

(No. 7796.)

"EL KAHIRA" (S.S.).

THE MERCHANT SHIPPING ACT, 1894.

REPORT OF COURT.

In the matter of a Formal Investigation held at the Railway and Canal Commission Court, Royal Courts of Justice, on the 18th, 19th, 20th, 21st, 26th and 27th days of September, 1923, and on the 4th day of October, 1923, before H. W. DISNEY, Esq., assisted by Captain A. R. PILKINGTON, J. McLAREN, Esq., M.I.C.E., and A. S. YOUNGER, Esq., B.Sc., M.I.N.A., into the circumstances attending the loss of the British steamship "El Kahira," of London, which left London on the 7th or 8th July, 1922, bound for Algiers, and which was seen off St. Katherine's Point, English Channel, and was reported to have been again sighted off Cape Finisterre on or about 12th July, 1922, and has not since been heard of.

The Court having carefully inquired into the circumstances attending the above-mentioned casualty, finds, for the reasons stated in the Annex hereto, that the steamship "El Kahira" went down and was lost with all on board in heavy weather on the night of the 8th or the morning of the 9th July, 1922, but that there is no evidence as to the actual cause of her loss.

Though there is no evidence that as regards her hull or machinery the ship was unseaworthy, in view of the proposed voyage, the Court finds that when the ship sailed she was an unsafe ship for the following reasons:—

- (1) She was not provided with a wireless installation as required by law.
- (2) Her boats' falls were in such a condition that the boats could not be readily launched or easily handled.
- (3) She had been so long laid up in the Thames, and such a length of time had elapsed since she was last thoroughly surveyed, that it was highly improper to send her to sea without first causing her to be dry-docked and thoroughly overhauled.

For allowing the ship to proceed to sea in this unsafe condition, the Court finds that Mr. Ernest Olivier and Captain B. Swinhoe-Stothard are responsible, inasmuch as they failed to use all reasonable means to ensure the ship being sent to sea in a seaworthy state, and as regards the wireless installation they deliberately broke the law.

Regarding Mr. Ernest Olivier as primarily responsible for all the circumstances which made this investigation necessary, and for the consequent large expenditure of public money, the Court orders him to pay the sum of 200 guineas towards the expenses of the investigation.

Dated this 4th day of October, 1923.

H. W. DISNEY, *Judge.*

We concur in the above Report.

A. R. PILKINGTON,
JOHN McLAREN, } *Assessors.*
A. SCOTT YOUNGER,

ANNEX TO THE REPORT.

This inquiry was held at the Railway and Canal Commission Court, Royal Courts of Justice, Strand, W.C., on the 18th, 19th, 20th, 21st, 26th and 27th days of September, 1923, and on the 4th day of October, 1923. Mr. ALFRED BUCKNILL, M.A. (instructed by the Solicitor to the Board of Trade) appeared as Counsel on behalf of the Board of Trade; Mr. DAVID

DAVIES (instructed by Messrs. Parker, Garrett and Co.) on behalf of the underwriters on the ship and the underwriters of the cargo; Mr. PILCHER (instructed by Messrs. William A. Crump and Son) on behalf of the underwriters on a policy against accidents to the crew of the vessel effected by Messrs. Olivier and Co., Ltd.; Mr. LEWIS NOAD (instructed by Messrs. Deacon and Co.) on behalf of Bureau Veritas and Mr. L. DABBY (instructed by Messrs. Thomas Cooper and Co.) on behalf of the owners, the Trading and Coaling Company, Ltd., Mr. Ernest Olivier, and Mr. H. W. Beckett, the registered manager of the vessel, and Captain B. Swinhoe-Stothard, the marine superintendent. Mr. G. GRAY (of the firm of Messrs. Rehder and Higgs) appeared as solicitor on behalf of the Imperial Merchant Service Guild to watch the interests of the widow of Captain Pepperell.

The "El Kahira," official number 110,140, was a steel screw vessel built in 1892 by Messrs. Robert Napier and Sons, Glasgow, for a foreign owner, and was registered as a British vessel for the first time in 1899. Her dimensions were:—Length, 300 feet, beam, 37.5 feet, moulded depth, 26.3 feet.

She was fitted with triple expansion engines. Her indicated H.P. was 3,600 and N.H.P. 510; her speed was about 16 knots. The diameters of the cylinders were 29½ inches, 47 inches and 79 inches respectively, with a stroke of 54 inches. She had the usual pumps for a vessel of her size. There were four single-ended steel boilers with a working pressure of 150 pounds, but at the time of the loss of the vessel the working pressure had been reduced to 130 pounds per square inch.

The vessel had been built for carrying about 70 first-class passengers, a number of second-class passengers, and cargo. She was of the spar deck type, with three decks, and had in addition one promenade deck amidships, 122 feet long, and a fore-castle deck 35 feet long. Water ballast was carried in a cellular double bottom fitted the whole length of the vessel and divided into three separate tanks; and a longitudinal bulkhead was fitted in No. 3 tank. The total water ballast was 319 tons. On the boat deck were davits and fittings for six boats. She was fitted with hand and steam steering gear, and had the required number of compasses. The mean draft when loaded to the centre of the disc in sea water was 21 feet 3¼ inches, and the deadweight carrying capacity was 2,110 tons. The registered tonnage was 2,034 tons. A cross bunker was fitted at the forward end of the stokehold and had a capacity of 429 tons. In order to get coal into the bunkers doors were fitted in the side of the vessel. The vessel had three holds, namely, fore hold 38 feet 4 inches long, main hold 49 feet 10 inches long, and after hold 49 feet 10 inches long. The fore hold tween deck was 38 feet 4 inches long, the main lower 'tween deck 49 feet 10 inches long, the after lower 'tween deck 61 feet 4 inches long and the fore main 'tween deck 26 feet 10 inches long. The total cubic space in feet to the top of the beams was 54,969. The vessel had four hatchways.

The "El Kahira" was owned and worked by the Khedivial Mail Steamship Co. until August, 1919, when she was bought by the Transport and Trading Co. for about £45,000. She had been re-classed in the Bureau Veritas in November, 1917, and this classification was confirmed at Marseilles in December, 1919, when she was dry-docked for examination of the bottom, and her boilers and machinery generally were surveyed in accordance with the Bureau Veritas' requirements. Under the Khedivial Mail Co. she had been carrying first and second class passengers as well as cargo, but by January, 1920, the second-class accommodation at the after end of the vessel had been removed in order to increase the cargo space.

During the early part of 1920 she was trading in the Mediterranean, and was subsequently engaged in running between London and Hamburg. On one of these voyages in June, 1920, she grounded on the Island of Texel, but was stated to have sustained no damage, though no survey was held to ascertain if in fact any damage had taken place.

In May, 1920, the vessel was sold to the Franco-British Steamship Company Limited, though no money was actually paid by the buyers, the transaction being merely a book entry. The trading of the vessel appeared to have resulted in a loss, and her owners mortgaged her to the Hydra Steamship Company at different times for various sums amounting to about £5,920 in all. In March, 1922, the Hydra Steamship Company took possession of the vessel under the mortgage, and on the 19th May, 1922, sold her to the Trading and Coaling Company for the sum of £5,200, representing the amount still owing on the mortgage. Again no money actually changed hands, but Mr. Ernest Olivier gave his personal guarantee for the subsequent payment of the purchase price to the Hydra Steamship Company, on behalf of the Trading and Coaling Company, who were the registered owners at the time of her loss.

In both the Transport and Trading Company and the Franco-British Steamship Company Mr. Ernest Olivier was directly interested. He was a shareholder in the former and managing director of the latter. A clerk in the employ of his company, Messrs. Olivier and Company (Limited), was appointed a director of the Hydra Steamship Company, and a member of Mr. Olivier's family held shares in that company. Mr. Ernest Olivier stated to the Court that he had no interest in the Trading and Coaling Company. That Company was formed by his son, Mr. Raymond Olivier, but Mr. Ernest Olivier admitted that he had the management and control of the "El Kahira" up to the time of her loss.

From August, 1920, till July, 1922, the vessel was laid up in the River Thames, first at Rainham Buoys, and latterly at Folly House Buoys. During this period considerable sums of money were spent, partly on minor repairs in the engine room, but mainly on renovations and renewals in the first class passenger accommodation. This work was for the most part carried out during the latter half of 1920, and as far as the deck and engine room were concerned merely covered the numerous small items of repairs usually necessary after a voyage. No important repairs to engines or boilers were carried out.

Early in 1922 it was decided to send the vessel to the Mediterranean, and with a view to preparing the vessel for sea the owners appointed Captain Vassiliades and Chief Engineer Stergius to stand by the vessel. Little or nothing appears to have been done by either of them until about the end of May, when a certain number of men were employed, the weekly wage bill amounting to between £40 and £50, which continued up to the time of the vessel sailing. Some of these men were engaged in cleaning the holds and bilges and others on similar work in the engine room.

In June, 1922, a survey was carried out by a Mr. Charles Casebourne at the request of the Salvage Association on certain small damage sustained by collision with the steamship "Paliki" at Rainham on 26th August, 1921, and also on damage to the propeller through striking a mooring buoy on 29th August, 1921. These damages were relatively unimportant and did not interfere with the seaworthiness, but it appears from the report that the engine turning gear was completely out of action, and there is no evidence that this was put in order before the vessel left. On the completion of the survey a certificate of seaworthiness was given by Mr. Casebourne, who stated to the Court that "she was seaworthy so far as the accident was concerned," and that was all he was concerned with.

Besides his interest in the various companies already mentioned which had for a longer or shorter period owned the "El Kahira," Mr. Olivier owned or managed a fleet of other steamers. He had as his Marine Superintendent Captain B. Swinhoe-Stothard. Captain Swinhoe-Stothard explained to the Court that in his view he was to act merely in an advisory capacity in relation to the "El Kahira," the fitting out of the vessel being in the hands of Captain Vassiliades and Chief Engineer Stergius. Mr. Olivier however stated that Captain Swinhoe-Stothard was responsible to him for the fitting out of the vessel. Requisitions for the necessary stores had to be sub-

mitted to the Marine Superintendent, and he himself surveyed the lifeboats, drew the attention of Mr. Olivier to the absence of the wireless, and undertook other supervisory duties which clearly indicated that he was exercising all the functions of a marine superintendent. The Court therefore is unable to accept Captain Swinhoe-Stothard's disclaimer of responsibility for what was done.

The ship's class with the Bureau Veritas was confirmed in December, 1919, at Marseilles, and as regards the hull and main engines no further survey except on the propeller shaft would fall due before November, 1921, unless the vessel met with some accident affecting her class. The boilers, however, were 30 years old, and should have been surveyed annually, and subjected to an hydraulic test every two years by the classification surveyors. It does not appear that any complete boiler survey had been held after December, 1919, so that when the vessel sailed on her last voyage the boilers were much overdue for survey, and there is evidence to show that they were in a defective condition.

The Court considers that neither Mr. Olivier nor Captain Swinhoe-Stothard can evade responsibility for this neglect, especially as their attention was called to the matter in an interview and by correspondence with the classification society. Attention is particularly directed to the three following letters:—

Messrs. The Franco-British Steamship Co.,

1, Billiter Avenue, E.C.

29th May, 1922.

From London District Office.

Dear Sirs,

s.s. "CITY OF WINDSOR," EX "EL KAHIRA."

In March last, in reply to our enquiries, you informed us that this vessel was proceeding to Greece, where re-classification surveys would be carried out.

We now hear she is laid up in London, and will therefore be glad to know if it is your intention to re-class the vessel here so as to preserve her class in the Register.

Yours faithfully,

(Signed) PHILIP D. WINSTANLEY.

(NOTE.—It was intended to change the name of the ship from "El Kahira" to "City of Windsor" but this change was never effected.)

From Olivier and Co.

1, Billiter Avenue, London, E.C. 3.

30th May, 1922.

To Messrs. The Bureau Veritas,
155, Fenchurch Street, E.C.

Dear Sirs,

s.s. "EL KAHIRA."

We thank you for your favour of yesterday's date. We regret owing to Engineers' Strike, repairs to this vessel have been considerably delayed, but we hope to sail her in the next few days.

Yours faithfully,

(Signed) B. SWINHOE-STOTHARD,
Marine Superintendent.

From London District Office.

To Messrs. The Franco-British Steamship Co.

c/o Messrs. Olivier and Co.,

1, Billiter Avenue, E.C. 3.

June 1st, 1922.

Dear Sirs,

s.s. "EL KAHIRA."

We are in receipt of your letter of the 30th ultimo in reply to our enquiries of 29th ultimo, which is not clear to us, as you do not confirm our enquiry as to the vessel being laid up in London and if it is your intention to re-class the vessel with us the repairs carried out here should be done under our survey.

Will you kindly inform us exactly what the position is and where you hope to sail the vessel to within the next few days.

Kindly note that her last term and class expired in November, 1921, and we require definite information in order to avoid removing her class from the Register.

Yours faithfully,

(Signed) PHILIP D. WINSTANLEY.

Though the from the regis sailing, the let action was ab reply was ever was given to Captain Swinhoe-Stothard's statements made by were untrue. ing statements those managin of the vessel insurances up survey and ov had suffered already made the Court beli of disposing c exacting in the In their anxie to take the r respect of hul

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Though the class of the vessel had not been removed from the register of Bureau Veritas at the time of sailing, the letter of 1st June, 1922, shows that such action was about to be taken by the society. No reply was ever sent to that letter, and no explanation was given to the Court for the failure to reply. Captain Swinhoe-Stothard admitted that the statements made by him in the letter dated 30th May, 1922, were untrue. The Court concludes that these misleading statements were made in pursuance of a policy by those managing the vessel to postpone the removal of the vessel from the register in order to obtain insurances upon her without incurring the expense of survey and overhaul for reclassification. The owners had suffered considerable loss upon the vessel, had already made several attempts to sell her, and were, the Court believes, sending her to Greece in the hope of disposing of her to purchasers who would be less exacting in their requirements than British shipowners. In their anxiety to avoid expense they were prepared to take the risk of the vessel being unseaworthy in respect of hull and machinery.

The evidence regarding the condition and construction of the boats is conflicting. Apparently there were davits fitted for six boats, three on each side, four of them being apparently steel boats, one of them a wooden boat, and the sixth one a small motor launch, which had been placed under davits instead of an old wooden boat which had been condemned and laid on deck to be thrown overboard at sea. Two of these boats, viz., No. 1 boat forward on the port side and No. 3 boat aft on the starboard side, had been picked out as best serving the requirements, and were, from the evidence, sufficiently large to be capable of each accommodating the whole of the crew. They were both steel boats and alleged to have been examined by Captain Swinhoe-Stothard, who apparently ordered and obtained the necessary compasses, red lights, boat axes, etc., sufficient for these two boats only. Nothing was done to any of the other boats, but from statements made by several of the witnesses they appear to have been in a neglected state, with the exception of the small boat, which did not form part of her necessary equipment.

The boats' falls were described by both pilots as in apparently bad condition, and Captain Swinhoe-Stothard informed the Court that they were in his opinion perished, in view of which he ordered a coil of new 3½-inch manila rope to replace them. New falls, however, were never fitted.

Captain Swinhoe-Stothard stated that there were 100 life jackets in the ship, but neither these nor the life boats and their equipment had been approved by the Board of Trade.

The vessel was not and never had been fitted with a wireless installation, and when it was first decided to send the vessel to Greece the attention of Mr. Olivier was called to this fact by Captain Swinhoe-Stothard, who pointed out the necessity of fitting the vessel with wireless for the voyage. Nothing was, however, done at the time, but, later, arrangements were made to bring back from Algiers a wireless set which had been supplied to the steamship "Kassiani," a vessel also managed by Olivier and Co., Ltd., but it was then already too late, and it was found towards the end of June that this set could not possibly arrive in time. No further steps were taken in the matter and the vessel was sent to sea, eventually, without any wireless apparatus.

The absence of a wireless apparatus was noticed by Mr. F. Philips-Smith when signing on the crew for the "El Kahira," owing to there being no wireless operator on her articles, but he apparently accepted the information given him by the Master that the vessel was exempted, and failed to take sufficient, if any steps, to corroborate it.

The steamer was chartered on 27th June, 1922, by C. Czarnikov, Ltd., to carry a cargo of sugar in bags to Italian ports. Loading was commenced at 10 a.m. on the 30th June, and completed at 5 p.m. on the 5th July, 29,161 100-lb. bags of the total weight of 1,301 tons 17 cwt. were taken on board in that time. During the loading it was found that it would be necessary to stow a certain amount of cargo in the

second-class saloon, as had been done on previous voyages, in order to put the vessel in trim, and about 1,900 bags were placed there. There does not appear to be any valid reason against this cargo being stored in that compartment. There is some discrepancy between the figures given by the stevedore and that by the ship's clerk as to the number of bags stowed in this space. The Court is satisfied that this was caused by the stevedore moving the loading barge forward to No. 2 hatch on getting the ship sufficiently by the stern without notifying the ship's clerk who had already allotted the barge's cargo to the after hatch. The cargo was apparently well stowed and its very nature would preclude the possibility of its shifting at sea.

Having carefully weighed the evidence of the various witnesses as to the hatches the Court is of opinion that they were properly battened down before the vessel proceeded to sea.

There was about 180 tons of brick rubble ballast in the forepart of the coal bunkers, which it was alleged was for the purpose of giving the vessel greater stability when in light condition. Some of the witnesses asserted that this ballast had been placed there because No. 2 ballast tank leaked and could not be filled, but this evidence is inconsistent with the testimony of other witnesses, whom the Court has no reason to disbelieve, to the effect that all the water tanks were full during the two years that the vessel was laid up in the River Thames.

At the time of sailing there was 230 tons of coal in the bunkers, which would be sufficient for 11 days' steaming in normal weather. The vessel's draft was 20 feet 10 inches aft, 19 feet 10 inches forward, giving a mean draft of 20 feet 4 inches. Her first port of call was Algiers, which, at the anticipated speed of eight knots, would require a voyage of nine days. It was suggested during the hearing that the margin of barely two days' coal was insufficient, but as both Lisbon and Gibraltar are on the direct route to Algiers the quantity carried seems to be ample.

The "El Kahira" carried a crew of 29 hands according to a copy of the articles supplied by the Board of Trade.

It was arranged that the vessel should sail on the evening of July 6th, but it was found that a leak had developed in one of the main boilers which was under steam, and her departure was delayed in consequence until the following morning. Shortly after sailing when the vessel was off Blackwall Point, it was reported that the boiler was again giving trouble, but this was apparently successfully dealt with, and the vessel continued on her voyage, and no further report regarding the boiler has been received. At Gravesend, which was reached about 1 p.m. the sea pilot came on board. The compasses were adjusted by a professional adjuster off the South Foreland; the standard compass was practically correct magnetic on every point at the completion of the operation. After the vessel had left Gravesend, while the anchor was being hove on board, the catfall carried away and some 45 fathoms of rope ran out, and the ship had to be stopped in order to recover the anchor. The pilot reports that during the operation the deck steam pipe couplings were blowing so badly that he had to request that steam be shut off as he was unable to see ahead. When the pilot left the vessel at Dover at 10.30 p.m. on 7th July, the wind was freshening from the south-west.

On the following day the steamship "Staffa" of Leith sighted astern a steamer which came up and passed her at 3 p.m. This proved to be the "El Kahira," the name being plainly visible. It was then blowing a moderate gale of increasing force with heavy squalls. Both vessels were shipping a good deal of water at the time. Later in the afternoon the "Staffa" overtook the "El Kahira." As she was being passed the mate noticed that some part of the bridge rail had been damaged, but the damage did not appear to be of a serious nature. The wind and sea increased until midnight, and from then it continued to blow with the force of a heavy gale, until noon of 9th July, when it slowly moderated.

As regards her boats, some attention was paid to these, and two of them were picked out, and equipped, one on each side of the vessel, sufficient to carry the entire crew. There is some evidence that these were examined and properly equipped, but as regards the boats' falls, the Court is of opinion that these were not in a proper condition for the purpose for which they were intended.

7. Some difficulty is experienced in arriving at any definite conclusion as to what work was actually carried out on board, but there is evidence to show that the boilers and machinery were tested under steam on 8th June, 1922. No important renewals or repairs, relating either to hull or machinery, were carried out during the period she was laid up.

8. The ship was purchased from the Khedivial Mail Steamship Co. towards the end of 1919 for about £45,000, but shortly before her loss she was transferred to the Trading and Coaling Co., Ltd., by the Hydra Steamship Co., Ltd., for £5,200, her actual value being probably rather higher than this, say £7,000, for which sum the Trading and Coaling Co., Ltd., were prepared to sell the vessel.

Insurances against total loss only, amounting to £8,000, were effected by the owners on the hull and machinery only, no policies being taken out on either freight or disbursements. The insurances on hull and machinery were held by the Hydra Steamship Co., Ltd., as security for the payment of the purchase money of £5,200, the greater part of which was still unpaid, though guaranteed for payment by Mr. Ernest Olivier.

9. (a) The vessel was no longer classed in the Bureau Veritas when she left London in July, 1922.

(b) The "El Kahira" was not fitted with a wireless installation as required by the Merchant Shipping (Wireless Telegraphy) Act, 1919, because the owners deliberately neglected to provide it in order to save expense. She was eventually allowed to proceed to sea without a wireless installation owing to the negligence of Mr. F. Philips-Smith, Deputy Shipping Superintendent to the Board of Trade, who issued the "A.A." certificate without first communicating with the proper authorities, thus enabling the owners to obtain her clearance at the Custom House.

(c) As regards hull and machinery, although there is no positive evidence that the vessel was in an actually unseaworthy condition, there is evidence

that the boilers were in a defective condition, and the Court considers that the bath and soil pipe openings in the ship's side, which were below the load water-line, would be a source of danger to the ship in bad weather. The boats' falls were in such a condition that the boats could not be readily launched or safely handled, and the vessel was without a wireless installation.

(d) The cargo was properly stowed and secured from shifting.

(e) The vessel had the required freeboard and was in proper trim for a summer voyage.

10. The "El Kahira" was sighted by the steamship "Staffa" in the afternoon and evening of July 8th, 1922, the weather being very stormy with an increasing westerly gale and heavy sea. Both vessels were shipping a good deal of water at the time and the mate of the "Staffa" noticed that some part of the bridge rail of the "El Kahira" had been washed adrift by a sea. At about 8 p.m. a vessel's lights were visible astern, which the officers of the "Staffa" believed to be the "El Kahira." The Court is not satisfied that she was ever seen again by any other vessel.

11. As there are no survivors from the vessel, the actual cause of her disappearance can only be a matter of conjecture, but in view of the heavy weather prevailing at the time, and the dangerous sea which was running in the vicinity of the Casquets, the Court is of opinion that the "El Kahira" was overwhelmed by the sea during the night of the 8th or the early morning of the 9th July, 1922.

12. No blame attaches to Mr. H. W. Beckett, the registered manager. Blame for the loss of the ship does attach to Mr. Ernest Olivier whom the Court finds to be primarily responsible for sending the ship to sea in an unsafe condition, and to Captain B. Swinhoe-Stothard for assuming responsibility and failing to take adequate measures to ensure that the vessel was properly prepared for sea.

Dated this 4th day of October, 1923.

H. W. DISNEY, *Judge.*

We concur.

A. R. PILKINGTON,
JOHN MCLAREN,
A. SCOTT YOUNGER, } *Assessors.*

(Issued by the Board of Trade in London
on Wednesday, the 24th day of October, 1923.)

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