

Proceedings of January 20, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
WESTERN DISTRICT OF MICHIGAN.

Before HON. CLARENCE W. SESSIONS.

UNITED STATES,

vs

WILLIAM H. HULL, GEORGE T. ARNOLD,
HARRY PEDERSEN, JOSEPH M. ERICKSON,
ROBERT REID and CHARLES ECKLIFF.

Appearances:

For the Government:

Myron H. Walker, Joseph B. Fleming,
Oliver E. Pagan, and Charles F. Clyne.

For George T. Arnold:

John D. Black, E. B. Cresap and Henry Hoffman.

For William H. Hull:

Charles E. Kremer and James J. Barbour.

For Captain Pedersen:

James J. Barbour.

For Joseph M. Erickson:

Clarence Darrow.

For Captain Reid and Charles Eickliff:

Walter I. Lillie and Charles E. Kremer.

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The Court: I think we are ready to proceed in these removal proceedings.

Mr. Walker: May it please the Court, it is suggested that perhaps it might be well in the beginning to have the attorneys announce if they will, which of the parties they represent so they will be known on the record.

Mr. Barber: If the Court please. I take it that the record will show at the outset, that your Honor is sitting as a Commissioner, according to the arrangements which have been made.

Mr. John D. Black, and Mr. E.B. Cresap, and Mr. Henry Hoffman will ~~be~~ represent Mr. George T. Arnold.

Mr. Charles E. Kremer and myself, James J. Barbour represent Mr. William H. Hull; and I also represent Captain Pedersen; and Mr. Clarence Darrow represents Mr. Erickson; and Mr. Walter I. Lillie represents Captain Reid and Mr. Eckliff; and Mr. Kremer also represents Captain Reid and Mr. Eckliff. I think that is all on our side.

Mr. Walker: On behalf of the Government, we wish to offer in evidence certified copies of indictments found by the Grand Jury for the Northern District of Illinois, Eastern Division. I will give the numbers, -- 5771, 5772, 5773, 5774, 5775, all certified. Perhaps I should announce in connection with the offer the Acts under which the indictments are found. The first one, 5771 for violation of Sec. 282 of the Criminal Law; the second one, 5772, for violation of Sec. 282 of the Criminal Code; the third, 5773, for violation of Sec. 37 of Criminal Code; 5774 for violation of Sec. 282 of the Criminal Code, and I may say, that the first three are returned against all of the parties

named, and who have been summoned to appear here.

William H. Hull, George P. Arnold, Harry Pedersen, Joseph M. Erickson, ~~Charles~~ Robert Reid, Charles C. Eckliff and also against Walter C. Steele, who is not a party in this proceeding.

5774 is found under Sec. 282 of the Criminal Code, returned against Mr. Pedersen and Mr. Erickson, and the St Joseph & Chicago Steamship Company.

Mr. Barber: That was what number?

Mr. Walker: 5774.

5775 for violation of 282, Criminal Code, returned against Robert Reid and Charles C. Eckliff.

Those, your Honor, are not attached to the complaint and warrant that was issued in this matter, but the Government desires to offer them in evidence and have them considered.

The remaining three are Nos. 5810, for violation of Sec. 282, Criminal Code, returned against all of the defendants, I think I will call them, and also Walter K. Greenbaum, who is not a party to this proceeding.

5811 for violation of Sec. 4561 of the Revised Statutes as amended, which will be found, I think as Sec. 11 of the Act of December 21, 1898.

Mr. Lillie: That is the amendment?

Mr. Walker: That is the amendment. And the Sec. 77 of the Criminal Code. That is returned against all of the parties to this proceeding, including Mr. Steele and Mr. Greenbaum.

The last one, 5812 is for violation of Sec. 37 of

the Criminal Code, and is returned against all of the parties to these proceedings; it does not include Mr. Greenbaum.

Mr. Barber: To the introduction of 5810 --11--12 each of the defendants, severally, object on the ground that the indictment states no offense; and for other legal reasons which I understand we will argue before your Honor after the evidence.

To the introduction of the other indictment, we object on the ground that the proceeding is not based on the other indictments and therefore they are not evidence in this case.

The Court: Do I understand that the other indictments are not related to this proceeding?

Mr. Barber: The other indictments were returned, if the Court please, in September. Earlier indictments to the indictments upon which these proceedings are based, 5810-11-12 only returned in November, as I believe.

Now under the practice I understand they have the right to introduce 5810-11-12 as prima facie evidence of the facts therein stated. I don't understand they have the right to introduce other indictments.

The Court: Not unless those may be superceding indictments.

Mr. Barber: The indictments I object to, were previous indictments.

The Court: Well, I understand. Not unless the indictment here involved may supercede indictments of the former ones.

Mr. Barber: Well I have not heard the Government

announce that that is the fact.

The Court: Well that, of course, I do not know.

Mr. Walker: They are offered only as a matter of evidence to show that I do not rely primarily and principally upon them, but they are offered as a matter of evidence, as bearing upon the question on which your Honor has to determine this proceeding, as I understand the question, as to whether a crime has been committed, and probable cause-- a prima facie case.

The Court: Well, I will receive them subject to the objection but not passing upon the question at this time. I will say to counsel that I have very grave doubts as to the right of the Government to introduce these other indictments that are extraneous to this matter.

Mr. Barber: Of course the first and the final objection that is based upon the ground that they are evidence of other crimes.

Mr. Walker: They set forth the same facts and transactions, and in part, are found under the same section of the Criminal Code -- two sections of the Criminal Code. These other indictments, as I understand it, in part, as your Honor intimates, are superceding indictments.

Mr. Barber: May I ask the District Attorney if in introducing these former indictments it is for the purpose of making prima facie proof of the facts therein stated?

Mr. Walker: It is for the purpose of making a prima facie case in particular. Frankly, though the chief reliance is placed upon the three indictments which are attached to the complaint.

Mr. Lillie: The certified copies of 5810-11-12 are the only ones attached to the complaint.

Mr. Walker: That is true.

The Court: Well, as I say, I will not pass upon the question at this time, I simply state that I have very grave doubts as to the right of the Government to introduce the other indictments other than those upon which the complaint and warrant are based in this matter.*

Mr. Barber: If the court please, for the convenience of counsel, I will say that none of the defendants will require any proof made as to their identity.

Mr. Walker: I had understood that to be the case.

The Court: Proof of identify is waived.

Mr. Walker: The only other proof that I now wish to offer is that of certified copies of the bench warrants issued upon these indictments and the official return as to these defendants appearing here not found within the district -- the Northern District of Illinois.

Mr. Lillie: Does that offer also include all of the rest of the indictments which have been offered?

Mr. Walker: Do you mean as to the first five?

Mr. Lillie: Yes.

Mr. Walker: I think this relates only to 5810-11-12.

The Court: It will be received, you may have them marked, as well as the others.

Mr. Barber: Mr. Walker, shall we proceed now?

Mr. Walker: Just a moment.

(Papers marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9)

Mr. Walker: It is thought best your Honor if it meets with your Honor's approval, that these indictments 5810, 11, 12-- the last three named -- should be read in

whole or in part, unless your Honor has already familiarized himself with them sufficiently, and they might be desirable in evidence.

The Court: I don't see what good can be accomplished. I take it for granted that counsel upon the other side are all familiar with the indictments, and the Court can familiarize itself with the indictments.

Mr. Hoffman: We have seen them all.

Mr. Walker: The only purpose is that all may have thoroughly in mind the nature of the charges under which the evidence is adduced.

Mr. Barber: So far as I am advised the counsel on the other side have the indictments thoroughly in mind, and I think the reading of them may be deferred until occasion arises.

The Court: It does not seem to me it is necessary.

Mr. Walker: Very well.

I can state very briefly the nature of them.

The Court: If you so desire you may do it.

Mr. Walker: I am not desirous of doing it unnecessarily, your Honor, but one of the counsel on this side has suggested it.

5810 for violation of Sec. 382 of the Criminal Code, of the United States shows that the steamship Eastland on the 24th of July 1915 was a vessel, licensed and enrolled under the laws of the United States; that she about to start upon a voyage upon the waters of Lake Michigan; owned by the St Joseph & Chicago Steamship Company; that Pedersen, Captain, and Mr. Erickson, Chief Engineer, Mr. Arnold and Mr. Hull, respectively the

president and superintendent and manager of the line owning the boats and in direct charge and control of the boat; and that Mr. Reid and Mr. Eckliff were local inspectors of the United States, one of hulls, the other of boilers, charged with the duty of inspecting this vessel, and had done so on the 7th of June, I think, preceding, ~~the~~ ~~day~~ and had given the necessary certificate; and also an amended certificate permitting the carriage of an added number of passengers -- I believe 3500. And that in so doing and in the management of said vessel in relation to said voyage they were negligent; they wilfully and negligently connived to the sending away upon the voyage of a vessel of unsuitable construction and unsafe and unseaworthy condition and improperly manned.

Mr. Lillie: Conspiracy that means?

Mr. Walker: No, that is not a conspiracy indictment, There are two counts in this indictment which are brought under that section. One of which counts, I believe, is set forth that the vessel was then in the Chicago river, being ^{one of} ~~xxxx~~ the connecting waters of the Great Lakes; the other count sets forth that it was in Lake Michigan, or the waters of Lake Michigan, is that right?

5811, I have been furnished a memorandum of that by Mr. ^{Payson} Higgins, of the Attorney General's office and I will refer to that. The first count is on Sec. 4561 of the Revised Statutes as amended by Act. of June 25, 1884, Chapter 121, Sec. 4 of the Act of December 21, 1898. Chapter 28, Sec. 11. And is in substance that these same parties attempted to send an unseaworthy ship to sea, thereby endangering the lives of the passengers and crew;

The second count, is on Sec. 37 of the Criminal

Code, the conspiracy section, which charges a conspiracy to commit an offense against the United States in sending an unseaworthy ship to sea. Following the first count as to the facts set forth.

The third count the same as the first count, except that it charges that thereby they endangered the lives of merchant seamen upon the vessel.

And the fourth count, based upon Sec. 37 is conspiracy to commit the offense under Sec. 382 of the Criminal Code, and endangering the lives of the passengers, 2570, by negligence and connivance, and thereby destroyed life.

Mr. Black: Pardon me, did I understand you to say that count 4 was the same as count 3 with the exceptions just stated?

Mr. Walker: No, I said the third count is the same as the first count with the exception that it charges endangering the lives of merchant seamen. The second and fourth counts are conspiracy counts.

Mr. Black: Thank you.

Mr. Walker: I will hand this little memorandum to the Court.

5812, as already stated, is based upon Sec. 37 of the Criminal Code, the conspiracy section, and only three counts I believe -- the three counts -- charges a conspiracy to send upon this voyage and also to send to sea in an unsafe and unseaworthy condition this steamship.

And I have been furnished this memorandum as to the particulars in which that indictment charges that it was unfit and unseaworthy and dangerous on the 24th of July, 1915,

namely, that she was of such construction as to render her exceptionally top-heavy and cranky and easily inclined to list dangerously and capsize upon sudden shifting of wind or sea and upon shifting of the passengers or cargo; and especially under the weight of great numbers -- 2500 passengers; that she had no permanent ballast; was equipped with a water ballast which was inadequate and ineffectual to control the steamship, among other reasons, because the water ballast was applied by a water ballast system to a single sea cock which was inadequate to supply water ballast sufficiently to withstand the pressure of wind or sea or the shifting of passengers or cargo; especially one loaded with this great number, 2500 passengers, and when they were received on board within a very short space of time, as in this case. That said sea cock was very liable to become clogged by floating and refuse matter and the ingress of water thereby impeded or prevented.

That no arrangement was made for simultaneous emptying of the tanks located on one side and filling the tanks on the opposite side. No provision was made by which it was possible to speedily ascertain how much water was in any of the said ballast tanks. Or whether any water was entering any of the tanks at a given time.

That she was manned by an incompetent and untrained compliment of officers and crew, who were incompetent to run and navigate said Eastland or operate her engines, ballast system or equipment. That she was in other respects unsafe and unfit for navigation in said service, especially that of the carrying said 2500 passengers in such service.

That the respondents had knowledge of these facts and connived together still to send her upon this voyage in this unsafe and unseaworthy condition, thereby

endangering the life of the passengers and causing loss of life.

I think that is all that is necessary unless your Honor cares to have this section read at this time.

Mr. Clyne, the United States Attorney of Chicago, and his assistant Mr. Fleming, both of whom are here, and Mr. Pagin from the Attorney General's office will have direct and principal charge of this matter on behalf of the Government, and I will defer to them.

That constitutes the case for the Government at this time, your Honor.

Mr. Barber: We desire to again formally note objection to the indictments on the ground that they do not state a crime and that the prima facie evidence shown in the indictments does not support the offenses attempted to be charged. And we waive no rights of course. But we desire to have these objections considered after the evidence is wholly in.

And with that motion, of course, goes the motion to have the defendants discharged, and each of them.

The Court: Well, the application will be formally denied at this time and objection noted.

F. A. DORITY, being produced and sworn as a witness, testified as follows:

Examination by Mr. Barber.

Q What is your name please? A F. A. Dority.

Q Where do you live? A Milwaukee.

Q What is your occupation? A Sailor.

Q How long have you been a sailor? A Thirty-five years.

Q What different positions have you held as a sailor?

A All of the different positions on board of a boat in the Master's Department.

Q What is your position at this time?

A Master -- ship master.

Q And when did you obtain your position as ship master?

A In '90 -- 1890.

Q Before that how long had you followed the sea?

A Ten or twelve years.

Q What boats had you traveled on -- in what positions?

A I had sailed.

Q What positions were you employed on and in what positions before 1890 in a general way?

A I have been employed in the ore going trade on board of steamers most of the time. Ore and coal.

Q When did you first become connected with passenger steamers?

A About 91 or 92.

Q What position did you take then?

A As second mate.

Q On what boat? A Or after 90? Pardon me Mr. Barber.

Q Yes, after 90. A I was master at 90.

Q Yes. A And I have been constantly in command of steamers since that time.

Q Tell the court what boats you have been in command of --
in the first place has all of your service been on the
Great Lakes?

A Yes, sir.

Q And more particularly Lake Michigan?

A And more particularly Lake Michigan.

Q State to the court what boats you have been on since 1890?

A I have been-- my first command was the steamer Osceola,
of the Port Huron, Sarnia and Duluth run.

Q How long did you serve on that boat?

A Two years I think.

Q Were they passenger steamers? A No, sir, freight steamer.

Q What boat next? A Colorado, the same run.

Q How long did you serve on that? A I think a couple of years.

Q What was the next boat?

A One of the Ann Arbor vessels.

Q Was it a passenger steamer? A Passenger and freight.

Q Where was that company running from? A From Frankfort,
Michigan to Kewaunee and Menominee.

Q What was its passenger allowance? A I think 35 or 40
people.

Q Mostly freight was it? A Yes, sir.

Q Car ferry, was it? A Yes, sir.

Q Carrying passengers between those points? A Yes, sir.

Q What was the next boat that you were on?

A One of the Pere Marquette boats.

Q Was that a car ferry too? A No, sir, that was a freight
boat at that time.

Q How long were you on the Pere Marquette?

A I think about six months.

Q When did you first become master of a passenger boat other than the one you have spoken of that had forty passengers?

A Why, about 97 or 98.

Q What boat was that? A Pere Marquette No. 3.

Q Where did that ply between? A From Ludington to Milwaukee -- Ludington, Michigan to Milwaukee, Wisconsin.

Q What was its carrying capacity?

A Why several hundred people with excursion permit -- seven hundred people.

Q Making daily trips? A Yes, sir.

Q After that what boats were you on? A After the Pere Marquette, the steamer Eastland.

Q When did you first -- Captain, in a general way will you tell us something as to the size of these boats which you were master of in tonnage?

A Why, this Pere Marquette I think her tonnage was about six or seven hundred ton, I think, but they were run along from six hundred up to perhaps a thousand tons capacity.

Q Did any of those boats have water ballast?

A No, sir.

Q And when did you become connected with the Eastland?

A Now I -- '03.

Q Now just for a moment I want to ask you what boat you are on now? A Steamer City of South Haven.

Q And is that a passenger steamer?

A Yes, sir.

Q Where does that run? A Chicago to South Haven, Michigan.

Q What capacity has it? A 2500 people.

Q And where does it dock? A At Clark Street Bridge, Chicago.

Q In the city of Chicago? A South end of Clark Street bridge.

Q Is that in the Chicago river? A Yes, sir.

Q And on which side of the river?

A On the west side of the bridge.

Q West side of the bridge and which side of the river?

A South side.

Q I want to know something about the Chicago river. How far from Lake Michigan is this Clark Street dock?

A Oh, I would say three quarters of a mile from the end of the pier.

Q That is three quarters of a mile west of the lake?

A I havent anything definite as to that, Mr. Barber, but to the best of my information, three quarters of a mile from the end of the north pier.

Q. How many street bridges are there from the end of the north pier where the lake is to the South Haven dock?

A Four I think.

Fleming
Mr. ~~Pagin~~: Now just a moment, Mr. Barber, of course if you are offering from Captain Dority to show where the river and lake is, I desire to object to it. That is not the way to show it. But I desire to object to this question for the purpose of showing where the river is and where the lake is.

Mr. Barber: This is merely incidental, I am asking the questions for the purpose of showing where the Chicago river and Lake Michigan is.

Fleming
Mr. ~~Pagin~~: I object as not the proper way.

The Court: What is the specific ground of the objection?

Fleming
Mr. ~~Pagin~~: The specific ground is the question where the line of the lake and the line of the river is may best be

determined by maps or one who is qualified. The specific objection is that he is not qualified, has not been qualified to show specifically where the line of the river is or where the line of the lake is; and I don't think the witness is qualified to testify as to where the river is.

The Court: I suppose the purpose of this testimony is simply to show actual conditions as they exist today and the surroundings?

Mr. Barber: That is so absolutely.

The Court: And not for the purpose of showing survey and lines or the original lines or anything of that kind?

Mr. Barber: I think I said your Honor--

The Court: Well, I will receive it for that purpose.

Q I was asking you about bridges on the river east of the South Haven Dock. How many?

A Four.

Q Will you state them. A Brush Street, State, Dearborn and Clark.

Q How long is the pier from the lake until you get to the river where there are banks on both sides?

A How long is the-- please repeat that.

Q Well, you spoke of a pier at the lake. Now is there piers on both sides or only just one pier?

A There is a pier on both sides.

Q And how long is that pier?

A Oh, I should say six or seven hundred feet.

Q That is up to the beach as you say, is it?

A Up to the dock line where the commercial docks start.

Q And then from that point west is land on each side of the stream?

A All docked -- all docked.

- Q Are these docks built on the banks of the river?
- A I presume they are.
- Q As far as you know? A So far as I know they are
- Q How many years have you been travelling on that river, Captain? A Well, 25 or 30 years, more or less.
- Q Does that river as you enter it from Lake Michigan and pull out up connect with any other lake?
- A Not to my knowledge.
- Q Have you followed it as far as it is navigable?
- A No sir.
- Q Is there a railroad bridge east of the South Haven dock and east of Rush Street? A No sir.
- Q There used to be one, did there? A Yes sir
- Q Well, so far as you know, the river does not connect with any other lake? A So far as I know, it does not.
- Q How long had the Eastland been running and been built when you became the Master of it? A Why, I think about 30 or 40 days, perhaps.
- Q By whom was it operated at that time? A The Michigan Steamship Company.
- Q Who were the officers of that company? A Mr. R. R. Blacker was manager, and outside of that, I don't recollect who were the officers.
- Q How many years were you the Master of the Eastland?
- A Four, I think.
- Q What was the trips---between what points did it ply when you were the Master? A Chicago and South Haven
- Q What is the distance from Chicago to South Haven across the lake? A Why, we called it 78 miles. I presume it would measure up about 76.

Q Did I understand it, you began in 1903? A Yes sir

Q And was the master in 1904, 1905 and 1906? A Yes sir.

Q What was the passenger allowance for the boat while you were Master? A I dont recollect.

Q Beginning in 1903? A I dont recollect the allowance in 1903. In 1904 I think we were allowed 3300 people and the balance of the time that I was in charge of that steamer, I think 3000.

Q Who was your chief engineer? A The first year I was in her Mr. Randall of Port Huron was chief engineer in 1903. In 1904 and 5, Mr. Eales, now of Philadelphia. 6, William Knapp, Chicago.

Q Had Mr. Knapp been connected with the boat before he became chief engineer? A Yes sir,

Q In what capacity? A First Assistant Engineer.

Q When did he first become connected with the boat?

A In 1904, I think.

Q Did the boat make daily trips between Chicago and South Haven? A Yes sir.

Q And in the excursion season, in the summer season?

A Yes sir.

Q How many passengers has that boat carried while you were Master at any one time?

MR. CLINE: We desire to object to that. If he knows; there is some sufficient way of counting?

THE COURT: You may answer if you know.

A I dont know.

Q Have you any knowledge on the subject? A We were allowed 3300 people, and I had nothing to do with the counting of passengers on board the vessel or off. I

would stand on the bridge and when the man that was counting the passengers on board counted on her limit he would give me the sign and we would proceed on our voyage, stop people getting aboard, which has occurred on several occasions. That has occurred on several occasions. Of course, I took it for granted from that that we had our capacity.

Q That man, did he have an official position?

A Yes sir.

Q What was it? A That was counter of passengers, appointed I think by the government ~~me~~

Q Collector of Customs---appointed by the Collector of Customs? A I think so.

Q When was it? In what season do you recall that this man indicated to you that the boat had its limit of passengers on board?

Q MR. CLINE: We object to that, your honor, what conversation occurred. That man may be produced here if they desire to prove that; merely hearsay.

THE COURT: You misunderstood the question. He asked what season it was.

MR. CLINE: I beg your pardon.

A I don't remember whether it was four or five; it was either four or five, or both, perhaps.

Q Were there any particular days of the week when that announcement was made to you by the official counter? A I think the only days of the week that the passengers were counted on board the vessel was on Saturday and Sunday.

Q And in holiday seasons? A And holidays.

Q For instance, Labor pay? A Labor pay, 4th of July.

Q And did you have to make any report yourself of the number of passengers that the boat had? A I did.

Q And you did make those reports, didn't you? A Yes sir.

Q To the government? A Yes sir.

Q How did you acquire the information---from the counters in the way you have stated? A I received my information from the purser of the steamer.

Q How many times, would you say, that the boat had on 3000 or more passengers, assuming that to be the number, when the official counter indicated to you that such a number was on there?

MR. CLINE: We desire to object to that, first, it isn't the proper way to prove the number that was on board. The official record of the government may be produced. It is mere hearsay, repeating what some man told him, and it isn't the best evidence, and for that reason we desire to object to the question.

MR. BARBOUR: I will state to the court that we are going to put on some counters, but I am asking the witness now as to how many times in his recollection it was indicated to him that the full capacity of 3000 or more was on the boat.

THE COURT: I think the witness has already answered, but you may answer.

A Well, I should say several times anyway; several times.

Q Can you speak any more definitely as to that? Was it in more than one year, Captain? A That includes every year that I was in charge of the vessel; several times during every season that I was in charge of it.

Q I presume you mean by that on Saturdays and Sundays and on holidays, is that so? A Exactly.

Q Were you familiar with the ballast system of the Eastland?

A In a general way, yes sir.

Q That was a water ballast system? A Yes sir

Q Do you know how many tanks the boat had? A I think so, yes sir.

Q How many? A Ten.

Q How were they distributed? A Five on a side.

Q Where were they in the boat? A Commencing at number one, number two, number 3, four and five, commencing forward at number one.

Q Number one was forward? A Two number ones, two number twos, two number threes, two number fours, and two number fives.

Q On each side of the boat there was a tank of the same number? A Yes sir.

Q Same designation? A Yes sir.

Q And the first one was number one. Were those---all of those tanks divided? A Yes sir.

Q That is number one on the starboard and number one on the port? A Four and a half above head.

Q So the water from one wouldnt pass into the other?

A Yes sir.

Q Number 3 was immediately aft of the forward tanks?

A Yes sir.

Q And number 3 in the middle? A Yes sir.

Q Then number 4 was aft of 3 and number 5 in the stern?

A Exactly,

Q Where were the tanks located with reference to the hull of the boat? A I didnt just get that.

Q With reference to the bottom of the boat, where were

the tanks located? A I think 40 inches from the top of the tank to the outside plating of the steamer, the bottom---I believe there was about 40 inches of space between the two floors.

Q And then the decks were on top of them? A No, that included the ~~xxx~~ tank. The tank was included in this 40 inch space.

Q Above the tank there was 40 inches? A This top of the table is the bottom of the vessel; 40 inches from that table is the tank top.

Q Yes. A This ~~xx~~ water space was between the two, the bottom of the vessel and the tank top, and 40 inches the whole length of the steamer.

Q Was that space of 40 inches used for anything, any purpose at all? A Except for carrying water ballast.

THE COURT: That is the ~~xx~~ tank?

A That is the tank.

Q What I am trying to get at, was the tank itself immediately on the bottom of the boat? A The bottom of the tank was the immediate bottom of the boat.

Q Then the tank itself was ~~xxx~~ how high, did you say?

A About 40 inches. We always estimated it was about 40 inches.

Q What was the capacity of those tanks? A Why, the engineer and I used to figure them about between four and five hundred tons, the combined capacity of the tanks, of the ten tanks.

Q Do you know how many tons of water the tank number 3 held? A We used to figure that tank number 3 would hold 240 or 50 tons.

Q That is about 125 tons on each side? A Yes sir.

- Q What use was made of the tanks number one? A We only used the tanks number one and two occasionally in the middle of the week when we had very light list of passengers; we would let a little water in number one and two to raise her stern a little bit, as she would make a little time, run a little faster, being lighter.
- Q Filling one and two would depress the bow and raise the stern? A And raise the stern.
- Q What use did you make of tanks four and five? A Very little, if any; we used them occasionally, but not often.
- Q Tanks number 3, I take it, were your largest tanks?
- A We used number 3 exclusively for ballast. Number 3 was our ballast tank
- Q MR. BARBOUR: Is it convenient for you to have ^{model} ~~the~~ of the Eastland here in court?
- MR. CLINE: I will say one is here; we are just unboxing it now.
- MR. BARBOUR: I have a model here, but I think yours is a little different.
- MR. CLINE: We will have that here in a few moments.
- THE COURT: Very well.
- Q Do you remember having some trouble outside of South Haven in the month of July, 1904, was it? A Yes sir.
- Q Captain, you remember the date when this trouble occurred outside of South Haven? A I think it was July 17th, 1904.
- Q I will first ask you as to the depth of water in the Shouth Haven harbor? A At that time?
- Q Yes, at that time. A Why, about 13 feet, 12 or 13 feet; that is over the bar at the end of the pier.
- Q As you enter the harbor there was a shoal spot and there

Was a bar there? A Yes sir.

Q How deep was the water there at the bar?

A About 12 or 13 feet.

Q And was there any shoal spot in the harbor?

A Everywhere. There was shoal water everywhere at that time in the South Haven harbor.

Q How far was it from the dock where the Eastland docked out to the end of the pier in the lake in South Haven?

A Oh, perhaps a third of a mile.

Q What was the draft of the Eastland? A I think about 13 feet.

Q Would that be when she had 3000 passengers on 13 feet?

MR. FLEMING: I object, your honor please; no reference in the record to the fact that there was 3300 passengers at any time plying between these ports.

THE COURT: I will sustain the objection.

Q At what time was the draft 13 feet---with the passengers on her? A No. If my recollection serves me right, she drew about 13 feet under ordinary conditions.

Q What did she draw when you had the highest number on her that she ever had when you was Master? A I should judge she would draw 14 feet, or 14 feet, 6, possibly.

Q And was the bar there at the entrance of the pier when you had the full capacity on the boat? A The bar was there, yes sir.

Q Putting in ballast in this number 3 tank, did that increase the draft of the boat? A Yes sir.

Q How much? A A foot perhaps, a foot and a half.

Q Prior to this trouble on the 17th of July, what if any use did you make of the number 3 tanks at the dock in South Haven and running out to beyond the pier?

A Prior to that trouble---prior to the trouble that we had

at that time we didnt pay very much attention to our water tanks. I dont remember as we did; personally, I did not, I know.

Q Was there any reason why you did not make use of the number 3 tanks prior to that time? A No, no reason why we couldnt if we wished to.

Q Well, I say was there any reason why you didnt fill the number 3 tanks before July 17th in loading at the dock and in getting out to beyond the pier? A Only to keep the boat as light---have light draft as possible, one reason why, perhaps, we didnt use it, in getting over the bar.

Q That is the main reason why, isnt it? A I presume it would be.

Q Did you have any trouble with the Eastland in loading her at the docks or in sailing the vessel out into the lake before the 17th of July when you was running her without water in the tanks? A No, nothing to speak of.

MR. DARROW: You mean by that question, you had no trouble running without water?

MR. BARBOUR: Before that date.

MR. DARROW: The question doesnt show that.

Q I was referring to before July 17, 1904.

A I dont remember that we ever had any trouble.

Q Then you recall no trouble ~~wh~~ at all when you was running without water ~~framprior~~ to the 17th of July, is that it? A No sir.

Q Did you use to load at the docks without water in the number 3 tanks? A As far as I know, we did.

Q Did you have any trouble on the 17th of July, 1908?

A Yes sir.

Q About how large of a load did you have on at that time?

A I presume we had our limited number of people.

MR. FLEMING: I object to that and move the answer be stricken out as not responsive. He is not speaking of his knowledge, if your honor please. He says, "I presume we had our capacity on that date."

THE COURT: I take it that that is a mere estimate of the witness, that the boat was loaded; is that what you mean, that you had a full load that day?

A As far as the number is concerned, your honor, I wouldn't swear just exactly how many we had, but I presume we had a full load.

THE COURT: That is what you mean, you had a heavy load?

A Yes sir.

MR. FLEMING. No evidence, if your honor please, as to the capacity of the boat on 5-17-04 as yet in the record.

THE COURT: That may be true, but the answer may stand.

Q At that time what was you allowed? A 3300 people.

Q Will you tell the court ^{what occurred} from the time you left the dock---was this on the return to Chicago? A Yes sir.

Q On that day? A On account of the shoal water in the harbor we were unable to use the water ballast until we got on the lake. I remember about that time, not thinking that this water ballast was such an important factor in the handling of the steamer, that we are on---

MR FLEMING: It isnt answering the question, telling what occurred prior to---

THE COURT: Just tell us what occurred.

A As we passed out of the harbor at South Haven into Lake Michigan, the boat listed quite heavily to port and ran along that way for, oh, several minutes, perhaps ten minutes, five to ten minutes, and all of a sudden without any apparent reason, listed much heavier to starboard, rolled the other way. I immediately checked the engines down and left the bridge in charge of the firxt officer and went down to the engine room to consult with the engineer as to the apparent reason for this listing. He found out that he had been unable to get his water ballast just in the proper place, / I think, after passing into Lake Michigan, but he was doing it as fast as he could; at no doubt within a few minutes the boat would be on her even keel, and he assured me that everything would be alright, which later on I found to be the case. Perhaps in 15 or 20 minutes when he got his water ballast properly distributed, the boat was on even keel, and we proceeded on our trip to Chicago without any farther trouble.

THE COURT: Well, did this listing occur before you passed the bar or afterwards? A Afterwards.

Q That was out in the open? A Several miles in Lake Michigan.

Q Were there any passengers on the upper deck at that time?

A Yes sir.

Q About how many? A I would say ten or twelve hundred.

Q MR. CLINE: I object to that unless you limit what time it was.

Q Up to the time the boat righted itself on this trip

from the dock out into the lake?

- A We used to judge that our upper deck would hold ten or twelve hundred people. At that time the upper deck was entirely available for passengers.

MR. CLINE: We ask that that be stricken out as not responsive.

THE COURT: Of course, the questioner is the only one who can object to lack of responsiveness.

- Q On that day up to the time that you went down to the engine room, about how many people did you estimate was on the upper deck? A I would say from ten to twelve hundred people.
- Q Did you make any change in the distribution of the load of people at that time? A I did.
- Q Before the boat righted itself? A I did.
- Q What did you do? A I went up on the upper deck among the passengers after interviewing the engineer and assured the people that they were perfectly safe; that there was no possible danger any further than the boat's listing as she was at the present time, except it would take us a good deal longer to right to steamer with the people on top, as so some of them would go below, as far as they could on the main deck, if possible, and a great many of the passengers responded to my request and went down below.
- Q Well, how far over did the boat list to starboard with reference to the gangways? A The two aft gangways run to water.
- Q And were they closed? A Entirely submerged, yes sir.
- Q You closed up the gangways? A Yes sir, they were closed before she listed.
- Q And as she turned over, she was entirely submerged?

A Yes sir.

Q About what angle of list did she have at that time?

A Why, as I estimated, I should say 20 degrees, 25 perhaps.

Q That is the starboard list, I am speaking of?

A Starboard list.

Q What was the port list at that time, do you recall?

A Not as much as the starboard: I presume 15 degrees, 12 or 15 degrees.

Q On what side was the sea cock in which the water entered to go into the tanks? A Port side.

Q When the boat was listed to starboard so that it was--- so the gangways were submerged, was the sea cock out of water? A I couldn't say as to that.

Q What would be your judgment? A I should think it would be pretty close to the surface of the water.

Q Then by adjusting the load of the passengers, that had a tendency to bring the sea cock further under water?

A It would have a tendency to right the steamer a little, yes sir.

THE COURT: This is your witness, Mr. Barbour; you better avoid leading questions.

Q Was there any United States official on board at that time? A Yes sir.

Q Who? A Captain Mansfield of Chicago.

Q What position did he have? A Inspector of Hulls, Government Inspector of Hulls for the City of Chicago.

Q And the Eastland was under his supervision? A Yes sir.

Q Final supervision? A Yes sir.

Q Where was he on the boat at the time? A On the bridge.

Q Did he have any members of his family present with him

at that time? A He had his---

MR. CLINE: Object to it as immaterial.

THE COURT: I will sustain the objection.

Q Captain Mansfield is dead now, I believe? A He is, yes sir.

Q After that incident there, was there any change made as to the number of passengers that you allowed on the upper deck? A Not that season. Not the season of 1904.

Q Did you make any change with reference to the use of water ballast in the South Haven harbor after that time?

A Yes sir.

Q What change did you make? A We always had our water ballast in before leaving the dock with a crowd of people on board the vessel on either side of the lake.

Q As the boat travelled along in the water with the water ballast in it in the South Haven harbor, did it go aground? Did it ground as it went along?

MR. CLINE: I renew the objection.

THE COURT: You better avoid leading questions; this is your witness.

Q How did you get over the bar with the water tanks filled?

A By pulling over; the force of the engines would push her over the bar; push her through a foot and a half or two feet of mud and sand.

Q Do I understand that that was the effect of the putting of the ballast in the boat, that put it a foot or foot and ~~and~~ a half in the sand? A Made her that much deeper in the water, I presume a foot, perhaps, or a foot and a half, this number 3 tank.

Q That much deeper in the water; I am asking you, did

it put it any down in the bottom of the river?

A Naturally, if it was that much deeper in the water, it would be that much closer to the bottom, and if there wasn't water enough to float her, she would be that much in the bottom of the river in the mud and sand and dirt, or whatever it was.

Q Was she that much in the mud and sand? A She was that much in.

Q Did you have any state rooms on the boat at that time?

A Yes sir.

Q How many? A I think about 100.

Q Where were they distributed? A In both the upper and lower cabin on each side of the vessel.

Q And this deck when the 1200 people were on, was that above the second tier? A The roof of the second upper, which we call the hurricane deck.

Q Will you tell the court how many decks the Eastland had and name the decks at that time? A Main deck, the main deck of the vessel, and the cabin deck, promenade deck and hurricane deck, four decks,

Q And the hurricane deck is where these 1200 people---

A (Interrupting) The hurricane deck is the topmost deck.

Q Now did you make any change as to the state rooms after that? A The next year we took out the state rooms in the upper cabin.

Q About how many state rooms? A 40 or 50.

Q They were under---immediately under what deck?

A The hurricane deck.

Q And on what deck? A They were on the promenade deck, and immediately under the hurricane deck.

Q Was that a separate deck for that upper tier, or was that

a gallery? A There was---it was the promenade deck of the steamer which extended from the bow to the stern and from side to side.

Q Was there any more of these state rooms removed while you were managing the boat? A No sir.

Q What was your experience with the Eastland in rough weather?

A My experience with the Eastland in rough weather?

Q Yes. A We considered her an excellent boat in bad weather.

Q What kind of a sea boat was she? A A-1, first class.

Q What effect, if any, did a strong wind have on the boat?

A Very little.

Q Did you alter your course or otherwise when there was a strong wind on? A I dont never remember of altering the Eastland's course a fraction of the compass, a point of the compass, the four years I was in command of her on account of the waather.

Q Did she keep her course? A Always kept her course there.

Q How did the boat compare with other passenger steamers that you were on with reference to that feature of sea going in rough weather and in keeping her course?

MR. CLINE: I object to that as immaterial, as to how it compared with other boats.

THE COURT: I think I will sustain that objection.

Q What boat did you become master of after that?

A City of South Haven.

Q How long have you been master of the South Haven,

A About eight or nine or ten years, I guess.

Q What is her passenger allowance?

A 2500 people.

Q Is she a longer boat? A No sir, she is not quite as long as the Eastland.

Q What is the difference? A About 30 feet.

Q Is it a steel boat? A Yes sir.

Q What kind of a boat is the Eastland? A Steel boat.

Q What was your experience with the South Haven in rough weather?

MR. CLINE: We object to that, your honor; it is imaterial.

THE COURT: I will sustain the objection. It seems to me you have gone far enough when you question the witness as to the sea-worthyness of this Eastland.

MR. BARBOUR: I had in mind making proof along this line that other boats ~~on~~ the same storms were compelled to alter their course and head into the wind, your honor,

THE COURT: Of course, the City of South Haven isnt on trial here, and we enter upon that field, it is unlimited.

Q What do you say as to whether or not the Eastland listed at times? A It did, yes sir.

Q To what extent did she list and upon what occasions?

A Nothing---never dangerously; she never listed dangerously. She is what we considered a cranky boat among sailors.

Q Is it an unusual thing, Captain, for boats to list?

A No sir.

Q What do you mean by a cranky boat? A I mean a boat that lists easily.

Q By listing, what do you mean---rolling? A No sir, a boat that will list in the river, smooth water. All boats will roll.

THE COURT: To the ordinary layman, you mean she

tips one side? A She tilts.

Q Would that mean her to be unseaworthy at all?

MR. FLEMING: Just a moment.

Q Did the listing indicate anything as to the seaworthiness of the vessel? A No sir.

MR. CLINE: I object. This gentleman has not quqlified as an expert.

THE COURT: At this time I will sustain the objection

Q Since you became a master have you been continuously in active service? A I have.

Q On Lake Michigan?

MR. FLEMING: Just a moment; I think counsel ought to refrain from leading the witness. He has done that from the beginning of the examination, right down. We want to make those objections.

THE COURT: I trust you will try to avoid leading questions, Mr. Barbour.

Q You speak of the boat listing in the river; to what extent did it list? A Oh, I would say perhaps six or eight inches on the water line.

Q Now, have you observed other boats as to whether or not they did the same thing? A I think--

MR. CLINE: (Interrupting) Objected to as immaterial.

THE COURT: You may answer that question.

A I think that all boats list more or less.

Q Did the listing of the Eastland while you was the Master of it, as you have described it now, other than on the 17th of July, affect its seaworthiness at all?

Mr. Clyne: I object to that. This man is not qualified we contend to answer the question.

Mr. Barber: I would try to qualify him if I knew how but I confess that other than showing that he has been ^{about} the Master of these vessels for 25 years and in full charge of them and seen these and other vessels in service, I am ignorant as to how to qualify him.

The Court: I will permit the answer.

A No sir.

Q Based entirely on your experience, Captain, in the handling of the Eastland, would you say that 2500 people could be loaded on to the Eastland at the dock, assuming that there was plenty of water under her without ballast in the number three tanks, with safety?

A I don't think that we ever loaded her with that many people after this occasion that has already been talked about in Court without her water ballast; I don't never remember that we did.

Q Will the Reporter read the question to the Captain again?
(Question referred to read)

A Does that mean without ballast in the number three tanks, or any tank, or just number three tank?

Q In the number three tanks, and in any tanks?

A I couldn't answer that question because I don't think that I ever loaded her or ever saw 2500 people on her without the ballast in her, in deep water, or shoal water either for that matter.

Q I will frame the question, without water in the number three

tanks, based on your experience, could that boat be loaded with 2500 passengers, at a dock, with plenty of water under her, without ballast in number three tanks, with safety?

A From my experience I would say that the steamer Eastland could not be loaded with 2500 people anywhere, with perfect safety to the passengers, without some water ballast.

Q In answering that question do you have in mind water ballast?

Mr. Glyne: I object to that, the same objection.

Mr. Barber: I haven't finished the question.

Mr. Glyne: You have gone far enough to indicate the tenor of it.

Mr. Barber: I do not express myself suddenly or quickly. I mean does that answer to that question assume of having water ballast in her, do you mean water ballast in the number three tanks?

Mr. Glyne: We object.

The Court: I think you may answer that. I think the witness understood the question before though.

A Possibly the water in number 4 and 5 tank might answer the same purpose.

Q I am asking you with reference to your actual experience?

A My actual experience is I don't never remember of loading that vessel with 2500 people without having her water ballast, without her water ballast.

Q Proper to the 17th of July 1904?

A After that occasion.

Q I am speaking of before that, Captain?

A Before that I cannot speak definitely because I don't know. There wasn't much attention paid to her water ballast, we didn't know the importance of it at that time, before that occasion.

Q If am asking you to confine your experience to what it was up to the 17th of July 1904, based on that experience then and not on anything that occurred after that, would you say that 2500 people could be put on to that boat tied at a dock, where she had sufficient water under her, without ballast in the number three tanks, with safety?

A Up to that-

Mr. Fleming: It is immaterial anyhow. It relates back prior to July 17th 1904.

The Court: The witness seems to have covered the ground completely.

Mr. Barber: May he finish the answer?

The Court: I think I will sustain that objection.

The witness has covered the ground and given his experience and given us his opinion and view.

Q Where were the coal bunkers on that boat?

A They were situated about amidship of the vessel, fore and aft.

Q And where with reference to the main deck?

A Immediately below the main deck, between the tank top and the main deck.

Q Would the coal have any effect, the presence of coal below the main deck have any effect upon the boat as ballast?

A It would, yes sir.

Q And where with reference to the water line was the coal kept?

A Oh, perhaps the top of the coal bunker would be three feet above the water line in some places; from 2 to 4 feet I should say.

Q And how big were they? A. The coal bunkers?

Q Yes, sir.

A Perhaps 12 feet, 10 or 12 feet.

Q What were their capacity in tonnage?

A I think we figure about 200 tons.

Q In all your experience with the Eastland did you consider her at any time a dangerous or unseaworthy boat?

A No sir.

Mr.Fleming: In order to keep the record, I think I will interpose a motion to strike out that last answer as calling for a conclusion of the witness.

The Court: I think the answer may stand.

Q Did you have any members of your family on that boat at any time?

Mr.Fleming: Objected to as immaterial. Been gone over twice.

Mr.Barber: Not at all.

The Court: I will sustain the objection.

Q Have you ever seen the Eastland in dry dock?

A Yes,sir.

Q And have you seen the City of South Haven in dry dock?

A Yes,sir.

Q Did you see the Eastland after it turned over in Chicago harbor? A.Yes,sir.

Q That was at what dock? A.At Clark street bridge.

Q Is that the South Haven dock? A.Yes,sir.

Q Is that where the City of South Haven docks?

A Yes sir.

Q For how many years has it docked there?

A I think 4 or 5 years.

Q Have you seen the city of South Haven in dry dock?

A Yes sir.

Q Is there any difference in the hulls of those vessels?

A Yes sir.

Mr.Glyne: We object to that.

The Court: What is the purpose of this?

Mr. Barber: The witness has stated, if the Court please, that the City of South Haven has docked for a number of years at this same dock where the Eastland is. One point that we make is that the Eastland overturned because it was on the bottom of the river, and I want to show that the City of South Haven is entirely different in its hull, so that it might be at that dock and not be on the bottom where the Eastland would. I have already shown that the boat, the South Haven, was 20 feet shorter than the Eastland.

Mr. Clyne: Your Honor, there is no evidence here that this witness has ever observed the hull of the City of South Haven and knows anything about its construction.

The Court: He just testified that he seen her in dry dock.

Mr. Clyne: We object as being unimportant as to what the construction of the South Haven was or a comparison of it with the Eastland.

The Court: I will permit the answer, for the purpose stated.

Q What is the difference?

A The South Haven's bilges are considerable rounder than the steamer Eastland's amidships section.

Q I have learned what the bilges are since I got in this suit, will you please tell what they are. What is the bilge?

A The bilge is the lower part of the frame, the turn of the frame, from the direct line of the side of the vessel to the keel.

Mr. Barber: Your Honor, I have here a model which I will by subsequent proof identify as a model of the Eastland, and I wish to make reference to it now.

The Court: Is there any objection to using it at this time upon the promise of counsel?

Mr. Glyne: No objection on the question of its being properly identified.

The Court: Very well.

Q Do you recognize this model as being anything like the boat you saw in dry dock? The Eastland?

A I would think it would resemble the Eastland, yes sir. I never saw it before.

Q That is, never saw this model?

A Never saw this model, no sir.

Q Is it your opinion that it resembles the Eastland?

A I should think so; my impression of it.

Q Will you come down here and point out to the court the difference, assuming this to be the Eastland, between that and the South Haven?

A What I was referring to your Honor is the bilge of the vessel, the amidship section of this model here, which is supposed to be the steamer Eastland is much flatter than the South Haven, the South Haven's dead rise commences here, this corner is cut off more, it doesn't project as much as this. The Eastland is a sharper corner, this is a round corner.

Q Was the Eastland a single or twin-screw boat?

A Twin screw.

Q How did the Eastland's side run down here, was it straight or at an angle?

Mr. Fleming: Just a minute, your Honor.

Q Amidships?

Mr. Fleming: I think if this man is competent to testify, he persists in suggesting.

Mr.Barber: I dont think that that question suggests any answer.

The Court: You may answer, The witness has already answered I think.

A All perfectly straight,flat sides.

Q How is the bottom? A.Flat.

Q What was the distance across the Eastland?

A Eastland 38 foot beam.

Q At what point was the draft 13 feet?

A At the stern. The marks are here.

Q What was the draft at the bow? A.I should judge nine feet possibly.

Q Do you know what the draft was amidships?

A I do not; I never heave heard it.

Q Was there any difference in the draft of the Eastland in her bilges amidship from the South Haven in her bilges amidship?

A I should say that the Eastland---let's see-the South Haven was a deeper draft vessel than the Eastland on her keel, the Eastland would draw more water on her bilges than the South Haven.

Mr.Barber: Cross-Examine.

Cross Examination by Mr. Clynne.

Q You became Captain of the Eastland in 1903?

A Yes,sir.

Q Im July of that year? A.Yes sir.

Q Had you seen this boat prior to that time? A.Yes sir.

Q Where? A.Chicago river.

Q How long prior to July 1903 did you see the Eastland in the

Chicago river?

A Not prior to July; sometime in July she arrived in Chicago, about the fourth of July and about that time I saw her for the first time.

Q Do you know what type or class or character of boat the Eastland is, in the designation of boats?

A I think that she is first class in every respect, from an insurance-----

Q (Interrupting) What class of boats, they are classified are they not, boats are classified?

A By insurance companies, yes sir.

Q I mean classified in respect to the shape and character of their construction, are they not?

A Not only by insurance companies that I have any recollection of.

Q Do you know whether boats are classified with respect to the form and shape of their hulls?

A No sir, I do not.

Q Did you ever hear of a class of boats known as channel steamers?

A I have heard of them.

Q Would you know a channel steamer type boat if you should see one? A. I would not.

Q You don't know then whether the Eastland is a channel type boat or not?

A I don't know, no.

Q When you took charge of the Eastland as Captain she was plying between what points?

A Chicago and South Haven.

Q In what general character of business was it engaged at that time?

A Passenger business exclusively.

Q Did it carry any freight??

A Occasionally a little, not to amount to anything.

Q Did it carry any freight in form of fruit between Michigan points and Chicago, during that time??

A During the time that I was in the vessel we did on two or three occasions carry a little fruit from one port to the other.

Q At that time 1904 was it plying during the day between those points or was it a night boat??

A It was a day boat.

Q Did it sail at night??

A I think we made one night trip a week.

Q How many staterooms were in the Eastland at that time, 1904??

A I think about a hundred, somewhere about a hundred; perhaps not quite.

Q That number continued until 1905 as I understand??

A I think so.

Q Were you ever down in the tanks, ballast tanks of the Eastland? A. I never was in the tanks of the Eastland, no sir.

Q You say that it had ten tanks, how do you know that??

A From what the engineer told me and others.

Q You never made a personal examination of the tanks??

A I never made a personal examination of the tanks.

Q So your information as to the number of tanks in the boat was limited to what someone told you??

A Yes, sir.

Q You never verified that as to whether that was correct or not??

A Not from personal observation.

Q And as I understand you to say you never were in the tanks??

A No sir, I think think that I was ever in a tank on the Eastland.

Q You say from what you was told there were 10 tanks, five tanks in two divisions?

A Yes, sir.

Q Did you ever measure the capacity of these tanks??

A No sir.

Q Where did you get the information that the capacity of these tanks was 600 tons??

A I dont think that in my evidence I ever said they were 600 tons.

Q What did you say? I may have misunderstood you??

A I said about five I thought.

Q Where did you get that information? A. From the engineer.

Q You never made any measurements or calculations yourself to ascertain what the capacity was?

A No, I never did.

Q During the time that you was Captain of this boat did you ever examine the equipment and arrangement and how water was fed from the seacock opening into these various ballast tanks??

A I have seen it on several occasions, the system.

Q You saw what? A. The system of filling the tanks.

Q Do you know how far the seacock opening in the boat is below the water line?

A Not exactly, no.

Q I believe that you stated on your direct examination that at your trouble at South Haven that you thought that the seacock opening was about the water line, how far is the seacock opening below the water line, about how far?

A Why, I should judge as an estimate perhaps 7 or 8 feet, something like that, 6 or 7 feet.

Q Have you ever examined the seacock opening in that boat??

A No sir.

Q Have you ever seen it? A. Yes, sir.

Q Where? A. I have seen it several times in dry dock.

Q Do you know what the diameter of that seacock opening was in that boat?

A I never measured it.

Q What was the form of construction, Captain, of distributing water from the seacock opening to the tanks in the Eastland?

A By a system of pipes.

Q Just describe that in your own way if you will to the Court?

A The seacock is located on the port bilge of the steamer and connected with the system of manifold valves, on the inside of the steamer. This system of manifold valves was a big square casting that ran right across between the engines and the bulkhead, between the boilers and engines of the steamer, and there was valves, 10 valves, let's see, there was 10 valves I think placed right across there like that, you could open any one and fill any one of those tanks at a time, or fill them all by opening of the valves; she took the water by gravity, the water ran in and it was pumped out.

Q You took the water by gravity?

A Yes sir.

Q How was the water discharged from those tanks?

A It was handled with pumps.

Q Did that construction in the Eastland there permit water to pass from one tank to the other?

A I don't think so.

Q Who was in charge of the ballast tanks during the time that you was Captain of the boat? Whose duty was it to manage and control and operate the ballast tanks?

A Why, the chief engineer was the man in direct charge, I

presume; he was in charge of everything pertaining to the engine outfit.

Q When you took charge of the boat in 1903, July 1903, did you have any conversation or discussion with the owners of the boat at that time as to the management of the ballast tanks in the Eastland?

A No sir, I don't remember that I ever did.

Q When do I understand that your first attention was invited to the importance and necessity of looking after the ballast tanks in the Eastland?

A At the time of the accident or near accident you might call it, of July 17th 1904.

Q Did that disturbance and trouble occur when you were coming in or going out of that harbor?

A Bound for Chicago; going out.

Q Did the passengers talk to you about the situation there of the boat at the time?

A At the time of this trouble?

Q Yes. A. I presume they did more or less, I cannot recall any particular instance.

Q To refresh your mind, do you recall a committee waiting upon you at that day or during that trip?

A On Board the vessel.

Q Concerning the listing of the boat?

A Yes, I do.

Q Just tell us about that if you please?

A The occasion of this trip was a crowd of people, the post-office clerks excursion of Chicago, and the committee that had this excursion in charge came to me while the vessel was laying on her beams end in Lake Michigan and insisted on returning to South Haven, from humanity's

standpoint, for the sakes of their wives and family and children that were on board of the vessel; they felt as though they were unsafe, in an unsafe position. They came to me on the bridge after I had been down and interviewed the chief engineer and after I had requested the passengers to leave the upper deck. I stood on the bridge of the vessel looking aft. They stood just below me, about two feet, three feet, on the Hurricane roof, looking at me at the forward end of the vessel, and during the time, a few minutes there, perhaps 15 or 20 minutes, we were discussing this question of going back to South Haven. In my own mind I had no idea of going back to South Haven because I felt perfectly assured everything would be all right when we got things right; kind of prolonging the conversation as long as possible, I commenced to see that the vessel was straightening up. I was looking aft and they were looking at me, they couldn't see what I could see, because she had very lofty spars and lofty stacks, long stacks, and I could see that they commenced to come up, and finally I said to McCullough, I think the young fellow's name was, I used to know him very well, was one of a committee of this excursion, I put my hand on his shoulder like that, I said: Look here, boys, turn around and look the other way and see the condition that your vessel is in now, and they were surprised, they hadn't realized she was straightening, and delighted as well as surprised to think that the vessel had almost come up on an even keel.

Q Did you tell them at that time the reason why you couldn't go back to South Haven?

A I don't remember that I told them any reason.

Q Do you remember telling this committee that the tanks

had been filled with water and in view of that fact that you couldnt go back, couldnt get over the bar?

A I do not.

Q How long did it take to cure that list?

A I think the whole trouble perhaps took a half an hour, may be 30 or 40 minutes.

Q You mean from the time that you first observed it until the matter was thoroughly over only 30 minutes elapsed?

A Something 30 or 40 minutes I think between the time of leaving South Haven until the vessel was on even keel.

Q You wouldnt say it was longer than that?

A I wouldnt think so. I have no recollection, I didnt time it especially. From why I derive my time from was I think we were about 40 minutes late that night getting into Chicago.

Q Has your attention ever been invited to the fact of how long it took to fill the ballast tanks of the Eastland when they were empty?

A I understood from the engineer that it would take about a half an hour to fill all the tanks.

Q What do you mean by all the tanks?

A The whole water bottom.

Q As I understand prior to this trouble at South Haven you had personally given no attention to the question of ballast tanks?

A I dont think I had.

Q When this trouble was obviated as you say on this trip do you know how many of the tanks had been filled?

A Before leaving South Haven?

Q Before the boat had righted itself?

A Why, I understood from the engineer that the 4 and 5 tank was full.

Q After that time and during the entire time that you was Captain of this boat, have you any knowledge or recollection that tanks 1, 2, 3, 4 and 5 were ever filled?

A Not all of them.

Q Have you any recollection at any time that tanks other than number 3 were filled?

A No sir.

Q Then during the time and all of the time that you were Captain of this boat they did not fill nor use more than tank number 3?

A Number 3 was our ballast tank.

Q What was the practice with respect to filling the tanks part of the way or up to the top?

A Full, fill the tank full, we considered the vessel worse off with a tank half full than as though we had nothing in it at all.

Q Did you know that?

A From the reason that it would allow the water to slush from side to side.

Q After this disturbance and trouble at South Haven do you know whether the carrying capacity as licensed by the United States Government, was reduced or increased?

A It remained the same I think that year.

Q You are not certain about that? A. Quite certain.

Q What was the licensed capacity of the boat the following year, 1905?

A I think she was decreased 300 people.

Q From what number? A. From 3300 to 3,000.

Q You are quite certain that it remained at 3300 during the year 1904?

A From the best of my opinion, yes sir.

Q And the following year 1905, it was reduced how many?

A I think it was reduced to 3,000.

Q And in 1906? A. 3,000.

Q You spoke of removing some 40 rooms during the year 1905, 40 staterooms, what was the purpose of that if you know?

A I do. Mr. Cochrane who was then our general manager did it to give the passengers more room; with 3,000 or 3300 people they were quite crowded in certain parts of the vessel, and inasmuch as we only used the staterooms once a week he thought it would be to advantage and the advantage of our patrons to have them removed, and he did so.

Q After the rooms were removed what was placed in the place, or the place where the state rooms had been located?

A Nothing except stanchions to hold the roof, to take the place of the state room partitions.

Q Was this space where the state room had been constructed left open and unobstructed?

A Entirely open.

Q No seats placed in there?

A No permanent seats I don't think.

Q People did sit in there, did they not, when they were going on an excursion?

A People could use that for sitting or standing purposes, It was entirely at their----

Q As a result of the removal of these state rooms, passengers and those upon the boat were permitted to go at will from one side of the boat to the other?

A Exactly.

Q That would have a tendency would it not to cause the boat to list more quickly than when the state rooms were there?

A Why, naturally a little I think; more people would be out,

it would give them six feet of the way around, not the outside of the vessel because the outside of her upper cabin was about 7 or 8 feet from the extreme outside of the vessel but this space by removing the state rooms would give them about 6 foot, six or seven feet all the way around the inside of that upper cabin, that people could stand and sit, it previous to that time had been locked up as far as the passengers were concerned, consequently-----

Q (Interrupting) The result of the removal of these state rooms the passengers could go from one side of the boat to the other?

A Yes sir.

Q And that naturally would cause the boat to list as they passed from one side to the other?

A It would give them a chance to get a little more heft on that side than it would ordinarily.

The Court: I mistrust that you are working at cross purposes; the cabin was left was it not, or was the cabin removed also on this deck?

A The sides of the cabin were left just as they were originally.

The Court: So that the passengers could not go directly from one side of the boat to the other?

A No sir.

The Court: It would simply make more space where they might congregate on either side?

A Could go six feet farther than they did before.

Q (By Mr. Glyne, resuming) You say just the outside portions of the cabin were removed?

A The outside wall of the cabin.

Q And the inside wall was permitted to remain?

A The outside wall was not removed, the inside wall was removed, as well as the partitions between each state room. The outside of the original cabin was left just as it was there when the boat was built.

Q And that occurred on both sides of the boat, both starboard and port side?

A Yes sir.

Q As a result of this removal, removing of these partitions as state rooms, how much greater distance or space were passengers permitted to go after they were removed than before, did you say six feet?

A The staterooms were about 6 to 7 feet, perhaps 6 foot 6, 6 foot 8, not more than 7 feet or less than 6.

Q You mean each side so it would be 14 feet?

A Exactly, that would be 14 feet altogether.

Q They would be permitted to go 14 feet further than they could before?

A Exactly.

Q That wouldnt include the main aisle there or passageway? would it? A. Nothing to do with that.

Q That would be added on then to the 14 feet would it not? Do you understand me? I say in addition to this 14 feet there would be added the space which prior to removal was used to pass in and out of the cabins on the inside?

A Except that this partition was still there between this outside space and where the staterooms were. The outside of the cabin proper was still standing, just a partition.

The Court: You mean by that you enlarged the cabin?

A We enlarged the wing cabin by taking the staterooms out..

Q You have noticed the Eastland list upon many occasions have you not?

A Oh, yes, a great many times.

Q Until finally the boat was known and designated as a cranky boat??

A Amongst sailors she was called a cranky boat.

Q That was the general reputation she bore among sailors and men who are following the sea??

A Yes, sir.

Q And I believe you stated that that boat was inclined to tip, it was very sensitive?

A Yes sir.

Q In view of the fact that the Eastland was a cranky boat which you knew, did you feel that you were operating that boat safely in using only tank number 3 as far as water ballast?

A Yes sir.

Q Did the use of ballast in tank number 3 free that boat from listing?

A Dangerously, yes.

Q What do you mean by dangerously, to the point where you thought she was going to upset??

A No, not necessarily. She would always list a little bit as all steamers will more or less, some more than others. We always considered the Eastland perfectly safe with her number three tank full with her limited number of passengers.

Q But notwithstanding I say the use of water in tank number 3 the boat was inclined to list, is that it?

A Oh, yes, she would list a little.

Q Instead of using water in tank number 3, don't you think that it would have been better if there had been some form of permanent ballast placed in that boat, in view of her cranky condition??

A Well, all I can speak from is from my own actual experience in the vessel, and personally I just as soon have the water ballast, if I was in charge of that vessel, I would feel just as safe with the water ballast as I would with something permanent.

Q You would feel just as safe if you had all the necessary water ballast?

A Yes.

Q But for general purposes, for safety, wouldn't it have been far better, would it not have been safer to have had permanent ballast in that boat in view of the fact that it was a very cranky boat?

A I think it would have been a safer proposition from all points of the game, inasmuch as the changing of crews, people that hadn't had the experience that I had with the steamer, not knowing of the importance of the ballast, it would under all conditions been a safer proposition.

Q It is your opinion then it would have been the part of prudence to have put in this permanent ballast?

A Not at the time the steamer was built.

Q But at the time, beginning with 1904-5 and from that time on?

A With permanent ballast I would have considered her a safer proposition, yes.

Court here took a recess until 1:30 P.M.

1
Austin 1st take in P.M.

Q Captain, what was the tonnage of the Eastland?

A Well sir, I dont remember her exact tonnage.

Q About 1960 ton gross?

A Something near two thousand I think her measurements.

Q Assuming Captain, that this was a boat of 1961 gross tons and that she was engaged in the business of carrying passengers -- excursion business -- and considering the construction of the boat ^{as} ~~and~~ you understood it and know it Captain would you be able to say how much ballast this boat ought to carry to navigate safely?

A No, sir.

Q That would be something that you would not be qualified to testify on?

A No, sir.

Q I believe that you testified that it had only sea cock open -- the Eastland had only one sea cock open through which the water was admitted to the ballast tanks?

A One was only did you say?

Q That was your understanding?

A That was my understanding, yes.

Q Do you know whether or not that is a construction that is generally used on passenger boats of having but one sea cock open?

A The Eastland had I think more than one sea cock, but one sea cock was used exclusively for the ballast tanks.

Q What do you mean by more than one sea cock?

A I think it had two, possibly three, it might have had.

Q What were the other sea cocks used for?

A Water for the boilers.

Q But for the purpose of admitting water into the ballast tanks it had but one sea cock open, is that your under-

standing? A To the best of my information, yes, sir.

Q I am asking you now Captain is that form of construction, I mean but one sea cock opening, one that is generally used or do many boats or some boats have more than one sea cock open?

A Well, the steamer Eastland being the only boat that I was ever in that had a water bottom I could not answer that question in a general way.

Q Well, are you familiar with the ballast construction of any other passenger boats upon the Great Lakes?

A No, sir.

Q Did not you operate the City of South Haven?

A Yes, sir.

Q How many sea cock openings did that have?

A The steamer City of South Haven has no water bottom.

Q Has no water bottom? A No, sir.

Q You dont know then whether as a matter of fact the general practice is to have more than one sea cock opening?

A I do not.

Q You never discussed that subject or inquired into it?

A No, sir.

Q Well now, Captain, from your long years of experience upon the lakes, I am going to ask you whether it would not have been the part of prudence in the Eastland to have two sea cock openings for ballast to be used in connection with filling the ballast tanks?

A Well I presume if she had had more than one sea cock she could have filled the tanks more rapidly, but it always seemed to me that one was sufficient.

Q Well, assuming that it took thirty minutes to fill the tanks,

would it not be well to have two sea cock openings so that the tanks might be filled more quickly and readily?

A From my point of view I would say no; I would say that one sea cock was sufficient.

Q You think it would be of no purpose to fill the tanks more quickly than thirty minutes?

A No, sir.

Q Under all conditions? A Yes, sir.

Q Assuming that you had two sea cock openings when you had the trouble at South Haven would it have been any advantage upon that occasion to have had two sea cock openings?

Mr. Darrow: Your Honor, we object to it as to whether one method is more crude than another, it has no foundation for a criminal case. Supposing it could have been filled a little quicker--

The Court: I will permit the proof.

(Question read to the witness)

A No, not from my knowledge of the conditions, no.

Q Why do you say that?

A I think that they were handling the water as fast as they could use it through one sea cock. I dont see where two sea cocks could have been an advantage to the situation at that time.

Q Well, was not time important in that difficulty that you had there at South Haven in getting the tanks filled?

A Not under those conditions.

Q Well, under any condition where you would be in trouble and you lack ballast?

A I dont ever remember of a case while I was Master of the Eastland where I can recall that two sea cocks would have

helped our position any. I always considered that one sea cock that would fill those tanks in thirty minutes was suitable.

Q And the two sea cocks would not have been of any service on that occasion?

A Not from my point of view of the case.

Q As I understand those tanks were/^{so}constructed that it was not possible to pump from one tank into the other, is that your understanding of the construction?

A That is my understanding of the construction.

Q Do you know whether that form of construction is one that is generally used on passenger steam boats on the Great Lakes?

A No, sir, I do not.

Q Would it have been any advantage to have had those tanks so constructed that water might have been admitted from one tank into the other?

A No, sir.

Q You cant say that that would be of any service?

A I cannot.

Q I believe you testified Captain, that your trouble at South Haven when the boat listed that the water line was above the lower half of the aft gangway, is that correct?

A Yes, sir.

Q Were there any dead lights near the aft gangway near the Eastland? A Yes, sir.

Q Where were they constructed or placed in the boat, Captain?

A Do you mean in the position above the water line?

Q Yes. A They were, as I remember it, the accurate measurement, they were on the line with the upper half of the

gangway on the side of the vessel on a line of that door along here, perhaps (witness indicating on side of the room.)

Q Where were they placed with reference to the gangways in the Eastland?

A They were dead lights in the engineer's room, in the chief engineer's room, which was between the gangway and the engine room; and also along the side of the engine room-- and in fact at various intervals along the whole length of the vessel.

Q Do you remember Captain how many there were of those dead lights along that line? A I do not.

Q During the time that you were Captain of the Eastland were those dead lights in such shape that they might be opened and closed?

A Yes, sir.

Q What was the practice with respect to keeping them open or closed while upon a voyage?

A The practice after this occurrence at South Haven was that they were always closed.

Q Why did you keep those dead lights closed, Captain?

A To keep the water out in case of list and sometimes in case of seaway or something of that sort.

Q So I understand the practice was to keep the dead lights closed?

A Yes, sir.

Q -- constantly. A No. When we had a full load of passengers or a rough trip, rough way.

Q I mean while you were upon a voyage did you keep those dead lights closed?

A Not all of the time we didnt keep the dead lights closed.

Q Do you know Captain whether afterwards, subsequent to the time that you were Captain of the boat that those dead lights were closed permanently?

A No, I do not know it, if that is a fact I do not know it.

Q You never heard of it? A No.

Q But it is a fact that during the time that you was Captain that you did adopt the practice of having those dead lights closed so that when the boat would list water would not be admitted to them?

A Yes, sir.

Q How far Captain would you say that those lights -- the dead lights was above the water line when the boat was standing in perfectly normal calm waters?

Aa Oh, I should think probably six or seven feet, something like that.

Q Yes. How much of a list would the boat have to take in order to admit water into those dead lights, assuming that they were open?

A The only time that I ever saw her list so that the water would have come into the dead lights--

Q No, pardon me, you dont understand the question. How much of an inclination -- how much of a list would the boat have to take in order to admit water through these dead lights assuming that they were open-- Just a moment. Your Honor, at this time the Government desires to present a motion that the witnesses during this case be excluded from the room.

Mr. Barbour: We object to that, if the court please.

As I understand it, that motion, if made at all, is to be made

before the testimony commences. Many of our witnesses are experts here, the Captain is an expert, every captain of a ship is an expert, and their testimony will be based on testimony they have heard, in some instances, and it will result in confusion and delay.

The Court: If this were a trial of the case I would be inclined to grant the motion. As it is, I don't think it ought to be granted, and particularly in view of the fact that it is not made until after the testimony has been begun.

Mr. Clyne: Well of course it is a matter within the discretion of the court.

The Court: Well I understand that, but in this proceeding I doubt if it ought to be granted.

(Question read to the witness)

A The only reply that I can give you to that question is the only time that I ever saw the water coming in on account of a list -- that would have come in on account of a list if they had been open was the time that we took the list at South Haven and I figured at that time that she had about twenty or thirty degrees of a list.

Q Well, I am asking you generally from your observation and knowledge of the boat, how much of an inclination would a boat need to take in order to admit water?

A Twenty to thirty degrees.

Q From twenty to thirty degrees?

A I think so, as an estimate.

Q And you say Captain that during the time that you was Captain and in charge of this boat as Master, that those dead lights were not permanently closed?

A No, sir.

Q Coming back to the time of your trouble at South Haven after this committee waited upon you in relation to turning back in your journey, what did you do in your effort to get the passengers down from the hurricane deck?

A I went among them at various places on the hurricane roof and asked them as a favor to help expedite matters by going down below, as far as possible, it was a request, it was not a command.

Q Did you do anything else in your effort to get them to go down?

A No, sir, I did not.

Q Do you recall anything else that was done?

A I do not.

Q Do you remember whether on that occasion Captain, the hose was turned upon the passengers?

A I remember that it was not absolutely.

Q You are sure of that?

A I am sure of that.

Q Do you know Captain whether the deadlights that we have been speaking of have ever been permanently closed?

A I could not say as to that.

Q I believe you stated Captain that the boat listed upon many occasions?

A (witness nods yes)

Q At those times did you observe the water line being above the bottom of the end of the gang way openings?

A No, I dont think that I ever did.

Q Did you ever look to see where the water line was when the boat was listed?

A I always looked, I always looked and I always saw.

Q Well where was the water line on these various occasions when the boat listed?

A With a full load of passengers on the vessel I should think that her two aft gangways which were about on the same line from the water would be, oh, perhaps a foot or a foot and a half above the water.

Q What was the length of the Eastland Captain?

A I think about 265 or 66.

Q And her beam? A 38 feet.

Q What was the length of the City of South Haven?

A About 238 or something like that.

Q A shorter boat? A Yes, sir.

Q What was her beam?

A Forty feet.

Q Greater beam than the Eastland? A Two feet.

Q Captain, what effect, if any, does the beam-- the distance of the beam of a boat have upon its stability?

A Why, it would naturally help the stability.

Q Well, in what proportion?

A I don't know in what proportion.

Q Do you know whether there is any rule upon the subject in the construction of boats?

A I presume there is among ship builders but not among steam boat masters.

Q Well, among ship builders, do you know whether there is a rule that is in force and used?

A I cannot say as I do, no, sir.

Q Captain, how do you determine the stability of a boat?

A I have no way of determining the stability of a boat except from personal observation and the action of the vessel.

Q Do you know whether there is any other way of determining

the stability of a boat other than looking at it and observing it?

A Why, I think I do now after last fall, after the boats were tested in Chicago after this occurrence, that is the only time I ever knew of a boat being tested for her stability. I never heard of it before that time.

Q Would you say Captain from your experience and observation that you know how many people this boat could carry safely?

A Well, from the best of my ability and knowledge she has carried --

Q No, I am asking just how many she --

A I never counted the people on board of the steamer.

Q At any time? A At any time.

Q And you have no knowledge then as to how many people were on the boat at any time?

A Not absolutely, no, sir.

Q Captain, what is it that makes a boat cranky or sensitive?

A I think several reasons.

Q Well, what are they?

A From the construction of a vessel and sometimes from the narrowness of the beam of a vessel or --

Q Well in this case Captain, this was a long narrow boat, was it not?

A Not exceptionally so, there are other vessels that are still longer and narrower than she is.

Q That is not the question, I say this was a long narrow boat.

Mr. Barbour: I submit he has answered--

Mr. Clyne: Just a minute --

Q Was this or was it not a long narrow boat?

A Just ordinary.

Q Well, do you know of a boat on the lakes that is as long as this boat that has less beam?

A I know of boats as long as this with the same beam.

Q Well, I am asking you do you know of one with less beam?

A I cant recall one just at present.

Q Did you ever hear of one of less beam?

A No, I dont know as I ever did.

Q Do you know the name of a boat on the Great Lakes that is of the length of this boat that has the same beam?

A I think I do.

Q What is the name? A I think the steamer Virginia of the Goodrich Line has the same beam as the Eastland only I am not positive, but I think she is 38 foot beam and she is some ten or fifteen feet longer than the Eastland.

Q Where did you get that information Captain?

A Why, in a general way and the blue book of American shipping and our own book that the ship master's have and several ways.

Q Well, in general, Captain, this boat was regard and recognized as a long narrow boat, isnt that true?

A No, ~~xxx~~ I dont think so, not excessively so.

Q Well I am not asking you about excessively, but is it not a fact that it was a long narrow boat?

A No, not from my personal belief.

Q What would you call a long narrow boat?

A A boat that is twice as long and half as wide, I would call her a long narrow boat.

Q That is to say a boat that would be twice as long as this one and only have a beam half the beam of this you would call that a long narrow boat?

A I would call that a long narrow boat, yes, sir.

Q Is there any such boat in existence?

A I ~~know~~ ^{dont} know of any.

Q But you would call that a long narrow boat?

A I would call that a long narrow boat.

Q Captain, do you remember testifying before the Federal Grand Jury in Chicago on the question as to whether this was a long narrow boat?

A I dont remember the question, no, sir.

Q You dont remember any question on that subject. Do you remember any questions on that subject?

A I cant recall any particular question, no, sir.

Q Isnt it a fact Captain that at that time that you stated that it was your opinion that considering the length of the boat, her beam was too small?

Mr. Barbour: I object, if the court please, unless the District Attorney puts the question in the form it was asked.

Mr. Darrow: And he should be shown the testimony too.

The Court: Yes, if you are going to examine the witness and have the testimony you should show it to him.

Mr. Darrow: Certainly.

The Court: Of course this is in the nature of impeaching--

Q Yes. Captain, again I am going to ask you the question what is that makes a cranky and sensitive boat?

A Why, I think it is owing to her construction more than anything else, her bottom.

Q Her bottom? A I think so.

Q Would you say anything else other than the bottom?

A No, I could not say anything else more than that. Her lines underwater.

Q Yes, well this boat was a cranky boat, was it not?

A Considered so, yes, sir.

Q And that it was from those lines that made it cranky, was it not?

A I presume that was the reason.

Q Just a minute. I show you testimony and ask you to read that question for yourself and then I will propound a question, it is underscored in pencil.

A All right, sir.

Q I now ask you the question whether at Chicago before the Federal Grand Jury you were asked this question and whether you did not make this answer:

"Q You knew the general disposition of the boat to list?

A Yes, sir. Q She is known as a cranky vessel? A Yes, sir. Q Cranky vessel is what? A A cranky vessel is usually fault of construction of the steamer. She has not enough breadth under water and possibly may be too narrow in her length or something of that kind, which would make her a cranky vessel. That apparently was the trouble with the Eastland, she had very little breadth under water, consequently was a cranky steamer."

I ask you whether you recall having been asked that question and made that answer?

A I presume I was, I could not deny it.

Q Captain, you were asked a question on direct examination respecting certain bridges and locations on the Chicago river. You would not undertake to say Captain just where the Chicago river is and where it begins and where the line of Lake Michigan is, would you?

A No, sir.

Q Or where the banks of the Chicago river are?

A No, sir, I could not say.

Q You are generally familiar with where the docks are there and where the banks are that you never looked into or investigated?

A No, sir.

Q That is correct? (No answer by the witness)

Q I think that is all.

RE DIRECT EXAMINATION BY MR. BARBOUR:

Q Captain, ~~what~~ would you say that the dock of the South Haven where the Eastland turned over -- was that the Chicago river?

Mr. Clyne: I object to the question.

The Court: I sustain the objection. The witness says he does not know anything about it.

Q How wide is the channel at that point where the Eastland turned over west of Clark Street?

Mr. Clyne: Now your Honor, that presumes that he knows and he just testified that he does not know where the banks were.

The Court: Well if you are talking about the Chicago river as it may have been some other time or if you are talking about the navigability of the channel there at the present time of course he may answer.

Q That is what I am talking about.

The Court: But of course the testimony would not in any sense tend to show whether it was lake ~~xxxxxx~~ or whether it was river. Or upon the question of the jurisdiction of the court.

Q How wide is the channel at that point there?

A The river at our dock, from dock to dock is 15 or 20 feet wider than the South Haven is long because we go in there frequently and she is about 255 or 60 feet over all.

Q Now where the docks are at that point where is the land on each side with reference to the docks?

Mr. Clyne: Object to the question.

The Court: He may answer that.

A I dont know that I ever saw any land adjacent --

Q Was there buildings there?

A Adjacent to the docks, I see the buildings if that is what you refer to.

Q Yes. A The buildings, you take it right across the river at Reed Murta Company's Building it is about eight or ten feet and on our side of the river the dock there is probably six or seven feet to the building from the edge of the dock.

Q And these are the rear of the buildings, is that it?

A These are -- on our side of the river their dock that is the rear of the buildings on South Water Street.

Q Well, what flows in that channel there between those two docks?

A Chicago river.

Mr. Clyne: We object to that your Honor.

The Court: It may stand.

Q How long has that been publicly and generally known as the Chicago river so far as you know?

Mr. Clyne: Now just a minute, I desire to object to that your Honor, he is not qualified to testify respecting the lines there of the Chicago river, what they have been, and to ask him at this time is nothing but a mere conclusion, and the most he says is that his observation in a general way where the buildings are and not where the banks are.

The Court: No, I think he may answer this question. Of course it is not in any way conclusive upon any question, as

I can see, but it may have some bearing.

A Ever since I have known Chicago I have known the river as Chicago river.

Q And up to what point --

A Thirty years probably --

Q And how far east have you known of that channel being known and called the Chicago river?

Mr. Clyne: I object to that.

The Court: You may answer that.

A As far as the lake, as far as the end of the Government pier.

Q And how far west from the Government pier have you known of the channel being called the Chicago river?

A I have been up as far as the Santa Fe elevator.

Q And how far west of the South Haven dock is that?

A Several miles.

Q Is that navigable at the Santa Fe docks?

A Yes, sir.

Q How wide is the channel there at the Rush Street bridge?

A It is at least 260 feet.

Q And that is the first bridge you come to coming in from the pier?

A Yes, sir.

Q Is there land on each side of that channel there?

A There are buildings on each side.

Q Well, isnt there land too?

A I presume there is land under the buildings, I am not sure.
is at

Q This ~~asky~~ the Rush Street bridge? A Yes.

Q From the point east to the docks to the wharf, didnt you see land right there on the channel?

Mr. Clyne: That is objected to.

The Court: I will sustain the objection.

Q Is there a street called Michigan Avenue near to the Rush Street bridge?

A Yes, sir.

Q And the street called Rush Street over the bridge?

A Yes, sir.

Mr. Clyne: Just a minute, I dont think counsel ought to lead the witness if your Honor please; I dont want to be protesting too often.

Q Is there any change -- general change in the channel as to the width from the Rush Street dock west to the South Haven dock -- Rush Street bridge?

Mr. Clyne: Now your Honor that contains-- there is a proper way to prove those things as to how the channel is there.

The Court: Well, there may be a better way but at the same time I think it is admissible as far as he is concerned.

A Change in the channel, is that the question?

The Court: Is there any change in the width?

A Yes.

The Court: How does the width compare?

A Immediately you get through Rush Street the river narrows until you get up as far as Dearborn and from Dearborn up as far as Clark to Wells it widens again a little bit.

Q You were asked ~~xxxx~~ about permanent ballast. What do you understand by the expression permanent ballast?

A Why, I understand that that would mean pig iron or lead or something of thatkind in the bottom of the vessel.

Q Do you know of any boats using permanent ballast of that kind?

A I do not.

Q Is it, in your opinion, preferable to water ballast for any purpose?

A Well I never used it myself and I dont know of any vessel that does use it. I have never used anything but water ballast and I could not say whether it was or not.

Q Well, what do you know if anything of the action of that permanent ballast or pig iron on the tanks, as to ccrosion or otherwise?

A I do not.

Q Do you know anything as to that?

A I do not.

Q Well, would pig iron corrode if it was there?

A I presume it would.

Q Would pig iron or a permanent ballast of that nature be as easily moved and changed as water ballast?

A It would not.

Q Is that an advantage to be able to shift ballast readily?

A It is.

Q Would you consider coal in bunkers a good ballast?

A Yes, sir.

Q And if it was on the Eastland in the bunkers there would that be in the nature of permanent ballast so long as it was there?

A It would.

Q Would keeping the water in the No. 3 tanks, keeping it full there, would not that be the equivalent of permanent ballast?

A Yes, sir.

Mr. Clyne: Just a moment. I dont think counsel ought to be permitted to go on in that way.

The Court: Certainly your questions are objectionable, Mr. Barbour, and objections have been made many times and it practically amounts to your testifying instead of the witness.

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Mr. Barbour: I will try and keep within the rule. I recognize that with reference to this question as your Honor suggested. As to the suggestion that the Rush Street bridge was there in Chicago I did not know that I was causing very much harm.

Q You spoke this morning Captain of the boat at South Haven after the 17th of July 1904 going through a foot and a half of mud and sand and the boat being in motion at that time. Now to what extent did the boat encounter those obstructions?

Mr. Clyne: Your Honor, I did not touch upon that subject.

The Court: You may answer.

A Well, you understand, Mr. Barbour, that the bottom of the river is not smooth as this floor, it is rough as the dredge or the sand sucker leaves it, and it has lumps here and there, and when I said that she was pushing through perhaps a foot and a half of sand I meant a lump here and a lump there occasionally. I did not mean that she would -- you let any vessel in a foot and a half of sand and mud, suppose it is there as though at a dock and she probably would stay there, you ~~xxxxxx~~ probably would not be able to push her through but in passing out of the channel you are hitting a little lump here and a little lump there and a bar in some way--

Q Is the effect any different on a boat standing still than when it is in motion and going through and over an obstruction?

A Yes, I think it would be.

Q In what respect?

A If the boat was on the bottom -- a boat of the construction

of this alongside of the dock standing still it would be apt to list her permanently, where in passing along out of the river it would list her a little this way and a little that way, she would kind of roll more or less.

Q Captain, you were asked on cross-examination about the effect of the removal of the upper state rooms giving this six feet extra space in side of the cabin walls. What did you notice as to the way the people distributed themselves inside that cabin after the state rooms were removed?

MR. FLEMING: We object to that as immaterial, if your honor please.

MR. BARBOUR: It is just as material as the questions on cross-examination, and not more, I take it.

THE COURT: I dont see how it is very material.

MR. BARBOUR: I dont either, but the tendency was---

THE COURT: I think we better ommit it.

Q Well, did the removal of those statem~~re~~ rooms and the giving of that added space affect the listing of the boat in any way after that time? A Did not.

Q Do you know of boats, any boats at all, that do not list? A No sir.

Q What would you say from your experience, Captain, as to whether a boat that did not list wouldright as well and recover from---in case of turning over to one side as a boat that did list?

MR. FLEMING: Same object,ion if your honor please.

THE COURT: He says he doesnt know or any but what do list. It seems to me we are getting into the hypothetical a good ways.

Q Now, Captain, I will ask you again, based on your experience as a master, both before and after you handled the Eastland, and while handling the Eastland, do you or do you km not consider the Eastland stable and seaworthy boat?

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MR. FLEMING: Objected to, if your honor please.
We have had that a number of times.

THE COURT: The captain has already answered the question.

MR. BARBOUR: That is all.

RE-CROSS EXAMINATION BY MR. CLYNE:

Q Captain, I believe that you stated that the Virginia was about the same length and the same beam as the Eastland.

MR. BARBOUR: He said it was longer.

Q Longer, about 8 or 10 feet? A I didnt give any figures. I said that from my recollection, I thought that she was longer and the same width as the Eastland.

Q And you have seen, of course, the virginia, many times?

A Yes sir.

Q And where? A In Chicago and Milwaukee.

Q In the harbor there? A In the harbors.

Q Do you know what difference the size of tonnage there is between ~~the~~ the Eastland and the Virginia?

A No sir, I dont.

Q From your observation of them, ~~what~~ would you say there was any? A I should think there would be a little, yes.

Q Well, do you know, Captain, that the records show that there is over 250 tons difference, gross tonage in the two boats? A Well, I presume there would be as much as that.

Q You would take that into account in comparing boats with respect to the beam and the length? A No, I

dont know as I would.

Q That wouldnt make any difference? A Not from my point of view.

Q What do you mean from your point? A I was simply taking and comparing the two boats' outside dimensions, regardless of the tonage.

Q Would you say after your 35 years' experience on the lakes that a difference of 250 gross tons in two boats would not make any difference on that point? A Well, on what point?

Q I am talking about comparing the length of the boat and the beam of the ~~kw~~ boat with 250---two boats of practically the same beam and the same length, would 250 gross ton difference between the boats make any difference between stability and crankiness?

A I presume it would. That would illustrate that the Virginia's bottom lines were carried out fuller than the Eastland, giving her that much more displacement.

Q But tye tonage would not make any difference; you say it would be merely the bottom lines? A That is the tonage, the bottom lines; that is the displacement.

Q That is the only difference that you make?

A That would demonstrate to me that that would be a fact, that she was a fuller boat on the bottom than the Eastland; that she measured that much more.

Q And a safer boat? A Make her more---stability, yes.

G E O R G E R. C U R T I S S, a witness,
produced, sworn and examined on behalf of the Defendants,
testified as follows:

DIRECT EXAMINATION BY MR. BARBOUR.

- Q What is your name? A George R. Curtiss.
- Q Where do you live? A Chicago.
- Q What is your occupation? A Salesman.
- Q What was your occupation in 1905? A I was in the insurance business at South Haven, also deputy collector of customs at that port.
- Q Did you ever as deputy collector of customs at that port have anything to do with the Eastland?
- A Used to count the passengers on the boat there.
- Q When? A On special days like Sundays or holidays.
- Q In what manner did you count them? A We had a little counting machine we held in our hand and as the passengers came on, we would count them as they came on the gangway with this machine.
- Q How often did you count the passengers as they went on to the Eastland? A Every Sunday.
- Q Of what year? A My recollection is, I started in the year 1905; 1906 and following years the Eastland was taken away from South Haven and I counted on the City of South Haven from that time on.
- Q Did you count on any other days than Sundays?
- A On legal holidays, 4th of July and Labor day.
- Q How many people have you counted going on the Eastland at any one time?

MR. CLYNE: If your honor please, that is ~~is~~ a matter of record. I think it is subject to better proof than that.

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MR. LILLIE: I beg to differ with the gentleman---

THE COURT: He may answer.

A This would be a matter of recollection on my part as to the number of passengers that were allowed in that year. I have no records, but my recollection is that it was between 2900 and 3000 in 1905.

THE COURT: Well, he didnt ask you how many were allowed. He asked you how many you actually counted.

A I counted the number that were allowed.

Q How frequently? A Every Sunday.

Q Well, do you mean every Sunday you counted the number that was allowed on the boat? A Well, I would say that during the months of July I did---July and August I think she carried her limit nearly every sunday.

Q And what was the size of the number of passengers on holidays? A Practically the same.

Q How was it in 1906, Mr. Curtiss? A My recollection is that in 1906 I was assisted by inspectors from Grand Haven and that only occasionally did I count on the Eastland; that they did most of the counting on the Eastland and I went to the city of South Haven.

Q When you did count in 1906, how many people went on

A All that she was allowed to carry.

Q Did you see the boat leave the dock? A Yes sir.

Q For how far a distance did you see her travel?

A I usually watched her for 15 or 20 minutes after she left the dock.

Q Have you ever seen anything unusual about the way the boat travelled with these crowds on that you counted?

A No sir.

MR. FLEMING: Objected to as calling for the

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conclusion of the witness.

THE COURT: The answer may stand.

MR. BARBOUR: Cross-examine.

CROSS-EXAMINATION BY MR. FLEMING.

Q Do I understand, Mr. Curtiss, that you counted the passengers during the summers of 1905 and 1906, both?

A Yes sir.

Q Were you there during the entire season?

A Yes sir.

Q How many times during the season of 1905 did you check passengers on the Eastland? A Well, I couldn't say positively, but my opinion is it was every Sunday.

Q from the 1st of July until Labor Day.

Q And during the season of 1906 how often did you check passengers? A On the Eastland?

Q On the Eastland, yes. A Well, that---I divided my time between the city of South Haven and the Eastland.

Q What is your best recollection as to the number of days?

A You counted during the summer of 1906? A As far as the Eastland is concerned?

Q All my questions ~~xxx~~ have reference to the Eastland?

A Well, I don't think over two or three times anyway in 1906.

Q Do you know the capacity of the Eastland during the year 1905? A I say my recollection is between 2900 and 3000.

Q Isn't it a fact it was 28, the maximum? 2800?

A I don't think so. I think it was between 2900 and 3000.

Q Did you make a report to your superiors of the number of passengers that went aboard that boat? A I did.

Q During the two seasons, 1905 and 1906? A Yes sir.

Q To whom did you report? A Reported to Mr. Dewey, the regular deputy collector at South Haven.

Q Do you know whether those reports are on file today or not? A I do not.

MR. FLEMING: That is all.

M E R W I N S. T H O M P S O N, a witness, produced, sworn and examined on behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. KREMER:

Q What is your full name? A Merwin S Thompson.

Q Where do you live? A Painesville, Ohio.

Q What is your present occupation? A I am sales manager for the Haskill Motor Car Company.

Q Did you sail the lakes at one time? A For sometime?

Q Yes. A I think 19 years.

Q And up to what year? A Up to and including 1911.

Q And what year did you begin sailing? A 1893.

Q In what capacity did you begin? A Coal passer.

Q When did you get to be a master of lake vessels?

A 1900.

Q Were you at any time master of the Steamer Eastland?

A Yes sir.

Q For how many years were you her master?

A Three seasons.

Q And during that time where was she being navigated?

A Between Cleveland and Cedar Point.

Q Where is Cedar Point? A Near Sanduskey on the inside of the Bay.

Q What is the length of your run? A It was about 57 or 8 miles, the way we ran it.

Q And along what shore is it? A South shore of Lake Erie.

Q What business was she engaged in at that time?

A Passengers almost exclusively; some little freight.

Q And what was your run, in daylight or night run?

A On that run it was a daylight run.

Q What time did you leave Cleveland? A 8:30 every morning.

Q And about when would you arrive at Cedar Point?

A 11:45.

Q And then when would you leave Cedar Point? A 4:30.

Q And what time did you arrive at Cleveland? A 7:45.

Q When you were at Cleveland loading your passengers and unloading them, where in Cleveland did you have your dock? A On the East side of the river just below the outside of the Main Street bridge.

Q What river was that? A Cuyahoga.

Q And when you came in with your passengers, how did you make your dock? What maneuvers did you have to go through to make your dock? A Well, in coming in, in order to be in a position to make our---what we call our Moonlight run, in the evening, it was necessary, or we found it advisable to come in and turn around before we unloaded our passengers. That left our boat heading out, and then we could unload and load practically at the same time, if we wished, if we happened to be a little late, and we were in the position to go right

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along out about our business when we were ready to go, to avoid congestion and so forth in the river.

Q Now how many passengers were you allowed to carry during those years? A I think 2200 during the three seasons.

Q And did you at that time engage in what you call Moonlight excursions? A Yes sir, almost every night.

Q What did you do on those occasions, where did you go and what did you carry? A We carried passengers.

Q And where did you go with them? A You mean the direction?

Q Yes, where did you go, where did you take thej,

A Out into the lake.

Q And back again? A Yes sir.

Q Now, during that time did you at any time carry, and if so, how many times, your maximum number of passenbers?

A Do you mean on these Moonlight excursions?

Q On any, daylight, Moonlight or any time? A Well, of course, our Sundays and holidays were always pretty well loaded, I mean from 1700 up to our capacity, and on Saturday nights and Sunday nights I might say almost entirely when the weather was good, no little squalls to scare them away, we wouldhave have practically a capacity load.

Q Now getting back from your record, about what would you say in gross, in number of times, did you take out substantially your papacity, or substantially your capacity, how many times? A You mean taking into consideration both runs, to the Point and in night runs?

Q All your runs and all your years.

MR. FLEMING: Objected to as immaterial.

A That would be hard to say-

THE COURT: You may answer.

Q I dont know as I can. Sundays and our holidays, as I have said before, are all capacity runs practically, expecially on the evenings, and Saturday nights also was the same as our sundays.

Q And how many Sundays and Saturdays are included in the season that you were working there, that is, what was your season? A About 90 days, about three months, practically.

Q And you have just as many Sundays down there as we have here? A I think so.

Q Now, Captain, during that time that you were master of that vessel, did you ever have any trouble with her in carrying her passengers? A Now, I dont know just what you mean,

Q I man, did you ever turn her over or anything else that was a disaster, might be called a catastrophe or a disaster or accident? A No sir, I think not.

Q Did you at any time meet with bad weather? when you were in her? A Yes sir.

Q And what kind of bad weather did you have her out in?

A Well, in the three seasons, of course, you will have more or less bad weather at times. I know the first season that we were in the boat, I think we had the most bad weather, if not more than we had the other two years toggther.

Q What do you call bad weather down in Cleveland where you come ffrom? A Well, before I got into the Eastland I was brought up on the Breight boats that run from

Buffalo to Duluth largely, and sailed up until December, and naturally you would have some weather, but on one or two occasions we had what I could say was a bad breeze of wind.

Q Now speaking modestly, but speaking accurately, wasn't it more than a breeze of wind? A Yes, I think I could say it was on one occasion in particular that it was more than an average breeze of wind.

Q Did you have any gale of wind during those three years you were there? A We had one moderate gale.

Q And did you ever run into heavy seas while you were with her? A Yes sir.

Q How tell us how she behaved in a gale or wind or heavy sea? A Well, I don't know just how to express myself to you, but I can say that she behaved as well as any boat I was ever aboard of, if not a little better.

Q What do you say from your experience and knowledge of the Eastland she is as a sea boat? A I never was in a better one.

Q How? A I never was in a better one.

Q How would your experience compare with other people's experience?

MR. FLEMING: I object to that.

THE COURT: I will sustain that objection.

Q Now, did you during your time---were you familiar with the fact that she had a water bottom tanks in her?

A Yes sir.

Q Do you know whether or not they were used? A I think they were.

Q Were they used for ballast or for trimming or for both?

A Both.

Q And tell us how you used the tanks, we will say, for trimming purposes? A The matter of water ballast and trimming the tanks was left largely to the engineer, that is the detail.

Q Now then, what was the---you were familiar with the general operation of the tanks were you not? A Whyk in a general way, yes sir.

Q Now, then, tell us in a general way how the tanks were operated for trimming purposes? A Well, I dont know.

Q I dont mean the detail as to just how many turns of the valve on the right hand was made, but whether he used one or the other or several tanks? A Well, that I dont know.

Q You dont know that. When you say you dont know that, did you not as to the---

MR. FLEMING: Objected to , if your honor please, as leading.

MR. KREMER: I havent got it put yet.

MR. FLEMING: Youhave gon far enough .

THE COURT: Avoid leading questions.

Q Did you as the chief officer of that steamer receive reports from time to time from your subordinate officers as to what they were doing? A As to what they were doing with regard to the water?

Q Their duties. A You mean the general duties on the ship?

Q Yes. A Yes sir.

Q Did you receive reports from the engineer as to what he was doing with the tanks? A You mean daily reports and in detail and as to the different movements that he made during the trip?

Q From time to time, such reports as he made, I dont care what they were? A I think not, except in a general sort of a way verbally.

Q And for insteance, in the matter of trimming the ship, will you explain what trimming the ship means, as I am trying to use that term? A Well, I think possibly you mean pumping water from one side into the other to straighten her providing she was listed for some cause.

Q That is what you ~~xxxx~~ call trimming? A That is what we would call trimming her, yes sir.

Q Do you know whether that was done at any time, whether she was trimmed? A Oh, yes I think she was.

Q And you know whether or not the tanks and the water in the tanks was used for ballast purposes?

MR. FLEMING: He hasnt testified to knowledge of facts. It is merely hearsay. I submit it is incompetent.

THE COURT: Tell whether you know or not

A The question once more please

(Question read)

A I think they were.

MR. WALKER: I move to strike that out. There is no evidence he knows; It is not responsive and incompetent.

MR. KREMER: I think the witness means to say he does know.

THE COURT: The ~~xxxx~~ question is do you know whether the water was used for ballast?

A I think it was, yes sir.

MR. FLEMING: The same objection, the same motion.

MR. KREMER: The difference between thinking it was and saying it was is, of course, one of these fine distinctions.

THE COURT: It may go out as it stands at the present time

Q You use the word "I think it was." Now will you tell what you mean by "I think it was."?

MR. FLEMING: Objected to.

THE COURT: It seems to me it is very easy for you to say, Captain, whether you know or not; if you don't know anything about it, tell us, and if you do, say so.

Q Yes, her water was used for ballast.

Q Captain, you say you have sailed on the lakes in freight boats and others; do you know whether or not other steams use tanks in the bottom? A Yes sir.

Q To what extent are tanks of that kind used on the great lakes? A They are used largely in freight boats for trimming and for ballast, keep their wheels down. In the fall of the year when they are running light they fill their tanks and when they are loaded, they empty them. Sometimes if there is a mistake made in loading a little bit, the boat has listed a little bit with cargo, they use a little water to offset that.

Q What percentage, Captain, if you can tell me, of the modern freighters use tanks for ballast purposes on the lakes?

MR. FLEMING: Objected to as immaterial.

THE COURT: How is that material? We are not dealing with a freighter here.

MR. KREMER: No, but the purpose is the same, that is the object of ballast tanks is the same. It may be claimed here that permanent ballast should have been used,

we will say, in the Eastland. Now, I want to show, carrying it right through, the kind of ballast that is used on the lakes.

MR. CLYNE: I might say, it is obvious of course there is such a marked distinction in the freight and passenger in the use of water ballast, a marked difference between freight and passenger boats.

THE COURT: I think we better confine ourselves to passenger service.

Q Captain, ~~may~~ have you any knowledge to what extent water ballast tanks are used on passenger steamers? A No sir.

Q You havent any knowledge? A Just in a general way.

Q In a general way? A Yes sir.

Q What do you know of them in a general way?

MR. WALKER: He ~~said~~ he didnt have any knowledge.

THE COURT: You may answer.

A The last question?

(Question read)

Q I never sailed in any other passenger steamers than the Eastland and two others, and they both ~~had~~ used water ballast.

Q What were the others? A The Northland and the Northwest.

Q And those were steamers that plied between what ports?

A Buffalo and Duluth at that time.

Q How do they compare in size and capacity with the Eastland?

A They are a little larger boats.

Q And you know how they compare in quality, standing?

MR. CLYNE: Ojbected to as incompetent and immaterial.

MR. KREMER: I have reference now to whether they are in the first class.

THE COURT: I doubt if it is competent to make com-

MR. FLEMING: Objected to. He has already testified, if your honor please, he doesn't know.

THE COURT: He says he doesn't know; that seems to cover it.

MR. KREMER: He hasn't any knowledge but---

(THE COURT: If he has no knowledge, his judgment wouldn't be very good.

MR. KREMER: He may have a judgment without knowledge.

THE COURT: I sustain the objection.

MR. KREMER: With the knowledge that he has---your honor rule on it? A

THE COURT: Yes.

Q Did you in your experience ever hear of a passenger boat carrying permanent ballast? A I think not

Q Now in turning around, or rather in making your dock at Cleveland, coming from Cedar Point, and coming from your moonlight excursions, how did you wind or turn your ship in the Cuyahoga River? A Why, we did it the same way in coming from Cedar Point that we did on our excursion run. We always made the same movements and handled the boat in the same manner all the way.

Q What way was that? A We would come in the piers in the usual way and then, as I explained, turned around and headed out boat out in order to have her ready for the excursion run, and coming in from the excursion run would do the same thing, to have her ready for morning.

Q How did you make that turn, with what aid? A Necessary to come in through the Lake Shore bridge and turn to the right; run her nose into the river, or slip, as you might call it, and then with the assistance of a tug taking her stern line, would pull her stern around up

the river against the current, if there was any; sometimes there was and sometimes there was not, to straighten around so that we could back to the dock starboard side to.

Q Now, coming in what side of your ship would you present in the direction where your home dock was?

A Well in coming in our port side would be to the dock.

Q Now, in doing that, what was your observation as to where the passengers went on those occasions, on which side?

MR. FLEMING: Object to it as immaterial, what happened down at Cleveland.

THE COURT: He may answer.

A Why, usually on the port side.

Q On the port side. Then when your tug---when you got to the point in the river where you wanted to swing your stern, what position would the tug take with reference to your stern? A The tug would be on the port side pulling on the stern line that almost right angles with the ship.

Q And where did that line lead to on the Eastland?

MR. FLEMING: I submit if your honor please, this line of examination is immaterial.

THE COURT: He may answer.

A To our stern bits through the stern chalk.

Q Where was that stern chalk upon the Eastland?

A Right at the extreme end.

Q On what deck? A Well, you would call it the cabin deck, the second deck.

Q And about how many feet above water? A I should say from 12 to 13, 14 feet, possibly.

Q And what sized line did you use? A Six inch line.

Q How did that tug pull ~~xxx~~ in order to get your stern around, as to whether or not it pulled on the check or wide open? A It depended on who it was. We would get different tugs at different times, and whether or not we were---had the whole river to ourselves, and a great many times, in fact almost invariably, when we had room they would snap her around as quick as possible and get her into the dock.

Q And what kind of tugs, what size tugs did you use there at different times pulling on you in that way?

A Cleveland has a pretty good class of tugs. I dont know the dimensions and power, but there are several there powerful tugs there.

Q Did you have these at different times? A In their regular turn.

Q And did they work full power on your at these times?

A A great many times.

Q Now, in pulling on her stern like that, what did you observe in regard to listing her, as to whether ir did or did not list her?

MR. FLEMING: I object to ~~that~~ the leading character of counsel's questions.

THE COURT: Oh, I dont think this last question is leading.

MR. FLEMING: The general line of questions has been leading.

MR. KREMER: I dont believe I have asked a leading question

THE COURT: Proceed.

(Question read)

- A It would usually give her a list for two reasons: One that the tug would be pulling hard on that side at almost a direct right angle, and another reason, that the dock, being on that side, that we were coming to, it would be all lighted up and a great many times from five hundred to a thousand or fifteen hundred passengers would be there ready for the moonlight run, if it happened to be the Cedar Point run coming in, and the ^{tug} ~~steak~~ on that side is quite a curiosity, and the natural tendency of the people in the passengers is to go over on that side and see everything that is doing, so the result would be that she would be listed to the port.
- Q And during any of these times did she have any dangerous lists? A We never thought so.
- Q Now as a mariner, an expert mariner, what do you say as to whether listing is a common or an uncommon, frequent or infrequent position for a vessel to take?
- A I think all boats list.

Q Do you remember during one of the times that you had the Eastland to a speed boat race on Lake Erie?

A Yes, sir.

Q Tell us about that occasion, as to where the Eastland was first?

A I think we were coming down the lake about abreast of Loraine.

Q From where? From Cedar Point out to Cleveland?

A From Cedar Point out to Cleveland.

Q And then what did you see ~~of that~~ at that time of the speed boat race, what was there of it?

A The speed boat SpeeJack is considered one of our fastest boats down there, and he came out to give us nautically speaking I guess, a little brush, and come out right alongside of us and in fact right abreast of us, and he stayed there for a few minutes right alongside of us; that was Sunday when we were having a pretty good load and our passengers would all get on that side of course to see the excitement. Then to show what he really could do he would go ahead of us, go on around us, make a circle, and come back this way, that would naturally cause the people to get around as fast as possible to see what was going on, and it had a tendency to give us more or less of a list back and forth, so we really didn't have a fair show.

Q Did you have any difficulty, any trouble with the boat at the time on account of that?

A Nothing any more than I don't think we could get the speed that we could if he had stayed on one side and let us keep her perfectly straight.

Q And do you know whether or not her trimming tanks were used at that time to straighten her up as she listed?

A I think the engineer told me afterwards and I think during that-----

Mr. Fleming: Objected to.

The Court: That may go out, it wouldn't be proper what he told you afterwards.

Q Could you from your own observation of the way the boat acted under those circumstances tell whether or not the trimming tanks were being used?

A I don't know as I could.

Q You couldn't tell. You received a report from the engineer at the time?

A Yes sir.

Q What did he report?

A I have forgotten the exact words but I think to the effect that if he would stay on one side and let me alone so I could keep her trim I would give him a run for his money, or something to that effect.

Q What was the name of your engineer at that time?

A Grant Donaldson.

Q And how long had he been with you?

A He was with me the three years that I was in the Eastland.

The Court: You did not tell us what years you were with the Eastland, the Master of it?

A 1909, 1910 and 1911.

Q Tell me if there was any difference and if so what was it between her construction, that is her decks and outfit between the time that you sailed her and the time she left for Chicago in 1914?

A When she left for Chicago?

Q Yes..

A I don't think there was any changes made to speak of after

I left her; between the time I left the boat and the boat left Cleveland.

Q Were any changes made from the time that you went aboard of her until you left her?

A Yes, sir.

Q What changes were made?

A Well, the first year, 1909, we took out a few of the staterooms down about amidships on the cabin deck to make a little more room for dancing, and I think we made some changes in the floor and got it in shape for dancing, where the year before that they had used canvass.

Cross Examination by Mr. Fleming.

Q Your experience has been confined to three boats, has it not, Captain? A. Do you mean entirely, my experience?

Q Your experience, take it as a Master first, your experience has been confined to three boats, is that right?

A No sir.

Q Your entire experience then has been confined to how many boats? A. As Master?

Q No, your entire experience on the lakes?

A Why, I don't know, I should say a dozen or 15 possibly.

Q What relation did you sustain to the boat Northland concerning which you have testified a few moments ago?

A The Northland?

Q The Northland, yes?

A Quartermaster.

Q What was the other boat you named, the Northwest?

A The Northwest is a sister ship.

Q In what capacity did you serve there?

A Third officer one year and second officer the following spring for about a month.

Q Then as I understand you you have been Master of only one boat, is that right?

A No sir.

Q How many boats other than the Eastland have you been Master of; passenger boats now we are speaking of?

A Oh, none.

Q Your experience then as a Master of passenger boats has been confined exclusively to that of the Eastland, is that right? A. Yes, sir.

Q That is during the three seasons to which you have alluded?

A Yes, sir.

Q And at the conclusion of those services you left the Eastland and became sales manager for some concern is that right?

A No sir, at that time I left the steamer Eastland and was employed by the White company as a salesman,; that however was not the last of my sailing.

Q When you first took charge of the Eastland, what was the capacity of the boat do you remember?

A I think 2200.

Q Do you remember the capacity of the boat at the time you left Cleveland?

A Now, do you mean the time that I left?

Q The time you left, you severed your relations with the boat I mean?

A It was just the same, there was no change.

Q Isn't it a fact that owing to the actions of that boat, the capacity of the boat was decreased during the latter year of your service there?

A I think not.

Q Did you ever have any talk with Messrs. Gould and McGrath the local inspectors with reference to the decrease of the capacity of that boat?

A I dont think so, not with the local inspectors.

Q Were you the Master of the boat at the time the capacity was decreased to 1381 passengers by those local inspectors at Cleveland?

A I think not. I am not sure about that but I think not.

Q That boat was constructed and designed primarily for speed, was it not?

A I dont know I am sure.

Q Isnt it a fact that you testified before and stated to the Government investigator at Cleveland that that boat was primarily constructed for speed and was generally known as a speedy boat?

Mr. Barbour: I object to that.

The Court: You may answer that.

Mr. Barbour: The ground of the objection is the District Attorney asks if it is not a fact that he testified, and stated to the Government Inspector at Cleveland, putting two different questions.

Mr. Fleming: I will change that.

The Court: Very well.

Q Do you know Mr. DeWoody of Cleveland?

A Yes, sir.

Q Do you remember of his having interviewed you back about six or seven months ago?

A Yes, sir.

Q Do you remember stating to him that that boat was a boat built primarily for speed?

Q Wouldnt you consider that boat an unsafe boat with a capacity in excess then of 2200?

A Well,I dont know what she would do. We never have made any tests of that kind.

Q Do you know anything about the ballast tanks of the steamship Eastland at the time she was at Cleveland?

A I was never in them.

Q Did you ever make any detailed examination of those ballast tanks? A.No sir.

Q Did you ever give any instructions or directions to the chief engineer as to the method or manner of operation of those tanks?

A Not directly, we discussed it in a general sort of a way.

Q You never issued any orders to him,did you,in reference either to the use of the tanks in the matter of trimming?

A Directly as to whether he should fill this tank or fill that tank,do you mean?

Q Or to fill any tank?

A To fill any tank?

Q Yes? A.Not in that way.

Q Did you ever issue any orders at all with reference to the use of water as ballast or for trimming purposes,to Mr.Donaldson?

A Yes,in this way,for instance,we would on sunday night or some night in particular that we hadnt known there was a large excursion,I would send word or see the engineer personally and tell him that we had a large load tonight and he could govern himself accordingly with regard to his water.

Q Did you tell him specifically what to do on any occasion?

A No sir.

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Q At the time of the reception of people there aboard that boat on the river, to which you have referred, did you use water or did you not in the ballast tanks?

A We used water.

Q Do you remember the extent to which you used water at the time of the receiving of passengers aboard the boat?

A No sir.

Q That was left exclusively was it to the chief engineer, Mr. Donaldson?

A Yes sir.

Q And you cannot testify as to what was done or not done at any time in connection with the loading of passengers insofar as the ballast tanks are concerned?

A All I did with regard to the ballast was to keep the engineers posted as to the number of passengers that were coming aboard.

Q You had considerable trouble with that boat while you operated it between Cedar Point and Cleveland, did you not?

A I didn't think so.

Q You had trouble on a number of occasions, did you not?

A What kind of trouble do you mean?

Q Trouble with listing of the boat and frightening of the people? A. No sir.

Q Wasn't it generally known, don't you remember one trip back in 1906---the year 1911 on a trip from Cedar Point to Cleveland when you were carrying upwards of 2200 people that there was general panic aboard that boat because of the actions of the boat?

A No sir.

Q Didn't you return to harbor, back to Cedar point one night after you had started the voyage, because of the behavior of the boat?

- A She never turned around for weather while I was in it.
- Q That boat was generally known among seamen on Lake Erie as a cranky boat, was it not?
- A I dont know. People would ask me, some of the sailors, if she wasnt a little cranky, but whether it was generally known or not I dont know.
- Q Isnt it a fact that it was published generally that the boat was an unseaworthy boat and a cranky boat, in the papers of Cleveland, during the time which you were Master of the boat?
- A We used to hear a good deal about it, yes sir.
- Q And you have talked with seamen too have you not concerning the character of the seaworthiness of the boat?
- A Occasionally.
- Q And isnt it a fact that the concensus of opinion was that it was a cranky unseaworthy boat?
- A No sir.
- Q Isnt it a fact that the general opinion among seamen on Lake Erie was that she was a cranky boat disposed to list?
- A That might be.
- Q Isnt it a fact that it was?
- A To what extent I dont know.
- Q Do you remember any talk with Mr. Gould or McGrath with reference to the steamship Eastland?
- A Oh, a great many times.
- Q Do you remember their telling you that the boat was of such a construction that it was dangerous to carry upwards of 2200 people and they deemed it necessary to cut the capacity of the boat?
- A No sir.

Q As a matter of fact didnt they cut the capacity of the boat to 1381?

A No sir.

Kremer
Mr. Graham: What year?

Q The year 1913-'14.

A I dont know.

Q Do you have any knowledge of that?

A I dont remember anything about that.

Q Do you remember following one trip there was so many publications in the local papers that your company offered a reward to any engineer who would prove that boat unstable or unseaworthy?

A Yes sir.

Q What was the cause for the publication do you remember?

A I think it was the general report that we kept hearing that she was unseaworthy and she was unsafe among certain classes of people, that they wanted to try and outlive that and push it down and push it down permanently if they could.

Q And that came because of the fact of the tendency of that boat to list did it not?

A I dont know, I think that came largely from reports from Chicago. They might have been enlarged, they might not, I dont know.

Q Have you ever been identified with any passenger boat that carried permanent ballast?

A No sir.

Q Boats that carry permanent ballast, have you any idea where the ballast was placed?

A No sir.

Q You know nothing whatsoever of the use of permanent ballast

in connection with passenger boats?

A No sir.

Q Is that right? A. Yes, sir.

Q Capt. Nelson ever speak to you concerning this boat,
Capt. Nelson of Cleveland?

A I think he has.

Q He has discussed has he not the general reputation of the
boat as an unsatble cranky boat?

A I dont remember.

Q Would you say he has not discussed with you that subject?

A I wouldnt say one way or the other, It has been discussed
with different people and whether anything was said
directly with Capt. Nelson with regard to that I couldnt say.

Q Havent you had discussions with Capt. Nelson as to the
maximum capacity which should be given that boat?

A I think not.

Q Havent you talked with him on the subject of the number
of people that may be carried with safety on Lake Erie
aboard the steamship Eastland?

A I dont think so.

Q Do you remember the limitation upon that boat that she
should operate within five miles from shore on Lake Erie?

A Not during the time I was in her, no sir.

Kremer

Re-Direct Examination by Mr. Graham.

Q The word "cranky" has been used and I wish you would give
a definition of cranky as that word is understood by people
who know what it means?

Mr. Walker: You mean about men or about vessels?

Mr. Lillie: Both.

A Well, I think a cranky ship is inclined to list a little

easier and a little quicker possibly than a broad built different type of ship.

Q Is cranky and unseaworthy synonymous? Do they mean the same thing?

A I think a cranky ship might possibly be a better sea boat than one that is not, in fact that is true in the Eastland's case.

Q Is a cranky boat necessarily unseaworthy as the terms are understood among nautical men?

A I don't know why she should be.

Q Just answer me. A. Give me the question again, please?

Q Just read it. (Question read) A. No sir.

Q I will ask you whether or not in your experience with her while at Cleveland as you have here testified to, there was anything in the conduct of the Eastland that would justify calling her cranky or unseaworthy?

Mr. Clyne: We desire to object to that, calling for a conclusion. He has detailed his experience with the boat.

The Court: You may answer.

A You are combining the two now, you are combining crankiness and the unseaworthiness and asking me to say yr or no.

Q You can explain it any way you like, if you understand what I mean?

A She was undoubtedly a cranky boat, but she was a long ways from being an unseaworthy boat.

Q How does a steamer that is cranky compare with one that is ~~stiff~~ stiff as to seaworthiness and sea going qualities?

A A boat that wasn't cranky would be more liable to be fuller, I mean by that that her lines wouldn't be so fine, she would push through the water harder, she would labor more in some ways in a head sea, that is, she would pound, where

a boat of finer lines, with dead rise and those things, that go to make up a cranky boat, would cut through and would probably make better time and her time on her speed would compare favorably with what it would in smooth water, more than a boat of the other type; that has been my experience.

Q Which of the two would be the better sea boat?

A So far as the sea going qualities I much prefer the-----

Mr. Fleming: I object, his preferences.

The Court: That is his way of expressing his opinion. You may answer.

Q Go on. A. I was going to say, so far as the seagoing qualities are concerned I would much prefer a boat of the type of the Eastland coming down the lake to get there on time and come right along through, than I would a more stable solid scow type of a boat, that might not be so cranky.

The Court: If I understand you, Captain, then, crankiness in a boat is commendable rather than the contrary, is that right?

A It is except people that don't understand boats, when they see a boat take a little list they feel inclined to think she is going to go over, and the fact that the boat like the Eastland has had trouble in Chicago and they see a little list, the first thing she goes one way or the other, they feel that there is trouble, whereby there really is not trouble, she is going to stay, and she is a better sea boat, she goes right along about her business and she will go up the lake when boats like the side wheel boats could not look out of the piers, and that was demonstrated in Cleveland, on the date we went up that breeze of wind, she went to Cedar point and back that day, when I think

I am not making too broad a statement that there wasn't a boat left Cleveland and I think the Northwest laid about the breakwater all day long. I think I am correct in that statement that we were the only boat that left Cleveland on that day, and I don't think we were over 18 minutes late coming back, and I don't believe there is a boat that was laid to a dock in the city of Cleveland that day that could have gone there unless it might have been the Northwest.

Mr. Kremer: What was the weather, describe the weather??

A It was a bad northeaster, and the local men along the docks say they hadn't seen as bad a breeze, not for a number of years, even in the fall of the year. I think it is generally conceded among the local marine men at Cleveland along the south shore that that was one of the worst breezes of wind we had for some little time.

Re-cross Examination by Mr. Fleming.

Q Do you remember the permanent sealing of some of the dead lights while you were Captain of that boat at Cleveland??

A The permanent sealing??

Q Don't you remember sealing them?

A No sir.

Q That was not done during your captaincy??

A No sir; I don't think we ever permanently sealed any dead lights, I think we might have locked some of them up possibly.

Q Do you remember having locked them up then permanently?

A I think we did go down in the after part of that boat, and just what was done or how it was done I ~~am~~ don't remember, but I think we had some talk about dead lights

and I think that they were taken care of in some way.

Q Did you ever have any talk with the local government inspectors with reference to the sealing of those dead lights? A. I don't think so.

Q Do you remember the reason for the sealing of them then?

A They were pretty close to the water.

Q When did you leave the Eastland? A. 1911.

Q The boat sailed Lake Erie after you left it?

A Not that year.

Q Did you have anything to do with effecting the sale of that boat the early part of 1914?

A Do you mean-----

Q Did you have anything to do with the sale of the boat by the navigation company down at Cleveland to the St. Joseph Michigan Transportation company?

A No sir.

Mr. Fleming: That is all.

Capt. Nels B. Nelson, being called as a witness,
being duly sworn, testified as follows:

Direct Examination by Mr. Kremen.

Q What is your full names? A. Nels Bernard Nelson.

Q And where do you live? A. Cleveland, Ohio.

Q And what is your present occupation?

A Supervising Inspector of steamboats 9th district.

Q And where are you stationed? A. Cleveland, Ohio.

Q And what is embraced within your district as supervising
inspector? A. Lake Erie, Ontario, and Champlain.

Q And how many local inspectors are there within that district?

A Two at Toledo, two at Cleveland and two assistants, two at
Buffalo, and two assistants, two at Oswego, New York, two at
Burlington, Vermont.

Q How many years have you been supervising inspector?

A Since 1912, January.

Q And before that what office had you?

A Local inspector of steamboats.

Q How many years were you local inspector?

A From 1905.

Q And where were you stationed? A. Cleveland.

Q How many years did you serve as local inspector?

A From 1905 to 1912.

Q Before that what was your occupation?

A I was Master of steamboat.

Q And how long had you been Master of steamboats?

A Oh, about 15 years or more.

Q And what experience had you had as a sailor prior to your
being Master of steamboats?

A Oh, I had served in all the capacities on a sailing vessel
from quartermaster, second mate, mate and master.

Q Then steam? A. Then steam I was mate and then Master.

Q Where did you do all of that sailing?

A Why after I left the Ocean principally on the lakes.

Q How long were you on the ocean?

A Why I served sometime as a boy when I was 14 years old, came up on the lakes before I was 18 and then during the winters used to go down on the ocean and sail.

Q Do you know the steamer Eastland? A. Yes, sir.

Q When did you first become acquainted with her, as it were?

A She came to Cleveland in 1907 with the Grand Haven inspection, and we inspected her, I inspected her with an assistant in the spring of 1908, and in 1909 and 1910 and 1911 and of course 1912 I didn't inspect her because I was promoted to supervising inspector.

Q She was still within your district?

A Yes.

Q When you inspected her what was your part of the inspection of her as a local inspector?

A Why, to look at the general stability and structure and build of the ship and pass on her seaworthiness, whatever the statutory law demands.

Q What else did you have to do with her outfit?

A See that all her life saving equipment complied with the law and rules and regulations.

Q Who as the local inspector assisted you in making the inspection in those years?

A Capt. Gould.

Q And what was his duty in connection with the inspection?

A The same as mine. Thomas W. Gould.

Q What was his duty? A. The same as mine.

Q Was there anyone who inspected with you as to the boiler and machinery?

- A The boiler inspector and hull inspector put a hydrostatic pressure on the boilers, jointly.
- Q Who was that man?
- A Why James McGrath was boiler inspector the first year we inspected her.
- Q Who constituted the board, the first year that the Eastland was taken, the Board of Local inspectors?
- A Mr. McGrath and myself.
- Q And who the next year?
- A Messrs. McGrath and myself.
- Q And the following years? A. Up to 1912.
- Q And when you made the inspection did you make a joint inspection or a separate inspection?
- A Why partly joint inspection and partly separate.
- Q After inspecting her and from that time on what did you know about the Eastland and what she was doing?
- A Why we certificated her for the passenger business.
- Q Did you see her during that time?
- A During the time she operated out of Cleveland?
- Q Yes. A. A number of times, we would go down and tally passengers when we had time.
- Q How frequently did you see her on the occasions that she was actively carrying passengers? down there during the years that you were the local inspector?
- A Oh, a number of times, I couldn't state the number.
- Q What duty had you to perform in connection with the Eastland on her employment and business?
- A It was my duty to see that she complied with the law and lived up to the law, and in addition to the annual inspection we reinspected her three times a year.
- Q When you inspected her how much of an examination of her

did you make?

A Why I have the records here, it is all subject to official record, any testimony I may give.

Q I don't care about that unless you want to. I am speaking generally just what you did, the actual acts?

A Examined her structure and build, and life saving equipment.

Q Who determined the question of the number of passengers she would be allowed to carry?

A The local inspectors.

Q And what elements did you consider in arriving at the amount or the number of people that she was allowed to carry?

A Why on a new ship we considered the stability and take into consideration a good many things, I didn't to the Eastland because she had run a number of years, and she came down to Cleveland with a certificate of 2400, and she ran the season of 1907 with 2400, that is the maximum, and we gave her 2400 again.

Q And in a case of where a vessel has been in existence and employment for a number of years in other districts, what consideration and what value do you place upon the inspection certificate with which she comes to your district?

A I place some value, that she had been up in the Chicago District and naturally been watched by the inspectors up here, and if they deemed it unsafe or she couldn't carry the number of passengers safely, they would probably cut her down.

Q What number of passengers did you give her the first year that she was there?

A 2400 the same as she came down with. I am now speaking of the maximum number.

Q Did you at any time know of her carrying the maximum number?

A I couldnt say. The first time I tallied the Eastland was in 1907, and I went down to the dock in the afternoon I think, that is a few days after she got to Cleveland, and as my records show I tallied 2360 or '70 newsboys, and I rather think some of the newsboys, a number of newsboys got aboard without being tallied because it is pretty hard to keep track of them.

Q Newsboys in Cleveland are no different from what they are up here then. Did you go out with her?

A No sir.

Q Did you see her go out?

A I stood on Main street bridge just a short distance to watch her.

Q How did she carry them?

A Well, they seemed to be all on the upper deck, and she did have a little list outboard I think, but nothing very alarming.

Q Did you that year make any trips on her, to Cedar Point or out on moonlight excursions?

A Several trips.

Q How did she act on those occasions?

A I never saw anything wrong with the ship.

Q And how about 1908?

A I never saw anything wrong with her.

Q About any time that you were there?

A I never saw anything wrong with the Eastland outside of a little slight list occasionally.

Q What do you say as to whether or not the Eastland was a stable and seaworthy craft and capable of carrying safely the number of people that were allowed her?

A If she hadnt been I would have reduced her.

Q What do you say now as to whether she was or not?

A Why I think the Eastland probably could handle and carry 2500 people any time under the same condition as she was in Cleveland, I don't know anything about her condition she was in in Chicago.

Q Assuming that she was in the same condition, I am assuming that she was in the same condition, what do you say as to her being stable and safe if she had 2500 passengers on board?

A She would be perfectly safe but be a little crowded.

Q I will ask you about how many tons 2500 passengers weigh?

A You could figure out, we figure about 150 pounds to a person, that would be about 187 and a half tons.

Q In making allowance for passengers to be carried on a steamer like that, do you consider the area, the deck area or the weight of the passengers as most important?

A Why, we consider both, stability of the ship and the deck area taken into consideration what run she is on.

Q The Eastland with 2500 people on board would be having a load of about something less than 200 tons, wouldn't she?

A Yes.

Q What do you say as to whether that was a heavy load or a light load for a steamer of the Eastland's capacity?

A I consider it a safe load if she was properly handled.

Q I mean now without reference to being human beings but dead weight, the dead weight of 2500 people regardless of whether they are people or pig iron?

A Oh, dead weight, it would be a light load.

Q And when, if the Eastland as you knew her, were loaded with 2500 people, what do you say as to whether or not there would be much or little opportunity for a crowd to get on to one side or the other?

A 2500 people?

Q Yes. A. She could probably hold half of them on one side, if she would have to.

Q And the other half where?

A The other half would be on the other side.

Q I will ask you whether you understand the term cranky as having been used here, as to what that means among sailors and marine men?

A As a rule among sailors you speak of a cranky ship, it is a sensitive ship, easier heeling over, a cranky schooner heels over easier than a canvass. I would like to follow out my statement: a cranky ship may not necessarily be dangerously cranky.

Q And just describe that, tell us what you mean by that?

A Why, after some ships list over why they gain in stability they increase under weighted surface.

Q And others? A. Others won't increase as much.

Q What do you say as to how common a thing it is among vessels, passenger steamers, if you please, to list on the starboard or the port side, more or less?

A That depends on the type of passenger steamers; we have some types of passenger steamers that don't list any, other types list some.

Q These are the side wheel steamers?

A Side wheel steamers.

Q But I am speaking now of propellers?

A Propellor type as a rule lists easy.

Q I will ask you now whether or not it is a fact or is not a fact that every propellor that carries passengers for excursion purposes lists more or less on the ~~trip~~ trip no matter what the weather is?

A I couldn't make that statement because I haven't seen them all, there may be some that done.

Q Did you ever see one that didn't?

A No, I never saw one that didn't.

Q I will ask you whether or not a cranky vessel, or I will use another term, a tender vessel, is necessarily unseaworthy?

A Not necessarily, no.

Q Is that any evidence of unseaworthiness?

A That she is tender?

Q Cranky or tender? A. No sir.

Q Did you know at the time you inspected this vessel where she had been built?

A Yes sir, we looked up her records.

Q And did you know that she had been built under the supervision of the Bureau Veritas?

A She had a Bureau Veritas classification.

Q Are you familiar with what is known as the Bureau Veritas classification on the lakes?

A Why, that is a classification that is used entirely almost.

Q And what is the purpose and object of that classification?

A To get a rating for the ship.

Q And what is that rating for? A. For insurance and valuation both.

Q And how commonly is it in use among vesselmen who are buying and selling ships? A. Well, they use the classification as a basis for the value of the ship and her rating.

Q Did you know that this steamer Eastland was constructed under the rules and supervision of the Bureau Veritas? A. I did because the classification, the certificate was hanging right there on a frame.

Q What was the rating of the Bureau Veritas at the time you saw it? A. I have forgotten now, I think it was A-1, or A-1 with a star, I have forgotten the rating.

Q Do you know whether it was the highest or not?

A The highest, yes.

Q Are you familiar with the manner in which the Bureau Veritas superintends the specifications and construction of ships on the lakes?

A Why yes, they have got a book.

Q And how -- what do they do -- what do they actually do in connection with the architecture and construction and the building of a ship?

A Why they generally have a superintendent that looks out and sees that the ship complies with the rules and regulations of the Great Lakes which has Bureau Veritas qualification. And after she is built and complies with all the rules and regulations she gets a class. That is the structure of the ship. The Bureau Veritas does not say anything about the model of the ship, this is the construction of the ship.

Q Yes, well do they have anything to say as to whether or not she is a fit ship to carry cargoe and passengers as the case may be?

A I should think they would not class her if she was not a fit ship to carry passengers.

Mr. Walker: I move to strike that out.

The Court: It may go out.

(Question read to counsel)

Q Now can you answer the question yes or no?

A Will you read the question?

(Question read to the witness)

Mr. Walker: It calls for the witness' knowledge.

A I dont know, positively I dont know. It may be as a general proposition but you want an answer yes or no and I can only say I dont know.

Q In the matter of numbering the passengers in a steamer

like the Eastland, do the local inspectors in the particular district in which she is navigated use their own or somebody's else judgment in determining the number of passengers she shall carry.

Mr. Clyne: I object to the question.

Q I ask this because the alternative may be that there is a regulation that determines that whether they do it on judgment or whether they do it as to rules and regulations specifically.

The Court: You may take the answer of this witness as to his knowledge as to what he does. This man has been a local inspector.

Mr. Kremer: Yes.

The Court: You may inquire so far as he is concerned.

A I stated before that I took the stability of the ship into consideration but in the case of the Eastland I rated her on her previous record largely.

Q And did you use your own judgment in connection with it at all?

A Why certainly I would have to use part of my judgment.

Q Yes. Who determines in the first instance the number of passengers that the ship shall be allowed to carry?

A The local inspectors provided by statutory law. They are the only ones. There is no appeal from the local inspector to the supervising inspector as to the number of passengers-- or there was not until about a couple of months ago.

Q Yes; in many other things that the local inspectors do there is an appeal to the supervising inspector?

A Except in that case, there has not been until lately, but that is not in the law, that is only in the rule.

Q Yes, as the supervising inspector covering a number of locals, are you familiar with how the men determine the number of passengers that a ship shall carry in the various districts over which you preside?

A I generally try to keep track of it as good as I can with a view to enforce perfect safety to the traveling public.

Q Yes, did you keep your eye on the Eastland after you were supervising inspector?

A Why I cant say that I did because she was reduced to two thousand people and I didnt think it was necessary.

Q And how do you keep in touch with the local inspectors as to what they are doing?

A Why we have a tally card sent from the local inspectors to the supervising inspectors every day. Daily log. And also a card going through our office of every boat that they inspect. The number of passengers, lighter service, boat equipment and everything pertaining to the life saving of the ship.

Q Are those reports sufficiently -- are those reports in detail as to the inspection of each ship?

A Partly so, yes.

Q Have you, as supervising inspector, you more or less supervised their work and duties?

A Yes, sir.

Q What do you do with the reports of the local inspectors?

A I look them over and if they are all right I got to stamp them and put my initials on them and forward them to Washington. If they are not all right I have got to return them.

Q To what department do you send them?

A Supervising inspector general.

Q When a legal inspector's amended certificate of inspection--

Mr. Clyne: ~~May~~ I interrupt? May we have a recess for a couple of minutes?

The Court: We will take a recess now for two or three minutes.

Q During the time that the Eastland was running out of Cleveland in your District did you know of any difficulty that she had been into through her being cranky or otherwise?

A I never knew of any difficulty but there were lots of rumors around that she was cranky.

Q Yes. A Hearsay.

Q And how did that affect you so far as your duties were concerned?

A Why we naturally were a little more watchful.

Q Did you at any time see anything yourself that indicated her not being safe or suitable?

A No, sir, if I did I would have revoked her certificate.

Q Captain, as an inspector and as a seaman, what would you say of the Eastland as to a model ~~ship~~ shape?

A I would say she was an exceptionally fine ship, fine model.

Q Yes, now what do you mean you say fine model?

A Fine lines.

Q What does that mean?

A Well I don't know as I can explain it, there is a lot of difference between fine lines and broad lines like a freight ship.

Q Yes, which is the better shape, one that has fine lines or one that has not fine lines?

A For what purpose?

Q For passenger purposes?

Mr. Clyne: We will object to that "better" unless it is stated in what respect, as to speed or --

The Court: Well, we will get at that I suppose later.

(Question read to the witness)

A Fine lines would be a speedier ship, easier sea-boat.

Q When you say easier sea-boat, what do you mean by that?

A Well, I don't know as I can explain it, she is easier in herself.

Q Does that mean she is more comfortable to passengers?

A She rolls easier, behaves easier.

Q Yes, how as to her sea worthiness, sea going qualities?

A Why, sea going qualities -- fine line ship, its sea-going qualities are just as good as a coarse line ship.

Q And in encountering heavy seas, what do you say as to whether they are better or otherwise than a broad ship is?

A Finer the lines the easier she rides on the sea.

Q Yes, what do you call that when she rides easy in the sea in nautical parlance?

A Good sea boat.

Q Good sea boat. That's all, Mr. Clyne.

CROSS EXAMINATION BY MR. CLYNE:

Q Captain, you began your services as an inspector in what year?

A I think it was 1905.

Q And when did you first see the Eastland, when did the Eastland first come under your inspection?

A 1907 she came to Cleveland.

Q And in that year what allowance did you make for her carrying capacity for passengers?

A She came down with a certificate from Grand Haven I believe, we did not increase it nor didnt decrease it.

Q When the boat arrived at Cleveland did you give ~~xxxxxx~~ it an inspection?

A Why --

Q Or shortly after that? A I sent the assistant inspector up to see if she had the requisite number of life preservers.

Q What did you fix the carrying capacity of the boat Eastland in the year 1907?

A I didnt fix it, she came down with the Grand Haven certificate.

Q How much was that? A Why, we didnt save that certificate but as near as I have any record 2400.

Q How long did that capacity continue?

A Why until she laid up, she laid up some time in August.

Q Well, was there ever any change in this number that she came to you with?

A Not in 1907.

Q I am asking you at any time. When did the next change in the capacity of this boat occur?

A At 2400?

Q Yes. A In 1909.

Q She continued then for two years?

A Lets see when I got our inspection.

Q Whats that? A In 1908 we inspected her the first time in Cleveland.

Q Yes, and what did you fix the capacity of the boat at at that time?

A Maximum 2400 passengers and a hundred of the crew.

Q In 1908 Captain -- A In 1908.

Q Why isnt it a fact Captain that in 1908 you fixed the capacity at a hundred fifty --

A Why I am now speaking of the maximum number of passengers which was allowed. I am not speaking of all the little details. We gave her a certificate and she didnt have the necessary number of life preservers and we increased the amount from time to time.

Q Captain, I will make the question a little plainer. When you made the first inspection in the year 1908, do you know what the maximum capacity of the Eastland was at that inspection?

A Yes, sir.

Q Please give me that.

A That is subject to records. The steamer Eastland came to Cleveland with a certificate of inspection --

Q I am not asking you that Captain --

A Well, I got to read --

Q I am asking you about the year 1908.

A I have got to read it all until I get to it. June 13, 1908 was the first inspection of the steamer Eastland which took place in this district. That is the Cleveland district, and after considering the situation carefully it is determined that 1500 passengers are to be the proper number to allow the steamer throughout the season.

Q That is what I wanted? A June 23, 1908, same year --

Q 1908 -- A 1908--

Q Captain, what was--

Mr. Lillie: Let him answer the question.

Q Is there something else Captain?

?A Why I have got to read along so to get the reason that we increased from time to time was because they didnt have

the necessary number of life preservers.

Q I understand, but you have answered--

A Throughout the season I said. Now, there was several amendments made in 1908.

Q Well, what was the greatest maximum capacity at any time during the year 1908, Captain?

A 2400.

Q 2400. What date was that? A. That was July 2nd 1908, excursion permit was again increased this time to 900 making a total of 2400 passengers allowed.

Q What date was that? A. I think it was July 2nd, may be a discrepancy in a day or so, but the records will----

Q What other change subsequent to that was made in fixing the capacity of the steamship Eastland, Captain?

A That would be, you come now to 1909 do you?

Q Why, if that is the year? A. Why, yes that would be the year after 1908.

Q If there was any change in 1908 what was it?

A No sir.

Q If there was none then 1909?

A No sir. 1909 at annual inspection the number of regular passengers was again set at 1500. That is regular throughout the season. On June 12, 1909 an excursion permit for 500 was issued.

Q Pardon me, that made a total of 2,000 did it not, Captain?

A Yes.

Q Now, was there any change after that? A. Yes.

Q What was that? A. One June 26th 1909 an excursion permit was issued increasing the number to 700, this made a total of 2200. This was the largest number granted that year.

Q How long did that permit last of 2200?

A Why, I havent got the record of it but we generally give them during the excursion season.

Q Well, do you mean to have us understand that that increase either continued for the remainder of the season or for a day?

A Oh, it would go properly throughout the season which it was navigated.

Q Well, you have the records there, what do they say??

A Well, I have part of the records.

Q And you dont know whether that increase was for a day or the season?

A Why, I think I could get it right here, it is given until September 1st 1909.

Q How long did that run, captain, if you have any information??

A That just said until September 1st.

Q Now, captain, why did you reduce this boat from 2400 to 2200?

A Well, there was several rumors about the boat not being seaworthy which I was positive of it was-----

Q Well, this information how did they know?

A Well, I will get to that after a while.

Q Well, I am asking you now, Captain?

Mr. Lillie: Let him answer it.

A And the people complained about the ship rolling, people down our way had always been used to riding on side wheelers and this was a propellor ship, and naturally rolled deep, and she had developed an excursion business, moonlight business Previous to that we used to carry--we used to count the children and babies in arms, and for the factor of safety we thought we would reduce it to 2200, and so in 1900--shallow water had to be considered a point and we simply wanted to apply the safest game we could.

Q Now, Captain, when the boat came there and you made the first

inspection just tell the court if you will what you did in determining and fixing the capacity of this boat?

A When she came there?

Q On your first inspection to fix the capacity what did you do?

A Well, I examined that by a hydrostatic pressure measured up her deck space and took into consideration her past record and I had watched her.

Q What did you find her deck space to be, Captain?

A Why, I think I have it right here, her deck space was 16733 square feet giving her a liberal allowance for alleyways and stairways and passageways.

Q What did you do after figuring the deck space-- in other words, what part does that play in determining the capacity of the boat and deck space?

A That just determines as to the comfort of the passengers.

Q That has nothing to do with the safety or stability of the boat has it? A. No sir.

Q Well, what did you take into consideration in figuring the stability of this boat in allowing 2,000 people to be carried upon it?

A Why, she had carried 3,000 upon Lake Michigan---

Q Well, I understand.

Mr. Lillie: Now, let him answer the question please.

A She had carried 3,000 upon Lake Michigan; she had carried 2800; she had carried 2400 safely, throughout the season, and I had watched her carefully and I considered 2400 was a good safe allowance to give her again considering that we counted the children and babies in arms. And besides that they had removed a number of state rooms.

Q Where did you get your information that she carried 2500 or any number in excess of 2500?

A Well, largely by hearsay I guess.

Q So your information was upon hearsay, was it?

A I couldn't tell you, I might have seen some official records.

Q Well, do you know? A. I can't remember any now.

Q You can't tell us whether you looked at any official records in fixing her capacity?

A I can't remember now. We exchanged ideas as local inspectors, I saw Capt. Manchester a number of times, he probably asked me.

Q Well, what did you do after you examined her hull and looked over the boat generally as to figuring out what the capacity of this boat would be?

A I don't understand that question.

Q Strike that out. Just analyze if you will please for us the elements that you considered by fixing the capacity of this boat with reference to the safety of it, convenience and safety.

A Safety, I had watched her the summer before and she had carried 2400 people under different conditions and she had been tried out and we considered that 2400 people was a safe number to give her the following year.

Q Well, do you think that that is the way to determine the capacity of a boat with respect to safety?

A There are other ways to determine, but we had neither time or money or anything else to carry out any other experiment.

Q Why, isn't it a fact that really in fixing the capacity you take the deck area and divide that by some certain factor?

A No, ~~that~~ don't determine the stability of the ship.

Q You never did that? A. No, sir.

Q What was the capacity-- well, Captain what are these other ways of determining safety of this boat that you did not use?

A Why, you can put a ship to the incline test or a stability

test.

Q Would that fix the safety--carrying capacity, of this boat??

A Fix the number of passengers the ship can safely carry.

Q Was that done? A. The builders do that, and they do it in the Navy, but I never knew it being done in the merchant marine up here.

Q ~~What~~ Do you say the builders of this boat did that?

A No, I say the builders in some cases furnish that with a passenger ship.

Q You dont know what the test might have revealed with respect to this boat do you? A. No sir.

Q Might have shown that the boat was only safe to carry 1500 passengers, might it not?

A It could not ^{convince} ~~advise~~ me because I have seen her carry a larger number.

Q I say but it might have shown that this boat was not safe to carry in excess of 1500?

A It might have shown it but it would not convince me because I have seen it carry more.

Q Do you consider your observation better than this test?

A That from actual conditions must be better than the scientific test.

Q They are superior, you regard them as superior?

A In that particular case they would be.

Q Now, just describe if you will in a brief way just what this incline test is?

A Why, I could not explain that to you in detail intelligently to you. There is a man here that can do that. I have a general knowledge in my own crude way what it is but I dont know as I could explain it intelligently enough to you.

Q And you have applied it yourself, Captain?

A Partly.

Q Well, do you mean that you needed assistance?

A Yes, sir.

Q Or directions in the matter? A. Why, we need some aid and assistance, yes.

Q So as I understand it you fixed the capacity of this boat by looking at it, looking it over and hearing what other inspectors had said in regard to it?

A By her past record and actual observation.

Q Well, what was the capacity of this boat in the year---- I show witness a paper entitled at the head "Certificate of Inspection Steam and Motor vessels" I ask you whether you ever saw that paper before and if so when?

A That is in 1912.

Q That is a certificate for the inspection of the steamship Eastland. A. That is 1911, 1500 regular passengers and afterwards she got an amended certificate of inspection.

Q Is that your signature? A. Yes sir.

Q Found there at the bottom? A. Yes sir, 1911.

Q N.B. Nelson: Can you tell from examination of it when you signed that? A. In June 1911 it is sworn to.

Q That is the certificate issued by you while one of the inspectors at Cleveland for the steamship Eastland?

A Yes, 1500 regular passengers.

Q I show you--are you familiar with the signature of Thomas W. Gould and James McGrath who were inspectors at Cleveland?

A Yes, sir.

Q I show witness a paper temporary certificate of inspection-- Mr. Lillie: what year?

Q This is for the 4th day of June 1913. I ask you whether you know those signatures?

A Yes, perfectly familiar with them.

Q They are the signatures of--- A. The local inspectors,,
Gould and McGrath.

Q I show witness certificate amending certificate of inspection
by changing the character of vessel, route and equipment
and under date of June 29th 1912, and ask you whether you
are familiar with the signatures?

A I am familiar with the signatures.

Q And they are the signatures found on that paper of McGrath
and Gould?

A Yes,, 2,000 people, 1912.

Q I show the witness certificate of inspection for steam and
motor vessels under date of May 27th 1912, and ask you to say
what the capacity was for carrying passengers upon the
steamship Eastland at that time?

A Why, her regular certificate, 1500, throughout the season of
course.

Q Yes. I show witness certificate of inspection for steam and
motor vessels under date of July 1, 1912 signed by Thomas W.
McGrath--- A. No, Thomas W. Gould and James McGrath.

Q Thomas W. Gould and James McGrath and ask you to read if you
will the typewritten portion at the top of that certificate?

A "This steamer being provided with 2,184 cubic feet of life
boat capacity, proper deduction being made for crew of 75,
is hereby allowed to carry 651 passengers, with route
specified below from May 15 to September 15 both inclusive.
Also navigated on routes which are at all points within a
distance of five miles from land or over waters whose depth
is not sufficient to entirely submerge the vessel. This
steamer may, between May 15th and September 15th carry 2,000
passengers." Perfectly right.

Q So when this boat was permitted to carry 2,000 people, you

as supervising inspector, limited this boat to remain within five miles of shore or to such points as not to submerge the vessel, is that correct?

A No sir.

Q Just explain it?

A Why, in 1912 the rules and regulations was entirely revised limiting the passenger capacity to localities or passenger allowance according to life saving equipment. Throughout the whole season the ship had to carry full equipment of life boats and life rafts but between May and October she only had to carry 30 per cent--or 20 per cent. I have forgotten-- within five miles of land only 10 per cent.

Q Now, you say that the rule was changed when?

A I think in 1912.

Q And what was that rule as you understand it?

A Just as I repeated it to you.

Q Well, ~~what~~ do you mean to have us understand that the number of passengers was carried in proportion to the amount of boatage and raftage that you had on the boat?

A Previous to the Titanic disaster the rules differed in England as well as this country and boatage was rated by the tonnage of the ship, after the Titanic disaster the boatage was rated at the percentage of the passengers the ship carried.

Q I understand, but that don't answer my question. The question is this: In fixing the capacity of a boat with respect to the number of passengers, did you fix the capacity with reference to the amount of boatage and raftage that you had on the boat?

A In that particular case I suppose they did. That is issued by the local inspectors.

Q Well, you were supervising inspector, did you not know just what they did; as near as you can tell us in this case?

A Well, I didn't understand, Mr. Clyne, what you said, did I base it on what?

Q No, I say supervising inspector. Those matters came under your observation, did they not?

A Yes.

Q Well, just tell us and explain if you will, it came under your observation, from those two local inspectors, what you did with respect to this certificate on these matters?

A I didn't see the certificate.

Q Well, did you have any report?

A Yes, I got a card report. That complies with the rules. That endorsement complies with the rules and regulations.

Q Well then we are to understand that after the adoption of this rule that a number of people that were permitted to go aboard the Eastland was determined by the amount of boatage and raftage that had been placed on the boat, is that correct?

A To some extent.

Q Well, to what extent, that is what I want to know?

A Why, they couldn't no local inspectors give any more, independent of how much boatage and raftage they had, would give them no more than the boat would safely carry as to stability.

Q Well, which governed, was it the judgment of the boat or the amount of raftage and boatage that they had on, in fixing the capacity?

A Why, the passenger allowance had been reduced, she had carried 2400, she had carried 2300, and they reduced her to 2,000 simply because she didn't have boats and rafts enough to meet

any more.

Q Well, you mean to say then if they put on this boat Eastland the amount of raftage and boatage as required by this rule which was adopted in 1912 they could not allow more than 2,000 people on this boat, is that correct?

A If they had equipped her with boats and rafts perhaps the local inspectors would have given her 2200 again, I don't know.

Q Well, you say you don't know, you have the facts there, what is your information about it?

A Why, the local inspectors, they have a statutory law, they can determine and fix the number of passengers a ship can carry, there was no appeal to the supervising inspector.

Q I understand. So you feel that the rule which was adopted in 1912 and put in force with respect to the Eastland caused them to reduce the carrying capacity of this boat as shown by that certificate?

A Why probably so and probably by a letter I got from the supervising inspector general.

Q What was that? A. Why, I have got a copy of that letter, a certificate letter, in which-- in the early part of 1912 the supervising inspector general under date of April 27, file No. 50191 sent out a certificate letter directing that the utmost care and conservative be shown by the inspectors in the inspection of certification of steamers partly passenger steamers. And the local inspectors claimed that is one of the reasons why they refused the allowance of the Eastland from 2200 to 2000, there is the letter on file.

Q Just read the letter if you will, that part of it relative to the matter?

A The certificate letter is not here.

Q Well, what is that letter? A That is a letter the local inspectors wrote to me when I asked them about the passenger allowance.

Q Captain did the---

THE COURT: Just a moment if you please; now I understand you, Captain, after the Titanic disaster certain other rules were promulgated by the department---

A By the Department.

" THE COURT: And in accordance with those rules the capacity of some of the boats, as to the passengers, was further limited.

A Further limited.

THE COURT: By the boatage and raftage.

A By the boatage and raftage.

THE COURT: And this reduction might have been caused by the fact that they had not sufficient boatage and raftage to accommodate some of the passengers.

A Yes, your honor the local inspectors say so.

THE COURT: And the requirement---or the permission, rather, to navigate not more than five miles from shore had reference also to the boatage and raftage?

A Yes sir, to the boatage and raftage.

THE COURT: Because in the one case that percentage would be, you say, 20 percent, and in the other it was cut in two.

A Ten.

THE COURT: Making tenpercent.

MR. BARBOUR: I understood the Captain to say 30 percent.

A Well, that is subject to the record.

THE COURT: Well, whatever it was, they were

permitted to carry more passengers with the same amount of boatage and not go five miles from shore?

A Yes sir.

THE COURT: Then that would be if they navigated waters more than five miles from shore?

A Yes sir, and that is reduced to three miles now, your honor.

Q Now, Captain, I direct your attention to a book entitled "General rules and regulations respecting bays, lakes and sounds" and ask you to look at that part of rule 3 found on page 178, and ask you whether that is the rule that you are testifying about? A Well, what year is this book?

Q That is the year 1914. A Yes.

Q That rule has not been changed, Captain, in 1915, has it?

A No.

Q The same rule? A Yes.

Q And is that the rule that you refer to? A That is the rule I refer to, 30 percent, see I am right about that.

Q This rule from page 178 I would like to read this for the benefit of the court.

THE COURT: Very well.

Q It is not lengthy.

"Lake, bay and sound, steamers carrying passengers shall be equipped with life boats of sufficient capacity as to accommodate at one time all persons on board, including passengers and crew, provided however, that such steamers navigating during the interval from the 15th day of May to the 15th day of October in any one year, both dates inclusive, shall be required to be equipped with life boats of only such capacity as will ~~xxxx~~ be sufficient to

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accommodate at one time at least 30 percent of all persons on board, including passengers and crew. Provided, however, that such steamers navigating routes lying at all points within a distance of three miles from land, or over waters whose depth is not sufficient to entirely submerge the vessel in case of disaster, shall during the interval from May 15th to October 15th, both dates inclusive be required to be equipped with life boats of only such capacity as will be sufficient to accommodate at one time at least ten percent of all persons on board including passengers and crew. Provided, further, that lake, ~~sandy~~ bay and sound steamers carrying passengers and navigating the waters of the lakes, bays and sounds tributary to the Pacific Coast"---and then it refers to the Atlantic--- that is all---

Q Captain, the rule which you adhere to in issuing that certificate ~~of~~ in 1913 is the same rule that is in force now, is it not? A Why, I don't know. It is changed from five miles to three miles. The first rule was five miles from shore and sometime it was changed to three miles.

Q Well, that is what it is now, then, three miles?

A Yes.

Q The first time----

A It was five miles.

Q Referring to the certificate that I showed you a moment ago, the certificate of 1913, the rule was--

A Five miles.

Q The rule was five miles. A Yes, that is right.

Q And the rule now has been changed to three miles?

A Three miles.

THE COURT: Well, now, Captain, so far as those certificates are concerned, the limitation as to the number

of passengers was based upon the boatage and life boats?

A To a certain , yes.

THE COURT: Largely, was it not?

A Largely, yes.

Q And with the increased boatage or number of life boats the limitation might have been raised? A Might have been, yes. I dont think that it had, but it might have been.

THE COURT: Ye .

Q Now, Captain, just in proportion to the amount of fafts and boatage you could get on, you could increase the carrying capacity of the boats? A To a certain extent.

Q Well, to what extent, if you please? A Well, to a safe number, you deem that ~~shaltixbe~~ ship will carry.

Q Well, how is that as to the number determined?

A Why, I told you the way we determined the Eastland, by personal observation.

Q Personal observation? A Now, if I might be permitted by the court to state, I have two passenger boats down at Buffalo that ~~xxxxxxx~~ run between Buffalo and Crystal Beach that carry 3500people. They have got ballast, they have what we call trimming tank, both of them, but they never used them. They were built to carry 3500 to 4000 people, but we started in with 2500 and we watched them and increased them to 3000 and increased them a couple hundred more until we creased them to 3500.

Q The record does not show---I desire to direct attention to the certificate, amending the certificate of inspection by changing the vessel route and equipment, date June 29, 1912, signed Thomas W. McGrath and James M. Gould and ask you to state what the carrying capacity of that boat

was at that time as shown by the certificate?

A There was 2381 passengers specified---

Q Under the terms of the amendment that boat could not cross the lakes? A Not with 2000 passengers.

Q I say under the certificate that boat could not cross the lakes, could it? A Not with 2000 passengers.

Q Not with 2000 passengers? A No sir, not unless the water was so shallow that she would not be submerged, she was confined to five miles off shore.

Q Well, why did you continue to limit the operation of this boat first from permission to cross the lake down to this certificate where she was not permitted to carry except within five miles of the capacity of 2000 passengers, why did you do that? A Because the rules and regulation changed.

Q Why, the rules and regulations did not require you to limit the observation of the boat, I mean the operation of the boat and the route of the boat, except as to the life equipment and boatage, is not that true? A I don't understand the question.

Q I mean by that this: You limited this boat to travel as shown by this certificate within five miles of shore assuming that she carried 2000 people? What would be needed to be done with respect to equipment if this boat could have her permission to cross the lake with 2000 people? A She would have increased her life boat and raft capacity to maybe 30 percent.

Q Well, does this certificate show that she did not have that 30 percent? A Why, yes. This certificate shows that this steamer must provide 2184 cubic feet of life

boat capacity.

Q Well, that included her crew and passengers, did it not?

A A proper reduction must be allowed for a crew of 75 is hereby allowed to carry passengers as follows: It may be a typographical error in this language, all of this language is subject to our records in our office. It may be a misprint.

Q Well, this is your record isnt it? A That is the local inspector's record.

Q Well, is not that your record based on their records?

A Why, to some extent yes.

Q Well, isnt it wholly? A There may be a misprint about that.

Q No, I say isnt your record based upon this record with respect to this matter?

A I have no record of that. If there is anything about the passengers and the boatage, it is simply a misprint.

- Q When this boat came to Cleveland, Captain, you say that you observed that it had fine lines? A Yes sir, beautiful lines.
- Q It was a long boat for its beam and its tonage, was it not? A Why, not anything out of the ordinary.
- Q Well, do you know of a single boat on the Great Lakes, sailing the Great Lakes today, that has a tonage the same as the Eastland had that had the same beam and the same tonage? A Why, the tonage, Mr. Clyne, is very deceiving, because by adding the amount of deck to the ship would increase the tonage.
- Q Do you know of another boat that is on the Great Lakes--- A (Interrupting*) The Northwest, the Northland is fine type of ships just like the Eastland, perhaps not as fine.

MR. CLYNE: Read the question.

(Question read)

- A I cant say I do.
- Q Well, it is a fact, is it not, that the Eastland is the only boat on the lake with the length that she has, that is the beam---
- A I havent looked up the record. Off hand, I should say I guess it is. I am not confined to passenger ships because---
- Q I am talking of passenger ships. A Yes.
- Q Do you know what type of boat this is, Captain, in the classification of boats what they call this boat? A What do you mean, a fine boat by the lines?
- Q Oh, no, they have classification of boats. This is known as the channel steamer type, isnt it? A You know, Mr. Clyne, I am at sea about a channel steamer type. That is only local, I believe; that is only a local name.

Q You think that is local; it has no significance in marine construction? A Yes.

Q Captain, from your observation and study of boats, would you say that this boat was built and constructed for a passenger boat to carry 2000 people? A It could carry 2000 people properly handled.

MR. KREMER: I am going to object to that. How could he know what the builder had in mind when he built it?

THE COURT: That isnt what he is asking him for. You may answer.

A Why, I like to qualify that by saying to begin with, the Eastland, if she had been built of the design originally for an excursion ship, she may have been designed entirely different from what she was.

Q They dont build excursion boats along that line?

A They have taken ships of that kind and made excursion boats of them.

Q They dont build excursion ships of this type or kind?

A They wouldnt build a boat like that for running excursions between Cleveland and Cedar Point.

Q Or any other place that you know of on the lakes?

A I dont know as to that.

Q Isnt it a fact that boats of that fine line and this beam and this length that have been converted here and used as excursion boats, that changes have been made in the bottom; they have been added to? A We have only one ship of that type.

Q What is that? A The only ship I know of is the Neronic.

Q Did you ever hear about them putting bustles on boats?

A The only ship I know of is the Neronic.

Q What did they do with it? A They hustled her out.

- Q Why did they bustle her out? A Why to avoid carrying a lot of ballast.
- Q To avoid listing and tipping? A To avoid her crankiness.
- Q To avoid the crankiness of the boat, isnt that true, Captain? A Whyk I suppose that is why they bustled her out.
- Q If you were correcting the construction of a boat for excursion purposes, to be used in the way that this boat was used, you wouldnt design this kind of a boat, would you?
- A Why I wouldnt because it would be too expensive a ship to design. I could design a cheaper type.
- Q Now, I mean aside from the monetary question, in respect to the lines of the boat, you wouldnt build that kind of a boat? A I dont know---I wouldnt; she would be too expensive.
- Q Well, aside from the question---can you give me your opinion aside from the monetary consideration?
- MR. KREMER: You mean as a matter of safety?
- A As a matter of safety, she was safe enough if she was handled right.
- Q That doesnt answer the question. Can you give me a better answer? A No sir.
- Q Captain, do you know how many ballast tanks was on this boat? A Yes sir.
- Q How many? A Five.
- Q With a division? A Yes sir.
- Q Well, as a matter of fact, there were 12 tanks on this boat, Captain? A 10.
- Q You mean to say there wasnot fore aft peak tanks?
- A Yes sir, I qualify: She had a fore peak tank and aft peak tank.

- Q What was that done for? A Just from memory, we thought the dead lights was a little too close to the water's edge.
- Q How close was that to the water? A I couldn't tell you off hand.
- Q Was it five feet, Captain? A I just told you I couldn't tell you off-hand.
- Q What is your best recollection and memory on it?
- A I don't think you should ask me to guess at anything, I don't know. They were evidently low enough and close enough to the water that we considered them dangerous and we made them rivot them up.
- Q What would you mean by that, what would you regard as dangerous and being close to the water line?
- A Perhaps some of the dead lights was pretty close to the water's edge.
- Q Four feet? A Oh, less than that.
- Q Three feet? A Less than that.
- Q A foot? A Somewhere around a foot, I suppose. It is a good many years ago, Mr. Clyne; it is pretty hard to remember these things. You have a photograph that will show all the dead lights.
- Q I now show you---
- A (Interrupting) What is the use---you have photographs that was made of it.
- Q I show you what purports to be a photograph of the Eastland. I ask you after looking at it if you can tell me what the distance was between the water line and the dead lights that you sealed up at the time the boat was under your inspection at Cleveland? A Now, the dead lights fell pretty close to the water line.
- Q How close, from looking at the picture, or any other

reference? A I suppose some of these dead lights is only eight or ~~xx~~ ten inches above the water.

Q Are those the ones sealed up? A The ones we sealed up are after the fan tail.

Q What is the distance between the dead lights sealed up and the water line? A Whyk as I remember, the reason we made them rivit them up---

Q You dont catch my question. What was the distance between---measured between the surface---

A I cant remember.

Q Cant you look at the photograph and give us---

A (Interrupting) Why, Mr. Clyne, I am not supposed to guess on this thing. If I dont know a thing, I will tell you so.

Q Captain, look at the photograph and give us your best judgment of this thing.

THE COURT: The photograph speaks for itself.

MR. KREMER: If the photograph is to scale, we can measure it ourselves.

THE COURT: He said two or three times that he doesnt know.

Q Do youknow how much the boat would have to list to admit water into these dead light openings? A I dont know as I remember. Her aft gangway would be about 20 inches or two feet above water when it was loaded. It is the part I looked ~~far~~ at for the most.

Q Can you give us an expression in degrees of how much the boat would have to list? A No. You can determine that by actual measurements.

Q But you thought it was a part of wisdom and safety to order the dead lights closed? A As I remember, every-

thing we done on the Eastland was with a view to safety.

Q Do you remember the time this boat was at Cleveland and under your inspection, there was a great deal of talk and discussion in regard to the unseaworthiness of the boat? A Yes sir, and that is one reason why we took such precaution with anything.

Q You went to the dock very frequently? A Yes sir.

Q And give very close attention? A Yes sir.

Q It is true, is it not, that this boat gave you some worry and concern while it was there at Cleveland?

A It didnt give me any worry, but I wanted to watch her and see that everything passed out alright.

Q Didnt you tell me at Chicago, Captain, when we were talking about this boat, that this boat worried you some while it was at Cleveland? A In an off-hand way, I might say she worried me, but not to such an extent that I considered her unsafe, because if she had, I would have simply went down and took up the certificate. Of course, there is a little worry connected with every passenger ship.

Court here ~~has~~ adjourned until morning at 9:30 o'clock.