

CAPTAIN SEARS IS ACQUITTED

Master of Iroquois Which Foundered With Heavy Loss of Life, Not Guilty of Manslaughter.

JUDGE'S CHARGE IN FAVOR OF ACCUSED.

Court, in Summing Up, Alludes to Shortcomings of Marine Department of Dominion Government.

Following clever addresses from counsel for both sides and a general summing up of evidence by his lordship, Mr. Justice Murphy, in the marine court Thursday afternoon the jury took five minutes to declare Capt. Albert A. Sears, late master of the steamer Iroquois which sank off Sidney on April 10 last with a large loss of life, not guilty of the crime of manslaughter as charged by the crown.

Considering the large number of witnesses examined the case was brought to a conclusion rapidly. As the proceedings neared their close yesterday afternoon the court room filled up with spectators until the court officers had to clear spaces about the doors. In the audience behind the barrier there were numbers of well known Sidney people. The case began on Wednesday and on that day Mr. H. W. R. Moore, for the crown, closed his case. Mr. H. A. McLean, K. C., defendant's counsel, opened his case on Wednesday and, upon continuing yesterday forenoon, placed Mr. Baynes Reed in the box. Many witnesses followed, the last of them being the prisoner himself.

When the court resumed yesterday morning, Mr. Baynes Reed, of the meteorological bureau, introduced documentary evidence taken from the records showing the velocity of the wind as recorded on the day the steamer Iroquois was lost. The figures showed that the wind recorded on the day the Iroquois foundered was less than sixty miles an hour.

To Mr. Moore witness admitted that his records were only for Victoria. Wind might be blowing in gales at Sidney and not be so strong in Victoria. The contour of the land would make a great difference.

James J. White, of Sidney, employed in the customs at Sidney, could recall no occasion in seven and a half years when the Iroquois did not make its regular trip. He had known the steamer to go out in much stronger wind than that blowing on April 10.

To Mr. Moore witness said he was not a seaman and had no means of gauging the force of the wind.

S. Moore, of Sidney, had known the Iroquois ever since she started on the Sidney run in 1890 and had often seen her go out in stronger gales than that of April 10. Witness estimated that the wind on that date as between 25 and 30 miles an hour. Witness said a boat-house and had seen the Iroquois' boats after the accident and would say they were good seaworthy boats. They were clinker built boats, and good sized, 18 feet 6 inches long, and 5 feet 10 inches deep. They could carry 20 passengers very easily. The piece torn from one of the boats would not affect the seaworthiness of the boat unless the sea were beating on the starboard side.

Effect of Deckload. To Mr. Moore witness said the effect of a deckload on a ship was to make her cranky.

Mr. McLean elicited the opinion that a two and a half ton deckload would have had no effect on the Iroquois.

E. J. Parsons, master mariner, was on the Iroquois as mate in 1908 for a short time. He would have taken the Iroquois out on April 10. Witness never found the steamer tender in rough weather.

Cross-examined witness admitted a deck load tended to raise the centre of gravity and thereby somewhat lessened the stability of a vessel.

George W. Caven, master mariner, was master of the Iroquois in 1900 during the completion of her construction at Port Moody. He afterwards sailed her. Witness had experienced as hard a blow as he ever saw on the Pacific coast. She was without cargo, and had only a little coal in her hold. The same wind blew some of the coal cargo right off the track at Ladysmith. The Iroquois was quite staunch. Witness said the lifeboats were strong cedar and oak boats, and were serviceable.

Mr. Moore brought out the fact that the witness was considered a very careful navigator and had often lay in at Saanich with passengers on board during bad weather.

Witness gave as his opinion that the Iroquois had sprung a leak while banging against the wharf at Sidney and that the resultant intake of water had sunk to do with her foundering.

Witness considered the ship's boats staunch, good sea boats. He could not say what shape they were in on April 10.

To Mr. McLean witness said he would have taken the steamer out on the day in question.

In His Own Defence. Captain A. A. Sears, the accused, was then put on in his own defence. He would be 48 years old tomorrow and first went to sea as a boy in 1884. He was in deep water nearly eight years, and on the North and South Atlantic. Witness identified several discharges given him from various vessels. His character was always rated very good. Witness came to British Columbia in 1890 and had been on various passenger steamers including the Yosemite and the

In disgrace and had not changed his name for any reason of that nature. Samuel Munro, of Sidney, farmer, would not call the weather on April 10 as bad as he had seen.

He admitted to Mr. Moore that he was not a sailor and was not watching the weather, closely on April 10.

Mr. Turpel's Evidence. William Turpel, of Victoria, shipwright, had often repaired the Iroquois. The steamer had always come in once a year for overhauling and Captain Sears had always given special orders that nothing was to be spared to put her in first-class shape. Witness always received her a day earlier to see that the work and material was first-class.

To Mr. Moore witness said he had never had instructions to repair the small boats. He had never seen any small boats ships he repaired that had air-tight compartments.

Charles T. Bruce, marine engineer, had formerly been an engineer on the Iroquois. He found her as good a seagoing boat as he had ever seen. He said Sears had always told him to keep the engines in first-class shape. The Iroquois had always made her regular trip.

Cross-examined witness said he had seen freight loaded on the Iroquois. He had often seen lumber and a little iron on the top deck. With a heavy load on the top deck the steamer was more tender than otherwise.

To Mr. McLean witness said he would not consider two and a half tons a heavy load on the upper deck.

Not Good Boats. Dr. W. G. Cummings, M. D., of Sidney, had been a ship's surgeon for a year on the deep sea. He also had had experience on small boats. He had seen the Iroquois' boats. He did not think they were good lifeboats. They were not heavily enough built. He thought they were all right for a calm day, but not for a gale.

Witness said he had seen the Iroquois' boats in a gale. They were not intact. A hole eight inches long was torn in the stern of one of them.

Asked if this hole would have made the boat less seaworthy if the wind were on the starboard side, witness said he did not think that would make any difference because the boat filled with water, not wind.

To Mr. Moore witness said he would not call the Iroquois' boats suitable lifeboats.

Captain Joseph Riley, master mariner, considered the Iroquois equal to any boat of her size on the coast. Witness was at one time master of the Iroquois. He had never known her to miss a trip, although sometimes she had to lay over.

Witness was in Sidney on April 10. If the wind had blown sixty miles an hour the Iroquois could not have left on her passengers because she could not have lain alongside the wharf without either breaking the wharf or being broken herself.

Question For Inspectors. Capt. Riley said he would never have hesitated a moment in taking the Iroquois out on April 10. Speaking of the vessel's lifeboats witness said as long as the inspectors passed the boats the matter of the steamer was right in taking them. The boats were of cedar and oak frames. Witness considered the lifeboats adequate.

Cross-examined witness said he had never had a chance to take out freight from the Iroquois. There were three boats put against him. If he had had the freight he would have loaded her, all she could pack. It was all left to the master of a steamer what was a sufficient load. There was no law. None of the coast boats was properly stowed as any coast steamer. None of them used shifting boards. Witness would not admit that shifting cargo caused the Iroquois to turn turtle. A deckload often steadied a steamer, like the Iroquois, like a sail.

James S. Davis, master mariner for thirty-three years, was on the Iroquois about two months in 1908. During that time he took her out every trip, and never had any difficulty with her. He would have taken her out on April 10.

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Charmers. During all his career witness had never lost a life until the day of April 10.

Continuing his evidence Capt. Sears said he had made 1,423 trips on the Iroquois and had always found her staunch and good in a sea way. On the night of the Clallam disaster witness was on the Iroquois, the wind then was much worse than on April 10. Witness recalled that there was freight on the freight deck on that occasion. He did not think there was any on the upper deck. The Iroquois behaved very well during this experience. The sea was coming over the bows and the sea was very high. Evening, the Iroquois' witness said the Iroquois had two of what were always called lifeboats on this coast. They complied with the government requirements for lifeboats.

Fulfilled Requirements. The boats were in good condition at the time of the disaster. They were equipped in accordance with the government requirements. When the Iroquois turned over one of the davits dropped down through the top deck and the hook of the davit fell over the boat. As the boat was properly stowed and safe. There were some sacks of feed without gratings under them and witness ordered gratings put under them. The steamer had a fairly good load but he had had more many times. Witness judged the wind to be blowing 45 to 50 miles an hour. No boat the size of the Iroquois could lie at that wharf in a 60 mile gale. In the opinion of the witness there was no reason why they should not go out that morning.

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No Watertight Compartments. To Mr. Moore witness said the steamer's boats were not unsinkable lifeboats such as were used in the navy service. They had no watertight compartments. They came up to the requirements of the regulations. The crew of the Iroquois was not drilled to lifeboat drill and had no assigned positions. Witness had seen what a fertilizer was piled on the morning the steamer sailed. He estimated the wind was blowing at 50 miles an hour during the squall that struck the Iroquois.

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Address for Defence. Mr. McLean began his address to the jury at 2:45.

The matter was so important from the standpoint of the accused that he could not pass the case without touching on some of the points. This was a criminal investigation. It was a criminal trial. Capt. Sears was charged with the second most serious charge on the calendar, as the crown had taken the somewhat extraordinary course of proceeding against this man criminally. He was an innocent until proven guilty. He was at all times entitled to the benefit of any reasonable doubt and he was in this case not to be judged in any way as he would be in an investigation by a marine court as to the steamer's loss. In this case the accused's past was of much importance. His past in this case was all in his favor. It was the record of a self-made man, a hard-working man. The only difficulty the speaker had was to keep down the number of witnesses from his own community who wanted to assist the accused. This was

the case in all quarters save "for a handful of fools and liars." The evidence showed that no matter what error in judgment may have been made, the accused acted in accordance with his best judgment and did his duty by his crew. The crown charged certain omissions. What was it the accused omitted? Mr. McLean took up the omissions charged categorically and argued that even were they all true and proved they did not charge the death of John Brydon as the crown alleged. It was alleged that Capt. Sears should have run the steamer on Shell Island. This was absurd. Had he turned the boat in that direction the wind would have beaten her away more quickly. Capt. Sears stayed at the wheel until driven out by water and had he had two minutes more not a life would have been lost. Accidents like this happen rarely and Capt. Sears launched the boat as quickly as he could. It was said none of the crew should have gone in the boat. If they had not gone it would have been charged that none of the crew went to handle the boat. It was so easy to find fault in cases of this kind afterwards. But it must be borne in mind that Capt. Sears had to act instantaneously. There was evidence to show that he acted courageously and well. He did well to succeed in getting the boat off at all under the circumstances. In fact the fact was a lot of evidence to support the charges of omission. So far as law was concerned the rest of the crown's case as far as he could judge the freight was properly stowed and safe. There were some sacks of feed without gratings under them and witness ordered gratings put under them. The steamer had a fairly good load but he had had more many times. Witness judged the wind to be blowing 45 to 50 miles an hour. No boat the size of the Iroquois could lie at that wharf in a 60 mile gale. In the opinion of the witness there was no reason why they should not go out that morning.

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the case in all quarters save "for a handful of fools and liars." The evidence showed that no matter what error in judgment may have been made, the accused acted in accordance with his best judgment and did his duty by his crew. The crown charged certain omissions. What was it the accused omitted? Mr. McLean took up the omissions charged categorically and argued that even were they all true and proved they did not charge the death of John Brydon as the crown alleged. It was alleged that Capt. Sears should have run the steamer on Shell Island. This was absurd. Had he turned the boat in that direction the wind would have beaten her away more quickly. Capt. Sears stayed at the wheel until driven out by water and had he had two minutes more not a life would have been lost. Accidents like this happen rarely and Capt. Sears launched the boat as quickly as he could. It was said none of the crew should have gone in the boat. If they had not gone it would have been charged that none of the crew went to handle the boat. It was so easy to find fault in cases of this kind afterwards. But it must be borne in mind that Capt. Sears had to act instantaneously. There was evidence to show that he acted courageously and well. He did well to succeed in getting the boat off at all under the circumstances. In fact the fact was a lot of evidence to support the charges of omission. So far as law was concerned the rest of the crown's case as far as he could judge the freight was properly stowed and safe. There were some sacks of feed without gratings under them and witness ordered gratings put under them. The steamer had a fairly good load but he had had more many times. Witness judged the wind to be blowing 45 to 50 miles an hour. No boat the size of the Iroquois could lie at that wharf in a 60 mile gale. In the opinion of the witness there was no reason why they should not go out that morning.

Capt. Sears went on to describe the sailing of the Iroquois. A heavy sea struck her as she came abreast of Point Roberts and she heeled over and came down with a jar and witness felt the cargo shift. He held the steamer up to the wind and told the mate to shift the cargo back as soon as possible. He kept the steamer up to the wind but soon she rolled again and went farther over and witness thought more cargo shifted. The steamer did not right herself. He got out with some assistance before the lower part of the cabin. Witness then looked to getting the women into the boat. Nine or ten people were in the first boat when the davit caught it and witness asked some of the men to go out and help free the boat. Witness asked the mate to go in the boat but a sea took the boat clear and some of the men in the boat rowed her away. Two minutes later he was told the boat had swamped.

No Watertight Compartments. To Mr. Moore witness said the steamer's boats were not unsinkable lifeboats such as were used in the navy service. They had no watertight compartments. They came up to the requirements of the regulations. The crew of the Iroquois was not drilled to lifeboat drill and had no assigned positions. Witness had seen what a fertilizer was piled on the morning the steamer sailed. He estimated the wind was blowing at 50 miles an hour during the squall that struck the Iroquois.

Capt. Sears was still under cross-examination when the court resumed after luncheon. Mr. Moore read out the authority giving requirements for sea-going coast steamers' small boats. Witness admitted that his small boat had no airtight, watertight compartments. He had taken counsel for the crown and witness as to the interpretation of the term "buoyancy" as used legally. Witness declared the term referred to the buoyancy of the vessel and not to the buoyancy of the cargo. Witness was inclined to believe the witness was correct in his interpretation of the term. Buoyancy was synonymous with displacement and was not affected ordinarily by watertight compartments.

Address for Defence. Mr. McLean began his address to the jury at 2:45.

of the name of honest citizens and were false to the good name in this regard enjoyed by juries in Canada. Canada did not wish to approximate the methods in a country not very far away.

His lordship went on then to instruct on the law. He distinguished clearly between the civil and criminal aspects of the case. In this case the jury was not concerned with the death of any of the victims of the disaster other than that of John Brydon.

In reviewing the evidence his lordship referred to the omissions alleged by the crown. His facts showed that the steamer went down within four minutes at most. The captain was in his wheel house and remained there trying to beach his vessel. Where else would he go? He acted like a man who did not believe that the vessel was going down. His was a noble attempt to prove criminal carelessness. It was for the jury to decide. It was also charged that the accused gave no orders about throwing the cargo overboard or about launching the small boats. The length of time—about three minutes—must again be taken into account.

In Favor of Accused. His lordship went over the details of the captain's actions after the actual wreck, making the deductions in favor of the accused. Captain Sears was said to have sent his boat off with a hole punched in it by a davit. The passengers were panic-stricken, probably, and the wreckage liable to break up at any minute. What on earth could the man do? He couldn't make a new boat. It was for the jury to say if he was criminally reckless in sending that boat away. His lordship reviewed the points of the evidence in detail and explained that the accused could not be held guilty for any shortcomings of the marine department of the Dominion of Canada.

In concluding his lordship again instructed the jury that the accused was entitled to the benefit of the doubt in every instance. The onus was on the crown to prove the charges to the hilt. If the jury thought the charges had been so proven, then they would return a verdict of manslaughter, if they did not, then they would find the prisoner not guilty.

The jury, retired at 4:25. At 4:30 they returned with a verdict of "Not guilty."

Captain Sears was discharged.

MAINLAND CRIMES

Police Authorities Baffled by Disappearance of Man Wanted for Wife Murder.

The police authorities of the lower mainland have at present on their hands three capital cases each of which appears to be peculiarly baff