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2, 1961

IN THE PRIVY COUNCIL

No. 23 of 1960

ON APPEAL  
FROM THE SUPREME COURT OF NEW SOUTH WALES  
ADMIRALTY JURISDICTION NO.7 of 1952

B E T W E E N

OVERSEAS TANKSHIP U.K. LIMITED  
(Defendant) .. .. . Appellant

- and -

MORTS DOCK & ENGINEERING CO.  
LIMITED (Plaintiff) .. .. . Respondent

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RECORD OF PROCEEDINGS

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VOLUME I  
(Pages 1 to 212)

UNIVERSITY OF LONDON  
W.C.1.  
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

63636

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IN THE PRIVY COUNCILNo. 23 of 1960ON APPEALFROM THE SUPREME COURT OF NEW SOUTH WALESADMIRALTY JURISDICTION NO.7 of 1952B E T W E E N

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MORTS DOCK & ENGINEERING CO.  
 LIMITED (Plaintiff) .. .. . Respondent

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"A"	Map of Harbour
"B1"	Photograph of Docks
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"B5"	Photograph of Docks
"B6"	Photograph of Docks
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"B8"	Photograph of Docks
"C"	Sketch of Wharves
"D"	Letter and Chart of Tides



Exhibit Mark	Description of Document					
"E1"	Photographs of Fire					
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"F"	Sketch of Welding Sheds					
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<u>Defendant's Exhibits - Not Printed by Agreement between Parties</u>						
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IN THE PRIVY COUNCIL

NO.23 of 1960

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES

ADMIRALTY JURISDICTION NO.7 of 1952

B E T W E E N

OVERSEAS TANKSHIP U.K. LIMITED  
(Defendant) .. .. Appellant

- and -

10

MORTS DOCK & ENGINEERING CO.  
LIMITED (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMIRALTY JURISDICTION )

No. 7 of 1952.

In the Supreme  
Court of New  
South Wales  
(Admiralty  
Jurisdiction)

No.1

BETWEEN MORTS DOCK & ENGINEERING CO. LIMITED  
Plaintiff

Statement of  
Claim,

AND OVERSEAS TANKSHIP U.K. LIMITED  
Defendant

1st September  
1952.

20

STATEMENT OF CLAIM

WRIT issued the Sixteenth day of May One thousand  
nine hundred and fifty two.

1. The Plaintiff is the owner of a wharf together  
with a large quantity of equipment machinery  
plant and tools thereon situate at Morts Dock  
Morts Bay Balmain.

30

2. The Defendant is the charterer by demise of  
the S.S. "Waggon Mound" an oil burning vessel  
of gross 10,172 nett 6,134 tons register and  
at all material times the said vessel was  
moored in Morts Bay Balmain in the vicinity  
of the Plaintiff's wharf.

In the Supreme  
Court of New  
South Wales  
(Admiralty  
Jurisdiction)

—  
No.1

Statement of  
Claim,

1st September  
1952 -  
continued.

3. On Tuesday the Thirtieth day of October One thousand nine hundred and fifty one the vessel "Waggon Mound" was taking oil into her bunkers and in the process of bunkering oil a large quantity of oil was permitted to escape from the vessel into the waters of the Bay. This said oil was of a highly inflammable nature and floated on the surface of the water.
4. A large quantity of the oil collected on the water beneath the Plaintiff's wharf and surrounded the piles of the said wharf. 10
5. On the First day of November One thousand nine hundred and fifty one the said oil became ignited and the fire therefrom greatly damaged the Plaintiff's wharf and the equipment machinery plant and tools which were on the wharf.
6. The said fire caused extensive damage to the Plaintiff's wharf and to the equipment machinery plant and tools thereon. 20
7. The Plaintiff says that the said damage to its wharf and to the equipment machinery plant and tools thereon was occasioned by those in charge of the "Waggon Mound" whilst it was re-fuelling permitting the said large quantities of oil to escape from the ship.
8. In particular the Plaintiff says that those in charge of the "Waggon Mound" (being the servants and agents of the Defendant) were negligent in that 30
  - (a) They permitted refuelling operations to be carried out without taking proper or adequate precautions to prevent the escape of highly inflammable fuel or oil from the ship.
  - (b) They permitted inflammable oil to escape from the ship in such large quantities that it was capable of being ignited.
  - (c) Large quantities of highly inflammable oil having escaped from the ship at a time and place when by reason of the currents and tides it was likely to accumulate in and around the Plaintiff's wharf they 40

failed to take any steps to warn the Plaintiff of the danger or to remove the accumulation of oil from the vicinity of the Plaintiff's wharf or to render the accumulation of oil near the Plaintiff's wharf harmless.

In the Supreme Court of New South Wales (Admiralty Jurisdiction)

No.1

Statement of Claim,  
1st September 1952 - continued.

THE PLAINTIFF CLAIMS:-

10

- (1) A declaration that it is entitled to recover from the Defendant the amount of the damage it has sustained.
- (2) To have an account taken of such damage.
- (3) Such further or other relief as the nature of the case may require.

DATED this First day of September 1952.

R.H. Minter

Plaintiff's Attorney  
31 Hunter Street, SYDNEY.

No. 2

A N S W E R

20

IN THE SUPREME COURT OF NEW SOUTH WALES ADMIRALTY JURISDICTION )

No. 7 of 1952.

BETWEEN MORTS DOCK & ENGINEERING CO. LTD.  
Plaintiff

- and -

OVERSEAS TANKSHIP U.K. LIMITED  
Defendant

A N S W E R

30

1. The Defendant admits paragraph one of the Statement of Claim.

2. The Defendant admits that it is the Charterer by demise of S.S. "Wagon Mound" an oil burning vessel of 10,172 tons gross and net register 6,134 tons.

No.2

Answer,  
10th September 1952.

In the Supreme  
Court of New  
South Wales  
(Admiralty  
Jurisdiction)

—  
No.2

Answer,

10th September  
1952 -  
continued.

3. The Defendant denies that the damage mentioned in the Statement of Claim was caused or contributed to by any negligence on the part of itself or its servants as alleged or at all and says that the said damage was solely caused by the negligence of the Plaintiff or its servants. Save as herein-after expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim.

4. On the Thirtieth day of October One thousand nine hundred and fifty-one the S.S. "Wagon Mound", moored to the Caltex Jetty, Ballast Point, Mort Bay, had completed bunkering with oil fuel, herein-after called "furnace oil", at about four a.m. "Furnace oil" floating on water is not highly or easily inflammable and can be ignited only by some burning substance coming in contact therewith capable of acting as a wick. 10

5. The S.S. "Wagon Mound" unberthed about eleven a.m. on Thirtieth day of October One thousand nine hundred and fifty-one and sailed for overseas, clearing the Heads about twelve noon. 20

6. The fire in the Statement of Claim mentioned broke out on the First day of November One thousand nine hundred and fifty-one.

7. Prior to and at the time of the outbreak of the said fire the Plaintiff by its servants and workmen was operating oxy-acetylene plant and other apparatus on its said wharf and on a ship lying alongside. 30

8. The said fire was caused by the negligence of the said Plaintiff its servants and workmen in and about the operations conducted on the said wharf and ship and in and about the care control and management of the workmen so employed and in and about the failure to prevent ignited materials falling from the said wharf, well knowing of the presence of oil beneath and in the vicinity of the said wharf.

DATED this Tenth day of September, 1952. 40

George Ashwin Yuill

Defendant's Attorney.

39 Hunter Street,  
SYDNEY.



In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

No.4

Court Notes,  
17th February  
1958 -  
continued.

were not fully available for production to the Court but that the firm would make every endeavour to answer the subpoena tomorrow morning. Mr. Taylor stated that course was satisfactory to him.)

(Ronald Thornycroft Gosling, Secretary of the Board of Fire Commissioners, on subpoena duces tecum, produced to the Court reports and other documents relating to a fire at Morts Dock on 1st November 1951.)

10

(In reply to Mr. Meares His Honor said these documents would be made available to both counsel.)

(At 2.12 p.m. Mr. Taylor opened to His Honor.)

(During his opening address Mr. Taylor tendered a chart, which was marked Exhibit A. and three photographs which were marked Exhibits B1, B2 and B3.)

Mr. MEARES: My learned friend tells me that Mr. Parkins is in Court and is apparently going to give evidence. I do not object to him being here to assist my friend, but insofar as this witness now is going to give evidence of matters which Mr. Parkins will give evidence, I suggest that he leave the Court.

20

MR. TAYLOR: There is no possibility of that, he is not giving evidence about the same thing.

Plaintiff's  
Evidence.

No.5

B.A. Cullen  
Ward,

Examination.

CASE FOR THE PLAINTIFF

No. 5

EVIDENCE OF B.A. CULLEN-WARD

BRUCE ALISTAIR CULLEN WARD  
Sworn, examined, deposed:

30

TO MR. TAYLOR: My name is Bruce Alistair Cullen Ward. I live at 81 Chalmers Road, Strathfield. At the present time I am the proprietor of a service station but I was for some years employed by the Vacuum Oil Co. Ltd.

Q. Were you employed there in October 1951 as the Chief Bunkering Officer for Vacuum Oil Co.? A.Yes.



Q. How long had you been Chief Bunkering Officer for Vacuum Oil Co.? A. About 10 years.

Q. Were you over that period of time engaged when required in bunkering ships with oil for the Vacuum Oil Co.? A. Yes.

Q. Are you familiar with the practice and procedure? A. Yes.

Q. Did you proceed to the "Waggon Mound" on 29th October? A. Yes.

10 Q. Where was the "Waggon Mound"? A. At Ballast Point, at the Caltex wharf.

Q. You had prior notice, I suppose, that you were going there? A. Yes.

Q. What was required was furnace oil for her bunkers. Did you go to the ship by land or did you go across in the barge? A. No, I came across by ferry.

Q. When you got on board whom did you see? A. The chief engineer.

20 Q. After you had seen the chief engineer did you ascertain from him the requirements? A. Yes.

Q. Do you remember what they were? A. Approximately nine --- (Objected to: pressed: allowed).

HIS HONOR: You will have to connect it up, Mr. Taylor.

MR. TAYLOR: What did the chief tell you they wanted? A. About 950 tons.

Q. Is furnace oil the correct name of it? A. Yes.

Q. How is it brought across from Vacuum? A. By barge.

30 Q. For the bunkering of this ship did you use one or two barges? A. Two barges.

Q. And they were the "Vacuum"? A. And the smaller one; F17, I think was the number. I am not sure of the number.

Q. Are both those barges equipped with hoses and pumping equipment? A. Yes.

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No.5

B. A. Cullen Ward,

Examination - continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction  
-----  
Plaintiff's  
Evidence.

No. 5

B.A. Cullen  
Ward,

Examination -  
continued.

Q. Did you remain on the ship after you went aboard on the 29th? A. Yes. Other than coming up to the Customs Office.

Q. Where was the Customs office then, with Caltex? A. Up at the main gates of Caltex.

Q. You have to make out returns, I suppose, for the Customs people? A. Yes.

Q. Because this fuel that goes into overseas tankers is -- A. Yes.

Q. Apart from the trip to the Customs did you remain on the "Waggon Mound" until bunkering was completed? A. Yes.

10

Q. When was that? A. That was the following morning.

Q. What is the procedure when the first barge of furnace oil comes alongside? A. I have to ascertain from the chief engineer where he wants the barge -- (General procedure objected to).

Q. What was the procedure you followed? A. I would see the chief engineer and ask him where the barge was to be put.

20

Q. Are there a number of fueling points on this tanker? A. On this particular tanker there were three fueling points.

Q. How do you know which one you are going to use? A. We have got to ascertain that from the chief engineer.

Q. After you saw the chief engineer, did he remain on board or go away? A. He went away. (Objected to: rejected).

30

HIS HONOR: I am prepared to allow evidence that he was an officer of the ship, and that this witness was told certain things and the barge tied up and there was an oil pump on it. That, I think, raises an inescapable inference that it was with a responsible officer of the ship. To say the man was the chief engineer you must have some proof of his identity. He might have been dressed in pyjamas --

MR. TAYLOR: Q. How did you know this man was -- (Objected to).

40

HIS HONOR: What caused you to believe that this man was --- (Objected to).

MR. TAYLOR: Q. What caused you to think he was the chief engineer? A. He was the man in the chief engineer's office when I went aboard.

Q. You went to his office. How long after you went aboard did the first barge load come aboard? A. In about half an hour.

Q. What did you do when the barge came alongside?

10 A. Indicated where the barge was to pull up.

Q. When was that? Do you remember where you started filling? A. From memory I think it was amidships.

Q. Did you bring your hose inboard? A. Yes.

Q. Who does that? A. The men on the barge do that. If the tanker is fairly well out of the water, some of the people on board the ship give a hand to load it up.

Q. Were hoses coupled up to the ship's valves?  
A. Yes.

20 Q. Who does that? A. The bargemen do that.

Q. Did anybody direct you to which valve to go?  
A. Yes, the chief engineer and his assistant.

Q. Do you remember their names? A. The chief engineer?

Q. The chief and the assistant? A. No. I am afraid I could not tell you.

Q. Then did pumping commence? A. Yes.

30 Q. After pumping was done, what did you do on this occasion? A. I get all the figures from the barge and I retire to the chief engineer's office and work out all the figures.

Q. Did you dip the barge before you started pumping?  
A. Yes, definitely.

Q. On the occasion you dipped out there, did anybody from the "Waggon Mound" accompany you while you dipped it? A. On the first few barges I think they were.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

—  
No.5

B.A. Cullen  
Ward,

Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence

\_\_\_\_\_  
No.5

B.A. Cullen  
Ward,

Examination -  
continued.

HIS HONOR: Q. What did you do? A. We took ullages of the tanks on the barges, only on the barge.

MR. TAYLOR: Q. You say on the first few occasions somebody from the "Waggon Mound" was there when you dipped? A. Yes.

Q. After you dipped you took a figure? A. I took the readings, and the temperature of the fuel.

Q. Did you record those? A. They are recorded, yes.

Q. Did you give them to anybody in the ship? A. The chief engineer gets a copy. (Objected to).

10

Q. On this occasion whom did you give them to when you made the record? To whom did you give them on the ship? A. The chief engineer got all those records.

Q. Did you give them to him yourself or with anybody else? A. No, I gave them to the chief engineer the following morning.

Q. That is when the operation was finished? A. After completion, and all the papers are compiled - after completion of the job.

20

Q. Did the bunkering continue through the 29th and the night of the 30th? A. That is correct.

Q. What was the procedure? Did you have two barges at the same time or only one coming in at the one time? A. I would have to look at my reports on that. I am not sure whether there were two barges pumping at one time or only one.

Q. As each load came alongside, would you take soundings of the quantity that was in it? A. Yes.

Q. Do you remember when the last load came alongside in the early hours of the morning? A. Yes.

30

Q. Do you remember which vessel it was? A. The Vacuum barge.

Q. The Vacuum is a big barge? A. The biggest one they had in those days.

Q. Prior to the last load coming alongside, did you have a conversation with a person on board the "Waggon Mound"? A. Yes, I did.

Q. Who was the person with whom you had the conversation? (Objected to: allowed). A. The second engineer.

Q. Do you remember his name? A. No. I think he was a Puerto Rican. I could not tell you. (Question objected to: allowed).

10 Q. Did you have anything to do with this man you described as the second engineer before you took the last load? A. Yes, he had been taking the fuel in the barges before.

HIS HONOR: Q. What did you say? A. He had been in charge of taking the fuel for the ship.

MR. TAYLOR: Q. When you say "from the ship" you mean from the Vacuum? A. From the barge to the ship.

Q. During the time you were there did you at any time see any soundings being taken of the ship's tanks? A. Yes.

Q. Who was taking those? A. The second engineer? (Objected to: allowed).

20 Q. What did you say to the second engineer at the time before this last load before the Vacuum came alongside? A. I lost the first part.

Q. What did you say? What was the conversation between you and the second engineer before the last load on the Vacuum came alongside? A. He asked me to come in -- (Objected to:)

HIS HONOR: Q. What did he say to you? A. He asked me how many barrels we had on board the barge.

30 MR. TAYLOR: Q. Before the last load what did you say? A. There were approximately 1300.

Q. What did he say when you said that? A. That they could take that quantity.

HIS HONOR: Q. He did not say "they". What did he say? A. He said, "We can take that."

MR. TAYLOR: Q. That 1300. How many barrels does the Vacuum hold, full? A. 1300 is approximately the full capacity.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.5

B.A. Cullen  
Ward,

Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.5

B.A. Cullen  
Ward,

Examination -  
continued.

HIS HONOR: Q. 1300 what? A. Barrels.

MR. TAYLOR: Q. When you speak of a barrel you are speaking of a 44-gallon drum? A. Actually U.S. barrels, I think they call them - 42 gallons - but still a drum.

Q. It is in the shape. When you talk about a ton of oil that varies, I suppose? A. Yes.

Q. What happened when the Vacuum came along for the last load? Was she coupled up? A. She was coupled up in the usual manner and dipped and we were told we could start pumping.

10

Q. You were told you could start pumping? A. Yes.

Q. Who told you that? A. The second engineer.

Q. Where were you when the last load was being pumped in? A. I was in the chief engineer's cabin.

Q. Did you on this occasion use that as a sort of office? A. Yes, definitely.

Q. And some time later did you go to the barge? A. Yes.

Q. Tell us when it was and what happened, if you can? A. Round about 4 o'clock, or somewhere in that time, I was told that the job was completed and I went down to do the final dips. I went aboard and took the sounding.

20

Q. You went down to do the final dips? A. Yes.

Q. When you got on the barge did you notice anything? A. Yes. There was a fine spray of oil coming out of the forward scupper.

HIS HONOR: Q. The forward scupper of what? A. The tanker, the "Waggon Mound".

30

MR. TAYLOR: Q. Whereabouts was the last load being put aboard? A. Amidships.

Q. Which tanks were you pumping into? A. The fore peak tanks.

Q. Where are the bunkers of the "Waggon Mound" situated? A. We were taking fuel amidships. There

is the bridge, the bridge housing for'ard, and again there are two tanks right at the very bow of the ship.

Q. The main body of the ship is taken up with where they carry the ship's cargo? A. I would not like to say on that.

Q. But these fore peak tanks you say are --- A. Right up for'ard.

10 Q. And the valves to which the hose was affixed was amidships? A. Yes.

Q. When you noticed the fine spray of oil coming out of the for'ard scupper, what did you do? A. I went aboard to see what it was.

Q. What did you find? A. I found oil bubbling out of the fore peak tank, and I raced around to find somebody to put a plug in the scuppers.

Q. Where was it coming out when you say it was bubbling? A. On the deck.

20 Q. Where was it coming out of? A. The trunk of the tank.

Q. That is the opening? A. Yes.

HIS HONOR: Q. What do you call the trunk of the tank? A. A hatch cover arrangement on the deck, the hatch was open and that was where the oil was coming out of.

MR. TAYLOR: Q. Could you see what quantity was on the deck? A. I am afraid I could not.

Q. Was there anybody up there near where the oil was coming out when you got up? A. I don't think so.

30 Q. What did you do? A. I got hold of one of the crew to put a plug in the scupper to stop the oil getting on the harbour.

Q. Did you go looking for anybody? A. I went looking for the engineer then.

Q. That is the second engineer? A. The second engineer.

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Q. By the way, had you seen anything of the chief engineer after you saw him when you first got there on the 29th? A. No.

Q. When did you last see him on the 29th, at what time? A. It would be in the morning before lunch.

Q. Had you seen him from that time onwards? A. No.

Q. You went looking for the second engineer. Did you find him? A. Yes.

Q. Whereabouts did you find him? A. He was coming along the deck to me. 10

Q. Coming along the deck from where? A. I presume from the engine-room.

Q. Did you have a conversation with him? A. Yes.

Q. Do you remember what you said and what he said to you? A. I just told him that there was a spill.

Q. You said there had been a spill? ---

HIS HONOR: Q. Try, if you can, to give your evidence as if it were taken down on a tape recorder and you were playing it back. It would be "I said to him, 'There has been a spill'. He said to me, '---'. I want you if you can to repeat the exact words. A. I will try. 20

Q. You cannot remember them perfectly, I know, but as near as you can. A. Yes.

MR. MEARES: I still formally object to the evidence. (Allowed).

HIS HONOR: Q. 'I said to him "There has been a spill."' - What did he say? A. I cannot remember.

MR. TAYLOR: Q. Did you notice anything about him at that stage? A. Yes, I did. 30

Q. What did you notice? A. He was under the influence. (Objected to; and rejected.)

HIS HONOR: Q. Tell us what you noticed? A. To my way of thinking ---

Q. I want to know what were the facts that caused you to think that? A. His speech and his walk.



Q. Have you ever been in the Court when anybody has been charged with driving under the influence?  
A. No. This is the first time I have been in Court.

MR. TAYLOR: Q. That question is not directed to you personally. You noticed his speech and his walk. Did you smell anything? A. Yes, I could smell liquor.

HIS HONOR: Q. Apart from the smell of liquor, was there anything else you noticed about him? A. No.

10 Q. Did he speak to you at all? A. He mumbled something; but it was in a language I could not understand, and he raced forward.

MR. TAYLOR: Q. He raced forward. Did you see where he went there or what he did when he went forward? A. Yes, to round up the crew and get the plugs put in the scupper.

HIS HONOR: Q. Who rounded up the crew? A. From memory I think he rounded up some of the Indian crew there to get to work on them.

20 MR. TAYLOR: Q. You remained on board? A. Yes.

Q. What happened to the Vacuum, the barge? A. The hoses were uncoupled and stowed away, and we took soundings.

Q. Did you take soundings? A. Yes.

Q. What did the soundings reveal as to the quantity of oil? A. There were 6000 odd gallons left.

Q. Did you take the soundings? A. I took the soundings. I am standing up as the engineer takes the soundings and I read the tape as he brings it out.

30 Q. And then you make a calculation? A. Yes.

Q. 6400 gallons? A. Yes, something like that.

Q. Did you make a record of it at the time? A. Yes, I definitely made a record of it.

Q. After that had been done, did you see the second engineer, after you had gone back? A. I cannot recollect that.

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Q. What did you do when you went back? A. I went back into this cabin and sat down and compiled the rest of the figures and then waited until the chief engineer came on board, to get the signatures.

Q. Before we get to that interview, did you observe when you came below at any time what had happened so far as this overflow from the oil was concerned? A. On the side of the ship the barge was tied there was like a spray, on the side of the ship, and on the wharf side there was quite a quantity on the wharf and drums which were stacked on the wharf? 10

HIS HONOR: Q. Quite a quantity of what? A. Furnace oil.

MR. TAYLOR: Q. What colour is furnace oil? A. Furnace oil is black.

Q. Did anything happen, so far as the ship was concerned, later on in the morning? A. Before we started pumping?

Q. No, after you had noticed this oil escaping and before the chief engineer came back. Do you remember whether she remained on an even keel? A. No, during that part of the game she had got a list to starboard, that is to the wharf side. 20

Q. What effect did that have on the oil? A. The oil we had trapped up for'ard then spilt over the side of the ship.

Q. Before you left the ship that day did you see how far this oil extended in the waters of the port? A. That was after I left the ship?

Q. No, before you left the ship? A. No. You could not see it from where we were. 30

Q. That pump on the Vacuum, at what rate does it pump? A. About 100 tons an hour.

HIS HONOR: Q. How many gallons would that be?

MR. TAYLOR: Q. Roughly how many gallons? About 200 gallons a ton, isn't it? A. About 200 to the ton.

MR. MEARES: Is that U.S. or Imperial?

MR. TAYLOR: Q. Is that American gallons? A. No. I think that is just Imperial, that figure there.

Q. That would be something in the order of 20,000 gallons an hour, which would be something over 300 gallons a minute? A. Yes.

Q. Is it a big hose it pumps through? A. Yes.

Q. What was the diameter? A. I think it is a 6 inch diameter.

10 Q. Could you say how long this oil had been overflowing before pumping stopped? A. No, I could not say that.

Q. Before the oil is pumped in is something done to it so that you can pump it? Is it heated? A. Some grades of oil are heated.

Q. Do you know whether this particular one was or not? A. That I could not say.

Q. You do not see this oil over at the works; you come from head office in town? A. I come from head office, straight to the ship.

20 Q. And the trips the barge makes back are that it comes back to the works at Pulpit Point? A. Yes.

Q. And loads up there? A. Yes.

Q. And do not go on that? A. No.

Q. You told us that you waited for the chief engineer to come back. When he came back did you give him some papers? A. Yes. I gave him papers and I got his signature.

Q. Did you have any discussion with him about this overflow of oil? A. I informed him -- (Objected to).

30 Q. Who was present when you had this conversation? A. The captain and Mr. Smith from Caltex.

Q. Yourself and the chief engineer? A. Yes.

Q. What was said about this escape of oil? As near as you can recollect tell us what you said and what anybody else said? A. I informed the chief --

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continued.

HIS HONOR: Q. What did you say? A. I said to the chief, "There has been an overflow on the fore peak tanks." And he said ---

MR. TAYLOR: Q. What did he say? A. He did not say much at all. He called for the second engineer.

Q. Did that gentleman attend? A. He came along, yes. What was said there I did not understand because it was in another language. The captain, in front of Mr. Smith, told me not to worry - it was nothing to do with us - we had delivered the oil and it was their fault the oil had flowed overboard.

10

Q. That was said to you by the captain in the presence of the chief engineer? A. By the captain in the presence of the chief engineer and Mr. Smith.

Q. Mr. Smith was the gentleman from Caltex? A. He was shipping manager, in those days, from Caltex.

Q. You had to wait until you got your paper signed --- (Mr. Meares objected to the term "shipping manager" and asked that it be struck out -- objection allowed.)

20

Q. Did you know Mr. Smith before this occasion? A. Yes. I have known Mr. Smith for 8 or 9 years.

Q. Have you done business with him with Vacuum? A. He is not with Vacuum. He was the shipping manager for Caltex - yes.

Q. When the papers were all signed you went back to town? A. Yes.

Q. Did you, on the day you were aboard, see anything else leaking from the "Waggon Mound" other than the furnace oil you told us about? A. Yes, I did.

30

Q. What was the other thing which you saw leaking? (Objected to, firstly as being irrelevant, and secondly, when seen not identified).

Q. What did you see and where did you see it? A. I saw gasoline escaping from a pipe line on board the tanker.

(Objected to: Mr. Meares asked that the answer be struck out: evidence pressed).

40

APPLICATION BY COUNSEL FOR PLAINTIFF

In the Supreme  
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—  
No.6

Application by  
Counsel for  
Plaintiff,

17th February  
1958.

10 (Mr. Taylor calls for letter from Vacuum Oil to Norton Smith dated 16th July 1952 and three accompanying statements. Mr. Meares produced a letter to Norton Smith from Vacuum Oil Co. dated 9th July together with three statements including what purports to be a copy of a statement of Mr. Cullen Ward. Document handed to His Honor. Mr. Meares said although he objected to the document he had no objection to His Honor looking at it to decide whether or not it was relevant).

HIS HONOR: I think it is not within the pleadings.

20 (Mr. Taylor asked leave to amend the pleadings by adding para. 2A: "Whilst she was alongside the Caltex Wharf petrol, gasoline, escaped from the ship and went on to the waters of the harbour." Then to amend para. 4 to read: "A large quantity of oil being bunker oil referred to in para. 3 and the gasoline mentioned in para. 2A, mixed with petrol that escaped from the vessel and collected on the water beneath the plaintiff's wharf and surrounded the piles of the said wharf.

To delete from para. 7 the words "whilst it was refueling."

From para. 8A to delete "fuel or oil" and insert "substances".)

30 HIS HONOR: You might put your proposed amendments in writing, Mr. Taylor.

40 (Proposed amendments objected to on the grounds that (1) they make a completely different case to the cause of action alleged in the statement of claim and (2) it is a complaint that is made more than 6 years after the alleged wrong and (3) - as an alternative only to (1) and (2) - were the amendments to be allowed it should be allowed on terms of the defendant being granted an adjournment, firstly, and, secondly, the plaintiff pay the whole of the cost of the action up to date irrespective of the result.)

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(Mr. Meares stated that he wished to refer His Honor to authorities as to the case being Statute barred.)

(FURTHER HEARING ADJOURNED until 10 a.m.  
TUESDAY 18th FEBRUARY, 1958).

IN ADMIRALTY

CORAM: KINSELLA J.

MORTS DOCK & ENGINEERING CO., LTD. v. OVERSEAS  
TANKSHIPS U.K. LTD.

SECOND DAY: Tuesday, 18th February, 1958.

MR. TAYLOR: I make application to amend the pleadings by amending Paragraph 3 by inserting after the word "bay" the words: 10

"prior to the escape of this oil gasoline or petrol had leaked from valves on the ship. Either by reason of mixing with petrol and/or gasoline or from its nature the said oil was of a highly inflammable nature and flowed on the surface of the water."

That does not involve any consequential amendment.

I would concede it would not be open to Your Honor to amend the pleadings more than six years after action is brought to raise a new cause of action. 20

(Mr. Taylor pressed the above amendment. Mr. Meares objected to the amendment, submitting that this is a case where if the amendment is allowed the defendant will be deprived of meeting the case by evidence which he otherwise could have called, and added that this was a new departure, a new head of claim and a new cause of action, and further submitted that the amendment was barred by Statute. 30

His Honor refused the amendment.  
His Honor's ruling appears in a separate transcript).

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B.A. CULLEN WARD, EXAMINATION-CONTINUED.

BRUCE ALISTAIR CULLEN WARD  
Examination Continued:

(Mr. Meares asked that the answer given to the last question on p.12 of the transcript be struck out. Mr. Taylor objected to this application).

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10

HIS HONOR: When this question was asked yesterday afternoon and objection taken to it by Mr. Meares I was under the impression - which I expressed - that I thought the question was outside the pleadings. I gave considerable thought to the matter during the adjournment and it now seems to me, I think - with some hesitation - that I should come to the decision that I should allow the question and permit the answer. It seems to me that the answer is admissible on the basis that it goes to show that in fact the oil was of a highly inflammable nature when it flowed on the surface of the water - oil which otherwise might not have had that quality of inflammability. As I say, with some hesitation, I think this question and answer must be admitted.

20

MR. MEARES: It is no use being unfair about this, I feel I must say this: when I said I had not considered this matter, I have not --

HIS HONOR: Mr. Meares, I did not doubt that for a moment.

30

MR. MEARES: The point is that I do not know how far my friend can get without me having to apply for an adjournment.

HIS HONOR: If you feel you are in any difficulty and an adjournment should be applied for, you may apply for one.

MR. MEARES: I submit when this witness has given his evidence I will be in a position to know, I may ask my friend something in the meantime.

40

MR. TAYLOR: Q. You were telling us yesterday that you saw in addition to this furnace oil escaping during the early hours of the morning on the Tuesday

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gasoline escaping from a pipe on board the tanker. Whereabouts on the tanker was that? A. That was the after end of the tanker near the pump room.

Q. Whereabouts was that gasoline going? A. On to the deck; over the deck into the harbour through the scuppers.

Q. Did you see it for long? How long was it going on when you saw it? --

HIS HONOR: What do you mean by that; how long had it been going on when he saw it or for how long did he watch it? 10

MR. TAYLOR: Q. For how long did you observe it? A. Not for very long.

Q. Can you give me some idea. Was it a matter of minutes or a quarter of an hour? A. I would say minutes, yes; from the time it took me to walk from the Chief Engineer's Office to half way along the catwalk on the tanker.

Q. To the gangplank that goes ashore? A. Yes. I was leaving, going ashore. 20

Q. Was there a little bit of this or quite a quantity? A. There was quite a quantity, quite a lot.

HIS HONOR: When you say "quite a quantity", what do you mean?

MR. TAYLOR: Q. Could you give us some idea as to the quantity that was escaping as you saw it? Was it coming from one valve or more than one valve? A. From where I was I would say from one; maybe two, but the one that was leaking the most was nearest to me. 30

Q. Can you give us some idea as to how it was coming out of this valve? How would you describe it? A. Putting it this way: it was coming out under pressure. Would that help you?

HIS HONOR: Q. It might ooze out under pressure or be merely drips? A. No. This was coming like a garden hose. It is rather hard to explain.

MR. TAYLOR: Q. You observed it over that length of time, you say, as you walked along. While you



were seeing it could you smell anything? A. Definitely I could smell.

Q. What did you smell? A. A gasoline smell, very strong.

Q. I suppose on these tankers there is always a smell of it? A. Yes.

Q. You are familiar with that? A. Yes.

10 Q. Was this an ordinary sort of smell or was it the particular petrol that was coming out that you could smell? A. Put it this way: it was a very strong smell of petrol.

Q. You saw it? A. Yes.

Q. What color was it? A. White.

Q. After you saw it did you go somewhere? A. Yes. I went ashore to the Customs Officer.

Q. Did you later on return to the ship? A. I returned to the ship.

Q. Did you at any time see on that day --

20 HIS HONOR: Q. How much later did you return to the ship? A. I had to walk up to the top of the hill and deposit the drawback forms, and had a yarn with him. I suppose it would be half an hour. I am only guessing at that.

MR. TAYLOR: Q. When you came back would this still be going on or had it ceased? A. No, it had ceased.

Q. Did you notice anything on the waters of the bay when you came back? A. I did not look.

30 Q. Can you tell me when that was, what day? A. That was on the morning of the 29th, the day we started bunkering.

Q. You told us yesterday about the time the oil overflowed, the oil from the bunkering. Did you yourself have anything to do with any of the valves on board the ship? A. No, definitely not.

Q. I think you said yesterday you actually saw this fuel oil coming out of - you described it as a hatch, I think? A. Yes.

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continued.

Q. On the fore peak tank? A. Yes.

Q. And spilling out on to the deck.

You had been with Vacuum for a long time?  
A. Yes.

Q. You are not a technical man, I understand? A.No.

Q. In addition to handling bunkering oil did you  
handle various other products? A. Yes.

Q. Petrol, aviation spirit, kerosene? A. Yes, and  
lubricating oil.

Q. Furnace oil that is put in their ships to be  
burnt, is that regarded as safe or unsafe oil? 10  
A. Safe oil. (Objected to).

Q. Did you regard it as safe oil? A. Yes.

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CROSS-EXAMINATION

MR. MEARES: Q. Let me get this quite clear; you  
told us, did you not, that you have been with the  
Vacuum Oil Co. for some time? A. That is right.

Q. How long? A. Just on 20 years.

Q. I suppose in that time you have had very great  
experience of bunkering, have you? A. Ten years 20  
of bunkering.

Q. In the last ten years you have been engaged  
solely or primarily in bunkering vessels, have you?  
A. No.

Q. It has been a large part of your work? A. No.  
I think you have got that incorrect, if I may say  
so.

Q. You have had a considerable experience of it?  
A. No. I have been out of the industry for three 30  
years.

Q. From 1955 back to 1945 you had had very consider-  
able experience of bunkering vessels? A. Could I  
alter that, if you don't mind?

Q. Could you what? A. I had ten years of bunkering  
experience from the time I started bunkering until  
the time I left the oil industry.

Q. All right, I will take your answer. You thought this fuel oil was perfectly safe? A. That is right.

Q. That was the view that you had after being with Vacuum for some 20 years? A. Yes.

Q. And after being experienced in bunkering for ten years? A. Yes.

10 Q. And I suppose you had had very considerable experience with furnace oil of this sort in your 20 years experience? A. Yes.

Q. And it was an oil that your company had been supplying for many many years when you were with it? A. Yes.

Q. And the discharge of the fuel oil over the side did not concern you from a safety point of view at all? A. Well, it did; because I reported it.

Q. I thought you said you thought it was a safe oil. Did you believe that? A. Yes, I did; but I reported it because it pollutes the harbor.

20 Q. Because it pollutes the harbor? That was the only reason why you were worried - why you reported it? A. Yes.

Q. I suppose on the other hand you would realise the inflammable, highly dangerous nature of petrol. Is that right? A. Yes.

Q. And I suppose you were also at the time of this incident well aware of the effects of petrol vapor and its volatility? Is that so? A. Yes.

30 Q. And I suppose you were also aware, were you not that this ship was discharging alongside an oil installation, namely Caltex? A. Yes.

Q. And you knew, of course, that the Caltex installation contained tanks of petrol and oil and other derivatives of it? A. Yes.

Q. And I suppose you would agree with me, would you not, that the escape of petrol on to a tanker which was lying next door to an oil installation? You follow that? --

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MR. TAYLOR: "On to a tanker"?

MR. MEARES: Q. Yes, the escape of petrol on to a tanker which was lying next door to an oil installation would be just about one of the most unfortunate circumstances under which you could imagine petrol escaping; is that so? A. I think so.

Q. And one of the most dangerous? Is that correct?  
A. That is correct.

Q. And you at all times were aware of that? A. Yes.

Q. You do not want to alter that? A. No. I was 10  
aware of it.

Q. And of course this incident happened in broad daylight? A. That is right.

Q. I suppose it would be fair to suggest to you that from your experience anybody on shore - that is the oil installation - would be very conscious of the dangers also? A. Yes.

Q. Might I suggest to you also that anybody on a tanker would also be highly conscious of the grave dangers? A. That is right. 20

Q. You told us that you saw this discharging for a matter of minutes only? A. Yes.

Q. When did you see it? A. In the morning.

Q. At what time? A. I would not be sure of that time.

Q. Just try and think? A. It is a long way back and I am on oath --

Q. It is a long way back. May I suggest to you that to your recollection all the events of this day are somewhat blurred by the lapse of time? A. I wrote 30  
my report --

Q. Would you answer my question? A. Yes.

Q. Would you admit that your recollection of the events of this day are somewhat blurred by the lapse of time? A. Yes.

Q. You observed this petrol escaping when you were in what position? A. Bunkering Officer of the --

- Q. Where were you? A. I was on board the tanker.
- Q. Where? A. On the catwalk.
- Q. You had come from the Chief Engineer's office?  
Is that correct? A. That is correct.
- Q. And you came up from the Chief Engineer's office;  
when was it you first observed petrol escaping?  
A. When I came out of the doorway.
- Q. Of what? A. Of the companionway - I suppose you  
call it.
- 10 Q. And from there you walked to where? A. Towards  
the gangplank.
- Q. On the starboard side? A. On the starboard side.
- Q. How far from the entrance of the doorway to the  
Engineer's office to the gangplank on the starboard  
side was it - roughly? A. I would not be sure.
- Q. You would not be sure. Naturally you would not  
know. I don't want to try and make things too  
difficult, but can you just give the Court a rough  
idea? - (No answer.)
- 20 Q. I think you may assume that the length of the  
"Waggon Mound" is approximately 500 odd feet. That  
may help you in reaching an estimate of the distance  
from the Chief Engineer's cabin or office to the  
starboard gangplank? A. About 150 feet?
- Q. 150 feet; 50 yards? A. About that.
- Q. Let me get this clear; would you imagine that  
you are standing where His Honor's Associate is?  
Do you follow that? A. Yes.
- Q. You understand that? A. Yes.
- 30 Q. And we will imagine that is the entrance to the  
Chief Engineer's office. Do you follow? A. Yes.
- Q. And then we will imagine that you are walking up  
to the door, which is the entrance to No.3 Court  
here, in the direction of the starboard gangplank.  
Do you follow that? A. Yes.
- Q. Where was it in your path that you first noticed  
this leak of petrol? A. As I stepped out of the  
doorway.

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Q. As you stepped out. Now, looking towards the entrance of this Court where was the leak? A. (Indicating): I would say about there.

HIS HONOR: How far is that?

MR. MEARES: Q. Just imagine you are where His Honor's Associate is. You pointed to just in front of the witness box where you saw the escape of petrol. Is that right? A. Yes. Putting it this way: there is a catwalk outside --

Q. Will you tell me approximately in yards how far the petrol leak was from you when you first stepped out of the Engineer's office? A. It would be 3 yards, I should say. 10

Q. 3 yards? A. Roughly, but you are looking down on to it - if you get what I mean.

HIS HONOR: Q. Did the Engineer's office have an entrance on to the deck or did you go through a companionway? A. No. I came through a companionway.

HIS HONOR: Mr. Meares, there may be some confusion. The witness says "Coming from the Engineer's office you leave the door of the Engineer's office and then go through a companionway." 20

MR. MEARES: Q. You did not see this petrol until you had come through the companionway? A. That is correct.

Q. And you came through the companionway and then you saw the petrol when it was about 3 yards away from you? A. Yes.

Q. As you were walking along that petrol leak was on your right, but lower down than you? A. On my left. 30

Q. On your left? A. Yes.

Q. But lower than you? A. Yes.

Q. Because you were walking across the catwalk? A. Yes.

Q. From the time you got out of the entrance to the companionway and were walking to the starboard gang-plank your back was turned to the leak, of course? A. That is right. 40

Q. You never observed the leak after you had got off the starboard gangplank? A. No.

Q. Or any time thereafter? A. No.

Q. It would be fair - I do not want to trap you - to put to you that you would have observed this leak for a matter of seconds only at the most?

A. Yes, I suppose you could say that.

Q. Were you worried about it? A. Well, yes and no. The men were --

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B.A. Cullen  
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Cross-  
Examination -  
continued.

10 Q. "Yes and no"? Yes and no - I see. Is that the best answer you can give us? A. The men were working there tightening up the flanges.

Q. The men were working there tightening up the flange. Where were they working? A. Working on the deck, tightening the flanges and stopping the leak.

Q. So when you passed this petrol leak that you saw the men were actually in the process then of repairing the leak? A. That is correct.

20 Q. Let me get this quite clear so that we may understand it: the practice on a tanker is this, is it not, that when she discharges petrol or any other substance that substance is pumped out under pressure? A. That is right.

Q. Of course there are means readily available on the tanker to stop pumping operations? A. That is right.

Q. By means of press buttons; is that correct?  
A. I would not know. I am not a technical man. I have never worked in a tanker.

30 Q. How thick was this petrol pipe; what diameter?  
A. Could I say "a large one", because there were many sizes on board.

Q. We might be thinking of garden hoses. What relation would it bear to a garden hose? A. I would say the comparison of an inch to 12 inches. I would say about a 12 inch pipe.

Q. 12 inches diameter or circumference? A. Diameter.

Q. Which do you mean? A. Diameter.

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Examination -  
continued.

Q. All you saw escaping from this pipe in a matter of a few seconds was petrol which you thought was about the thickness of an ordinary garden hose leak: is that right? A. Yes.

Q. Perhaps I have put it wrongly - like a spray from a garden hose? A. Yes.

Q. And of course you would appreciate this, wouldn't you; that if the men observed the leak - do you follow me - in the flange then it would be quite easy to stop pumping immediately? A. Yes. 10

Q. And you know this also, do you not: that when the discharging of petrol or - for that matter - other oils takes place on a tanker the practice is to commence at a low pressure and gradually work up to a full pressure? A. I have had nothing to do with tankers.

Q. You don't know that? A. No.

Q. That would be eminently sensible as a thing to do, wouldn't it? A. It would be.

Q. I suppose you will agree with me that one of the purposes of that would be just to make certain -- (Objected to; rejected). 20

Q. You immediately took the view when you saw those men working that they were curing the trouble? Is that right? A. That is right.

Q. And when you came back from being on shore the trouble was completely cured? A. That is right.

Q. From then on, whenever it was, until the 31st October, you never saw any further petrol leaking anywhere? A. The 30th? 30

Q. The 30th? A. Yes.

Q. That is right? A. That is true.

Q. Might I suggest to you that this leak that you observed was a leak which occurred very shortly after you boarded the ship and were seeing the Chief Engineer about bunkering? A. I was not in a position to answer that, I do not know when it started or what time it finished.



Q. Do you remember going into the office? A. Yes, definitely.

Q. There was no leak then? A. No, but I was in the office quite a while.

Q. But when you went in there was no leak? A. No. The ship had only just come alongside the docks.

Q. What I am putting to you is this: see if I can have your agreement to it - that the probabilities are that this leak you observed took place within half an hour of the ship coming alongside? A. No, they are not.

Q. What? A. I could not agree to that.

Q. You do not agree: within three-quarters of an hour? A. It takes that long, approximately, to get the hose on board.

Q. It takes that time to get a hose on board? A. I am not sure of the time, but it takes quite a considerable time to put a hose on board the tanker and couple up.

20 Q. Would you agree with me that this leak took place probably very shortly after the hose was put on board? A. Yes.

Q. Very shortly after the petrol hose was connected up; so far as you can remember? A. Yes, so far as I can remember, yes.

Q. And of course petrol, you are aware, is a substance which in air evaporates very quickly? A. Yes.

30 Q. How many hours after seeing this petrol was it approximately that you saw the oil escaping? A. I cannot give you a good answer on that one because I do not know what time it was that I saw the petrol.

Q. It would be fair to suggest to you, would it not, that it would be a matter of approximately at least 15 to 20 hours later? A. Within that period, yes.

Q. This petrol, you realise, had been completely got rid of shortly before you came back from the gangplank? - (Objected to. At Mr. Meares' request the witness left the Court. Mr. Meares then withdrew his question). (Witness returned to Court).

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Examination -  
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B.A. Cullen  
Ward,

Cross-  
Examination -  
continued.

HIS HONOR: Mr. Meares would like to ask you one question before you leave.

MR. MEARES: Q. When you came back on to the ship you could then see no signs of petrol? A. Correct.

(Luncheon Adjournment)

MR. MEARES: Q. I want to show you a photograph with the number 4 marked on the back of it. (Shown to witness). You would agree with me that that photograph represents portion of one side of the ship, would you? A. Yes.

10

Q. And may we take it that the "Waggon Mound", looking forward to aft, had a forward deck; did it not? A. Yes.

Q. Then there was some deck housing? Is that correct? A. Yes.

Q. And through the deck housing there were two companionways going, one on the starboard and one on the port side? A. Yes.

Q. And aft of the deck housing there was another deck; is that correct? A. Yes.

20

Q. And when you got to the end of the aft deck there was a poop deck bulkhead right of that, and the poop deck right aft was higher than either the forward or the aft decks? A. That is correct.

Q. Having a look at the photograph I show you, which is numbered 4 on the back, would you agree with me that that is a fair representation of the starboard side of the forward deck of the "Waggon Mound"? A. Yes.

Q. And do you see the housing at the top right-hand corner of the photograph? A. Yes.

30

Q. Is that the deck housing to which you referred? A. That is correct.

Q. Did you see an entrance through that deck house, and is that the starboard companionway through the deck housing - (Indicating)? A. (Indicating on photograph): Yes.

Q. You point to the entrance near a ladder way - whatever you call it? A. Yes.

Q. You see also in the deck area on that photograph some circular containers sticking up above the deck and there appear to be five of them in number?  
A. Yes - (Indicates on photograph).

Q. And a few more towards midships, a couple more?  
A. Yes.

Q. Some of them seem to have lids open and some of them have the lids closed down on them. Is that right? A. That is right.

10 Q. Are those containers that are shown on that photograph what you term the trunk of the tanks? A. That is correct - (Indicating) - this portion here.

HIS HONOR: Q. Keep your voice up. Do not have a private conversation with Mr. Meares? A. I am sorry.

MR. MEARES: Q. Do you indicate as being the trunk of the tanks those circular objects jutting out above the deck that you have spoken of, some of which have lids and some don't? A. Yes.

20 Q. So that His Honor may have a picture of the matter that would be correct, the tank itself is underneath the deck somewhere? A. Yes.

Q. And coming out of the deck itself there is what might be loosely termed a round mouth to the tank?  
A. Yes.

Q. It is not funnel-shaped. That mouth which is called the trunk is regular and circular? A. Yes.

Q. And it is the trunk of one of the fore peak tanks that you observed to be overflowing? A. That is correct.

30 Q. And when bunkering oil is being loaded into the tanks the hoses are not connected on to the tops of the trunk? A. Definitely not.

Q. Would you mark for me on this photograph which is marked 4 which trunk you found overflowing?  
A. I am trying to visualise --

Q. Wait a minute. In fairness to you I want to show you something else. Would you look at the photograph marked No. 1 - (Shown)? A. That is the port side.

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Cross-  
Examination -  
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B.A. Cullen  
Ward,

Cross-  
Examination -  
continued.

Q. Would you recognise that as being the port side of the fore deck of the "Waggon Mound"? A. Yes.

Q. Just have a look at that quietly - (Photograph handed to witness). Then at the next photograph, numbered 6 --

HIS HONOR: Just a moment, Mr. Meares. Let him do what you asked him to do; look at it quietly.

Q. Mr. Cullen Ward, make sure you are familiar with the photographs before you commit yourself to anything? A. I will, sir. 10

MR. MEARES: Q. Then do you see photograph numbered 6 - (Handed to witness)? A. Yes.

Q. Would you agree that that represents the aft end of the forward deck on the port side? A. Yes.

Q. Would you have a look at photographs 8 and 9 - (Handed to witness) - and would you agree with me that those photographs show the size of the gunwale board? Is that the right expression - "gunwale board"? A. Gunwale or scupper.

Q. The size of the gunwale on the "Waggon Mound" in the forward deck? A. Yes. 20

Q. Also is that demonstrated by photographs numbered 3 and 7? A. The starboard side.

Q. Photographs 3 and 7 are the starboard side, and they demonstrate the gunwale? Is that correct? A. That is right.

Q. Then would you agree that the photograph numbered 10 demonstrates the aft portion of the port side of the forward deck? A. That is starboard, aft? 30

Q. You tell me what it is? A. I think that is the starboard side.

Q. And photograph numbered 5 - (Handed to witness)? A. It would be a different angle of the starboard side.

Q. Of the forward deck? A. The forward deck, the starboard side.

Q. And photograph numbered 2? - (Handed to witness).  
A. I would say that would be the port.

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Q. Would you have a look at the printed description on the back of those photographs? Take it quietly again and tell me if the descriptions are fair descriptions of what the photographs show? A. No.2? Do you want me to read it out?

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Evidence.

Q. No? A. That is O.K. No.5 - yes.

No.7

10 Q. The description is fair? A. Yes, that is correct. That is No.10.

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Ward,

No: 3 is correct. No. 7 is correct. No. 8 is correct, No. 9 is correct. No. 6 is correct. No. 1 is correct, and No. 4 is correct.

Cross-  
Examination -  
continued.

No. 8

No.8

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

Submissions by  
Counsel for  
the Defendant,  
18th February  
1958.

MR. MEARES: I do not know whether my friend would be prepared to tender these. The only point is that it might help the Court to understand it at this stage.

20 MR. TAYLOR: I don't mind you tendering them now.

MR. MEARES: I do not want to tender them in your case. I had offered these to you before.

MR. TAYLOR: I don't feel disposed to tender them. I have no objection to them being marked for identification and no objection to Your Honor seeing them.

30 (David Edward Hunt, in answer to a subpoena addressed to the Secretary of Caltex Oil, as solicitor for that company, produced all the documents set out in the subpoena which the company had been able to find. These documents were produced in two bundles and Mr. Hunt stated he had been instructed to claim privilege as to the second bundle produced).

MR. HUNT: My clients are involved in this litigation indirectly because we have been served with a writ by the present plaintiffs.

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No.8

Submissions by  
Counsel for  
the Defendant,  
18th February  
1958 -  
continued.

HIS HONOR: (To Mr. Hunt): You are not involved in this litigation. You can stand by and have leave to apply to intervene at any time.

(Mr. Taylor asked to be allowed to examine the documents produced by Mr. Hunt.

Mr. Meares stated that irrespective of what Mr. Hunt had said that he, Mr. Meares, claimed privilege and he objected to Mr. Taylor seeing any of the documents in the second bundle.

The first bundle of documents produced by Mr. Hunt was then made available to Mr. Taylor).

10

MR. MEARES: We do not want Your Honor to see certain documents if Mr. Hunt proposes to claim privilege. I say this with diffidence; it might be extremely difficult for Your Honor, having seen the documents in one capacity, to divorce them from Your Honor's mind in another. If I can stop subjecting Your Honor to that risk I should like to do so.

HIS HONOR: Very well, Mr. Meares.

20

MR. TAYLOR: There are many documents in this bundle and rather than take up the time of the Court just now I ask Your Honor's leave to look at them at 4 o'clock or at some later time.

I press my application to see the other documents. As I understand the position if privilege is claimed it is for Your Honor to rule on each document individually.

HIS HONOR: I take it the privilege sought is privilege from production; in other words, exemption from the subpoena?

30

MR. TAYLOR: If that is the basis of the claim I do not know what the ground of it is.

MR. MEARES: My friend is only entitled to see documents which he is entitled to tender.

HIS HONOR: That is begging a very big question. He called for documents under subpoena. How does he know they are documents he can tender or not until he sees them?

I assume you are aware of the form of this subpoena?

40

(Subpoena handed to Mr. Meares. Mr. Meares pressed his objection to the documents being made available to Mr. Taylor).

HIS HONOR: (To Mr. Hunt): Do you wish to be sworn and give evidence as to the ground on which you claim privilege, Mr. Hunt?

MR. HUNT: Yes.

(Witness stood down).

No. 9

EVIDENCE OF D.E. HUNT

DAVID EDWARD HUNT

Sworn to answer:

MR. TAYLOR: I admitted Mr. Hunt's attendance in answer to the subpoena without requiring the Secretary to attend yesterday, but it is the Secretary who should be sworn and claim the privilege. I do not think it could properly be done by the Solicitor.

HIS HONOR: You may withdraw your consent to the production by Mr. Hunt.

MR. TAYLOR: That is the only consent I had given; I withdraw it.

HIS HONOR: I think you had better step down, Mr. Hunt. Mr. Taylor requires such evidence as will be given to be given by the person to whom the subpoena was addressed.

MR. HUNT: May I address Your Honor from the floor of the Court?

HIS HONOR: Yes.

(Witness retired)

MR. HUNT: In relation to the claim of privilege I submit that my clients are entitled to be represented by their legal advisers in Court.

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No. 8

Submissions by Counsel for the Defendant, 18th February 1958 - continued.

No. 9

D.E. Hunt, Examination.

In the Supreme  
Court of New  
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Evidence.

No.9

D.E. Hunt,  
Examination -  
continued.

HIS HONOR: Yes; the person to whom the subpoena is addressed must attend in Court and he may, on application, be granted leave to have legal representation.

MR. HUNT: The subpoena was not served properly on the Secretary.

HIS HONOR: It is a little late now. You cannot hardly contend that it is now the position that he was not given proper notice or that it did not come properly to his notice, because of his answer --

10

MR. HUNT: That is so. We have done our best to answer. I would ask Your Honor that the question of claiming privilege be stood over to allow me to get proper advice on the matter.

HIS HONOR: It can stand over till the person to whom the subpoena is addressed attends and claims privilege.

MR. HUNT: I do not want it to be served again.

HIS HONOR: You might arrange for the Secretary to appear and seek representation --

20

MR. HUNT: Might I have the documents?

HIS HONOR: No. They will remain in Court and no person will have access to them. They will be put in an envelope and kept in custody. They are in the Court and in the custody of the Court, and if you wish to have access to them in the precincts of the Court you may do so, but they will not leave the Court.

MR. HUNT: From Your Honor's Associate?

HIS HONOR: Yes.

30

MR. MEARES: Do the documents my friend has remain in Court --

HIS HONOR: They will stay in Court or in the precincts of the Court. The parties can have access to them. If the parties agree to them being taken out of Court I have no objection, but otherwise the parties may have access to them in the Court. The others will be placed in an envelope.



No. 10

FURTHER EVIDENCE OF B.A. CULLEN WARD

BRUCE ALISTAIR CULLEN WARD  
Cross-examination resumed:

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\_\_\_\_\_  
No.10

B.A. Cullen  
Ward, Recalled,

Cross-  
Examination  
resumed.

MR. MEARES: Q. Would you mark for me on the photo-  
graph numbered 4 the trunk out of which you saw the  
oil coming? ---

MR. TAYLOR: That is the oil he saw at 4 o'clock on  
the Tuesday morning?

10 MR. MEARES: Yes.

Q. Would you mark it with a cross? A. It is a fair  
time ago. (Indicating on photograph): It could be  
one of those two here, but I am not too sure.

Q. Would you like to have a look at some others to  
see if you want to alter that? A. There are two  
trunks very close together. It was dark at night.  
It was dark at this particular time and it would be  
very hard to tell which one of those two it was,  
but it was one of those two here - (Indicating).

20 Q. Could I mark this with a line connecting those  
two? Do you mind if I do that? - (Marking photo-  
graph.) Would that be fair? A. That would be fair.

HIS HONOR: Q. On what photo is this? A. On No. 1.

MR. MEARES: Q. You say on photograph No. 1 the ink  
line between the two trunks is where you saw the oil  
coming out of one of those two trunks? A. Yes, to  
the best of my knowledge.

30 MR. MEARES: With my friend's permission I just  
hand this to Your Honor.- (Photograph handed to His  
Honor.) Would Your Honor bear in mind that the  
decking is aft and Your Honor is seeing really the  
fore deck in most of the photographs.

HIS HONOR: This deck you had marked with the line  
is part of the aft deck?

MR. MEARES: No, that is the for'ard deck. The  
decking of course is at the stern end, of the for'ard  
deck, but the photographs are all of the for'ard end.  
The witness marks, as I understand it, on Exhibits 1

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B.A. Cullen  
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Cross-  
Examination -  
continued.

and 2 the trunks, which are the two most forward trunks on the starboard side.

HIS HONOR: They are the two most forward ones shown on Photograph 1?

MR. MEARES: Yes, Your Honor.

Q. Of course you noticed the oil was bubbling out of those tanks at that trunk? A. That is correct.

Q. If pumping were going on the oil would bubble out of the trunks? A. Not necessarily on those tanks.

10

HIS HONOR: Q. I don't quite follow that - "If pumping was going on"? A. The oil would be bubbling out of those fore peak tanks, when stored in those fore peaks.

If you had a cross-section of a diagram of those tanks you would see that there is quite a big air pocket. The trunk comes down like this, and the deck level is here (indicating). There is a ladder leading down and there is an air pocket created on this side.

20

MR. MEARES: Q. On what side? A. On both sides of the trunk. Are you with me?

Q. Yes. A. What causes the bubbling is the air trapped in this vacuum - I suppose you can call it - in this pocket.

Q. If you were pumping and you had got so much oil in that the tanks could not stand or take any more oil because it was being pumped in under pressure the oil would bubble out? A. That is one reason, yes.

30

Q. Supposing you have a cylinder - a petrol tank - and you put a nozzle in the petrol tank with the gasoline and it starts to overflow; because it is going in and overflowing it would bubble out; is that correct? A. Yes.

HIS HONOR: I would think it would flow out. I am trying to appreciate what the witness is putting. If there was an air pocket on each side, I can see if some oil is being pushed in some air must be displaced to make room for it, which to my lay mind

40

would account for the bubbling out as distinct from flowing out - the displacement of air by reason of the influx of further oil.

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MR. MEARES: Q. Would that be correct? A. Yes.

Q. And this was bubbling at the time? A. That is when I went up and had a look at it.

Plaintiff's Evidence.

Q. Would you just have a look at this document - (Shown to witness). Is that in your handwriting?

No.10

A. Yes.

B.A. Cullen  
Ward, Recalled,

10 Q. Are the contents of that document true? A. Yes.

Cross- Examination - continued.

Q. Do you see a notation there in that document under the heading "Started pumping"? A. Yes.

Q. That document is all in your own handwriting? A. That is true.

Q. With the exception of the signature of somebody else on the left-hand corner? A. That is correct.

Q. And that purports to be the signature of an officer? A. That is correct.

20 Q. Of the "Waggon Mound"? Is that right? A. That is correct.

Q. And his name was Churney, was it? A. I could not say.

Q. Does it look like that? A. "B" something, and a "C" which ends with a "y". I cannot decipher what it is there.

Q. You got that officer's signature to that there? A. Yes.

Q. When you had concluded pumping? A. Yes.

30 Q. And your signature appears on the right-hand side of it? A. That is correct.

Q. As the Bunkering Officer? A. Yes.

Q. Would you tell me - that document being correct - the periods you started and stopped pumping between 29th October and 30th October, 1951? A. Do you want me to mention it?

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Evidence.

No.10

B.A. Cullen  
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Cross-  
Examination -  
continued.

Q. Yes? A. This is a carbon copy and it is difficult, but I think that is about --

Q. First of all - interrupting you - can I just ask you this: have you a note there when the barge was alongside? A. On my other report there is a note.

Q. From here you see you have got a note - "Barge alongside at" -- A. Yes.

Q. When was the barge alongside? A. It looks about 11.5 a.m. That was the first load.

Q. 11.5 a.m. on 29th October? A. Yes. 10

Q. Would you read out when you started pumping and when you finished pumping? A. 11.15 started pumping. - (Indicating): That could be a nought there. At any rate, that is clear, "11.15 started pumping."

Q. Then on 29th October? A. Yes. Do you want the time finished?

Q. Yes? A. She finished at noon.

Q. About noon? A. Yes.

Q. That is on the 29th, is it? A. That is right.

That is the first load. The next one is alongside - would that be 11 or 12.10? 11.10. The starting time, 11.40; finished pumping 1.40. They are right. I think that is 1.55; would you say? 20

Q. You tell me? A. I think it is 1.55. Yes, it would be. 2 p.m., started pumping. 2.45 finished pumping.

Q. That is the third load? A. That is the third load.

The fourth load; 4.30 p.m. alongside; started pumping 5.30 p.m; finished pumping 7.50 p.m. The next load would be alongside at 6 p.m; started pumping 6.30 p.m; finished pumping 7.25 p.m. The next load was alongside 7.45 p.m., started pumping at 10 p.m., finished pumping at 10.45 p.m. The next one is alongside at 1.15 a.m. - that is on the 30th - started pumping at 1.45 a.m. and finished pumping 4.15 a.m. 30

Q. And you finished pumping at quarter past 4 on the morning of the 30th? A. Yes.

Q. And the flashpoint of the oil was what? A. 170 degrees. - (Objected to.)

HIS HONOR: Is that part of the document.

MR. MEARES: Yes.

HIS HONOR: It is shown on the document, is it?

MR. MEARES: Yes.

Q. That is shown on the document? A. Yes.

10 Q. 170 degrees. By "flashpoint" you mean the Pensky-Martens point? A. I could not answer that.

(Document m.f.i. l.)

Q. Would you just tell me what viscosity it was? Would you agree with me that the viscosity, SSU 100 degrees Fahr. was 505? A. Those were given to me by the laboratory.

Q. You have got a note here, "Observed tank or barge temperature degrees Fahr.", and you have got noted down certain temperatures? A. Yes.

20 Q. I think there are seven temperatures. What are those temperatures you have got down there on the left-hand corner of the document? A. Those are the temperatures of the barge, the oil in the barge.

Q. The oil of course was heated for the purpose of getting it into the "Waggon Mound", for pumping purposes? A. I do not even remember what the temperatures were.

30 Q. Just have a look. You gave some evidence as to whether the oil was heated or not? A. I would not be sure whether I have given --

Q. At the bottom of p.10 - "Q. Before the oil is pumped in is something done to it so you can pump it? Is it heated? - A. Some grades of oil are heated. Q. Do you know whether this particular one was or not? - A. That I could not say." Do you remember saying that? A. That is right, yes.

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Ward, Recalled,

Cross-  
Examination -  
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B.A. Cullen  
Ward, Recalled,  
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continued.

Q. But then did you not say, on p.4 - the second last question - "Q. After you dipped you took a figure?" and your answer was "I took the readings and the temperature of the fuel"? A. That is correct.

Q. So if you took the readings of the temperatures of the fuel you could tell from those readings whether or not the oil was heated? A. If it was up in the 100 degrees I would say the oil had been heated.

10

Q. Just have a look at the document m.f.i. 1, and look at "Observed tank or barge temperatures" there? A. I would say that that oil has not been heated.

Q. Would you tell me what the temperatures of the oil were? A. They were in round about 68 to 70 odd degrees.

Q. Would you just read them for me? A. "78, 68, 80, 68, 80, 78, 68."

Q. May we take it, however, that because of the thickness of this oil it is occasionally advisable to heat it so that you can pump and that it will flow more freely? ---

20

HIS HONOR: What do you mean by "this oil"; the oil that was being pumped in on this particular day?

MR. MEARES: Yes.

Q. May we take it as soon as it gets cool it is a very thick waxy sort of oil? A. Yes.

MR. MEARES: Q. When it is cool it might be described as thicker than treacle? A. Yes.

Q. Something of the viscosity of what is known as marmite, could we say? A. No, not quite as solid as that; tar - something like a tarry substance.

30

Q. You had a man there called Mr. Munce? A. Yes.

Q. On the barge? A. Yes.

Q. The story you tell us is that you noticed a spray of oil and you went looking for somebody on deck? A. Yes.

Q. And this was about 4 a.m.? A. Yes, round about that time.

HIS HONOR: A spray of oil?

MR. MEARES: Yes.

Q. And you found this man Seute, whom you described as the Second Officer? A. The Second Engineer.

Q. And you acquainted him with the leakage of this oil? A. Yes.

Q. You told him that the oil was leaking? A. Yes.

10 Q. And he then rushed off to grab hold of the crew? A. Yes.

Q. You had spoken to him at 3 o'clock that night? A. Yes.

Q. And you had had a discussion with him about how much oil he could take? A. Yes.

Q. Where did you have that discussion? A. I am not too sure whether it was in the Chief's cabin or on the deck.

20 Q. Would this be correct? Think this over for me if you would. First of all, at the time of your noticing this escape, light rain was falling? A. Yes.

Q. And a severe southerly was blowing? A. Yes.

Q. I am putting this to you, that before you noticed that, Mr. Munce climbed the ladder from the vacuum to the tanker and saw the engineer in charge of bunkering, as well as Mr. Shiels? A. That is not correct.

HIS HONOR: He saw the engineer in charge of bunkering?

30 MR. MEARES: Yes, as well as Mr. Cullen Ward, Mr. Shiels.

Q. And I put it to you that it was Munce who told you of the escape of the oil? A. No.

Q. That would be completely incorrect, would it? A. Yes.

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B.A. Cullen  
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B.A. Cullen  
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continued.

Q. And I put it to you furthermore that you then gave some instructions about the scupper hole?

A. Yes, that is correct.

HIS HONOR: He then gave instructions about the scupper?

MR. MEARES: Yes.

HIS HONOR: He has denied that he had.

MR. MEARES: I withdraw the question altogether; perhaps it is equivocal.

Q. You will agree that is a totally different account to the account you give? A. Well, ....

10

Q. It is, isn't it? A. Yes.

Q. What you say, as I understand the position, is that you discovered oil on your face? A. No, I discovered oil on Munce's face.

Q. You discovered oil on Munce's face? A. Yes.

Q. Did not you swear yesterday that you noticed some oil on your face? A. I may; if I did, I am sorry; it was on Munce's face.

Q. I think I am putting something to you which is not right. Did you say this (p.7) that when you were on the barge there was a fine spray of oil coming out of the for'ard scupper? A. Yes.

20

Q. Was that the first time you appreciated that oil was escaping? A. It was.

Q. And then you ran on to the Waggon Mound? A. Yes.

Q. And you found the engineer? A. No, I went up to see what it was first.

Q. And then you found the engineer? A. Yes.

Q. I am putting to you that Munce came up on to the Waggon Mound and it was he who first told you of the escape of oil? A. No, that is incorrect.

30

Q. That would be completely wrong, would it? A. Yes.

Q. Did you see Mr. Munce outside the court? A. Have I seen him?



Q. Yes? A. Yes.

Q. Yesterday? A. No.

Q. Today? A. Yes, today.

Q. What about Mr. Shiels? A. I have not seen Mr. Shiels for years.

Q. Where is he, do you know? A. I would not have any idea.

Q. Mr. Shiels was employed on your barge? A. Yes.

Q. And so was Mr. Munce? A. Yes.

10 Q. And it would be true that Mr. Shiels came up on to the deck to see what was going on and when he got up there on to the deck he found you there with Mr. Munce and the Second Engineer? A. Well, I am not too clear on that point, but his position was supposed to be at the hose.

HIS HONOR: Q. On the tanker? A. Yes.

MR. MEARES: Q. If the pumping stopped? A. His job is to stay by there.

20 Q. On the tanker? A. On the tanker; that is where he is standing.

Q. His job is on the tanker by the hose? A. Either there or on the barge. When I went past Mr. Shiels was not anywhere about. To the best of my knowledge and belief I did not see Mr. Shiels.

Q. I am putting to you that what in truth happened was this: Somebody on the barge received a call from the ship to stop pumping immediately? - (Objected to).

30 Q. Did you hear that? A. No, I did not hear that at all.

Q. What I am suggesting to you is this, that at this critical time anybody who was on the barge was out of earshot of the ship? A. I do not see how that could be.

Q. You could not discover Mr. Shiels? A. No; he could have been looking for the Engineer.

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B.A. Cullen  
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Ward, Recalled,

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continued.

Q. Mr. Shields' job, you tell us, was to check up the hoses on the Waggon Mound? A. Yes. I did not keep an eye on these chaps all the time.

Q. May we take it that Vacuum Oil had three employees there? A. That is correct.

Q. And you were jointly responsible for bunkering this ship? A. That is correct.

Q. Checking on the hoses, pumping and so on; is that right? A. That is correct.

Q. Checking if there was a leakage? A. On the vacuum lines, yes.

10

Q. Would not you be watching on the Waggon Mound? A. No, that is not our duty.

Q. Did not you tell me that Shields would be watching the hose on the Waggon Mound? - (Objected to).

HIS HONOR: He said he was standing by.

MR. MEARES: Q. Would not Mr. Shields be standing by the hose on the Waggon Mound? A. He could be on the Waggon Mound or on the barge.

Q. And it was quite customary to stand by the hose on the Waggon Mound? A. Yes.

20

Q. For what purpose? A. To make sure no leaks came out of our hoses.

Q. Did not he watch to check if there was any overflow? A. No - (Objected to; allowed).

Q. That was his job, amongst other things, generally to check on the hoses and see that everything was going all right? A. From the Vacuum barge to the ship's filling point, yes.

Q. Yes, and also on the ship itself? A. No.

30

Q. You pump oil from the barge into the ship? A. That is correct.

Q. And your hoses are connected from the barge at the barge? A. That is correct.

Q. And they are connected at points on the ship?

A. Yes.

Q. And he was concerned with checking those hoses on the barge and on the ship? A. That is correct.

Q. To ensure that there was not any leak of oil?

A. From our side of the operation.

Q. From your side of the operation? A. Yes.

10 HIS HONOR: Q. You mean by that - your side of the operation - up to the point where the oil is delivered to the ship's hold? A. Once it is delivered into the ship we have no control over it whatsoever; but I am responsible to see there is no oil leaking from the barge, from the hose from the barge to the fuelling point on the ship. If any spills in the harbour I am responsible.

Q. If it spills from the ship, it is all the better from your point of view? A. Yes.

20 MR. MEARES: Q. First of all, if you saw the oil spurting out from a leak in your hose wherever it was, you would immediately stop pumping? A. That is correct.

Q. And you could do that in a second? A. Yes.

Q. By the same token, if the three of you there, each doing his proper job, you would be able to determine within a matter of a second or two whether there was any leak from the ship's tanks? A. There could only be one person who would see that; that would be Shiels.

30 Q. You would be able to, too? A. I would be in the Chief Engineer's cabin, so I could not see from there.

Q. Are you sitting in the cabin all night? A. Practically all night.

Q. Doing what? A. Figuring.

Q. What are you figuring? A. There are quite a lot of documents to prepare in the operation of bunkering, which, if you had a look at them you would agree with me. My time is practically fully occupied in doing that clerical work.

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B.A. Cullen  
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continued.

Q. Do you mean to say you were there for 30 hours on end? A. That is true.

Q. You were figuring all the time? A. I would not say I was figuring all the time - but the majority of the time.

Q. Approximately how many documents have you to prepare? A. 16 copies of that statement you showed me there. The compiling of the figures takes a considerable amount of time.

Q. What figures? A. To fill in the tonnage, the barrels, there is quite a lot of work involved.

10

Q. You do not spend 30 hours doing that? A. With every barge that comes along we have to work out figures. It is all compiled on those different reports.

Q. You have Shiels there, haven't you? A. Yes.

Q. And this other man Munce? A. Yes.

Q. I suppose when they are pumping they are keeping an eye on things? A. Not on the ship; it is nothing to do with them, on the ship.

20

Q. You would be wanting to make sure that your pumps were delivering fuel oil for the purpose for which you had been ordered to deliver it? A. We can feel it by the vibration of the hose.

Q. You would want to know whether the hose was broken? A. You can see it because it is only a short length of hose.

Q. You would want to know whether there was any leak on the ship? A. One man can see that from where he stands.

30

Q. Where is he standing? A. Right at the ship's manifold on the deck.

Q. And also he can see if there is a leak? A. Only at that point; the bridge decking is in the road of the forepeak tanks.

Q. Would not he know that his tanks are overflowing? A. No - (Objected to).

Q. And when you arrived you found some oil there, and how much oil was there you have already told us you could not say? A. That is correct.

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Q. You saw there was some trouble that the Second Engineer was having with a sticking valve that led from the forepeak tanks to a pipe running from there to the tanks aft? A. No, I did not.

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Q. You did not know anything about it? A. I did not know anything about it.

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10 Q. You did not see him wrestling with it? A. No, I did not.

B.A. Cullen  
Ward, Recalled,  
Cross-  
Examination -  
continued.

Q. Did you see an officer named McMahon? A. No.

Q. What! A. I do not recollect the name.

HIS HONOR: An officer of what?

MR. MEARES: Of the Waggon Mound? A. I could have, but I did not know his name.

20 Q. Will you agree with me that just at this time you noticed the leak, or within a few minutes after that, not only the Second Engineer was there, but also this officer, a deck officer named McMahon? A. That could be so because at that time there were quite a few people around.

Q. At the time of this leak being discovered there was not only the engineer officer, but there was, as far as you can recollect, another officer from the Waggon Mound present? A. Yes, there could have been.

Q. And quite a few other people in addition? A. Yes.

30 Q. When was the last time you had seen Shiels prior to this leakage of oil on the night of 30th October? A. I would not have the vaguest idea.

Q. Not the vaguest idea? A. Not the vaguest idea.

Q. When was it you last saw Munce? A. This morning.

Q. Prior to this leak on the morning in question? A. This morning.

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B.A. Cullen  
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continued.

Q. I will put it to you again. Do you remember the leak occurring on the morning of the 30th October? A. Yes.

Q. When had you seen Munce prior to that? A. It would have been on our next filling job.

Q. No; before that. You are filling the Waggon Mound? A. Yes.

Q. And there was a leak? A. Yes.

Q. At some time immediately thereabouts you saw Munce; that is right, isn't it? A. Yes.

10

Q. Before that time when was it you had last seen Munce? A. When he brought the barge alongside.

Q. What time was that; 1.45, was it? A. Yes, something like that.

Q. So at any rate you have no clear recollection of seeing Munce or Shields for a couple of hours prior to this leak? A. That is true.

Q. And you cannot tell us what they were doing? A. No, I would not have a clue.

Q. During that time did you not at any time go out to see what your men were doing, whether they were doing their job? A. Yes, I would do a walk up the catwalk and see that everything was going all right, and I might have called out "How much have you to go?" to give me an idea.

20

Q. When did you walk up the catwalk? A. I might do that two or three times during the bunkering operation.

Q. Do you know when it was? A. No, I would not have any idea.

30

MR. MEARES: I ask leave to reserve any further question in cross-examination in the event of the further investigation we may have to make. I do not envisage it being necessary to ask this witness anything else.

MR. TAYLOR: You mean about petrol?

MR. MEARES: Yes.

MR. TAYLOR: My friend has concluded his cross-examination except for any matter concerning petrol?

HIS HONOR: Yes.

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B.A. Cullen  
Ward, Recalled,  
Re-Examination.

RE-EXAMINATION

MR. TAYLOR: Q. Tell me, when the last barge was discharging oil into the Waggon Mound, where did the hose from the barge go into the Waggon Mound?  
A. Aft of the bridge; what they call the midship filling point.

10 Q. How far from the midship filling point to the trunkway out of which you saw this fuel escaping at about 4 a.m.? A. I would say about 150 ft.; maybe a little more.

Q. Could anybody standing where the fuel line went into the midship filling point of the Waggon Mound see at night the place where you say you saw the oil coming out at 4 a.m.? A. Definitely not; you could not see.

20 Q. Do you know when a fuel line from your barge is connected to a receiving point on the Waggon Mound; where that oil is going? A. Occasionally we know, but not always. That is the business of the ship's engineer.

Q. Do you know how many tanks of fuel oil there are on the Waggon Mound? A. I could not say correctly.

Q. Do you know whereabouts the valves are which control the flow of oil from the time it goes into the midship filling point? A. No, I do not.

30 Q. You were asked by my learned friend what time it was when you saw this petrol leaking when you came out of the Chief Engineer's cabin. Do you remember my friend asking you some questions about that?  
A. Yes.

Q. Since you were asked those questions you have been given the time when the first barge of fuel oil came alongside and operations commenced; you gave that to my learned friend as 11.15 a.m.?  
A. Yes.

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B.A. Cullen  
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- continued.

Q. In relation to the first lot of oil going into the Waggon Mound, when was it you went up to the Customs? A. It would be after the barge started pumping, because the reason I would go up would be to take samples of the furnace oil to the Customs Office.

Q. Which would be after the first barge started pumping? A. Yes.

Q. When you came out of the Chief Engineer's cabin that morning to go to the Customs Office, was the Chief Engineer there or had he gone? -- (Objected to; allowed).

10

Q. Was the Chief Engineer there or had he gone when you went to the Customs? A. I think the Chief Engineer had gone.

Q. My friend showed you a document and then asked some questions about the flashpoint of this oil, and you said that that was given to you by somebody in the chemical department? A. In the laboratory; yes.

20

Q. Do you have anything to do with this oil before it goes alongside? A. No.

Q. Do you yourself do any tests on it? A. No, I do not.

Q. When you say it was given to you by the chemistry department, do you mean by that that it was given to you orally? - (Objected to; allowed).

Q. Do you get that information orally, or is it given in a document? A. Orally; and it is followed up for filing purposes in the office; it is typed.

30

Q. Do you remember my friend putting some figures as to the specific gravity and viscosity of this particular fuel? A. Yes.

Q. Are those matters that you know yourself, or are they what someone else tells you? - (Objected to; allowed). A. Someone else tells me.

(Witness retired)



No.11

EVIDENCE OF D. CRAVENDAVID CRAVEN

sworn, examined, deposed:

In the Supreme  
Court of New  
South Wales  
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No.11

D. Craven,  
Examination.

10

TO MR. TAYLOR: I am the Harbour Inspector employed by the Maritime Services Board of N.S.W. I have been with the Maritime Services Board for 21 years, and I have been in my present position for the past 13 years. I reside at 18 Cliff St., Milson's Point.

Q. In the course of your duties have you had experience of spillages of oil in the Sydney Harbour?

A. Yes, 47 in all.

Q. Have you certain duties to perform if it is reported to you that there has been a spillage of oil in the harbour? A. Yes.

Q. On the morning of Tuesday, 30th October, 1951, did you go to the Caltex Wharf and go aboard the Waggon Mound? A. Yes.

20 Q. What did you see when you got there? A. When I arrived I saw oil on the wharf, and I went aboard the ship and I saw oil all over the foredeck.

Q. What sort of oil? A. Heavy black furnace oil.

Q. You saw it on the deck and you saw it on the wharf? A. I mean the deck of the wharf when I refer to the wharf.

Q. Did you see any in the ship? A. Yes, on the foredeck of the ship - a considerable quantity there.

30 Q. Where was it? A. On the foredeck.

Q. Was it all in the one place, or in the scuppers? What was the situation. A. Mostly thick concentrations on the port side, to use a nautical term.

Q. Did you notice anything about the scuppers? A. No, I did not observe the scuppers.

Q. Did you see any signs of furnace oil on the outside of the ship? A. Yes, I saw oil on the plating on both sides of the ship - the hull.

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D. Craven,

Examination -  
continued.

Q. Both sides of the hull, port and starboard?

A. Yes, I did.

Q. Could you see where it came from? A. Not particularly. It was on the plating. I cannot recall exactly where it was.

Q. Did you see it going right up to the top of the plating; was it anywhere near the scuppers? A. Yes.

Q. On both sides? A. Yes, on both sides.

Q. Did you observe on that occasion any oil on the waters of the port? A. Yes, a considerable quantity over a wide area. 10

Q. From where the Waggon Mound was could you indicate the area that you observed? A. I saw oil on the water as far as the Yeend Street wharf, about 200 yards from the ship.

Q. Was it thick or thin? A. On the seaward side of the ship it was very thick and heavy concentration; it was trapped there by the ship.

Q. Going down to the Yeend Street wharf how was it? A. Very thick concentrations there. 20

Q. How far out on the waters of the bay did it extend from the shore? A. Proceeding from the Quay, we went direct to the ship, and therefore we were ploughing through it, and only saw as far as the eye could see in our immediate path.

Q. How long before you got to the ship were you ploughing through it? You came into the oil, you said? A. Five minutes.

HIS HONOR: Q. What was your speed; for what distance did you go through it? A. The launch does 8 knots. 30

Q. For what distance was the oil? A. Approximately 200 yards.

MR. TAYLOR: Q. 200 yards back from the ship you were going through oil? Could you see from where you were on the ship if it went down past Yeend Street? A. No, I could not see past Yeend Street.

HIS HONOR: Could you get from the witness what time it was?

MR. TAYLOR: Q. What time did you go aboard? A. At approximately 10 a.m.

Q. Was the pilot on board when you got there?

A. Yes, the pilot was on board in the Master's cabin.

Q. Did you have an interview with the Master while you were there? A. Yes.

Q. Did you have some conversation with the Master?

10

A. I did. I told the captain the purpose of my visit.

Q. Who was present at this conversation? A. Myself and Mr. Litherland of our Legal Branch, who accompanied me.

Q. Was there anybody else there whom you knew?

A. The Pilot.

Q. Anybody else? A. I cannot recollect at this stage.

Q. Was there anybody there from Caltex whom you knew? A. No, I do not recall that.

20

Q. Do you know a Mr. Durack? A. Yes.

Q. For how long have you known him? A. For 12 or 13 years.

Q. What is his position with Caltex? A. So far as I know he is in charge of the installation there at Ballast Point.

Q. At that time, I am speaking about? A. I do not know his exact position at that time; but I know he had to do with the installation.

Q. At Ballast Point? A. Yes, at Ballast Point.

30

Q. You told the Master the purpose of your visit?

A. Yes, and I asked him to tell me what had happened.

Q. What did he tell you? A. He told me that - (Objected to).

Q. Give it as nearly as you can; put it in the first person, what you said to him. Give us the direct words what you said and what he said to you? --

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D. Craven,  
Examination -  
continued.

HIS HONOR: Imagine it was taken on a tape recorder and you were playing the recorder back.

MR. MEARES: I object to any conversations with the Master.

MR. TAYLOR: I press it.

HIS HONOR: I will allow it.

MR. TAYLOR: Q. What did you say to the Master and what did the Master say to you? A. I asked him to tell me what had happened. He told me - (Ob-  
jected to; allowed).

10

Q. He said what to you? A. That they had been taking on bunkers.

HIS HONOR: Q. I suppose he said "we"? the ship had.  
A. Yes.

MR. TAYLOR: Q. The ship had been taking in bunkers?  
A. Yes.

Q. What happened? A. At an early hour that morning there had been an overflow.

Q. Is there anything else that you can remember?  
A. Not a great deal.

20

Q. Did you have some conversation with him about what you proposed to do? A. Yes, I asked him if he would leave an authority with his agent.

MR. MEARES: I object to all these conversations with the Master - what he proposed to do or anything of that sort.

HIS HONOR: The conversation is merely as to what he said.

MR. MEARES: I object to it.

HIS HONOR: I will allow it.

30

MR. TAYLOR: Q. What did he say? A. I asked him would he leave authority - (the rest of the answer was objected to and was struck out at the direction of His Honor).

Q. You asked would he leave authority with his agents? A. Yes, I did.

Q. To do what? A. It is customary.

Q. What did you say to him; what did he say? A. To act on his behalf.

Q. And did he say he would? A. He did say so.

Q. Whom did he say? A. Mr. Durack.

Q. Mr. Durack of Caltex? --

HIS HONOR: Q. Did you say "leave authority to act on your behalf with regard to forwarding mail"?  
A. They signed an authority.

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D. Craven,  
Examination -  
continued.

10 MR. TAYLOR: Q. Tell us the conversation. What did you say that led up to the leaving of authority with his agent? Did you tell him you were going to do something? A. Yes, report it to the Maritime Services Board, who would decide what action would be taken.

Q. Did you indicate in any way the nature of that action? A. No, I did not.

HIS HONOR: Q. What did he say, if anything? A. He said he would.

20 MR. TAYLOR: Q. He said he would leave authority with Mr. Durack? A. That is right.

Q. Did he give you anything? A. Yes, he gave me a copy of his report, the entry he made in the log. He gave me a copy.

Q. Have a look at this document I show you; is that the document he gave you? A. Yes, that is a copy.

(Above document m.f.i.2).

Q. You told us that this was furnace oil that you observed on the ship? A. Yes, heavy black oil.

30 Q. So far as the oil on the waters of the Port of Sydney are concerned, have you certain duties to perform if it is reported to you that there is oil on the waters? A. Yes.

Q. Are those duties the same, or do they vary depending upon the nature of the oil that is found to be on the waters? A. They vary in the light of circumstances.

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D. Craven,

Examination -  
continued.

Q. Do they vary so far as the fire danger is concerned? A. Yes.

Q. So far as this furnace oil is concerned, was it in your view a fire danger on this day? A. No, it was not.

Q. Did you take any action in respect of the oil on the harbour - this furnace oil that day at all, apart from this action you mentioned you took?

A. No, I did not.

Q. If that furnace oil in your view had been a fire danger, what action would you have taken? - (Objected to; pressed; disallowed).

10

Q. You were present in court when the Captain of the Waggon Mound was charged? A. Yes, I was.

Q. And was a plea entered on his behalf? A. Yes.

Q. A plea of what? A. A plea of guilty - (Objected to).

Q. Did you lay a charge against the Master? A. The Master of the ship.

HIS HONOR: Q. You laid the charge? A. Yes.

20

MR. TAYLOR: Q. What was the charge? A. A breach of regulation, of the Port of Sydney Regulations, No.143 at that time.

Q. Tell us the terms of it? A. Shall not allow oil to escape into the waters of the port; minimum penalty £25 and maximum £100 at that time.

HIS HONOR: Q. You have had over 37 cases of overflowing of oil? A. 47.

MR. TAYLOR: Q. It was to that charge that the plea of guilty was entered? A. Yes.

30

HIS HONOR: I allow it.

MR. TAYLOR: Q. And you were in court when the plea of guilty was entered by the Captain? A. I was there.

CROSS-EXAMINATION

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

\_\_\_\_\_  
No. 11.

D. Craven,  
Cross-  
Examination.

MR. MEARES: Q. You heard the representative on the Captain's behalf pointing out to the Court that the overflow was due to a valve which had stuck?  
A. He did mention that.

Q. You have given us the minimum and the maximum penalty - £25 and £100? A. Yes, that is correct, at that time.

Q. And the Court imposed a penalty of £25? A. Yes.

10 Q. In other words, the minimum fine; is that right?  
A. At that time, yes, that is right.

Q. I am not worrying about any other time. You have discussed the affairs of that morning in October more than once, have you? A. Yes.

Q. And you granted an interview to the gentleman sitting behind me, Mr. Yuill, solicitor? A. Any interview took place in the presence of our solicitor.

20 Q. Did you have an interview with Mr. Yuill, this gentleman sitting behind me? A. Mr. Yuill had an interview with me.

Q. Did you do any talking at all, or did he do the talking? A. He did the talking.

Q. Are you putting that seriously to the Court?  
A. What are you asking me to remember?

Q. I am suggesting to you that Mr. Yuill came to see you in order to ask you what your version of the incident was; is that right or wrong? A. I cannot recall precisely.

30 Q. Don't you really recall? First of all, do you recall this gentleman coming to see you? A. I do.

Q. Do you remember him talking to you? A. I do.

Q. Do you remember what he was talking about?  
A. This pending case.

Q. And do you remember when it was that he saw you?  
A. Did you say "when" or "where"?

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No. 11.

D. Craven,

Cross-  
Examination -  
continued.

Q. When, approximately? A. 2 or 3 weeks ago.

Q. 2 or 3 weeks ago; are you sure of that? A. It may be more; it was certainly only recently.

Q. Supposing I suggested to you that he saw you in October of 1957, what would you say? A. Yes.

Q. What I am suggesting to you now is that your memory is not the best? A. That is right.

Q. That is right. See if this would be correct. Did you tell him this, that you did not go into Mort Bay on the morning of your inspection; is that what you told him? A. I may have. 10

Q. Would it have been true? A. Not exactly; I was in Mort Bay; I must be there to go to the ship.

Q. Would you tell me why you told him you did not go into Mort Bay, if it was untrue? A. I do not admit that I did.

Q. Did you tell him or didn't you? A. I do not admit that I did.

Q. Would you deny that you told him? A. I cannot swear. The ship was in Mort Bay itself. 20

Q. The ship was in what? A. Mort Bay.

Q. It was at Ballast Point? A. That is right.

Q. At the head of Mort Bay? A. At the head of Mort Bay.

Q. Can we have it then that you told him that you did not go into the bay, past the head of the bay? A. Past the bow of the ship.

Q. Past the bow of the ship? That is what you told him? Did you tell him this also, that the oil was not all over the bay? A. I could not see all over the bay. 30

Q. Did you tell him then that it was not all over the bay? A. I may have.

Q. It would have been true to the best of your knowledge? A. It would be true.



Q. And did you tell him also that the oil was only in the vicinity of the ship and the Caltex Wharf; did you tell him that? You did, didn't you?  
 A. I cannot swear to that.

Q. That would have been true, too, wouldn't it?  
 A. No, I saw it as far as Yeend Street.

Q. You could not see clearly as far as Yeend Street, could you? A. Yes.

Q. What! A. Yes.

10 Q. Did you tell him this, that the thickness of the oil was not accurately obtained - and I am not dealing with around the ship. It was not accurately obtained, but it was not very thick; that is what you said? A. I do not recall that.

Q. That was true? A. No, I do not agree with that.

Q. Would you deny that you told him that? A. It was very thick between the ship and the shore - very thick concentrations.

20 Q. Just forget about between the ship and the shore. You have told us, as I understand it, that the ship was containing this oil, in effect? A. That is correct.

Q. And that because of the barrier the ship was making, the oil between the ship and the shore was very thick? A. That is right.

Q. And it would be fair to say - and that is why I tried to make it clear to you - that outside of that, going towards Yeend Street Wharf, the oil was not very thick? A. Not as thick as the other part.

30 Q. It was not as nearly as thick? A. That is right.

Q. And it could fairly be described, going towards Yeend Street Wharf, as not being very thick? A. Not very thick, no.

Q. You made no inspection of the thickness of the oil towards Yeend Street Wharf, except insofar as your eye could see from the vicinity of the bow of the Waggon Mound? A. That is correct.

In the Supreme  
 Court of New  
 South Wales  
 Admiralty  
 Jurisdiction

Plaintiff's  
 Evidence.

No. 11

D. Craven,

Cross-  
 Examination -  
 continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.11

D. Craven,

Cross-  
Examination -  
continued.

Q. You saw this oil on the for'ard deck of the ship? A. On the foredeck; that is right.

Q. Was it up against the deck housing where you saw it? A. Yes, and spread over the deck; the crew were scooping it up into drums.

Q. What was the thickness of it? A. Very thick and deep there.

Q. How thick and deep? A. It could be 6 to 8 inches.

Q. 6 to 8 inches? A. It could be.

10

Q. And supposing I told you the gunwale was  $3\frac{1}{2}$  inches, what would you say? A. That is unusual; it is usually 6 or 7 inches. The camber of the ship would concentrate it in that position.

Q. Are you suggesting to His Honor that this oil on the deck was 6 to 8 inches thick? A. I did not measure it.

Q. That is what you swore, didn't you? (No answer).

Q. Didn't you? A. It could be, I said.

Q. I am suggesting that that is a gross exaggeration; what do you say? A. Because it is customary .....

20

Q. Don't worry about what is customary. A. It could be.

Q. But you are not prepared to swear one way or the other? A. I cannot.

Re-Examination.

RE-EXAMINATION

MR. TAYLOR: Q. You did not measure it, I take it?  
A. I did not measure it.

Q. Is that the best estimate you can give? A. The best estimate I can give in the circumstances.

30

(Witness retired)

MR. MEARES: May I ask my learned friend through Your Honor whether he proposes to call any expert of any kind, for this reason: I know nothing about this question of petrol.

HIS HONOR: You require an expert to be in court?

MR. MEARES: I do not know what I am going to do.

HIS HONOR: You want an opportunity of considering it?

MR. MEARES: Yes.

MR. TAYLOR: I shall give my friend notice of the time and place if and when I propose to call an expert witness.

10 MR. MEARES: Perhaps Mr. Taylor could give me due and proper notice?

MR. TAYLOR: Due and proper notice.

(At this stage further hearing adjourned to Wednesday, 19th February, 1958).

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No.11

D. Craven,  
Re-Examination  
- continued.

No.12

INTERVENTION OF COUNSEL FOR  
CALTEX OIL COMPANY LIMITED

IN ADMIRALTY

CORAM: KINSELLA J.

MORTS DOCK & ENGINEERING CO., LTD. -v- OVERSEAS  
TANKSHIPS U.K. LTD.

No.12

Intervention of Counsel for Caltex Oil Company Limited,  
19th February 1958.

20 THIRD DAY: Wednesday, 19th February, 1958.

30 MR. HENCHMAN: Late last night I was asked to apply to Your Honor this morning for leave to appear on behalf of the Caltex Oil Company Limited in connection with certain matters which I understand arose yesterday with regard to a subpoena and the production of certain documents. Your Honour will realise I have had no opportunity to examine the documents and no opportunity as yet to interview the proposed witnesses, and very little information as to what happened yesterday.

I hope Your Honor will give me leave to represent the company on this aspect.

HIS HONOR: Yes. I think in the circumstances I shall grant leave to you to represent the Company.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.12

Intervention  
of Counsel for  
Caltex Oil  
Company Limited,  
19th February  
1958--  
continued.

You are not entitled to that as a matter of right, but as a matter of discretion I shall grant you that leave.

MR. HENCHMAN: Your Honour will understand that I am so far very slightly instructed in the matter.

The Secretary of the Company, Mr. Smee, is present. The Assistant Secretary of the Company is also present. So far as I understand the position the documents are in the custody of the Court and I think everything that has been required by the subpoena has been brought into the Courtroom.

10

HIS HONOR: So far as I know there is no suggestion to the contrary.

MR. HENCHMAN: Would it be convenient to Your Honor and to my learned friends if I have an opportunity to see these documents and to discuss the matter with Mr. Smee and Mr. Searle before this point is raised?

HIS HONOR: Mr. Taylor has called your client on subpoena to produce certain documents.

20

Have you any objections to deferring the call, Mr. Taylor, until Mr. Henchman has had an opportunity of conferring with his client; perhaps until two o'clock?

MR. TAYLOR: No; provided it is not deferred too long.

HIS HONOR: Till two o'clock today?

MR. HENCHMAN: I think I can do it earlier than that, much earlier. I will not promise but I think an hour might be enough.

30

HIS HONOR: If you will be good enough to let us know when your client is ready to answer the subpoena. Strictly he has answered it already.

Those documents that have been in an envelope in the custody of my Associate since yesterday will now be handed out. (Produced to Mr. Henchman).

Do you require also the documents which have been produced without objection?

MR. HENCHMAN: I should not think so. There is no question that has arisen concerning them that I can gather.

However, I should inform Your Honor that the Secretary, Mr. Smee, instructs me that he knows nothing whatever about this matter and is prepared to go into the witness box to say so if anybody wants him to do so. Otherwise might he be permitted to leave the Court?

10 HIS HONOR: So long as the man is produced who knows something about it. I do not want to have the whole Board of Directors and management here.

MR. HENCHMAN: Mr. Searle knows something about it.

HIS HONOR: We are only concerned with somebody who can produce the documents.

MR. HENCHMAN: So long as it is clearly understood that we did produce the Secretary as required yesterday.

20 HIS HONOR: Very well. He is released from further attendance.

MR. TAYLOR: I ask my friend, pursuant to an arrangement made between us, to produce on subpoena the log and entries in the log of the "Waggon Mound" for the relevant period.

(Mr. Meares produced to the Court the following:  
Smooth deck log covering period to 31st  
October, 1951;  
Rough deck log covering period to 31st  
October, 1951;  
30 Engine room log book from September 29th,  
1951 - divided into two sections: Sea log  
and port log;  
Further Engine room log book.)

Mr. Taylor asked permission to see the above documents Mr. Meares objected to Mr. Taylor having access to the documents unless he called for them. Mr. Taylor pressed his application.)

40 HIS HONOR: While I think there is a good deal to commend itself in Mr. Meares' submissions, the practice of this Court for many years - so long as I can remember - has been somewhat to the contrary. I think

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South Wales  
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Plaintiff's  
Evidence.

No.12

Intervention  
of Counsel for  
Caltex Oil  
Company Limited,

19th February  
1958 -  
continued.

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Court of New  
South Wales  
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Evidence.

No.12

Intervention  
of Counsel for  
Caltex Oil  
Company Limited,  
19th February  
1958 -  
continued.

the practice which has been followed, and which I propose to follow, is that on Mr. Meares' objection I will examine these documents and decide whether they should be made available to Mr. Taylor, and the principle which will guide me is to consider whether the documents if they were sought on discovery would have been discovered. If so I think Mr. Taylor is entitled to see them, otherwise he is not.

MR. TAYLOR: I do not understand my friend to object to my seeing them but I understand he objects to my seeing them unless I call for them. 10

HIS HONOR: What ones are you concerned with?

MR. TAYLOR: The first is an entry, being the eighth entry opposite "11.45" in p.2 of the Smooth Deck Log Book of 29.10.51.

HIS HONOR: Are you familiar with that, Mr. Meares?

MR. MEARES: Yes.

HIS HONOR: I think Mr. Taylor is entitled to that.

I allow Mr. Taylor to see the log in respect of the period the ship the "Waggon Mound" was in port at the wharf in question. 20

MR. MEARES: Might I have it quite clearly on the notes that, with respect to Your Honor, I object to my friend seeing these documents.

HIS HONOR: I allow Mr. Taylor to see the Rough Deck Log Book of 29, 30th and 31st. (Objected to - both above books handed to Mr. Taylor).

I allow Mr. Taylor to see the Engine Room Logs referring to the tanks - he is given leave to see the Engine Department Log Book for the same days. (Objected to). 30

He is allowed to see so much of the Rough Log (being entered in pencil) which relates to the 29th, 30th and 31st October. (Objected to).

MR. TAYLOR: Might I have permission to see these documents in Court during the lunch-hour?

HIS HONOR: Yes.

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No.13

EVIDENCE OF M.C.L. KENTMILTON CHARLES LINDSAY KENT

Sworn, examined, deposed:

In the Supreme  
Court of New  
South Wales  
Admiralty  
JurisdictionPlaintiff's  
Evidence.No.13M.C.L. Kent,  
Examination.

TO MR. TAYLOR: My name is Milton Charles Lindsay Kent. I am an industrial and aerial photographer by occupation and carry on business at Haberfield.

10 Q. You went to the premises at Morts Dock one day last year. Do you remember the date? A. I have not the exact date but it would be early November.

Q. Early November last year. You there took some photographs of various parts of the bay? A. Yes.

Q. This photograph (Exhibit "B1" shown to witness) is one you took, showing Morts Bay from the end of the Sheerlegs Wharf, right around so far as you could get? A. Yes. That is a panorama.

Q. You then pasted those together, pieced them together? A. Not from the Sheerlegs Wharf.

20 Q. You did not take it from the Sheerlegs Wharf; you took it out on the wharf? A. From the Morts Bay Wharf the Sheerlegs Wharf is on the right, and as you see portion on the wharf that is on my left here.

Q. It goes right around? A. Yes.

30 HIS HONOR: Q. It shows a panorama from where to where? A. It shows a panorama from the wharf at Morts Dock to the premises on the extreme left. I do not know whose property that is - the premises on the extreme left of the Sheerlegs Wharf, to the Sheerlegs Wharf on the right, just below the pylon of the Harbour Bridge.

MR. TAYLOR: Q. That wharf which the photograph is taken is known as the Joiners Wharf? A. Yes.

Q. (Showing witness Exhibit "B2"); Is that a photograph taken by you from a launch out in the bay, of the Caltex Wharf and the Caltex Tanks? A. That is correct; taken from a launch in the bay.

Q. Over in the left distance you can see a crane on the Sheerlegs Wharf? A. Yes.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.13

M.C.L. Kent,  
Examination -  
continued.

Q. (Exhibit "B3" shown to witness): That is a photograph taken looking down towards the Sheerlegs Wharf and taken further up by this Yeend St. Wharf, showing the whole length of the Sheerlegs Wharf and the crane? A. That is correct. There is the ferry wharf there on the extreme right.

Q. Did you also take some photographs underneath the wharf, looking in underneath the wharf? A. Yes, I did.

HIS HONOR: Underneath what wharf?

10

MR. TAYLOR: The Sheerlegs Wharf.

Q. Can you tell me whereabouts the first photograph I show you was taken? What portion of the wharf does that show? A. Do you require the Exhibit number?

Q. No, just answer the question. This photograph is taken from a launch as you come up. You can see the front of the launch, the same launch that I employed for the previous photographs. It depicts the fire damage of the wharf from midway, and the half-centre of the photograph to the left - to the left half of the photograph - depicts the fire damage, and the right-hand side consists of lesser damage.

20

MR. MEARES: Would he answer the question?

MR. TAYLOR: Q. I want to know where it was taken from; does it show the whole of the wharf? Is it taken from the centre of the wharf, or where? A. Yes. I can give you an approximation of the position.

30

Q. Where is it? A. Referring to the previous paragraph (Ex. "B3"). Might I refer again to that? We have to refer to this photograph there to show us exactly by reference to this photograph where these were. I am trying to explain it to you. Therefore I will say approximately the distance would be from this photograph --

Q. You can see the last two piles in that? A. Yes. It would be an approximation but I would say, roughly speaking, 30 or 40 yards - 40 yards from the Yeend St. end of the ferry wharf.

40



(Photograph tendered and marked Exhibit "B4").

MR. TAYLOR: There will be evidence given later on that some of these posts have been renewed. I think you will find those are the ones.

HIS HONOR: This purports to show the fire damage under the wharf?

MR. TAYLOR: Yes. The piles and the condition in which they still are.

10 Q. Is that photograph I show you a close-up of some of the piles and the other timbers underneath the Sheerlegs Wharf? A. That is so.

Q. I do not suppose you can get it - but you might get from the other photographs the particular place where that was taken from? A. Yes.

20 Q. Could you describe it and say it is a close-up of portion of the wharf already shown in Ex. "B4"? A. The right-hand pile shows in this photograph, showing some of the fire damage of the piles, as explained in the position of the previous photograph marked by -- what would you term that (indicating).

Q. Bollard? ---

MR. BEGG: It is pile sticking up above the wharf.

WITNESS: It is hardly a bollard. It is more like a projecting pile extending in the air in that line. That probably explains that position by that marking there.

(Photograph tendered and marked Exhibit "B5").

30 Q. Coming to the photograph I now show you; is that a photograph of the wharf taken from the direction of the Yeend St. Wharf, looking down the wharf and showing the crane in the far distance? A. Yes. This photograph was taken from the end of the wharf. Behind me there was a wire fence, which was the barricade between the wharf also and the ferry wharf. Behind the camera was a fence, showing the full extension of the wharf, looking approximately southwest, I should say.

(Photograph tendered and marked Exhibit "B6").

In the Supreme  
Court of New  
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Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.13

M.C.L. Kent,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.13

M.C.L. Kent,  
Examination -  
continued.

Q. (Showing three photographs to witness): Are these three photographs that you took looking down on the planking of the wharf and showing the condition it was in when you were out there that day?  
A. That is correct.

MR. MEARES: Was it near the Yeend St. or the other end?

MR. TAYLOR: Can you in any way fix where this was taken from? A. Might I refer back to the last one? (Handed to witness).

10

The approximate position showing the damage of the floor of the wharf was about - might I say - this side of the crane.

HIS HONOR: Q. What do you mean by "this side"?  
A. The Yeend St. side of the crane.

(TO MR. TAYLOR): In different areas, over an approximate distance of about, I would say, some 50 yards.

Q. That is these three photographs? A. Yes.

HIS HONOR: Q. That is the area or the distance from the crane back towards Yeend St.? A. Yes.

20

MR. TAYLOR: Yes, over 50 yards.

Q. Covering that area of wharf between the crane and the Yeend St. Wharf, covering an area of some 40 or 50 yards.

(Three photographs tendered and marked Exhibits "B7(1)", "B7(2)" and "B7(3)".)

Q. The last photograph I show you is a photograph of a ship at the Joiners? A. Yes. The Morts Dock - might I explain about this?

30

Q. I just want you to answer this. It is a photograph of the ship at the Joiners' Wharf, taken from down in the direction of the dock? A. Yes, from approximately the same position where I took the panoramic picture.

(Photograph of ship at Joiners' Wharf, m.f.i. "3").

CROSS-EXAMINATION

MR. MEARES: Q. Mr. Kent, when you took these photographs last year there was no work being carried out on the Sheerlegs Wharf, was there? A. No work carried out?

Q. I will put the question again. When you took these photographs last year there was no work being carried out on the Sheerlegs Wharf, was there? A. Not to my visibility.

10 Might I explain one point about this question?

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.13

M.C.L. Kent,

Cross-  
Examination.

RE-EXAMINATION

MR. TAYLOR: Nobody wants an explanation from you. You have answered the question. Was there any work going on the day you were out there? A. It was photographed in the luncheon hour between one and two.

MR. MEARES: Q. At any rate you could see there was no ship alongside? A. No.

20 Q. You could see no evidence of there being any work of any consequence being undertaken on the wharf? A. No.

Q. And so far as you would see, it was, substantially speaking, a deserted wharf; there was nobody there? A. Correct.

(Witness retired and allowed to leave).

No.14

EVIDENCE OF T.G. PARKIN

THOMAS GEORGE PARKIN  
Sworn, examined, deposed:

No.14

T.G. Parkin,  
Examination.

30 TO MR. TAYLOR: My name is Thomas George Parkin. I reside at 5, Booth St., Balmain. I am Works Manager for the plaintiff company. I have been with the plaintiff company 34 years.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.14

T.G. Parkin,

Examination -  
continued.

Q. Before that did you do your apprenticeship as a boilermaker at Cockatoo Dock, and subsequently worked for the Cockatoo Dock? A. That is correct.

Q. You were there, I think, from 1927 to 1933, and you have been with Morts ever since? A. Yes.

Q. You came to Morts in 1933 as Assistant boiler-maker and then you were later foreman boilermaker, assistant works manager and works manager? A. That is correct.

Q. In October 1951, did the company have a ship - the "Corrimal" - at the Sheerlegs Wharf? A. They did. 10

Q. And engaged doing certain work on the "Corrimal"? A. That is correct.

Q. You might just tell me roughly what length would the "Corrimal" be? A. The length of the "Corrimal", I would say approximately, may be 200 feet or 250 feet - approximately. I am not sure of that.

Q. And she was tied up in the Sheerlegs Wharf? A. She was tied to the Sheerlegs Wharf. 20

Q. And I think she had been up there for some time? A. A considerable time.

Q. Prior to the fire breaking out you had a number of trades working on the ship itself? A. Yes.

Q. As well as your own men, the Morts Dock men, were there other men working there who were not employed by you? A. Yes, there was. There would be some from R.W. Miller and I have got an idea that there was one from some other sub-contractor to R.W. Miller. 30

Q. How many of Miller's men were there, do you remember? A. I don't remember offhand, but there would be something in the vicinity of 12 to 14.

HIS HONOR: Q. Of Miller's men? A. Of Miller's.

MR. TAYLOR: Q. What trades would these men be? A. Boilermakers, ironworkers' assistants, fitters; and I think there may have been some painters and dockers.

Q. From time to time I suppose you had various trades working down on the "Corrimal", and at the time we are concerned with - the day of the fire and three or four days immediately preceding that day would you have boilermakers working there?  
A. Yes.

Q. Riggers? A. Yes.

Q. Ironworkers? A. Yes.

Q. Shipwrights? A. Yes.

10 Q. Carpenters? A. Yes.

Q. In addition to the work that was being done at the Sheerlegs Wharf on the "Corrimal" itself was some work being done on the wharf? A. Yes. There would be work carried on on the wharf.

Q. And it was survey, repair and alterations you were doing to the "Corrimal"? A. That is correct.

HIS HONOR: Q. What was the nature of the work carried on at the wharf? --

MR. TAYLOR: I was just coming to that.

20 Q. For that purpose did you have the mast out?  
A. The mast was on the Yeend St. end of the wharf.

Q. What was the nature of the work you were carrying on on the wharf as distinct from in the "Corrimal" itself? A. They were carrying out repairs to the mast. That would be, putting sheathings and one thing and another on the mast.

30 Q. In addition to that would there be men working on the wharf with materials that were subsequently going into the "Corrimal"; men marking off and that sort of thing? A. Yes, there would be.

Q. Did you have on the wharf some appliances for electric welding and for burning? A. Yes.

Q. What was on the wharf? A. There would be electric welding sets. They would be housed --

Q. Are they mobile? Can you move those around?  
A. No, they are not mobile. You can detach them. They are what we call permanent fixtures.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.14

T.G. Parkin,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.14

T.G. Parkin,  
Examination -  
continued.

Q. How many of those were on the wharf? A. I would say there would be three, I suppose.

Q. Was there an oxy-burning outfit on the wharf?  
A. There may be more than one - one or two there. They are mobile oxy sets.

Q. That is an apparatus that uses oxy-acetylene flame which is used for cutting metal? A. That is correct.

Q. And had all the plant you have spoken of been on the wharf for some time prior to 1st November?  
A. Yes.

10

Q. And used? A. Yes.

Q. Would it be all used all the time or would there be some days when some of it was used, and some not used; the oxy-acetylene and welding? A. I would say it would be generally used every day some part of the day.

Q. Two or three days before 1st November who was in charge of the men there? A. They really come under the forman boilermaker and he would delegate a charge hand in charge of the shift.

20

MR. MEARES: That is for which men?

MR. TAYLOR: All the men down there.

HIS HONOR: Are you referring to the men on the wharf? I understood some were not employees.

MR. TAYLOR: Q. I am only speaking of the Morts Docks employees. Who was the leading hand in charge? A. A person by the name of Jack Hodgkiss.

Q. He was in charge of the Morts men on the ship or on the wharf? A. He would be in charge of all the men in relation to the boiler shop.

30

Q. What trades is that? A. Boilermakers and Iron-workers.

HIS HONOR: Q. You have men there not from the boiler shop? A. Yes.

Q. But Hodgkiss was in charge of the men from the boiler shop? A. Yes.

MR. TAYLOR: Q. What tradesmen used these welders?  
A. The boilermakers.

Q. This work that was being carried out on the Sheerlegs - on the "Corrimal" - I suppose was only portion of the work that was being carried out through Morts Dock from day to day? A. Yes.

Q. You have a dry dock down there where ships come into the docks and repairs are effected to them?  
A. Yes.

10 Q. Did you have at that time other ships in the dockyard being repaired? A. Yes. There was fire damage repair being carried out to the motor ship "Bulolo".

Q. Where was she? A. Lying on the Joiners Wharf.

Q. That is the opposite wharf? A. Yes. It is right on the south-western end of the bay.

Q. (Showing witness copy of Ex. "B1"). That is where she is in the left side of this panoramic picture? A. Yes.

20 Q. And the particular feature I show you now, m.f.i. "3", is a picture taken in November last year of the ship at the Joiners Wharf? A. Yes. That looks very much like the "Dalby" to me.

The "Bulolo" would come a bit further forward.

Q. A bigger ship? A. A bit further up this end; a bit bigger.

Q. M.f.i. "3" that I show you now shows a ship somewhat smaller than the "Bulolo" at the Joiners wharf?  
A. That is correct.

30 Q. In relation to these works - so that His Honor could get a picture of what work goes on at Morts Bay - what other work goes on at Morts Dock itself?  
A. The dock itself is right up at the head of the bay, and around that particular time there was a vessel called the "Polynesian" in Morts Dock.

Q. The men would be working on her? A. Yes.

40 Q. In relation to that have you got slipways there?  
A. Yes, half-way between the Joiners wharf and the Sheers Wharf, there are two slipways running out into the water.

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Q. What are they used for? A. They are used for putting the smaller vessels - one for vessels of approximately under 1,000-tons and the other one approximately 1,500 up to 2,000-tons.

Q. To take them right out of the water? A. Yes. They pull them right out of the water.

Q. I think in addition to that there is the Morts Dock shipbuilding plant at the top of Woolwich?

A. Yes. There is a dock at Woolwich.

Q. Is it at Woolwich you build ships? A. We did build two ships. 10

Q. Your position as works manager covers the whole of this? A. That is correct.

Q. You told me, I think, that you had served your time as an apprentice and you had been a boilermaker for many years? A. Yes.

Q. Had you had previous experience of coming in contact with furnace oil? A. Yes.

Q. Where did you come across it? A. I came across it mostly during my time as foreman at Morts Dock; foreman boilermaker. 20

Q. Would that be in connection with the work of the dock at all, in connection with work that the Dock was doing on ships that burnt furnace oil? A. Yes.

Q. What have you had to do with it? A. Mainly with that; when we deal with them - the vessels as they come in, their tanks are full of oil and they cannot get rid of the oil and we have to carry out certain repairs with the oil in the tanks.

Q. Have you actually carried on welding operations on ships' tanks with the furnace oil in them? A. Yes. The men working for me have. 30

Q. Under your supervision? A. Working under my supervision.

Q. At that time - that is, leading up to the 1st November - how did you regard furnace oil; as safe or unsafe? A. I always understood furnace oil to be reasonably safe.



Q. What do you mean by that? Did you regard it as an oil that you could burn if you set a light to it with a match or a newspaper or something of that sort? (Objected to; withdrawn).

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Q. What did you know, if anything, at that stage about the possibility of furnace oil, not in a tank but out in the open, being ignited? A. I would think, in my experience it would be nearly impossible; out in the open.

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10 MR. MEARES: What!

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MR. TAYLOR: Set it alight - "ignite it" was the expression I used.

HIS HONOR: What means did you have in mind for setting it alight when you said that?

MR. TAYLOR: Q. What did you have in mind? A. I would have in my mind, knowing --

20 HIS HONOR: Q. Supposing something like the contents of an incendiary bomb fell on it? A. No. I only mean in relation to the trade, in regard to oxy-acetylene welding or electric welding in the trade, which I am thinking of.

MR. TAYLOR: Q. You mean carrying out all those operations you would not regard --? A. As dangerous.

Q. As having any chance of igniting? A. I would not; not in the open.

Q. I want to ask you about the morning of Tuesday 30th October, 1951. Do you remember coming to work that morning? A. Yes, I do.

30 Q. Where is your office, by the way? A. My office would be right in line with and between that ship on the photo - looking over I could look out my window and see the Sheers Wharf if there is no vessel at the wharf.

Q. You say if you look at m.f.i. "3" your office is right over in the right? A. (Indicating): Right behind that.

(M.f.i. "3" tendered).

HIS HONOR: Q. Your office is where? A. Approximately

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in the middle of that vessel, looking over the office you would look right amidships of that vessel.

MR. TAYLOR: I will see if I can get a photograph which picks it out.

HIS HONOR: I think that makes it fairly clear.

(Photograph m.f.i. "3" marked Exhibit "B8").

MR. TAYLOR: Q. And you go to work, I suppose, from Balmain down by road? A. That is correct.

Q. And come into the main gate, into your office? 10  
A. Yes.

Q. When did you first know of the presence of anything in Morts Bay? A. I usually arrive at the works between 25 and 20 to 8. As soon as the bell goes I generally walk out into the Works, and in going to the Works you cross the caisson in front of Morts Dock.

Q. What time does the bell go. A. Quarter to eight.

Q. And this morning at quarter to eight when the starting bell went did you go, as you usually do, around the dock premises? A. Correct. 20

Q. You got to what you call the caisson? Have a look at this plan I show you, would you? (Plan shown to witness). This shows Ballast Point, the Dolphin, the "Waggon Mound" tied up to the jetty, the Yeend St. Wharf, the "Corrimal" - the hatched area of the fire - the slipways, the caisson and the Joiners' Wharf? A. That is correct.

Q. Does that accurately show the position of those various things? A. I would say it does. 30

Q. Did you actually - I see you did not draw it, it was drawn by No. 12 -- ? A. No --

MR. MEARES: I am not worried about that, if you tell me it is accurate.

WITNESS: I would say it is accurate position of that area.

MR. MEARES: Did he ever see the "Waggon Mound"?

MR. TAYLOR: I will get that from him.

MR. MEARES: Q. Did you? A. Yes. (No objection to plan.)

Q. Would you mark where your office is? A. (Indicating on plan): I would say approximately there. My office is there.

(Plan of area tendered and marked Exhibit "C").

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10 Q. When you went on your inspection on that morning what did you notice so far as the water was concerned? A. I noticed a very large quantity of heavy oil floating in the vicinity of the caisson along by the foreshores, across the docks, right across to - I would say - the point of the shore at the outward, southern end, of the point of the Sheers Wharf; and it also extended along in under the Joiners Wharf, between the "Bulolo" and the shore.

Q. Under the Joiners Wharf? A. Under the Joiners Wharf.

20 Q. If you stood at the caisson could you see it along the Sheerlegs Wharf? How far, if you stood at the caisson, could you see it along the Sheerlegs Wharf? A. I could see it to the point of the Sheers Wharf.

MR. MEARES: Q. To the point? A. To the nearest end to where I was standing.

MR. TAYLOR: Q. To the nearest end to where you were standing? A. Yes.

30 Q. That is what you could see from where you were on the caisson? A. That is correct.

Q. What did this oil look like? A. It looked a very heavy dark oil.

Q. What did you take it to be? A. I took it to be what I term fuel oil, which is furnace oil.

Q. As you looked down from the Joiners' Wharf around to the caisson was there any of this on the waters of the bay? A. Yes. It would extend out well into the middle of the bay.

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Q. Did you notice how thick it was where the water meets the slips at the caisson - on the shore?

A. It was very thick near the caisson. Near the foreshores it was exceptionally thick. It tapered away a little as it came out, but over the entire surface it was fairly thick.

HIS HONOR: Q. What do you mean by "thick"? Are you referring to its depth or referring to it being a continuous cover? A. It stood out of the water a little.

10

MR. TAYLOR: Q. What did you notice about it on the slipways? A. On the slipways, with the tide rising and falling, it had congested on the parts of the slip, which really interfered with us using the slip.

(Mr. Taylor stated he proposed to tender a chart showing the tides at Fort Denison on 29th October to 1st November, together with a certificate; but asked leave to defer the actual tender until he was able to supply a letter which had no notations on it. Letter and chart to become Exhibit "D").

20

MR. TAYLOR: So that Your Honor will understand the position I will read out the contents of this letter. It shows that on the 29th the low water at Fort Denison was  $6\frac{3}{4}$  inches at 1.14, and high water was 4 ft.  $7\frac{1}{2}$  at 7.8 p.m.

On the 30th, it was  $3\frac{5}{4}$  inches at 1.13 a.m. and high, 5 ft.3, at 7.33 a.m. Low again  $3\frac{1}{2}$  at 1.57, and 4 ft. 6 at 7.51 p.m. On the 31st low, 4 inches at 1.44 a.m. and 5 ft.  $6\frac{5}{4}$  at 8.18 a.m. On the 1st: low,  $6\frac{1}{2}$  inches at 2.26 a.m. and 5 ft.  $7\frac{1}{2}$  at 8.45 a.m. A quarter-inch at 3.30 and 4 ft.  $1\frac{1}{4}$  at 9.20 p.m. So the tide at Fort Denison at 2.45 a.m. on the 1st November was three inches. So it would be a pretty low tide - pretty well - when the fire broke out.

30

Q. I think I had asked you the condition of the slipway and I think you told His Honor that there was this heavy oil on it, carried on by the incoming tide. According to the figures I have just read out it would be high tide on the morning of the 30th shortly after half-past-seven? A. In the morning.

40

Q. After you had inspected the area around the slipway did you go around to the Sheerlegs Wharf in the vicinity of the Sheerlegs Wharf? A. I could see the Sheerlegs Wharf from where I was inspecting the slipway.

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Q. You told us you could see the oil up as far as the southern end. You were standing at what you call the caisson? A. I was standing on the caisson and looking directly across at that corner of the wharf which I called the south-west.

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Q. That corner of the wharf you indicate -- ? A. As the south-west corner, I call it.

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Q. Did you remain there or go around later on? A. I had a look around so far as the slipway, and then came around.

HIS HONOR: Q. When you say you had a look around, do you mean you went around? A. I went around as far as the slipway and then came back.

MR. TAYLOR: Q. Later when you came back did you do something so far as the Maritime Services Board was concerned? A. Yes, I asked our booking clerk, Mr. Allen, to contact the Maritime Services Board and advise them of the quantity of oil that was in the bay and see what they had to say about it.

20

Q. Having done that where did you go then? Did you see Mr. Hodgkiss; Jack Hodgkiss? A. I think I saw him before that.

Q. Where did you see him, do you remember? A. I saw him in the vicinity of the caisson and boiler ship.

30

Q. Did you give him some instructions? Did he tell you something about the oil? A. He asked me - he said did I -- (Objected to).

Q. Did you give him some instructions about the men who used the welding machines and the oxy-acetylene machines? A. Yes. I advised him that there was to be no oxy or acetylene used until further orders.

Q. Having given him those instructions was it after that that you went back to the office? A. It was after that I went back to the office.

40

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Q. After that, did you then ring up and speak to somebody on the telephone? A. Yes. It was between getting the reply from Mr. Allen that I rang the Caltex and I asked them that I would like to speak to the manager or whoever was in charge.

Q. Did they put you on to Mr. Durack? A. They put me on to Mr. Durack.

Q. And did Mr. Durack come over to the premises of Mort Dock? A. He did, he came over and spoke to me. 10

Q. Up to the time you rang Mr. Durack, what was your knowledge about whether or not there was oil under the Sheerlegs wharf and around the "Corrimal"? A. I knew there was oil there.

Q. What time did Mr. Durack come there, do you remember? A. It would be in the vicinity of 10 o'clock, I would say.

Q. Did he and you make an inspection? A. We did.

Q. Of the oil on the waters of the dock? A. We did. 20

Q. Did you go with him right around to the Sheerlegs Wharf? A. We went around that way but stayed at the slipway.

Q. I don't mean stayed around; you made an inspection, I suppose, starting with the oil underneath the Joiners' Wharf? A. Yes.

Q. And you worked your way around and inspected the oil down at the caisson? You said there was a ship in the dock at the time? A. Yes.

Q. There would be no oil in there? A. There would be no oil in there because she was a dry dock. 30

Q. And you inspected the slipways. Then did you go around to the Sheers Wharf? A. Went to the Sheers Wharf.

Q. By the way, when you went out that morning did you see a vessel up at the Caltex wharf, a tanker? A. Yes. I had seen that earlier.

Q. That was at the Caltex wharf? A. At the Caltex wharf.

Q. Could you see from where you were the name of the vessel? A. No.

Q. You did not know what it was? A. No.

Q. Can you tell me what sort of vessel it was? --

MR. MEARES: I would not be denying that the "Waggon Mound" was in there.

MR. TAYLOR: My friend does not dispute that the "Waggon Mound" was at the Caltex wharf.

10 Q. When you got around to the Sheerlegs wharf with Mr. Durack was that the first time you had been on the wharf itself? A. The first time I had been on the wharf.

Q. When you got there could you see any oil? A. Not on the wharf. Where we were standing we could not see any.

Q. Could you see any on the water? A. I would say from where we were standing, we would not see the oil, just where I was speaking to him.

20 Q. Where were you speaking to him? A. I was standing more back on the land adjoining the wharf.

Q. Did you have a conversation with Mr. Durack there about the question of carrying on your work on the "Corrimal"? A. Yes.

30 Q. What did you say to him? A. I told Mr. Durack that I had stopped all burning and welding operations until I got from somebody that it was safe from fire, and be able to use it. I told him that I was contacting the Maritime Services Board, and we had a little discussion there and he told me that in his opinion it was quite safe to carry on our normal work.

Q. After that did you give instructions to Mr. Hodgkiss to carry on work as usual? A. I did.

Q. Would you yourself go to the work on the "Corrimal" and on the wharf in the course of the day? Did you make any inspections of it from time to time? A. I would; I would say on an average of once a day.

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Q. Can you tell me when work recommenced on the "Corrimal" and on the wharf after that are you able to recollect being there again on that day or the next day? Are you able to recollect going back there? A. Yes.

Q. Can you tell me what there were in the way of precautions where the men who were using the oxy-acetylene torch were on the wharf ---

HIS HONOR: Q. When was this; the same day or the next day? 10

MR. TAYLOR: Q. The same day? A. That is on the first day; the Tuesday?

Q. Yes. A. I would not be sure, because they are all over the place. They are a mobile unit but they were working on the mast; I can be sure of that, but I could not be sure of any actual position the welder was on on the Tuesday.

Q. Did you see near where the welders were working or near the men working the oxy-acetylene burner any precautions against fire? A. They were carrying out their usual precaution, of having a bag very well saturated, with water, water was on the bag - or a drum with water alongside them. 20

Q. Were there any other things there that you can remember? A. No. There would not actually be anything other than in connection with the men themselves.

Q. Were there anywhere on the wharf, where they were welding or burning, any sheets of corrugated iron? A. Burning sheets of corrugated iron. 30

Q. Were there anywhere near where they were burning any sheets of corrugated iron? A. It would be quite possible they would be corrugated or flat iron under the bags, but I did not see them because they generally cover it --

Q. What is the usual practice when you are burning and using an oxy-acetylene burner on a wooden floor of a wooden wharf? (Objected to - pressed).

Q. What is the usual practice that is taken there when oxy-acetylene burning is done on the wharf? A. The usual practice is to take a wet bag, well saturated. 40



Q. Is anything put underneath the bag, between the bag and the wooden floor? A. Not in all cases.

HIS HONOR: Q. The wet bag is the thing? A. I have always been satisfied that the wet bag is quite all right, but I have seen them - and I have had them - put galvanised flat iron or corrugated iron underneath.

10 MR. TAYLOR: Q. If a bag is used where would the sheet be put? A. It would be put underneath, because they would try not to expose any tin because the slag dropped on to the bag sticks to it and does not go away, but if you drop it onto some hard substance you do not know where it is going to. The bag catches it.

HIS HONOR: Q. The bag cushions the falling object? A. Yes.

20 MR. TAYLOR: Q. So far as you could see on the 30th - you say you saw bags - could you say whether or not there was any iron underneath? You don't know? A. No.

Q. Did work proceed on the Tuesday after you told the hands to re-start? A. I would say as soon as I spoke to the charge-hand and told him it was all right to carry on, I would say within a quarter-of-an-hour they would be working.

Q. You told us that you got Mr. Allen to get in touch with the Maritime Services Board? A. I would like to make a little correction there.

30 Mr. Allen had spoken to me before I went around. Mr. Allen gave me the information that, I would say -- (Objected to).

Q. You have already told us what Mr. Allen -- ? A. I did not tell you.

Q. I think Allen gave you the result of his communication to the Maritime Services Board before you spoke to Durack? A. Yes. I thought I might have given the impression that I had spoken to Durack first, but I had that other information.

40 Q. Did the Maritime Services Board or anybody do anything about the oil that was on the harbour? A. No, they did not.

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Q. Previous to this occasion, during the course of your working on the water front, have you had experience of other spillings in the harbour, of the bay, of oil; not any particular oil, but just oil generally? A. No., not like as you put it; but I have seen other spirit and oil in the bay at different times.

Q. Did you have any knowledge at that time of what the Maritime Services Board did if inflammable or dangerous oil was spilt on the water? A. Yes. 10  
Generally the Maritime Services Board always cordoned off any portion or any part that is dangerous -- (Objected to - allowed).

Q. You said that was your knowledge of their practice; if it was inflammable or dangerous oil they cordoned off? A. Yes, and they broke it up.

Q. How did they break it? A. Bring fire floats and put the hydrant on it.

Q. They did it under pressure? A. Yes, when it is on the water. 20

Q. From time to time you have had other oil in Morts Bay. I do not mean petrol or anything like that. Have you ever seen furnace oil there before? A. Yes.

Q. Have you ever seen it in anything like the quantities you saw it there on this occasion? A. Never.

Q. Between the morning of the 30th and the time this fire broke out had you seen how far the oil extended in relation to the Sheerlegs Wharf? A. Yes. It was fairly mobile. But each morning I would say it was reasonably similar. 30

Q. And you said in relation to the Sheerlegs Wharf -- ?

HIS HONOR: Q. You mean the position of the oil was reasonably similar? A. Reasonably similar to the Tuesday and the Wednesday.

MR. TAYLOR: Q. Leaving out the day, whenever it was, what was the furthest you saw it in the easterly direction, up towards Ballast Point? What is the furthest up you saw the oil? A. I would say approximately four or five hundred feet out from 40

our foreshores. Out from what I would call the boiler shop wharf, there. (Indicating on Exhibit "C"). That is the wharf on the left there.

Q. What I am trying to get is how far up in this direction (indicating on Ex. "C") in any time did you see the furnace oil? A. I cannot say with any certainty past that point (indicating).

MR. MEARES: Q. Past the Yeend St. Wharf? A. Yes.

10 MR. TAYLOR: Q. Past the Yeend St. Wharf? It was circular, in that way (indicating).

MR. TAYLOR: Could he mark the Exhibit?

HIS HONOR: Yes.

MR. TAYLOR: Would you hatch it? Put a line in the general direction of the line of the oil that you observed? A. That is in my observation (indicating).

Q. You mean it was inside that line? A. Yes but I did hear that it got over here; but I could not substantiate that.

Q. You did not see that? A. No.

20 HIS HONOR: Q. Would you make that line a little more definite in the marking? A. (witness marks plan).

MR. TAYLOR: Q. Was it, so far as you could see the same thickness all the way or did it appear to be thicker in some places than in others? A. It was much thicker around here (Indicating).

30 Q. You indicate the front of the caisson? A. Yes. That is the boiler shop, the front of the caisson (indicating), and I had better add to that - that was under the wharf where the "Bulolo" was.

Q. You have drawn a line indicating the position of the "Bulolo"? A. Yes.

HIS HONOR: Q. Nearly parallel to the line of the wharf, is that? What wharf is it? A. The Joiners' wharf. That would be approximately 40 ft.

MR. TAYLOR: Q. You say it was thicker where you indicate around there? A. Yes.

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HIS HONOR: Q. Was it constant coverage on the surface or was it in patches in that area? A. I would say it was fairly constant all the way.

MR. TAYLOR: Q. What happened when launches went through it? I suppose you had launches coming in? A. They broke it up.

Q. Did you observe what happened when any launches came in? A. We actually docked a ship through it.

Q. When was it you docked the ship? Which day was it? A. The 31st. I remember we un-docked a vessel; 10 there was a vessel in.

Q. There was a vessel in. Then you say you took that vessel out of the dock and put another one in on the 31st? A. Yes.

Q. Did you notice what happened to the oil when you carried out that operation? ---

MR. TAYLOR: Your Honor is familiar, I take it, with the process of putting a ship in dock and taking it out?

HIS HONOR: I cannot say I am familiar, but I have 20 seen it.

WITNESS: During the operation a fair quantity of oil went into the dock, and it congregated on the altars we call the squares that come down, and the men have to work on that.

Q. Did you notice what happened after that vessel went through this oil? A. It sort of breaks up and makes a passageway and then comes back together again and makes a solid mass again; like floating over. 30

Q. Do you remember being over on the wharf near the "Corrimal" on the morning of the 1st November, the day of the fire? A. Yes.

Q. You were over there that day? A. I was over there.

Q. What time approximately were you there that morning? A. I would say between 9 and 10.

Q. Can you remember anything in particular you did that morning over there? A. The particular thing

I did was to notice whether where these burners and welders were working they were carrying out the same precautions, and everywhere there was a burner or welder working he had the precaution of a wet bag where he was working.

Q. I have asked you about welders and men using acetylene burners on the wharf. Were there any electric welders working on the ship? A. Yes, there would be.

10 Q. Were they working inboard of the ship? A. I would say yes. They would be working inboard.

Q. To what stage had the work got on the "Corrimal"? A. I would say it was very near completion. It would be within approximately two weeks of completion.

Q. On the Thursday after lunch did you see a fire - on the Thursday? A. Well, yes, I did.

Q. What was the first thing you knew? A. To be frank, the first thing I knew of it was from Mr. Durack.

20 Q. You were having a telephone -- ? A. Mr. Durack rang me at approximately two o'clock, and I was sitting in my office and he asked me for permission to come into the works as he had somebody whom he wished to view damage to property, and before I could answer he said to me "Good Lord! Your place has gone up in flames."

Q. From where you were in the office I believe you told His Honor that with the ship in the wharf you could not see the Sheerlegs Wharf? A. Yes.

30 Q. When he told you that did you look out? A. Yes, I looked straight out.

Q. What did you see? A. I saw a great volume of smoke going up, I would say the full length of the "Bulolo" in a semi-circle. The "Bulolo" was in front of me, and as Mr. Durack spoke to me I could see this deep black volume of smoke.

Q. You would be in your office here and the "Bulolo" there - and you saw it over the top of the "Bulolo"? A. That is correct.

40 MR. MEARES: If it is clear on the notes - it was some distance from the "Bulolo"?

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.14

T.G. Parkin,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.14

T.G. Parkin,  
Examination -  
continued.

MR. TAYLOR: Yes, the "Bulolo" was at the Joiners' wharf.

HIS HONOR: Q. What would the distance be to the "Bulolo"? A. Approximately 100 feet.

MR. TAYLOR: Q. From you to the "Bulolo"? A. Yes. (Indicating). The smoke I saw was over here.

MR. MEARES: Q. The Sheerlegs wharf? A. Yes.

MR. TAYLOR: Q. You could get that distance straight across? A. I would say it would be approximately six to seven-hundred feet across there. 10

MR. TAYLOR: This plan is scaled an inch to the chain. (Ruler handed to witness).

HIS HONOR: Q. The smoke would necessarily be fairly high in the air then? A. Yes, it was.

Q. Having regard to the height of the "Bulolo"? A. Yes. (Measuring on chart). It is twelve times that.

MR. TAYLOR: Q. From your office to where the "Corrimal" was? A. Yes, about 600 feet I said.

(Witness stood down). 20

No.15

R.L. Searle,  
Examination.

No.15

EVIDENCE OF R. L. SEARLE

RICHARD LAURENCE SEARLE

Sworn to answer:

MR. HENCHMAN: I produce documents to the Court. In accordance with my advice certain documents have been added. There are more documents there than we took away from the Court. After considering the subpoena, on my advice, more documents have been added. 30

TO MR. HENCHMAN: My full name is Richard Laurence Searle. I live at Blaxland Road, Wentworth Falls. I am the Assistant Secretary of Caltex (Aust.) Pty. Ltd.

Q. I think you are familiar, are you not, with the events out of which this action arose? A. Yes.

Q. I think you knew of the events shortly after 30th October, 1951? A. Yes.

Q. And you have had the handling of those matters arising out of that, so far as your company was concerned ever since? A. I have.

Q. You have, I think, received a subpoena to produce all classes of document? A. I did.

10 Q. All the documents that you had have been produced to the Court? A. They have.

Q. And you claim privilege only in respect to 1 to 4 matters referred to in the subpoena? A. I have.

Q. Do you produce the records and documents in paragraph 4? I understand those are already produced and have been dealt with. So far as the second paragraph of the subpoena is concerned you do not produce any of those documents referred to. Those are "Reports, Statements and Memorandum by Mr. Steve Smith"? A. There are not any that I know of.

20

Q. Is there any Steve Smith employed by your company? A. Not that I know of.

MR. TAYLOR: That is a typographical error. It should have been Merv. Smith. I cannot blame the witness for that.

MR. HENCHMAN: Q. That raises another matter? A. I do not know of any reports prepared by Mr. Mervyn Smith.

30 Q. I am instructed there are no documents prepared by Mr. Mervyn Smith either. Is that so? A. To the best of my knowledge, that is so.

Q. The first matter dealt with in this subpoena refers to supports, statements of memorandum, made by Mr. Durack with reference to matters arising in this action. You remember hearing of the incident occurring on 30th October 1951? A. I do.

Q. Did you receive complaints from various persons that same afternoon? A. I did not actually personally receive them but they came to the Company.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

Q. You know that complaints were received by the Company that afternoon by persons who claimed to have been injured by oil on the surface of the water? A. That is right.

Q. Within a few days after that did you know that claims were received by your company? A. I know that quite a large number of claims were received. (Objected to by Mr. Taylor - allowed).

Q. You told us that claims were made within a few days, and I think a writ was issued against your company thereupon by R.W. Miller Ltd. in October 1953? A. That is correct.

10

Q. And damages were claimed by Miller in respect of injuries that Miller's alleged that they suffered as a result of this oil being on the surface of the water? A. That is correct.

Q. Who was Mr. Durack? A. Mr. Durack at that time was Terminal Superintendent at Ballast Point terminal.

Q. What does that mean? A. He was in charge of the facilities - storage facilities - and personnel at --

20

Q. Would you now take the envelope that has been produced in Court --

MR. HENCHMAN: Your Honor will understand I have no copies of these documents and it might be of great assistance to me if I could approach the witness and follow the documents with him.

HIS HONOR: You may.

MR. HENCHMAN: Q. You do produce, do you not, to the Court, the document signed by T. Durack, Terminal Superintendent? A. Addressed to J.H. Wallace.

30

Q. Addressed to J.H. Wallace, Manager of Operations of Head Office in your company, and dated 31st October, 1951? A. That is correct.

Q. And you claim privilege for it? A. Yes, it is an internal report.

MR. TAYLOR: Internal report? Is that the ground?



MR. HENCHMAN: Q. For what purpose was that report prepared? A. To acquaint Mr. Durack's immediate superior of the happenings, and the possibilities of claims.

Q. Can you tell His Honor whether at that time any complaints had actually been received? A. Yes, a number of complaints had been received.

Q. By that time? A. Yes.

10 Q. What had happened concerning the possibility of prosecution? ---

MR. TAYLOR: Of whom, of Caltex?

MR. HENCHMAN: Q. Of the Master of the vessel -- (Objected to).

HIS HONOR: What is the possibility of that? Six years have passed and there is no possibility of incriminating anybody now.

MR. HENCHMAN: I am not worried about that. It is the explanation of why the document came into existence.

20 Q. What had happened at that time? A. We had taken an authority on behalf of the Master to act on his behalf to settle any summons issued by the Maritime Services Board.

Q. Was that made a condition of the ship leaving the port? A. It was.

Q. Was that document prepared by Mr. Durack with that in mind also? A. Yes.

MR. HENCHMAN: Will Your Honor deal with these matters one by one?

30 HIS HONOR: Are they all covered by the one ground?

MR. HENCHMAN: There are different grounds for different documents.

HIS HONOR: I think I will take the evidence of all of them and you may, if you wish, deal with them in such order as you desire. In other words I am not going to have a separate argument over each document.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

MR. HENCHMAN: I take it they will be covered by Your Honor's decision in groups?

Q. Do you also produce to the Court a summary of events signed by Mr. Durack and, I think, undated?

A. Yes, I do.

Q. Do you know when that was prepared? A. It was prepared, I think, in 1954 or late 1953 at the request of Mr. E.A. Hunt.

Q. Was Mr. E.A. Hunt then the solicitor to your company? A. He was acting for us.

10

Q. Did you and Mr. Durack go to Mr. Hunt's office? A. We did.

Q. Did Mr. Hunt make a request of Mr. Durack as to preparing any document? A. He did. He asked Mr. Durack to prepare a complete summary of events.

Q. Was that the document prepared by Mr. Durack? A. That is the document.

Q. That is the undated document? A. It is undated.

Q. Do you now produce two carbon copies of a letter of 12th November 1951 from Caltex Oil (Aust.) Pty. Ltd. to Overseas Tankships U.K. Ltd.? A. I do.

20

Q. Do you claim privilege in respect of those letters? A. I do.

Q. The reason? A. They are advice to Overseas Tankships U.K. Ltd. of an opinion and advice from solicitors who were then acting, Messrs. Norton Smith & Co.

Q. That is a communication to Tankships of advice that you had received from your solicitors? A. Our solicitors.

30

Q. Then is there a letter produced of the 13th December 1951? A. Yes from Overseas Tankships to Caltex.

Q. Do you claim privilege in respect of that? A. I do.

Q. For what reason? A. It is referring to statements required or attached from officers of the

"Waggon Mound" dealing with the oil spillage. It was prepared or the statements were obtained at the request of the solicitors then acting.

Q. For what purpose? A. For the purpose of defending any claim which may be made upon us as a result of these events.

MR. TAYLOR: Is the witness saying Norton Smith were acting for Caltex?

HIS HONOR: I think so.

10 MR. HENCHMAN: Q. Perhaps you would tell us just what was the position about them acting for Caltex at various times after 30th October, 1951? A. Norton Smith & Co. were acting for both Caltex and the "Waggon Mound" for Overseas Tankships U.K. Ltd., the owners of the "Waggon Mound", up to a particular time when it became evident that Caltex and Overseas Tankships U.K. Ltd. would be joined or served with legal process. It was then decided that it may be more desirable for different solicitors to act, 20 one for Caltex and one for "Waggon Mound" and Overseas Tankships U.K.

Q. Thereupon Hunt & Hunt were appointed to act for you? A. Hunt & Hunt took over on our behalf.

Q. Referring again to the letter of 13th December 1951, you say that and the statement with it were forwarded to you on solicitor's advice for the purpose of enabling you -

30 HIS HONOR: He cannot say any documents were forwarded to him on solicitor's advice. That could only be given by the person who sent the documents.

MR. HENCHMAN: Q. What is the position? A. On the solicitor's advice a request was made of Overseas Tankships U.K. Ltd. to obtain the statements from certain ships' officers. The letter attaches those statements.

Q. They were being obtained on solicitor's advice for the purpose of enabling you to defend any litigation? A. That is true.

40 Q. There is a letter of 19th November 1952 from Caltex signed by N.J.H. Wallace, to Messrs. Norton Smith & Co., solicitors? A. Yes.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

HIS HONOR: Q. What is the date of that? A. 19th  
November 1952.

MR. HENCHMAN: Q. To Norton Smith, then acting for  
you? A. That is right.

Q. You claim privilege from that on the ground that  
it is a communication passing between you and your  
legal advisers? A. Solicitors.

Q. The 21st October? A. From Overseas Tankships.

Q. You produce a letter of 21st October 1952 from  
Overseas Tankships to Caltex? A. Yes. 10

Q. You claim privilege for that? A. Dealing with  
the settlement of claims.

Q. Claims made on - A. On Caltex.

Q. You produce a copy letter from Caltex to Over-  
seas Tankships of the 14th July 1952 and you claim  
privilege in respect of that? A. Yes.

Q. With it do you produce a letter of 1st August  
1952 from Caltex to Overseas Tankships and do you  
claim privilege for those two letters? A. Yes,  
they are dealing with advice from our legal repre- 20  
sentatives at that time.

Q. From Caltex's legal representatives? A. Yes.

Q. From Caltex's legal representatives? A. Who  
were also the legal representatives of Overseas  
Tankships U.K.

Q. Next I think are two carbon copies of a letter  
of 20th May 1952 from Caltex? A. To Overseas  
Tankships U.K.

Q. They are the same letter? A. That is correct.

Q. Do you claim privilege in respect of those? 30  
A. I do.

Q. The reason? A. They deal with the claims,  
settlement of claims and advice received from our  
legal representatives and the legal representatives  
of Tankships U.K. Ltd. at that time.

Q. Are they communications of Overseas Tankships

of advice you have received from your solicitors?  
A. They are.

Q. A carbon copy letter of 9th January 1952 from Overseas Tankships to Caltex? A. Yes.

Q. Do you claim privilege in respect of that?  
A. Yes.

Q. The reason? A. Dealing again with statements made by officers of the "Waggon Mound" and also with legal advice.

10 Q. This is - A. This is Overseas Tankships U.K. to the Caltex Oil Pty. Ltd., 13th December 1951. It is a copy only. It is a further letter dealing with the statements of officers.

Q. But it is in the same text as the other one of 13th December 1951? A. Yes.

Q. The same text or the same strain? A. It is slightly different in text but exactly the same matter.

Q. You claim privilege on the same ground? A. I do.

20 Q. The next one, I think, is the letter of 16th November, 1951, Overseas Tankships to Caltex. You claim privilege in respect of that? A. I do.

Q. The reason? A. It is an internal matter of advice, a letter from Tankships to us in answer to a previous letter sent by us conveying advice of legal representatives.

HIS HONOR: Q. Where is the previous letter sent by you, or a copy of it? A. I am sorry, it is a cable they refer to. That is not here.

30 MR. HENCHMAN: Q. Cable No.199? A. I have not got that.

HIS HONOR: Q. Do you not keep copies of your cables?  
A. Yes, I could produce that.

MR. MEARES: They are not subpoenaed.

HIS HONOR: Let me see a copy of it.

MR. TAYLOR: This is still Item 3 in the subpoena?

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.15

R.L. Searle,  
Examination -  
continued.

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No.15

R.L. Searle, Examination - continued.

MR. HENCHMAN: Yes.

HIS HONOR: It says "Letters received from and copies of letters sent." It does not cover cables.

WITNESS: There are two copies of that letter, an original and a carbon.

MR. HENCHMAN: Q. Two copies of the letter of 16th December 1951. Then there is a letter of 17th November 1951, Caltex to Overseas Tankships. Do you claim privilege for that? A. I do. It deals with a statement from the Master of the vessel "Waggon Mound" relating to the oil spillage. It is an internal letter.

10

Q. Relating to claims made on you? A. The possibility of claims, claims pending.

Q. Carbon copy of letter of 19th December 1951 from Caltex to Overseas Tankships. There are two copies of that? A. Yes.

Q. Do you claim privilege in respect of those? A. I do. It deals with claims received and the possibility of further claims.

20

Q. What was the purpose of that letter. Was it to enable you to prepare for the defence of claims that might be made upon you? A. It was also dealing with statements of the officers of the vessel.

Q. By that time, of course, claims had been made? A. Had been made.

No.16

Submissions of Counsel for Caltex Oil Company Limited, 19th February 1958.

No.16

SUBMISSIONS OF COUNSEL FOR CALTEX OIL COMPANY LIMITED

30

MR. HENCHMAN: Those are the whole of the documents produced, Your Honor.

HIS HONOR: The first one is a letter of 31st October 1951 for which I understand you claim privileges on the ground that it is an internal report prepared to acquaint Mr. Durack's superior

of the happenings on the night in question and the possibility of claims. I will see the document. (Handed to His Honor). How do you support your claim for privilege?

In the Supreme Court of New South Wales Admiralty Jurisdiction

MR. HENCHMAN: I submit that a person who has a document prepared for the purpose of anticipating litigation cannot be compelled to produce it.

Plaintiff's Evidence.

HIS HONOR: Of course, if the litigation is taking place for which the document is prepared. He is not a party to this litigation.

No.16

10

(Argument ensued on the claim for privilege).

Submissions of Counsel for Caltex Oil Company Limited,

HIS HONOR: You might pass to the next one.

19th February 1958 -

MR. HENCHMAN: The next one is a summary by Durack undated, and that one was made at the request of Mr. E.A. Hunt at a time when Mr. E.A. Hunt was the solicitor for the Caltex Co., and this is a document which was prepared at Mr. Hunt's request and sent to him for the purpose of dealing with litigation. It was compiled apparently after September 13th, 1954, by which time the litigation against Caltex had actually come to existence. (Document handed to His Honor).

continued.

20

MR. MEARES: I do not know whether I can properly say any more than I have said.

HIS HONOR: You cannot. The matter of privilege is entirely a personal one to the person who claims it.

MR. MEARES: I submit I am entitled as a party.

HIS HONOR: No.

30

MR. MEARES: I object, and I submit that I am entitled to be heard on the question of the privilege of these documents. Secondly, I submit with respect that Your Honor will not read and should not read any of the documents in question. Thirdly, I submit with respect that Your Honor will not, whatever Your Honor's views are of the matter, read the documents unless it is absolutely necessary.

HIS HONOR: I am not going to read them from idle curiosity.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.16

Submissions of  
Counsel for  
Caltex Oil  
Company Limited,  
19th February  
1958 -  
continued.

MR. MEARES: The only point I can put is, how can it be possible if all these documents are read by the Court - they must have effect on the Court's mind.

HIS HONOR: Mr. Meares submits that he is entitled to be heard in support of the claim of privilege. I rule that he is not entitled to be heard. A claim for privilege is entirely personal to the individual who makes it, and in this case leave was given to that person to be represented by counsel. Counsel represents him. In my view of the law, Mr. Meares has no locus standi in the matter at all. Mr. Meares further objected as counsel for one of the parties to this action that I was not entitled to and I should not read the documents which are the subject of the claim for privilege. Alternatively, he submitted that I should not read these documents unless I found it absolutely necessary to do so. In my view, it is impossible for me to rule on questions on the claim of privilege in respect of these documents unless I am acquainted with the contents of the documents. It is necessary for me to read them, and I therefore rule that I not only may but that I should read them, and I shall proceed to do so.

10

20

MR. MEARES: So that I do not interfere with the process of the Court, may I take it that Your Honor holds that I have no right to be heard at all as to whether my learned friend should see these documents?

30

HIS HONOR: I am not going to rule on that at this stage. I am ruling only on the question of privilege which Mr. Henchman is arguing. I have read that. What is the next matter?

MR. HENCHMAN: The next is two carbon copies of letter of 12th November 1951.

HIS HONOR: Perhaps it might save everybody's time and save some tedium for others if I were to take that file and read it and we would probably get through it much more quickly. I have not read any of the documents.

40

MR. HENCHMAN: These three Your Honor will have no difficulty with, because they are obviously matters relating to our legal advisers.

HIS HONOR: Whom are these solicitors representing?



MR. HENCHMAN: Norton Smith at that stage were acting for Caltex, and, I believe, the present defendant.

HIS HONOR: That is inconsistent with something I have read.

MR. HENCHMAN: I think Mr. Searle said so.

10 HIS HONOR: My note is that Mr. Searle claimed privilege on the ground that these letters are advice to Overseas Tankships Ltd. "from our solicitors", not from their solicitors.

MR. HENCHMAN: Caltex's solicitors to Caltex and a letter saying "this is what the Caltex solicitors have advised us." It clearly seems to be a communication between the professional adviser and client or quotation of it. May I put Mr. Searle back to clear up when Mr. Norton Smith were acting for Caltex? I think it was clear they were acting for Caltex until Caltex went to Hunt & Hunt about 13th November 1954.

20 HIS HONOR: You have not a copy of all the letters. I think I can disclose this for the purpose of argument, "We consulted our company's solicitors, Messrs. Minter Simpson & Co." I merely invite your attention to the passage there. What it imports, I do not know.

MR. TAYLOR: If Your Honor wants the answer, it is in the documents produced by Caltex that have been shown to me without objection. It is quite clear in these documents who Norton Smith were acting for.

30 HIS HONOR: These are admissible on the question of privilege. There is no date on the second document, the summary of events.

MR. HENCHMAN: The evidence is sworn to that it was compiled shortly after 13th September 1954. It has been sworn by Mr. Searle that that document was prepared at the request of Mr. E.A. Hunt, and that is the document that Durak prepared. The evidence can further be given on that aspect if necessary. I submit the evidence is already there.

40 MR. TAYLOR: I would not seek to see any document that is a document between solicitor and client. No such document was subpoenaed, but I understood when

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.16

Submissions of  
Counsel for  
Caltex Oil  
Company Limited,

19th February  
1958 -  
continued.

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No.16

Submissions of Counsel for Caltex Oil Company Limited, 19th February 1958 - continued.

the evidence was being given there is a suggestion that some of the documents that are now in the file are in fact communications between solicitor and client.

HIS HONOR: I have already noted this document, the second one as being a document prepared between solicitor and client. Are you familiar with No.3?

MR. HENCHMAN: Yes.

HIS HONOR: It seems to me that at the time that letter was written the relationship of solicitor and client did not apply.

10

MR. HENCHMAN: May I put Mr. Searle back and get the position clear?

HIS HONOR: Yes.

No.17

No.17

R.L. Searle, Recalled, Examination - continued.

FURTHER EVIDENCE OF R.L. SEARLE

RICHARD L. SEARLE  
Recalled:

MR. HENCHMAN: Q. As at the date of the spillage of this oil, who were the solicitors acting for Caltex? A. Norton Smith & Co., to the best of my knowledge at this stage.

20

HIS HONOR: Q. Do you know? A. I understand they were.

Q. Do you know? A. I would have to refresh my memory to make certain. This is some seven years ago.

MR. HENCHMAN: Q. To the best of your knowledge how long did they continue to be the solicitors? A. It would be until 1954 some time, but I could not say exactly when.

30

Q. Was it the time you went to see Mr. E.A. Hunt? A. Yes.

Q. I think you said that would be September 13th, 1954? A. I would think it was about that time, but it would be about the time we went to see Mr. E.A. Hunt.

Q. No doubt you could refresh your memory at lunch time? A. Yes.

(Witness retired)

40

No.18

ADDRESS BY COUNSEL FOR CALTEX  
OIL COMPANY LIMITED

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No.18

Address by  
Counsel for  
Caltex Oil  
Company Limited,

19th February  
1958.

HIS HONOR: Would you let me have that file? I shall examine it during the lunch hour.

MR. HENCHMAN: The attitude the Caltex Company takes to them is that they put the documents before the Court, and there is no objection to Your Honor seeing them, but in the next document there are a number of statements which could be - and I speak without consideration and only on instructions, of vital importance to the Caltex Company in the second and third actions which have been mentioned to Your Honor. I have not read them. It is quite probable that those matters would come before Your Honor as a Commercial Cause. I would suggest that Your Honor can give deep consideration as to whether Your Honor would read at this stage more than the covering letter.

HIS HONOR: I will read as much as I find necessary to rule on the claim of privilege. It may be that I may disqualify myself from hearing the other causes. I must ask you to hand the documents over.

(Documents handed to the Court.)

(Luncheon adjournment).

At 2 p.m.

HIS HONOR: Had you concluded your argument, Mr. Henchman?

MR. HENCHMAN: Not quite.

30

No.19

FURTHER EVIDENCE OF R.L. SEARLE  
RICHARD L. SEARLE  
Recalled:

No.19

R.L. Searle,  
Recalled,  
Examination -  
continued.

MR. HENCHMAN: Q. You are on your former oath. You were to endeavour to make enquiries during lunch time as to when Norton Smith & Co. were acting as solicitors for Caltex Company? A. In this matter up until September 1954.

Q. Did the company employ Minter Simpson? A. They did in this matter solely for the purpose of appearing for the Master of the vessel.

Q. In the prosecution that was proposed against the Master? A. Yes.

(Witness retired).

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

No.20

SUBMISSIONS AND ARGUMENTS BY COUNSEL FOR CALTEX OIL  
COMPANY LIMITED AND COUNSEL FOR THE PLAINTIFF

Plaintiff's  
Evidence.

No.20

Submissions  
and arguments  
by Counsel for  
Caltex Oil  
Company Limited  
and Counsel for  
the Plaintiff,  
19th February  
1958.

MR. TAYLOR: Your Honor has ruled my learned friend has no right to be heard on this question. Does that ruling apply to the plaintiffs because if so I do not want to transgress it, but I do want to point out that there are some documents in the file which have been produced. I directed my friend's attention to them before the adjournment. I invite Your Honor's attention to a letter of 14th July 1952 and to a letter of 2nd November 1951 from Caltex, Managing Director, to Overseas Tankships, the fourth paragraph.

10

MR. HENCHMAN: Privilege has been claimed in respect of that letter.

HIS HONOR: It was produced and handed over yesterday.

MR. HENCHMAN: It is a similar letter to one for which privilege was claimed today.

20

HIS HONOR: This document has already been produced and read.

MR. HENCHMAN: I take it Your Honor has read through the letters during the adjournment. They fall into several classes and the claim for privilege has been stated in respect of each letter by the witness when he was in the box, particularly the letter of 13th December 1951 and the letters which are communications from solicitors to us in connection with litigation or anticipated litigation, and letters which convey the contents of that advice of our solicitors to other people. Also I submit that we would not be compelled to produce documents when litigation is pending against us by the same plaintiff.

30

(Further argument ensued: For judgment on claim for privilege, see separate transcript).

HIS HONOR: The documents which I have ruled to be outside privilege will, of course, be retained in Court. The other documents I shall hand out, but I am going to ask your indulgence to allow me to go through them again. I may possibly extend my ruling tomorrow morning. They will be kept in Court for that purpose in the care of my Associate.

40

MR. HENCHMAN: If your Honor intends to vary the judgment in any way, or to add to the rulings, I might perhaps be informed by Your Honor's Associate.

HIS HONOR: Yes. For more abundant caution, I merely wish to go through them.

MR. HENCHMAN: After Your Honor has dealt with them, we may lift the unused documents from Your Honor's Associate?

10 HIS HONOR: Yes. It is hardly necessary, I think, to obtain an assurance that they will be preserved intact.

MR. HENCHMAN: They will be preserved. We have been brought here on subpoena, and I suggest Mr. Taylor's client should pay the cost of our attendance here.

MR. TAYLOR: I do not consent.

HIS HONOR: I make no order as to costs.

20 MR. MEARES: Might I assume, irrespective of this matter of privilege having been determined and Your Honor having ruled that I am not entitled to be heard, might I now be heard to urge that none of the documents that Your Honor has held are not privileged should be handed to my learned friend, none of them. I submit the only documents Mr. Taylor should be permitted to see are documents which can be tendered in evidence by him.

(Mr. Meares argued this submission).

HIS HONOR: I allow Mr. Taylor to have access to the documents which I have ruled to be outside privilege.

MR. MEARES: May I have access to them also?

30 HIS HONOR: You may.

(Documents handed to Mr. Taylor).

40 MR. TAYLOR: I hand them to my learned friend and ask permission to look at them again. Might I identify them on the notes? The documents I have been handed are a copy letter of 1st August 1952; copy letter of 7th November 1951, 14th July 1952, original letter of 16th November 1951 and a copy of it, and a report dated 31.10.51 and a copy letter of 19.12.51. .... I hand those back to Your Honor's Associate.

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Plaintiff's  
Evidence.

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Submissions  
and arguments  
by Counsel for  
Caltex Oil  
Company Limited  
and Counsel for  
the Plaintiff,

19th February  
1958 -  
continued.

In the Supreme  
Court of New  
South Wales  
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No.21

FURTHER EVIDENCE OF T.G. PARKIN

THOMAS GEORGE PARKIN

Further examined:

Plaintiff's  
Evidence.

No.21

T.G. Parkin,  
Recalled,  
Examination.

MR. TAYLOR: Q. We had arrived at the stage that you were describing to His Honor what you saw when you looked out from your office, and you told His Honor that you saw a cloud of black smoke, fan-shaped, over the top of the "Bulolo". What else did you see at that stage? A. At that stage there was a violent explosion, and coming out the centre of that smoke seemed to be something that was going up in the air.

10

Q. Did you see any flames? A. Not at that particular time.

HIS HONOR: Q. What do you mean by "something"? Can you give any description of its appearance? A. It just looked like fragments or it could be fragments of any part - see how I can put it, like pieces of wood or something thrown into the air. It was coming out of the centre of the smoke.

20

Q. I gather you could not locate the start of the smoke exactly because the "Bulolo" was between you and the place from which it rose? A. Yes, that is right, at that time.

MR. TAYLOR: Q. I suppose you had a number of things to do immediately? A. Yes.

Q. Did you go around to where you could get a view of the fire? A. Yes. The first thing I did, I came out of the office rather hurriedly, and on my right-hand side behind the "Bulolo" I saw some of our employees running hoses and there were some small fires attached there and I hesitated there, stopped there to see what they were. I could see they were of no moment.

30

Q. Where were those small fires? A. They were on the edge of where the wharf and the land met, about midships of the "Bulolo" but this was on the land, just at the edge where the timbers of the wharf meet earth.

40

Q. After giving this attention, did you ultimately get to a place where you could see the fire? A. I got on the Joiner's wharf at the bow of the "Bulolo".

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HIS HONOR: Q. You went on there? A. I went to the Joiner's wharf at the bow of the "Bulolo".

Plaintiff's  
Evidence.

MR. TAYLOR: Q. Could you see across then to the Sheerlegs wharf? A. Yes.

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Q. What did you see? A. It was just a mass of flames. The water appeared to be alight.

T.G. Parkin,  
Recalled,

10 Q. Whereabouts? A. I would say at the after end of the "Corrimal" and extending back along the wharf may be 30 or 40 yards and extending out, I would say, anything from 10 to 15 ft. past the "Corrimal".

Examination -  
continued.

HIS HONOR: Q. You say 30 to 40 yards? A. Aft of the "Corrimal".

MR. TAYLOR: Q. Extending out how far? A. About 15 or 20 ft. outboard past the "Corrimal".

20 Q. Could you see what was happening to the "Corrimal" itself? A. The "Corrimal" itself at that particular time seemed to be alight at the after end.

Q. Was there anything moored against the "Corrimal" on the starboard side, the side out from the wharf? A. At the time I got there it was on the move out. It was a lighter.

Q. Being pushed out? A. Yes.

Q. Was there any fire on that that you could see? A. Yes, there appeared to be a fire on the mast of that.

30 HIS HONOR: Q. What sort of lighter was it? A. Just an ordinary lighter, maybe 100 ft. long, something like that that usually they take alongside boats to make lifts, lifting from punt to the vessel.

MR. TAYLOR: Q. After you had seen that what did you do? A. To tell you the truth, I was pretty upset at the time, and I spoke -

Q. You need not worry about that. Did there come a time when you went around to near the Sheerlegs wharf? A. Yes, I went around to the Sheerlegs wharf.

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Recalled,

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continued.

Q. Was that after the fire had been put out, or was it still burning? A. It was still burning and the fire brigades were playing water on it.

HIS HONOR: Q. How long from the time you saw the fire? A. I would say approximately 10 to 15 minutes.

MR. TAYLOR: Q. When you got around there you saw the fire brigades and floats were putting it out. Was there any fire still burning when you got around there? A. Yes.

10

Q. What about the oil on the water. Was that still burning? A. Well, I would say that I did not see it burning around there at that time.

Q. Did you see what had happened to the Sheerlegs wharf? A. Well, it did look badly damaged. There is a big crane that would be, when the fire broke out, in the centre of the wharf. They had brought that along clear.

Q. Did you see over what area the damage to the wharf extended? A. It looked round approximately 200 feet.

20

Q. And the "Corrimal", was that still burning when you got there? A. Only just smouldering when I got there, I would say.

Q. What about the lighter? A. The lighter was out of my view then because she would be behind it.

Q. You took steps to see your men were safe?  
A. That was the main thing.

Q. Did you notice at any time anything about the cross-trees on the mast of the "Corrimal"? A. I cannot say I particularly took any notice of that.

30

Q. Will you look at these photographs? (shown to witness). Do you recognise that? A. Yes. I would say that is looking over the starboard side of the "Corrimal" to the fire float.

Q. The fire float is using water? A. Yes, and that would be just forward of the bridge.

MR. TAYLOR: That is one of the photographs I opened. It is a still taken from the film. I tender it.

40



(Above photograph tendered and marked Exhibit E1).

Q. Do you recognise that one you see there? A. I would say that would be the fire float.

Q. That is the fire float with the hoses going on to the wharfage? A. Yes.

(Above photograph tendered: objected to: objection withdrawn: marked Exhibit E2).

10 Q. Would you look at that photograph? Do you recognise that? A. That appears to be taken on the extreme outside of the property overlooking the Sheers wharf, close down to the Yeend Street end.

Q. Would that be the aft end of the "Corrimal"? A. That is the "Corrimal". That is the structure you see in that other photograph.

Q. It is taken up on the land side of the Sheerlegs wharf. Is that the wharf there? A. This is a lot of junk.

20 Q. That is taken looking down towards the "Corrimal" and you can see the superstructure of the "Corrimal".

(Photograph tendered and marked Exhibit E3).

Q. Ultimately the fire was got under control and put out and I suppose you made a more detailed inspection of what had occurred to the wharf and the ship. Did you make it yourself? A. No, I did not make it myself.

30 MR. TAYLOR: I have indicated that I do not propose to go into the question of damages here. I will be content with a finding from Your Honor to go before the Registrar. We could probably agree about it and do it more expeditiously that way.

Q. Did the company have down on the wharf its own fire-fighting equipment, hoses and things like that? A. Yes, there is a hydrant and a place for a hydrant to hang and there are hydrants along the front of the wharf where you could couple hoses to.

HIS HONOR: Q. Did you have hoses also?

MR. TAYLOR: Q. Do you know if any use was made of those in this particular - (Objected to).

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Plaintiff's Evidence.

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T.G. Parkin, Recalled,

Examination - continued.

CROSS-EXAMINATION

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T.G. Parkin,  
Recalled,

Cross-  
Examination.

MR. MEARES: Q. You say you heard an explosion?  
A. Yes.

Q. Might I suggest to you that that which you saw going up immediately after that explosion could well have been a gas cylinder, an oxy-acetylene gas cylinder? A. Well, it could have been part of it. I think it was something that the gas threw up outside of that because the cylinder opened up just like a piece of paper and remained on the deck. 10

Q. You think it was something the gas threw up?  
A. That is my opinion.

Q. By gas, you mean the gas in an oxy-acetylene cylinder? A. Yes.

Q. May we take it that you think this explosion you heard was probably the explosion of an oxy-acetylene gas cylinder? A. I would say that would be correct.

Q. When you said the mast of the "Audrey Dee" was alight, from what you could see the mast had been lit up from the fire on the "Corrimal" itself? 20  
A. I would say that that is where it more than likely could.

Q. You would be supported in that, would you not, by the fact that that was the only part of the "Audrey Dee" that was alight? A. I would not swear to that. That is all I saw.

Q. At the time of this fire, the "Audrey Dee" was moored on the starboard side of the "Corrimal"? 30  
A. That is correct.

Q. Aft? A. Well, I would say very much amidships.

Q. If anything, aft of amidships? A. Somewhere around there, because of a lot of men jumped on to her.

Q. Then I understand that this oil that you saw at about 10 o'clock on 30th October, as you have told us - A. Yes.

Q. And to the best of your observation from then until the time of the fire it did not vary on the bay to any great extent except when there was a temporary alteration as the result of a vessel or vessels passing through it? A. I would say that would be correct.

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Recalled,

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continued.

10 Q. If I may use a layman's expression to you about the matter, would it be fair to say that on the 30th October it was as bad as it was on the 31st and as bad as it was on the 1st November? A. There was not very much difference any days that I observed it.

Q. After observing the condition fairly early in the morning of the 30th you would not permit any welding or burning to take place? A. That is correct.

Q. But that welding or burning was recommended at what time on the 30th? A. I would say somewhere in the vicinity of 11 o'clock, somewhere like that.

20 Q. May we assume then that from 11 o'clock on the 30th until the time of the fire, approximately 2 o'clock on the 1st November, welding and burning was being carried on by electric welding apparatus, oxy-acetylene torches, both on the "Corrimal" and on the wharf? A. That would be correct.

30 Q. I think you would be able to recall, would you not, that on the 31st October and the 1st November there were men welding alongside the "Corrimal" above the deck on some deck housing between the wharf and the "Corrimal"? A. I would say that would be correct.

Q. The "Corrimal", I think, was fended out from the wharf a matter of some 4 or 5 ft.? A. Yes, a couple of feet.

Q. She was lying with her portside into the wharf?  
A. Yes.

Q. So that the head of her was lying outside looking to the mouth of the bay? A. Looking towards Yeend Street.

40 Q. The "Corrimal" had deck housing? A. Yes.

Q. That deck housing, of course, went up above the decks? A. That would be right.

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continued.

Q. And the outside of the deck housing would be fairly flush with the actual sides of the "Corrimal" itself? A. Parts of it would.

Q. So that if one can imagine that the side of the bar table at which I stand is the wharf - can you understand that? A. Yes.

Q. Assuming that I am portion of the "Corrimal" facing towards the entrance to the bay? A. Yes.

Q. And assuming that I represent, from here is the side of the "Corrimal", from my waist down, and up here is the deck housing, up above my waist is the deck housing? A. Yes, I can follow that.

10

Q. What you were telling me was that there were people who were on stages suspended welding on the deck housing of the "Corrimal" between the wharf and the "Corrimal"? A. That would be some time between the Monday -

Q. And those employees were on flying stages?  
A. Well, I would think that they would be on permanent staging.

20

Q. On stages of some sort? A. Yes, on stages. Flying staging is very small.

Q. How many men did Morts Dock have working on this project? I mean by that, on the wharf and on the "Corrimal"? A. I would have to approximate that, and I would say somewhere between maybe 100 and 150. I could be wrong there. That is what I would judge.

Q. May we assume that the majority of the work that was going on was boilermaker or ironwork? A. I would not say the majority but about 50 per cent. of it.

30

Q. What was the other 50 per cent.? A. The other 50 per cent. were taken up with painters and dockers, shipwrights, carpenters and the like, working in the holds and roundabout.

Q. This work had been going on for quite a considerable period of time? A. Yes.

Q. The Sheerlegs wharf is a wharf which before the fire, between the planks - I do not mean all of them, but many of the planks - there would be spaces of an inch up to an inch and a half? A. It would vary.

40

Q. It might be an inch and a half; it might be even more but it would vary? A. It would vary.

Q. Would you tell us roughly how long the wharf was?  
A. 400 ft.

Q. The "Corrimal" was how long? A. I would approximate her at about 200 ft. I would not be sure of that.

Q. Was she lying more in the bay or more towards Yeend Street or about in the centre of the wharf?  
A. I would say she was pretty well in the centre.

Q. On the wharf itself you had houses in which electric welding equipment can be kept for you?  
A. That is correct.

Q. Where were those houses in relation to the "Corrimal"? A. One of them would be on the far south-western end.

Q. Is that aft of it? A. Right aft. One would be fairly well forward, and the other one I think would be somewhere around midships.

Q. Those three, that is an electrical plant, is it?  
A. They are what they call buzzer sets of welding.

Q. There is machinery in there? A. Those sets are there. They connect up to the wiring system and reproduce the welding current for the welder.

Q. How far are those houses from the seaward from the seaward side of the wharf? A. I would say they were fairly close to where the end of the wharf joins the land. They would not be close to the water's edge. They would be well in-board.

Q. Could you give the Court an idea? A. The width of the wharf would be 40 ft.

Q. How far in would you say they were? A. I would say they would be in about 5 ft. There would be 35 ft. from the water's edge.

Q. That would be the back of the house? A. Yes.

Q. What about the front of the house? A. They were across the wharf and they were approximately about 12 ft. long, so you would have to take, say, the

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continued.

centre of the 12 ft. The centre of that box would be about 35 ft. from the water's edge.

Q. If I walked from the water's edge side of the wharf towards the box, how far would I have to go before I hit any portion of the box? A. About 28 ft.

Q. Would you look at that? Is one of those boxes shown on "B6" or not? A. Yes, this is one up here, the right forward one.

Q. The water runs right underneath this width of wharf of 40 ft.? A. That is correct. 10

Q. May we take it that from the 30th October until the time of the fire these welding sets inside the houses were being fairly constantly used for welding purposes in connection with the "Corrimal"? A. I would say they would be alternately used by all in accordance with which part of the job, the chap was welding. He might be using any one of them, any part of the time.

HIS HONOR: Q. Did you have only one welder on that job? A. No, up to four and five can operate from the one box approximately. 20

MR. MEARES: Q. Might we have the picture then, from each box there might be four or five leads, or only one lead? A. No, each welder would have his own lead.

Q. So that each welder would have a lead from the house to wherever he was welding? A. That would be correct.

Q. And that applies to the electric welding only? A. There are also leads at the end of the wharf, come under the wharf, and he can attach his leads to that. 30

Q. Whereabouts are they under the wharf? A. They come from under the wharf to what they call a buzzbar on the front of the wharf where there would be a small cast-iron box. He can lift a lead off and clamp his lead on that.

Q. Where is that buzzbar in relation to the front of the wharf? A. They would be along the front end of the wharf close to the water. 40

Q. Low down? A. On the deck of the wharf.

Q. On the deck of the wharf on the seaward edge of the wharf? A. Yes, that is correct.

Q. How do you spell that - b-u-z-z? A. I would say so.

Q. If you look at Exhibit B6, do you see a little spike there? A. Yes.

10 Q. Do you mean to say that the box would be somewhere in front of that spike? A. No, it has nothing to do with it. It is more like that.

Q. Could you indicate on that roughly where they are? A. It would be more like something that is let in there, but I cannot see any there, to tell you the truth.

Q. It might be somewhere in the position of where you indicate on Exhibit B6? A. Yes.

MR. MEARES: I will mark that "BB".

20 MR. TAYLOR: Q. You mean on the edge of the stringer? A. Yes, and it is quite possible they did not use those.

MR. MEARES: Q. Then there were some men of Millers there? A. Yes.

Q. How many men were there of Millers? A. I would say somewhere in the vicinity of 12 or 14.

30 Q. Were all the Miller men engaged upon the work on the "Corrimal" or associated with it? A. I would not be able to tell just where they were working on the vessel.

Q. But as far as you know they were working on the vessel? A. On board the vessel, yes.

Q. This job of surveying and repairing the "Corrimal", that was a job that Morts Dock were doing? A. That is a job that Morts Dock were doing.

Q. You were doing it under contract? A. We were doing it under contract and some under what we call schedule that comes along after the contract.

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continued.

Q. You were doing it under contract with whom?  
A. R.W. Miller.

Q. Had you tendered for the contract? (Objected  
to: question rejected).

Q. You were in charge yourself of the whole project  
as works manager, were you? A. As works manager I  
would be responsible for anything carried on there.

Q. You would be responsible for work carried on on  
the "Corrimal" or on the wharf? A. That would be  
correct.

10

HIS HONOR: Q. Any work by your company? A. By our  
company.

Q. You would not be responsible for Millers' work,  
were you -

MR. MEARES: Q. I want to get this. That would  
involve any work being done on the "Corrimal" by  
anybody at all? A. No, that would not come under my  
jurisdiction. Anything carried on on the "Corrimal"  
by Morts' employees would come under my jurisdiction.

Q. What were the men on the "Corrimal" doing apart  
from the Morts' men? A. They would be working for  
R.M. Miller.

20

Q. Doing something quite different to what you were  
doing? A. Certain parts of the work they would  
undertake to do themselves without giving it to us  
to do.

Q. What were those parts? A. I would not be able  
to tell you. I could not tell you accurately.

Q. Might I say that what work Millers' men were  
doing was internal work? A. It was on-board, in-  
board somewhere.

30

Q. Who was doing any of the painting? A. The pain-  
ting of the ship? That would be done by either  
painters and dockers or professional painters. It  
all depends what they were doing.

Q. Were they Morts' men or Millers' men? A. They  
may both be doing it. They could well both be  
doing it.



Q. At this time between 30th October - I do not want to bind you to hours or days, but between the 30th October and 1st November the ship was being painted? A. I would not be able to swear to that.

Q. You could not deny it? A. I would not deny it or swear it.

Q. The mast of the "Corrimal" that was on the wharf, how long would that mast have been? A. I would say approximately 80 ft.

10 Q. That mast, you would agree, was lying from approximately midships for'ard of the "Corrimal"? A. I think it might even go further than that. It might go from the fo'c'sle for'ard of the wharf.

Q. Supposing I said it went approximately from approximately somewhere near where the deck housing was forward? A. No, she would not be at the deck housing.

20 Q. No, from the deck housing forward towards the front of the bow of the "Corrimal"? A. That is the fo'c'sle.

Q. Is that right? Do you agree with that? A. What was that?

Q. I am suggesting to you that you have a deck housing on the "Corrimal"? A. Yes.

HIS HONOR: The witness is calling it the fo'c'sle.

Q. Is that right? A. That is a long way from the deck housing.

MR. MEARES: Q. Take the deck housing with the bridge on top. You know that? A. Yes.

30 Q. Would it be true to say the mast was running from about there for'ard? A. No, I think it would be a good deal further for'ard, from my memory.

Q. You could not be certain of it? A. I could not be certain, but I would say it went from what we call the break of the fo'c'sle towards Yeend Street wharf.

Q. In those 100 to 150 men, how many of those at Morts Dock were classified as oxy-cutters or welders?

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continued.

How many of them would be in a trade which would involve that sort of work? A. I could not tell you with any accuracy. That varies a lot.

MR. MEARES: Q. Can you just give us a rough idea? A. I say there may be anything up to four of each. There may be one of each and there may be four of each.

Q. There could be anything up to four oxy-acetylene welders and four electric welders? A. There could be four. There could be just the one. They vary. 10

Q. Would that be any number, or would that be the total? A. Are you speaking of boilermakers and their assistants?

Q. I was not. I just want you to tell me that out of the number of employees you had there, 100 or 150, approximately how many of them at any time would be using an acetylene and electric torch? A. The numbers I mentioned, anything from one to four.

HIS HONOR: Q. In either category? A. Yes. 20

Q. That means one to eight? A. One to eight could be working either the oxy planes or the welding.

MR. MEARES: Q. In addition to those men were there men of Miller's? Between the 30th October and the 1st November you think there would be men from Miller's who would have been using torches or welding apparatus? A. No, they would not be welding for certain because they would not have the welding apparatus and I doubt if they would have any burning gear, and though they would be doing work, that would not necessitate that. I would not be sure. 30

Q. I suppose you will agree with me that on the wharf during those days, between 30th October and 1st November, that lying around the wharf and the wharf planks there would be numerous odd pieces of cotton waste and other material? A. I would not think there would be any.

Q. I want you to think of that very carefully. I am going to put to you that on a wharf -- this Sheerlegs wharf -- with the number of men you had working there that there would be quite a bit of odd pieces of cotton waste? A. I would not say there would be a greater bit. 40

Q. Is cotton waste used on the wharf? A. Not a lot, it is only used by fitters, mostly.

Q. Where do the fitters get it from? A. They get it from the general store.

Q. What do they do when they finish with it? A. When they finished with it?

Q. Yes. A. I could not say what they do with it. There is not a lot used at all.

10 Q. What do they do? Do they ever throw it in the water? A. They could.

Q. I suppose that the cotton waste a fitter had finished with might very well be greasy and oily? A. It is possible it could.

Q. Would you admit that on the Sheerlegs Wharf today that an inspection of it would disclose, even today, large pieces of cotton waste lying around the wharf and in between planks - large numbers? A. That would surprise me.

20 Q. And of course no work has been done alongside the wharf for how long? A. There has been no work alongside it but there has been a considerable amount of work done on it.

Q. On it for how long? A. At intervals, pretty well all the time.

Q. Did you have a look at this wharf after the fire? A. I did.

Q. Could you tell me what area of the wharf showed signs of being burnt? A. I would say between 150 to 200 feet by 40.

30 Q. Where was it? A. I would say near enough to the centre of the wharf.

Q. I suppose those men that were using the acetylene torches had gas cylinders quite near to them? A. They always have them within about 30 to 40 ft. of where they are working.

Q. It is not uncommon, of course, for men using torches to have a piece of lighted hemp or something else - tow - for the purpose of lighting their apparatus? A. It is fairly common, but we frown on

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No.21

T.G. Parkin,  
Recalled,

Cross-  
Examination -  
continued.

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Court of New  
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Plaintiff's  
Evidence.

No.21

T.G. Parkin,  
Recalled,

Cross-  
Examination -  
continued.

it and try to avoid it wherever possible and tell them not to use it. (On Mr. Meares' application the last part of the answer was ordered to be struck out).

Q. I suppose it would be fair to describe this wharf at the time of the fire as a tinder-dry and well-seasoned wharf? A. It had been there a fair while.

Q. You just mentioned some little patches of fire in the vicinity of the "Bulolo". Was that after the accident? A. Yes. 10

Q. I suppose in your opinion, at any rate, it would have been caused by something that was alight being hurled to the point where the little fires were? A. We had no idea what it was, actually.

Q. You cannot help us? A. No.

MR. MEARES: My friend said he had a lot of documents from Morts Dock that we subpoenaed. Could I just have a look at them?

MR. TAYLOR: In answer to the subpoena that was served on the Secretary of Morts Dock I produce Item 1 and Item 2. (Documents produced to Court). 20

MR. MEARES: Might I, to save time, have a look at these documents later. Perhaps we should have looked at these before. We have had other things to do, and might I reserve the right to ask this witness one or two questions possibly after I have had a look at the documents?

HIS HONOR: Very well. Do you want access to these?

MR. MEARES: Yes, Your Honor. I have nothing further to ask this witness at this stage. (Documents handed to Mr. Meares). 30

MR. TAYLOR: Then I will not re-examine until my friend has finished, and at this stage I do not want to proceed with any other witness.

MR. MEARES: I should imagine it would be unlikely that I will ask any more questions of this witness.

MR. TAYLOR: In that case, in view of what my friend says, I will proceed with re-examination, and treat the cross-examination as finished. 40

RE-EXAMINATION

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T.G. Parkin,  
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MR. TAYLOR: Q. You were asked some questions by my learned friend about some person at some point of time welding on the deck housing of the "Corrimal". Can you remember what part of the deck housing was being welded? A. No, I could not remember, actually.

Q. Is the deck housing - you used the expression "inboard" - how far? (Objected to.)

10 Q. You told my friend that your belief was that that man was working in a permanent staging? A. That is correct.

Q. Do you recollect where the permanent staging was? A. It was well aft.

HIS HONOR: Q. Well aft of what? A. Well aft of the vessel.

MR. TAYLOR: Q. Where was it in relation to the side of the vessel? A. I would say - the floor of it would be just about level with the deck you walk on. 20 That is the easiest way to illustrate it.

Q. (Indicating jury box): Let us take that as being the side of the vessel. Where was it in relation to that, that (indicating) being the other side of it over there?

Take that as the vessel; and this is the side of the vessel near the docks, and back down near you is the aft end of the vessel ----

HIS HONOR: Where is the ship's rail? What part of the side of the ship are you now referring to?

30 MR. TAYLOR: The ship's rail? The top of that (indicating the jury box) is the top of the rail.

Q. Where was it? A. My memory is that the deck house is like an "L", and where you are it goes inboard. You have a walk-way here which goes inboard, and levels out to the after-end of the vessel, and it was in the proximity of this (indicating) if my memory is correct.

MR. MEARES: Q. Right aft? A. Right aft.

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T.G. Parkin,  
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- continued.

MR. TAYLOR: Q. How did the staging run; parallel with the side of the vessel or what? A. Not parallel with the side of the vessel.

Q. What portion of the vessel was being welded from that staging, can you tell me? A. No, I could not tell you exactly. I would think it would be something on that deck house, but I would not be sure.

Q. If any of these men from Miller's were electric welding they would be using your lines? A. If they were, yes.

10

Q. You were asked some questions by my friend on the fitters using cotton waste, and you said fitters used it. Whereabouts would the fitters be working on the wharf or in the vessel, or both? A. They would be working mostly around about the deck and in the engine room.

Q. My friend asked you about the oxy-welders using tow, which I understand to be a section of hempen rope. On any occasions that you were down on the wharf or the ship did you ever see any oxy-welders using a light with tow? A. No. (Question objected to - allowed).

20

Q. What was the ruling in your company as to the use of tow by oxy welders? (Objected to).

HIS HONOR: The witness has already said that they did not allow it.

MR. MEARES: "Frowned upon it".

Q. Perhaps you might tell me what does "L.F.T.L.A." mean in these boilermakers' sheets? (Shown to witness). A. "14.14.14" - that would be money? No, that would be hours.

30

No, I am afraid I could not tell you truthfully what that is. It is generally simple, when we get the explanation.

(Document shown to His Honor).

MR. MEARES: Q. Would it deal with assistance to the boilermakers and fitters and turners - the labourer's assistant? A. Is that the boilermaker's shop?

HIS HONOR: Q. "Boilermakers, blacksmiths, shipwrights, carpenters, plumbers, joiners, motor lorries"? A. The same term, it would be.

Q. The same, except the motor lorries? A. It would be some term. The explanation would be very easy and I will endeavour to get it for you.

MR. MEARES: Q. Could you give me the job number of the "Corrimal"? A. It is an "X" number. If you could read one of them out I think I could tell you.

10 MR. BEGG: Q. 833X? A. I think you will find some of them have an order with "Corrimal" above it on the boilermaker's sheets.

MR. MEARES: Perhaps, to save time, we could leave this matter.

HIS HONOR: Mr. Taylor, no doubt, will be able to enlighten you in due course.

(Witness retired).

No.22

EVIDENCE OF J.E. HODGKISS

JOHN EDWARD HODGKISS

Sworn, examined, deposed:

20

MR. TAYLOR: This witness is very deaf.

Q. Your name is John Edward Hodgkiss. Where do you live? A. 7 Laird St., Five Dock. I am a boiler-maker.

Q. How long have you been a boilermaker? A. 48 years in Morts Dock.

30

Q. Do you remember the fire that took place on the wharf in 1951? A. 1951? I think it was October 30th, if I am not mistaken.

Q. First November was the date of the fire. Were you in charge of the boilermakers working on the "Corrimal"? A. Absolutely.

Q. The Morts Dock men? A. Morts Dock only.

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No.21

T.G. Parkin,  
Recalled,  
Re-Examination  
- continued.

No.22

J.E. Hodgkiss,  
Examination.

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No.22

J.E. Hodgkiss,  
Examination -  
continued.

Q. Were there other men working there for Miller's?  
A. I believe there were other men there, Miller's men, I believe.

Q. You had nothing to do with them? A. Nothing to do with them.

Q. Do you remember coming to work one morning and seeing some oil, some furnace oil? A. Quite so.

Q. Whereabouts did you see it? A. I happened to be coming along the shore side and as I got towards the "Corrimal" the smell of the fumes from the oil was very heavy, and I looked over and saw the oil there and I said "My word!" I said "That's thick." 10

Q. Where did you see it? Was it on the water?  
A. On the water, yes.

Q. Were you on the Sheerlegs wharf then? A. On the Sheerlegs Wharf.

Q. Could you see to where it extended? A. It seemed to come from right along from the oil works. I did not see how far it came from it travelled over past the Sheerlegs Wharf. 20

Q. It came from the oil works. You mean the Caltex --? A. Yes.

Q. Right past the Sheerlegs Wharf? A. Yes.

Q. Where was it in relation to the bay? Was it on the waters of the bay? A. It was on the water up against the "Corrimal".

Q. What did it look like? A. It looked all very dark, dark oil.

Q. Can you remember what date this was? A. I think myself it was close to the end of the month. I think either the 29th or the 30th. When I saw it? 30

Q. Yes. A. That would be the 28th, most likely.

Q. Some days before the fire? A. On the Tuesday before the fire. The fire was on the Thursday. On the Tuesday I discovered the oil.

Q. Tuesday was the 30th, you see. Where was it in relation to the wharf? A. It seemed to travel under



the wharf, but up against the "Corrimal". I don't know how far it came out - it looked like it came up from the oil works and drifted right down and went around the stern of the "Corrimal".

Q. Was there a space between the "Corrimal" and the wharf? A. Yes, there was a fender.

Q. How far? A. I am not sure whether it was a small fender or an 8-foot fender.

10 Q. How long is the small fender? A. The small fender most likely runs to 20 ft. long, and most likely 2 ft. to 18 inches wide.

Q. What I am trying to find out is what space there was between the "Corrimal" and the wharf? A. That would be the space whatever fender was in.

Q. You are not too certain? A. No. I cannot say for certain. It is eight years ago.

20 Q. When you saw the oil on the water around there, did you have some electric welders and men using an oxy-acetylene torch working for you? A. They were working on the wharf on the day before, and previous to that.

Q. What did you do when you saw the oil on the water? A. The first thing I done I told the burners and the welders not to do any burning or welding until I saw further into it.

Q. Then did you go away and see Mr. Parkin? A. I went away and happened to come across Mr. Parkin and I think he was about the best one I could have seen too.

30 Q. Later on did you see Mr. Parkin again with another man? A. I did.

Q. Do you know who the other man was? A. He was supposed to be the manager of the oil works, I was led to believe.

Q. Somebody from the oil works? After you saw those two men did you tell your men to carry on, the welders and burners? A. I told the men to carry on after they told me it was not inflammable. (Objected to - allowed).

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J.E. Hodgkiss,  
Examination -  
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No.22

J.E. Hodgkiss,  
Examination -  
continued.

HIS HONOR: I will allow that after he saw them did he tell his men to carry on.

MR. TAYLOR: Q. Do not answer this for the moment. Before you told your men to carry on had anybody told you anything? Did Mr. Parkin tell you anything? A. Mr. Parkin and the manager at the oil works -- (Objected to - pressed - objection withdrawn).

Q. What were you told and who told it to you?

A. The Manager of the Oil Works. 10

Q. What did he say? A. He said we could carry on, it was not inflammable.

Q. Did he say that to you or to Mr. Parkin? A. I think he said it to me and Mr. Parkin together. That was my opinion. The three of us were there together.

Q. Did you then tell your men to carry on? A. Yes.

Q. That was on the Tuesday? A. That is on the Tuesday.

Q. Did you carry on work on the Tuesday, and on the Wednesday, and on the Thursday? A. On the Thursday till about quarter-to-two on the Thursday. 20

Q. Do you remember where you were when the fire broke out? A. I do.

Q. Where were you? A. I was on the Sheers wharf.

Q. When the fire broke out? A. No. All the burners were working there and I just left the burner and I went aboard and I walked down the port side to the engine room and I went down to see one of the welders working in the engine room. I was down there when they called out to me "Come up, she's afire". I did not take much notice the first time but when they called out the second time I came up, and she was afire. 30

Q. What did you see when you came up? A. I could see nothing else but flames.

Q. Where were they? A. They were racing along the alley way, along the deck of the "Corrimal" and I tried to get out. But I could not get out. It

drove me back again and I had to go to the other side of the engine room and go over the side.

Q. Where did you see the flames that were racing?

A. Racing along the port-side of the "Corrimal".

Q. That is the side closest the wharf? A. Yes.

Q. When you say you saw you could not get out, you could not get out onto the wharf? A. I could not get near the wharf.

10 Q. What did you do? A. I doubled back into the engine room and I went over the side. When I looked over the side the oil was alight on the starboard side, and as luck happened there was a lighter there, the "Audrey Dee", and I put myself over the side of "Audrey Dee".

Q. When you say it was alight on the starboard side, what was alight? A. The oil that was lying on the water on the starboard side.

Q. Was that alight? A. That was alight.

20 Q. Could you see when you came up from the engine room whether there was any fire on to the wharf or on the wharf? A. The fire was everywhere, it was that severe.

Q. You got on to the "Audrey Dee". Were there any other men who got on to her? A. I think there were other men but I could not tell you what their names were at the present time.

Q. Did you push her away? A. When they got aboard the "Audrey Dee" she caught alight and they cut her lines and let her drift into the bay a bit.

30 Q. Could you see where the fire was as you drifted away in the "Audrey Dee"? A. As we drifted away into the stream you could see the wharf was one mass of flames, practically the full length of the wharf was the same.

Q. And the "Corrimal", where was she burning?  
A. She was burning from the bridge to right aft, from the bridge after on the port side, right around the after end.

40 Q. Where is the bridge on the "Corrimal"? A. The bridge is amidships.

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J.E. Hodgkiss,  
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J.E. Hodgkiss,

Examination -  
continued.

Q. And she was burning from the bridge down to the aft end? A. Yes.

Q. Did you see any of the oil burning on the water, apart from this around the starboard side around the "Corrimal"? A. Did I see any oil?

Q. Burning? A. The only time I could see the oil burning I could not get out of the engine room to look over the port side but when I raced to the starboard side I looked over the side and I said, "It is no good looking to the water", that was alight - I looked - as I put myself over to the "Audrey Dee".

10

Q. I want you to come back, if you will, to that day when you walked along down the wharf to go on to the ship. You said you saw the acetylene burner? A. Yes. There was a boilermaker operating the burner.

Q. What was he doing? A. He was burning the heads off bolts for the shipwright.

Q. I suppose he had an assistant holding the bolt? A. Yes.

20

Q. And he burnt the head off with a plane. Where were the heads going? A. He was burning them off down to water that was there, a four or five-gallon tin of water, and held them with the tongs and burnt them into the water.

Q. Did he have any safety gear where he was? A. He had.

Q. What did he have? A. I think he had a couple of tins - a couple of gallons -- (Objected to).

Q. Did you notice what he had there? A. Yes. He had - we always take precautions - he had a couple of sheets of galvanised iron -- (Objected to).

30

HIS HONOR: What did he see?

MR. TAYLOR: Q. You can only tell me what you saw? Not what you usually see; but what you saw on that day. What did you see as far as -- ? A. You mean precautions?

Q. Yes. A. On that day he had a couple of sheets of galvanised iron besides the wet bags and that tin of water.

40

Q. Did you see anybody welding on the wharf as you walked along? A. Yes.

HIS HONOR: Where was this welder?

MR. TAYLOR: Q. Before I come to that; where was the man cutting the heads off the bolts? Whereabouts on the wharf was he? A. About amidships of the "Corrimal". If you would give me a photo or anything here I can practically point out the position for you. (Exhibit "C" shown to witness).

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J.E. Hodgkiss,

Examination -  
continued.

10 (Indicating on Exhibit "C"): That is the way she lies. That is the Sheerlegs wharf and that is the "Corrimal". Most likely the bridge would be about there, and the burner would be most likely there.

Q. Would you mark it with a pencil - putting "B" for burner? A. (Witness marks plan accordingly).

20 Q. Was there anybody using the electric welding on the wharf that you recollect as you went down past there to go on the ship that day? Was there anybody using a weld on the wharf? A. Yes, a boilermaker - a Mr. Kennett.

Q. Where was he welding? A. Most likely he would be down here (indicating).

Q. On the after end of the ship? A. Yes.

Q. Could you indicate approximately? (Witness indicates). You indicate approximately opposite where "i" appears? A. The electric welder there. That is where the oxy welder was - about 40 ft. away, most likely.

30 MR. TAYLOR: Q. And the welder, you say, was down here, and you indicate the letter "i"? A. Yes.

(Further hearing adjourned until Thursday,  
20th February, 1958, at 10 a.m.)

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In the Supreme  
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No.23

SUBMISSIONS BY COUNSEL  
FOR THE DEFENDANT

Plaintiff's  
Evidence.

IN ADMIRALTYCORAM: KINSELLA J.

MORTS DOCK & ENGINEERING CO. LTD. v. OVERSEAS TANK-  
SHIPS U.K. LTD.

No.23

Submissions by  
Counsel for  
the Defendant,  
20th February  
1958.

FOURTH DAY; THURSDAY, 20TH FEBRUARY, 1958.

MR. MEARES: Before my friend proceeds with his evidence I ask that some corrections be made. Your Honor will pardon me if I appear to be a little meticulous, but the issues here are substantial. 10

At p.3, halfway down the page: "Q. What is the procedure when the first barge of furnace oil comes alongside? A. I have to ascertain from the Chief Engineer where he wants the barge." Then in brackets appears "General procedure adopted to." That word "adopted" should be "objected". I ask leave to insert "objected" in lieu of "adopted".

HIS HONOR: Yes.

MR. MEARES: At p.7, seventh question: "Q. Where are the bunkers of the Waggon Mound situated?" I do not know whether Mr. Taylor asked that question. 20

HIS HONOR: I think he did.

MR. TAYLOR: I did ask it.

MR. MEARES: Then three questions later: "Q. And the barrels to which the hose was affixed was amidships;" that word "barrels" should be "valves".

HIS HONOR: Yes.

MR. MEARES: Then the third last question on p.8: "Q. What did you notice? A. He was under the influence - (Objected to)". That answer was rejected in our recollection. 30

HIS HONOR: Yes. I feel sure I did not say "rejected" but that certainly was my intention.

MR. MEARES: That is precisely our recollection, with respect.

MR. TAYLOR: I do not know whether that could be right. The question Your Honor next put presupposes its admission: "Q. Tell us what you noticed? A. To my way of thinking .... Q. I want to know what were the facts that caused you to think that?"

HIS HONOR: He had given a conclusion which I did not want; but I want his facts.

10 MR. TAYLOR: But with that struck out would it be intelligible?

HIS HONOR: I did not say "strike out;" I said "rejected".

MR. MEARES: Then at p.11, the last question: "(Mr. Meares objected to the term 'shipping manager' and asked that it be struck out)". Your Honor rejected my submission.

HIS HONOR: Yes.

MR. MEARES: But it does not appear from the transcript.

20 HIS HONOR: It is not specifically stated; but it is fairly obvious if you go over the page, because the same thing is repeated after your objection: "Q. Have you done business with Vacuum? A. He is not with Vacuum. He was the shipping manager for Caltex - yes." You are protected by your objection there.

MR. MEARES: Then at p.105, the first question: "Q. And the Corrimal, where was she burning? A. It was burning from the bridge right aft to right aft."

30 MR. TAYLOR: "From the bridge to right aft." "From the bridge aft on the port side, right round on the after end."

MR. MEARES: Your Honor will recall that I cross-examined Mr. Cullen Ward in some detail about some photographs, and Your Honor, with my friend's permission, saw them. Could I have those photographs marked?

HIS HONOR: Yes.

40 MR. TAYLOR: They were marked for identification at the time.

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No.23

Submissions by  
Counsel for  
the Defendant,  
20th February  
1958 -  
continued.

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Submissions by  
Counsel for  
the Defendant,

20th February  
1958 -  
continued.

MR. MEARES: No, it does not appear from the transcript.

HIS HONOR: No, I do not think they were. They were photographs with typed slips on them?

MR. MEARES: Yes, I simply handed them up to the Court and I forgot to ask.

HIS HONOR: How many were there; there are 10 here.

MR. MEARES: Yes, 10.

HIS HONOR: The 10 photographs on which Mr. Cullen Ward was cross-examined will be marked for identification "4", with the serial numbers 1 to 10 on each photograph.

10

MR. TAYLOR: Might I draw Your Honor's attention to the answer to the fifth question on p.100: "Q.How did the staging run; parallel with the side of the vessel or what? A. Not parallel with the side of the vessel." The answer should be "parallel to the side of the vessel." The word "not" should be struck out.

20

No.24

J.E. Hodgkiss,  
Examination -  
continued.

No.24

JOHN EDWARD HODGKISS  
Examination Continued:

HIS HONOR (to Witness): If there is any question that you do not hear properly, do not answer it. Make sure you understand the question before you give your answer.

MR. TAYLOR: Q. Do you remember you were telling me where the man was who was welding on the wharf with the welder - the man with the oxy-welder. Do you remember marking that? A. Yes.

30

Q. Besides the man with the torch on the wharf, there was an electric welder on the wharf? -

MR. MEARES: It is not clear from the transcript precisely what he is talking about - when he gives the evidence about the oxy-welder; but I may be wrong.



MR. TAYLOR: Q. Were there any other welders working on the wharf when you came along to go on to the ship? A. There was one welder and one burner. The welder was working on the slip end of the wharf, and the burner was working about amidships on the wharf.

Q. Were those the only men working on the wharf with oxy or electric-welders? A. At that time - (Objected to).

10 HIS HONOR: When he went aboard; when he went on to the ship.

MR. MEARES: On what day?

MR. TAYLOR: The day of the fire.

20 Q. I am asking about what you saw on the day of the fire as you went along the wharf to go on to the ship? A. As I came along the wharf evidently the welder was welding. As I came to the burner, he was burning heads off bolts for the shipwrights. I never spoke; I could see what he was doing, and I went straight aboard.

Q. Was there any sign of any fire at that time? A. Not at the time.

Q. Had you had reported to you at that time any fire or anything like that? A. No, I had not.

30 Q. When you went aboard the vessel did you go straight to the engine room, or have a look around at the men who were working on the vessel? A. I went aboard and I went straight along to the port side, and as I went along I saw different men and I glanced at what they were doing, and I went straight to the engine room. The reason why .... (Objected to).

Q. You went along the port side of the ship and glanced along to see what the men were doing, and you went down to the engine room? A. Yes.

Q. Tell me what was going on along the port side of the Corrimal; what were the Morts Dock men doing? A. The burner was doing hatch beam slides.

40 Q. That is, a man on the vessel, the burner, is using the oxy-acetylene torch? A. Yes.

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Evidence.

No.24

J.E. Hodgkiss,  
Examination -  
continued.

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No.24

J.E. Hodgkiss,  
Examination -  
continued.

Q. Where was he operating? A. He was operating on the after end of the bridge.

Q. Do you remember his name? A. Yes, Stewart.

Q. Was he anywhere near the side of the vessel?  
A. Yes, he was up alongside the bulwarks almost; between the bulwarks and the hatch coaming.

Q. Was he on deck level? A. Yes, on deck level.

Q. Was it a steel or wooden deck underneath where he was burning? A. A steel deck.

Q. Had he been there earlier that day? A. Yes, he was there that morning from a quarter to 8 most likely. But the job that he had - I shift him everywhere. At the time of the fire he was on the after side of the bridge. 10

Q. And he was doing these slides for hatch beams?  
A. Yes, he was burning the slides of hatch beams and odds and ends that I wanted doing.

Q. The men who wanted something burnt or cut would bring it to him and he would do it, and they would take it away? A. Yes. 20

Q. Those slides for hatch beams, are they a metal thing that the hatch beam fits into? A. Yes.

Q. Was there anybody else using any welding or burning gear on the upper deck of the ship before you went down below? --

HIS HONOR: Anyone other than Stewart?

MR. TAYLOR: Yes.

WITNESS: No, he was the only burner. I had a welder.

MR. TAYLOR: Q. Who was the welder you had? 30  
A. Taylor.

Q. Where was he working? A. I think he was working round about the crew's quarters aft. I would not say for sure, but I think that was where he was - towards the crew's quarters aft.

Q. You saw him there? A. Yes, I saw him there.

Q. Do you remember or are you able to say at the particular time when you went past whether he was welding in board from the side of the ship or whether he was working over the side of the ship, or where? A. He would be working inboard.

Q. At the after end of the ship there had been some reconstruction of the quarters? A. Yes, they put new quarters up for the crew.

10 Q. During the construction of those quarters would there be a fair bit of welding to be done? A. Yes. It was all completely welded.

Q. That was complete? A. Yes.

Q. Do you remember what trades were working in the new crew's quarters on the day of the fire? A. I think there were joiners there; it was just about completed.

Q. Was there anybody else, apart from Taylor and Stewart, using any burning gear on the deck? A.No, not at that time.

20 Q. You say you walked past and you went down into the ship? A. Yes.

Q. You did tell me yesterday that just after you got down they called out to you about the fire? A. Yes.

Q. You are a bit hard of hearing today, but were you as hard of hearing back in 1951 as you are now? A. I was hard of hearing but nothing like I am today. This past 4 or 5 years it seems to be getting a bit harder on me.

30 Q. Eventually you got off the Audrey Dee? A. Yes.

Q. When you came up and could not get across to the wharf, you went down again to the port side and off the ship? A. I went from the port side to the starboard side.

Q. Were other men from Morts Dock with you on the Audrey Dee? A. There were other men, but I am not sure; you do not take notice who was there. You are thinking of yourself.

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Jurisdiction

Plaintiff's  
Evidence.

No.24

J.E. Hodgkiss,  
Examination -  
continued.

In the Supreme  
Court of New  
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Plaintiff's  
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No.24

J.E. Hodgkiss,

Examination -  
continued.

Q. After the fire was put out did you have a look at the damage done to the ship? A. Yes.

Q. Tell me anything about the plates of the ship on the port side? A. Practically from the bridge right aft was all buckled with heat.

Q. You would be able to say from your experience: Do those plates buckle easily, or does it require intense heat to buckle them - (Objected to; disallowed).

Q. Have you had experience at any time of seeing the effect of heat on ships plates? A. Yes.

10

Q. What sort of experience have you had? A. I have had practically all the experience you could possibly have, renewing plates - you mean fire damage?

Q. Yes? A. I have had many a job come into Morts Dock with fire damage and where flame is beating on a plate, and especially where you put water on it to put out a fire, naturally the plate buckles; the water which is put on causes the expansion.

20

Q. It is the sudden heat and then water being put on it? A. Yes.

Q. When you saw this fire after you got to comparative safety, was there smoke coming from the fire? A. Yes.

Q. What was the colour of the smoke? A. It was a deep black smoke.

Q. You did tell me yesterday that you saw the oil burning on the water around the counter of the Corrimal? A. Yes, right around the quarter.

30

Cross-  
Examination.

CROSS-EXAMINATION

MR. MEARES: Q. I want to get this absolutely clear. Are you absolutely certain that you saw all the oil that you have described, on the Tuesday two days before the fire? A. Had I seen the oil on the water from the Tuesday to the Thursday? Is that what you want?

Q. You told Mr. Taylor that you saw all this oil that you have described on the waters on the

Tuesday; is that right? A. I saw the oil on the water on the Tuesday, yes.

Q. And the fire was on a Thursday? A. Quite so.

Q. And you are absolutely certain that the oil you saw, you saw on Tuesday, 2 days before the fire?

A. The same oil? Is that what you want to know?

Q. Are you absolutely certain that you saw the oil on the Tuesday? A. I saw the oil on the Tuesday morning, yes.

10 Q. And you are absolutely certain that you saw the oil 2 days before the outbreak of the fire? A. Yes, I saw the oil on the water.

Q. And in regard to giving any instructions, you were concerned only with the Morts Dock men?

A. Repeat that again?

Q. So far as the giving of any instructions was concerned, you were concerned only with Morts Dock men? A. Quite so.

20 Q. And at no time on the 30th, 31st October or the 1st November did you ever give any instructions to any of Miller's men? A. Not to my knowledge.

Q. Nor did you ever direct anyone to give Miller's men any instructions? A. I won't say so.

Q. You did not? A. No, I won't say so.

Q. When you say you won't say so, do you mean to the best of your recollection? A. I will say no.

30 Q. You tell us that on 1st November you observed certain welders and burners working on the wharf and the ship; is that correct? A. Did any other burners work on the wharf and on the ship on that day?

Q. You have told us about them? A. Yes.

Q. Did you have any particular reason, as you were going to the ship on 1st November, particularly to observe the activities of any burners or welders? A. The day of the fire you are talking about now?

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J.E. Hodgkiss,

Cross-  
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continued.

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No.24

J.E. Hodgkiss,  
Cross-  
Examination -  
continued.

Q. Yes. Did you have any particular reason? A. On the day of the fire?

Q. Yes? A. Yes, the reason why I went down; I knew I had a man in the engine room working, and that is what took me from the deck - to go to the engine room to see how he was getting on with his work.

Q. I will put the question to you again. Did you on the 1st November have any particular reason to observe what burners and welders were doing on that day? A. I should think that would be my job, to see what they were doing, right through the day.

10

Q. Yes, but if I asked you what the burners and welders were doing on 21st July, 1951, you could not tell me, could you? A. You are talking about the Corrimal now, at that time? The job was such a big job it is hard to say exactly where they were. On the Corrimal - we put new plates in the deck and the shell of the Corrimal.

20

HIS HONOR: You are asking now about the 21st July. If it was substantially the same job that was going on, he would be in a better position. He is associating this with the job.

MR. MEARES: Yes.

Q. What I am suggesting to you is this, and can I have your agreement on it, that on 1st November, 1951, you had no special reason as you were going on board to observe particularly the activities of burners and welders? A. Naturally when I am going along I have to go and see how the welder was getting on in the engine room; that was my object, and as I passed along I just glanced at the other men.

30

Q. You glanced at the other men? A. Yes, at what they were doing.

Q. Apart from the burners and welders, what they were doing, tell me what the rest of your men were doing as you went on board ship that morning of the 1st November? What were the rest of them doing - each one? A. The job was very nearly completed and there were just odds and ends around about - hatch cleats and so forth around the hatches.

40

Q. What other men were doing what when you went on board? A. You are taking me back now 6 or 7 years, and it wants a good memory for all those things.

Q. I follow you. When was it after this fire that you directed your mind as to where the men were employed and what they were doing as you walked on to the ship that afternoon? A. After the fire?

10 Q. When did you come to recall this evidence that you have given, about the burners and the welders? Was it last week or when? A. I cannot follow you. You ask me what the burners were doing on the wharf on that day; is that what you want to know?

Q. Yes? A. As I told Mr. Taylor, I said there was one welder working on the masts on the wharf.

Q. That is what you told Mr. Taylor? A. Yes, and I tell you too.

Q. When was it you first tried to remember where those burners and welders were? A. On that day?

20 Q. Yes. When did you first try to remember? Was it a week or two ago, or when? A. I knew in my own heart right from the first where they were.

Q. Leave out your heart. When was it you tried to recall where those men were? Was it last week or when? A. I did not have to stop to think where they were because it was always in my mind where they were on that day the fire occurred. I knew exactly where they were on that day of the fire.

30 Q. Did you know exactly where all your other men were when the fire broke out? A. Not exactly; but in that case, where the fire was ...

Q. Do not talk me down if you don't mind. What about Mr. Bartlett? A. Mr. Who?

Q. Mr. Bartlett? A. Mr. Bartlett at that time - he may have been putting on manhole doors - or something like that - for me.

Q. Have you any idea what he was doing? A. As I told you before, it is very hard after 6 or 7 years to say exactly where every man was placed. It is very hard.

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J.E. Hodgkiss,  
Cross-  
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continued.

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No.24

J.E. Hodgkiss,

Cross-  
Examination -  
continued.

Q. Where was Mr. Fontaine, what was he doing?

A. What is his name again?

Q. Fontaine? A. Fontaine was the welder in the after tank down the engine room, that is the gentleman I went down to see how he was getting on.

Q. What was Mr. Hackett doing on the 1st November?

A. Mr. Hackett - I think myself he had just completed a doubling plate on the shell - if I am not mistaken.

Q. What was Mr. Smith doing? A. Say what he is - a boilermaker or what is he? 10

Q. What was he doing? A. What is Mr. Smith?

Q. A Boilermaker? A. Mr. Smith?

Q. Don't you remember? A. No, I cannot bring him to mind at the present time.

Q. What about Mr. Heath? A. I cannot bring to mind at the present time what he was doing.

Q. What about Mr. Cutler? A. Mr. Cutler was a caulker, and I think at the present time he was doing some work on the crew's quarters aft. 20

Q. What about Mr. Hill? A. What is Mr. Hill?

Q. Don't you know what he is? A. He may be an ironworker working with one of the burners at that time.

Q. You do not know that? A. I do know - if it is Mr. Hill.

Q. What was he doing? A. He was boilermaker's assistant to Mr. Godfrey - if it is the same gentleman - Mr. Sidy Hill.

Q. Who is Mr. Godfrey? A. He is the boilermaker-burner. 30

Q. What was he doing? A. Burning bolts for the shipwrights on the wharf.

Q. On the wharf? A. Yes.

Q. You have not mentioned him before, have you? --



MR. TAYLOR: Not mentioned his name, you mean?

MR. MEARES: Yes.

HIS HONOR: He was not asked his name.

MR. MEARES: Q. He was burning bolts? A. Burning heads off bolts on the wharf for the shipwrights.

Q. Whereabouts was he? A. He was about the after end of the bridge of the Corrimal, on the Sheer-legs wharf.

10 Q. And the bridge of the Corrimal is about amidships on that ship? A. Yes.

Q. On that day you were not interested in anything that Miller's men were doing? A. Quite so.

Q. On that day there were some of your men engaged in chipping hull plates? A. They may come under the Painters & Dockers for all I know.

Q. They would not be your men? A. No, I would not be interested in them.

20 Q. Might I suggest to you - and if you do not know then tell me - that on the 1st November there were some few painters chipping hull plates? A. As I said before, I would not know what they were going to do, because they would not come under my jurisdiction at all.

Q. You were interested only in your own men, who were the boilermakers and their assistants? A. Yes, that is right.

Q. On 1st November when you were walking towards the ship, you were not at all worried about any fire risk on that day? A. No.

30 Q. Would you admit that on this 1st November, the day of the fire, there were some of the men there painting the bulwarks? A. As I told you before, they would not come under my jurisdiction at all and I would not know. I was not interested in anyone else.

(Witness retired)

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No.24

J.E. Hodgkiss,  
Cross-  
Examination -  
continued.

In the Supreme  
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No.25

EVIDENCE OF L.I. SHARPE

LANCELOT IVOR SHARPE  
Sworn, examined, deposed:

Plaintiff's  
Evidence.

No.25

L.I. Sharpe,  
Examination.

TO MR. TAYLOR: I reside at 241 Balmain Rd.,  
Leichhardt. I am the Industrial Officer at Morts  
Dock. I have been with the company for almost 31  
years. I have occupied various positions with the  
company.

Q. Are you familiar with the tides at Morts Bay? 10  
A. How do you mean familiar?

Q. Which way they flow? A. Yes.

Q. Tell me what tide it is that brings rubbish and  
stuff into Morts Bay? A. The rising tide.

Q. Would that apply to things accumulated on the  
water? -- (Objected to).

Q. What about things on the water up in the direc-  
tion of Ballast Point; what tide would they come  
in on, if they come in at all into the bay? A.They  
would have to come in on a rising tide. 20

Q. Is there any particular set of the tide about  
Morts Bay? -- (Objected to by Mr. Meares on the  
ground that the witness was not qualified; dis-  
allowed.)

Q. What happens when you get an incoming tide to-  
wards Morts Dock? A. Various factors affect it,  
such as the direction of the wind and the extent  
of the tide.

Q. Have you observed from time to time what happens  
in Morts Bay with regard to the accumulation of  
rubbish on a high tide? A. Yes. 30

Q. What happens? A. Any flotsam or jetsom in that  
bay tends to be carried to the dock entrance.

Q. Do you remember coming to work on the morning of  
the Tuesday, 2 days before this fire took place?  
A. I do; I remember it well.

Q. In your capacity as Industrial Officer, what  
did you have to do that morning? A. I had occasion

to cross the dock at a quarter-past 8 that morning. I observed a large quantity of oil floating on the water.

Q. Where did you observe it? A. Surrounding the dock entrance and stretching across the bay in the direction of the slipways.

Q. Could you see up from the Sheerlegs wharf?

10 A. As far as it could be seen in the direction of the slipways, and then the view was somewhat restricted from there.

Q. Did you observe whether there was any underneath or around the Joiners' wharf? A. I did not observe it then.

Q. Did you observe it later on? A. Yes, during the week.

HIS HONOR: Q. How much later on? A. Later in the same day, in the afternoon.

20 MR. TAYLOR: Q. Where was the oil in relation to the Joiners' wharf? A. It had begun to spread along the Joiners' wharf in the direction of the southern end of the wharf.

Q. What did this oil look like? A. To me it looked like crude oil or heavy bunker oil.

Q. You said you had occasion to go to the end of the dock on the Tuesday at a quarter-past 8. Was that in connection with some work that was being done down near the slips? A. Not at that hour, but it was in connection with a matter I had to discuss with the foreman machinist.

30 Q. Later on that same day, Tuesday, did you go around to the Sheerlegs? A. Yes.

Q. Do you remember what time it was? A. At 11 o'clock I was called to the slipway itself. The painters working on the - (Objected to).

Q. You went down to the slipway, and did you particularly go there to observe the condition of the slip? A. Yes.

Q. What did you observe? A. The whole of the material of the slipway just above the waterline

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L.I. Sharpe,  
Examination -  
continued.

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Court of New  
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No.25

L.I. Sharpe,  
Examination  
continued.

and into the water was heavily coated with this thick oil.

Q. Was there much of the oil there? A. Yes, there was a large quantity all around the slipway.

Q. Did it have any smell that you noticed or can recollect? A. Just the usual oily smell.

MR. MEARES: What time was this?

MR. TAYLOR: At 11 o'clock on the same day.

MR. MEARES: The 30th.

MR. TAYLOR: Q. Did you on that day go around to the Sheerlegs wharf? A. Yes, after I left the slipway.

10

Q. You went around to make an observation? A. Yes.

Q. What did you notice going around to the Sheerlegs wharf? A. The oil which was floating on the water stretched right back to the ferry wharf at Yeend Street and was underneath the Sheerlegs wharf from the foreshores out to the side of the ship Corrimal.

Q. Was there any oil between the Corrimal and the wharf? A. That is where the oil was.

20

Q. Did you observe any oil anywhere else farther out on the bay? A. Not outboard of the vessel, no.

Q. Did you at any time on the Tuesday see a vessel, a tanker, up at the Caltex Wharf? A. Yes, early in the morning.

Q. Would you be on the Corrimal at any time on the Tuesday, Wednesday or Thursday? A. Not on the vessel itself.

Q. I take it your work would be done in the office? A. Quite a lot is done out in the yard and on vessels.

30

Q. You would not be able to say you were down at the Sheerlegs wharf on any other occasion after the inspection on the Tuesday? A. I was only on the Sheerlegs wharf from about a quarter to 12 to mid-day on Tuesday.

Q. Were you there at all on the Wednesday? A. I do not think so.

Q. Were you there at all on the Thursday? A. On Thursday morning, early in the forenoon.

Q. Where did you go early in the forenoon; right to the Sheerlegs? A. It would be the western end of the Sheerlegs wharf.

HIS HONOR: Q. At about what time? A. At about 9.30.

10 MR. TAYLOR: Q. At the western end; that is the end nearest the slipway? A. Yes.

Q. There are some steps there? A. Yes.

Q. Were you actually on the steps that morning? A. I was actually on the steps and looked under the wharf.

Q. Look at Exhibit B3; the place you speak of, is it shown there? A. Around the corner of the wharf at that end (indicating).

20 MR. TAYLOR: The witness indicates the corner of the wharf on the lefthand end of the photograph, and says that the steps he was on were around that corner of the wharf.

HIS HONOR: Behind the corner near which the crane is shown?

MR. TAYLOR: Yes.

Q. You went that morning and looked underneath the wharf itself? A. Yes.

30 Q. What did you notice underneath the wharf? A. I mainly noticed that the oil was much less in volume than it had been on the Tuesday.

Q. How far under the wharf did it extend so far as you could see, when you saw it on the Thursday? A. Right from the foreshore and out to the ship's side, and practically the full length of the wharf.

Q. You say it appeared to be less there then than on the Tuesday? A. It had thinned out considerably.

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L.I. Sharpe,  
Examination -  
continued.

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Plaintiff's  
Evidence.

No.25

L.I. Sharpe,  
Examination -  
continued.

Q. Where were you when the fire occurred? A. In the main office of the company.

Q. What was the first you knew of it? A. The first I knew of any happening on that day was when a large number of men began to run towards the direction of the dockhead. As I left the main office my view of the bay was obstructed by a vessel lying at the Joiners' wharf. That was the Bulolo. I hurried to the dockhead and looked in the direction of the Corrimal, and the water was ablaze underneath the wharf and right to the end of the vessel; that is the after end.

10

Q. Did you see anything of the fire on the dockhead? A. Nothing at all.

Q. What do you mean by the dockhead? A. The south eastern corner of the dock proper.

Q. Look at photograph B1; you saw it there? A. It seems to be a bit out of perspective there. I saw it from that point there. (Witness indicates position on plan Exhibit C.)

20

Q. You indicate an area to the right? -

HIS HONOR: Perhaps the witness might draw it on the plan.

MR. TAYLOR: Q. Put an "S" where you think you were standing? (Witness marks position with an "S" in red pencil on Exhibit C.)

Q. You saw it alight on the water underneath the wharf and between the ship and the wharf? A. Yes.

Q. Did you observe smoke? A. The forepart of the ship was obstructed by thick smoke, and also the lower part of the crane on the wharf. The main thing I noticed was fierce flame burning on the water and up through the decking of the wharf.

30

Q. Did you hear an explosion? A. Yes, just about the time I arrived at the dockhead.

Q. Could you tell whether the explosion was on the ship, or where? A. There was a loud explosion and an object thrown skywards from the ship, which appeared to come from the deck itself.

Q. When you got to the dockhead did you get any idea of the length of the wharf the fire extended, from where you were? A. At that stage it appeared that the whole wharf was a mass of fierce flame.

Q. It appeared from where you were? A. Yes.

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No.25

L.I. Sharpe,  
Examination -  
continued.

CROSS-EXAMINATION

MR. MEARES: Q. You have had occasion to observe the effect of tide? A. Only through my own observations over the years.

Cross-  
Examination.

10 Q. I suppose you have also observed the effect of a tide or wind making up against the tide? A. Yes, I have seen that.

Q. And you have heard the expression some time "The wind beating the tide"? A. Yes, I have heard the expression.

20 Q. And you understand by that, that sometimes the wind will be such that its effect will counteract and defeat the effect of the tide? A. I have noticed that when the filling of the dock has been taking place.

Q. Dealing with this flotsam, I suggest to you that in Morts Bay you do get quite a deal of flotsam? A. A Considerable amount.

Q. I suppose you would get those straw things that bottles are put in, amongst other things? A. Yes, amongst other things.

Q. And all sorts and conditions of flotsam you get floating in and around the bay? A. Even dead animals come up there.

30 Q. Dealing with the flotsam, once it comes in you will tend to get more of an accumulation of that where the tide is not running freely? A. It is a dead-end pocket.

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Evidence.

No.25

L.I. Sharpe,

Cross-  
Examination -  
continued.

Q. Yes. I suppose, generally speaking, with the flotsam you would tend to get more of it in and around and underneath the wharves and that sort of thing? A. Not to a great extent. I have never noticed it to any extent under the wharves.

Q. Just around the edge of the wharves? A. The two main places I have observed any debris at all washed up ...

Q. Leave out "washed up". A. Well, accumulated.

Q. You told Mr. Taylor you would get a lot of accumulated rubbish with the tide? A. That is the impression I have gained from my own observation.

10

Q. I am suggesting to you that the greatest amount of accumulation in the bay you would get is where there is a dead pocket or where the tide is not running strongly? A. It also accumulates on the slipways where the tide is free.

Q. You never saw any flames on the water, other than the flames between the ship and the wharf, and underneath the wharf? A. That is so.

20

Q. Have you a recollection of the wind? A. The wind on that day?

Q. Yes? A. It was north east.

Q. On what day? A. On Thursday, 1st November.

Q. All day? A. At the time of the fire.

Q. All day on the 1st November the wind was north east? A. No, at the time of the fire, you asked the question.

Q. What about in the morning? A. It could have been in another direction altogether. Usually ...

30

Q. No, please; I do not want you to worry about what usually happens. Are you able to swear what the wind was on the morning of the 1st November? A. Not on the morning of that day.

Q. You have no idea? A. No.

Q. But it was different from north east? A. It could have been; but I do not know for sure.

(Witness retired)

(Weather Report by Weather Bureau in relation to period 29th October to 1st November, and in regard to wind directions velocities, tendered.)

40



No.26

EVIDENCE OF P.E. O'TOOLEPATRICK EDWARD O'TOOLE  
Sworn, examined, deposed:In the Supreme  
Court of New  
South Wales  
Admiralty  
JurisdictionPlaintiff's  
Evidence.

No.26

P.E. O'Toole,  
Examination.

10

TO MR. TAYLOR: I reside at 35 Evans St., Rozelle. I am a rigger employed at the present time by the Main Roads Department, Harbour Bridge. I was formerly employed by Morts Dock. I was employed by that company on the occasion when a fire took place down at the Sheerlegs Wharf.

Q. And you were employed there for some time prior to that? A. Yes.

Q. You were employed in those days as a rigger? A. Yes.

Q. Do you remember the fire? A. Yes.

Q. When the fire broke out where were you working? A. On the wharf adjoining where the fire actually broke out.

Q. Near where it actually broke out? A. Yes.

20 Q. Fix that particular portion of the wharf you were on in relation to any part of the ship? A. Approximately but not exactly amidships; that is, the middle of the boat. More towards the after end I would say.

Q. What were you actually doing at the time of the fire, can you remember? A. There was a mast on the wharf, and our job was to turn it over for the boilermaker or whoever was required to work on it.

Q. You were turning the mast over? A. Yes.

30 Q. Was anyone near you using a welder or burner? A. There was a chap burning on the wharf then, but he was working on the mast.

Q. He was welding on the mast? A. Burning.

Q. What was the first you knew of any fire? A. The first I knew that there was a fire was just as if someone had thrown some petrol or something on a fire. You know the noise it makes.

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P.E. O'Toole,  
Examination -  
continued.

Q. You heard a noise? A. Yes.

Q. The sort of noise you get when someone -  
A. Woof! and the next minute a mass of flames.

Q. The next minute a mass of flames? A. Say  
seconds.

Q. How far away were the flames? A. 10 ft. away  
from me.

Q. On the Corrimal, under the wharf, or where?  
A. It is hard to say. The next minute it was along-  
side the ship, under the wharf and everywhere. 10

Q. What did you do when that happened? A. I gave  
them a hand to get a hose, and someone said "You  
had better tell the Caltex people."

Q. Did you stay where you were, or did you depart  
hence? A. I ran away as quick as I could.

Q. Where did you run? A. I helped them to get a  
hose first of all.

Q. You went back with the hose, and then you went  
up to Caltex? A. Yes.

Q. Did you see the extent of the fire when you got  
over to where the hose was, where it was burning  
and how far it had got? A. I got a better view  
when I got up to Caltex. It was uphill, and I  
looked down on the wharf. 20

Q. Had you gone straight up there? A. 2 or 3  
minutes afterwards.

Q. After it first broke out? A. Yes.

Q. What could you see from up there? A. Nearly  
all the wharf was alight and alongside the ship  
was alight, and it was going around the back, and  
there was a small drifter, I suppose you call it,  
alongside the Corrimal, and it was starting to get  
alight. 30

HIS HONOR: Q. The whole wharf was alight, and  
alongside the ship was alight? A. Yes.

Q. And alongside the ship a small lighter? A. Yes,  
it was on the starboard side of the Corrimal.

MR. TAYLOR: Q. You said the lighter was starting to catch fire? A. Yes.

Q. Did you notice anything about the water itself? A. You could not actually see the water for the flames. I presume it was alight.

Q. You mean the flames that were on the wharf? A. Yes.

Q. That was your observation from the Caltex place? A. Yes.

10 Q. You say a man was welding or burning somewhere near you? A. Yes, not very far from me.

Q. Did you notice anything he had there besides the burner? A. As regards the safety precautions?

Q. Yes, did he have any safety gear there? ---

MR. MEARES: I assume this is put on the defence of contributory negligence? If it is not, then I object to it.

20 MR. TAYLOR: It is put on the defence of contributory negligence, and it also goes or would go to the question of how far the fire started, whether it started from the operations of the plaintiff, or whether it did not.

HIS HONOR: I allow it.

MR. TAYLOR: Q. What safety gear did you see there? A. Normally a rigger's job down at the - (Objected to).

30 HIS HONOR: Q. Just confine yourself to this particular occasion; not what is the usual practice. Do you understand? A. Yes. On this occasion we were told not to start work until ... (Objected to).

MR. TAYLOR: Q. What did you see in the way of safety gear? - (Objected to):

HIS HONOR: Finish the question, Mr. Taylor, but the witness need not answer.

MR. TAYLOR: Q. You told us you saw some safety gear there. I do not want to know what is usually

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there, or your instructions; I only want to know what you observed there? ---

HIS HONOR: Q. Anything you saw there associated with the welder's work? ---

MR. TAYLOR: Q. Yes, on that day? A. There was corrugated iron and wet bags underneath where he was standing and burning, for a distance of, say, 10 ft. and normally - (Objected to).

HIS HONOR: Q. The corrugated iron was where?  
A. Underneath and around where he was working.

10

MR. TAYLOR: Q. Did you see how high this fire went on the Corrimal? ---

HIS HONOR: What do you mean by that?

MR. TAYLOR: How high up.

HIS HONOR: You mean the flames or the damage?

MR. TAYLOR: Q. What was the highest part of the Corrimal that you saw burning? A. The crosstrees on the mast.

Q. How high would the crosstrees on the mast be from the water? A. I say approximately 50 ft.

20

Q. How high were the flames when you saw them - the highest you saw the flames in relation to the Corrimal? A. They caught alight the rigging on top of the Corrimal, but they were not as high as that. They were, say, three-quarters the way up the mast.

Q. You mean by that, up to the crosstrees, or past the crosstrees, or what? A. I would say they were opposite the crosstrees.

Q. You had worked the whole of the Thursday on the wharf? A. The Thursday of the fire?

30

Q. Yes. A. Yes.

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CROSS-EXAMINATION

MR. MEARES: Q. What is your trade? A. I am a semi-skilled tradesman you might say.

Q. Did you come under the fitter or boilermaker?  
A. Ironworkers' Union.

Q. An ironworker? A. Yes.

Q. Who was your foreman? A. Foreman or chargehand?

Q. Foreman? A. Mr. Loughlin.

Q. And your chargehand? A. Mr. Hodgkiss.

Q. And your name is Patrick Edward? A. Patrick Edward O'Toole.

Q. On the day of this fire what were you doing?  
A. I was working on the wharf turning derricks or masts; I am not sure what they were.

Q. Turning what? A. On the wharf.

Q. Whereabouts on the wharf? A. In the vicinity of the fire.

Q. Whereabouts on the wharf? A. As I pointed out to Mr. Taylor, not amidships of the boat - a little towards the after end.

Q. A little towards the after end of the ship?  
A. Yes.

20 Q. What were you doing? A. Turning masts over.

Q. What mast? A. I do not know who they were for; they probably belonged to the Corrimal.

Q. Were they very small or great huge masts?  
A. They would weigh about 5 tons.

Q. How many of those masts were there? A. Only the one, I think.

Q. Only the one? A. I could be wrong.

30 Q. What were you doing with it? A. The crane comes along and they put two slings around it, and you put your bitts around to turn the mast over a certain way.

Q. Was that the only mast on the wharf? A. I am not sure; there could have been another one for all I know.

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Q. Don't you remember? A. No; put it there could have been two masts; I do not know.

Q. You do not remember? A. No.

Q. Is your memory very clear on what was going on on the wharf on that day? A. The fire was very vivid to me and I had never seen a fire like it in my life, to tell you the truth.

Q. Can't you remember whether there was one mast on the wharf, or two? A. No, I cannot remember everything.

10

HIS HONOR: Q. Can you remember whether you worked on the one mast or on two? A. Only the one.

MR. MEARES: Q. To the best of your recollection, when you were working on the wharf there was only one mast on the wharf? A. To the best of my recollection, yes.

Q. And portion of that mast was well aft of amidships? A. They are fairly long. They go from the aft ....

Q. Would you answer the question? Portion of that mast was well aft of amidships; is that right? A. And portion was well for'ard, too.

20

Q. Was portion well aft of amidships? A. Yes.

Q. Take amidships and take the stern of her; were you about half-way of amidships and stern? A. When the fire started?

Q. When you were working? A. I could not say, because you are moving around all the time.

Q. At the time of this fire you were engaged on the project of moving this mast around with the help of the crane? A. That is correct.

30

Q. And I suppose you had other men to assist you? A. That is correct.

Q. Who were they? A. Fred McGiven and Gordon Martin.

Q. It was the big overhead crane - the Sheerlegs crane that was helping you? A. Yes.

Q. And I suppose your attention was very much concentrated upon this project of moving this very heavy and unweildy mast? A. I did not say that I was moving it at the particular time of the fire.

Q. What were you doing? A. My job was to move the mast.

Q. At that time; tell me what you were doing at the time of the fire? A. We just stand by until the mast wants to be moved.

10 Q. At the time of the fire, tell me what you were doing? if you know? A. I do not like saying, but I was just standing there, as a matter of fact.

Q. You were just standing there? A. Yes.

Q. Standing there doing what? ----

MR. TAYLOR: Nothing.

WITNESS: Someone said "nothing".

MR. MEARES: Q. Were you looking at the masts?  
A. No, looking at things in general.

20 HIS HONOR: Q. You were waiting to be called on?  
A. Yes, that is right.

MR. MEARES: Q. At any time while you were standing there, did you hear anyone call out? A. No, I did not. I was by myself at the time.

Q. You explained you heard a woof? A. Yes.

Q. That was the very first indication you had of any fire? A. Yes.

30 Q. Did you hear at any time, from the time you received that first indication, until the fire was well under way, any other unusual noise? A. I heard an oxy-bottle going off.

Q. An oxy-bottle go off? A. Yes.

Q. Before this woof you never heard anybody calling out any warning or anything of that description at all? A. No.

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Q. I suppose your experience of putting petrol on fires is fairly limited, is it? A. I know for a fact that if you want to start ...

Q. Just answer my question? A. I would not say "limited", no.

Q. It is very wide, is it? A. No, but everybody knows that as soon as you put kerosene on a fire it just explodes.

Q. I am not asking about kerosene on a fire?  
A. Or petrol. 10

Q. I am not asking about putting petrol on a fire?  
A. Well, petrol ...

Q. Have you ever put petrol on a fire? A. Yes.

Q. Have you? When did you do that? A. When I was a kiddy, I suppose.

Q. And that is your only recollection of putting petrol on a fire? A. Yes, everybody knows - (The rest of the answer was objected to and was struck out at the direction of His Honor.)

Q. The only time you put petrol on a fire or have seen petrol put on a fire was when you were a child? --- 20

HIS HONOR: He has not been asked about seeing it being put on.

MR. MEARES: Q. Have you ever seen it being put on a fire? A. It could have been within the last 10 years, I suppose.

Q. Have you any recollection ever of having seen petrol being put on a fire? A. I do not know whether this is in order, but during the war I saw a tanker go up, carrying benzine. 30

Q. Have you ever seen petrol put on a fire? A. Yes.

Q. When? A. I could not exactly say approximately.

Q. Assuming somebody threw a pint or so, or a quantity like that, of petrol or kerosene on a fire, the noise you heard was something in that category?  
A. Correct.



Q. Of course, the painters were working on the side of the ship? A. Not to my knowledge.

MR. TAYLOR: When?

MR. MEARES: Q. On that day? A. When a boat comes out of dock, all the painting is generally finished on her.

Q. Are you a very observant person? A. That is the general practice as regards shipbuilding.

10 Q. Are you a very observant person? A. Not very; but I see things.

Q. You told us that there was someone doing some oxy-acetylene welding? A. Yes.

Q. Did you have any particular reason on that day to observe what was underneath them? A. There is a vivid recollection of the fire ...

Q. A vivid recollection of the fire? A. Things stick in your mind for years after.

20 Q. May I take it then that you have a pretty clear recollection of what was going on on that wharf on that day? A. Through the fire, yes.

Q. But you cannot even remember whether there was one mast or two masts there? A. I cannot remember everything. That is the only thing I could not remember.

Q. You told us about one oxy-acetylene man? A. Yes.

Q. And you told us in some detail what he had underneath his apparatus. Was there anyone else burning or welding around on that wharf on that day? A. Not on the wharf.

30 Q. Are you prepared to swear - and I take it you are - that there was nobody else using an oxy-acetylene torch or doing electric welding on that wharf? A. No, it is a long wharf.

Q. Would you be prepared to say that there was nobody working with a torch, either oxy-acetylene or electric? - (Objected to).

Q. What do you call the thing that the electric welder holds? A. An acetylene torch.

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Q. The electric welder? A. No.

Q. What would it be called, the thing he holds and welds with? A. Just a holder.

Q. You understand that? A. Yes.

Q. On that day, just before the fire, did you see any welder using a holder, or any welder using a torch, other than the person you have mentioned?

A. I saw one chap on board; the only chap in my recollection was on board.

Q. One chap on board? A. But he was using an acetylene gun, burning. 10

Q. Where was he burning? A. Burning on the masts.

Q. Burning on the masts? A. No - or near the masts.

Q. On board? A. No.

Q. You told us about the man on the mast? A. Yes, he was burning.

Q. Apart from that man, did you observe any other welder or person using a torch on the wharf? A.No.

Q. Would you say there was not anyone? A. I would say there was not. 20

Q. What do you say about anyone welding or using a torch on the ship? Was there anyone using a torch, or welding on the ship? A. A lot of men were working on the ship.

Q. You have no recollection at all whether anyone, immediately before the fire, was using a torch or welding on the ship? A. I was not on the ship and I do not know.

Q. Have you any recollection of any staging and any men welding on the stage on the side of the ship? A. No, the ship was nearing completion. 30

Q. Would you be prepared to swear that on that day there was no man welding on the side of the ship? A. I would do, yes.

Q. You would swear that? A. Yes.

Q. And would you also swear that on that day there were no men working on the side of the ship using oxy torches? A. Yes, I would do.

Q. You would swear that? A. Yes.

Q. And you are quite certain of that? A. May have been on the starboard side.

Q. Yes; but on the port side - would you swear it?

A. Yes, on the port side. It all depends what you mean by the "side".

10 Q. Picture if you would the port side of the ship?

A. You mean the outside shell of the boat?

Q. Yes; and take the deckhouse up above the deck?

A. That is not the side of the ship, though, is it?

Q. No, it is not. Take the deckhouse; is that all right? A. I would not swear to that, no.

Q. You would not swear to what? A. To the deckhouse.

20 Q. On that day, on the port side did you see anyone working on a platform or staging? A. On the port side, no.

Q. Would you be prepared to say that nobody was working on the port side on a platform or staging?

A. On the port side of the ship - that is, the shell of the ship - there was no one; but on the deckhouse I do not know.

Q. Would you be prepared to say whether anybody was working on a staging or platform on the port side, welding the deckhouse part of it - or parts of it?

30 A. To my recollection of the deckhouse there was no one near the side. But it may be wrong.

Q. There was on this wharf quite a lot of activity going on in the way of work? A. Normal activity, I suppose.

Q. There would be 100 or 150 men working there?

A. No.

Q. How many? A. About a dozen - that is, at various parts of the wharf.

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Q. How many were working on the ship? A. I do not know.

Q. Give us an idea? A. I could not tell you honestly.

Q. More than a dozen? A. Yes, it would be more than a dozen.

Q. How many approximately? A. There are different trades.

Q. Would you have any idea of the number who were working there? A. No. 10

Q. Have you any idea of the number of Morts men engaged on the project of repairing the Corrimal, whether that involved working on the ship or on the wharf? A. That did not come under my business at all.

Q. You have not the slightest idea of that? A. No.

Q. How long were you working on the wharf, on the job? A. On the job on the Corrimal itself?

Q. Yes? A. I could not tell you. The blokes are coming and going down there. 20

Q. Have you any idea? A. I never kept a check on that.

Q. Before this fire, how long had you been working on the Corrimal job? A. A few months.

Q. Roughly how long? A. I would say 3 months.

Q. 3 months? A. But I could be away out; I do not know.

Q. Were you particularly interested in the activities of oxy welders and burners? Were you particularly interested in what they were doing? A.No, as I said before. 30

Q. So you had no particular interest in observing the activities, what the oxy-acetylene burners were doing, in any way? A. Not until the fire started, no.

Q. You were working down aft all the morning, were you? A. Not down aft, no.

Q. Between amidships and the stern? A. Yes.

Q. All the morning? A. Yes, all the morning.

Q. And you were working there until the fire started after lunch? A. Yes.

Q. You had no particular reason to observe what was underneath this person who was welding the mast, did you? A. I put them there.

Q. You put them there, did you? When did you put them there? (No answer).

10 Q. When did you put them there? Just think now?  
A. Yes, I am trying to.

Q. When did you put them there? (No answer).

Q. When? A. I would say on the Tuesday.

Q. On the Tuesday? What did you put where?  
A. Corrugated iron and wet bags.

Q. Where? A. All round where they were burning.

Q. All round who was burning? A. Where this Frank Godfrey was burning.

20 Q. Who told you to put anything there? A. The chargehand.

Q. Mr. Hodgkiss? A. Yes.

Q. Was he burning on Tuesday - Frank Godfrey?  
A. No, he shifted them around all the time.

Q. Who shifted them around? A. We did. He might move 50 ft., and we would move them up there.

Q. Are you suggesting you moved this iron and bag after Tuesday? A. After Tuesday.

Q. Yes? A. We could have done.

30 Q. But you are not certain, are you? A. No, I am not certain.

Q. And of course, from Tuesday onwards Godfrey was moving around, working in various places? A. Only about 50 ft. backwards and forwards.

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Q. And you did not observe particularly on Thursday where precisely Godfrey was working, did you?  
A. It would be hard.

Q. It would be hard, yes. And the best you can tell us about what Godfrey had underneath him was that on Tuesday you had instructions to put down some iron and bags where he was then working; is that so? A. I said I thought it was Tuesday; I was not quite sure.

Q. But from then on you never observed where the bags or iron were in relation to where he was working? A. They are always where he is working.

10

(Short adjournment)

MR. MEARES: Q. May we take it that before the Tuesday which was the 30th October, if the welders were working there or the oxy-acetylene men with torches, there were not any bags or there was no corrugated iron? A. The normal course -

Q. Would you answer my question?

HIS HONOR: I think that is a perfect answer to the form of your question.

20

MR. MEARES: Would you answer my question? A. It is a normal practice when you get to the burning to take safety precautions. It might not be corrugated iron; it might be bags of some description. It could be anything, any safety precaution.

Q. You tell us that on somebody's instructions you specially put down some bags and corrugated iron on Tuesday. Is that right? (Objected to). A. It may not have been Tuesday, it may have been Monday.

30

Q. On Tuesday you put down some bag and corrugated iron? A. Normal practice, yes.

Q. Did you put it down? A. Yes.

Q. On Tuesday? A. I do not know whether it was Tuesday or Monday. I am not quite sure.

Q. You said this morning it was Tuesday? (Objected to). A. I was doubtful.

Q. It was the Monday or the Tuesday? A. I am not quite sure.

Q. You never put any bags or corrugated iron down after that? A. The chap was burning -

Q. Would you answer my question? (Objected to).

Q. Would you listen to my question? A. I cannot answer the way you are putting it. You are not giving me a chance.

Q. Can you tell us whether after you put down the bags and corrugated iron that you have told us about either on the Monday or Tuesday, whenever it was, whether after that and before the fire you put down any other bags or corrugated iron? A. No, wherever the burner moved we would shift the safety precautions with them.

Q. Do you seriously suggest that if the oxy-acetylene men wanted to move a matter of 15 feet that he would call you up to do it? A. There is a lot of union principles on the water front.

Q. Do you seriously suggest that if Mr. Godfrey wanted to move himself a matter of 15 ft. he would call you up to move the bags and the corrugated iron? A. Yes.

HIS HONOR: You mean, I take it, move a matter of 15 feet off the protecting material?

MR. MEARES: Yes.

Q. Are you suggesting that that is not a job that a welder or oxy-acetylene burner himself does normally, provide his own safety precautions? A. It is a line of demarcation.

Q. Are you suggesting that the line of demarcation is such that the welder or burner does not do it? A. Correct.

Q. Did you move Mr. Godfrey's bags or galvanised iron at any time after Tuesday? A. I am not quite sure what day it was but there was a day we had to stop work. It may have been Monday, Tuesday or Wednesday, or the Thursday the fire happened and we had to get permission for burning. How long it took to get permission I do not know but after that he started to burn. We may have moved the bags and we may not have done after Tuesday.

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Q. You do not know? A. We must have moved them.

Q. But you cannot remember it of your own recollection? A. As regards the days; I cannot.

Q. The position is this, that you did not pay any particular attention to him on the day of the fire?

A. Only as regards the safety precautions, that is all.

Q. Do you seriously tell us now - take on the Wednesday, the day before the fire; do you follow that? A. Yes.

10

Q. Did you pay any particular attention to him on the Wednesday? A. As regards the safety precautions, if we had to shift the bags, yes; I would have paid attention.

Q. I suppose, according to you, if he wanted the bags shifted he would ask you? A. Naturally, yes.

Q. You were not particularly interested to see whether he was working on the bags or not, were you?

A. I shifted them and put them in position.

Q. Were you particularly interested? A. Yes.

20

Q. Why? A. It is my job to put the bags underneath where he is working, for safety precautions.

Q. Didn't you rely on him to tell you if he wanted them moved? A. He did tell me to move them.

Q. When? A. I am not sure on the days.

Q. I am putting to you again, on the Thursday which was the day of the fire you cannot tell me whether on that day or not you moved the bags or the iron. You do not know, do you? A. I am not quite sure. We did move the bags during the week.

30

Q. Also you would not be prepared to swear whether on the Thursday at the very time of this fire he was working on the bags or off them. That is so, isn't it? A. If he was burning he would be working on the bags.

Q. Not if he was -? (Objected to).

Q. Are you prepared to swear that at the time of this fire Godfrey was working on these bags? A. If he was burning, yes.



Q. Let us take your answer. Just immediately preceding the fire were you watching him? A. Watching everything in general. I suppose my eyes would go to him occasionally. I was not watching expressly.

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Q. I ask you again, are you prepared to swear that just before the time of this fire Godfrey was working on top of the bags? A. I cannot answer it unless I say the same thing. If he was burning yes, I will swear to it.

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10 Q. I will put this to you, you are not prepared to swear that for at least half an hour before this fire at any time you were taking any notice of what Godfrey was doing, are you? A. I would not say that. I was standing near him practically all the morning.

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Q. You are not prepared to swear that for half an hour before the fire at any time you observed what he was doing? A. I would be prepared to swear that.

Q. What was he doing? A. I am standing -

20 Q. What was he doing? A. To the best of my recollection he was burning on the mast.

Q. What was he burning on the mast? A. It could have been angle bars.

Q. What else could it have been? A. It could have been bolts, anything at all that were sticking out.

Q. That were what - sticking out? A. Yes.

Q. Sticking out of what? A. They could have been on the mast.

30 Q. But you are not prepared to swear what he was doing, are you, immediately before this fire?  
A. Yes, I am, I know -

Q. You swear what he was doing immediately before this fire? A. I can swear he was burning.

Q. What was he doing? (Objected to). A. I am afraid my memory is not as good as that. That is only a little minor point, what he was burning.

Q. I suppose it was only a minor point - ? A. To my mind, not to yours.

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P.E. O'Toole,  
Cross-  
Examination -  
continued.

Q. It was only a minor point -? A. As regards what he was burning.

Q. Let me finish my question. I suppose it was only a minor point, was it not, to you as to whether or not every minute of the day he was working on the bags or a little bit off them? A. You are talking about what he was burning.

Q. I know I was. Can you answer the question I put to you? A. If he was burning he was working on the bags.

10

Q. You tell us about the interest you had in Mr. Godfrey. Is that right? You have told us about what you saw Mr. Godfrey do? A. Yes.

Q. Did your responsibility apply to the other men using torches? A. There was no other men using torches on the wharf.

Q. You will swear that? A. I will swear that, yes.

Q. Did your responsibility apply to men using holders? A. There was no one working there.

20

Q. Was it your duty, if men were working with holders, to put bags and stuff, safety precautions, just the same as with the oxy-burners? A. Yes.

Q. Then you swear, do you, that on the day of this fire, on the morning of this fire there was no person using a holder on that wharf? A. How do you mean? Electric welder?

Q. Yes. A. The wharf is a pretty long place. Where I was particularly concerned was with the chap who was burning.

30

Q. Would you answer my question? A. I would not swear to it.

Q. You would not swear to it? A. No.

Q. Would you be prepared to swear that between midships and the stern of the ship there was nobody using a holder? A. On the wharf?

Q. On the wharf? A. What does this swearing entail, please?

HIS HONOR: It means pledging your recollection, whether you remember it and whether you are prepared to say yes or no to the question. Everything you say while you are in the witness box is said under oath. You are swearing to everything you utter here.

WITNESS: I would not swear to it.

MR. MEARES: Q. But you swore to it earlier, didn't you? A. On the boat you said.

10 Q. Do you remember on Tuesday or Wednesday putting any bags out for anyone other than Godfrey? A. There are three men working -

Q. Would you answer my question? (Objected to).

Q. Do you remember on Tuesday or Wednesday putting any bags or iron out for any other men other than Godfrey? A. Myself, no; but somebody else might have done.

20 Q. Do you remember on Tuesday or Wednesday shifting any bags or iron for any other man other than Godfrey? A. No.

Q. Let me get this clear. There were other men putting out bags and iron? A. Not necessarily. If there is anybody working and the safety precautions warranted it, they would be.

Q. You then did not have the responsibility of putting out bags and iron for all these welders and burners, did you? A. My responsibility was Mr. Godfrey. Others in the squad may have done it for somebody else.

30 Q. All you were told in regard to Godfrey was something by the chargehand, was it not? A. That is correct.

Q. And the chargehand told you this, and this only, to put some bags and iron out for Mr. Godfrey?  
A. Yes.

Q. You did that job and you did nothing more? A. I turned the mast over. That was only a temporary job.

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P.E. O'Toole,  
Cross-  
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continued.

RE-EXAMINATION

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P.E. O'Toole,  
Re-Examination.

MR. TAYLOR: Q. You were asked some questions by my learned friend about moving the safety gear for the man using the oxy-acetylene torch if he moved his position? A. Yes.

Q. Was that one of the jobs you had to do when you were working on the wharf near Godfrey? A. Yes.

Q. If Godfrey had occasion to weld away from the safety gear what would your duty have been? A. To move the bags underneath him.

10

MR. MEARES: I object to that in view of the witness' cross-examination. It depends on a number of circumstances ....

HIS HONOR: He referred to the custom and the line of demarcation.

MR. TAYLOR: Q. I think you told Mr. Meares you cannot remember any date upon which you did any moving? A. No, I cannot.

Q. If you were working with Godfrey and he had to move the place where he was using an oxy-acetylene torch, what would you do, if you would do anything about his safety gear? A. What I did? He would tell me first of all - (Objected to).

20

Q. What would your duty be if Godfrey had to move, as far as his safety gear was concerned? A. I would move it for him.

Q. Would you wait until somebody told you to do that or would you do it of your own accord? (Objected to).

HIS HONOR: As part of his duty, I allow the question.

30

WITNESS: If the particular boilermaker is working and said, "Will you shift that gear for me?", I would do it.

Q. Supposing Godfrey moved and you were there and nothing was said by anybody, what would you do about his safety gear? A. I would do it - (Objected to).

HIS HONOR: I reject that.

MR. TAYLOR: Q. Were there other men there who had duties similar to you or were you the only person that had that sort of duty?

HIS HONOR: Where?

MR. TAYLOR: Q. On the wharf that day? A. There are three in a rigging squad and the chargehand might come over and say "Would you shift - (Objected to).

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P.E. O'Toole, Re-Examination - continued.

10 (Witness retired)

No.27

FURTHER EVIDENCE OF T.G. PARKIN

THOMAS GEORGE PARKIN  
Recalled:

No.27

T.G. Parkin, Recalled, Examination.

MR. MEARES: Q. You remember me asking you yesterday about whether or not you would expect to see cotton waste around the wharf, on the wharf and between the planks of the wharf? A. Yes, you asked me that question.

20 Q. Have you made an inspection of the wharf between yesterday and today? A. I had a look this morning.

Q. I suggest to you that this morning you saw quite a number of pieces of cotton waste on that wharf?

A. No, I did not.

Q. Did you see any pieces? A. Yes, I saw a few.

Q. You saw pieces of cotton waste lying free - (Objected to).

MR. MEARES: I ask leave to ask these questions. (Objected to: question allowed).

30 Q. You found some cotton waste lying free? A. Yes, free.

Q. You also saw pieces of cotton waste in between the planks? A. When.

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T.G. Parkin,  
Recalled,

Examination -  
continued.

Q. Today? A. No.

Q. May I put this to you, can you recall the Sheer-  
legs Wharf in October and November of last year?

A. Yes.

Q. I suggest to you that in October and November  
last year there was not any activity going on, no  
work going on on the wharf? A. I would not say  
that. There would be work going on on the wharf.

Q. Every day? A. Every day.

Q. Are you prepared to swear - and I want you to  
think - that on the 31st October, 1957, there was  
work going on on the Sheerlegs Wharf? A. What date  
was that? 10

Q. 31st October, 1957? A. That is one of the days  
in question, isn't it?

Q. 1957, last year? A. I mistook the year. I  
would say that practically every day of the year  
there is work going on there in one form or another.

Q. May I put this to you that the condition of the  
wharf on 31st October, 1957, in regard to pieces of  
waste lying around the wharf, in that connection as  
far as you know there would be no reason for there  
to be any more waste lying around then than in  
1951? (Objected to; question allowed). 20

Q. What do you say? A. I would not be able to  
swear accurately to the condition of the wharf on  
the date first mentioned.

Q. I fully appreciate that but what I want to get  
from you is this; taking this year, could you give  
me any reason at all for there being more cotton  
waste around this area than in other years? A. I  
could. 30

Q. Tell me what it is? A. During the dismantling  
and carrying out of repairs of a vessel called the  
"Dalby", they took the boilers and engines out of  
her and placed it on the wharf and it has been in  
the hands of the breakers or the scrap merchants  
dispensing with this material.

Q. When was that? A. It would be within the last  
18 months and it has been continuing over a long  
period. 40

HIS HONOR: Q. What is the significance of that?  
A. The significance of that is that there was a big marine engine standing on the wharf that the A.S.B. were trying to dispose of and they could not dispose of it and they decided to break it up.

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Q. Was has that got to do with the presence or absence of cotton waste? A. Well, fitters would be dismantling that engine and there is likely to be more at the present time than at any other time.

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10 Q: I think you told us fitters use cotton waste?  
A. Yes.

T.G. Parkin, Recalled,

Examination - continued.

MR. MEARES: Q. But that engine, the fitters would not be working anywhere other than fairly close to the engine, would they? A. No, there are winches and all types of gear spread right throughout that wharf and at various parts of the year different men are working on it.

20 Q. However, you would agree with this, that the cotton waste that you saw on that wharf today, was the average amount of cotton waste you would have expected to have seen there in 1951, as far as you could observe? A. About average, yes.

(Witness retired)

No.28

No.28

EVIDENCE OF J.V. ALLEN

J.V. Allen, Examination.

JOHN VERNON ALLEN

Sworn, examined, deposed:

TO MR. TAYLOR: My full name is John Vernon Allen. My occupation, I am a foreman electrician.

30 Q. You are foreman electrician at Morts Dock? A.Yes.

Q. How long have you been there? A. Twenty years.

Q. Were you there on the electrical installation when it was put into the Sheerlegs Wharf? A. Yes.

Q. Have you drawn a couple of sketches of it?  
A. Yes.

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J.V. Allen,  
Examination -  
continued.

Q. Have you got them with you? A. I have (Produced).

Q. First of all, there is a sub-station somewhere near the Sheerlegs Wharf? A. Yes, at the ferry end of the wharf.

Q. And the cables come from there down and serve three welding sheds? A. They do.

Q. Spaced along the wharf. About where on the wharf is the shed? A. Probably about 20 to 30 ft. from the edge of the wharf.

10

Q. That is the sea edge? A. Yes.

Q. From those welding sheds are there cables that run to the terminal boxes I see, into the wharf? A. That is correct.

Q. Do they run underneath the wharf? A. Underneath the wharf.

Q. Are these terminals - they were called buzz boxes here yesterday; is that right? A. We just call them welding terminal boxes.

Q. That is where the welder can plug his electric torch for the purpose of carrying out his work? A. Yes.

20

Q. Does that sketch you have there (shown) the layout of the electrical system? A. It is not to scale but it is roughly the layout.

Q. Can you tell me who installed that work? A. Stowe Electric.

Q. Was it done under the supervision of engineers? A. It was done by, I believe, Donoghue & Carter under the supervision of the late Mr. Julian who was a qualified consulting engineer.

30

Q. Underneath where the cables run under the wharf, are they covered in? A. Yes, they are adequately protected.

Q. What with? A. The power cables feeding the welding cubicles are enclosed in fibre troughing and the buzz bars which supply power to the crane are encased in heavy galvanised troughs.



(Above sketch tendered and marked Exhibit "F".)

Q. This second sketch you have also not to scale but does that show the passage of the cables into the welding shed and then into the welding set inside the shed? A. That is correct. It only shows the one welding set.

Q. That is if the welders want to plug in on the set inside the shed? A. That is right.

10 Q. Is that cable where it goes under the wharf encased in fibre troughing? A. Yes.

(Above sketch tendered and marked Exhibit "G".)

Q. There was also in 1951 a crane that operated on rails up and down the length of the wharf? A. Yes.

Q. Was electric current provided for that crane? A. Yes, it was provided.

20 Q. Where did that come from? A. It had a slot along the length of the wharf and underneath the slot there was a trough containing three copper buzz bars being about two by three-eighths thick, the buzz bars would be, and the crane had three rollers on it and the rollers ran along the top of the copper buzz bar and there it was despatched up to the top.

Q. The opposite way to the way the tram does it? A. Yes, only inverted.

Q. That electric current supplied to there, does that run along the whole length of the wharf? A. It would be about 265 feet, the whole length of the wharf.

30 Q. How was that covered in? A. That was covered, totally protected in very heavy galvanised troughing supported by galvanised angle brackets.

Q. This sketch you have done here, does that show in the bottom right-hand corner the wharf decking; that is the outside beam of the wharf? A. That is a section of the trough. That trough carries the current supply to the welding cubicles for power.

Q. This shows how the crane comes along and picks up the current? A. Yes.

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J.V. Allen, Examination - continued.

Q. That is all covered in troughing? A. Galvanised troughing.

(Above sketch tendered and marked Exhibit "H".)

Q. Would it be part of your duties to maintain this equipment and see that it was maintained in good order and condition? A. It was.

Q. In 1951? A. It was.

Q. As far as you know was it in good order and condition on the day of the fire? A. Yes, in excellent order.

10

Q. Do you remember when the wharf was built? A. I could not say the exact date.

Cross-Examination.

CROSS-EXAMINATION

MR. MEARES: Q. You are a foreman electrician in respect of the whole Morts Dock activities?

A. Only as far as maintenance, not on the ship work.

Q. Do you keep a book, a diary of work you do from day to day? A. We do.

Q. I do not suppose you would be able to tell me when it was you made any routine inspection of the Sheerlegs Wharf installation? A. Not in that year.

20

Q. This electrical installation for the welders, when was that installed? A. I could not recall the date.

Q. Roughly? A. Well, during the war some time.

(Witness retired)

No.29

F.J. Kennett, Examination.

No.29

EVIDENCE OF F.J. KENNETT

30

FREDERICK JOHN KENNETT  
Sworn, examined, deposed:

TO MR. TAYLOR: My full name is Frederick John Kennett. I live at 11 Abbott St., Cammeray. I am a boilermaker by occupation.

Q. By whom are you employed at the present time?  
A. Cockatoo Island Dockyard.

Q. Were you formerly employed by Morts Dock? A. Yes.

Q. You were working there in November 1951 when the fire broke out on the "Corrimal"? A. I was.

Q. Had you been with Morts Dock for some time before that? A. Yes, I was with them for some time before then. Just exactly how long I could not say.

10 Q. Do you remember the fire breaking out? A. I remember the day.

Q. Where were you working at the time the fire broke out, do you remember? A. The time the fire occurred, on the mast.

Q. Whereabouts? A. On the wharf.

Q. What were you doing with the mast? A. I was welding.

Q. You mean electric welding? A. Yes.

20 Q. What was the first you saw or heard of the outbreak of fire? A. What I can recollect, the first I heard of it was somebody sang out "There is a fire under the wharf".

Q. What happened then? A. I just dropped my things and left the position where I was working.

Q. What did you do? Did you go to see what was going on or did you leave? A. I stood back and I had a bit of a look at it, and then it did not appear to be coming along very severe so I thought I would attempt to go back and rescue a bit of gear and ports and things we had in the welding shed nearby.

30 Q. Were you able to do that? A. No, I was not.

Q. What prevented you? A. A sudden burst of smoke, fire came from underneath the wharf before I got half-way across.

Q. How would you describe it from the time you first saw it, leaving out what anybody told you? How would you describe the outbreak of the fire, slow or quick? A. From the time I started to come back it

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continued.

really appeared to me to be just in a few seconds, when the burst came up.

Q. What do you mean by that? A. All the smoke and that came up from underneath the wharf.

Q. Was there anything else besides smoke? A. All I can recollect seeing is black smoke. I was in a bit of a hurry. I never waited after that.

Q. You did not get as far as the shed to collect your belongings? A. I definitely did not.

Q. Where did you go then? Did you go anywhere where you could get a view of the fire? A. No, I made a sort of detour around it to get over towards - I just ran where I thought it was safe. By that time it was a mass of smoke and I had no view of the fire. I was groping my way out. 10

Q. You used the expression that the fire burst. Could you tell me what you mean by that? A. It seemed to come up in a sort of an eruption. It seemed to just blow up.

Q. Come up from where? A. Come up from underneath the wharf. 20

MR. MEARES: What is he speaking of?

MR. TAYLOR: The fire.

MR. MEARES: He said there was a burst of smoke.

MR. TAYLOR: I am asking you whether after you got clear - you said you made a detour to get around the fire. Did you get clear of it? A. Yes.

Q. Where did you go to then? A. I went over towards the store wharf. That is where I went. There is a big wharf just behind there and I went from there to the opening of the gates, the opening into the entrance to the wharf. I came out that way. 30

Q. That is by the back of the wharf? A. Yes, going back towards our boiler shop.

Q. From there could you see what was going on? A. Actually I could not because there was too much smoke.

Q. What colour was this smoke? A. It was black.

Q. Was it light or dense? A. It looked to be fairly black to me, I can recollect at the time. It was dense.

Q. Could you see what was burning? A. I could not see anything. It was only that the wharf and everything was alight when I had seen it.

Q. At some time you saw the wharf and everything you saw was alight? What did you see burning?  
10 A. The wharf.

Q. What did you see when you saw the wharf and everything was alight? A. What I can recollect seeing was the welding sheds going up.

Q. You saw them burning? A. I saw them burning.

Q. Did you see anything else that you can remember?  
A. No, nothing that I actually recollect. All the smoke was on the planking of the wharf.

20 Q. What about the ship, the "Corrimal"? A. From where I was standing there was a haze of smoke when I beat it out of there and my recollection after that was the fire floats coming up and putting the fire out on the "Corrimal".

Q. Where was the "Corrimal" burning when you saw it?  
A. It seemed to be - when I saw it through the smoke I could not exactly say where it was burning. I have a recollection of seeing a mast burning, something like that.

30 Q. The mast on the "Corrimal" burning? A. Just where it was, from my view, I could not see for the smoke.

Q. In your observation, how far did this fire spread along the wharf? A. Well, from when it came up, from when I went across to try to rescue the goods, it came up there. It seemed to me - of course I did not have much idea of the time but by the time I got back near the store wharf I heard an oxy bottle go off. That was on the ship.

Q. By the time - ? A. By the time I got across. It could not have been very long.

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continued.

Q. What was your observation of the extent to which the fire burned along the wharf? Did it go along the whole wharf or some portion of it? A. No, it was not running right along the whole wharf, but it appeared to be all more down towards - what I could see - down towards the Caltex Oil Co., but, as I say, I was looking through a cloud of smoke. I could not judge the lot.

Q. When you were welding that day on the mast what was the position so far as any sparks or metal that came from your welding process was concerned? What happened to that? A. We always make precaution for that by covering it directly underneath where we are welding. That was done in this case. 10

Q. Is that something you do or do you have somebody to do that for you? A. Well, in this particular case I usually do it myself because a welder does not carry a mate.

Cross-  
Examination.

CROSS-EXAMINATION

MR. MEARES: Q. If the oxy-acetylene man or welder carries a mate then the mate does it for him? A. A burner always carries a mate. 20

Q. If he carries a mate then the mate does it for the burner? A. He does it for him.

Q. I just want to get this clear. You were welding a mast? A. That is correct.

Q. Whereabouts were you on the mast? Were you at one end or in the centre or where? A. By what I can recollect I was on what I call the bottom end.

Q. Where was the bottom end of the mast in relation to amidships of the "Corrimal"? A. The bottom end of the mast, I should imagine, would be a little past amidships. I am not quite certain. 30

Q. Do you mean aft or for'ard? A. Aft. I am not quite certain. I could not honestly say on that point.

Q. So that you would say from your recollection you were working aft of amidships? A. I would think I was.

HIS HONOR: Q. May I ask where the mast was in relation to the wharf? What is the beam at the side of the wharf, the stringer? A. A sponson.

Q. Where was it in relation to the sponson? A. It was further inboard.

Q. About how far roughly? A. I would say as far as from me to the edge of that seat, easily.

MR. MEARES: Q. Which one? A. The long one with the "jury in waiting".

10 HIS HONOR: Q. 15 to 20 ft.? A. I could not say approximately.

MR. MEARES: Q. You were working there and then you heard somebody call out to you? A. Yes, I did.

Q. What did he call out? A. What I can recollect he said "There is a fire under the wharf".

Q. Where was he? A. It would be somebody on the ship. It could be anybody.

20 Q. You do not know whether he was aft of you, taking the ship's position or for'ard of you? A. That is something which I could not say.

Q. At any rate, of course when he said there was a fire under the wharf that would be a matter that would have interested you? A. That was all that was interesting me.

Q. You have told us that you had a bit of a look there, did you? A. Well, I got away and I looked back.

Q. I think you told us that you stood and looked - (Objected to: shorthand notes read).

30 Q. When you heard "There is a fire under the wharf", you then immediately turned to get off the wharf? A. That is correct.

Q. Where did you get to before you stood back and had a look at the fire? A. I think I just went a few yards further along the wharf.

Q. In what direction? A. It would be down towards, as we come onto the wharf through the gates down there, down towards the dressing sheds.

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continued.

MR. TAYLOR: The opposite end to Yeend St.

MR. MEARES: Q. How far did you get down before you stood back? A. I could not say approximately but it was not very far.

Q. It might be 20 yards; it might be 30 yards?  
A. It would not be -

Q. It would not be 20 or 30? A. It was not very far. My idea was when I turned and looked back, to go and get some gear. I was not able to do that.

10

Q. You would not be certain how far it was? A. It was not a vast distance away.

Q. You stood back and you had a look. Is that right? A. I had a look at the smoke filtering through.

Q. You saw the smoke filtering through? A. That is correct.

Q. Where was the smoke filtering through? A. It was coming through the planking on the wharf.

Q. Was it out towards the sponson or was it well under the wharf, or what, or can't you remember?  
A. What I can recollect it was to the left of the mast, to my left of the mast.

20

Q. Can you tell us this, take the end of the mast - do you follow that? A. Yes.

Q. That end was aft of amidships. All right? In relation to that end of the mast where was it you saw the smoke coming out? A. What it appeared to me, it seemed to be about somewhere about half the length of the mast more towards the end.

30

Q. More towards Yeend St.? A. Yes.

Q. And the smoke seemed to be coming out generally over the whole width of the wharf; you could not distinguish whether it was in the water or in under the wharf? A. It was not coming out in the whole width of the wharf, when I attempted to go back and get my box and other gear.

Q. When you stopped and looked you saw smoke coming out. Is that correct? A. That is correct.



Q. That smoke, you said, was from about the bottom end of the mast to about half way along the mast, or don't you remember? A. It would not be such a vast volume of smoke when I paused to have a look at it. It would not be as high as that.

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Q. How far up did it go from the bottom end of the mast? A. When the eruption sort of came up underneath -

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10 Q. I do want to take this piece by piece. If you cannot remember, just say so. A. I could not give you any approximate idea how far -

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continued.

Q. All right. When you stopped and looked back, you could not give an approximate idea of the amount of smoke you saw? A. I definitely could not do that.

Q. You were looking there and then you decided you would go back to your gear? A. Yes.

Q. Where did you have to go to? A. There was a shed there with two or three welding sets in it.

20 Q. Was that shed for'ard, the Yeend St. end shed?  
A. No, it was down towards the Yeend St. end.

Q. Before I show you something, after you stopped and looked back, you got about half way towards the shed when you decided that discretion was the better part of valour? A. Yes.

Q. (Approaching witness): I want you to look at Exhibit "B3". You see the shed there. There is the Yeend St. Wharf? A. Yes.

Q. You see the shed there? A. Yes.

30 Q. Is that the shed you had your gear in, that you had to go to? A. No, another shed further back here. That was the last shed back towards Yeend St. wharf.

Q. Would you look at Exhibit "B6"? Do you see the shed there? A. This one here, yes.

40 Q. I do not want to confuse you. I think these photographs were taken in 1957. Was it that shed or was it for'ard of that shed? A. From the angle I see here, this is something which I cannot really pick from that angle, but it was not the shed back towards the Yeend St. wharf, which was further back this way.

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F.J. Kennett,  
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continued.

Q. There were three sheds. It was not the shed that was closest to Yeend St., it was not the shed that was closest the other end of the wharf, it was the middle shed? A. It was somewhere approximately round there.

Q. And it was the middle of the three sheds that you had to go to. Is that right? A. I think that would be just about it, somewhere around there.

MR. MEARES: I think it should be on the notes that in "B6" the shed I showed him, my friend tells me, is the Yeend St. end shed. 10

Q. You got halfway to the shed where the gear was. Is that correct? A. As much as I can recollect in the haste.

Q. Then you decided you had better go back? A. No, the flame came up and I made a sort of detour around it.

Q. Was it flame? I want you to think. You said earlier that smoke came up, not flame. Smoke, was it not? A. It was just an eruption underneath. There was black smoke came up. There could have been in the centre - but my life was in danger and I did not stop to examine it. 20

Q. I want to know, when you got half way to that shed was it smoke that came up or flame or aren't you able to say? A. It was black smoke which came up. I can distinctly remember the billow of black smoke that came up first. Flame may have followed.

Q. But you are not certain? A. I did not wait.

Q. Black smoke having come up very close to where you were, what did you do then? Did you have to retrace your steps? A. No, I sort of made what I can recollect I sort of made a detour around it to go over towards the store wharf. 30

Q. Where is the store wharf? A. It is a big wharf which stands beside it. It is in these photos.

Q. Do you mean the Joiners' Wharf? A. It is a big storage wharf over there on the side, a big storage shed I should say.

Q. Would you look at Exhibit "B6" and do you see what looks like a galvanised iron structure there? 40

Is that the storage shed to which you refer?  
A. That is the shed there. I was over in that vicinity.

MR. MEARES: The witness points to the large structure on the right-hand corner of the shed.

(Witness retired)

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F.J. Kennett -  
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No.30

SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

No.30

Submissions by  
Counsel for  
the Plaintiff,  
20th February  
1958.

10 MR. TAYLOR: Yesterday I tendered a tide chart or graph, Exhibit "D", and I said that I would tender with it a certificate of 10th February, 1958. Could I tender that certificate as part of Exhibit "D"?

MR. MEARES: No objection.

MR. TAYLOR: I tender the certificate of 29th January, 1958, of the Deputy Director of the Meteorological Bureau as to the weather of October 29th to November 1st and the winds at three-hourly intervals.

20 MR. MEARES: No objection.

(Above certificate tendered and marked Exhibit "J".)

(Luncheon adjournment.)

AT 2 P.M.

30 HIS HONOR: Mr. Hunt, in connection with this claim of privilege, there is one letter which has given me considerable concern. I have looked at such authorities as I could, including Wigmore, who points out that a claim of privilege is in derogation of the general duty of testifying and must be

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so construed. There is a letter which from its words may be regarded as of importance, and it seems to me its admissibility may turn on the question of when the retainer to Norton Smith as solicitors for the defendant in this action commenced. I do not know whether you could arrange - you may or may not be able to - for some representative of Norton Smith who is in a position to give evidence on that to attend tomorrow morning, because as the evidence goes now I am not prepared to accept the evidence of Mr. Searle. I say that without any reflection upon his honesty at all, but I do doubt whether he has the capacity or authority to give evidence on that point. In any event, his evidence is slightly ambiguous. He said yesterday "Norton Smith & Co. were acting for both Caltex and the 'Waggon Mound' and Overseas Tankships up to a particular time when it became evident that Caltex and Overseas Tankships would be served or joined with legal process" and then they separated but he did not say when that originally commenced so far as Overseas Tankships is concerned. 10

MR. HUNT: There was a representative of Norton Smith in Court.

HIS HONOR: I do not know whether he would be in a position to give evidence on that point. If you wish you might have Mr. Henchman appear.

MR. HUNT: I take it it is that document to which the original letter is attached.

HIS HONOR: I prefer not to indicate what it is at the moment. 30

MR. HUNT: I will endeavour to have that evidence available tomorrow morning.

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EVIDENCE OF F. MCGIFFEN

FREDERICK MCGIFFEN

Sworn, examined, deposed:

TO MR. TAYLOR: My name is Frederick McGiffen.

Q. You live at 12 Cove St., Balmain? A. I have only one ear. You will have to speak up a little. 40

HIS HONOR: Q. Are you a boilermaker? A. I am a boilermaker's attendant.

MR. TAYLOR: Q. Where do you live? A. 12 Cove St., Balmain.

HIS HONOR: I want to tell you, as you have difficulty in hearing, do not attempt to answer any question unless you are certain you have heard it properly.

10 MR. TAYLOR: Q. In 1951 were you employed by Morts Dock? A. Yes.

Q. Do you remember the day a fire occurred down on the wharf where the "Corrimal" was? A. I do.

Q. Were you working that day when the fire broke out? A. I was.

Q. Where were you working? A. On the wharf.

Q. Whereabouts on the wharf in relation to the "Corrimal"? Would you be opposite the bow, the stern, or amidships? A little further forward than amidships.

20 Q. Did you see a fire break out there? A. I was on the spot at the time.

Q. What is the first thing you saw? A. The first thing I saw was a chap said to me "Come and look over here. There is a small flame" and when I went to look next thing there was a roar and there were flames and smoke spread over the place.

Q. How quickly did it spread? A. It spread very quickly.

30 Q. What did you do? A. We made our way along the wharf, smoke and flames and we had a small gangway or like two planks fixed and I rushed aboard and shouted down for every man to get ashore as the ship was on fire.

Q. You rushed aboard the "Corrimal"? A. That is right.

Q. Could you see what was burning? A. I definitely did not see what was burning.

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continued.

Q. Later on, as the fire got hold, did you see what had burnt? A. The wharf took fire and she spread mostly abaft the bridge over the engine room.

Q. Of the "Corrimal"? A. Yes.

Q. Did you see it burning anywhere else? A. It spread aft.

Q. What about between the "Corrimal" and the wharf?

A. All the wharf was on fire. You could not see much for smoke.

Q. Did you see anything burning on the water? A. I did not see anything burning on the water. 10

Q. What sort of smoke was coming from it?

A. Volumes of dense black smoke.

Q. How far along the wharf did the fire go? A. It spread that quick - not quite up to the stern, just abaft, mostly over the engine room.

Q. When you went on to the "Corrimal" and called out? A. There was no fire then.

Q. What did you do then? A. When I shouted down they took no notice and I said "The wharf and ship is on fire definitely". They all started to rush up then. 20

Q. What did you do? Did you stay on the "Corrimal"? A. No, I rushed ashore.

Q. You spoke of seeing the flame and then there was a roar? A. Well, it was like a gust of wind.

Q. That is how you describe it? A. Like a roar where the flames took hold.

CROSS-EXAMINATION

Cross-  
Examination.

MR. MEARES: Q. Where were you on the wharf working? A. I was on the wharf working. 30

Q. Where? A. Just where the fire practically started. She started.

Q. Were you the Yeend St. end of the wharf or the other end of the wharf? A. No, in between Yeend St. and the other end of the wharf.

Q. You were just about or close to the centre of the "Corrimal"? A. No, I would not say that.

Q. You were just a little bit forward of the centre of the "Corrimal"? A. We will say that, four points.

Q. What did you say - four points? A. That is nautical, compass points. It came along this way.

Q. What do you mean by four points - 45 degrees?  
A. No.

10 Q. What do you mean? A. I will say just for'ard of the bridge.

Q. You were for'ard of the bridge? A. Yes.

Q. Is the bridge amidships of the "Corrimal" or aft?  
A. Now, let me see. I would say, as far as I remember I could not say whether the bridge is amidships or aft, to tell you the truth.

20 Q. I do not want to be unfair to you, but you did swear that you were working just for'ard of amidships. Is that true? A. Just a touch amidships we will say. We will say the "Corrimal" is that size -

Q. I do not want that. Do you now say you were approximately amidships? A. We will say amidships.

Q. That is amidships of the "Corrimal"? A. Not on the "Corrimal".

Q. But you were on the wharf about the centre of the "Corrimal"? A. Just a little bit for'ard of the centre.

30 Q. How far were you away from the seaward side of the wharf? A. If that is the side of the wharf - you mean the outboard side?

Q. How close from the edge of the wharf were you?  
A. About 7 or 8 ft. we will say.

Q. Just have another think. Would you like to alter that or not? A. Say that is the side of the wharf.

Q. You indicate the side of the witness box in No.1 court? A. I was from the books there to here from the side of the wharf.

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F. McGiffen,  
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HIS HONOR: I would say about 9 or 10 ft.

MR. MEARES: Q. You think, looking at that, that would be about 9 or 10 ft. in? A. We will say that.

Q. You heard somebody say what? First of all what were you doing at the time? A. Turning the mast.

Q. How were you turning the mast? A. You put the wire around them, reef the wire through the eye with a little play down and get the crane and it turns it which way the welder or burner, whoever it is, wants it.

10

Q. Was a crane in the process of turning the mast? A. No, she was not doing anything then, just at the present time.

Q. When you say you were turning the mast - ? A. That was my job to do it.

Q. What were you doing? A. Nothing at the time.

Q. Were you just looking? A. I was just standing by, that is our job, to stand by.

Q. Was there anybody with you standing by? A. I had one of my mates.

20

Q. Who was that? A. O'Toole.

Q. Who was it sang out? A. I could not -

Q. Was it Mr. O'Toole? A. No.

Q. Who was it? A. I could not definitely say now.

Q. Where was the person who sang out? A. He seemed - while I was over there he seemed to saunter. He says "There is a flame here" and I walked over and next thing -

Q. Wait a minute. Somebody simply said "There is a flame here" did he? A. Yes.

30

HIS HONOR: That is not quite what the witness said. The witness indicated that he pointed down through the wharf.

MR. MEARES: Q. When this man said "There is a flame here" - is that right? A. A small flame.



Q. A small flame, are you sure he said that? A. Yes.

Q. Where was that man? A. Just looking over the wharf like that.

Q. Over the edge of the wharf? A. This is the edge of the wharf -

Q. Was he looking underneath the wharf? A. No, looking straight down like that.

Q. He said "There is a small flame here", did he? A. That is quite right.

10 Q. What happened then? A. I walked over and next thing -

Q. You walked over? A. Yes.

Q. To where he was? A. Yes.

Q. To the edge of the wharf? A. Yes.

Q. When you got over to where he was and looked down, what did you see, if anything? A. I did not see anything practically.

20 Q. What do you mean by that, you did not see anything practically? A. I did not see anything. As soon as I poked my head over the edge of the wharf there was a roar and there were flames and smoke all over the place.

Q. May we take it this is clear, that when you went to the edge of the wharf you saw flames and smoke all over the place? A. No, definitely not.

Q. Did you see a small flame? A. I went over to have a look.

Q. Did you see a small flame? A. I saw a very small flame.

30 Q. How big was it? A. I could not tell you what it was.

Q. You could not tell me what it was. What do you mean by that? A. It was small, just like a small flicker and next thing there was nothing but smoke and flame.

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F. McGiffen,  
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F. McGiffen,

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continued.

Q. Was it on the water? A. Well, it was down below.

Q. But you saw it, didn't you? A. I just saw a small particle of flame.

Q. You saw a small flame? A. A particle of flame.

Q. Where was it? A. Just where this fellow looked down, where we were standing, just where I said, abaft where I was working on the "Corrimal".

Q. Do you mean to say - was it on the water or on the piles or where was it? A. It was definitely on the water. 10

Q. Do you remember a moment ago saying you were not sure where it was? A. I beg your pardon?

HIS HONOR: Q. Did you not say a moment ago that it was on the water? A. I said it was on the water.

MR. MEARES: Q. Did you not say a moment ago that you did not know where it was? A. I said it was down below. What is down below but water?

Q. You are not certain it was on the water, are you? A. I am certain it was down on the water level. 20

Q. The water level, how big was it? A. Just a little flicker.

Q. How big? A. Like a little flicker and then -

Q. A little flicker like a match, the size of a match? A. I could not say whether it was a match or what it was.

Q. Can't you give us any idea of the size of it? A. No, I could not even tell you.

Q. Was there any smoke there? A. I did not even see any smoke. 30

Q. Would you be prepared to say there was not any smoke? A. It all happened that quick -

Q. Would you be prepared to say there was not any smoke? A. Not that I saw.

Q. It all happened that quick. Is that right? A. That is correct.

Q. Might I put it to you fairly that when you actually got to the side of that wharf and looked down, at that time there was a lot of smoke and a lot of fire? A. No.

Q. There was not? A. I saw -

MR. MEARES: Q. When you were looking down there at some time there was this great deal of smoke and flame? A. No, when I looked down -

10 Q. So that when you were looking over the edge you never saw a great deal of smoke and flame? A. There was no deal of smoke or flame when I first looked over.

Q. At any time when you were looking over the edge of the wharf did you see a great deal of smoke and flame? A. When I first looked over?

Q. Answer my question. (Objected to).

20 HIS HONOR: I understand the witness to have said that he looked over and saw a little flame a flicker, and then there was a roar and a large quantity of smoke and flame. I do not know whether you are seeking to get a time analysis from this witness.

MR. MEARES: Q. You tell us that first of all you noticed a little flame? A. A flicker.

Q. At some time after you noticed the little flame you noticed when you were looking down towards the water a lot of flame and smoke. Is that right? A. When I looked down I saw that small flicker. The next thing off she went.

30 Q. That is when you were looking down? A. I had to get away, it just went -

Q. May we take it that when you were looking over the edge of the wharf there was suddenly this outburst of smoke and flame. Is that right? A. It just happened that suddenly, as soon as I saw that, away it went.

40 Q. I suppose at that time, may I take it that where this little flame, round about where the little flame was, after that there was nothing but a mass of flame and smoke coming up from the water. Is that right? A. That is right.

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continued.

Q. Along the side of the wharf? A. It spread right over, yes.

Q. In a great mass? A. Black smoke mostly.

Q. But you tell us, don't you, that after that you were able to walk from the wharf on to the "Corrimal"? Did you go over two planks? A. She did not reach that far.

Q. After you saw this flame and smoke you then walked across two planks on to the "Corrimal"?

A. I did.

10

Q. Where were the planks? A. Right aft, right on the stern.

Q. Right on the stern? A. Yes.

Q. How far did you have to walk to get down to the stern? A. You mean from - I did not walk, I ran.

Q. How far did you have to go to get from where you were looking over to the 2 planks? A. About 12 seconds.

Q. No. A. Yes, I am a good runner.

Q. However good you are that must have been about 100 yards. You are not in the Olympic standard, are you? How far was it? A. From where the fire first started?

20

HIS HONOR: From where you were looking over and saw this flicker of flame, down to the planks.

MR. MEARES: Q. How far, 12 seconds running?  
A. Pardon?

Q. You tell us how far? A. That again I would say roughly half the length of this hall, a quarter we will say roughly.

30

Q. I am suggesting to you that if you are a very good runner you could have done that in less than 12 seconds? A. I am long in the legs.

Q. You realise you told me a moment ago that you are a very good runner and it took you 12 seconds to get from where you saw the flame to these two planks at the stern. Did you say that? A. Pardon?

Q. You remember saying that? A. 12 seconds, I would say it was less than that.

Q. How long would you say now? A. We are getting down to brass tacks. I was in a hurry.

Q. To get down to brass tacks, to use your expression, how long did it take you to get from where you saw the little flame? A. I was very quick.

Q. How long? A. We will say 5 or 6 seconds.

10 Q. You were just for'ard of amidships, weren't you?  
A. Yes.

Q. You walked directly across to the edge of the wharf to see this little flame? A. I just looked over like that.

Q. And that little flame was just for'ard of amidships of the "Corrimal", was it not? A. Just about, yes.

20 Q. Having seen that little flame looking over, you then heard this great noise and you saw the great fire and the great smoke. Is that right? A. It was not a great fire. It was the smoke that put the wind up us mostly.

Q. So you did not see a great fire? A. Yes, there were plenty of flames too.

Q. But it was the smoke that frightened you? A. It was mostly the smoke and the roar.

Q. It was more smoke you saw than fire? A. There was plenty of fire underneath.

Q. Did you see it? A. What?

30 Q. The fire? A. I saw it creeping up the ship's side and up the piles.

Q. You went right down to the stern of the "Corrimal"?  
A. Yes.

Q. You may take it from me that you must have traversed a distance of something in the vicinity of 40 yards to get down to the stern of her. Do you appreciate that? A. That is 120 feet.

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continued.

Q. That is what you did, isn't it? A. Yes, roughly.

Q. Having got down that 120 feet, you then crossed across on two planks on to the "Corrimal", didn't you? A. I did.

Q. When you crossed those two planks on to the "Corrimal", there was no fire coming up towards the planks directly? A. It was sweeping around the top of the engine room then.

Q. Would you answer my question? When you crossed those planks, looking down just underneath the planks there was no fire there? A. Not when I crossed the planks, no. 10

Q. You crossed the planks and where did you go? A. Shouted down the engine room.

Q. Where did you go is what I asked you? A. Right on the stern and just shouted down into the engine room.

Q. Did you go down to a companionway? A. No, definitely not.

Q. How far did you go across the "Corrimal's" deck? A. The stern would be about 6 ft. away, there would be about 12 ft. planks and about 6 ft. from there. 20

Q. You shouted out down the engine room? A. "Come up, there is a fire".

Q. They never answered you? A. Yes.

Q. Of course you would have waited - ? A. No.

Q. Wait a minute. You would have waited of course to see whether they came up? A. No.

Q. But you went there to warn them? A. I did.

Q. They did not come up after the first call, did they? A. There were one or two coming up the ladder and they must have seen smoke. 30

Q. You told us early, and correct me if I am wrong, that when you called the first time they did not come up? (Objected to).

Q. When you called the first time the men took no notice. That is so? A. I am not going to say they did not take any notice.

Q. You swore it to Mr. Taylor? A. Well, I will say this, if I shout down "Come up, the wharf and ship is on fire. Come on, the ship and the wharf is on fire", then I beat it myself.

Q. But you waited for the men to come up? A. I did not wait for the men to come up at all.

10 Q. Didn't you see them come out? A. I did not.

Q. Didn't you swear a moment ago there might have been someone coming up? A. I saw one or two of them coming up the ladder. They might have been coming up for paint or something. They were professional painters and that there. They might have been coming up to replenish their paint.

Q. I suppose you went down there for the purpose of - you realised the men down there were in danger? A. I did.

20 Q. You never left there until you were satisfied they had heard your call? A. They had heard the call.

Q. You called not once but twice? A. Twice.

Q. That is so, and it was not until the second call that these men came out, was it? A. I would not swear to that.

Q. You are sure of that? A. Well, I am going to say that I called twice, men coming up -

30 Q. Now, of course these men, from where you called, were right down in the bowels of the ship? A. They were not. They were in the engine room. They only have a small engine room.

Q. They have to come up a ladder? A. Well, I am not an engineer.

Q. Anyway, these men came up, did they? A. As far as I know they came up. They must have done.

Q. You went back over the gang plank? A. Yes.

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continued.

Q. At that time there was no fire there, was there?  
A. Not right on the wharf.

Q. The fire at that time had not got to the stern  
of the "Corrimal"? A. Right to the stern, no.

Q. After you got to the wharf itself, where did you  
go then? A. I picked the hose up and applied the  
hose as much as I could do.

Q. You picked the hose up? A. Yes.

Q. Where was the hose? A. Already on the wharf.

Q. Who had brought it on to the wharf? A. We have 10  
always got a hose and stuff when they do any work  
handy on a ship, fire appliances.

Q. As soon as you got off the planks you immedi-  
ately started to use a hose? A. Yes.

Q. Who else was on that hose? A. Several of the men  
that were hanging around the job. When a fire breaks  
out, different men in Morts Dock - it employs a lot  
of men -

Q. Have you any idea who the men were? A. There was 20  
no fire where we were standing. We were shooting it  
over on to the fire.

Q. Where did you get the hose from? A. Already on  
the wharf.

Q. Where on the wharf? A. Lying close handy.

Q. Was it? A. Water ready.

Q. Right down aft of the wharf? A. No, further  
along the wharf.

Q. Whereabouts? A. Where we were working.

Q. Whereabouts was this hose on the wharf? A. Where 30  
we were working.

Q. That was amidships? A. Yes.

Q. So you came back across the planks and then went  
amidships where the hose was? A. On the wharf, no,  
no definitely not. We pulled the hose along, the  
lot of us.



Q. Where was the hose when you started to pull it along? Was it right down - ? A. No.

Q. Was it right down the slipway end of the wharf when you pulled it along? A. If you will excuse me -

Q. No, I won't. First of all, would you tell me when you grabbed hold of that hose, did you pull the hose right from the western end of the Sheerlegs wharf, the dock end of the wharf? A. There is only about so much planking on the wharf. The rest is ground. We have it along the ground.

Q. There is only so much planking on the wharf? A. Yes. We have to get it from the hydrant or whichever hydrant we use, we have it on the ground and coming around.

Q. Would you take this table in front of me, would you look at this table? A. Yes.

Q. Would you assume that this end of the table is Yeend St. end? A. If it was that way I might.

20 Q. Where Mr. Begg is sitting is the Yeend St. end of the wharf. Do you follow that? A. Where was the hydrant?

Q. On the end of the table nearest me was the Yeend St. end of the wharf, can you follow that? A. Yes.

Q. The other end of the table is the other end of the wharf. Do you understand? A. I quite understand.

30 Q. Where I am standing and where all these gentlemen with wigs are - ? A. You would be down under the wharf.

Q. That is the seaward side of the wharf? A. Yes.

Q. Where the "Corrimal" is lying? A. You are the "Corrimal".

Q. Mr. Begg Yeend St., down here is the dock end, and along where counsel are is the "Corrimal". Now tell us that at some point in relation to this wharf you seized a hose? A. Yes.

In the Supreme  
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No. 31

F. McGiffen,  
Cross-  
Examination -  
continued.

In the Supreme  
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No. 31

F. McGiffen,

Cross-  
Examination -  
continued.

Q. Where did you go in relation to the wharf to seize the hose? A. (Witness approached Bar Table): If that is the water front the "Corrimal" - this is the wharf to here.

Q. (Indicating the Bar Table as being the wharf). Over here is all ground.

Q. Up a bit of a hill? A. No, this is the wharf coming here. That ground runs here. We have the hydrant up there coming around on to the job on the ground.

10

HIS HONOR: Q. The hydrant is on the ground? A. Yes.

MR. MEARES: Q. On the shore? A. On the shore.

Q. You went up and you picked up the hydrant?  
A. On the ground.

Q. You picked up the hose? A. I picked up a bend of the hose.

Q. You picked up something? A. Yes.

Q. Where was the thing that you picked up? First of all, was it the dock end of the wharf but on the ground? A. The dock end of the wharf away from Yeend St. altogether.

20

Q. As I understand you it was not actually on the wharf, what you picked up? A. It was bending -

Q. Don't worry whether it was bending. It was not on the wharf. It was on the land side of the wharf on the ground itself? A. It was ready waiting where three men could pick it up in two seconds.

Q. I will put it to you once again, whatever you picked up, I suggest to you was right at the dock end of the wharf, not on the wharf, but on the ground? A. It was just ready and we picked it up and played it on the seat of the fire.

30

Q. Where was it? A. Ready to play on the seat of the fire, if any.

HIS HONOR: Q. Was it on the ground or on the wharf structure? A. It was coming around from the ground just over to the seat of the fire where we were working.

Q. It was there before the fire? A. Yes, always a precaution.

MR. MEARES: Q. I show you a little drawing. Do you see that I have drawn something that represents the "Corrimal" and this area here is all wharf?

A. That is the wharf, yes.

Q. With the "Corrimal" lying alongside it? A. Yes.

Q. You see I have drawn the dock end of the wharf?

A. Yes.

10 Q. That is the end of the wharf marked in blue on one end and marked with a blue pencil on the other end as the Yeend St. end of the wharf, and where I have hatched in blue is the ground at the back of the wharf. Do you agree with that? A. Yes, that is quite right.

Q. You are quite clear about it? A. The "Corrimal" is there. You must have that wharf to the end of the paper.

20 Q. Would you draw the wharf and the "Corrimal" yourself?

HIS HONOR: You had better do it yourself, Mr. Meares.

WITNESS: We will take the whole paper.

MR. MEARES: Q. Might I indicate the dock end and Yeend St. end? Now I will put the "Corrimal".

A. Here from this distance.

Q. Put her stern there and I just draw her out. You tell me when you want me to stop? A. That will do.

30 Q. Can I hatch that to indicate the ground? A. Yes.

Q. At some point of time after you had got off the "Corrimal" you picked up a hose? A. Yes.

Q. When you picked up the hose would you indicate on this plan where you were? A. This is about the hose, isn't it?

Q. Just take your time. A. There is a box here. That is a wall there. Coming along and just lying like that and taking the kinks out of it.

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F. McGiffen,

Cross-  
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continued.

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F. McGiffen,

Cross-  
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continued.

Q. Where were you when you picked the hose up?

A. Up here (marking plan).

Q. You mark with an "X" where you were when you picked the hose up. Is that right? A. Yes.

Q. Where did you take the hose to? A. The fire was up here then.

Q. Where did you take the hose to? Just think?

A. Where the fire was coming along the wharf.

Q. Show me where you took it to? A. Just about here (indicating).

10

Q. Do you concede the midships position of the "Corrimal"? A. Midships is halfway.

Q. Where did you take the hose to? A. Where the flames were coming up the wharf.

Q. Where? Mark it on the plan. A. I have not a rough design of the "Corrimal" but I would show you where the engine room was.

Q. Can you describe it? A. We were not in the race of getting over the "Corrimal" up that way.

Q. Where did you take the hose to? A. Just where the fire was coming up through the wharf.

20

HIS HONOR: Mark "F" for "Fire". (Sketch marked by witness).

(Sketch m.f.i. "5".)

MR. MEARES: Q. How long did you hold the hose there? A. Not too long.

Q. About five minutes or ten or fifteen? A. I would say about ten minutes until the fire brigade came.

Q. Would you look at the photograph I show you which is Exhibit "B6"? You see that photograph? A. Yes.

30

Q. Do you see a building on the photograph with what looks like to be a fire hose box affixed to it? A. Yes.

Q. Was it a box like that fixed on a building like that that this hose you speak about was in? A. Yes,

it was on the store, the big Naval store down there, not one of these.

Q. Would you now look at the big building there?

A. That is the store I presume.

Q. Is that so? A. Yes.

Q. The hose was fixed ready, this hose box was fixed ready on the dockend of that store, was it?

A. Which way do you mean the dock end?

Q. Opposite the Yeend St. end? A. No.

10 Q. Where? A. Up towards Morts Dock.

(Witness retired)

In the Supreme Court of New South Wales Admiralty Jurisdiction

Plaintiff's Evidence.

No.31

F. McGiffen, Cross-Examination - continued.

No.32

SUBMISSIONS AND ARGUMENTS BY COUNSEL FOR PLAINTIFF AND DEFENDANT

No.32

Submissions and Arguments by Counsel for Plaintiff and Defendant, 20th February 1958.

MR. TAYLOR: Might I have the smooth deck log and the documents which were produced yesterday and which I was allowed to look at?

HIS HONOR: Yes.

(Mr. Allen was called as a witness: no answer)

20 MR. TAYLOR: I tender an extract from the smooth deck log of the "Waggon Mound" under date Monday 29th October, the extract being:

"1045; one hose 8-inches connected to 3 line. 1120, commenced discharge gasoline from 5 c/tk. 1145. stopped discharging to repair leaking glands. 11.45 commenced taking bunkers. Scuttles plugged."

I tender that entry in the log.

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-----  
Plaintiff's  
Evidence.

No.32

(Further argument ensued.)

Submissions  
and Arguments  
by Counsel  
for Plaintiff  
and Defendant,  
20th February  
1958 -  
continued.

MR. MEARES: I object to the tender and I submit it is evidence if any by way of admission against me. I object to it on the first ground that it is inadmissible in any event. Secondly, I submit that if my friend wishes to tender a part of the log by way of admission then he must properly tender all that part of the log which deals with the matter.

MR. MEARES: May I indicate the grounds of my objection: What my friend tenders is evidence of a leak being detected. He has led certain evidence in connection with this leak. If it is only that portion of the log that is admitted, the existence of a leak, he may seek to argue inferentially by virtue of other evidence that the leak started and was a continuing thing. If my friend wishes to tender the log concerning the leak, it is apparent from the log entry concerning the leak that the leak was reported as having commenced at a certain time, and it was further stated after a certain time that they had commenced working on it. Pumping was then resumed, namely, at 12.30 and continued on until a certain time. I am entitled to have the benefit of that statement also in the log.

We argue this in effect: looking at the document, if it operates at all in anybody's favour, it says this, that a leak started and it was stopped, and they executed repairs and it recommenced without stopping further. For my friend to read on to the notes a certain extract from the log - because I cannot tender admissions in my favour ---

HIS HONOR: It has always been accepted that ships' logs are admissible on either side.

MR. MEARES: If Your Honor is prepared to hold that, then I am only wasting the Court's time. With very great respect, when one comes to think of it, I am barking up the wrong tree. I am aware of the authorities concerning logs, and perhaps as Your Honor puts it, it is evidence. If Your Honor holds that I can tender any aspect of it that I wish, then I will withdraw my objection at this stage.

HIS HONOR: I think you will not be prejudiced if you tender it.

(Extract from Log Book dated 29th October, 1951, tendered and marked Exhibit K.)

(Letter dated 16th November, 1951, from General Manager, Overseas Tankships U.K. Ltd. to Caltex, tendered; objected to by Mr. Meares on the following grounds:

(1) that it has not been proved to have been written by Overseas Tankships; (2) it is not proved that the signature on it is a signature of anybody on behalf of Overseas Tankships in authority; (3) that the contents of the letter are irrelevant; (4) that the company to which it is addressed is not identical with the Company that is served, the nomenclature of the Company being different, the U.K. being in brackets.)

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Plaintiff's Evidence.

No.32

Submissions and Arguments by Counsel for Plaintiff and Defendant,

20th February 1958 - continued.

HIS HONOR: Taking the last matter: I overrule that. The similarity in this case is so close that in my opinion it is sufficient to constitute prima facie evidence.

MR. MEARES: I appreciate the technicality of that particular submission.

MR. TAYLOR: The ground on which I tender it is the last paragraph, namely, an admission by the manager of the defendant company that there was a necessity to warn people of the escape of oil. That could only be to warn them of possible consequences. There would be no need to warn people that oil in fact had escaped; that would be sufficiently obvious at the time the letter was written. The defendant company realised the necessity of warning people of the dangerous propensities of this oil.

One of the grounds of negligence on which we rely is that we were given no warning by the defendant company of the fact that this oil was liable to burn; that is the basis of the tender.

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Court of New  
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Submissions  
and Arguments  
by Counsel  
for Plaintiff  
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20th. February  
1958 -  
continued.

In regard to the proof of authority, it is a letter produced from Caltex under subpoena, and produced as part of the correspondence between Caltex and that company. Your Honor already has the evidence from the Secretary of Caltex that at that time the company was in correspondence with Overseas Tankships and they were acting on behalf of the master of the ship in connection with the proceedings brought against him, and the evidence of the secretary that there was correspondence proceeding between Caltex and Overseas Tankships relating to the escape of oil, and that is part of it.

10

HIS HONOR: It is not evidence in the case; it is evidence on the voir dire, so to speak.

MR. TAYLOR: If that be so, then I will tender it as evidence in this case on this issue.

HIS HONOR: You may not recollect, but the witness was not sworn as a witness in the case.

MR. TAYLOR: It has been received as evidence concerning whence those documents came.

20

HIS HONOR: No, only for the purpose of a collateral matter entirely, on the claim of privilege. He was sworn as on the voir dire: "You shall true answer make to all such questions as the Court shall demand of you."

MR. TAYLOR: You have the evidence of Capt. Craven.

HIS HONOR: That does not identify it.

MR. TAYLOR: I tender the evidence of Mr. Searle as evidence in this case on this issue.

30

HIS HONOR: I do not think you are entitled to do that. You may call Mr. Searle and have him sworn in this case. I do not see how otherwise you can get the evidence in. Have you any authority to justify the evidence on the voir dire as evidence on issues?



MR. TAYLOR: It can be done and frequently it is done; but I do not know that there is any authority.

HIS HONOR: If given by a party, yes; but not by a stranger.

MR. TAYLOR: Your Honor means that we have to recall him and he will give the same evidence?

HIS HONOR: You will have to recall him and ask certain questions.

10 MR. TAYLOR: I tender with it two copies of letters from Caltex; they were originally tendered as letters OTUK 192 and 195.

MR. MEARES: I very strongly object to those letters. They purport to be letters from Caltex making all sorts of statements about this thing; but they do not bind us.

MR. TAYLOR: There are not any evidence of the facts stated in them, but the basis of the tender is that they are a chain of correspondence.

20 MR. MEARES: I object. There is not the slightest evidence that those letters were received by Tankships.

HIS HONOR: The reply may constitute a receipt, of course. I shall admit letter dated 16th November, 1951, a letter from the defendant's company to Caltex Oil (Aust.) Pty. Ltd. As to the two letters that were tendered with it, I propose to admit them if Mr. Meares maintains his objection that the authenticity of the letter which I have admitted is challenged; that is to say, he requires proof  
30 that it emanated from the defendant.

MR. MEARES: No, I am not going to say anything, with respect.

HIS HONOR: Very well; that objection having been taken, I shall admit the two carbon copies of letters dated 2nd November, 1951 and numbered in the

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Submissions  
and Arguments  
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and Defendant,  
20th February  
1958 -  
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Submissions  
and Arguments  
by Counsel  
for Plaintiff  
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20th February  
1958 -  
continued.

top lefthand corner OTUK-192, and another letter bearing the same date and numbered in the left-hand corner OTUK-195, purporting to be copies of letters from Caltex Oil (Aust.) Ltd. to the defendant. They are admitted not as evidence of the facts contained in them, but as evidence which tends to prove the identification of the authorship of the letter of the 16th November, 1951.

MR. MEARES: Might I have it on the notes that there is no evidence - and I think I have already said this - that the signatory was the Managing Director or Manager. And further, we submit there is no evidence that he was authorised to make admissions; and in law he is not.

10

HIS HONOR: You will have the benefit of those submissions.

(Above mentioned documents tendered and marked Exhibit L.)

MR. TAYLOR: Subject to that and to calling of a Mr. Allan, who is on his way up from Morts Dock, that is my case.

20

MR. MEARES: I am afraid that we have to put ourselves in Your Honor's hands to this extent; we can ask Your Honor what is Your Honor's practice on the question of moving for a verdict, or whether it is a matter on which Your Honor would require to hear argument. In this State if you move for a verdict at Common Law you elect; but that is not so in England.

HIS HONOR: I understood the practice was adopted because of a decision of the King's Bench Division in England. It is a practice of relatively recent introduction.

30

MR. MEARES: No, I think I am right in saying that it is not, particularly before a Judge. You can move without penalty. I would be entitled to argue either that I have a right or I have not, and I should ask leave at the proper time to do that.

HIS HONOR: To be perfectly frank, I do not know. Our practice in Admiralty is an independent practice and it is adopted from English practice which is now antediluvian. It has been modified in England but not here. I have not had occasion to look into it.

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Plaintiff's Evidence.

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Submissions and Arguments by Counsel for Plaintiff and Defendant,

20th February 1958 - continued.

10

MR. TAYLOR: It is covered by Rule 136 of the Admiralty Rules, at p.107. (Read). This situation is provided for in the Practice at Common Law. The practice at common law is that you have to make up your mind.

MR. MEARES: I should like to reserve that question until my friend has closed his case.

No.33

EVIDENCE OF W.W. ALLAN

WILLIAM WINGRAVE ALLAN  
Sworn, examined, deposed:

No.33

W.W. Allan,  
Examination.

20

TO MR. TAYLOR: I reside at No. 4 Luke's Av., Balmain East. I am employed at Morts Dock. I was employed at the Dock in November, 1951.

Q. Do you remember an occasion of the fire on the "Corrimal" at the Sheerlegs wharf? A. Yes.

Q. On the Tuesday preceding that fire were you given some instructions by Mr. Parkin about getting in touch with the Maritime Services Board? A.Yes.

Q. Did you get in touch with the Board? A. Yes, I did.

30

Q. Did you report something to the Board? A. To the best of my knowledge I reported--(Objected to by Mr. Meares, unless the evidence goes to Mr. Taylor's case on contributory negligence. Mr. Taylor intimated that it did; allowed.)

In the Supreme  
Court of New  
South Wales  
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Jurisdiction  
Plaintiff's  
Evidence.

No.33

W.W. Allan,  
Examination -  
continued.

Q. What did you tell them at the Board? A. I reported that there was oil in the vicinity of our works.

Q. Did you say anything about the quantity of it?  
A. No, I just reported it.

Q. What were you told by the Board? A. I was told that they could do nothing about it.

Q. Did you pass on that information to Mr. Parkin?  
A. Yes.

CROSS-EXAMINATION

10

Cross-  
Examination.

MR. MEARES: Q. You told him it was fuel or furnace oil? You told him that, didn't you? --- (No answer).

HIS HONOR: Q. Are you hard of hearing? A. I am a little; but I am a bit nervous.

MR. MEARES: Q. You told this gentleman that it was fuel oil when you rang him on the telephone? You said "There is a bit of fuel oil on the harbour"?  
A. I should think that I would just report oil.

Q. And he told you they had no means of doing anything about it? A. Yes.

20

(Witness retired)

MR. TAYLOR: That is my case.

MR. MEARES: Would Your Honor grant me an indulgence now until tomorrow morning?

HIS HONOR: Yes, I think so; I think it is only fair.

(At this stage further hearing adjourned to Friday, 21st February, 1958.)

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SUBMISSION BY COUNSEL FOR THE PLAINTIFF

IN ADMIRALTY

CORAM: KINSELLA J.

MORTS DOCK & ENGINEERING CO. LTD. -v- OVERSEAS  
TANKSHIPS U.K. LTD.

FIFTH DAY: FRIDAY, 21st FEBRUARY, 1958.

In the Supreme  
Court of New  
South Wales  
Admiralty  
Jurisdiction

Plaintiff's  
Evidence.

No. 34

Submission by  
Counsel for  
the Plaintiff.

21st February  
1958.

10

MR. TAYLOR: There are two matters I would like to put to Your Honor. One is the question of whether Your Honour would like a view of Morts Dock and the Sheerlegs Wharf and the surrounding parts. If Your Honor thinks a view would be helpful that would be arranged at any time suitable to Your Honor.

20

The other matter is, as I informed Your Honor in my opening address, that there is a film of this fire which we could arrange for Your Honor to view if Your Honor thought it would be of any assistance. It does not show the commencement of the fire - the enterprise of the film industry is not such that they anticipate these fires, but they got there very soon after - and it shows the fire from the point of time when the fire floats start to arrive until it was put out. If Your Honour thinks that might be of assistance, the film is with Cinesound, and with their co-operation we could arrange to have it shown at a convenient time.

30

MR. MEARES: So far as the view is concerned, I think that is a matter entirely for the Court. I can only say for myself that I feel it was of some assistance to me.

So far as the film is concerned, I have no instructions as to that and certainly would not consent to it.

HIS HONOR: I cannot see the film unless it is tendered in evidence. It is not in evidence.

MR. TAYLOR: I should perhaps tender it and have the decision made then.

(To Mr. Meares): You have not seen it?

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Plaintiff's  
Evidence.

No. 34

Submission by  
Counsel for  
the Plaintiff.

21st February  
1958 -  
continued.

MR. MEARES: No, I do not know anything about it, frankly.

MR. TAYLOR: I am in a difficulty there. I have not seen it myself. My junior has seen it.

HIS HONOR: It is a matter for you. The film is merely the same as photographic evidence and is on the same basis as any other photograph in that it has to be proved.

MR. TAYLOR: I strictly should do it in my own case  
---

10

MR. MEARES: If you wish to re-open, I am not going to take that point.

HIS HONOR: I am inclined to think that a view might help. I have very general knowledge in that I have passed it very often in ferry boats and I think that a view would be helpful if it could be arranged. We will decide the time of the view later on.

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IN THE PRIVY COUNCIL

No. 23 of 1960

ON APPEAL  
FROM THE SUPREME COURT OF NEW SOUTH WALES  
ADMIRALTY JURISDICTION NO.7 of 1952

B E T W E E N

OVERSEAS TANKSHIP U.K. LIMITED  
(Defendant) .. .. . Appellant

- and -

MORTS DOCK & ENGINEERING CO.  
LIMITED (Plaintiff) .. .. . Respondent

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RECORD OF PROCEEDINGS

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