

(No. S. 251.)

"LORD ROSEBERY" (S.S.)

AND

"GAUL" (S.S.).

The Merchant Shipping Act, 1894.

IN the matter of a formal investigation held at the Town Hall, Hull, on the 12th, 13th, 14th, 15th and 18th days of May, 1908, before J. G. HAY HALKETT, Esquire, assisted by Captain BARNETT BIGLEY, Captain W. G. B. MELVILLE, and Mr. W. C. NORMINTON, into the circumstances attending the collision between the British steamships "LORD ROSEBERY" and "GAUL," in the vicinity of Cape Utskalar Light, Faxø Bay, Iceland, on the 16th day of February, 1908.

Report of Court.

The Court having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds for the reasons stated in the Annex hereto, that the collision between the vessels and the subsequent foundering of the "Lord Rosebery" was caused by the "Gaul" having a bad look-out, and not keeping out of her way. It would have been avoided or its severity lessened if the "Lord Rosebery" had not also had a bad look-out. The Court finds the skipper of the "Gaul," Mr. William Ernest Lowery, and the second hand of the "Lord Rosebery," in default. It suspends the certificate of the former (No. 6445) for three months from this date, but for reasons stated in the answer to question 8, it refrains from dealing with the certificate of the latter.

Dated this 18th day of May, 1908.

J. G. HAY HALKETT,
Judge.

We concur in the above Report.

WM. BARNETT BIGLEY, }
WM. G. B. MELVILLE, } As-sessors.
W. C. NORMINTON. }

Annex to the Report.

This inquiry was held at the Town Hall, Hull, on the above-mentioned days when Mr. H. Saxelbye appeared for the Board of Trade. Dr. R. W. Aske appeared for Ernest Sjögren, the second hand of the "Lord Rosebery," and Mr. H. Colbeck for Mr. William Ernest Lowery, skipper of the "Gaul." James Smith, spare hand of the "Gaul," was also a party to the inquiry and appeared in person, but was not represented professionally. Upon the application of Dr. T. C. Jackson, the Hull Steam Trawlers Mutual Insurance and Protecting Company, Ltd., the underwriters of both vessels, for whom he appeared, were made a party to the inquiry.

The "Lord Rosebery," Official Number 113627, was a British screw steam trawler, built of iron and steel at Hull, in 1901, by Messrs. Cook, Welton, & Gemmell, and her respective dimensions were:—Length 120 ft.; breadth 21·8 ft.; depth of hold 12 ft.;

gross tonnage 229·18 tons, and registered tonnage 91·62 tons. She was fitted by Messrs. Amos & Smith, Hull, with triple expansion engines of 70 h.p. nominal, the diameter of the cylinders being 12½ ins., 21½ ins. and 35 ins., respectively, her length of stroke being 24 ins., and her speed is given in the register as 10 knots. She was owned by The Yorkshire Steam Fishing Company, Ltd. Mr. John McCann, of St. Andrew's Dock, Hull, being her registered manager. She had one boat of the size and description usually carried by vessels of her class, and was supplied with three lifebuoys, and one life jacket for each member of the crew. She was well fitted and properly equipped for the trade in which she was engaged.

The "Gaul," Official Number 121030, is a British screw steam trawler built of steel at Beverley, in 1905, by Messrs. Cook, Welton & Gemmell, and her respective dimensions are:—Length 130 ft.; breadth 22 ft.; depth of hold 12·47 ft.; gross tonnage 270·37 tons, and registered tonnage 94·18 tons. She was fitted by Messrs. Amos & Smith, Hull, with triple expansion engines of 80 h.p. nominal, the diameter of the cylinders being 13 ins., 22 ins., and 36 ins., respectively, her length of stroke being 24 ins., and her speed is given in the register as 10½ knots. She is owned by the Imperial Steam Fishing Company, Ltd., Messrs. Frank Orlando Hellyer and Owen Stooks Hellyer, both of St. Andrew's Dock, Hull, being her joint registered managers. She had one boat of the size and description usually carried by vessels of her class, and was supplied with two lifebuoys and 14 life jackets. She was well fitted and properly equipped for the trade in which she was engaged.

The "Lord Rosebery" left Hull on the 23rd January last bound for the fishing grounds of Faxø Bay, Iceland, with a crew of 12 hands all told—seven of whom were foreigners. Her then skipper was a Swede, who is not now in the United Kingdom. The second hand, also a Swede, did not know his surname, but stated that his Christian name was John. The vessel encountered very heavy weather before arriving at the Pentland Firth, which continued and rendered it necessary for her to put in at Stromness, where she remained for two days. After leaving there the weather again became bad, and, when in the neighbourhood of Sule Skerry, her boat was washed away and the wheelhouse and mizzen damaged. She thereupon put back to Aberdeen for repairs and a new boat. These were effected, the boat was obtained, also new lamps and a fresh supply of paraffin. After four days in port, the vessel proceeded on her voyage, but, when about 20 miles past Sule Skerry, the new boat was smashed by heavy seas. In due course, she reached her intended destination about 12 miles to the northward and westward of Cape Utskalar, and fished for two days round a dan.

During the night's fishing of the 15th–16th February last, the skipper remained in the wheelhouse and the second hand stated that he came on watch about 6.30 a.m. but it was probably somewhat earlier. According to his evidence, the sea was then smooth and the wind a light breeze from the E.N.E. Both nets had become torn and the crew were busily engaged in repairing them—the vessel in the meantime being hove to driving slowly with the wind, the wheel being lashed to windward—and heading about S.S.E. About half an hour after the second hand came on watch the skipper turned in. Before going below he told the second hand to get the nets quickly mended, and, as he intended to recommence fishing as soon as possible, to keep the fishing lights up. Accordingly, for two hours, or two hours and a half, before the casualty, the following state of affairs existed on the vessel:—The fishing lights were kept up, although the side lights and masthead light should have been substituted for them, and, in order to proceed as quickly as possible with the mending of the trawl, the second hand attempted not only to keep a look-out but to supervise the crew working on the deck and to work there himself. He went into the wheelhouse and remained there for a few minutes at a time, then to the deck, to aft side of the wheelhouse, where he

worked for a period, then back to the wheelhouse, and so on during the space that intervened before the casualty. Thus, of necessity, he was unable to keep a good and proper look-out. He stated that the weather was so clear during his watch that he could see the land, and the hulls of fishing vessels which were trawling and lying to about a mile to windward of him, also that shortly before the casualty (which took place about 7.30 a.m. by Greenwich time—sunrise by the same time being about 9.15) it was nearly daylight. The second hand stated that he went into the wheelhouse for the last time, about 5 minutes before the casualty. He said that the triplex, globular, and stern lights were then duly exhibited and burning brightly. The evidence of the crew of the "Lord Rosebery" as to her lights before the casualty was very precise. The third hand, two spare hands, deck-hand, trimmer and cook saw them burning before the casualty, and, of these, all except one of the spare hands who saw them half an hour before, saw them only a few minutes previous to it. In addition to the fishing lights, it was stated that the men on deck were lighted at their work by an acetylene gas lamp or two and that two dan lamps were also burning. Under these circumstances the second hand on his return to the empty wheelhouse saw, when his foot was on the ladder, a steam trawler which he recognized by her high funnel to be the "Gaul" with her fishing lights exhibited a few ships' lengths distant coming straight for the "Lord Rosebery's" port side. It is obvious that this vessel should have been sighted much sooner. The second hand stated that he then blew the whistle one long blast, but no one but himself appears to have heard this, that he let go the lashing of the wheel, but, before he had time to give any signal to the engine-room, the "Gaul," coming at a good rate of speed, with her stem struck the port side of the "Lord Rosebery" abreast of the winch cutting into about three planks of the deck.

The "Gaul" left Hull on the 7th February last, also bound for the fishing grounds of Faxa Bay, Iceland, under the command of Mr. William Ernest Lowrey, who held a certificate of competency as skipper, No. 6445, and dated the 21st February, 1901, with a crew of 12 hands, all told. She arrived off Utskalar on the 12th February, when she commenced fishing and on the morning of the 16th February that headland bore to the southward and eastward. The skipper went down to breakfast about 7 a.m. or a little later. At this time he said that it was a nice clear morning, but very dark, and that the wind was light from the E.N.E., with smooth sea. The crew were engaged in fixing the trawl for fine ground, and, in the meantime, although the vessel had temporarily ceased from fishing, the fishing lights were improperly kept up, but were, without doubt, burning brightly. Before going down into the cabin (where he joined the second hand, chief engineer, boatswain and possibly others) the skipper called James Smith, spare hand, to him and told him to ring the engines on slow, to steer S.W., and to keep a good look-out. Thus he left to an uncertificated hand the task of keeping a look-out, steering the vessel and controlling the telegraph. When James Smith entered the wheelhouse, the four windows in front were, according to him, open, also the two side doors. He took his stand behind the wheel on the starboard side. It was contended by the solicitor for the second hand of the "Lord Rosebery" that in his then position Smith would be prevented by the length of the roof of the wheelhouse and the top of its windows from seeing the triplex and globular lights of another trawler when as near as three lengths away. To maintain this contention diagrams were submitted, but no formal proof of their accuracy was tendered. Smith had been very hard at work with only short snatches of rest for many hours previously. Whether this was the cause or not, it is certain that he did not keep a good look-out, for he did not see the "Lord Rosebery" until he was quite close to her—probably only 3 or 4 ships' lengths distant. He stated that he saw no lights on board her, but that he first sighted her mizzen on the starboard bow of his vessel. As soon as he noticed her, he rang the telegraph full speed astern and put the helm hard-a-port. Just before the collision the skipper, who in the cabin had heard the telegraph ring, rushed into the wheelhouse and took charge of the look-out and telegraph, leaving Smith at the wheel.

The latter stated that the skipper had just nicely got into the wheelhouse when the "Gaul" struck the port side of the "Lord Rosebery." The casualty took place about 7.30 or 7.35 a.m.

The skipper of the "Gaul" stated that when he came into the wheelhouse he did not see any lights on the "Lord Rosebery." His first question however to Smith, which was put after he had seen the other vessel right ahead and close to, hardly seems consistent with this statement. He asked him "What are you thinking about?" which would have been unnecessary if he had seen a vessel without lights. To this Smith—who then was probably far too near the "Lord Rosebery" to see her triplex and globular light from the back of the wheelhouse—replied "He's no lights up skipper." The case for the "Gaul" was that the "Lord Rosebery" had no lights, but it was anything but a strong one. Apart from Smith's evidence and that of the skipper, who had not time to make sure of the matter, the only witnesses on board the "Gaul" who said anything about the "Lord Rosebery's" lights before the collision were the two spare hands. These were mending nets near bright acetylene lamps on the deck and they stated that they looked up and saw a black mass and no lights. The Court is satisfied that the "Lord Rosebery" up to the time of the casualty had her fishing lights exhibited, but apparently the impact of the collision knocked out both her triplex and globular light which accounts for the impression in the mind of the skipper of the "Gaul." He was, no doubt, strengthened in this view by a conversation which he had with the skipper of the "Lord Rosebery" some time after the casualty. On the impact there had been shouting from the "Gaul" that the other vessel had no lights up, to which they replied "You've knocked them out." Referring to this the skipper of the "Gaul" said "I shouted to you about the lights" to which the skipper of the "Lord Rosebery" replied "They were in when I went below twenty minutes before but they were out when I came on deck." As a matter of fact the skipper of the "Lord Rosebery" had been turned in on the floor of the cabin and did not come on deck until aroused by the blow. No significance can therefore be attached to this conversation.

The skipper of the "Gaul" and the second hand of the "Lord Rosebery" each drew diagrams of the position of the vessels on the point of impact and there was little discrepancy between them. Taking the "Lord Rosebery" as heading S.S.E., the "Gaul" was heading about S.W. which was the course given. Immediately after the blow the engines of the "Gaul," which were then going astern, were stopped, and, afterwards, they were put ahead and astern as was necessary to keep the "Gaul" in close proximity with the "Lord Rosebery." Those on board the latter vessel had shouted that they had no boat and the "Gaul's" boat was got out. In the meantime the "Gaul" came close to the "Lord Rosebery" and those on board the latter vessel,—which was making water very fast—came into the former. The second hand and boatswain of the "Gaul" and some of the crew of the "Lord Rosebery" then went in the boat to that vessel. They first examined the hole in the "Lord Rosebery's" port side which was a foot above water but they could not see how far below water and then got on board on the starboard quarter. The ship's company of the "Gaul" showed a great desire to cast blame upon the crew of the other vessel on every ground—possibly on account of the foreign element amongst them. Having suggested that all her lights were out, they went on to say (although there was no evidence of it) that they had jumped on board the "Gaul" at the collision and the second hand of the "Gaul" complained that when on board the "Lord Rosebery" the members of the crew of that vessel did nothing but save their effects. He said that if a sail had been used as a collision mat over the hole the vessel might have been got ashore. He was, however, then unaware that the vessel had put back to Aberdeen, that the coal in the after ice room was not then exhausted and that consequently the water-tight door between it and the stokehold which had been cut into had not been closed. This, naturally, made all the difference in the world to the chance of getting the vessel into safety. Moreover, although he did say to the men in the boat "Let's see what we can do for her," he did not suggest that a sail should be used or

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ask them to assist in any definite plan. He found
that the men had gone to seek their clothes and
shouted to his skipper that he could get no help. He
was then told to get the warps out and with the aid
of his boatswain did so. When the men were on
board the "Lord Rosebery" she was filling rapidly
with water—there being three to four feet in the
engine room. Having swung the end of the warp on
the stern of the "Gaul" they then at the request of
the skipper of that vessel returned to her. The
"Gaul" got the warp taut and towed the "Lord
Rosebery" in the direction of the land for a short
time when smoke was seen to come from her funnel
and she appeared to be settling down. Accordingly
the skipper of the "Gaul" ordered the boatswain to
chop off the warp and she sank almost immediately
afterwards—half an hour to three quarters after the
casualty. The "Gaul" took the crew to Reykjavik
whence they returned to Hull in the steam trawler
"Coltman."

It seems to fall to the lot of this Court to have to
point out time after time that it is impossible for one
man alone in the wheelhouse to steer the vessel and
keep a good look-out. Casualties have so frequently
happened through this cause, and the reason for them
has been expressed by this Court so plainly that it is
disappointing that all fishermen have not taken warn-
ing. Had the skipper of the "Gaul" had any reason
to suppose that other craft would be met with within
a short distance to the southward and westward of
where he was when he went down to breakfast, he
would probably not have left an uncertificated hand
in a position in which no certificated hand should
have been placed. For this reason, and because of his
good record, the Court has dealt leniently with what
was a serious offence.

In view of recent decisions, unquestionably both
vessels carried wrong lights, and, apparently, from the
evidence, trawlers, when they have temporarily ceased
trawling, are often remiss in substituting the mast-
head and side lights for the fishing lights. It, how-
ever, cannot be alleged that in this case the improper
lights had anything to do with the casualty.

No question was asked by the Board of Trade as to
whether the "Lord Rosebery's" fishing lights were
out before the casualty. However, had she been in
darkness, the cause of the casualty would not have been
far to seek, and a great deal of time was taken up on
hearing evidence on this point. The Court is, how-
ever, entirely satisfied that, prior to the casualty, she
had these lights burning, although, apparently, they
were extinguished by the impact between the vessels,
and, when the boat came from the "Gaul," there
seems to have been only one gas light not put out.

It was argued by the solicitor for the second hand
of the "Lord Rosebery" that, if the look-out on that
vessel were defective—as it unquestionably was—yet
that had nothing to do with the casualty. From this
view the Court wishes to express its dissent. Under
the circumstances of the case, and leaving the wrong
lights out of account, it would be absurd to hold the
"Gaul" alone to blame for the casualty. Had a vigilant
look-out been on the wheelhouse of the "Lord Rose-
bery," the collision need not have occurred. Being
crossing vessels it is true that, as she had her on her
own starboard side, it was the duty of the "Gaul"
to keep out of the way, and the "Lord Rosebery" to
keep her course. Still, had there been a proper look-
out on the "Lord Rosebery" she would have seen the
impending danger much earlier, sounded her whistle,
and, if need be, taking advantage of the provisions of
Article 27, might even at the last moment have found
a way of escape. Of course, on seeing the "Gaul"
under steam carrying fishing lights, the look-out might
naturally have assumed that she had her trawl down,
and, acting on the decision in the Tweedsdale (L. R.
14 P. D. 164), would have kept out of the way,
although, had he known the truth, it would not have
been his duty to do so. However, had he attempted
to do so and failed, the misleading lights of the other
vessel would have cast the blame upon her, (for his
wrong lights would not have contributed to the
casualty), and in all probability he would not have
failed. Therefore, in the opinion of the Court, the
bad look-out on both vessels contributed to the
casualty.

At the conclusion of the evidence, Mr. Saxelby,
on behalf of the Board of Trade, submitted the
following questions for the opinion of the Court:—

(1) At or about, or shortly after 7 a.m. of the
16th February last, were the steam vessels "Lord
Rosebery" and "Gaul" engaged in trawling within
the meaning of Article 9 (d) of the Regulations for
Preventing Collisions at Sea? If so, did they
exhibit the lights referred to in that Article?

If the vessels were not engaged in trawling, did they
exhibit the lights referred to in Article 2 of the said
Regulations?

(2) At the time mentioned, were the vessels crossing
ships within the meaning of Article 19 of the
Regulations? If so—

- (a) Did the "Gaul" comply with that Article
and Articles 22 and 23, and
(b) Did the "Lord Rosebery" comply with
Article 21 of the Regulations?

If the vessels were not crossing ships, were the
proper precautions taken by those on board both
ships to prevent a collision within the meaning of
Article 29 of the Regulations?

(3) Was the skipper of the "Gaul" justified in
leaving that vessel in charge of James Smith, spare
hand?

(4) Was a good and proper look-out kept on both
vessels?

(5) What was the cause of the collision?

(6) Was the "Lord Rosebery" prematurely aban-
doned? Was every effort possible made to save her?

(7) Were both vessels navigated with proper and
seamanlike care?

(8) Was the loss of the steamship "Lord Rosebery"
caused by the wrongful act or default of the second
hand of that vessel or of the skipper of the "Gaul"?
Does blame attach to James Smith, spare hand of the
"Gaul"?

James Smith, spare hand of the "Gaul," having
said a few words, Mr. Colbeck having addressed the
Court on behalf of the skipper of the "Gaul," Dr. A. E.
Jackson (for Dr. T. C. Jackson) on behalf of the
underwriters, and Dr. R. W. Aske having spoken for
the second hand of the "Lord Rosebery," the Court
gave judgment and returned the following answers to
the questions of the Board of Trade:—

(1) At or about or shortly after 7 a.m. of the
16th February last, the steam vessels "Lord Rosebery"
and "Gaul" were not engaged in trawling within the
meaning of Article 9 (d) of the Regulations for
Preventing Collisions at Sea. The former vessel had
been driving before the wind for over two hours and
the latter vessel was for 20 minutes or more prior to
the casualty on a S.W. course, while on board both
vessels the crew were engaged in working at the nets.
Although not engaged in trawling, both vessels had
their trawling lights up and neither of them exhibited
the lights referred to in Article 2 of the said
Regulations.

As the look-out on both vessels was bad, the wrong
lights had nothing to do with the casualty.

(2) At the time mentioned the vessels were crossing
ships within the meaning of Article 19 of the Regula-
tions. This being so—

(a) The "Gaul" did not comply with that article,
but she did not infringe Article 22 as she did
not cross ahead nor attempt to do so. She
did not comply with Article 23.

(b) The "Lord Rosebery," in the absence of a
good and proper look-out, did nothing, and
thus she unconsciously did comply with Article
21 of the Regulations.

(3) The skipper of the "Gaul" was not justified in
leaving that vessel in charge of James Smith, spare
hand. No man placed alone in the wheelhouse could
steer the vessel and at the same time keep a good and
proper look-out.

(4) A good and proper look-out was not kept on
either vessel.

(5) The collision was caused by the "Gaul" having
a bad look-out and not keeping out of the way of the
"Lord Rosebery." It would have been avoided or its
severity lessened if the "Lord Rosebery" had not
also had a bad look-out.

(6) The "Lord Rosebery" was not prematurely abandoned. Nothing that could have been done would have saved her.

(7) Neither vessel was navigated with proper and seamanlike care.

(8) The loss of the steamship "Lord Rosebery" was caused by the default of the second hand of that vessel and by the wrongful act of the skipper of the "Gaul." Some blame does attach to James Smith, spare hand of the "Gaul."

As the second hand of the "Lord Rosebery" was dividing his time between the wheelhouse and the deck to comply with the wish of the skipper, the Court refrains from dealing with his certificate, but severely censures him for leaving the wheelhouse at all without calling up another man to remain there until he returned. Taking into consideration the excellent character borne by the skipper of the "Gaul," the Court suspends his certificate (No. 6445) for three months only from this date. The duty which the

skipper most improperly entrusted to James Smith, the spare hand of the "Gaul," was an exceedingly difficult one for any man to perform. The Court, however, is of opinion that James Smith should have seen the lights of the "Lord Rosebery" sooner, and thus is not free from blame.

J. G. HAY HALKETT,
Judge.

We concur,

WM. BARNETT BIGLEY, }
WM. G. B. MELVILLE, } Assessors.
W. C. NORMINTON, }

(Issued in London by the Board of Trade on the 16th day of June, 1908.)

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