have

been expected to put a line ashore in the circumstances, and at that distance, the appellants called the elevator employees, who, when the tug and tow were approaching, had been sent out by their Superintendent to attend to the mooring. There were four of them : Dault, Colquette, Ney and Yeo. And, in considering their testimony, it should be remembered that, according to the correspondence, the tug was interested in the elevator company, and had been recommended by the Superintendent of the elevator, and, of course, both tug and elevator were concerned in the success of the towing operation and the mooring of the tow.

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10 Dault, as he testifies, came out of the elevator when the "Paisley" was to the north of it, coming southwest; "too far out to look for a line," and during her passage she remained still too far away. The dock was in course of construction at the time, and had been completed only to, or for a very short distance above, the southern side of the elevator. Beyond that there was piling, and Dault walked along, opposite the ship, as she passed. Ultimately a line was thrown, which landed upon a cluster of piles, from which it was recovered, but not in time to be of any use, for, if for no other reason, it was 65 feet out from the nearest post to which a cable could be fastened. Dault was asked,

20 Q. What do you say now as to whether it would have been any use or not to try to get a cable to stop the boat there ?

A. Well, at the distance the boat was away from the first piling, I don't think they could have done it."

He says that the piling upon which the heaving line fell was about 100 feet south from the south side of the elevator.

Colquette testifies that, when he came on the dock, the "Paisley's" bow was to the south of the elevator, possibly about 75 feet, and that he did not expect a line, because she was further out than usual; that in practice the tow comes right up against the dock, or within a few feet.

30 Ney, the foreman at the elevator, who went out with Dault, says that when the vessel passed, he did not expect a line, because she was too far out, and that, when the line was actually thrown, she was "around in the neighbourhood of 150 feet, I would say," from the south end of the elevator, and that, as a rule, the tow is brought right in to the centre of the elevator, to touch the dock.

Yeo came out of the elevator on the south side, and then the ship was passing the elevator, and the pilot house of the "Paisley" was in view. Asked whether, when he got to the dock, he expected a line to be thrown, he answers :

"No, we weren't looking for one just then.

40 Q. Why not ?

A. Well, the boat was out further than usual."

He is the man who recovered the line that was thrown from the ship to the piles south of the elevator.

These are the witnesses from the elevator called by the defence. Then comes the testimony of Penrice and his assistants on board the tow, Sykes, Bechard and Holmes.

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Penrice tells us that the "Paisley" passed the elevator dock too far away to land a heaving line with which to pull a cable ashore by hand. He estimates the distance at 100 feet, and, according to other evidence, that is a long cast, under favourable circumstances. He had been aft, on the starboard side of the "Paisley," and came forward to the forecandle. His testimony in the record, at pages 162, line 9, to 165, line 28, and, in cross-examination, at page 183, lines 9 to 24, is worth quoting.

A. I looked at the winch to make sure that the forward line was ready for mooring purposes.

Q. Where had you got to? You only said you came forward up 10 the starboard side. Where did you get to?

A. I came forward to about No. 1 hatch, between No. 1 and No. 2.

By MR. TOWERS : Q. Where was your forward windlass?

A. My forward windlass was in the windlass room and the mooring winch was between No. 1 and No. 2 hatch.

Q. The mooring winch? A. Yes, sir.

By HIS LORDSHIP : Q. That is the one you looked at, is it?

A. Yes, sir.

By MR. TOWERS : Q. What did you look at it for?

A. To make sure the line was ready to heave a line for mooring 20 purposes.

Q. And was it there? A. It was.

Q. Did the situation cause you any thought—?

HIS LORDSHIP : Why suggest that to him? Just get what was done. If he was under any apprehension that is what he will tell you.

Q. We have got the mooring line there; you saw it was all right, did you? A. Yes, sir.

Q. What next? A. Went from there onto the forecandle, onto the bow.

Q. What did you see there? A. Saw the tug pulling on us. 30

Q. At that time? A. At that time.

Q. Pulling in which direction?

A. Well, I don't quite understand that question.

Q. Well, in which direction was the tug pulling you?

By HIS LORDSHIP : Q. Towards the elevator or away from it?

A. Well, he was pulling us about like that. (Indicating.)

Q. That is parallel to the dock line, is it?

A. Practically parallel.

By MR. TOWERS : Q. Well, how long did that continue?

A. Oh, maybe two or three minutes. 40

Q. And did you stay there during that time? A. I did.

By HIS LORDSHIP : Q. Did you say anything to anybody on the tug? A. I remember of—as the bow of the Paisley at this time was past the elevator, considerably past—

MR. HOLDEN : Past the south side?

A. (Cont'd): The south side of the elevator, and I passed the remark that it was time—

Q. I know, did you pass it to the men on the tug ?

A. No.

Q. I don't care what you talked among yourselves.

A. That was amongst ourselves. I had no communication with the tug whatsoever.

By MR. TOWERS : Q. Up to that time had you made any attempt to get a line ashore ? A. I had not.

Q. Why ? A. I couldn't. It was too far away.

10 Q. Had any other man on board, to your knowledge, made such attempt ? A. They had not.

By HIS LORDSHIP : Q. Did you give any instructions to the men at this time ? You saw the mooring winch was all right and the the mooring line was there and you saw the tug pulling you along and you said something to them on board. Did what you said include any order to them ?

A. No order to the tug at all.

By MR. TOWERS : Q. To any of your men on the boat ?

A. No, it did not include any orders.

Q. Well then, what happened ?

20 A. The tug stopped pulling and backed across our bow, that would be from the starboard bow to the port, slackening up his tow line.

Q. Did you see that ? A. I saw that.

By HIS LORDSHIP : Q. She backed across your bow ?

A. Across our bow, and the men on the tug disconnected the tow line from the stern of the tug and carried the bight of it forward on the tug.

Q. Did you see that ? A. I saw that operation.

Q. You saw it perfectly. With any difficulty or without difficulty ?

30 A. They got the bight of the line forward and they seemed to have trouble in getting sufficient turns on it; the speed of the Paisley going and the tug going astern they didn't have enough slack in their line to make it fast around the bitts, it was surging or rendering on them.

By HIS LORDSHIP : Q. The tug was backing, the Paisley going on, is that right ?

A. Correct.

Q. And the result ? A. The men could not handle the tow line.

Q. They could handle it all right; you said something about they couldn't get sufficient turns ?

A. Sufficient turns on the snubbing post forward.

Q. That is what you saw, or was that what you thought ?

40 A. Well, I saw that, and they also had trouble carrying the line past the stays on the side of the tug.

Q. Past what ? A. The stays.

By MR. TOWERS : Q. Well then, what, if anything, did you do ?

A. When I saw them having trouble getting the line by I left the forecastle and went down on deck where my mooring line was on the forward winch.

By HIS LORDSHIP : Q. That is the main deck ?

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A. Main deck.

By MR. TOWERS : Q. You went to the mooring winch ?

A. Well, down to the starboard side, that would be abreast of the mooring winch, picked up a heaving line and endeavoured to pass it ashore.

By HIS LORDSHIP : Q. What did your endeavour consist of, throwing it ? A. Throwing it.

By MR. TOWERS : Q. What distance would you say you threw it ?

A. Oh, I threw it 75 feet. 10

Q. And where did it light ? A. The end of the line lit on these spring spiles, the furthest spiles to the south'ard on the dock.

By HIS LORDSHIP : Q. Did you pay it out then ?

A. Well, I had no more to pay out, sir. I had the end of the line in my hand.

By MR. TOWERS : Q. Well, then would the Paisley going ahead carry it off at once ?

A. Well, it would tend to do that, but I walked down the Paisley toward amidships so it wouldn't be pulled off these spring spiles.

Q. I show you Exhibit C-2 where "Piles where Yeo got heaving 20 line" are shown. Is that correct ?

A. That is correct.

Q. Then what ? A. One of the elevator men secured the end of the line; by this time I was nearly amidships on the Paisley; I called for another heaving line, intending to tie the two of them together and make it fast to the cable.

By HIS LORDSHIP : Q. Whom did you call to ?

A. One of the two men I had on the boat, Mr. Bechard.

Q. For another heaving line ? A. Yes.

Q. And—? A. He was bringing me the heaving line and I sized up the situation and decided I couldn't get a line ashore, that is a cable ashore.

Q. Yes, and—? A. And I told Mr. Yeo on the dock to let it go.

By MR. TOWERS : Q. Had you seen anything more of the tug in the meantime ? A. I had not; I was busy endeavouring to get that line out.

Q. And why did you decide you couldn't do it ?

A. Oh, it was impossible for—

By HIS LORDSHIP : Q. Yes, but why ? Why was it impossible ? 40
You must have had some reason for making up your mind ?

A. Well, the winches were dead, had no steam, I couldn't pull them out; I had experience with that with the other boat.

Q. Well, but I thought you said the winch was all right, the mooring winch ?

A. It was ready; what I mean by that sir, the cable was out and through the chock and on the deck to take a heaving line there, but to

get that line out you have to pull it out by man power.

Q. Yes, well? A. And that is a very slow operation when there is no steam on a winch.

By MR. TOWERS : Q. Those were the conditions under which you started, were they? A. They were.

Q. Now you say that you sized up the situation and decided you couldn't get a cable ashore. Now just elaborate the reasons that made you come to that conclusion?

A. Well, it was too far off, firstly.

Q. Yes? A. To pull a cable and get it to a spile.

Q. Yes. Next? A. And the fact the winches were dead, it is a very slow operation getting the cable out.

Q. Yes? A. And also the amount of cable I would have had to put out to reach a spile would be a considerable heft.

By HIS LORDSHIP : Q. A great weight, I suppose?

A. A great weight, and would take a long time to pull it out there.

Q. Any other factor? Any other reason?

A. Well, that is about all I know of.

By MR. TOWERS : Q. How close was the nearest spile it could be put on? A. Oh, it would be 125 or thirty feet from the line.

By HIS LORDSHIP : Q. From where?

A. From the mooring cable that I had ready.

By MR. TOWERS : Q. You don't mean that these piles are the ones that the mooring cable was to be put on?

A. No. You couldn't put that on them, they were no good.

Q. And the other one was no good?

A. Yes; 65 or 70 feet from that.

Q. Now you had this mooring cable ready and passed through the chock and lying on deck, you say?

A. Correct.

Q. How did you expect to manoeuvre the boat when you left your other berth?

A. Well, I expected the tug would put us right to the dock and I would pass the eye of the cable on the dock.

By HIS LORDSHIP : Q. You expected the tug to do what?

A. To put the Paisley alongside of the dock.

Q. Without any lines being thrown from your ship?

A. Without throwing any heaving lines, yes, sir.

* * * * *

Q. When you did go forward, her stem then being a little south of the south wall of the elevator, what instructions did you then give to your three men?

A. I came forward and went up on the forecastle and— Oh, there was a conversation; I don't remember anything definitely, only I do remember this : That I passed the remark, He has got us going pretty

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fast. He had better check us pretty soon now. It was more speaking my own mind out loud than anything else.

Penrice says also, in another place, that he had two wire cables and two manilla lines, "ready to put ashore," and "for tying up the 'Paisley' when she arrived at the dock."

Sykes was examined; he says nothing as to the possibility of putting a line ashore, except that "If we were close enough, we might have got a line ashore, and checked the vessel." Bechard says the tow was too far out. Holmes was also called, but he does not testify as to the distance at which the "Paisley" passed the elevator. His impression of the accident is naively summed up in the following answers. He had assisted Sykes in putting the towing line on the port bitts :

Q. Then after that what happened ?

A. Well, I couldn't just say.

Q. How long a line was that ? How long was it pulled up ? After you put it on the port bitts what distance ahead did the tug go ?

A. Well, I couldn't exactly say that either.

Q. Well, about how far ?

A. Well, I should say about a hundred feet.

Q. And then what happened ?

A. Well, I think he backed up, if I am not mistaken, and while they was backing up they was trying to make for to bring the line up to the forward snubbing post on the tug and it busted.

Q. The line busted ? A. Yes, sir.

Q. Then, where did the vessel go ?

A. I think the vessel went towards the amidships.

Q. On what ? A. Towards the amidships of the Paisley.

Q. You mean the tug went ? A. The tug.

Q. Where did the Paisley go after the line bust ?

A. The Paisley went on ahead.

Q. And where did she pull up ?

A. She pulled up against another boat.

As to the rate of speed at which the tug and tow passed up on their southwesterly course opposite to the elevator dock, there are various estimates by the observers, running from half a mile an hour to two or three miles, and there seems to be no doubt that it was involved in the operation, as designed by Captain Waugh, that, at some point beyond the elevator, he would cast off the tow line from the tug's stern, carry it forward and make it fast at her bow, and, by reversing the tug and backing up on that line, check the speed of the tow, so as to enable him to push her into place by bringing the tug into contact with the side or bow of the ship; or, as described in the evidence, by "nosing" the ship into place, a manoeuvre which did not in any wise depend upon any action on the part of Penrice, or any of his men, in the way of landing a cable, to be made fast on the dock for the purpose of checking the "Paisley's" speed.

The trial judge finds for the plaintiffs, upon the ground that the tug and tow were jointly negligent, and he says,

"I accept the stories of Waugh and Mathewson that they got the bow of the Paisley within thirty feet of the dock, and that the course taken would throw the stern in, and I have no doubt that had those on her been ready, and proper arrangements made to have men at the dock to receive them, they could have got their lines out in time to have helped to check the steamer and, with the shoving of the tug, to safely dock her."

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Now, with all due respect for the learned judge's finding, and with full realization of the difficulties, if any, involved in the case, I am persuaded, upon the whole testimony and the attendant circumstances, that the judge is mistaken, both in his finding and in permitting that finding to influence his determination of the case. The evidence of Waugh and Mathewson, as to the distance of 30 feet, depends upon the assumption that the tug, after making fast to the forward port bitts of the "Paisley," directed her course at a very broad angle to the face of the elevator dock, or towards the west shore of the harbour. It is not less than 175 feet from the north side of the elevator, to the place where, on the chart, Captain Waugh put the encircled cross, to which he says he headed the tug, and, if he did that, and continued in that direction, the tug would, of course, have been ashore long before the tow got within thirty feet of the dock, or any distance approximating to it. Therefore, if the tug, after shifting her line to the "Paisley's" bow, really set out upon the course which her captain says she did, she must immediately have swung considerably to the southward, because she seems to have passed the elevator dock with her tow about parallel with the dock, and on her course to collide with the "Saskatchewan." Captain Waugh says he was immediately northeast of the elevator, when the "Paisley's" bow came within thirty feet of the dock, "as closely as I could go or judge," but the "Paisley" was being brought to the elevator in order immediately to discharge her cargo, and the intention evidently was that she should lie with her starboard side to the dock, and under the leg of the elevator. Captain Waugh, with the interest which his owners had in the elevator, and his experience in towing vessels there, knew perfectly well what should be done, and he says, "We were supposed to put her right at the elevator"; and the suggestion that he anticipated that the ship-keeper would put his lines ashore from the ship's bow to the northward of the elevator, even if he could, is impossible to accept, especially when it is evident that Captain Waugh did not intend to cast off, reverse and nose the tow in, until he had reached the point beyond the elevator where that process was attempted and failed. Moreover, Captain Waugh never gave any order or instruction for the handling of the lines, thus shewing, since he was in charge of the enterprise, that no action on the part of the tow was at the time expected or anticipated; and, indeed, it would have been a very imprudent and perhaps hazardous step on the part of the ship-keeper and those on the dock, without direction from the tug, to have attempted to check the speed of the tow while the tug was still deliberately moving her forward.

Penrice seems fully to have realized that, if a line were to be put ashore from the ship, he would be the one to do it, and the elevator employees were on the dock for no other purpose than to receive and make fast the mooring cables when landed; but not one of them considered that the vessel was

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within reasonable distance for that; and it is most unlikely that any of these men, who were at the time responsible for the mooring, and not unaccustomed to that service, would be apt to misjudge the situation, which was perfectly simple—unobstructed sea room, adequate tug power, an experienced master in absolute control, men at hand to execute his order. The idea of a long, flying shot, without orders, in the absence of any emergency, in the hope of checking the vessel before the tug had made known its plan and method of approach, and without any direction from the tug, can, I think, be suggested only to be rejected. It was when, in pursuance of the captain's project, he had cast loose from the tow and was endeavouring to move his tow-line to his forward bitts, and when it was discovered that the mate was having trouble with the lines, that Penrice, as a forlorn hope, made the cast which fell on the piles at a distance of 75 feet from the ship, and where the line was 65 feet from the nearest snubbing post on the dock. 10

These are the facts and circumstances, as disclosed by the proof, and I can only regard the tug-master's testimony as an effort on the part of the tug to excuse her own faulty navigation by alleging neglect of the tow to land her mooring lines; it is an excuse for which there is no justifiable foundation in fact. I cannot discern that, during the progress of the towing, the ship-keeper did or omitted to do anything which caused or contributed to the accident, and I see no reason to charge the owners of the "Paisley" with any fault relating to the navigation, after the "Paisley" was taken by the tug from her moorings. 20

Even supposing that the tug did, at one stage of her progress, bring the bow of the "Paisley," at a speed of one-half mile an hour, to within 30 feet of the elevator dock, as the speed and distance are estimated by the tug-master and his mate, that cannot, I think, be considered as completing the movement of the ship to the elevator, and it still remained for the tug to bring the ship alongside, where she could be moored, and where her cargo could be discharged. Penrice, the ship-keeper, had no authority, either from his owners or from the tug, to exercise independent judgment as to anything concerned with the navigation, or as to when, so long as the ship was in charge of the tug, good seamanship required that he should cast a line or perform any service connected with the movement of the ship. He was not employed by the owners of the ship for that purpose, and he had no order or authority from the tug-master. It certainly did not seem to him that the time had come for mooring, and the towing or moving to the dock had not been completed when the "Paisley," on her southerly course, was passing the dock, even if her bow were, at one stage of that passage, only thirty feet from the dock. 30

With regard to the port anchor, there is no doubt that Penrice, on 15th January, when the tug-master objected to the position to which he had raised the anchor in its hawse-pipe, encouraged Captain Waugh to leave it in the position in which it was at the time of the accident, and, perhaps, the "Saskatchewan" would not have sustained the damage which occurred, if the anchor had not been there, but the position of the anchor, if it were a fault, was not the fault of the owners of the "Paisley"; they had put the tug in charge, and their ship-keeper had no authority to direct the stowage of the 40

anchors, for the purposes of the tug; and moreover, the anchor did not cause or contribute to the collision, and its position does not create liability on the part of the owners, upon well known principles, which were recently discussed in the case of *Admiralty Commissioners v S.S. Volute*, (1922), A.C. 129.

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For similar reasons, the evidence as to the manner in which Penrice had placed or employed his three men upon the ship during the passage, for the purpose of providing facilities and expedition for the mooring of the vessel, at the elevator, does not affect the case, because, even if Penrice had actually complied with all the conditions which the plaintiffs suggest, it is obvious that
10 the accident would nevertheless have occurred as and when it did. I do not consider, however, that the plaintiff has succeeded in attributing any fault to the ship-keeper or his men in this particular.

It may, I think, be fairly and safely assumed, having regard to all the evidence and the course of the trial, that the tug was competent to the service for which she was engaged; and, upon this assumption, the owners of the "Paisley" were, in my view, justified in permitting their vessel to be moved from her moorings to the elevator, as they did, under the power, direction and control of the tug, and, being not otherwise guilty of any fault, have incurred no personal liability; but the question remains whether the ship itself has
20 become liable to the plaintiffs for the damage which, in the circumstances, the latter sustained by reason of the negligence of the tug.

Now it is evident that, in the towing of the "Paisley," the governing and navigating authority was solely with the tug, and that the ship, in the condition in which she was, had no power to assist in the operation, either in the way of furnishing power or of directing her course. It was not contended at the hearing that the tug was in any wise the servant of the tow. Neither the ship-keeper, nor the three men whom he had employed to assist on board and at the dock in the discharge of the vessel's cargo, had any authority or duties which were unfulfilled with regard to the navigation; the ship-keeper
30 appears to have been prepared and willing to give effect, so far as possible, to any order which he might receive from the tug-master, and all such orders were in fact duly executed; it is observable, too, in this connection, that, by the Harrison Company's letter of 11th December, the only service to be rendered by the ship-keeper for which the tug stipulated was to "direct the mooring of the steamships *after being unloaded*." The case therefore falls within the rule stated by Fletcher Moulton, L.J., in the *Devonshire*, 1912, Prob., 49, where he says, referring to the towing of barges or other craft of the like kind,

40 "In such cases the tow has no control over those navigating the tug. The tug is in the position of an independent contractor who performs the service of towing the barge to its destination, and who chooses for himself how he shall perform that service. I can see no reason why the misconduct of such an independent contractor should be imputed to the innocent tow, who is, in fact, no party to the wrongful act. So to impute it would be inconsistent with the general principles of our common law, and I should decline to do so unless I found a well-settled principle of admiralty jurisprudence evidenced by a course of consistent decisions which required

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me to do so. When the decisions are examined, the contrary is found to be the case.”

And he proceeds to consider those decisions.

In *Sturgis v. Boyer* (1860), 24 How., 110, an Admiralty action *in rem*, which originated in the United States District Court, Clifford, J., pronouncing the judgment, upon appeal to the Supreme Court of the United States, used the following language :

“Cases arise undoubtedly where both the tug and tow are jointly liable for the consequences of a collision; as where those in charge of the respective vessels jointly participate in their control and management, and the master and crew of both vessels are either deficient in skill, omit to take due care, or are guilty of negligence in their navigation. Other cases may well be imagined where the tow alone would be responsible; as where the tug is employed by the master or owners of the tow as the mere motive power to propel their vessel from one point to another, and both vessels are exclusively under the control and direction and management of the master and crew of the tow. . . . But whenever the tug under the charge of her own master and crew, and in the usual and ordinary course of such an employment, undertakes to transport another vessel which, for the time being, has neither her master nor crew on board, from one point to another over waters where such accessory power is necessarily or usually employed, she must be held responsible for the proper navigation of both vessels. . . . Assuming that the tug is a suitable vessel, properly manned and equipped for the undertaking, so that no degree of negligence can attach to the owners of the tow on the ground that the motive power employed by them was in an unseaworthy condition, the tow, under the circumstances supposed, is no more responsible for the collision than so much freight. And it is not perceived that it can make any difference in that behalf that a part or even the whole officers and crew of the tow are on board, provided it clearly appears that the tug was a seaworthy vessel properly manned and equipped for the enterprise.”

These passages are quoted and adopted by Butt, J., sitting with Sir James Hannen, in *The Quickstep* (1890), 15 P.D., 196, 201; and in Marsden on Collisions at Sea, 8th ed., the learned author makes the following comments :

“The extent of the liability of a shipowner for engaging an unseaworthy tug does not appear to have been fully considered in this country (as to liability for employing tugs of insufficient power, see *The Bristol City*, 1920, 37 T.L.R., 901); in other respects this statement seems to be a correct exposition of the principles upon which the respective liabilities of tug and tow are to be determined.”

If, as I conclude, the “Paisley’s” owners were not guilty of any fault, it follows that they have not incurred any personal obligation. *River Wear Commissioners v. Adamson* (1877), 2 App. Cas., 767, 768, per Lord Blackburn; *The Devonshire*, 1912, A.C., 634, 647.

It is suggested, however, that a maritime lien nevertheless attached to the tow, although innocent of any fault in itself, seeing that it was the instrument which, by reason of the tug’s negligence, caused the injury. The

cases were reviewed by Hill, J., in *The Sylvan Arrow*, 1923, Prob. Div., 220; but the question is, for the purpose of this appeal, in principle ruled against the plaintiff by the decisions of the Judicial Committee in *The American* and *The Syria*, L.R., 6 P.C., 127, and particularly in the case of *The Utopia*, 1893, A.C., 492. In the latter case the judgment was pronounced by Sir Francis Jeune, who says, at p. 499 :

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10 “It was suggested in argument that, as the action against the *Utopia*
is an action *in rem*, the ship may be held liable, though there be no liability
in the owners. Such contention appears to their Lordships to be contrary
to principles of maritime law now well recognized. No doubt at the time
of action brought, a ship may be made liable in an action *in rem*, though
its then owners are not, because, by reason of the negligence of the owners,
or their servants, causing a collision, a maritime lien on their vessel may
have been established, and that lien binds the vessel in the hands of sub-
sequent owners. But the foundation of the lien is the negligence of the
owners or their servants at the time of the collision, and if that be not
proved no lien comes into existence, and the ship is no more liable than
any other property which the owners at the time of collision may have
20 possessed. In the recent case of the *Castlegate*, in the House of Lords,
(1893) A.C., 52, language used by the present Master of the Rolls in the
case of *The Parlement Belge*, 5 P.D., 219, which expresses the above view,
was quoted with an approval which their Lordships desire to repeat.”

The appeals should, in my opinion, be allowed, and the actions should in each case be dismissed, with costs.

Ottawa, February 28th, 1929.

I hereby certify that the foregoing is a true copy of the reasons for judgment given by the Honourable Judges of the Supreme Court of Canada in this case.

S. EDWARD BOLTON,
Law Reporter.

NOTICE OF APPEAL,

JAMES RICHARDSON & SONS, LIMITED.

*In the
Supreme
Court of
Canada.*

—

Notice of
Appeal to
Privy Council
James
Richardson
and Sons,
Limited,
26th Feb.,
1929.

 IN THE SUPREME COURT OF CANADA

ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL.

 BETWEEN :

 JAMES RICHARDSON & SONS, LIMITED,
(Plaintiff) APPELLANT,

AND

 THE SHIP "ROBERT J. PAISLEY,"
(Defendant) RESPONDENT, 10

AND BETWEEN

 CANADA STEAMSHIP LINES, LIMITED,
 PLAINTIFF,

AND

 THE SHIP "ROBERT J. PAISLEY,"
 DEFENDANT.

TAKE NOTICE that the Plaintiff, James Richardson & Sons, Limited, hereby appeals to His Majesty in His Privy Council from the Judgment of the Supreme Court of Canada, delivered on the 5th day of February, A.D. 1929. 20

DATED this 26th day of February, A.D. 1929.

CASEY WOOD & CO.,
 No. 330 Bay Street, Toronto 2, Ontario,
 Solicitors for the Plaintiff,
 James Richardson & Sons, Limited

NOTICE OF APPEAL
CANADA STEAMSHIP LINES, LIMITED.

*In the
Supreme
Court of
Canada.*
—
Notice of
Appeal to
Privy Council
Canada
Steamship
Lines, Ltd.

IN THE SUPREME COURT OF CANADA
ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL

BETWEEN :

JAMES RICHARDSON & SONS, LIMITED,
(Plaintiff) APPELLANT,

AND

THE SHIP " ROBERT J. PAISLEY,"
(Defendant) RESPONDENT,

10

AND BETWEEN

CANADA STEAMSHIP LINES, LIMITED, PLAINTIFF,

AND

THE SHIP " ROBERT J. PAISLEY," DEFENDANT.

TAKE NOTICE that the Plaintiff, Canada Steamship Lines, Limited, hereby appeals to His Majesty in His Privy Council from the Judgment of the Supreme Court of Canada, delivered on the 5th day of February, A.D. 20 1929.

DATED this 27th day of February, A.D. 1929.

ROWELL, REID, WRIGHT & McMILLAN,
38 King Street West, Toronto, Ontario

Solicitors for the Plaintiff,
Canada Steamship Lines, Limited.

ORDER FOR BAIL

*In the
Supreme
Court of
Canada.*

Order to give
bail and for
stay of pro-
ceedings, 2nd
March, 1929.

IN THE SUPREME COURT OF CANADA.
ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL.

THE HONOURABLE
MR. JUSTICE RINFRET,
Presiding in Chambers. } Saturday, the Second day of March, A.D. 1929

BETWEEN :

THE SHIP " ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT.

AND

JAMES RICHARDSON & SONS, LIMITED,
(*Plaintiff*) RESPONDENT,

AND BETWEEN

THE SHIP " ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT,

AND

CANADA STEAMSHIP LINES, LIMITED
(*Plaintiff*) RESPONDENT.

UPON Motion made this day by Mr. Larmonth of Counsel for the Respondents for an Order fixing the bail to be given by the Respondents upon their appeal to His Majesty the King in Council from the Judgment of this Court dated the 5th day of February, A.D. 1929, to answer the costs of the said appeal ;

UPON reading the said Judgment of this Court, the Notice of Appeal served on the 27th day of February, A.D. 1929, the Notice of Application to fix bail served herein on the 2nd day of March, A.D. 1929, and upon hearing Counsel for the Appellant and the Respondents and it appearing that the said actions were consolidated for the purpose of the appeal to the Supreme Court of Canada ;

IT IS ORDERED that the above-named Respondents do give bail to answer the costs of the appeal to His Majesty the King in Council in the sum of £600 sterling to the satisfaction of the Registrar of this Court on or

before the day of March, A.D. 1929;

AND IT IS FURTHER ORDERED that all proceedings herein be stayed until the said ninth day of March, A.D. 1929, and that upon the Respondents giving bail as above provided on or before the said ninth day of March, A.D. 1929, all proceedings herein be stayed until further order;

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

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Order to give
bail and for
stay of pro-
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March, 1929.

(continued)

F. RINFRET,

J.S.C.

Ent'd Fol. 121

10 O.B. No.7.

G.A.A.

E. R. CAMERON, *Registrar.*

BAIL BOND

JAMES RICHARDSON & SONS, LIMITED

In the
Supreme
Court of
Canada.
Bail Bond,
James
Richardson &
Sons, Limited,
5th March,
1929.

IN THE SUPREME COURT OF ONTARIO.
ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL.

Bond 58-16-120-29

BETWEEN :

JAMES RICHARDSON & SONS, LIMITED,
(Plaintiff) APPELLANT,

AND

THE SHIP " ROBERT J. PAISLEY,"
(Defendant) RESPONDENT,

10

AND BETWEEN

CANADA STEAMSHIP LINES, LIMITED,
(Plaintiff) APPELLANT,

AND

THE SHIP " ROBERT J. PAISLEY,"
(Defendant) RESPONDENT.

KNOW ALL MEN BY THESE PRESENTS that United States Fidelity and Guaranty Company hereby submits itself to the jurisdiction of this Court and consents that if the said Appellant (Plaintiff) herein, James Richardson & Sons, Limited, shall not pay what may be adjudged against it in the above actions for costs, execution may issue against us, our successors and assigns for a sum not exceeding One thousand five hundred dollars (\$1,500.00).

IN WITNESS WHEREOF the said United States Fidelity and Guaranty Company has hereunto set its seal attested by the hands of its proper Officers in that behalf this fifth day of March, A.D. 1929.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

By A. E. PERRY,
Attorney-in-fact.

[SEAL]

BAIL BOND

CANADA STEAMSHIP LINES, LIMITED.

In the
Supreme
Court of
Canada.

Bail Bond,
Canada
Steamship
Lines, Ltd.

IN THE SUPREME COURT OF CANADA.

ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL.

BETWEEN

JAMES RICHARDSON & SONS, LIMITED,
(Plaintiff) APPELLANT,

AND

THE SHIP "ROBERT J. PAISLEY,"
(Defendant) RESPONDENT,

AND BETWEEN

CANADA STEAMSHIP LINES, LIMITED
(Plaintiff) APPELLANT,

AND

THE SHIP "ROBERT J. PAISLEY,"
(Defendant) RESPONDENT.

10

KNOW ALL MEN BY THESE PRESENTS that the CANADIAN SURETY COMPANY hereby submits itself to the jurisdiction of this Court and consents that if the said Appellant (Plaintiff) herein, Canada Steamship Lines, Limited, shall not pay what may be adjudged against it in the above actions for costs, execution may issue against us, our successors and assigns, for a sum not exceeding Fifteen Hundred Dollars (\$1,500.00).

20

IN WITNESS WHEREOF the said Canadian Surety Company has hereunto set its seal attested by the hands of its proper officers in that behalf.

THE CANADIAN SURETY COMPANY,

By H. D. FRASER,
Resident Attorney.

Attest : S. H. PHILLIPS,
Resident Assistant Secretary.

[SEAL]
131299

ORDER APPROVING BAIL.

*In the
Supreme
Court of
Canada.*

Order
Approving
Bail,
6th March,
1929.

IN THE SUPREME COURT OF CANADA.
ON APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL.

E. R. CAMERON, ESQUIRE, K.C. } Wednesday, the Sixth day of March,
Registrar in Chambers. } A.D. 1929.

BETWEEN :

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT,

AND

JAMES RICHARDSON & SONS, LIMITED, 10
(*Plaintiff*) RESPONDENT,

AND BETWEEN

THE SHIP "ROBERT J. PAISLEY,"
(*Defendant*) APPELLANT,

AND

CANADA STEAMSHIP LINES, LIMITED,
(*Plaintiff*) RESPONDENT.

UPON the Application of the above-named Respondents in presence of Counsel for the above-named Appellant; upon hearing what was alleged by Counsel aforesaid :

IT IS ORDERED that a certain Bond bearing date the Fifth day of March, A.D. 1929, and filed this Sixth day of March, A.D. 1929, in which the United States Fidelity and Guaranty Company is Obligor, and the above-named Appellant, is Obligee, and that a certain Bond bearing date the Fifth day of March, A.D. 1929, and filed this Sixth day of March, A.D. 1929, in which the Canada Surety Company is Obligor, and the above-named Appellant is Obligee, as security that the above-named Respondents will effectually prosecute their appeal to His Majesty in Council from the Judgment of this

Court, bearing date the Fifth day of February, A.D. 1929, and will pay such costs as may be awarded against them by His Majesty in Council, be and the same is hereby approved and allowed as good and sufficient security.

*In the
Supreme
Court of
Canada.*

—
Order
Approving
Bail,
6th March,
1929.

AND IT IS FURTHER ORDERED that the costs of this Application be costs in the said Appeal.

(continued)

Ent'd Fol. 122,
O.B. No. 7.
G.A.A.

E. R. CAMERON,
Registrar.