

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

WILHELM WILHELMSSEN,
Libelant and Appellee,

v.

THE BARK "THIELBEK,"
Knohr & Burchard, Nfl.,
Claimants and Appellees,

THE PORT OF PORTLAND,
Respondent and Appellant.

No. 6111

KNOHR & BURCHARD, Nfl.,
Libelant and Appellee,

v.

THE "THODE FAGELUND,"
Wilhelm Wilhelmsen,
Claimant and Appellant,

THE PORT OF PORTLAND,
Respondent and Appellant.

No. 6116

APOSTLES ON APPEAL

From the District Court of the United States
for the District of Oregon

VOLUME II.

Pages 737 to 1429 inclusive

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(Testimony of Captain I. Turppa.)

means that your beam would be about co-incident with the railing upon her poop deck there. (Indicating.) Is that right, or were you forward of that? Would your beam be forward of that, further up?

A. Well, came just about—will come just about—just over part of our pilot house, her railing on her poop deck, and we always had a line about straight with the ship.

Q. Right alongside, what you call the tow-line?

A. Yes.

Q. So the bow 161 feet distant, the bow of the "Ocklahama" would be about opposite the waist of the "Thielbek," or a little forward of it?

A. We put the tow line on the pipe on the main deck, and the breast line probably a few feet after her mizzenmast.

Q. Now the "Thielbek" was a three-masted bark?

A. Four mast.

Q. Having mizzenmast, mainmast and foremast?

A. She was four mast.

Q. She was a four-mast bark?

A. Yes.

Q. And the mizzenmast of the bark "Thielbek" would be opposite where on your towboat?

A. The mizzenmast was—it might possibly have been abreast of our stem.

Q. The mizzenmast was abreast of your stem?

A. I wouldn't say that for sure.

(Testimony of Captain I. Turppa.)

Q. Well, that's near enough. In other words, what I am getting at is where the bow of your tow-boat was with respect to the port side of the "Thielbek."

A. Her rigging or her jigger mast was just about abreast of our pilot house.

Q. The jigger mast, I am right, am I not? When you say the jigger mast, it is the last mast in the stern of the ship?

A. Spanker, yes.

Q. When the "Ocklahama" swung off on this head line did she swing any more up-stream, and towards the dredge, or was her movement always down below until you gentlemen went up alongside the "Thode," and asked if they wanted any help?

A. As near as I have any knowledge of it, when the head line carried away, she dropped back a little bit; then we gave a starting bell and went ahead, and went up there to find out about if they needed any of our assistance.

Q. By the by, the "Ocklahama" has a steam steering gear, hasn't she?

A. No, sir, has hydraulic.

Q. And double rudders?

A. We have six rudders. Four main rudders, and two monkey rudders.

Q. And she answers her helm very quickly, doesn't she?

A. Well, not so very quick, but answers.

(Testimony of Captain I. Turppa.)

Q. She answers promptly; what sailors would call promptly. She answers promptly.

A. Yes, sir.

Q. Now, the reason you said if your were going up alone, that is, with an empty boat?

A. Yes, an empty boat.

Q. You would steer on the course and when you were going up with a tow, you would steer by your sense of distance and speed, you meant that was due to the fact that the drag of the towboat would have some influence on the way she steers and handles, didn't you?

A. Well, we generally steer by some object when we have a tow—principally.

Q. Going up the river that night, showing you Claimant's Exhibit 2, from the vicinity of the anchorage up towards Callender's dock, pointing out to you the spot and place in here, and coming along up, along through here—

A. Yes, we generally take—

Q. You generally fetch a course, do you not, Captain, from this anchorage—

A. Yes, we steer—if we anchor over in here, we generally run in fairly close to this beacon here.

Q. This coast light beacon?

A. Yes, the red beacon right over here, and there is a red light here on the Elmore dock. We just steer right straight for the outside of that red light.

Q. Then that is your second course?

A. That is our first—

(Testimony of Captain I. Turppa.)

Q. That is your second course. The first course would be up to this light?

A. Well, we generally turn around.

Q. You come up to this light, and take that as the point of the departure?

A. Yes.

Q. Then come to the Elmore Cannery light?

A. Outside of that.

Q. Outside, but keep in the fairway out here?

A. Yes, sir.

Q. And then run from the Elmore light to this flash-light buoy?

A. No, I generally steer so as to reach way up here, thousands of lights here, but generally the street line, two lights in a line, I generally steer by, and come up about abreast of Callender dock, and commence to haul up the river.

Q. You really don't take any bearing on flash-light buoy No. 2?

A. No. I don't generally go up in there. I steer right in the middle of the channel. That is the reason I take this street line up here, because I can get in the middle.

Q. In the middle of the fairway?

A. Yes.

Q. Your natural way, if you had been taking the "Thielbek," and I presume that is the way she was going that night—I am assuming if you had it, you would take the point of departure from this

(Testimony of Captain I. Turppa.)

red post light, and then steer for the Elmore Cannery dock?

A. Yes, sir.

Q. Then go from there on the range for these arc lights up the hill?

A. Yes.

Q. And when you get off here by Callender dock, would set up for Tongue Point?

A. Would make a kind of a swing with the ship; we don't swing fast.

Q. In that place where you call the swing, was right where the "Thode Fagelund" and the dredge "Chinook" were?

A. Yes, where we met the "Thode Fagelund" was above that evening.

Q. She was above the dredge?

A. She was anchored the evening before right up in here some place, in this vicinity, but at that time, that would have been the straight course.

Q. Up towards Tongue Point?

A. Yes.

Q. Did you make up the log, or did somebody else make up the pilot house log in this case?

A. I think Pilot Pease made the log.

Q. Pilot Pease made the log?

A. I think he did.

Q. Would you recognize the handwriting if you saw the log?

A. Yes, sir.

(Testimony of Captain I. Turppa.)

Mr. BRISTOL (to Mr. Minor): You have the original log?

Mr. MINOR: Yes. (Producing log.)

Q. I show you a book, and just direct your attention to the entry on page 83, August 23rd and 24th, and ask you if you recognize that, and whose writing it is, and whether it is the pilot house log or the engine room log?

A. It is the engine room log, yes.

Q. That is the engine room log?

A. I am satisfied it is.

Q. That is kept by—

A. The engineer.

Q. Mr. Eliassen or Mr. Stayton?

A. Both of them, probably. I see both of their writing in it.

Q. Now, I show you another book.

A. That is our log.

Q. Page 53, the entry of August 24, and ask you if you recognize that?

A. That is Captain Pease writing.

Q. All of it Captain Pease writing?

A. This is my writing here, but this is Captain Pease writing.

Q. You say your writing here?

A. This is my writing here.

Q. Where it says "landed Astoria dock 10:20 p. m. Alongside of 'Thielbek' 10:35 p. m." that is your writing?

A. That is my writing.

(Testimony of Captain I. Turppa.)

Q. All the rest of this writing August 24th, page 53, is Mr. Pease?

A. This is all Mr. Pease's writing here.

Q. Did you make a report, Captain, of this situation to The Port of Portland?

A. I don't remember whether I made it, or whether Mr. Pease made it. I won't say positive.

Q. Would you recognize your report if you saw it?

A. Yes, might recognize the writing if I saw it.

Mr. BRISTOL: May I have it, Mr. Minor, please?

Mr. MINOR: I haven't the original. I don't think I have. I have a copy.

Mr. BRISTOL: Let me have the copy.

Q. Did you make those reports in triplicate, or quadruplicate?

A. Yes, I always make trip reports.

Mr. WOOD: He asked whether you made it in triplicate, three, all of them the same.

A. No, I only make two, duplicate.

Q. I show you a paper, which says "August 24th and 25th," and ask you to look at it, and see if it bears anything that you recognize it by?

A. This is my writing here.

Q. Your writing here on the front of that report? Whose writing is on the back of it?

A. This ain't mine there.

Q. It isn't yours there. This bears the name on

(Testimony of Captain I. Turppa.)

the back, if you notice, "I. Turppa." Did you sign that?

A. It don't look to me like my writing.

Mr. MINOR: I think that is only a copy. I haven't the original.

A. I think that is only a copy. I don't make "s" like that. And this writing don't look like my writing, but this here looks a little like my writing. At first I thought it was, but now it don't look like it was.

Q. I would like to see this original report.

A. The corner here says "Copy."

Q. I know. Mr. Minor just handed me this. I want to know if you made a report to The Port of Portland?

A. I do make them. I do make trip reports, but I think that is just a copy of it.

Q. Can you say whether that is a true copy of your report?

A. I believe I can say that all right. Yes, that is a true copy.

Q. Then all the report that you made to The Port of Portland, of the situation that occurred this morning is contained here in this yellow paper—is that right?

A. Yes, sir; I don't think I made other report.

Q. Can you say that there is anything about that copy that isn't in accordance with the report you turned in, in any way or particular?

(Testimony of Captain I. Turppa.)

Mr. MINOR: If you want to know whether that is a copy. I gave you that as a copy.

Mr. BRISTOL: I know you did, but I want to see if he recognizes what he originally wrote. If he does, I am going to offer it in evidence. If he doesn't, I am going to demand the original. If he will say this is it, that is all there is to it.

A. Everything else I see here excepting here, I usually put on there where I landed tow. Here should be landed boat at Ballast Dock. I don't see that.

Q. You don't see that in there, do you?

A. I don't see that in there, but everything else is on.

Q. Now, look over on the back and see. How is that? Is that what you wrote?

A. Yes, that is what I wrote.

Q. That is all you wrote, is it?

A. Yes.

Mr. BRISTOL: I offer this as a copy, substitute a copy for the original report of I. Turppa, Master of the "Ocklahama," of the accident to The Port of Portland, as to the time of which he has been interrogated, as a part of his cross-examination.

Report marked "Libelant Wilhelmsen's Exhibit 2—Turppa."

(Testimony of Captain I. Turppa.)

RE-DIRECT EXAMINATION.

(Knöhr & Burchard.)

Questions by Mr. Wood:

Q. Captain Turppa, you said that the tide was just about flood at the time of the collision. Could you give an idea of the general speed of the current up the river, at that time and stage of the tide?

A. No, I can't tell you positively of it.

Q. You placed those models that Mr. Bristol handed you in the position you thought they were when you went into the pilot house, and saw them?

A. Yes, as near as I could.

Q. I want you to place them for me again on this piece of paper. You can step down and take the models, and put them on here. (Witness arranges blocks.) Now, with counsel's permission, I will trace these.

A. That was like this, just about abreast, as near as I could tell.

Q. Is that the way you want it?

A. Yes, and say this is about 50 feet here between it.

Q. Now, this is the distance that you estimate to be 50 feet?

A. Yes, sir, and I would say probably 100 feet from here.

Mr. BRISTOL: 100 feet from the stern of the dredge to the bow of the "Ocklahama."

Q. Now, this is as they were when you entered the pilot house?

(Testimony of Captain I. Turppa.)

A. Yes, sir.

Q. When you first went in the pilot house.

Mr. WOOD: I offer this drawing in evidence.

Marked "Knohr & Burchard's Exhibit 1 (Captain Turppa)."

Q. Captain, you said, in answer to Mr. Bristol, that it was possible to see the red light only from a point dead ahead; in other words, that the screen of the light prevents it from being seen—

A. Across the bow.

Q. (Continuing) Across the bow?

A. Yes, sir.

Q. And as I understand, there is no dispute, it can be seen from dead ahead to two points abaft the beam on the port side. I want to ask whether the shining of the red light dead ahead isn't somewhat theoretical, and as a matter of fact, can't you see it off a slight distance across the bow if you get far enough ahead of the vessel? Let me put it to you like this: Suppose you are dead ahead of a vessel, and a mile in front of her.

A. Yes.

Q. You see both her red and green light, don't you?

A. Yes, see both.

Q. Now, suppose you move, say, 100 yards either way to the right or left from that point. Don't you still continue to see both lights?

A. Well, I am not quite—I haven't got navigation down that fine. I wouldn't like to make a

(Testimony of Captain I. Turppa.)

statement just how many points or how far you could go a mile away to see that.

Q. Well, let me put it to you again like this, then: Suppose you start from a point a mile away from the vessel, and dead ahead of her, and approach the vessel, keeping all the time dead ahead of her?

A. Yes.

Q. And you get close to her. Don't you reach a point where you can't see either of the lights, possibly, as you get very close to her?

A. If you are dead ahead, you see the vessel's lights. You see both lights all the time, if you are dead ahead.

RE-DIRECT EXAMINATION.

(Port of Portland.)

Questions by Mr. Minor:

Q. Captain, can you tell where the "Thode Fagelund" anchored the night before when you passed her?

A. Yes, I can tell pretty close; not far from it.

Q. Tell the Court, as near as you can, where the "Thode Fagelund" anchored the night before when you passed her?

A. Seems to me she was just a little bit above the Gilman buoy on the channel.

COURT: How far above the dredge?

A. Above the dredge?

COURT: How far above?

A. I presume might be a quarter of a mile on

(Testimony of Captain I. Turppa.)

the river, or an eighth, between an eighth and a quarter of a mile.

COURT: And on the side opposite Astoria?

A. Well, it was in the channel. It would be somewheres near the range lights, the red range light, from Astoria.

COURT: I don't know about the range light, which side of the channel, or was she in the fairway?

A. I rather think she was on the north side of the channel, if any; just very near the channel. You see the channel isn't very wide there, and you can't be very far out of the channel.

COURT: North side; that is across from Astoria.

A. Yes. I could show on the blue print.

Q. One other question I want to ask. If the "Thode Fagelund" was proceeding at the course on which you saw her, when you were in the pilot house, what light of her would be seen from the "Thielbek" or the "Ocklahama"?

A. When I went to the pilot house, I saw the "Thode Fagelund's" red light.

Q. You saw the "Thode Fagelund's" red light?

A. Yes.

COURT: You didn't go in the pilot house until after the collision?

A. After the collision.

Q. At that time, you only saw the red light?

A. Only saw the red light.

(Testimony of Captain I. Turppa.)

Q. Didn't see the green light?

A. No.

Q. Now, if the "Thode Fagelund" gave a signal, as the evidence shows, to pass to starboard, was the position which she then occupied one which she would have taken in the execution of that signal?

A. Should have been the green light.

Q. Should have been the green light?

A. Two whistles.

Q. So the light which you saw and the position which she occupied at that time was not the position she would have had, or the light she would have shown, if she had executed the order which she gave, and passed to starboard. That is right?

A. Yes, sir.

Q. What is the beam of the "Ocklahama"?

A. 33 feet and a very small fraction over.

Mr. BRISTOL: Thirty-three five.

A. Thirty-three feet.

RE-CROSS EXAMINATION.

(Wilhelmsen.)

Questions by Mr. Bristol:

Q. Now, in order that you may have an opportunity to fix that place, I show you Claimant's Exhibit 2, and would like to have you show to the Court where that Gilman Buoy is, that Flash-light Buoy, and where you think the "Thode" was anchored. There is the Gilman Buoy (indicating).

A. Yes, sir. Now, the "Thode Fagelund" was anchored about here some place in the channel.

(Testimony of Captain I. Turppa.)

Q. Anchored in here in the channel?

A. Yes, somewhere about here.

Q. Opposite the Gilman Buoy?

A. Well, very near.

Q. Now, you notice this little illustration of the magnetic course, compass point?

A. Yes.

Q. Would she lie directly north of that Gilman Ledge Buoy, a little north and west of it?

A. Right over this way. Lay right up and down the channel when I went down.

Q. When you went down at 9:30?

A. Yes, sir.

Mr. BRISTOL: Can I mark in here on Claimant's Exhibit 2, Mr. Wood:

Mr. WOOD: Yes.

Q. Is that the spot?

A. Well, as near as I could guess, somewheres about there.

Q. Anchorage. I will draw this out. "Anchorage point 'Fagelund,' 9:30 p. m., August 23, 1913, as seen by Captain Turppa" (writing). Is that right?

A. Yes, sir.

COURT: Have the Captain mark the position of the "Thielbek" down there on this same map—oh, yes, he has already marked it.

Mr. BRISTOL: No, that is not already marked. I beg your pardon.

Q. I would like to have you mark now, Captain,

(Testimony of Captain I. Turppa.)

this being the Flavel situation, the oil dock, whether or not this red post light, and this oil dock, as agreed here this morning, needs to be changed on this map?

A. Well, I won't argue on that case, because I won't know if they have been changed. They haven't notified me about it. As near as I can tell, about half way between the oil dock and—

Q. The post light?

A. Just as near as I have knowledge of it.

Q. Now, could you mark, do you think—let me ask you if you think you could mark the position of the dredge as you saw her at 9:30 that night, too?

A. No, I wouldn't mark that, because she was far enough over when I went down to the dock I didn't go very close to the dredge.

Q. When you went to the dock that night coming down the channel, you came between the "Thode" and—

A. I won't mark that, but I can show you approximately where she was.

Q. You went between the "Thode" and the dredge, when you went to the dock, did you?

A. Where is the company's dock? You see, when I came here to Gilman Buoy, I ran right close into Astoria, on the railroad company's dock. I came in here, and left the dredge over here, so didn't go anywhere near it, and I ain't going to mark that, now.

(Testimony of Captain I. Turppa.)

Q. At 9:30 that night, the dredge was way on your starboard?

A. Yes, sir. I came right down here, and landed at the dock, and when I pulled out, I went right along close to the dock here, and it is quite wide in here; far enough away from me, I didn't pay much attention to her position.

Q. When you came down that night, did you go between the Gilman Light and the "Thode," having the "Thode" on your starboard hand, or on your port hand?

A. As near as I can recall, I did.

Q. You had the "Thode" on the starboard side coming down?

A. Yes, had her on the starboard, my right-hand side going down.

Mr. WOOD: Captain, you said it was quite wide there. Have you given the width of that channel?

A. No, and the blue prints give it as near as I can give it. I have no way of measuring that, and I couldn't give it any nearer than the blue print can give it, but it is quite wide.

Mr. BRISTOL: As far as you know, the blue print is all right?

A. Quite right, yes.

Witness excused.

Whereupon proceedings herein adjourned until
2 p. m.

Portland, Oregon, Wednesday, September 9, 1914,
2 P. M.

Mr. Bristol proceeds with the reading of the deposition of the witness Hansen, Yens B. Tollefsen, and Hartwick Johansen.

Mr. BRISTOL: I don't want to forestall Mr. Wood, but some parts of the testimony of the crew of the "Thielbek" I want in my case, and there is no need reading this piecemeal, and I might as well read it all. The testimony was taken under stipulation, and I am offering so much of this testimony to show what they did as against what they charged in the libel, in respect to obeying the rules of navigation.

Mr. WOOD: You are only going to read a comparatively small part. I am going to put it all in.

Mr. BRISTOL: All right, if you are going to put it all in, that will save that much time, and of course, if for any reason Mr. Wood changes his opinion about putting it all in, I have a right to go back to it.

Depositions read as follows:

Charles T. Bailey, E. H. Svendsen, H. W. Kent.

Mr. BRISTOL: Now, on the 15th of April, 1914, Captain M. B. Hansen, returned on a voyage by the "Thode Fagelund," returning to Portland upon another voyage, and we got him as a witness upon further matters that have not been brought to your notice, but he is the same witness who testified so particularly before.

Second deposition of M. B. Hansen read.

Whereupon proceedings herein adjourned until tomorrow morning.

Portland, Oregon, Thursday, September 10, 1914,
10 A. M.

Mr. BRISTOL: I offer in connection with the case of the libelants, the interrogatories and answers thereto in Case 6116, filed as of date October 4, 1913, and October 23, 1913, respectively. (Mr. Bristol proceeds to read same.)

Mr. BRISTOL: I have here the certified copy of the entire Marine Protest that you demanded of me, for which the charge was made yesterday of W. T. Isted. I, of course, have no right to present it, except in accordance with your demand. Here it is. Will the record show I offer it in accordance with the demand of counsel?

I have been furnished by Mr. Minor with copy of casualty report, and statement made by the "Ocklahoma," and what purports to be a copy of the engine room log, not the pilot house log. You have the originals here, yet, Mr. Minor?

Mr. MINOR: They are here some place.

Mr. BRISTOL: I probably will be able to agree with counsel as to what parts I want to put in a little bit later.

MICHAEL NOLAN, a witness called on behalf of libelant Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Where do you live?

A. Astoria, Oregon.

Q. How long have you lived in Astoria?

A. About fourteen years.

Q. How old are you?

A. Forty-two.

Q. What is your occupation?

A. Master mariner.

Q. How long have you been a master mariner?

A. Service about seven and a half years.

Q. Did you have anything to do with ships before that seven years' time?

A. Yes, I been to sea all my life.

Q. To sea all your life, and during that lifetime you have been occupied variously upon what kind of vessels?

A. The early part of my life I served on sailing vessels; since I came to America, 22 years ago, it has been mostly in steam.

Q. Mostly in steam?

A. Yes, sir.

Q. And are you what they call a pilot?

A. Served five years with The Port of Portland in the capacity of master of their tow ships, and acting as pilot, master of their tow ships on the

(Testimony of Michael Nolan.)

Columbia River Bar, towing to sea and return, and from Astoria to Portland, also.

Q. For five years you have been towing?

A. Served five years from the time I engaged with The Port of Portland to the time of my discharge from The Port of Portland, yes, sir. From the time of the "Thode Fagelund" collision last August up to this May, I was suspended from duty, so that time has got to be taken out of the five years.

Q. You mean to say that you—or you mean to have us understand here—I am asking; I don't know anything about it. You mean to have us understand you were fired by The Port of Portland?

A. Yes, sir, I was discharged from The Port of Portland on May 1st.

Q. Of this year?

A. Of this year, yes.

Q. Due to what?

A. I was told from the Clerk in the office at Astoria that it was from lack—

Mr. MINOR: I object to what he was told.

Q. Never mind what you were told unless by an officer of The Port of Portland, or someone authorized to speak therefor.

Mr. MINOR: I think his discharge that he speaks of is probably in writing, is it not?

Mr. BRISTOL: I don't know. We will ascertain if it is, if you want to pursue it a little. It is a surprise to me; I want to find out.

(Testimony of Michael Nolan.)

Q. Were you discharged by letter or anything of that kind?

A. Yes, sir; was a letter sent from the office in Portland to the man in charge of the office at Astoria. I have—

Q. Was that letter delivered to you?

A. The letter came to the office, to the man in Astoria and was telephoned to me. I went down and asked for a copy of the letter, and I took a pencil copy of the letter.

Q. Well, you never had the original?

A. No, sir.

Q. All right. What did the man tell you that telephoned you the contents of that letter?

Mr. MINOR: I object to that; he has a copy of the letter he says, and has seen the letter.

COURT: One he made himself?

Q. One he made himself?

Mr. MINOR: That is the best evidence, your Honor.

A. I haven't a copy of the letter with me, Mr. Bristol.

Q. Did you recognize this man's voice as an officer of The Port of Portland?

A. Yes, sir. He is in charge of the work of The Port of Portland, at Astoria.

Mr. MINOR: We will produce that letter.

Q. Did you recognize his voice as an employe of The Port of Portland?

A. My telephone rang, and I asked who it is

(Testimony of Michael Nolan.)

speaking, and he said Mr. J. T. Titley of Astoria, in charge of The Port of Portland's office at Astoria.

Q. He is in charge of the office at Astoria—The Port of Portland office?

A. Yes, sir.

Q. With office on the O. R. & N. dock?

A. Yes, sir.

Q. And you recognized his voice?

A. Yes, sir.

Q. What did he tell you?

Mr. MINOR: If your Honor, please, I object to what he says. It is clearly incompetent. As far as the letter of discharge is concerned we have had no request to produce it, but are willing to produce a copy of it.

COURT: Have you it here?

Mr. MINOR: We haven't it here; they haven't asked for it, but the letter will be here.

COURT: I think he may testify.

Mr. BRISTOL: I would like to have this testimony before your Honor. I would like to see what it is about. I don't know, and want to find out.

Mr. MINOR: I don't think an officer down there has the right—

COURT: He has the right to discharge him, and he was discharged. I suppose he has a right to discharge him.

Mr. MINOR: He had a letter.

COURT: A letter of instructions to the officer in Astoria, and the officer in Astoria carried out the

(Testimony of Michael Nolan.)

order, but I don't understand there was any letter to this man.

Q. What is the fact? Go on and state it.

A. Have his letter written to the man in charge of the office at Astoria.

Q. We have got beyond that. Tell me what conversation was had there when you went to the telephone; just what it was as near as you can recollect?

A. Told me I was suspended from duty with The Port of Portland from now. I says "All right, sir, much obliged to you" and hung up the telephone.

Q. That was what day?

A. I think it was the evening of April 31st.

Q. Did he give any reasons?

A. No, sir.

Mr. MINOR: I object to that; the reasons have nothing to do with it, and he can't bind The Port of Portland by reasons unless they are contained in the letter. If the reasons were contained in the letter—

Q. At any rate, to April 31st then you remained as a pilot of The Port of Portland?

A. Yes, sir.

Q. 1913 or 1914?

A. 1914, sir.

Q. 1914. So then on the 24th of August, 1913, you were a Port of Portland pilot, were you?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Employed and paid by them?

A. Yes, sir.

Q. Where were you on or about the 23rd day of August, 1913, at about the hour of nine o'clock in the evening?

A. On the 23rd of August?

Q. 23rd, yes.

A. At the hour of nine o'clock, sir?

Q. Yes.

A. At the hour of nine o'clock I believe I was at my residence.

Q. And where, if at all, did you go from your residence?

A. Direct to the Launch Pilot.

Q. Why did you go there?

A. I had received orders in the afternoon to pilot the steamer "Thode Fagelund" from Astoria to sea.

Q. Who gave you those orders?

A. J. F. Titley.

Q. This same man who you say fired you?

A. Yes.

Q. And he told you in the afternoon by telephone on Saturday, the 23rd of August, to get ready to pilot the "Thode Fagelund," did he?

A. The orders I received from J. T. Titley was the "Thode Fagelund" was to leave Stella at about five o'clock and for me to look after that vessel and pilot her to sea on her arrival at Astoria.

Q. Then you went to this Pilot Launch some

(Testimony of Michael Nolan.)

time after nine o'clock on the evening of the 23rd of August?

A. It was about nine-thirty when I arrived at the launch to go on board of her.

Q. Did you go on board, or what?

A. Went on board the Launch Pilot to take me from Astoria out to on board the "Thode Fagelund."

Q. Did you go out on board the "Thode Fagelund"?

A. Yes, sir.

Q. What Columbia River pilot, if any, did you then meet there?

A. Captain Allyn. Captain Joe Allyn.

Mr. BRISTOL: Captain Joe Allyn. I will say for the information of your Honor, parenthetically, that is the same Allyn whose testimony was taken before Miss Bell. I mean so your Honor will be advised, as I have not read that testimony yet.

Q. What is the fact then as to whether or not you took the position of pilot at that time aboard the "Thode Fagelund," and Captain Allyn turned her over to you—is that right?

A. Yes, sir.

Q. Who was in charge, if anybody, apparently of the "Thode Fagelund" at that time, other than Allyn who had just left her?

A. Captain Hansen.

Q. Is that M. B. Hansen?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Did you and Hansen have any talk between you as to what you were to do, or anything of that kind, or did you just go right about your work?

A. I arrived on board the "Thode Fagelund" about nine-forty. Mr. A. M. Cherry, the vice-consul, and Mr. A. Y. Anderson, the Custom House officer, had some business with Captain Hansen and they proceeded to the Captain's office to do their business. I remained outside on the deck talking to Captain Allyn, and in about fifteen or twenty minutes the business of Mr. Cherry and Mr. Anderson was finished. After their business was finished they came out on deck and Captain Hansen came with them. I was introduced to Captain Hansen, I believe, by Mr. Joe Allyn, Captain Allyn, the river pilot, and that was my first acquaintance with Captain Hansen of the steamer "Thode Fagelund."

Q. Was anything said then or later as to what time, or any time you were to leave down, or go out to sea?

A. Well, he had some other matters that he wanted to tell about for me—

COURT: Answer that direct. He asked you if there was anything said as to when you were to leave the next morning.

Q. Did he state anything about the time you were to leave, or give you any directions then at that place, as to what you were to do with the "Thode"?

A. After a short time in Captain Hansen's

(Testimony of Michael Nolan.)

cabin, he asked me what time would I want the ship for on the following morning. I told him about three o'clock to be ready to heave up anchor.

Q. Was she anchored when you went aboard of her?

A. Yes.

Q. At nine-forty you say you went aboard?

A. Yes, sir.

Q. How was the ship then in the river?

A. With her head up-stream, sir.

Q. With her head up-stream. The current and the tide were running out at nine-forty?

A. Yes, sir.

Q. Now, with her head up-stream, how did she lay in that river? I show you a chart of the Columbia River, No. 6140, issued September 15, 1909, being the engraved chart of the Columbia River issued by the government, showing the location in the Columbia River channel, opposite Astoria, etc., and ask you, on that chart, if you can or will point out to me where the "Thode Fagelund" was when you went aboard of her. That is where she was anchored with her head up-stream that night of August 23, 1913?

COURT: Does that show the wharves at Astoria?

Mr. BRISTOL: Right here, your Honor. It is the same as the other, but we use the white one because we may need another.

A. (Witness indicates on map.)

(Testimony of Michael Nolan.)

Q. Now, the witness makes a black mark westerly from what you call Gilman Flash Buoy No. 2, isn't it?

A. Yes, sir.

Mr. BRISTOL: And I place a ring 'around it in order that the point may be plain and I carry a line out to the margin of the map and mark it "Position of anchorage fixed by Nolan of 'Thode,' Saturday, August 23, 1913, at 9:40 p. m." Is that right, witness?

A. Yes, sir.

Q. Now, I want you to be kind enough, if you can tell me, whether you saw at that time any other thing afloat in the Columbia River in that vicinity, and if so, what?

A. Yes, sir, the dredge "Chinook" was anchored in the stream.

Q. Speak up as loud as you can, just as if you were giving commands on the ship.

A. I haven't got a very strong voice most of the time.

Q. Now, will you place a mark on there, as near as you can, of the position of anchorage of the dredge "Chinook" on that evening and at that time, when you saw her, if you can do so?

A. It is a little bit difficult, because if we had dividers, we could take a scale of this chart and put it on; I think I could give you the exact location, but putting it on this way and judging the distance, I may be a little in error one way or the other.

(Testimony of Michael Nolan.)

Q. We are assuming that you may be off on account of the scale anywhere from one to a thousand feet, and that you are assuming that; every other witness who has done so, has done so without proportionate dividers, and your estimate is just as good as theirs. The thing is to get the approximate location of where, in your judgment, at that time, 9:40 p. m., Saturday night, the dredge was anchored. We will get the positions afterwards; anchorage is what I am after now.

A. (Indicating) Right there.

Q. Yes, there by that old buoy which was then called 11, but afterwards 13, on the blue print; on this plat it is numbered 12, and on the blue print 13. Now, I make a little circle, where 12 is on this map, being buoy 13 on the blue print, around the mark that witness makes, and mark it "Position of anchorage fixed by Nolan of dredge 'Chinook,' Saturday, August 23, 1913, at 9:40."

A. That shows 27 contour, and up there shows 13, and still on the same.

Q. I know; this is a government chart now. I am not responsible for what it shows. I am asking you just merely the position in the river. Now, can you tell us whether those respective anchorages changed any as you have marked them on that plat, between 9:40 p. m. of Saturday night, and 3 o'clock or twenty minutes before 3 of the morning of August 24th?

A. No, sir.

(Testimony of Michael Nolan.)

Q. What?

A. No, sir.

Mr. BRISTOL: Then I offer this exemplar of the witness in evidence, with this one question added:

Q. You state to us from this map, what you saw at 9:40 Saturday evening, and what your testimony shall disclose that you saw afterwards, that these anchorages didn't change until either one of the ships moved. Is that correct—on the following day?

A. Yes, sir.

Mr. BRISTOL: I offer that in evidence, to show these anchorage points, and would like to have it marked.

Map marked "Libelant Wilhelmsen Exhibit 3—Nolan."

Q. Now, after Captain Hansen had informed you that he was—or had talked to you about the most advisable time to leave, and you had said three o'clock, did you remain on board the ship the rest of the time, or did you leave her and go ashore again?

A. Remained on board the ship.

Q. Remained on board the ship? When you were going out to the ship, or while you were on the ship, state whether or not you saw any place in that vicinity one of The Port of Portland tugboats, and if so, what one?

A. Steamer "Ocklahama" was lying at her berth

(Testimony of Michael Nolan.)

at the upper end of the O. R. & N. dock, me passing it.

Q. Opposite The Port of Portland office?

A. Yes, sir.

Q. And was she still lying there when you went out to the "Thode Fagelund"?

A. Yes, sir.

Q. Now, you may state, if you please, what occurred between the conversation you had with the Captain, if anything, up to three o'clock in the morning, with respect to yourself, what you did?

A. Nothing unusual. Between myself and Captain Hansen?

Q. Did you go to bed?

A. I laid down with my clothes on in the chart house with my overcoat for a pillow.

Q. Now, this chart house you speak about, is where on the "Thode Fagelund"?

A. On the after part of the main bridge.

Q. In order to get the location, I show you Libellant's Exhibit 3, in Case 6111, purporting to be and identified here as a photograph of the "Thode Fagelund," and ask you to look at it, and point out there to the Court, as near as you can, where that chart house is you talk about, and draw a line out from it, and mark it "Chart house."

A. On the after part of this.

COURT: Just mark it with a pencil. (Witness marks.)

(Testimony of Michael Nolan.)

Q. Well, now, say the chart house there; after part of the pilot house, is it?

A. Yes, sir.

Q. Now, how long were you in that chart room?

A. From about 10:30 to 3 o'clock.

Q. What did you do at three o'clock?

A. Got up and got out on deck.

Q. Whereabouts on deck did you go?

A. On the bridge.

Q. Showing you this same Libelant's Exhibit 3 again, I want you to mark on that photograph the place where you went after you went out of this chart house, if you can, and the position you took within the next few minutes after you went out to navigate that ship?

A. After getting up and going out on the deck—that is the fore part of the chart house there; that is the wheel house part there; the bridge extends out at the side on this side, and also on the other; walk through the pilot house, spoke to an officer that was on deck, and told him we wouldn't heave up the anchor at 3 o'clock.

Q. Mark where you were? Where did you go finally?

COURT: Your station.

A. That is, when I got up on deck first?

Q. No, I am asking you where you went to navigate the ship. Just mark it on that, so we can get through.

A. Up on top of that chart house.

(Testimony of Michael Nolan.)

Q. Up on top of that chart house? Mark it there the top of the chart house (witness marks). Now, I understand that the place that you marked the top of the chart house on Libelant's Exhibit 3 is the place where you finally took after passing all through these other details that I stopped you relating. The position you finally took and stood to navigate that ship, is that right?

A. Yes, sir.

Q. That is up on top of the pilot house, and where the man had the wheel? Is that right?

A. Yes, sir.

Q. And the highest point on the ship?

A. Yes, sir.

Q. That is, except the mast, of course. Now, when did you give the first order as pilot on board that ship?

A. At about 3 o'clock. I said to the officer in charge of the deck that we would not heave up the anchor. That was the first order I gave—command.

Q. And did you tell him when you would heave the anchor up?

A. When the ship would swing to flood tide.

Q. Now, at the time that you came out on deck at 3 o'clock, how was the "Thode Fagelund" then in the stream?

A. Her head was partly to the north and westward, with her stern the lower side of buoy No. 2, Gilman Ledge.

Q. Now, I show you a clean blue print here, so

(Testimony of Michael Nolan.)

as not to get the lines mixed. Mr. Wood asked me yesterday not to use his exhibits any more, so I will show you a clean one, being 18628 L. C. R. J. F. McIndoe, certification Columbia River from Point Harrington to Fort Stevens, and showing the water front of Astoria, and direct your mind and your eye to Flash Buoy No. 2, known as Gilman Buoy, and to Nolan Exhibit 3, upon which you marked the points of anchorage a moment ago. And now, I ask you to place upon this blue print the position that the "Thode Fagelund" was in at that anchorage at 3 o'clock in the morning of August 24, 1913, with respect to her direction in the stream. Now, if you want feet and inches, we will take it off this scale. Here is your 1,000 feet, 2,000 feet, etc., and here is your 500 feet (indicating). (Witness marks.)

Mr. BRISTOL: Now, witness marks a black line commencing at a point right under River Sounding figures 35 on the blue print chart, and extending southerly, southeasterly across the channel towards, and in the direction of, but westerly of, Flash Buoy No. 2, and that, I understand, to be the position that the "Thode Fagelund" had at the time I interrogated you about, 3 o'clock—is that right?

A. Yes, sir.

Q. And I understand you to say the reason you told him you wouldn't heave the anchor at 3 o'clock was because she had that position in the stream?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Is that right?

A. Yes, sir.

Q. Now, I want you to mark on there, having regard to the anchorage point that you placed upon "Libelant's Exhibit No. 3—Nolan"—calling your attention to what I told you before, that upon this edition they name that old buoy which is 13 here, and which is old 12, and numbered here as 13 on the new edition, and it is in the vicinity of that anchorage where you placed the dredge on this. Now, with that anchorage as the point, show us, if you will, how the dredge "Chinook" was in the channel at 3 o'clock (witness marks). Now, witness marks a line. This is the line here, is it?

A. Yes, sir.

Q. Commencing at a point at the top of figure for sounding, "34," almost directly in a line south, about a quarter of an inch from buoy marked No. 13 on blue print L. C. R. 18628, and extending across the channel of the Columbia River, a black mark representing the dredge "Chinook," the end of it in the vicinity of sounding figure "5" in the number "45," on a line with reference to compass points on the map, a little east of north, and a little west of south, bearing in a southwest direction.

A. South by west.

Q. South by west. What was the state of the tide at about 3 o'clock or at 3 o'clock there, when you noted these positions that you have delineated on this map?

(Testimony of Michael Nolan.)

A. It was about two-thirds on flood.

Q. About two-thirds on flood?

A. Yes, sir.

Q. Did you notice whether or not these ships, the "Thode Fagelund" and the dredge, were swinging at their anchor or not?

A. Yes, sir; the "Thode Fagelund" was swinging upstream with her stern inshore. The dredge "Chinook" was swinging upstream with her stern inshore, towards Astoria.

Q. With her stern towards Astoria?

A. Yes, sir.

Q. And at this time, Captain, or when you first came on deck, the "Chinook's" stern really lay with reference to her direct north and south line across the channel a little westerly of that line, and downstream?

A. Yes, sir.

Q. Now, for about how much length of time was it before that condition changed, if you can give me it? How long a time did you wait? Put it that way.

A. We waited until 3:20.

Q. Waited until 3:20. Then what did you do?

A. Gave orders to heave up the anchors.

Q. Now, when you gave that order to heave up the anchor, where were you?

A. Standing on top of the chart house.

Q. Where you marked it on Libelant's Exhibit 3?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. On that photograph?

A. Yes, sir.

Q. In that position, on top of the charthouse, state whether or not you were in position to see clearly all things around and by you and your ship?

A. Yes, sir.

Q. You may state why you took that position on that ship.

A. I considered it the best position on the ship. It was night time, conditions were crowded; from where the ship was anchored, I was looking into the lights of Astoria, the ship was heavily loaded and deep draught, and it required some caution in order to keep the vessel from getting into shallow water on the port side of the river, going down the stream, and also to keep her away from the dredge "Chinook" after heaving up the anchor. . It was the best position that I could see all around the horizon on.

Q. You say the "Thode Fagelund" was heavily loaded? That card you had in your hand, on which you marked your position, gives a true representation of the way she was loaded, her deck load and everything?

A. Yes, sir.

Q. She sat low in the water. Do you know what her draught was?

A. About 25 feet six in fresh water.

Q. Now, state whether or not a ship in that position, drawing that depth of water, and so

(Testimony of Michael Nolan.)

loaded, is acted upon by the current, and how acted upon, whether slow or fast?

A. In swinging to her anchor, do you mean?

Q. Yes, I am talking still about anchorage.

A. In case of the morning, of that morning, a vessel heavily loaded, would swing to a flood tide before a lighter vessel would.

Q. Now, this dredge "Chinook" never carries any cargo, does it?

A. No, sir.

Q. Let me ask you: Do you know the dredge "Chinook"?

A. Yes, sir.

Q. How do you know her?

A. I am at present employed on her.

Q. You are pilot on her now, aren't you?

A. Yes, sir.

Q. And you got that job after this other one?

A. Fourteen days after I was discharged from The Port of Portland, I was employed by the Government as pilot of the dredge "Chinook."

Mr. BRISTOL: So the Court may understand—this may be a little bit out of order, but I want to get it—why this dredge was there, if you can tell us—not that date, but how it operates. This dredge "Chinook" is the bar dredge that goes down to the mouth of the Columbia?

A. Yes, sir.

Q. She works during the week, and comes up

(Testimony of Michael Nolan.)

Friday or Saturday, as the case may be, and goes to anchorage in the Astoria harbor—is that correct?

A. Yes, sir.

Q. Can you state now, as of August 24, 1913, either from your then knowledge of the operation of the dredge "Chinook," or facts and circumstances brought to your attention, whether she was at anchor there, as her usual week-end operation? Or how long she had been at anchor there, if you know?

A. The dredge "Chinook" was at anchor there three days before the accident happened.

Q. Three days before the accident happened? Now, she is how big a boat?

A. Four hundred and fifty feet long, about 4000 tons.

Q. And she doesn't carry any cargo?

A. Not except when she is pumping sand into her.

Q. I mean at anchorage. She wouldn't be carrying anything in her to make her ride deep?

A. No, sir.

Q. What is her draft?

A. Average draft about seventeen feet; with oil a little more.

Q. Do you know whether her condition was any different then, on August 24th, than it is now? In other words, would your description of her now hold good for August 24th?

A. Comparatively no change in the draft of the ship.

(Testimony of Michael Nolan.)

Q. Now, speaking from your knowledge of the harbor down there, and having regard to the flood tide that morning, you say about two-thirds flood at this time, answer me this: Would the "Thode Fagelund," loaded between 25 and 26 feet, at anchor, swing to her chain with a greater degree of speed, or a less degree of speed than the dredge "Chinook" would swing to her chain under the same circumstances?

A. Conditions that morning in Astoria harbor were about two-thirds flood; the current running down the river is strong on top, but the flood running up the river is stronger underneath. The "Thode Fagelund" being deeper draft would swing up stream much sooner and faster than the dredge "Chinook" would.

Q. What was your reason, if you had any reason, to wait from 3 o'clock till 3:20? To take advantage of that condition?

A. In the first place, the "Thode Fagelund" was not headed down the stream; therefore it was necessary for me to wait until she swung with her head down the stream. In the second place, the "Chinook," laying as it was, crowded the channel, and it gave me a better opportunity to handle the vessel, and gave me more clearance to pass the dredge "Chinook."

Q. Now, we will consider that we have waited twenty minutes, and that you have given the order

(Testimony of Michael Nolan.)

to heave the anchor, which, I understand, you did at 3:20. Is that right?

A. Yes, sir.

Q. I want you now to put your pencil on the same marks and delineate to us the position which the dredge "Chinook" and the "Thode Fagelund" then had, if you can? Now, mind you, this is twenty minutes past three, August 24th. You are to show the new position of the dredge by her swing to tide, if any, and the new position of the "Thode Fagelund" from the same points of departure. (Witness marks.) Now, I want you to draw your pencil from this line you mark here—draw your pencil out here, and we mark here "Thode, first position, 3 a. m." Is that right?

A. Yes, sir.

Q. Now, from this other line, you have her more up and down stream, but still near sounding "35." Draw another line, and we will say "'Thode's' second position, 3:20 a. m." Is that correct?

A. Yes, sir.

COURT: At the time the order given to heave anchor.

Q. "At the time order given to heave anchor," the Court suggests.

COURT: My suggestion was, it might save an examination of the records some time, to see what that meant.

Q. Now, I draw a line out towards this other way, off the place of the map where we are not

(Testimony of Michael Nolan.)

involved—from the mark that you made “first position of the dredge.” Is that correct?

A. Yes, sir.

Q. And I mark it “Chinook, first position, 3 a. m.” Then I draw from the other line you made here—is that right?

A. Yes, sir.

Q. A line right there is where you mean?

A. Yes, sir.

Q. Draw from there out here, we will say, “Chinook, second position at 3:20 a. m. at the time order given to heave anchor on ‘Thode.’” Is that right?

A. Yes, sir.

Q. Now, then, as I understand it, from where you were upon the pilot house of the “Thode,” looking then in the direction in which you were intending it to be about to go downstream with the “Thode Fagelund,” or when you were headed downstream, she would not be even then in the thread of the channel to go out to sea?

A. No, sir.

Q. You would have to come around some around the dredge, in order to get upon your course to get in mid channel? Is that true, or not?

A. That is true.

Q. Now then, we will consider that the anchor is up, and I want to know whether the anchor was up at 3:20, so that you could start ahead, and if it was, what you did?

(Testimony of Michael Nolan.)

A. The anchor was hove up at about 3:20, sir. Orders were given for—

Q. Now, I don't want "Orders were given." What order, if any, did you give, and if you didn't give any, say so?

A. The first order that was given was to heave up the anchor.

Q. You have said you gave that?

A. Yes, sir.

Q. What other order did you give after that, if any?

A. Ahead slow.

Q. Ahead slow. How did you give that order?

A. Just as I have repeated, ahead slow start. That is the order that was given.

Q. Given by word of mouth from where you stood?

A. Given by word of mouth to the captain of the "Thode Fagelund," who was standing at the telegraph.

Q. Where was the telegraph?

A. On the starboard side of the bridge.

Q. How far from the Captain?

A. The Captain was standing alongside of the telegraph.

Q. That was Captain Hansen?

A. Yes, sir.

Q. That you spoke about a minute ago?

A. Yes, sir.

Q. Now, this telegraph you speak about, state

(Testimony of Michael Nolan.)

whether or not that is an instrument you pull a lever over, and that shows the command you gave, and whether or not that command is communicated to the engine room?

A. Yes, sir.

Q. How did the Captain execute that command? Could you see? Did you see? Do you know?

A. When the telegraph rings, there is a tell-tale, on the inside; you can hear when the handle is turned over; therefore I know the telegraph was used.

Q. Your first order then was slow speed ahead; is that right?

A. Yes, sir.

Q. That was with reference, now, to the operation of the engine?

A. Yes, sir.

Q. Did you give any order, and if so, what, with respect to the direction that your boat was to be steered?

A. Gave an order to starboard the helm.

Q. To starboard the helm?

A. Yes, sir.

Q. Was that done?

A. Yes, sir.

Q. On a starboard helm, such as you had on the "Thode," state whether or not that would cause her head to move to the left or to the right?

A. The starboard helm would cause the vessel's head to move to the right—to the left.

(Testimony of Michael Nolan.)

Q. To the left? Cause her head to move to the left?

A. Yes, sir.

Q. All right. In other words, what you sailors call port; her bow would go to the port?

A. Yes, sir.

Q. Now, when you gave that order of slow speed ahead, and starboard helm, did the "Thode" start to move?

A. Not at that moment, sir, because it takes considerable time for a vessel to start momentum ahead, and after a short time the vessel's head did start to move inshore.

Q. Now, when you say inshore, do you mean to the Astoria side, or to the side next the "Chinook"?

A. Inshore is to Astoria side, and to the left.

Q. That would be the south side of the channel, and on your port side?

A. Yes, sir.

Q. Now, tell me why you were moving your ship's head in that direction? Why didn't you, if you were headed downstream, keep straight ahead?

A. At the time that the anchor was heaved up, the "Thode Fagelund's" head was only heading for about the stern of the "Chinook." In order to make a clearance of the "Chinook" it was necessary to put the wheel to starboard.

Q. And how long did you proceed under that slow bell, with the wheel to starboard, as near as

(Testimony of Michael Nolan.)

you can tell? I don't want it in seconds. I want to know as near as you can tell.

A. I should judge that time to be about five minutes.

Q. Did you then give any other order with respect to the navigation of that ship, and if so, what?

A. The helm was steadied at about that time, and after the ship was steadied, there was an order given to half speed ahead on the engine.

Q. How was that order given and communicated?

A. That order was given to Captain Hansen, standing on the starboard side of the bridge, and was answered by him. The telegraph was rung. I could hear the communication given and answered from the bridge.

Q. And did you notice whether or not your ship operated in accordance with what you expected when that order was given?

A. Yes, sir.

Q. When you got half speed ahead, how was your—was an order given, and if not, why not, as to the position your helm should take? Did you change your helm, or did you keep it starboard, or put to port, or what did you do? Did you give any orders about it?

A. When the ship was steadied up, given half speed ahead, the ship was steadied on her course then.

(Testimony of Michael Nolan.)

Q. On her course then. Now, what course at that time was the "Thode Fagelund" on? Give us some object, if you can, on the Astoria shore, that she may have, or that you may have in your mind to steer for?

A. When conditions arise of that kind, or in operating a vessel of that class, at a time like that, it is not practical to say I am going to look at a compass, and steer the course, because it is very impractical in narrow waters where there is the current.

Q. I am not caring about compass course. I want to know if you headed up for any particular object, and if so, where it was—or about any particular object. I want to get something that tells us where that ship was headed for.

A. The ship was headed to reach a distance about one hundred feet off the stern of the dredge "Chinook," and about a line that would take us below the Callender dock on the Astoria side of the channel.

Q. You were headed at this time now, when you gave the half speed ahead, and steadied her helm, you were headed on a course about one hundred feet to the port or left hand of the stern of the dredge "Chinook" and towards a point about one hundred feet down the river on the Astoria side below the Callender dock. Is that right?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Now, how long had you run on that course before you gave the next order, if any?

A. The ship continued on that course until the "Ocklahama," towing the "Thielbek," came in sight.

Q. Where were the "Ocklahama" and the "Thielbek," having reference to this map, which is before you, L. C. R. 18628, the same blue print you have marked the other positions on, and while your ship was as you have described here, when you first saw the "Thielbek" and the "Ocklahama," and please mark with a line the position on this map. I will say for your information there is the O. R. & N. dock, there is the Railroad dock, this is street numbered—the Callender dock, the Standard Oil dock. (Indicating; witness marks.) Now, you make a line at about the foot of Tenth street.

A. This is Ninth street, I think.

Q. This is Tenth street.

A. This is Tenth street (indicating).

Q. This is Tenth street, yes. Well you mean she was about the foot of Tenth Street, or the foot of Ninth Street, or where?

A. It was off in that direction (indicating).

Q. Off in that direction about there. Witness makes a mark straight with the thread of the stream in the locality of the foot of Tenth Street, between Ninth and Tenth Streets in the City of Astoria, and out in the river about 300 or 400 feet. Now, that one line you marked there is supposed to represent both the boats, is it? Won't you please tell me

(Testimony of Michael Nolan.)

whether you could distinguish whether there were two boats or not, or do you simply make that as the location as near as you can fix it of where the "Thielbek" was, or can you tell us if you actually saw—be careful what you tell, because we want to know the facts—did you actually see the "Ocklahama"? If you did, mark here where you saw her. If you only saw the "Thielbek," and that is the representation of the "Thielbek," then say so.

A. I saw the "Thielbek" distinctly plain, and I saw the "Ocklahama" distinctly plain.

Q. Where did you see the "Ocklahama" and locate her with respect to the mark that you made representing the "Thielbek" on this same plat? (Witness marks.) Witness makes a mark formed by a little square on the outside.

A. On the port side.

Q. On the port side?

A. Of the "Thielbek."

Q. Of the "Thielbek," this line representing the "Thielbek." Now, with your permission, I will take your pencil and will draw a line from there, and will mark it "Position of Ocklahama and Thielbek when Pilot Nolan first saw them from the deck house of the Thode." Is that right?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. Now, that was while you were on this course, headed down the river, was it?

(Testimony of Michael Nolan.)

A. Yes, sir.

Q. Speak up loud, so we can all hear you. Needn't be afraid, we aren't going to eat you. Now, wait a minute. I want to fix another thing. When you saw that "Thielbek" and "Ocklahama," I want you to place a line on her, if you can, and if you can't, say so—but if you can, put a line on there showing relatively if the dredge had swung any in the stream and changed her position. If you can estimate that, show us, and where the bow of your ship was, the body of your ship was, please, at that time, so we can tell what your position was when you first saw the "Thielbek," and the "Ocklahama," with respect to the dredge "Chinook." You understand my question?

A. Yes.

Q. Can you do it?

A. I will try, sir.

Q. All right. As near as you can, please (witness marks). Witness makes a mark from the same anchorage point, being a black pencil line on the plat before him, from which I draw a line and carry it out to the side and mark it "Position of the 'Chinook.'" That, your Honor, I will mark "third position." Is that better? So as to identify it. "Third position dredge 'Chinook,' fixed by Nolan when his ship steadied on her course." Is that right?

A. At the time of seeing the "Thielbek."

Q. At the time of seeing the "Thielbek"?

A. Yes, sir.

(Testimony of Michael Nolan.)

COURT: When he first saw the "Thielbek."

Q. That is better—when he first saw the "Thielbek." That is better. That suits me just as well. "When he first saw the "Thielbek" and "Ocklahama." (Writing.) Now, will you please put on there, as near as you can, the position of the "Thode Fagelund" as she proceeded on the stream from her second position here. Show where she was now, with respect to that dredge, when you saw this "Thielbek" and "Ocklahama"?

A. (Marking) That is the position there of about the midships part of the steamer "Thode Fagelund" at the time of sighting the "Thielbek" with the steamer "Ocklahama" towing her.

Q. Witness marks a black point immediately at the side of sounding figures "36" in the channel soundings, around which I put a circle, which point he says represents the midships section. What you mean by midship section is beam section, is it?

A. That would be about the pilot house.

Q. "Midship section of the pilot house of the 'Thode Fagelund' when 'Thielbek' seen." Is that right?

A. Yes, sir.

Q. "When 'Thielbek' first seen"; that is right now, is it, Captain?

A. Yes, sir; one place here I want to rub out. I made a mark. I got it off the compass.

Q. Mr. Wood wants me to ask you what distance you estimate your ship was off the stern of the

(Testimony of Michael Nolan.)

"Chinook" at this time when you fixed that point as your pilot house, when you first saw—

A. That part there would be about the ship's length.

Q. In other words, your pilot house would be about a ship's length from the stern—

A. Dredge "Chinook."

Q. Of the dredge "Chinook." Now, how far would the bow of your ship be away from the dredge "Chinook"? In other words, what Mr. Wood wants to get at, at the time you saw the "Chinook," what distance was there between the stern of the dredge "Chinook" in that position and the bow of your ship?

A. Looking at the matter from my standpoint of view, I estimate that distance to be about one ship's length.

Mr. WOOD: That is the distance from the pilot house to the stern of the dredge "Chinook"?

A. Yes, sir.

Mr. WOOD: From the pilot house of the "Thode" to the stern of the "Chinook"?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Mr. BRISTOL: Does that suit you, Mr. Wood?

Mr. WOOD: Yes.

Q. Now, then, when you first saw this "Thielbek" and "Ocklahama" in that position, you were—

(Testimony of Michael Nolan.)

standing then at this point where you made that black mark, weren't you?

A. Yes.

Q. That is where you stood?

A. Yes, sir.

Q. On the top of the pilot house of the "Thode"?

A. Yes, sir.

Q. Now, I want you to tell us what you saw here. "Here" meaning in the position where the "Thielbek" and "Ocklahama" were, what did you see?

A. I saw a square rigger in tow of a stern-wheel steamer, which I presumed at the time to be the "Ocklahama."

Q. All right. Did you see any lights?

A. On observation, and looking for to see whether the ship was at anchor, or was at running, I saw the ship "Thielbek" had a port light up, and I saw the steamer "Ocklahama" had a port light.

Q. Now, just so we get this port light business fixed, the port light is a red light, isn't it?

A. Yes, sir.

Q. You saw two red lights then?

A. Yes, sir.

Q. What else did you see?

A. The "Ocklahama" had two towing lights, white lights.

Q. Did you see any other lights upon those vessels at that time? Now, I am talking about, just for the present, when you first saw them?

(Testimony of Michael Nolan.)

A. Yes, sir; I saw the starboard light of the "Thielbek."

Q. And the starboard light of the "Thielbek" is what kind of a light?

A. Green light, sir.

Q. Now, did you see any other lights?

A. Saw the red light on Smith's Point.

Q. Well, that is what I mean; the cannery light—Elmore cannery light.

A. Yes, the channel light established on Elmore's cannery for finding the channel.

Q. Now, did you see any other lights at that time than those you have described, upon the "Thielbek" and the "Ocklahama"?

A. No, sir.

Q. Seeing the two red lights, and the green light on the "Thielbek," state what, if anything, to you in the position you then were on the "Thode Fagelund," those lights indicated to you?

A. The lights represented to me, as one light being on the "Ocklahama" and the other on the "Thielbek," I couldn't understand why there was a light on the "Thielbek's" bow.

COURT: Let me interrupt by asking that if, in towing under those circumstances, it is claimed that the "Thielbek" should not have had a red light?

Mr. BRISTOL: If your Honor will pardon me, I would like to postpone the debate of that question for a little while, because there are other witnesses in the room; and I will communicate that answer

(Testimony of Michael Nolan.)

to your Honor privately, with counsel in attendance, but there will be quite a contention about that situation, your Honor?

COURT: Very well; go ahead.

Q. You may continue, Captain; if you had anything else to add. Indicated to you what? What I am trying to get at, did it indicate to you—I will have to lead you a little—did it indicate to you whether the "Thielbek" and the "Ocklahama" were stuck in the stream, tied to a dock, or being navigated?

A. I knew the vessels were being moved.

Q. Did you see them move?

A. Yes, sir.

Q. What did you do then?

A. Blew two whistles, pass starboard to starboard.

Q. Why did you blow two whistles?

A. I was above the dredge "Chinook"; the "Ocklahama" did not blow a whistle; the vessels were quite clear of one another; the "Thode Fagelund" had her running lights out in good order; the conditions being crowded, it was the only safe way I could navigate by asking for a starboard passing.

Q. When you sailors speak of a starboard passing, you mean by that the two right-hand sides or starboard sides with respect to you—they go by each other?

A. Yes, sir.

Q. And when you speak of a port passing, you

(Testimony of Michael Nolan.)

mean the two port sides, or left-hand sides of the ship go by each other?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So you signaled for what is called the star-board passing?

A. Yes, sir.

Q. Now, you may state, having regard now to the situation you placed on the map at that time, the time when you marked the little point where you stood and first saw the "Thielbek" and "Ocklahoma," why you didn't blow one whistle for a port passing?

A. The steamer "Thode Fagelund" was about one ship length above the dredge "Chinook," with the intention of passing the dredge "Chinook," about one hundred feet off, and at that time, had I blown one whistle for to pass port to port, that was an execution that I couldn't accomplish.

Q. Why not?

A. In the first place, there wasn't room for me to make a passing clear of the dredge "Chinook," and assume responsibility of not colliding with her.

Q. Not colliding with the dredge?

A. Yes, sir.

Q. Well, if you had one hundred feet clearance, or if your ship was then off—

A. Mr. Bristol, I would like to continue that question a little bit longer.

(Testimony of Michael Nolan.)

Q. Go ahead. I beg your pardon for interrupting you. I thought you were through. The question was why you didn't blow a port passing signal, one blast and go around the end of the dredge "Chinook"?

A. It was impossible for me to make that clearance past the dredge "Chinook." To do so, the helm would have to be put hard aport, and there wasn't in my estimation at the time distance enough to do that with any safety. With a vessel of the "Thode Fagelund's" capacity, being heavily loaded, and deep draft; to have blown one whistle for a port passing, at the time that I saw the "Thielbek," would be for me to assume that I could take that ship's head at least a point and a half to starboard, in order to make a clearance of the "Thielbek" in tow of the "Ocklahama," with the assumed distance between the "Thode Fagelund" and the "Thielbek"; if the "Thielbek" was anchored at the time, and lying still, it was about all the dredge "Chinook" would have been able to do, was to clear that vessel.

Q. You use the word "Thielbek" there. You meant the "Thode," didn't you? You said if the "Thielbek" had been anchored at that time, it was about all the dredge "Chinook" could do to clear that vessel.

A. I intended to say "Thode."

Q. You meant if the "Thode Fagelund" had been anchored at the point where you fixed the little mark, circumscribed with a circle, had she been

(Testimony of Michael Nolan.)

anchored at that time, there was just nice swinging distance for the "Chinook" to swing at anchor and get around?

A. Been about distance only for the "Thode Fagelund" to swing clear of the "Thielbek" if she was at anchor.

Q. The "Chinook," you mean, Captain.

A. No, sir. I mean the "Thode." I am talking about the "Thielbek" and the "Thode."

Q. All right; go ahead.

A. At the time the two whistles were blown, by the distance that I calculated was between the ships, if the "Thielbek" was anchored, and the "Thode Fagelund," with about the speed she had on her at the time, could only about make the movement for to clear that ship in safety, because in the night time, it is very hard to tell what a vessel of that capacity of the "Thode Fagelund" will do. The ship was heavy loaded, and the current was running upstream, and when a man is not accustomed to a ship, that is by handling her continually, it requires a good deal of practice to be able to make a general average of what such class of ships will do. Therefore, the "Thielbek," being in tow of the "Ocklahoma," I couldn't safely ask for a port passing, and assume the responsibility of clearing the ship "Thielbek."

Q. See if I understand what you mean then about this: That if when you first saw the "Thielbek," she had been fixed in the stream at anchorage,

(Testimony of Michael Nolan.)

and you in your relative position around or near the stern of the dredge "Chinook," that even with the "Chinook" anchored, if you had been called upon under those conditions, the tide running in, and your ship, the "Thode Fagelund," loaded, and the way it was being navigated, that you would not have had more than enough room to have executed a movement to get over to the starboard side of the channel. Is that right?

A. Yes, sir.

Q. Now, did your ship, the "Thode Fagelund," at that time, have much speed?

A. The ship "Thode Fagelund" at that time had just about enough speed to be manageable on her helm.

Q. And did that speed enter into or become one of the conditions considered by you as to whether or not it was proper navigation to execute a port or starboard passage?

A. Will you repeat that question again?

Q. I say, did this question of the speed of the "Thode" enter into the number of elements you have calculated as to whether it was proper for you to execute a port or starboard passing at that time?

A. The speed, yes, sir.

Q. Now, could you tell when you first saw the "Thielbek" and the "Ocklahama," or did you estimate the distance that your ship was from them?

A. In the night time it is very hard to tell dis-

(Testimony of Michael Nolan.)

tances, but I estimated it to be at about four ship's lengths, or five.

Q. Well, that is four or five what kind of ship lengths—the "Thode's"?

A. Is about 400 feet long; 350 feet long; the "Thode Fagelund" is 350 feet long.

Q. At that rate then you estimated the "Thielbek" and the "Ocklahoma" to be from 1400 to 1750 feet away from you. Is that right?

A. I wouldn't put it that far; I think about 1400 or 1500 feet.

Q. All right; that is what I wanted to get. Now, when you blew your first two whistles, state whether or not you received any answer from the "Ocklahoma."

A. At the time of blowing the first two whistles there was no answer given from the steamer "Ocklahoma."

Q. What did you then do?

A. Stopped the steamer "Thode Fagelund's" engines.

Q. You stopped her engines?

A. Yes, sir.

Q. How did you execute that order?

A. Gave an order to Captain Hansen to stop her, sir.

Q. Was it executed?

A. The telegraph rung and was answered.

Q. And you recognized it, or not, did you, the same way you described before by the bells?

(Testimony of Michael Nolan.)

A. Yes, sir, you can hear the telegraph being run over, and you can hear the answer being given.

Q. Did the engines stop?

A. Positively I couldn't state that the engine stopped at the time, sir. That is something that I couldn't state.

Q. Well, you have no reason to state that your order was not obeyed, have you?

A. I have every reason to believe that the order was obeyed.

Q. All right. Now, what did you do?

A. After waiting for about ten or twelve seconds to see if my signal would be consented to, I blew the second two whistles.

Q. And to those two whistles state whether or not you received an answer?

A. Yes, the steamer "Ocklahama" answered by two whistles.

Q. Did you notice at that time whether in response to those two whistles, the "Ocklahama" and the "Thielbek" made any change in their course or bearing, as to your ship?

A. No, sir, there was no change whatsoever.

Q. State then what you did.

A. Blew four—backed the steamer "Thode Fagelund" full speed astern.

Mr. WOOD: Is that in answer to the question what did he next do—or did he say he blew four first.

Mr. BRISTOL: He stopped and hesitated and

(Testimony of Michael Nolan.)

hesitated some more, and then he said, "I backed full speed astern," Mr. Wood; he didn't say anything about four. He started to say he blew four.

Q. Now, then, how did you give that order?

A. I blew the whistle cord myself.

Q. I am talking about this order for full speed astern. You stated that after you—

A. (Interrupting) Pardon me.

Q. (Continuing) stopped your engines, blew these whistles, and then got an answer, and saw no change in the course of the "Thielbek" and "Ocklahoma," I asked you what you did, and you said, "Went full speed astern." How did you give that order?

A. Through Captain Hansen.

Q. Was it executed?

A. Yes, sir.

Q. In the same manner or not as you have described the other orders as being executed?

A. Yes, sir.

Q. Then what did you do?

A. Blew four whistles, the danger signal.

Q. Was there any indication received by you from the "Ocklahoma" or the "Thielbek" that they gave any attention to your four whistles?

A. Was no answer given to the four whistles.

Q. Did you notice after the four whistles were given any change in the course of the "Thielbek" and "Ocklahoma"?

A. No, sir; there was no change.

(Testimony of Michael Nolan.)

Q. Then what did you do?

A. Gave an order to let go the anchor.

Q. Was that done?

A. Yes, sir.

Q. Who did that? Do you know?

A. First Officer.

Q. Where was he?

A. Standing on the forecastle head of the steamer "Thode Fagelund."

Q. Can you tell us just briefly how the anchor machinery of the steamer "Thode Fagelund" was situated, and how it worked?

A. The steamer "Thode Fagelund" has a windless which is about general in all such class of steamers. The chains connected run over a wildcat; in order to heave up the anchor there is a screw that sets into this wildcat, which connects the part of the windlass which heaves it up. After the anchor is heaved up, there is a brake put on, the screw taken off, and leaves the anchor in such position to let go instantly by the opening of a brake.

Q. And this officer executed the order of letting the anchor go that you gave by operating this brake, did he?

A. Yes, sir.

Q. Is that a matter of performance taking considerable time, or can it be done at once?

A. It can be done at once.

Q. Was it done at once?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Which anchor was it?

A. Port anchor.

Q. Why was the port anchor dropped?

A. The port anchor was the anchor the ship laid to all night, and was only after being used a short time before that.

Q. Then we are to understand that the reason he used the port anchor it was the one most readily available?

A. Yes, sir.

Q. State whether or not there was any other man standing on the forecastle deck of the "Thode Fagelund" on the starboard side of the anchor windlass at that time if you know?

A. I could not state just where the other man was, but it is the carpenter's duty aboard of these vessels to attend to the windlass. Two men were forward. I saw them a short time before that, but where the carpenter was at the time I couldn't say.

Q. The first officer, though, was the man that was at the port anchor side of the windlass?

A. The First Officer, yes, was on the port side of the ship.

Q. Now, when the anchor was let go, what did you do?

A. Blew four whistles again.

Q. Were those four whistles answered?

A. No, sir.

Q. Now, had there been any change noticed by

(Testimony of Michael Nolan.)

you in the course of the "Thielbek" or "Ocklahama" up to that time?

A. Just at about the time that the last danger signal was given, the "Thielbek's" port light—the "Ocklahama's" port light had shut out that I couldn't see it.

Q. Then the "Ocklahama's" red light was closed to you?

A. Was closed to me, yes, sir, and the starboard light opened.

Q. Of the "Ocklahama"?

A. The starboard light on the "Thielbek's" bow, sir.

Q. That would indicate what?

A. That the ship was swinging to port. That is, that her helm was to starboard.

Q. Now, during this time, going back a little, you understand, so as to get all these elements in together—during this time from the period in time when you first saw the "Thielbek," down to the time you dropped your anchor, and blew the last four whistles, state what position the helm of the "Thode Fagelund" was in?

A. At the time of seeing the "Thielbek" and the "Ocklahama," the helm was given an order to hard astarboard, and was answered by the man at the wheel, and the helm on the "Thode Fagelund" was never moved after that until after the collision.

Q. Can you tell us how far away, as far as you could see there, and estimate the distance, the

(Testimony of Michael Nolan.)

"Thielbek" and "Ocklahama" were, after you blew the last four whistles, and dropped your anchor?

A. The "Thielbek's" bow, I should estimate to be about 250 to 300 feet off.

Q. And in a position, then, coming towards your ship in that way? Showing you, for illustration, a couple of red blocks marked "Ocklahama" and "Thielbek," and a green block marked "Thode Fagelund," and with it a blank piece of paper, and I want you to place them, using these blocks.

COURT: Is that the time, now, he dropped the anchor?

Mr. BRISTOL: Yes.

Q. I want you to place these vessels so the Court and we all can see the position you say they were in when you say she was about 200 or 250 feet—whatever it was—when you blew the last four whistles, and dropped the anchor?

COURT: I understand the witness to testify he blew four whistles after he dropped the anchor, and he blew four before or about the time he dropped them; that is, he dropped the anchor, then blew four whistles after?

A. Yes.

COURT: So you refer to after the anchor was dropped?

Q. I refer to after the anchor dropped, and the last four whistles given; how far was the "Thielbek" away from you then?

A. 250 to 300 feet.

(Testimony of Michael Nolan.)

Q. All right. Take these blocks and set them so you can give us a view, as near as you can, where you were here on the pilot house of the "Thode Fagelund." That would be the green block. And the "Thielbek" and "Ocklahoma" in tow, as illustrated by these two red blocks, place them on the paper as they were, the distance you think they were, so we can mark them on there to get the position of those ships at that time, after the anchor was dropped on this boat.

A. All right, sir. At the time we would have to be in line. Give me a piece of paper, or something to make a mark.

Q. Taking this improvised straight edge, being a folded piece of blank paper, use that for your line, and get it the way you want it.

A. (Arranging blocks) That is about the position I stood on, sir, and there is about the actual condition.

Q. Where they are now?

A. Yes, sir.

Q. Now, I understand—

A. (Interrupting) That is about as near as I can put it, with me standing in there.

Q. You were still standing on the top of that pilot house?

A. Yes, sir, that is about the position.

Q. Now, I understand the approximate position representing the bows of these ships to be—marking

(Testimony of Michael Nolan.)

them—that distance in there as estimated by you now, is how much? 250 feet?

A. 250 to 300 feet.

Q. And I understand you that the red light of the "Ocklahama" shut out? Is that right?

A. Yes, sir.

Mr. BRISTOL: Now we will mark this "September 10, 1914. Exhibit in detail to go with blue print chart marked by witness Nolan, position of vessels after 'Thode' anchor down." Now, going back to the Court's suggestion, was it after the first four whistles, or the last four?

A. It was after the last four, sir.

Q. (Writing) "After last four whistles"; is that correct?

A. Yes, sir.

Q. Sign your name to it (witness does so). Now explain to me how it was that if you had been steering on this hard astarboard helm, and your port anchor down, that your ship, the "Thode Fagelund," got in that position?

Mr. MINOR: What is that?

Q. (Read.)

A. The "Thode Fagelund's" engines had been backing for about two minutes, and I assume that the vessel changed her position, that is, the head, about half a point to the starboard side. The reason of that is the ship having a right-hand propellor, backs stern to port, and throws her head to starboard. By observation from the time that I saw

(Testimony of Michael Nolan.)

the "Thielbek" in tow of the "Ocklahama" up to that time to arriving at that point, those lights were fully and clearly to me visible.

Q. All of that, you know, we don't get into the record. This point that you refer to is the point where the "Thielbek" was 250 feet off of you when you blew the last four whistles, and after your anchor was down, and this and this you refer to, touching the maps and the representations of the "Thielbek" and the "Ocklahama," which I understand you to say had shown their lights to you without change of course up to that instant. Is that correct?

A. Yes, sir.

Q. So that the first perceptible change of course up to this point that you noticed in the "Thielbek" and "Ocklahama," was when they were 250 feet from you; is that correct?

A. Yes, sir.

Q. And that was the only time that the red light was shut out on the "Ocklahama"?

A. Yes, sir.

Q. And you had seen the green light on the rigging, or on the "Thielbek" long prior to that, and prior to your giving those two whistles.

Mr. WOOD: I would like to have you ask that. I think you are leading him a little there.

Mr. BRISTOL: Not leading at all. We always have those troubles. You never can remember the testimony.

(Testimony of Michael Nolan.)

COURT: He testified to it before.

Mr. MINOR: He testified he saw both lights from the time he first saw them.

Q. Am I right or wrong?

A. Right, sir.

Q. You saw the green light of the "Thielbek" all the time?

A. Yes, sir.

Q. Saw the red light, too, didn't you?

A. Saw the red light on the "Thode Fagelund's" bow and the "Ocklahama" bow.

Q. You mean the "Thielbek"?

A. The "Thielbek's" bow.

Q. Saw the red light on here, too?

A. Yes, sir.

Q. If there was a red light on the "Thielbek's" bow, that red light, then, was shut out to you when you were in this position?

A. Yes, sir, that light was shut out.

Q. That light was shut out also?

A. Yes, sir.

Q. Is that about the relative location of it, or was it forward further?

A. No, sir, I presume about that, about 25 feet from the bow, I presume, we will say.

Q. Now, this green light was in here, about the same place?

A. Yes, sir.

Q. The opposite side; and you saw that?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Now, did you notice at this time when you were 250 feet apart, your anchor down, the last four whistles given, and your vessel not yet in collision—did you notice where the stern of the dredge "Chinook" was, and I show you for that purpose a black block and ask you to place that block upon this same exhibit paper, to go in connection with the chart, and place it there in its relative distance and position, as near as you can so that I may know where the stern of this dredge "Chinook" was with respect to these vessels at that time, being the time when you were 250 feet apart and before the collision?

A. That is something that I didn't observe before the collision.

Q. Didn't observe it before the collision?

A. Not at that time.

Q. All right. Now, what happened? From this point of time when you were 250 feet apart, as you have illustrated?

A. There is one thing, Mr. Bristol, going forward with that at the time of collision, I can show you.

Q. I understand. We will get to that. You said you didn't know at this time?

A. No.

Whereupon proceedings herein were adjourned until 2 p. m.

(Testimony of Michael Nolan.)

Portland, Or., Thursday, Sept. 10, 1914, 2 p. m.

Mr. BRISTOL: Your Honor, Mr. Wood asked me to buy some tools, and I am glad to hand your Honor a scale and pair of porcelain dividers.

COURT: I think it might be convenient to some of these witnesses in measuring distances.

MICHAEL NOLAN resumes the stand.

DIRECT EXAMINATION—Continued.

Questions by Mr. Bristol:

Q. Now, as I understand it—

A. Pardon me, Mr. Bristol, could I ask one favor?

Q. Yes.

A. This position as being plotted, brought to my mind the question on this other chart.

Q. "This position" doesn't mean anything. This position upon the brown paper, which you have drawn, brought to your attention something on the blue print map. What is that?

A. That I didn't mark the position of the "Thielbek," and what I know about right afterwards by recollection of my mind. That is the way that we were heading towards the Astoria shore. I would like to have that corrected.

Q. Let's see what you mean. Referring to map L. C. R. 18628, marked by the witness, "Position of 'Ocklahoma' and 'Thielbek' when Pilot Nolan first saw them from deck house of the 'Thode,'" and that I point to—is that what you say now you desire to fix definitely?

A. Yes.

(Testimony of Michael Nolan.)

Q. All right. Fix it as it was, as you saw it. That is what I asked you to do.

A. The position remains the same.

Q. That is, you mean the location remains the same?

A. Location remains the same.

Q. Rub it out.

Mr. MINOR: No, don't rub it out. I don't want that rubbed out.

Q. All right. Don't want that rubbed out. How shall he make that mark? Over the top?

Mr. MINOR: I don't know. That's for him to do.

Mr. BRISTOL: The witness has a right to correct anything that he has done.

Mr. MINOR: Certainly; but not to change what he has done.

COURT: This shows position and the mark shows the "Thielbek" heading towards the wharf this way.

A. When I made this map, your Honor, I wasn't aware that when I put my pencil down there, that that line was going to be put in evidence.

Q. Speak up so we can hear you.

COURT: What correction do you want to make?

A. What I want to do is to mark the same notation, but change the position mark into that position, as the line there would indicate.

Q. In other words, so that the "Thielbek" and "Ocklahama" bear up-stream on their course. Is that right?

(Testimony of Michael Nolan.)

A. Yes, sir; just as I saw them at that time.

Q. Well, mark it; that is what I wanted you to do in the first place. Mr. Minor doesn't want you to obliterate that mark, so get off down here so you don't obliterate Mr. Minor's mark. Make the angle the way you say she was.

A. All right, sir.

Q. I show you—Mr. Minor objecting to any change in the mark that you made before—I show you white plat, and I want you to put on the white plat now—this being anchorage points only of the dredge and the "Thode Fagelund," I want you to put in here somewhere where you think you saw the "Thielbek" at the first time, and how she was headed, if that is what you are driving at.

A. Yes, sir.

Q. All right, put it on there. Put it on the white plat. Mr. Minor doesn't want you to change the other one.

COURT: I might say that I don't understand that the mark the pilot made on this map, the location of the "Thielbek" was intended by him; it wasn't understood by me to indicate her position in the stream.

Mr. BRISTOL: Merely for location, that is all.

COURT: That is what I understood.

Mr. BRISTOL: Mr. Minor is insisting, because he wants to shut out the red light.

Mr. MINOR: No, I am not insisting upon anything.

(Testimony of Michael Nolan.)

Mr. BRISTOL: Then let him make the full marking—

Mr. MINOR: No.

Mr. BRISTOL: I know, but he is leaving the mark of the location.

Q. You don't want to change the location?

A. No, sir.

Q. All that you want, Captain, as I understand, is that by reason of the fact you made a line there, and as you now look at it, if these gentlemen claimed that was the shape of the boats—

A. Yes, sir.

Q. (Continuing) They would argue you couldn't see the lights?

A. Yes, sir.

Q. All right. Now, I want you to fix that as you saw it at the time in that location.

COURT: Just make a mark on there showing the course of the vessel, as you understand it.

Mr. BRISTOL: Yes, let's get at the facts (witness marks). Now, the black mark that you have made on this blue print map before you, behind, or lower down the river from the position at which you marked the "Thielbek" and the "Ocklahama" when you first saw them, demonstrate your evidence, or does it, of the course the "Thielbek" or the "Ocklahama" were on then in their course toward you?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. And that is all the change you want to make?

A. Yes, sir.

Q. I don't understand that you are making any change of the position you marked on the plat where the black line is, as I marked it of where the "Thielbek" and "Ocklahama" were when you first saw them?

A. None whatsoever, sir.

Q. It is only because of the fact you made a little short black line, about a quarter of an inch long, that happens to have a bearing in the river on another angle, you were afraid these gentlemen would undertake to claim you couldn't see the light.

A. Exactly, sir.

Q. I understood you to say this morning, when we closed, that you were not able to plat the position of the dredge with respect to the bearing of her stern to your ship at the time that the "Thielbek" was 250 or 300 feet away, but that you could do it at the time of the collision?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, with respect to this same plat, so that we can get it all together, I want you to assume for me—the object of this assumption is to dispense with a whole lot of papers that are confusing. Supposing the "Thielbek" was in conjunction with your ship; that is, actually struck and assuming that point to be half of that distance, for instance, right

(Testimony of Michael Nolan.)

there in the fold of the paper, did you see the position of the stern of the dredge, at the time the ships were in contact?

A. Yes, sir.

Q. How far off, and can you show me the relative position of the stern of the dredge "Chinook," assuming that the fold in the paper on this plat, which is intended to go as an exhibit to the blue print that you talked about,—how far off would the stern of the dredge be from that assumed point of contact?

Mr. WOOD: That is at the instant of the collision?

Mr. BRISTOL: At the instant of the collision, when he saw it, if he did. In other words, put the dredge where she was, and state the number of feet that this represents where you put it. Mind you, I am talking about at the time that the "Thielbek" struck you; not some time half an hour afterwards, nor fifteen minutes before, but just then if you saw it. If you didn't, say so?

A. Yes, sir, I saw it.

Q. Now, where was it? Use the black block and put it on the paper, using that fold of the paper to be about the line, and I am assuming that merely for accuracy, to counsel, as to where the ships may probably have struck, you not seeing in that 250 feet, assuming they struck there, how far off would the stern of the dredge be, and at what position did she lay at that time? Now, if you don't want to

(Testimony of Michael Nolan.)

do it that way, if you want to draw the ships the way you saw them, I will give you another piece of paper for you to draw the ships together, and then put the dredge "Chinook" in.

A. Well, that is a very hard matter. I have to think this out a little bit.

Q. Now, for the purpose of making a further exhibit to the blue print, which you testified about—

Mr. WOOD: Let me make a suggestion. Can't we put them together on this plat, and move them up?

Mr. BRISTOL: No, I don't want to confuse these, because this is an instant of time, Mr. Wood, when he saw the "Thielbek" 250 feet away, as he says. Now, I want the instant of time, if you please, and I hand you again the "Ocklahama" and the "Thielbek" in the red blocks, I hand you the "Thode Fagelund" in the green blocks, and I hand you the dredge in the black block. I want you to put all these ships together in the position they were at the time of the collision, as you saw them, if you know?

A. (Arranging blocks) That is about as near as I can place the position.

Q. That is as to the "Thielbek," "Thode" and dredge?

A. Yes, sir.

Q. All right. Now, where was the "Ocklahama?"

A. At the time of the actual collision—

Q. Yes, at the time of the impact.

(Testimony of Michael Nolan.)

A. I couldn't see the "Ocklahama" at that time, sir. She was shut out from my view there.

Q. She was shut out from you at the instant of the collision?

A. At the instant of the collision, yes, sir.

Q. Now, I mark these "At the instant of the collision of the three vessels." I have that right, have I?

A. Yes, sir.

Q. I draw the lead pencil around the black block, meaning the dredge "Chinook," the green block meaning the "Thode Fagelund," and the red block meaning the "Thielbek." Now, I ask you again, whether that, as you have been delineating it on that paper, was the position with respect to the three vessels at the instant of impact, as you saw it?

A. Yes, sir, that is as close as I can place the position.

Q. At that moment?

A. Yes, at that moment.

Q. And on that morning?

A. On that morning.

Q. Now, did you see the "Ocklahama" at any near time? I mean within a few seconds, or minutes, after that, where she was with respect to those three vessels?

A. Immediately after the collision, the "Ocklahama" came as far back on the "Thode Fagelund" as the dredge "Chinook."

(Testimony of Michael Nolan.)

Q. All right. We will put her in there. Put her where. We will demonstrate with this red block. How far back did she come? What is this distance in here between the "Thode" and the "Chinook," as you represent it?

A. This was about the place where I was standing.

Q. I asked you how you estimate this distance here?

A. That would be about 100 or 125 feet.

Q. In here between the stern, or up in here?

A. About in there, sir.

Q. About from the port quarter now of the dredge to the 'midship section of the "Thode" is 125 feet. Is that right at that time?

A. About that.

Q. Was there any place in here where the distance was closer?

A. No, sir, I don't think so.

Q. So you mean to say that all along in here, between the dredge "Chinook" and the "Thode Fagelund," as you have delineated it, is intended by you to represent 125 feet? Is that right?

A. Yes, sir.

Q. Was it more or less?

A. That is about the distance that I estimate it to be.

Q. Now, you say that the "Ocklahama" came up in that space of 125 feet. How far did she come up? Put this red block representing the "Ocklahama"

(Testimony of Michael Nolan.)

where she came. I will get it there if you will trust me. Put it where you want it. I will get it there for you, if you will just trust me. Is that it?

A. That is the wheel house of the "Thode." That is the wheel house of the "Ocklahama." She came that far along.

Q. The wheel house of the "Ocklahama" was opposite the wheel house of the "Thode Fagelund." Is that correct?

A. Yes, sir.

Q. In this space of 125 feet. The model being larger than the place where the witness has put the points together, and made the space we just mark this the "Ocklahama," and mark this "dredge," and mark this "Thode Fagelund," and mark this the "Thielbek." Now, then, we will put a circle around here, mark it all in black on here, meaning the space marked "Thode," for the wheel house where you were standing on the "Thode Fagelund." Is that correct?

A. Yes, sir.

Q. We will put a round spot over the "O" on the diagram marked "Ocklahama" to represent the wheel house of the "Ocklahama." Is that correct?

A. Yes, sir.

Q. Now, in view of the fact that you have simply placed here in your delineation the dredge block quite close. instead of 125 feet, can you tell me if you noticed how far it was from the "Ocklahama" to the dredge after she came up there?

(Testimony of Michael Nolan.)

A. I couldn't tell you that, but I could estimate the distance from the "Ocklahama" to the "Thode Fagelund."

Q. How far was that?

A. About 25 feet off.

Q. In other words, this small space in here now, I mark with an arrow, and mark out at the side of it "25 feet between the 'Ocklahama' and the 'Fagelund'" is correct at that time, is it? At the instant, just a few minutes, or a few seconds—how far along was it after they came in contact?

A. It was a very short time after the collision.

Q. What do you mean by "short time"? That is a relative term.

A. Well, about anywhere from one to two minutes.

Q. 25 feet between the "Ocklahama" and the "Fagelund," anywhere from one to two minutes after the collision, is that right?

A. Yes, sir.

Q. Now, you said, I believe, that at the instant of impact, you didn't see the "Ocklahama"?

A. No, sir, I didn't see that.

Q. Now, I mark this one "No. 2, September 10, 1914, Exhibit in detail to go with blue print chart marked by witness Nolan; position of vessels:—'Thode' and 'Thielbek' and dredge at instant of collision, and position of the 'Ocklahama' anywhere from one to two minutes after the collision," is that correct?

(Testimony of Michael Nolan.)

A. Yes, sir.

Q. Sign your name to it. (Witness does so.) Now, can you state, having reference to No. 2 Exhibit, in connection with blue print, at that same time at the instant of collision, how far it was from the port side of the "Thode Fagelund" and the O. R. & N. dock?

A. About 600 feet.

Q. Would that be from anywhere along the "Thode Fagelund," or would it be from her 'midship section, or your pilot house, from where you stood?

A. Was from where I stood, or 'midship of the "Thode Fagelund."

Q. From where you stood, all right. "600 feet off O. R. & N. dock," I mark on the edge of this exhibit. Is that correct?

A. Yes, sir.

Q. That would be 600 feet from where you stood on the pilot house on the "Thode Fagelund," as you estimate the distance, to the O. R. & N. dock, is that right?

A. Yes, sir.

Q. That port space. Did that—was that space in the river clear at this time?

A. Yes, sir.

Q. Now, I would like to have you state if you will, and if you know, whether the "Thode Fagelund" has a foremast?

A. The "Thode Fagelund" has a foremast.

(Testimony of Michael Nolan.)

Q. That is between the place where you stood and her bow?

A. Yes, sir.

Q. Can you give me a relative estimate where that position ought to be as placed on this diagram of the "Thode Fagelund," on this Exhibit 2, in connection with the blue print chart of your evidence?

A. I should estimate that distance to be about 75 or 80 feet from the bow.

Q. From the bow of the "Thode Fagelund"?

A. Yes, sir.

Q. We will say, for illustration, in the vicinity of the end of the letter "D," and I make a round circle, and call it foremast. Is that about right? Or is that right?

A. That is about right, sir.

Q. All right. Now, I want you to tell the Court and us, what you saw, if you did see, what direction the bowsprit, martingale, and top-hamper of her bow, of the "Thielbek," bore to the "Thode Fagelund" with respect to the stem or her bow, and that foremast. The idea being to derive, if I can, the fact as to whether the "Thielbek" was headed one way or the other with respect to your ship at that time, and what way it was.

A. That mark represents the forecastle-head from the deck of the "Thode Fagelund" to the end.

Q. Witness makes a straight mark on diagram of the "Thode Fagelund" thwartships, say it represents the end of the forecastle-deck on the "Thode

(Testimony of Michael Nolan.)

Fagelund," and I mark it "end of 'Thode's' fore-castle-deck."

A. That represents the forestay of the "Thode Fagelund."

Q. Witness draws a line from line representing end of fore-castle-deck, longitudinally upon ship's keel line, from that line to the place marked fore-mast, and calls it line of foremast stay.

A. (Drawing) That line represents the "Thielbek" jib-boom ends.

Q. This line here?

A. Yes, sir, at a distance, I should judge, of about fifteen feet above the deck load there of the "Thode Fagelund."

Q. I draw a line out from it and mark it with an arrow, and say "'Thielbek' jib-boom end about fifteen feet above deck load of 'Thode Fagelund.'" Now, you drew that line representing that jib-boom end to the starboard side of that forestay?

A. Yes, sir.

Q. Can you tell me the distance? What I am trying to get at is the angle. Can you tell me approximately the distance, when that forestay headed up there above your deck load—I mean that jib-boom headed up above your deck load—the distance that jib-boom was to the starboard of your forestay line? If you notice—

A. I notice where it is, but it is very hard to mark where it is.

(Testimony of Michael Nolan.)

Q. You know, of course, it wasn't straight across?

A. No, sir, in about that position.

Q. About how many feet would that space represent, between the line that you have drawn for the forestay and the line you have drawn for the jibboom of the "Thielbek"?

A. I should judge that to be anywhere from five to eight feet.

Q. I place a dot in there, and take out a line and mark the end of that line "distance five to eight feet." So that the angle that the "Thielbek's" jibboom took, at the instant of impact with respect to the forestay line of the "Thode Fagelund" was an angle representing a distance of five to eight feet off your starboard bow, rather from that forestay line. Is that right?

A. Yes, sir.

Q. You may state, please, whether the ships came together, and immediately separated, and how they acted with reference to the impact, if you know?

A. The ships remained together.

Q. For how long?

A. Possible about an hour.

Q. How did you get them apart?

A. I would like to answer this question in detail before we get to that, Mr. Bristol.

Q. All right. Go on.

A. After the impact, about a minute or two.

(Testimony of Michael Nolan.)

after the "Ocklahama" came up to this position, the "Thode Fagelund"—

Q. This position?

A. Yes, sir.

Q. Now, this position that you refer to—I want that in the record—is the position you have drawn of the "Ocklahama" in this No. 2 Exhibit in connection with the blue print?

A. Yes, sir.

Q. About two minutes after she came up to that position, then what?

A. The Captain of the "Ocklahama" called out to the steamer "Thode Fagelund," and wanted to know if there was any assistance that they could give the "Thode Fagelund." I answered the Captain of the "Ocklahama" and told him no that there was no assistance that he could give the "Thode Fagelund," to go back and make fast to the ship "Thielbek," as we could take care of ourselves. The "Ocklahama" backed back alongside the "Thielbek"; the ships remained together, and after a short time, the Captain of the "Thode Fagelund" left the bridge, went forward and examined the ships and came aft. I asked him if there was any danger of the "Thode Fagelund's" bow sinking in the water, and he told me no there wasn't. The ships remained in that position for a considerable length of time, which I couldn't state, possibly about half an hour from the time of the collision. I asked Captain Hansen's permission to leave the bridge and to go forward

(Testimony of Michael Nolan.)

on the "Thode Fagelund," and for him to take charge of the ship while I done that, and he granted me permission to go forward. When I went forward on the "Thode Fagelund's" bow, to see just how the ships were, the crew, part of the crew, was standing on the ship "Thielbek's" starboard bow, and amongst the crew that I heard there was Captain Turppa of the "Ocklahama," and from what I seen at the time of the impact, and the ship and the way the ships were lying at the time, I suggested to Captain Turppa that he, in backing the "Thielbek" out, that he could work her from port to starboard in order for to pull the ships apart. After that, I went back on the bridge of the "Thode Fagelund."

Q. Well, was that idea carried out?

A. Yes, sir.

Q. Now, when these ships were pulled apart, what position did the "Thode Fagelund" take in the stream?

A. After the ships were pulled apart?

Q. Well, I am talking now just at the instant they were pulled apart, if you know. What position did the "Thielbek" take in the stream?

Mr. MINOR: "Thielbek," or "Thode Fagelund"?

Mr. BRISTOL: I say, at the instant when the ships pulled apart.

Mr. MINOR: You asked first what position the "Thode Fagelund" took, and then what position the "Thielbek" took.

(Testimony of Michael Nolan.)

Mr. BRISTOL: Well, I am absent-minded. I wanted to know what position the "Thielbek" took at the instant the ships pulled apart.

A. I spoke so much, Mr. Bristol, on my part. I only wanted to explain.

Q. Never mind; you answer my question, and tell me what I want to know, if you know. If you don't know, say so.

A. After the ships were pulled apart, the "Thielbek" was backed down the river far enough to clear the "Thode Fagelund," and either from the movements of her wheel, or from the current up-stream, the ship "Thielbek" and the "Ocklahama" had drifted up to almost abreast, and between the "Thode Fagelund" and the O. R. & N. docks.

Q. How was the "Thielbek" headed at that time?

A. Her head was up-stream, up the river.

Q. Her head was up the river?

A. Yes, sir.

Q. And the "Ocklahama" headed up the river?

A. Yes, sir.

Q. Now, I want just before that, if you know; were you there when the ships actually separated?

A. Yes, sir.

Q. At the instant of separation, what position did the ship "Thielbek" take with respect to the "Thode Fagelund"?

A. Backed down-stream.

(Testimony of Michael Nolan.)

Q. She went right straight down-stream, did she?

A. Yes, sir.

Q. The same way she came up in here?

A. Yes, sir.

Q. And then the next movement was the "Ocklahoma" taking her on up-stream beyond you?

A. Didn't go beyond us. Lay abreast of us and between the "Thode Fagelund" and the O. R. & N. dock.

Q. The O. R. & N. dock, that is over here. Lay in here?

A. Yes, sir.

Q. "In here," being between the place marked "Thode Fagelund" and the O. R. & N. dock on this Exhibit No. 2. Is that right?

A. Yes, sir.

Q. And had the position of the "Thode Fagelund" changed in the river any?

A. No, sir.

Q. Between the time of that collision and the time that the "Thielbek" took that position?

A. No, sir.

Q. Did the "Thielbek" and the "Ocklahoma" go on up beyond you here, still further up the river beyond you, after the collision?

A. The "Thielbek" and the "Ocklahoma" lay between the "Thode Fagelund" and the O. R. & N. dock, must have been some time; for about thirty minutes, I should state.

(Testimony of Michael Nolan.)

Q. Then where did they go?

A. They went on up-stream and anchored at Tongue Point.

Q. So that, as I understand you, at all times, from the instant of this collision, until the "Thielbek" and "Ocklahama" finally pulled apart and disappeared, there was room for her to navigate, and she actually did navigate, between the "Thode Fagelund" and the O. R. & N. dock up-stream?

A. Yes, sir.

Q. Can you tell me when you dropped that anchor, how many fathoms of chain ran out?

A. About fifteen fathoms.

Q. How far had you proceeded upon your journey from your anchorage, which you marked upon this blue print L. C. R. 18628, to the place where, on Exhibit 2, attached thereto, you have marked the impact and the instant of the collision?

A. That was about 1,000—that was about 1100—1200 feet.

Mr. BRISTOL: I now offer in evidence the blue print L. C. R. 18628, together with the two exhibits on brown paper, in connection therewith, as illustrative of the testimony of this witness, and ask to have them marked.

Blue print marked "Libelant Wilhelmsen's Exhibit 4—Nolan."

Brown paper drawings marked respectively "Libelant's Exhibits 5 and 6—Nolan."

Q. Now, I show you Libelant's Exhibit 16, pur-

(Testimony of Michael Nolan.)

porting to be a tracing or diagram on some tracing paper, and ask you to look at it and tell me whether you can recognize that paper?

A. Yes, sir, I recognize this.

Q. What?

A. I recognize this.

Q. What is it?

A. Copy of the location at the collision at Astoria.

Q. Copy of the location of the collision. Now, do you mean that, or do you mean something else? Who made that plat?

A. I made that myself.

Q. You made that yourself?

A. Yes, sir.

Q. When did you make it?

A. Made that about on the 26th of August?

Q. 26th of August? Whereabouts?

A. At Astoria.

Q. Who did you give it to?

A. Made several of these. Was one went to The Port of Portland office, one given to Captain Hansen of the "Thode Fagelund."

Q. One went to Captain Hansen?

A. Yes, sir.

Q. It is in testimony here, and Captain Hansen produced as Libelant's Exhibit 16 that paper, and I asked you to state what that paper was intended to represent, by you when you made it?

A. That paper represents the locations and posi-

(Testimony of Michael Nolan.)

tions of the "Thode Fagelund," the dredge "Chinook," the "Thielbek" and the "Ocklahama," at the time of first seeing the "Thielbek."

Q. In other words, that was a diagram made by you on August 26, 1913, of the position of those ships at the time they were seen by the "Thode Fagelund." Is that right?

A. Yes, sir.

Q. And you gave that to Captain Hansen?

A. Yes, sir. I wouldn't so swear that I gave that to Captain Hansen or not, but I gave him one.

Q. Like that?

A. Yes, sir.

Q. And this you recognize as in your handwriting?

A. Yes, sir, that is my handwriting.

Q. And the way you made it?

A. Yes, sir.

Q. No change in it since you made it?

A. Except that writing up here in blue.

Q. Witness refers to identification marks "Libelant's Exhibit 16 in re-direct examination, Case 6111 A. W. P." You put all the rest of the marks on there, did you?

A. Yes, sir, every one of them.

Mr. BRISTOL: Now, I offer this print 6140 in evidence as a paper illustrative of the testimony of the witness, showing the respective anchorages of the dredge "Chinook," and the "Thielbek," on the

(Testimony of Michael Nolan.)

evening of August 23, 1913, and ask to have it marked.

Paper previously marked Libelant's Exhibit 16 at time of taking depositions, now marked "Libelant Wilhelmsen's Exhibit 7—Nolan."

Q. Now, referring to Libelant's Exhibit 16 (Nolan's Exhibit 7), I see some numbers, various indications which each number is supposed to represent. When you made that, that was supposed to be in accordance with the true facts as they appeared within your knowledge at the time the ships were so placed as shown on that exhibit, is that right?

A. Yes, sir.

Q. That exhibit being Libelant Wilhelmsen's Nolan Exhibit 7. Is that correct?

A. Yes, sir.

Q. Do you want to change it in any particular?

A. No, sir.

Q. Can you tell me from what you saw when you went forward on the bow of the "Thode Fagelund," before the ships were separated, how far the "Thielbek" had, if at all, cut into the "Thode Fagelund," on the fore-castle-deck, taking the fore-castle-deck as the place to measure that distance. In other words, how far was it from the stem of the "Thode Fagelund" to the stem or prow of the "Thielbek," if you noted that distance, and can estimate it?

A. The "Thielbek" had what we call a fiddle

(Testimony of Michael Nolan.)

bow. In other words, it went that way (illustrating). Wasn't a straight stem.

Q. What they call an ogee?

A. Yes, sir. So that would be a hard matter for me to determine how far her stem went, because we would have to arrive at some point.

Q. The "Thode Fagelund" was a straight bow ship?

A. Yes, sir.

Q. And the "Thielbek" had one of those ogee prows?

A. Yes, sir.

Q. Now, can you give it this way: With respect to the foremast of the "Thode Fagelund," how close was the jib-boom of the "Thielbek" to that foremast on your starboard hand? Was it up to the foremast? Was it between that and the stem? Was it beyond it, or where was it?

A. The end of the jib-boom, I would estimate it was about half way between the forestay and the foremast of the "Thode Fagelund."

Q. Looking at Libelant's Exhibit 3, and calling you attention to the faint line of the forestay, can you show me, making a mark there on Libelant's Exhibit, anywhere where you think the jib-boom was, looking at that starboard side of the picture; can you indicate to us now approximately where the end of the jib-boom of the "Thielbek" was?

A. Yes, sir; I will have to mark this.

Q. Yes, of course. Mark it on that.

(Testimony of Michael Nolan.)

A. I will mark the stay of the "Thode Fagelund" first. Now, that may be higher up, or it may be a portion lower down, but that, in my judgment, is about the point.

Q. I mark on Libelant's Exhibit 3, where witness has made two lines, "Line forestay." That is correct, is it?

A. Yes, sir.

Q. And I mark on the other line "Position of 'Thielbek' jib-boom at instant of collision." Is that right?

A. Yes.

Q. That line represents approximately the position with the exception you don't want to undertake to be accurate as to the distance above or below the deck load?

A. Yes, sir.

Q. Can you tell me whether her prow reached into the fore-castle-deck far enough to be in the vicinity of the piling that was stowed on the deck proper?

A. No, sir; the stem head of the ship did not reach that far, to the cargo.

Q. That fore-castle-head of the "Thode Fagelund" is about what distance?

A. 20 to 25 feet distant.

Q. How far did the prow of the "Thielbek" crumble the deck—the fore-castle-deck as you saw it?

A. The hole that was put in the "Thielbek's" port bow—

(Testimony of Michael Nolan.)

Q. I am talking about the "Thode Fagelund."

A. The "Thode Fagelund's" bow is very hard to describe, for the reason that the vessel was hit on a point almost on a line with the keel, and going on the fore and aft line with the keel, from the stem head, while it pushed the other part of the bow outwards, that is, port part of the "Thode Fagelund."

Q. You mean by that, it pushed the stem proper, the steel stem proper, you mean it pushed that over to starboard?

A. Pushed the steel stem to starboard, yes, sir, and the port side came down on an angle that way, shoving that almost as it was to port; where the iron of the "Thode Fagelund" had crumbled from the impact was the distance from the hole forward, up to the place in the after part of the deck; I wouldn't want to be positive and state that I know it.

Q. Well, can you give me any idea about what size hole, and what sort of a hole that was?

A. The ship was cut from the forecastle-deck down to below the 19-foot mark, from her keel. The bow of the "Thielbek" was into the bow of the "Thode Fagelund." At the collision there, the "Thielbek's" bow went down—no, that is wrong. At the time of the collision either the "Thode Fagelund's" bow went down, or the "Thielbek's" bow came up; I couldn't state, but either one or the other happened.

(Testimony of Michael Nolan.)

Q. Why do you say that?

A. I saw it.

Q. Well, is that what sailors call riding? One ship riding on the other in case of collision?

A. Yes, sir.

Q. Well, the prow of the "Thielbek" apparently rode upwards upon the bow of the "Thode Fagelund"?

A. The bow of the "Thielbek," yes, sir, it did do it.

Q. Now, suppose that you had not dropped your anchor, and suppose that you had not put your engines full speed astern, and made the swinging motion you described this morning, but suppose you had kept right on. Understand me now?

A. Yes, sir.

Q. I want you to tell the Court, having reference to Exhibit No. 2, in connection with the blue print (Libelant Wilhelmsen's Exhibit 6) whether the "Thode Fagelund" could and would have passed the "Thielbek" without being struck?

A. No, sir.

Q. Why not?

A. The ship "Thielbek's" port light we could see; the "Ocklahama's" port light we could see. The ship "Thielbek's" starboard light we could see; and as long as the conditions remained in that way it was impossible for the "Thode Fagelund" to pass the "Thielbek" without a collision.

Q. Well, now, what I want to get at was, having

(Testimony of Michael Nolan.)

reference to the position then more particularly, as shown by Exhibit 1 attached to this blue print (Libelant Wilhelmsen's Exhibit 5—Nolan), where you delineated the ships 250 feet apart, suppose you hadn't dropped your anchor, and suppose you hadn't stopped your engine and reversed, but had kept on, having reference to the time now when you blew the last two whistles, and they were answered by the "Ocklahama," and you had kept on without any perceptible change, as you describe, in the "Thielbek" and "Ocklahama's" course, and without executing the maneuvers that you did execute with the "Thode Fagelund," namely, full speed astern, and dropped your anchor, would the ships have cleared?

A. I kindly ask that you repeat that.

Q. (Read.)

A. At the time of the blowing of the second two whistles?

Q. Yes.

A. There was room to pass in safety.

Q. Now, then, why did not that room to pass in safety, when you blew the second two whistles, continue up to the time of the collision?

A. There was no change on the ship "Thielbek" nor the "Ocklahama's" course at that time.

COURT: You mean by that then, I understand, that if the "Thielbek" had answered your signal, had obeyed it, and kept to the Astoria side, as she

(Testimony of Michael Nolan.)

should have done by the signals, you could have passed safely?

Mr. BRISTOL: The other side, if the "Thielbek" had kept to the port side—her port.

COURT: Yes, in accordance with the signals.

Mr. BRISTOL: Yes. Is that right?

A. Yes, sir.

Q. In other words, let me put it this way; I understand you to say that at the time you blew the last two whistles and they were answered, if the "Thielbek" and the "Ocklahama" had promptly borne up to their port, at that time there would have been clear passage way for the two ships to have passed without collision. Is that right?

A. Yes, sir.

Q. And you meant, as I understand it, that because the "Thielbek" and the "Ocklahama" did not promptly obey your signal, but kept on their course until they were within 250 feet of you, as you have shown in this exhibit, that that is the reason you backed your ship and dropped your anchor. Is that correct?

A. Yes, sir.

Q. Now, I want you to tell us a little bit more in detail, if you can, having reference to the blue print, why, when you were in this position shown upon the blue print, being the place where you first sighted the "Thielbek," you couldn't have kept around the end of that dredge and over on this

(Testimony of Michael Nolan.)

north side of the channel. "Here," meaning in the direction of Buoy No. 11?

A. The "Thode" at the time of sighting the "Thielbek" was about a ship's length or so above the dredge "Chinook."

Q. That is with respect to your pilot house?

A. Yes, the "Thode Fagelund" was heavy loaded and deep draft. There was an incoming tide on the "Thielbek's" starboard bow,—or on the "Thode Fagelund's" starboard bow. For me to have blown one whistle, and put my helm to port, would have been an unwise part for me to act, for the reason of colliding with the dredge "Chinook."

COURT: In other words, you think you couldn't have gone around the "Chinook" that way.

A. No, sir. No, sir, the reason was for me to blow one whistle, I assumed the responsibility of clearing the dredge "Chinook," and I also notified this man here that I was clearly safe to change position with my starboard light only open to him, and maneuver that ship to at least a point and a half clear of the upcoming vessel, which I couldn't conscientiously do. The "Thielbek" could not see the "Thode Fagelund's" port light at the time.

Q. That is when you blew the first two whistles, you mean?

A. Yes, sir.

Q. Did you state, or do you know whether on the course you were on, whether the "Thielbek"—I am talking now of the time close to the collision—

(Testimony of Michael Nolan.)

whether on the course you kept, there was any time that the "Thielbek" could have seen your port light?

A. The "Thielbek" couldn't see the "Thode Fagelund's" port light except for a very short time before the collision, and I would state that time, to the best of my opinion, to be about 25 or 30 seconds, or, while a man would count 25.

Q. That would be just within the distance that they were approaching in that few feet that you illustrated on this exhibit here?

A. Yes, sir.

Q. No. 1?

A. Yes, sir.

Q. And that is, after you were going full speed astern?

A. Yes, sir.

Q. Now, Nolan, I want you to tell the Court and this counsel whether there was anything there to be done, in view of your experience as a mariner, in charge of that vessel at that time, other than you did do, as you have described, in order to avoid that collision?

A. At that time of my seeing the "Thielbek" with the "Ocklahama" towing her, the port light was in to her, that is, she couldn't see it.

COURT: That is your port light.

A. Yes, sir. The only safe movement that I could do, possibly, was to blow two whistles, and ask for a starboard passing. At the time of blowing the first two whistles, I believed there was

(Testimony of Michael Nolan.)

room to pass, and at the time of blowing the second two whistles, that was answered, if they were acted upon, I believe there was room to pass, but after that, it was apparent to me that no matter what was done on the "Thode Fagelund," she was there and couldn't get out of that collision.

Q. Captain Hansen said something in his testimony about an investigation down there a day or two after the collision on board the "Thode Fagelund." Do you know anything about that?

A. No, sir.

Q. Do you know anything of anybody being down there when you were present, and looking into the facts in this case?

A. In regard to me with the official capacity of the "Thode Fagelund," sir?

Q. What is that?

A. With regard to me in an official capacity to the "Thode Fagelund"?

Q. No, I am talking now about the "Thode Fagelund," anything about the collision. Was anybody down there investigating while you were on the "Thode Fagelund"?

A. After the collision, I remained on board the "Thode Fagelund" from Sunday morning until Monday, the 25th, about noon. On the 25th of August, I go on shore. The vessel had been taken up to Tongue Point anchorage, and anchored in a safe position out of the channel. I went home, and remained home until the following morning, August

(Testimony of Michael Nolan.)

26th, until about 10 o'clock. I was telephoned to from The Port of Portland's office, by Captain H. F. Astrup, and was asked if I would come down to The Port of Portland's office; that he wanted to see me personally. I told him "All right, sir." When I went down to The Port of Portland's office, they have two compartments in it. The business office is down in one end of it, and the public affairs is generally done in the outside part. When I went into the inner office, as we so called it, Captain Astrup was there, and Mr. Wood, this gentleman that is sitting present here in the courtroom. I was introduced to Mr. Wood by Captain Astrup, and was told by Captain Astrup that Mr. Wood was sent down from Portland as a lawyer to get all the detailed information, give him all the diagrams and everything that I knew, as he was employed by The Port of Portland. I asked Captain Astrup if Mr. Wood was a lawyer, and he told me he was. I asked Captain Astrup who these orders were from to him, and he said H. F. Campion, and I said "All right, sir." I asked Mr. Wood if he would step out to the outer office. He did so, and he stayed in the outer office.

Mr. MINOR: I object to his going into that on the part of The Port of Portland. Mr. Wood doesn't represent The Port of Portland.

Mr. BRISTOL: I am connecting up my evidence what occurred on the ship with reference to the situation as presented to my clients as repre-

(Testimony of Michael Nolan.)

sented on this ship at this time. The attitude that we were placed in so your Honor gets the viewpoint, as it may have a very material bearing upon the credibility of the evidence in this case.

Mr. MINOR: I understand, if I have it correctly, that this is a day or more after the collision occurred.

COURT: Captain Hansen testified to Mr. Wood and this witness coming aboard his ship.

Mr. MINOR: The day after, as I understand.

COURT: And certain things that occurred there at that time.

Mr. BRISTOL: That is this same thing. I want the details of it.

Mr. MINOR: That evidence I object to as hearsay and incompetent as far as The Port of Portland is concerned, because it does not appear Mr. Wood represented The Port of Portland. In fact, it appears he didn't.

COURT: What occurred on the vessel. He can testify. Go ahead, Captain Nolan, and tell the facts just as they were.

A. We went out to the outward office, and the conversation started about the collision case of the "Thode Fagelund" and the "Thielbek." The matters were all gone over in a general way from the time the "Thode Fagelund" had heaved up anchor until the collision and afterwards, and the conversation was a matter of drifting backward and forward into the collision case, all the time. And after

(Testimony of Michael Nolan.)

about an hour's conversation, I asked Mr. Wood how he was going to remember all of this when he wasn't taking any notes. And he told me he was a lawyer and had a long memory. I told him he would want to have a long memory if he was going to remember all this. A very short time after that, Mr. Wood asked if he could go aboard the "Thode Fagelund," and I told him yes, sir, he could do so. He asked me how we could go aboard, and I didn't want to assume the responsibility of hiring a launch, and I went to Captain H. F. Astrup, and told him Mr. Wood would like to go aboard the steamer "Thode Fagelund."

Q. Who did you say this man was?

A. Captain H. F. Astrup. He was in charge of the office that day, the 26th of August.

Q. What office?

A. The Port of Portland office at Astoria. He told me to go and take the Launch Pilot, and take Mr. Wood on board the "Thode Fagelund." We left The Port of Portland office, and walked, I should judge, a distance of six or eight blocks.

COURT: You needn't go into the whole detail of the matter.

Q. Get down to the question of whether you got on the "Thode Fagelund," and what occurred there. You got the tug Pilot, and did you go out to the ship, or didn't you?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. All right. When you got to the ship, did you have Mr. Wood or had you left him ashore?

A. Mr. Wood was with us.

Q. All right. Did you go on the deck of the "Thode Fagelund"?

A. When I went on the deck of the "Thode Fagelund," the first officer met us, the mate. I asked if Captain Hansen was aboard. He told me yes. I was not going to take permission to go over his ship without going to see Captain Hansen first, and Captain Hansen came out on deck, and I introduced Mr. Wood to Captain Hansen as a lawyer. He was presented to me as being on the side of The Port of Portland, and he says, "Nolan, you are way off. This man is not hired in that capacity." I turned around to Mr. Wood, and I said to him, "You have hoodwinked me all day, and you have got all that is inside me out. We are done. If you want to see the hole in the bow, go forward yourself and see it. We have finished any official capacity here." Mr. Wood went forward, looked at the hole. I had promised him going aboard that I would show him the chart, but the chart wasn't mentioned. We came ashore on the Launch Pilot. I bid Mr. Wood good-bye about 7 p. m., and didn't see him any more until we came into this court house.

Mr. MINOR: I move to strike that out as incompetent, and wholly immaterial to any issues, and without our permission.

Mr. BRISTOL: I insist upon the testimony.

(Testimony of Michael Nolan.)

COURT: It is in the record and there subject to your objection.

Mr. MINOR: Exception, your Honor.

CROSS-EXAMINATION.

Questions by Mr. Wood:

Q. Captain, I will begin where you left off. When you and I went out to the ship there you said just now that you were told by Hansen that you were way off, that I was not representing The Port of Portland, but something else, and it appears in your testimony now that it was not until after that, that I spoke up and said I was representing or might represent the "Thielbek." Do you swear to that, or do you swear that I spoke up before anything was said at all. You have been sworn in this case, haven't you?

A. Yes, sir.

COURT: Yes, he has been sworn.

A. Let me understand that question.

Q. When we went on that ship, and Captain Hansen came out on the deck, and you said something about me being sent down by The Port of Portland, didn't I immediately speak up and say that I was representing, or would represent the "Thielbek"? Didn't I immediately, before anything was said?

A. I believe Captain Hansen made the remark first before you did, sir. I do believe that that remark was made, but I believe Captain Hansen spoke first, to the best of my knowledge.

(Testimony of Michael Nolan.)

Q. You think Captain Hasnen told you first that I was not representing The Port of Portland?

A. Yes, sir, because he made the remark to me that he was speaking to you the other evening before, or that morning in the Columbia River Bar Pilot's office, and he inferred to me that he understood your situation in the matter in regard to the "Thode Fagelund."

Q. Did you and he have any conversation? I have really forgotten this myself. When we went on the ship, did you and he go off together, and talk away from me?

A. No, sir. You went forward. We remained on deck.

Q. Were we three together all the time?

A. I don't think we were any longer than you passed forward, went forward and looked at the hole, and came back, and we went in the boat.

Q. Well, was it during my absence that Captain Hansen told you I was representing the "Thielbek"?

A. No, sir, I think you were present.

Q. You think that he spoke about it before I did?

A. That is what is in my mind at the present time.

Q. Well, Captain Hansen says differently. It is in the testimony here. You said that I had hoodwinked you. Did I represent to you or tell you, or say anything that led you to believe I was repre-

(Testimony of Michael Nolan.)

sending The Port of Portland or the "Thielbek" or anything?

A. The man representing The Port of Portland business in Astoria, Captain H. F. Astrup, mentioned it, but you didn't contradict that statement, sir.

Q. Was I there?

A. Yes, sir.

Q. Did Captain Astrup say that The Port of Portland had sent me down to get information, or what did he say?

A. Captain Astrup said you were employed by The Port of Portland, and he was given orders from Mr. H. F. Campion.

Q. In other words, you think Captain Astrup said that I was sent down as the lawyer of The Port of Portland to investigate the facts?

A. Yes, sir.

Q. Now, so far as my hoodwinking you, and getting out of you, you say, everything you had in you, did you tell me anything differently from what you have told here?

A. Had I known you weren't employed by The Port of Portland, I wouldn't have talked to you about the collision matter at all. I had fully made up my mind I would talk to no one about the collision.

Q. But you didn't change your story at all. You told me what you think is the truth of it?

A. At that time?

(Testimony of Michael Nolan.)

Q. Yes.

A. Well, yes, sir, I think I did.

Q. The truth of it was that you were told by your superiors to tell me about the collision. Wasn't that it?

A. Yes, sir.

Q. That is the whole thing in a nutshell, isn't it? Your bosses told you to tell me all about the collision?

A. As you were the representative of The Port of Portland as the lawyer. That is the way I understood.

Q. I don't know about that. You were told to tell me about the collision. Wasn't that it?

A. Just as I have said, sir.

Q. All right. That is enough about that. Did you say at the beginning of your testimony that you were suspended from duty after the collision?

A. No, sir, I said I was suspended from duty on April 31st of this year.

Q. April 31st?

A. Of this year.

Q. And when were you discharged?

A. On the last day of April—the 30th of April. I beg your pardon, only thirty days in April—the afternoon of April 30th.

Q. Is when you were discharged?

A. Yes, sir.

Q. You said something when you first com-

(Testimony of Michael Nolan.)

menced to testify about your being suspended. What was that?

A. I was suspended from duty on the 25th day of August, 1913, the day after the collision.

Q. What do you mean by being suspended from duty?

A. I was suspended from all duty with The Port of Portland.

Q. Well, what do you mean by that? Did your pay continue?

A. Beg your pardon, sir?

Q. Did your pay continue?

A. Yes, sir.

Q. Did you do any more work after that?

A. No, sir.

Q. You mean they didn't allow you to pilot vessels for them any more?

A. They did not allow me to pilot any vessels.

Q. Had you had trouble in piloting vessels previous to this? Had you been in accidents?

Mr. BRISTOL: Objected to on the ground it is not proper cross-examination, and that evidence of any other instances would not affect this particular case.

Mr. WOOD: The cause of this, your Honor, The Port is pleading that they exercised due care in selecting their pilots, and you overruled that defense, but they are still insisting upon it, and I would like to know whether this pilot has been in accidents previous to this, and if so, how long before,

(Testimony of Michael Nolan.)

as bearing on the question as to whether he was known to be a good pilot or not, when selected.

Mr. BRISTOL: Now, if Mr. Wood will limit his offer to The Port of Portland, I am willing to let him pursue his interrogatories to the full extent of his bent. But if Mr. Wood insists upon that evidence against me, because I have a Port of Portland pilot that was in some other accident, I want to say right here I am taking issue with him as to this contract matter of limitation on any such question. The evidence is totally incompetent against me.

COURT: Against you.

Mr. BRISTOL: Do you offer it against me?

COURT: Against The Port of Portland.

Mr. BRISTOL: All right.

WITNESS: Question, please.

Q. (Read) Had you had trouble in piloting vessels previous to this? Had you been in accidents?

A. As for collision cases, I served five years with the The Port of Portland, sir, and on one occasion while I was pilot in towing their schooners up the river, the steamer Virginia had to be docked in Westport Slough, which is a very narrow channel, and in order for to put the Virginia to Westport Slough, the bow of the Wallula had to be put towards the stern of the schooner Virginia, and in swinging around, at the entrance to Westport Slough, the Wallula took the ground, and the Virginia struck her in the starboard quarter. After the vessel was docked, the captain of the Virginia

(Testimony of Michael Nolan.)

and myself examined the vessel, and the captain wasn't satisfied that The Port of Portland would replace it. I told him all right, sir, referred him to The Port of Portland office, and believe it cost \$35 to replace the injury.

Q. Is that the only accident you had?

A. In piloting the steamer Robert Dollar, I believe March 8th, she struck the Columbia River bar. The vessel was heavy loaded, and after the vessel proceeded eighty miles to sea, she lost the propeller, by breaking her tail shaft. Whether that was done on the Columbia River bar, I don't know.

Q. Was that all? I mean, in, say, the last five years before the collision, that you were employed by the Port.

A. The Wallula, while I was master of her, was tied up at the dock at Astoria, and the steamer Harvest Queen struck her, while tied at the dock, with her lights out on the stern, and did some damage, which the O. R. & N. Company replaced.

Q. Do you know how much the damage was that was done to the Robert Dollar?

A. No, sir, I don't.

Q. Now, you went out on the "Thode Fagelund," preparatory to taking her out—

Mr. BRISTOL: In order to keep my record straight, I move to strike out all the testimony of this witness with reference to the evidence he gave

(Testimony of Michael Nolan.)

as against the ship "Thode Fagelund" and Wilhelm Wilhelmsen.

COURT: It is only admitted against The Port of Portland.

Q. You got the anchor up, or gave orders to get the anchor up at 3:20. How long does it take to get it up?

A. Probably about two or three—two minutes, I presume.

Q. And then you got under way?

A. The anchor was reported up by the officer on the forecastle deck. Yes, sir, got under way.

Q. And you got under way about two minutes after 3:20, is that right—started your engine then?

A. No, sir, the ship was going ahead at about 3:20.

Q. About the same time you were heaving the anchor?

A. No, sir, we don't consider the ship is under way until the engines are in motion. The signal is given for the engine in motion.

Q. Do you give that signal for the engines to go ahead, while you are heaving the anchor, or after you have got the anchor up?

A. After the anchor was reported up by the officer on the forecastle head.

Q. So if you gave that order to heave the anchor at 3:20, you didn't start actually until two minutes later.

A. The order was given to heave the anchor, I

(Testimony of Michael Nolan.)

believe, before 3:20; 3:20 was the starting point of the engines.

Q. You ran about five minutes, I understood you to say, on a slow bell?

A. Yes, sir.

Q. You then gave the bell for half speed, and at that time the "Thielbek" and the "Ocklahama" were in sight—is that right?

A. At the time of the half-speed bell?

Q. Half speed, yes.

A. No, sir. That is, they were not in sight.

Q. When they came in sight, you were under half speed. What do you estimate your speed was through the water at that time?

A. The vessel could have very little more than steerage way. A vessel of that class I don't think could get steerage way to handle herself in any less speed than about two miles an hour.

Q. How much?

A. About two miles an hour.

Q. You think that is about what she had then, and then as I understand it, you saw the "Thielbek" and the "Ocklahama"; you were going about two miles an hour, and you were about a ship's length above the stern of the "Chinook." Am I right.

A. About a ship's length off, yes, sir.

Q. And headed on a course to clear the stern of the "Chinook," about 100 feet away?

A. Yes, sir.

Q. And headed to a point on the Astoria docks.

(Testimony of Michael Nolan.)

about 100 feet below the Callender dock—is that right?

A. Well, it was a little more than 100 feet down below, I would say.

Q. I may get you to mark that course later. And you saw two lights, red lights, on the "Ocklahama" and "Thielbek"?

A. Saw one red light on the "Thielbek's" bow, and one red light on the "Ocklahama."

Q. And what did you think when you saw those?

A. At first I looked for the second vessel, and on further examination I could see the top yards of the "Thielbek," over towards on Smith's Point. Her lower yards I couldn't see. I knew it was a square rigger immediately, and I could see the "Ocklahama" lashed up to her on the port side.

Q. How long after you first saw these two red lights did you make out what they were? Do I understand that caused you some little confusion?

A. No, sir. But in looking at an object at that time in the night, a man that would see two red lights would ask himself the question for a minute, what is it?

Q. And that you did, and then you determined what they were? Is that what you did?

A. Yes, sir, when I saw the vessels' yards above the woods on Smith's Point, that is, the trees.

Q. How long a time were you in doubt as to what they were?

(Testimony of Michael Nolan.)

A. Why, I suppose while a man could count two or three.

Q. Two or three?

A. Well, saying one, two, three. A man opening his eyes and looking at an object, you wouldn't say on the second, "I know what that is." You would think probably about one, two, three, at that time.

Q. As soon as you made out what they were, did you give a passing whistle?

A. Yes, sir.

Q. How long after you gave that passing whistle, which I understand was not answered, did you stop your engines?

A. I should judge that to be about five or six seconds.

Q. Why did you stop your engine?

A. Because my whistle wasn't answered. And to my mind the man I asked for a starboard passing on didn't make up his mind whether he would allow me to pass on that side or not. Therefore, I stopped the engine, as a matter of safety on my part.

Q. Were you apprehensive at that time of the danger of collision?

A. No, sir.

Q. At that time, I understood you to say you saw the green light on the "Thielbek" also?

A. Yes, sir.

Q. Did you see the green light at the same time you saw the two red lights, or a few seconds afterwards?

(Testimony of Michael Nolan.)

A. At the same time, sir.

Q. Saw them both together?

A. Yes, sir.

Q. And that green light, and those two red lights, as I understand you, remained in view to you up until just before the collision?

A. Yes, sir.

Q. About twenty-five seconds before the collision, when you say the red light shut out?

A. Yes, sir.

Q. What did the green light do then?

A. The green light was where I could see it, the starboard side of the "Thielbek"—was open to me, and the green light was still burning.

Q. And the green light remained open to you from the time you first saw the vessel, until the collision—is that right?

A. Yes, sir.

Q. I want to recall to you that in your direct examination you said that shortly before the collision, the red light on the "Thielbek" and the "Ocklahoma" shut out, and the green light opened up. Do you remember saying that?

A. Yes, sir—

Q. What?

A. The green light opened up?

Q. That is what you said. Opened up. What you said was that just at the time the last four whistles, the "Ocklahoma's" port light shut out, and the starboard light on the "Thielbek" opened.

(Testimony of Michael Nolan.)

A. If I made that statement in the record, that is a mistake on my part, of making it, and I would like to have that read over in that part before I would answer that question.

Q. Well, one or the other of them is wrong, isn't it? Either you didn't see the green light all of the time, or the green light didn't open up for you at the last four whistles. They can't both be right.

A. The green light—

Q. Answer the question.

Mr. BRISTOL: Is it a question, Mr. Wood, or is it your argument upon the evidence.

Mr. WOOD: I am asking a question whether they can both be right.

A. Repeat that question, please.

COURT: What do you mean by a light opening up, Captain?

A. A light opening up, is to see it, sir. A light shutting is where you don't see it.

COURT: When you say the green light opened up, you mean by that just came in view.

A. That would be the answer.

COURT: In this case you saw the green light in view all the time?

A. Yes, sir.

Mr. WOOD: My point is, he previously said the green light opened up.

COURT: I know; I think he did use that term. I thought at the time he was perhaps a little careless in using it.

(Testimony of Michael Nolan.)

Mr. BRISTOL: I think we can argue that question when we get to the argument.

Mr. WOOD: Mr. Bristol, I gave you full latitude in examining the witness.

COURT: Proceed with the testimony.

Q. At the time you stopped your engines, you then proceeded five or six seconds more and blew a second two whistles, didn't you?

A. I wouldn't say it was as much as six seconds, but from the time of the blowing of the first two whistles until the time of the blowing of the second two whistles, in my estimation, must have been while a man would count ten.

Q. And did you stop your engines about half between those two whistles?

A. Must have been about half way.

Mr. MINOR: I understand the time between the two whistles, or between the two signals was about the time it takes a man to count ten.

A. No, sir.

COURT: That is what you said.

Mr. BRISTOL: He said the time between the first two and second two he would estimate to be about the length of time it would take for a man to count ten.

Mr. MINOR: That is what I understood.

Q. Did you receive an immediate answer to your second two whistles—a prompt answer?

A. Well, immediately would be about what time it would take to reach his hand to the whistle cord

(Testimony of Michael Nolan.)

and pull it. I would say possibly while a man would count one or two, possibly three.

Q. Well, an ordinarily prompt answer?

A. Yes, sir.

Q. What did you do with your helm then?

A. At the time before the first two whistles was blown, the helm was ordered hard astarboard.

Q. Before you blew the first two whistles?

A. Yes, sir, and during the whole time after that, and up to the collision and after the collision, the helm never was moved on the "Thode Fagelund."

Q. Just previous to the time you ordered the helm hard astarboard, how was the helm?

A. The ship was steadied on her course.

Q. Helm amidships?

A. And I presume that the helm was midships.

Q. Now, after you got the assent from the "Ocklahama" to the passage you requested, how far did you go until you reversed your engines full speed astern?

A. That is a matter of a very short time, and it is impossible for me to say just how far the ship would go in that time. It was a dark night, nothing in front of you but a lot of lights all around you.

Q. Well, I will ask you another way—about how long in time was it?

A. From the time that the second two whistles were answered?

Q. Yes.

A. Until what time, sir?

(Testimony of Michael Nolan.)

COURT: Until you reversed your engines?

Q. Until you reversed your engines.

A. I would say about the time that a man would count five or six.

Q. Five or six?

A. Yes, sir.

Q. Did you notice your vessel swinging previous to that, in obedience to her starboard helm?

A. In my estimation at the time, and from actual experience, with that class of vessels, I knew that a vessel with so little headway on her as the "Thode Fagelund" had, heavy loaded, deep draft, and when you stop the screw, even though the helm is hard astarboard, there would be very, very little movement in her head to answer that helm on account of her being heavy loaded, in such a short time, and it is my opinion at the time that she didn't swing, and if she did, it was very little.

Q. I see. Then when you reversed your engines a short time after that, you gave four whistles. How long a time do you think that would be?

A. Mr. Wood, you are asking me now to fix time and that is a hard matter.

Q. I know it is difficult.

A. It is a question of counting this time of afterwards as evidence, because I want to state you put a man up there on the ship's bridge, not a light around you, you are alone, and when you ask a man to count time, or actually figure distance, I say in such condition, it is an utter impossibility, with

(Testimony of Michael Nolan.)

most men. They might tell you at a trial in a year after, that is, it was so much, but at the time, I don't think there is one man in twenty could do it.

Q. Not with mathematical exactness. However, I would like your estimate of it. You seemed to be in a little doubt this morning, I thought. You hesitated quite a while as to whether you reversed first or blew the four whistles first.

A. Well, no, sir; but I will tell you, this is only my second time in court, and it is rather a strange scene to be put up here under the critical situation that this is, when a man wants to be honest. I don't want any one to say that I got up here and changed my opinion from the time of the accident up to the present moment. If it possible for me to do it, I am here to tell the truth.

Q. All right.

A. And if I hesitated, it was only that I wanted to be honest in giving to the Court the best of my knowledge.

Q. I am not criticising you for hesitating. I think you ought to if you are not sure, but it simply indicated you had to stop and think over what the facts were, and that would show it must be very close. Now, I would like to ask you whether that is the fact or not.

Mr. BRISTOL: I would suggest again that we argue this case before the Court, and not with the witness.

(Testimony of Michael Nolan.)

COURT: You can answer the question, Captain, if you can. If you can't, say so.

A. The question, Mr. Wood?

Q. I would like your estimate of the time, Captain, that elapsed when you reversed your engines, to the first four whistles you gave.

A. I would say about four or five seconds, probably from three to five seconds.

COURT: You reversed your engines, and then gave the whistle?

A. Just reversed the engines, and then gave the whistle.

Q. The whole thing apparently was very quick?

A. Yes, sir, it was very quick.

Q. Now, you then dropped your anchor, didn't you, or ordered it dropped, or did you give other danger signals first?

A. After the first danger signal was given, then the anchor was ordered to let go. There was no answer given to the first danger signal, and the order to let go the anchor was given.

Q. How long do you think that was before the collision?

A. I said this morning, or today, in some time or other, that at the time that the lights were shut out, would be about 250 feet off, and while a man would count twenty-five.

Q. Just about twenty-five seconds?

A. Now the time that the anchor was let go would be possibly about five or six seconds before

(Testimony of Michael Nolan.)

that, but I will tell you the reason why I think so; after the anchor—the order was given to let go the anchor, I immediately blew the second danger signal.

Q. Right afterwards?

A. Immediately after the anchor was let go, and that is the only way I can estimate that time.

Q. Well, that is a good way. Do you think that the letting go of the anchor had any effect, one way or the other, as regards the collision?

A. No, sir; the only thing in my mind at the time of letting go the anchor was it would help steady the ship and keep her end on. I know that all ships have got a water-tight bulkhead forward; not all located in the same place, and if the collision was to be taken right forward, it was better to take it right forward than aft side of that collision bulkhead, for the reason if she struck aft side of the collision bulkhead, the ship's bow might go down; if it was forward, and the bulkhead kept intact, the ship would float. I think the letting go of the anchor, and it was my opinion when I said so, to let go the anchor, was to hold the ship as near to the "Thielbek's" bow as it was possible to hold her, and to avoid as little damage as possible. Now, if the anchor was any benefit—I will state this much, that it saved the crew of the "Thode Fagelund," to about ten lives, besides the steadying of the ship's head from going further starboard.

(Testimony of Michael Nolan.)

Q. How much had the ship's head gone to starboard, before you dropped the anchor?

A. I would judge about half a point, or a little more.

Q. That was before you dropped the anchor?

A. That is from the time the ship was backed until the collision.

Q. And the ship was backed about a minute and a half before you dropped your anchor?

A. No, sir, not that long.

Q. What?

A. A minute and a half — oh, the ship was backed a minute and a half?

Q. Before you dropped the anchor?

A. Well, I am inclined to think she was backed a little more.

Q. A little more than that?

A. Yes, sir; fully a minute and a half, anyway.

Q. Did you notice her head swinging to starboard under that reversed propeller?

A. Yes, sir.

Q. Or weren't you paying any attention to that?

A. Yes, sir; her head did swing to starboard. After the ship was given full speed astern, Captain Hansen of the "Thode Fagelund," before the anchor was let go, he made the remark, he says: "Captain, if you continue backing this ship full speed astern, you will cause her head to swing to starboard." I says: "Yes, sir; I know that, but everything that is

(Testimony of Michael Nolan.)

possible to be done must be done to stop her headway, and to save her from swinging to starboard."

Q. I don't understand it exactly myself, when you say, "everything must be done to stop her from swinging to starboard," when you gave that as an answer to Captain Hansen's statement, "she will swing on you if you reverse her." I don't see that you gave any logical answer. In other words, you started to reverse the engine. He said, "If you do that she will swing on you, pilot," or something like that—isn't that right?

A. No, sir.

Q. What is it?

A. After the ship had been backing some time, full speed astern, was the order to back?

Q. Yes.

A. After she had been backing some time, Captain Hansen said, "Pilot, if you continue to back this steamer full speed astern, you will cause her head to swing to starboard." Now, I will explain that.

Q. All right.

A. You take a steamer, the "Thode Fagelund," for instance, and she is headed on a course west. She has a small amount of speed on her, the helm is hard astarboard. That helm, if the vessel does not swing to port, it will at least steady her under normal conditions; back your screw full speed astern, and as that way diminishes, where she comes to a point of being stopped, the vessel's head will

(Testimony of Michael Nolan.)

start to swing to starboard at the time of her stopping, or about that time.

Q. Let me ask you this, Captain. You said I didn't get it straight. Captain Hansen, some time after you had reversed the engine, said, "If you continue backing, pilot, it will swing on you." That is what he said, about, isn't it? That is what he meant. I don't quote his exact words.

A. "You will cause the ship's head to swing to starboard."

Q. Yes, and then you said that you answered, "I can't help it; everything must be done to get her headway off, and to stop her swinging to starboard." Now, is that what you answered?

A. I will repeat the answer.

Q. Just tell me yes or no, if that is what you answered. Then you can go on and explain.

A. Your language and mine I don't think agree, because you ask me a question and want me to answer. Let me answer what actually was said.

Q. I don't want you to answer any other way than what was said.

A. All right. Captain Hansen said, "Pilot, if you continue to back this steamer, you will cause her head to swing to starboard." I said, "Yes, sir; I know that, but everything must be done that can be done to stop her headway, and stop her head from swinging to starboard." Now, that is about as near as I can, the actual words that passed. Now, Mr. Wood, in repeating this so many times, there may

(Testimony of Michael Nolan.)

be something, some word or other, that I left out, or put another in, but that is about the average of it.

Q. I only care for the sense of it. Well, how were you going to stop her head swinging to starboard, under the reversed propeller.

A. The anchor being on the bottom, caused her head to stop. She would have to tear her anchor through the bottom; therefore, her anchor being in contact with the bottom, would steady the ship's head.

Q. That is what I want. You relied on the anchor to stop the ship swinging to starboard.

A. And if any headway at that time, to stop her headway also. There were two objects.

Q. Was there any headway at the time her anchor was let go?

A. From the time that the anchor was let go, up to the time of the collision, was estimated to be about 25 seconds. Now, at the time of the collision, my opinion is, that the ship, the "Thode Fagelund," was about stopped. You take 25 seconds off the time of the impact, the time the anchor was let go, I can't tell you just about how much speed it was at that time.

Q. When you blew your two whistles, requesting a starboard passage with the "Thielbek," you were about a ship's length above the "Chinook," weren't you?

A. Well, that distance is only assumed.

Q. I know it.

(Testimony of Michael Nolan.)

A. Yes, sir.

Q. I say, about a ship's length?

A. Yes, sir.

Q. By ship's length, I understood you to say this morning, about 350 feet.

A. The "Thode Fagelund" ship length, because I was acting on the "Thode Fagelund." That would be about 350 feet.

Q. But you measured the distance from your pilot house to the stern of the "Chinook"?

A. Yes, sir, that would be about it.

Q. How far is it from the stem of the "Thode Fagelund" to the pilot house of the "Thode Fagelund"?

A. I would only estimate that to be about 125 feet. It may be one way or the other.

Q. So, at that time, the stem of the "Thode Fagelund" would be—speaking roughly now—we will say 200 feet from the stern of the "Chinook."

Mr. BRISTOL: 225, I figure it; 125 from 350.

Q. The whole thing is rough. I don't tie him down to 25 feet. You mean somewhere along there?

A. 275 feet, somewhere along there, 250 or 275 feet, yes, sir.

Q. And your whistles called for the "Thielbek" and "Ocklahama" to pass between you and the "Chinook," didn't they?

A. Yes, sir.

Q. Now, I want to ask you how you expected them to pass? Did you expect them to go through

(Testimony of Michael Nolan.)

the narrow space between your course and the stern of the "Chinook"?

A. Yes, sir.

Q. And that space was about 100 feet wide?

A. I suppose at that time—

Q. You said your course was for about 100 feet off the stern of the "Chinook"?

A. Yes, sir.

Q. Did you expect the "Thielbek" and the "Ocklahama" to pass in that 100 feet?

A. At the time that I would arrive at a point of meeting the "Thielbek," had the first two whistles been answered, the "Thode Fagelund" kept on, yes, sir.

Q. Where would you have been? You say at the time you figured meeting, where would you have been if you had kept on your course after the exchange of the second—of the two whistles?

A. What speed will we regulate the "Thielbek" at?

Q. I don't know. That is up to you to say.

COURT: How far would you have gone?

A. How far would I have gone to a meeting point with the "Thielbek"?

Q. Yes.

A. The "Thode Fagelund" would have went up a ship's length from her present position.

Q. Then you would have met right off the stern of the "Chinook"; is that right?

A. We would have been abreast or a little for-

(Testimony of Michael Nolan.)

ward of abreast of the dredge "Chinook." Yes, sir, we would have passed. That is what I say in passing her. The two ships, abreast of one another, would have been about past one another.

Q. So that the "Thielbek" and "Ocklahama" would have had to pass in the 100-foot space between you and the "Chinook"?

A. No, sir; that is not my opinion. However, I will try to state it to the Court, if possible.

Q. All right.

A. At the time that the two whistles was blown—

Q. Which two?

A. The first two, and a point of meeting the "Chinook" was aimed at for about 100 feet off; the flood tide was on the "Thode Fagelund's" starboard bow, which would, if she kept on her course, have moved the position further from the "Chinook," and left a wider opening by the time that she had arrived at a point of meeting the "Thielbek."

Q. How much would it have moved her? I understand the tide was just on the flood, not much current to it. Is that right?

A. The tide was about two-thirds from low water; was high water at 5:40, and it was, we will assume to say, 3:30 then. So only two hours more the tide was at the strongest point at that time of the tide.

Q. What do you estimate the current to have been upstream at that time?

(Testimony of Michael Nolan.)

A. I couldn't do that, sir.

Q. Isn't it a part of your business as a pilot to know the current when taking vessels out?

A. Let me demonstrate why I couldn't estimate that. The Columbia River at that point, the ebb tide runs down on top at low water, and the flood tide runs up underneath. Now, the tide will be running downstream on top, will carry a log down, but a ship will head to the flood tide, and when the point of the current meets, that the ebb slacks up, and comes to a stop, the ship will swing to a flood tide, although the current on top is perfectly normal, with a big run out, as we call it; that is, from neap tide down to zero, the tide gets harder force coming down; on the flood tide has larger force going up. At low water, the tide is what we call a lazy tide. On the early part it may not run fast, and it may go quick. Therefore it is an utter impossibility in the night time to tell just what the current will be doing.

Q. I didn't ask you to tell just what it would be doing. I asked you to tell me what the current was upstream. Now you say you can't do it?

A. No, sir, I can't.

Q. All right. Now, here is the position that you appear to me to be in, Captain. You are holding a course 100 feet off the stern of the dredge. You say that you expected to meet the "Thielbek" and the "Ocklahama" about off the "Chinook," so that she would have—the "Thielbek" and the "Ocklahama"

(Testimony of Michael Nolan.)

would have to pass between you and the "Chinook"; the distance between you and the "Chinook" on the course you have laid out is 100 feet, but you say the tide would have put you off further because it was hitting you on your starboard side. Now, it was certainly up to you, in the question of passage, to know about where you would meet in reference to the "Chinook." Now, I ask you, can you give me that spot?

A. No, I can't give you.

Q. You can't tell then, if both ships had proceeded on their courses, as you had requested, how far off the "Chinook" they would have met?

A. No, sir, because it is an impossibility to tell what speed the other vessel had on.

Q. And your boat didn't swing her head to port in obedience to your starboard helm at all, did she?

A. It is my opinion—

Q. You said before it did not, but I want you to repeat it if it is true.

A. After the engines are stopped—

Q. Can't you answer that question, yes or no?

Q. (Read).

COURT: What do you mean, Mr. Wood?

Mr. WOOD: After he had put his helm hard astarboard.

COURT: He was under that helm for quite a time. Do you mean after he blew his whistles, or when?

Mr. WOOD: I mean from the time that he put

(Testimony of Michael Nolan.)

his helm hard astarboard, in accordance with the whistles that he had blown up to the time that he dropped the anchor.

COURT: I understood him to say he put his helm hard astarboard at the time or just before he blew the first two whistles.

Mr. BRISTOL: Just then, and they stayed hard astarboard all the time. Now, Mr. Wood is trying to get him to say just how much the ship's head paid off, and I understand the Captain to say it didn't pay off at all. In other words, he argues the question to the witness, and then wants the witness to answer.

A. I think I answered that.

Q. I think so. You said it didn't pay off.

A. In my opinion, didn't pay off after the engines stopped. After the engines stop on that class of vessels, they seldom answer, because it is the water throwing from the screw has most effect in handling such class of vessels.

Q. Captain, am I correct, then; I understand from the time you put your helm hard astarboard, about the two first whistles, up until the time you dropped your port anchor, your vessel's head did not pay off to port?

Mr. BRISTOL: That is not what the witness said.

Mr. WOOD: He can answer that.

COURT: Let him answer.

Q. Am I correct in that?

(Testimony of Michael Nolan.)

A. Well, I will tell you. Here is the way the question looks to me: At the time the helm was put hard astarboard and the screw stopped, the vessel did not pay off to port.

COURT: You put your helm hard astarboard before you stopped the screw, didn't you?

A. Yes, sir.

COURT: Then from the time you put your helm hard astarboard, up to the time you stopped your screw, did it pay off?

A. No, sir; it is too short there. It is too short there for such a vessel to do it in such a short time. I would like to state for the benefit of the Court, in this particular case, the "Thode Fagelund" — in handling a ship of the "Thode Fagelund's" class, that is what we would call a tramp steamer, and heavy loaded and deep draft, in those movements of handling a ship you must first know what you are going to do and make up your mind that you are in the right, because there is no room for experiment. The vessels are heavy, and if they swing on you with very little way, it is very hard to estimate when they are going to stop, and if they get any momentum on them in going ahead through the water, it is a very difficult matter in a short space of time to get them stopped, because these ships are made and built for economy, both in their coal capacity and in their propellers, and very often, in most of these ships, they are very poor in backing up. In other words, the pitch of the wheel is made for a going

(Testimony of Michael Nolan.)

ahead motion, to get the best results; while backing it throws water against the ship, and throws water with very little power on a backing bell, as we would call it.

Q. Now, Captain, I understand you had about 25 tons of dynamite on the "Thode"?

A. Yes, 25 tons of dynamite on the "Thode."

Q. Loaded in her stern?

A. Yes, sir.

Q. Did you know about that?

A. Yes, sir.

Q. Did you feel any apprehension of a collision on account of being loaded with dynamite?

A. Well, I realized it was there.

Q. Did the dropping of the anchor have anything to do with the avoiding of the collision in the after part of the "Thode," where the dynamite was?

A. Did the dropping of the anchor have anything to do with the collision?

Q. When you dropped the port anchor, did you have in mind that it might prevent the "Thielbek" striking your boat up where the dynamite was? Was that your purpose in dropping the anchor?

A. Oh, no, sir; it was an impossibility for the "Thielbek," from where I stood, to strike the vessel at that time, anywhere except close ahead, or on the port bow. That would be the whole length of the ship from where the dynamite was.

Q. So the dynamite didn't enter into your calculations at all?

(Testimony of Michael Nolan.)

A. Well, I thought of the dynamite there. I was very much afraid of it, and I continued on the speed without backing the "Thode"; that is, to let the "Thode Fagelund" lay as she was, without backing her helm, without backing her wheel full speed astern, the "Thielbek" would have struck the "Thode Fagelund" on the starboard side, about the foremast, and into the cargo space, which would have, I believe, some effect on the whole ship. Whether effect enough against that dynamite in any way to go off, I am unable to tell.

Q. But as far as dropping the anchor goes, you didn't do that on account of the dynamite at all. Do I understand you right on that?

A. Well, the dynamite was in my head at the time, and I did things about it. The remarks I made to Captain Hansen was getting the ship's headway stopped, and stop her from swinging to starboard, so—

Q. Well, Captain, I don't want anything but what is the fact, but you first say the dynamite had nothing to do with dropping the anchor. Now, you say it was in your head. Now, did it influence you in dropping the anchor?

Mr. BRISTOL: May I ask, Mr. Wood, if he was influenced by the powder, in dropping the anchor, would it make any difference as between your ship and mine? Or between my ship and The Port of Portland, whether he was influenced by the powder, or whether he wasn't?

(Testimony of Michael Nolan.)

Mr. WOOD: Did you—

Mr. BRISTOL: Well, I would like to know whether you claim it to be material on that point.

A. I couldn't answer that question just now, Mr. Wood, because it has passed now, and things move out of your head, and I wouldn't like to.

Q. Did you and Captain Hansen, after the collision, have any discussion about the causes of the collision, or about your having reversed the engine, or having dropped the anchor?

A. After the collision, sir?

Q. Yes.

A. No, sir, not particularly, more than to speak of the general situation, what had been.

Q. Well, if you spoke of anything particularly about it, I would like to know about it.

A. Well, there is nothing more than I remember that we went over the general situation of whistles that was blown, and what was answered.

Q. He didn't find fault with you for any of your actions at all, did he?

A. No, sir; and since you ask that question, I would like to answer by a letter of Captain Hansen, if you will allow it to be in evidence here.

Q. I will be glad to. I have no objections.

A. Want me to read this out, sir?

Q. Yes, and we will introduce it in evidence.

A. (Reading) On board S. S. "Thode Fagelund," Portland, Oregon, at St. Johns City Dock, September 13, 1913. Captain Michael Nolan, 373 Seventh

(Testimony of Michael Nolan.)

Street, Astoria, Oregon. Dear pilot: In compliance for your request for my certificate of good and efficient conduct in handling my ship on August 24, 1913, I beg to say that I have no fault whatever to find with you, and approve of what you did at that time while acting as my pilot. But you understand, of course, that this certificate running to you personally, shall in no way be considered as relieving The Port of Portland from any consequences of their injuries to me on my vessel on that occasion from what was done by them through other employes. Very truly yours, M. B. Hansen, Master S. S. "Thode Fagelund." I hope that answers your question, Mr. Wood.

Q. Yes, do you want it in evidence?

A. If you wish.

Q. It doesn't answer my question entirely, but I will be glad to put it in if you want it.

A. I would like to keep the letter.

COURT: Let him keep the letter. It has been read in.

Mr. MINOR: You read that wrong. You said "other employes." Isn't it "their employes." I have the copy introduced down there. The copy is "their employes."

A. Isn't it all the same, sir?

Mr. MINOR: No, this is a copy and it is "their." Seems to be an incorrect copy.

Mr. BRISTOL: What record is that?

Mr. MINOR: My personal record.

(Testimony of Michael Nolan.)

WITNESS: This says "other employes."

Mr. BRISTOL: May I see that record?

Mr. MINOR: No, I don't think so.

COURT: He read the original.

Mr. MINOR: He has got the original. I just wanted to be sure.

Mr. BRISTOL: I would like to know, for the protection of my witness, how a copy of a letter, apparently written by Captain Hansen, gets into Mr. Minor's possession in a private record.

Mr. MINOR: Mr. Nolan can tell you.

Mr. BRISTOL: All right. How did Mr. Minor get a copy of this letter?

A. I couldn't tell you that, sir. I didn't know that Mr. Minor was given a copy of it.

COURT: How did The Port of Portland get a copy of it?

Mr. BRISTOL: Did you give a copy of this to The Port of Portland?

A. No, sir; not to my knowledge.

Mr. MINOR: Mr. Bristol probably knows, but has forgotten it. He gave it to the Pilot Commission.

Mr. BRISTOL: Who did? Me?

Mr. MINOR: Mr. Nolan.

WITNESS: Yes, that is right; given to the Pilot Commission.

Mr. MINOR: I supposed you knew.

Mr. BRISTOL: No, I didn't know a thing about it. I wondered how you got a copy of a letter supposed to pass between Hansen and him.

(Testimony of Michael Nolan.)

Mr. MINOR: The record seems to disclose that you were there, and therefore I supposed you were there.

Mr. BRISTOL: The records disclose I was where?

COURT: Proceed with your testimony and talk it over later.

Q. Captain, your letter doesn't completely answer my question. Captain Hansen in his testimony has said that after the collision you appeared a little worried, and he talked to you and calmed you down. That is the sense of what he said—I don't know just what his words are.

Mr. BRISTOL: I object to that, because the witness isn't shown the testimony, and because I will state to the Court Captain Hansen never said any such thing. I was present, and Mr. Wood tried to drive this conversation into Captain Hansen in the same manner. I want the testimony properly read to this witness, as Captain Hansen gave it, and let him be met with it, which is proper, if he wants to impeach him.

COURT: I think you might proceed with the cross examination and look that up later. You will have an opportunity to call his attention to it tomorrow morning.

A. I can answer that question if you wish, and I will answer it to the best of my knowledge.

Mr. WOOD: Your counsel objects to it, Captain.

Q. I show you Libelant Wilhelmsen (Nolan's)

(Testimony of Michael Nolan.)

Exhibit 5: You put the green light on the "Thode Fagelund" here forward, and the red light here forward. Are you approximately sure of those locations?

A. Meaning by that, you want me to say this is the approximate location ahead?

Q. I am only talking about the lights.

A. Approximately?

Q. Yes.

A. Within a radius of five or six feet, taking this as a base for the "Thielbek"?

Q. Yes.

A. Yes, sir; I am positive of that.

Q. Did you have any opportunity to observe these lights except as the vessels approached you?

A. This port light here I could see up to the time of this position here.

Q. That is up to the time you were 250 feet away?

A. Yes, sir; after that the port lights, while the ships remained together, couldn't be seen from the bridge; the starboard light I could see all the time from the time I first seen it, until the collision, and while the two ships remained together, for an hour, for about an hour.

Q. That green light never went out?

A. That green light never went out, and in other words I want to state I walked from the "Thode Fagelund," while the two ships were together, I walked—went a distance; I marked on one of these

(Testimony of Michael Nolan.)

charts where the forecastle head run to, and that starboard light in that lighthouse on the ship "Thielbek's" bow was still burning.

Q. And did you say these lights were lights on the "Thielbek" after the collision or before the collision?

A. I say before the collision, at the collision, and after the collision.

Q. That is as much as I could ask. I show you Libelant Wilhelmsen's Exhibit 6 (Nolan), a chart you made yourself, and will ask you, with counsel's permission—Mr. Bristol's permission—if you will take this straight edge, and mark there anywhere—all I want is the approximate trend of the current there, Captain, at this time, just previous to the collision.

Mr. BRISTOL: Pardon me, just a minute. Wouldn't it be fairer, Mr. Wood, to put that current where he is talking about it in the river channel, where he shows the position of the ship, delineate it there with lines, so as to show the current with all of them; then this situation is all together too close to delineate here, because we haven't got the banks of the river, the channel.

COURT: The relative sizes are different. On this scale it would be 1600 feet.

Mr. BRISTOL: This is proportioned on the blue print, and the little lines he has made, he has made a scale, and he can delineate the lines there, can't you, Captain?

(Testimony of Michael Nolan.)

A. Yes, sir.

Mr. BRISTOL: Mr. Wood wants you to make a line on there. What Mr. Wood is driving at here, he wants you to delineate for the Court and for everybody, taking the thread of the stream, you understand in the channel, rather, where was the current? Where is the current at flood tide? What general direction does it take? That is what he is after.

A. It won't do for me to mark this up.

Mr. BRISTOL: You don't have to mark it up. Make a mark up here, and one down here, so any one can take it and see this general direction of the current. You don't have to mark it all up.

Q. Now, that is about the middle of the channel (indicating). I will try to explain this. This part here of the channel, is only about 1100 or 1200 feet wide.

Mr. BRISTOL: Won't you please, when you say "this part of the channel," say about where it is; at the foot of some street, locate it for us. We can't get it in the record by saying "this is part of the channel."

A. At a location about the foot of Ninth Street, to Eleventh Street—

Mr. BRISTOL: In Astoria?

A. In the Astoria Harbor, the current runs directly on a flood tide upstream, just as that would indicate there.

Q. I would like to say, Captain, that the current

(Testimony of Michael Nolan.)

I am interested in is where the ships were, where the dredge "Chinook" was, say.

A. All right, sir. I would have to tell you this in the beginning because in there is a turn in the channel there, and two channels to take the current from. The current coming to there would go straight on flood, would be different on ebb.

Q. I want it upstream.

A. All right. It runs about Ninth to Eleventh Street directly upstream. At a point about Eleventh Street, the channel widens out. The regular ship's channel runs off to north northeast, which divides the current off to that direction.

Mr. BRISTOL: What is that direction? Is that north northeast going up the river?

A. That is about north northeast after you had arrived to the point where the "Chinook" was.

Q. Then the current passing the "Chinook" bears north northeast.

A. That is about where the "Chinook" was to upstream. That is the turning point, before you come to the "Chinook"; it would be about in there, the current would be east, northeasterly — east northeast.

Q. Your Honor and Mr. Bristol, how would it be to mark it here? You have the same channel.

Mr. BRISTOL: It is immaterial. Mark it on your own plat to show the current about where it was. Straight up to the "Chinook," he says, and then bears off. When you get the bearing, mark it.

(Testimony of Michael Nolan.)

Arrow on the tracing is the upstream current below the "Chinook." Now, then, from that point, Mr. Wood wants it upstream. Wants the general trend of it there. I mark another arrow on this tracing, Libelant's Exhibit 16, delineating the upstream current; that is on the north northeast bearing, is it?

A. Yes, sir.

Mr. BRISTOL: After you pass the dredge "Chinook"?

A. Now, that radius in there runs up to a point between there; there is a bank that forms another channel that runs up in front of the City of Astoria.

Q. This represents the main current below?

A. Yes, sir.

Q. And that represents the main current above?

A. Yes, sir.

Mr. BRISTOL: Now, "This" and "that" don't make anything in the record. We will put it in. This division is a line we will continue along straight with the boundary of the little plat, and that is the current that divides here at about where the "Chinook" was, and runs up along the dock, at Astoria and the railroad track, toward the Government mooring ground.

A. Yes, the bank in there divides the main current. A small channel runs in front of the City of Astoria. The main channel runs up in the direction of north northeast.

Q. On Libelant Wilhelmsen's Nolan's Exhibit 7, the arrows indicate the current upstream, at the

(Testimony of Michael Nolan.)

time, or approximately at the time of the collision. On this same exhibit, Captain, this represents the situation, does it not, at the time you first saw the "Thielbek" and the "Ocklahama"?

COURT: That is what he testified.

A. These positions here, yes, sir. That is the copy. Yes, sir, that was made in my handwriting.

Mr. WOOD: Would you object, Mr. Bristol, if he would mark the position of the Chinook there at the time of the collision?

Mr. BRISTOL: I think that is what he said.

COURT: No, at the time he first saw the "Thielbek."

Mr. BRISTOL: Oh, you want him to mark on this plat also, the position of the "Chinook" at the time of the collision?

Mr. WOOD: Yes.

COURT: What do you mean? Position up and down stream?

Mr. WOOD: Yes, your Honor; how much she had swung.

Mr. BRISTOL: I don't object.

Mr. WOOD: If you don't want your chart marked up.

Mr. BRISTOL: It don't make any difference to me as long as you don't get it confused. I don't want people confused.

Mr. WOOD: I don't either.

Mr. BRISTOL: If the Court thinks it is all right to mark it on this exhibit, I am willing. Counsel

(Testimony of Michael Nolan.)

wants witness to mark on here, Libelant's Exhibit 16, Nolan's 7, the position of the dredge "Chinook," whatever it was, as he would delineate it at the time of the collision.

COURT: You mean the direction?

Mr. BRISTOL: The direction she had swung in the channel. This plat or tracing being the position shown when the "Thielbek" and "Ocklahama" were sighted.

COURT: He can mark it in pencil.

A. Well, now, if I change these, it will change the position of this one here.

COURT: No. What Mr. Wood wants is the direction of the "Chinook" at the time of the collision, as I understand; its relative position in the stream, whether it had changed, swung around any, from the position it was in at the time you first sighted the "Thielbek," and if so, how?

A. This is the point of the collision.

Q. At the time of the collision, Captain, the direction that the "Chinook" was lying in.

A. (Marking) I think that is it.

Mr. BRISTOL: Witness makes a lead pencil mark over the No. 2 black ink mark on Exhibit 7, Nolan, or rather the black ink mark representing the "Chinook," at the time of the collision this lead pencil mark representing.

Q. She hadn't yet swung at the time of the collision?

(Testimony of Michael Nolan.)

A. She was not entirely up stream at the time of the collision.

COURT: In order that I may not be confused; on this Plat No. 2 (Nolan Exhibit 6) you have located it with reference to the "Thode Fagelund," immediately after the collision, when the "Ocklahoma" came alongside of her. Now, had it swung in the meantime, so as to be up and down the stream, or does it represent that?

A. (Illustrating) Take this for a basis of the north side of the river, and that for a basis on the south side of the river, you will see that that stern is drawn more towards this side and away from that. I tried to do that in placing the models.

COURT: How much had it moved from the time of the collision until the time that you represented on this plat?

Mr. WOOD: If you Honor will pardon me, this plat represents the position of the dredge, the "Thode Fagelund" and the "Thielbek" at the instant of the collision.

COURT: No, beg pardon, it doesn't.

Mr. WOOD: And the "Ocklahoma" one or two minutes after the collision.

COURT: Yes, that is right; probably that is true.

Mr. BRISTOL: This represents the place of the dredge, taking Nolan's exhibit 6, this being plate 2 to your blue print, the position of the dredge at the time of the collision.

(Testimony of Michael Nolan.)

COURT: Then those two plats are supposed to coincide.

Mr. BRISTOL: Yes, supposed to. Of course this plate Mr. Wood had him mark this change on, so the plat prepared originally should show the position he was in when the boats were first sighted. As your Honor well pointed out, these exhibits are on a scale so large as applied to the small channel.

COURT: I understand. I didn't want to get confused. I suppose that and this was not intended to represent the same conditions.

Q. The dredge "Chinook," then, Captain, had still considerable way to swing before it swung entirely up-stream with the current, the bow pointing down-stream?

A. At the time of the collision?

Q. Yes.

A. Yes, sir.

Q. But it had swung considerable in the ten minutes from 3:20 to 3:30, the twelve minutes from 3:20 to 3:32, when the collision took place?

A. Yes, sir; the dredge "Chinook" was continually swinging, certainly up-stream.

Q. How long would it have taken to swing from the position it was in at the time of the collision entirely around until this stern would be pointing right up with the current?

A. When I got up at 3 o'clock, I can state it this way, so I can make it clear to you, Mr. Wood. When I got up at 3 o'clock, the dredge "Chinook's" stern

(Testimony of Michael Nolan.)

was in for about the Callender dock. That would leave her stern a little more than down-stream across the channel, and it took from 3 up to about 3:20 for that ship to swing around with her stern up towards the upper end of the O. R. & N. dock.

COURT: How far would she swing, what part of a circle, a quarter round or a half round?

A. That would be about—

Mr. BRISTOL: I can show your Honor in a moment on another plat. Those two things are delineated on Libelant's Exhibit 1—Turppa, in the exhibit that Mr. Turppa gave. Callender dock and the O. R. & N. dock are shown. Now, will you show the Court on there what you mean? He wants to know how much of an arc it was. You say her stern was towards the Callender dock at three o'clock?

A. Yes, sir.

Mr. BRISTOL: And it swung over this arc from the Callender dock up this way to about there?

A. Yes, sir. That is the upper end of the O. R. & N. dock there?

Q. Yes.

A. There is the stern of the dredge "Chinook." She was lying in about that location.

COURT: Will you kindly mark the Callender and O. R. & N. docks on the blue print?

A. Here is the O. R. & N. dock there, sir.

Mr. BRISTOL: We will write it. On Libelant Welhelmsen Exhibit, Nolan 4, we will mark a cross, and opposite the cross "upper end O. R. & N. dock,"

(Testimony of Michael Nolan.)

and upon the place marked "Callender dock," we will put a cross and draw a line out from it and mark it "Callender dock." I understand, Captain, that the dredge swung from this position, where you saw the "Chinook," first position at 3 a. m.—you marked it pointing to Callender dock, didn't you?

A. That is the mark there, yes, sir.

Q. (Continuing) And the third position of the dredge, when in the position as you fix it at about 350 feet off your pilot house; that third position out here, marks the arc through which it swung as you undertake to delineate it?

A. Yes, sir.

COURT: Now, was something said about a light below?

Mr. BRISTOL: A light on the Elmore Cannery dock.

A. Right here on that dock there.

Mr. BRISTOL: Elmore cannery.

COURT: Is that Elmore's cannery?

Mr. BRISTOL: Yes, your Honor.

COURT: Mark the place.

Mr. BRISTOL: Opposite Elmore cannery dock, we put the words on this blue print at the request of the Court, "Elmore Cannery." That is a red light, isn't it, Captain?

A. Yes, sir.

Mr. WOOD: Now I think it would simplify this whole thing to put it on one paper. If you could

(Testimony of Michael Nolan.)

mark there the position the dredge "Chinook" swung to after she had swung entirely with the flood tide.

Mr. BRISTOL: He didn't see it. That was long after the collision there.

A. That was after the collision.

Q. Captain, you were there over an hour after the collision?

A. Well, but the dredge "Chinook," after the collision, why, I didn't pay very much attention to the "Chinook" after that. There were other things to be taken care of. There were the two ships together, and had to be got apart. One vessel was backing, the other vessel was backing. We had to take care they wouldn't do damage to the "Chinook," and also had to take care wouldn't make to the Astoria dock.

COURT: At flood tide, was the "Chinook's" stern up-stream?

A. Yes, sir.

Q. How long would it take, Captain, from her position at the time of the collision until she would swing with her stern up-stream, with the current?

A. That I couldn't say, Mr. Wood, at the time.

Q. You can't approximate that?

A. No, sir.

Whereupon proceedings herein were adjourned until 10 o'clock tomorrow morning.

(Testimony of Michael Nolan.)

Friday, September 11, 1914, 10 A. M.

MICHAEL NOLAN resumes the stand.

CROSS-EXAMINATION.

(Continued.)

Questions by Mr. Wood:

Q. Captain, the testimony of Captain Hansen, which I referred to yesterday, and which Mr. Bristol objected to my stating unless I read it to you was this: Captain Hansen first tells about this conversation between you when he tells you "she may turn on you, Pilot," and you said "All right, sir. I know it, but it can't be helped." Then I asked whether any other conversation and he said,—I asked him, "And that is all the conversation you had about it?"

"A. That is all we had, and that is all we spoke to one another until we finished, and Nolan was a little worried and upset and I said, 'It is no use to worry.' And I also heard that somebody said there had been a row between us and the pilot, but you may state that is absolutely false. There is no such thing. Now, I want to know what conversation you had that he refers to that is where you appeared to be upset, and he said, "There is no use to worry about it."

A. I said yesterday that the conversation in that line was in regard to what had been done; that is, in this matter of the blowing of the whistles. They answered nothing. Telegraphed signals to the engine room. What was done. I think that, to the

(Testimony of Michael Nolan.)

best of my knowledge, was all gone over, and if I appeared to Captain Hansen to be worried at that time, I want to state now the reason of it. I feel up from the time that I landed in this country, 22 years ago, up to that time, that my record on board a vessel, or anywhere ever I have been, has been excellent, and I regarded that situation of that accident at that moment as being a stumbling block to me for the rest of my life, and why wouldn't I at that time be upset and worried, after the collision had taken place? I put any man in responsibility on the "Thode Fagelund," and ask if he wouldn't be worried. I realized the danger there. I was sent there by The Port of Portland to pilot that ship out to sea. I went aboard the "Thode Fagelund," and Captain Hansen accepted my services, and every order I asked aboard that ship, and every command I gave was given freely and willingly, as to the best of their ability, aboard that ship. Therefore, the responsibility of that accident was not on Captain Hansen's shoulders or management. And there is no reason why I wouldn't feel upset at that time.

Q. I didn't ask you whether you were upset or not. I asked you what was the conversation. Can you tell me?

A. I told you in the beginning just everything aboard of the vessels, signals to the engine room, answers given to the "Ocklahama," from the "Ocklahama," what was done, to the best of my knowledge. That is all.

(Testimony of Michael Nolan.)

Q. Did either of you discuss whether the collision would have occurred if you had not reversed your engines? Was anything said about that?

Mr. BRISTOL: What has that got to do with the case? You were asking—I submit to the Court that Mr. Wood is injecting his own speculations into the conversation.

COURT: Just state what was said.

A. That is all I remember at that time, after the accident, Mr. Wood, as I just have stated.

Q. And nothing was said as to whether the collision would have occurred, or not, if you had not dropped the anchor?

A. Not that I remember, sir.

Mr. BRISTOL: The same objection, your Honor.

Q. Captain, you are mate now on the "Chinook," and I don't think it is in evidence how long the "Chinook" is. Can you state that?

A. She is 450 feet long, sir.

Q. How wide is the channel at the place of the collision, where the "Chinook" was anchored?

A. The testimony would be about 1500 feet.

Mr. WOOD: That is all.

FURTHER CROSS-EXAMINATION ON BEHALF
OF PORT OF PORTLAND.

Questions by Mr. Minor:

Q. Captain Nolan, I show you a paper, and ask whether that is not the original report you made to The Port of Portland?

A. Yes, sir, that is my signature at the bottom.

(Testimony of Michael Nolan.)

Q. Turn over to the back, and see if that is not part of it?

A. Yes, sir.

Q. Now, with this report, did you send a diagram into The Port of Portland—some sketch?

A. This here has been—this is in my handwriting.

Q. Did that go with this report, or was it sent in later?

A. I wouldn't be sure whether this report went ahead of this diagram or not, to my knowledge. I couldn't.

Mr. BRISTOL: Mr. Minor wants to know if they went together.

A. I wouldn't be sure about that, Mr. Bristol. I think must be some time after when this went.

Q. Anyway this is the original report sent in?

A. Yes, sir.

Mr. MINOR: I offer this in evidence.

Report marked "Port of Portland Exhibit No. 1—Nolan."

Q. You did send a diagram or sketch?

A. Yes.

Q. Is that the original sketch you sent?

A. They was three sketches made, I believe. Captain Hansen got one, The Port of Portland got one. This was taken by the blue print location of the harbor. This is my handwriting with my name signed to it.

Mr. MINOR: I offer this in evidence.

(Testimony of Michael Nolan.)

Sketch marked "Port of Portland Exhibit No. 2—Nolan."

Mr. BRISTOL: When is this supposed to fix. He sent this in. He made another, but this is different, this one introduced in evidence. Does it show the same time?

Mr. MINOR: Yes, the same time. He says the same.

Mr. BRISTOL: No, he doesn't.

A. There is a difference between this and the other offered in evidence yesterday, because this shows the point of contact at the collision, and the other one in evidence does not show that.

Mr. BRISTOL: That is what I thought.

Mr. MINOR: I thought you said you made three at the same time. That is what I understood you to say. You gave one to Hansen, sent one to The Port of Portland, and didn't say what you did with the other.

A. This one here is shown at the time of the sighting of the "Thielbek."

Mr. BRISTOL: That is Nolan's 7 or Libelant's 16.

(Testimony of Michael Nolan.)

PORT OF PORTLAND EXHIBIT 1 (Nolan).

ORIGINAL.

THE PORT OF PORTLAND CASUALTY
REPORT.

(Stamped)

THE PORT OF PORTLAND

Sept. 2, 1913.

GENERAL OFFICE.

Date of Accident, August 24th, 1913.

Location, Off O.-W. R. & N. Dock.

Nature of casualty, Collision.

Name of steamboat, Nor. S. S. "Thode Fagelund."

On trip from Astoria to Sea.

DAMAGE TO PROPERTY OTHER THAN THE
PORT OF PORTLAND.

Under this head report all accidents resulting in any damage or loss to wharves, vessels, or other property, other than Port of Portland. State exactly what was damaged, the amount, what action was taken after accident to prevent further loss, and what was done toward repairing damages. Port bow split below water line, and windlass damaged.

No temporary repairs made whilst I was on board. Cannot estimate.

DAMAGE TO THE PORT OF PORTLAND
PROPERTY.

Under this head report all accidents to Steamboat, Barge, Dredges, Wharves, Dry Dock, or other

(Testimony of Michael Nolan.)

Board property. Estimate amount of damage; state how caused and what was done to prevent and repair the damages, and by whom assistance was rendered if any, force of wind; state of weather, and if at night whether dark, moonlight or starlight.

To my knowledge no damage was done to The Port of Portland property.

(Stamped) THE PORT OF PORTLAND, AUG. 30, 1913, PORTLAND, OREGON.

INJURY TO PERSONS.

Under this head report every accident to employes, or other persons, giving name and address of witnesses, preferably those nearest the scene of the accident. A written statement from at least two witnesses, signed and signatures witnessed, must accompany each report.

Name....., Residence....., Occupation....., Employe or other..... Nature and extent of injury..... How caused? What disposition was made of the injured person? What was done with the personal effects and papers belonging to the injured person?

Witnesses, {
H. F. CAMPION,
Supt.

Address, {
M. NOLAN,
Captain.

(Testimony of Michael Nolan.)

PARTICULARS OF ACCIDENTS OR
CASUALTIES.

You cannot describe too fully.

Under this head a full and complete report must be given of the accident, also any fact or circumstances that may occur to you and not accounted for on other side of this blank.

Astoria, August 24th, 1913, at 3:20 a. m., S. S. "Thode Fagelund" weighed anchor from off the O.-W. R. & N. Dock; started ahead under a slow bell; in about five minutes' time speed was increased to half speed ahead. The dredge "Chinook" was at anchor off, and at about the middle, of the O.-W. R. & N. Dock laying directly across the channel, leaving the channel obscured that one could not see an approaching vessel. When within about one ship's length from the "Chinook," which was swinging to flood tide and her stern towards the Astoria side of the channel, I saw a sailing vessel under tow almost ahead on, or about one-quarter of one point on our starboard bow; I blew two whistles to pass on the starboard and received no answer; stopped our engine and blew two whistles again and was answered by two whistles from the steamer "Ocklahoma," which was towing the ship "Thielbek." I then backed full speed astern, and blew danger signal (four whistles) which was not answered. I then let go Port Anchor with fifteen fathom of chain, blew four whistles again, which were not answered. As the steamer

(Testimony of Michael Nolan.)

"Thode Fagelund's" headway was about stopped, anchor down with fifteen fathoms of chain on it, engine backing full speed astern it caused the steamer's head to swing to starboard about one-half of one point. The ship "Thielbek" struck the steamer "Thode Fagelund," at 3:32 a. m., on the stern head, cutting her on the port bow below the water line. The "Thode Fagelund's" headway was about stopped, engines backing full speed astern, port anchor down with fifteen fathom of chain when the ship "Thielbek" struck her. The steamer "Thode Fagelund" was under way only twelve minutes when struck, and had gone only about one thousand feet and had very little more than steering way on her up to the time of the accident. The "Thode Fagelund" remained in the same position all day, and on Monday at 10:30 a. m. was moved to an anchorage off Tongue Point.

Above report dictated to J. G. Titley at Astoria, Oregon, August 28th, 1913.

ORIGINAL.

THE PORT OF PORTLAND CASUALTY
REPORT

on Property or Person. For
INSTRUCTIONS. This report to be made in duplicate; filled out properly and forwarded to the office of THE PORT OF PORTLAND promptly for Delays, Accidents to persons or property, Deficiency in fuel and provisions, Neglect of duty by employes,

(Testimony of Michael Nolan.)

Defective or broken machinery, or any items of interest to the Board.

Mr. BRISTOL: Now, that one Mr. Minor showed is when?

A. At the point of contact of the collision. Now, what I said in regard to this Mr. Minor, I will state was respect to this copy and that is one was given to The Port of Portland, and the same given to Captain Hansen. That is what I meant by three of them.

Q. (Mr. Minor) The Port of Portland doesn't seem to have any of the other ones. It hadn't been able to give one to me. You are not sure you gave one to The Port of Portland, are you?

A. Yes, sir, I would say so on the stand. That I believe I did give one of these to The Port of Portland.

Mr. MINOR: This is the only one we have, your Honor.

Mr. BRISTOL: I have no objection to that, provided it goes in with the witness' explanation, that the one map is at the time of the point of contact, and the other is when he first saw the "Thielbek." I have no objection.

A. Yes, sir.

Mr. MINOR: The testimony is in the record.

Mr. Bristol: I understand it is. I suppose I have a chance to make a remark to the Court.

Mr. MINOR: Yes, it goes in with the testimony, of course.

(Testimony of Michael Nolan.)

Q. Captain, now you said something about being discharged by The Port of Portland. Was a letter written by Mr. Talbot to Mr. Campion, which you saw and made a copy of? I wish you would look at these two letters, and tell me whether these are the copies of the letters which you saw?

A. This copy I did not see.

Mr. BRISTOL: Won't you identify this so we will know what it is?

Q. This is the one you saw?

A. This is the copy I was allowed to read. This copy I was not.

Q. This copy of the letter of Mr. Talbot?

A. This is the letter of Mr. Talbot.

COURT: Never mind that. He never saw this.

Q. I wasn't allowed to take this, your Honor.

COURT: You didn't see this at all?

A. No, sir, it was there, but I wasn't allowed to read it.

Q. This is the one you saw?

A. Yes, sir, I saw this.

Mr. BRISTOL: Won't you please identify that letter? "This" doesn't mean anything in the record.

Q. This is the copy of the letter which you saw, the one I have now in my hand?

A. Yes, sir.

Mr. MINOR: I offer this in evidence.

Letter marked "Port of Portland Exhibit 3—Nolan."

(Testimony of Michael Nolan.)

Mr. BRISTOL: What was the date of that letter?

Mr. MINOR: 29th of April, and signed by M. Talbot. This is probably the original.

A. Now, Mr. Minor, to make those two letters clear, either this, or a copy of this letter which I read, was attached to this, at The Port of Portland office at Astoria, and when I went to the office for to get my check, I believe it was, I went there for, this letter was handed to me and read. I asked if I could take a copy of this letter, and Mr. Titley said yes, to take a copy of the letter, but I was given to understand that the other letter, this one here—

Mr. BRISTOL: The one the Judge has now.

A. Yes, sir. Was not my property, either to read or take a copy of, therefore, it was not read or looked at.

Mr. MINOR: If your Honor please, in order there may be no reflections upon the character of that letter, which he says he didn't see, I will offer that letter in evidence and ask to have it marked.

Mr. BRISTOL: I don't see what materiality it has, your Honor. The witness says he never saw it.

Mr. MINOR: There is an insinuation that there was something suppressed from him, and he wasn't allowed to read. I therefore think I have a right to clear it up.

Mr. BRISTOL: If he didn't see it, offering it in evidence don't prove he saw it.

(Testimony of Michael Nolan.)

Mr. MINOR: No, but The Port of Portland is entitled to some consideration.

Mr. BRISTOL: So is Mr. Nolan.

Mr. MINOR: I will be as fair to Mr. Nolan as you might desire.

Letter marked "Port of Portland's Exhibit 4—Nolan."

Q. Now, Captain Nolan, I wish to clear my own mind in regard to the orders which you gave. I understand that the first order which you gave was when Captain Hansen asked you what time you wanted the ship and you said 3 o'clock a. m.

A. On the night of August 23rd.

Q. That is right, is it?

A. Yes, sir, I said about 3 o'clock, was the words I used.

Q. Now, I understand that at that time, 3 o'clock, you went on deck. Is that correct?

A. Yes, sir.

Q. And that when you went on deck, you then said that you didn't want the anchor raised until 3:20, or did you say until 3:20, or until the ship had swung on its anchor with the channel—with the current?

A. Said I didn't want to lift the anchor until the dredge "Chinook" had swung in the channel, and our ship also.

COURT: What had swung? The dredge?

Mr. MINOR: The dredge "Chinook" had swung.

A. And our ship also.

(Testimony of Michael Nolan.)

Q. Now, I understand at 3:20, as nearly as you could give it, and in that connection, I want to call your attention—in order that I may be absolutely fair with you—to your report to The Port of Portland; at 3:20 the anchor was raised, was it?

A. Yes, sir, at 3:20 the anchor was raised, and the bell given to go ahead. I will state the reason why I know it was 3:20. The Port of Portland had a form at that time that they require their pilots to fill out, when they went aboard the ship, how the current was, if there was any delays from the time they went aboard the ship, until the ship got under way, what time the anchor was up, how long it took them to the bar, what time they were on the bar, and what time they got to sea. Therefore, when the order was given ahead slow bell, I naturally looked at what time it was. It was 3:20; that is the reason why I say about 3:20.

Q. Did you make the same report in that report to The Port of Portland?

A. On this particular occasion, sir?

Q. Yes.

A. No, sir. I don't think there was any bills given to the "Thode Fagelund" for pilotage service on that occasion.

Q. So this is the only report you made to The Port of Portland?

A. To the best of my knowledge.

Q. I just want to get the facts. I don't want you to think I am trying to trap you. Now, what

(Testimony of Michael Nolan.)

was the first order you gave after you gave the order to hoist the anchor?

A. Ahead slow, sir.

Q. And what was the next order which you gave?

A. Starboard the helm.

Q. Starboard the helm?

A. Yes, sir.

Q. And what was the next order which you gave?

A. Steady the helm.

Q. And what was the next order that you gave?

A. Half speed ahead.

Q. And what was the next order which you gave?

A. Blew two whistles before any other order given.

Q. I didn't ask that. I asked for orders. Let's get the orders in. What was the next order which you gave?

A. To the best of my knowledge, it was hard astarboard.

Q. Hard astarboard?

A. Yes, sir.

Q. Now, what was the next order which you gave?

A. Stop the engines.

Q. What was the next one you gave?

A. Full speed astern.

Q. What was the next one you gave?

(Testimony of Michael Nolan.)

A. Let go the anchor.

Q. Any other orders?

A. After the collision, I asked Captain Hansen to ascertain—

Q. I only want the orders you gave. I don't want anything else.

A. That was an order, sir.

Q. Was it?

A. I believe was an order, because I wanted to ascertain if the bulkhead was broken in order to back the ship to shallow water.

Q. What was the order?

A. I asked Captain Hansen if he would ask the first mate to see if the bulkhead was intact, or if it wasn't, and after a short time, the mate reported that it was intact.

Q. Any other orders?

A. During the time that the vessels remained together, there was orders given from the bridge to Captain Hansen, were telegraphed, in backing motions of the vessel's engines; that is, in this way: After the collision the engines were stopped, after the "Ocklahama" went back and made fast, the engines were worked at different periods on slow speed astern, half speed astern, and full speed astern. That is, working in conjunction with the "Ocklahama" to pull the vessels apart. Now, I couldn't state all of those orders in there, but there was considerable of them.

Q. Did you give those orders?

(Testimony of Michael Nolan.)

A. Yes, sir.

Q. You don't know exactly what those orders were?

A. Well, I wouldn't,—no, sir, I never really re-thought of them in my mind afterwards, because there was considerable length of time, and I think there was considerable orders.

Q. Now, the signals given—who gave the signals?

A. The whistle signals?

Q. Yes.

A. I blew them myself, sir.

Q. You blew them yourself. One thing before we leave this I want to call your attention to, Captain. Your report doesn't state—I don't know whether you have testified—how much chain the "Thode Fagelund" had when she was anchored?

A. Before the time of starting, or at the time of the collision, sir?

Q. Yes, before the time of starting?

A. No, sir.

Q. Do you know?

A. Do I know how much she had?

Q. Yes.

Mr. BRISTOL: This is the original anchorage, Mr. Minor.

Mr. MINOR: The original anchorage.

A. Well, I couldn't really say just now, Mr. Minor.

Q. You couldn't say?

(Testimony of Michael Nolan.)

A. Not just now, no.

Q. Now, when you went on the "Thode Fagelund" that night, as I understand, she was tailing up the channel with the current—tailing down the channel with the current?

A. Yes, sir.

COURT: I didn't understand. At the time he went on the night before?

Mr. MINOR: Yes.

A. An ebb tide, and the ship was tailing down the stream.

Q. Now, that would be tailing in the direction of the arrow, near the point marked "4" on this Nolan Exhibit 7—is that correct?

A. That is the stern of the ship was in this direction?

Q. No. I say tailing from the point marked "4," which on this seems to be the "Thode Fagelund's" anchorage.

A. Tailing down-stream.

Q. In the same direction the arrow is pointing, the arrow which is near that point.

A. No, sir, I wouldn't say that. It was over in that line there, on an ebb tide. This arrow we made there to show the direction of a flood tide, pointing up-stream.

Q. Ebb tide, then?

A. It runs down in the morning in a more uniform body, I believe.

Q. Runs down in a more uniform body?

(Testimony of Michael Nolan.)

A. Yes, sir, I believe over on the shoal, for the reason more body on it, and has to go through a narrow channel going up. As soon as it strikes that point, it widens itself out, but I believe is wider volume of ebb tide, going down on that location.

Q. So the ebb tide doesn't point exactly the direction the arrow near "4" on this Nolan Exhibit 7—that is, correct, is it?

A. Well, there is two arrows there, Mr. Minor.

Q. I said the one near the figure 4.

Mr. BRISTOL: The up-stream arrow Mr. Minor means.

Q. The one right near the figure 4. That is the way I defined it purposely?

A. No, sir. I would be inclined to think more on that. (Indicating.)

Q. Kind of diagonally between the two?

A. Diagonally between the two, yes, sir.

Q. Nearer the arrow marking the figure 4?

A. Yes, sir.

Q. Now, when you hoisted your anchor in the morning then, there was a flood tide, and that flood tide at the point where you were anchored was running in the direction indicated by the arrow near which the figure 4 is, was it?

A. I wouldn't say that at that time, sir.

Q. Which way was it running at that time?

A. The tide was running up-stream. That was only given as a point of information to find the current in that channel. Now, at no time, the tide—

(Testimony of Michael Nolan.)

Q. I don't care. Tell me which way it was running?

A. Running up-stream, sir.

Q. Can you indicate on that map which way it was running? I only want the facts.

A. Put it between the two arrows.

Q. Diagonally between the two arrows?

A. Yes, sir.

Q. Was running up-stream exactly the way you say the ebb tide runs out?

A. Yes, sir, that would be a fair answer to that question.

Q. Now, going to the signals, I understand the first signal was not given by you until you were going half speed ahead, that is correct, is it?

A. The first signal of the steam whistle you refer to now?

Q. The only signals, of course, were given by the steam whistles; the first signal that you gave. I am not speaking of orders. I am speaking of signals given by you. The first signal you gave was, I understand, two whistles, and that was given while you were running half speed ahead. That is correct, is it?

A. Yes, sir.

Q. And that was given when you had been running half speed ahead about five minutes?

A. Estimated to be about five minutes.

COURT: Running half speed ahead five minutes?

(Testimony of Michael Nolan.)

A. About five minutes.

COURT: How long had you run slow speed ahead?

A. Five minutes.

COURT: About ten minutes after you started when you gave the first signal?

A. Approximately that.

Q. Now you are running under the slow bell. How much distance did you go, in your judgment, under the slow bell?

A. I couldn't positively state what distance she went, only to this much: At the time of the anchor being taken clear of the bottom, and reported by the mate as being up, the "Thode Fagelund's" head was then about heading for the "Chinook's" stern. After the signal was given for ahead slow, the wheel was ordered starboard, and when the vessel had swung her head, clear of the dredge "Chinook," she must have been moving some, but I couldn't positively state just about how much, but I would state that I think to the best of my knowledge that I don't think that vessel would make any motion to go ahead in the water before about two minutes.

Q. And then for the other three minutes of the slow speed, how far did she go?

A. I couldn't positively state, sir.

Q. Give me your best judgment.

A. No, sir, I wouldn't want to be put on record for that on this trial, because it was something I didn't observe at the time, how much.

(Testimony of Michael Nolan.)

Q. Now, on this map, Nolan Exhibit 7, you haven't indicated where the Callender dock is. Isn't there some map on which that is indicated?

A. Yes, there was a map here yesterday. Mr. Bristol can get it now; on these large maps.

Mr. BRISTOL: Here it is, Mr. Minor. It is marked on there. That is the reduced plat.

Q. Well, inasmuch as you have given your position on this Nolan's Exhibit 7, which I understand is the position at the time you first sighted the "Thielbek" and "Ocklahoma," is it?

A. Yes, sir.

Q. Inasmuch as you have given your position at that time, I wish you would mark on this map, if you can, about where the Callender dock is?

A. I would have to get a scale. This has been taken from a regular scale. I don't remember the number now, and in order to put it there—the scale may be changed.

Mr. BRISTOL: About 2,000 feet. He wants you to fix the dock approximately, as near as you can. You know about where it is.

A. Those things lead to a lot of arguments and explanation and things of that kind.

Mr. BRISTOL: Never mind; he wants you to put that down. Put that down where the Callender dock is.

A. (Marking) Here is the place of that Callender dock. That is going to be misleading again (changing marks).

(Testimony of Michael Nolan.)

Mr. BRISTOL: In answer to Mr. Minor's question to make a mark on Nolan Exhibit 7, as to the approximate location of the Callender dock, witness makes a round mark in lead pencil, which I increase in size, and I carry out from it, with a black line, and mark the words "Callender dock" in lead pencil.

Q. About how far is the Callender dock below the O. R. & N. dock, I mean down the river from it? from it?

A. I should judge about 500 feet. Now, in saying that, Mr. Minor, the Callender dock extends further than the warehouse; I should say half ways, possibly, between the warehouse and the end of the O. R. & N. dock. We take that as a starting point for the Callender dock, and put it about 500 feet.

Q. I mean from the lower end of the O. R. & N. dock to the upper end of the Callender dock, you think is about 500 feet?

A. I would think that, sir.

Q. And about how long is the Callender dock?

A. Might possibly be 150 feet. I am not fully aware of the length of the dock.

Q. You don't think more than 150 feet?

A. I would say about 150 feet.

Q. What dock is next to the Callender dock down the river?

A. There is a dock, I believe, it has a 50-foot front, called the Ross Higgins, and Fisher Bros., in

(Testimony of Michael Nolan.)

conjunction. I think only has 50 feet front. There is a building on it.

Q. What dock is next to that?

A. The dock below that sets in from that. They are out of the channel line. The next dock below that is called the Flavel dock.

Q. The Flavel dock. How long is that?

A. I should say about 400 feet. I may not be right in that.

Q. What dock is next to that below?

A. The next dock below that they call Sanborn dock at the present time.

Q. What was it called at that time?

A. That is, I believe, at the foot of Ninth Street; formerly known as the Parker House dock, but I believe now known as the Sanborn dock, because Sanborn owns the property there.

Q. How long is that?

A. I believe Sanborn's dock, the upper end of Ninth Street, is about 200 feet, and the part below it, possibly about 100 feet.

Q. So the whole of it is about 300 feet?

A. I would make a guess, sir.

Q. And what dock is next below that?

A. Between those two docks a space there, no dockage at all, and only empty pilings.

Q. How wide is the space?

A. I should judge about 100 feet in there.

Q. When you go below Sanborn's dock, what is next?

(Testimony of Michael Nolan.)

A. A small dock in there, Lindenberger's Cold Storage plant. They have a small front there, I don't think very wide. I couldn't say exactly what it is, very small, though.

Q. What is next below that?

A. Standard Oil dock.

Q. Standard Oil dock. And how long is that?

A. I should judge that probably be about 75 feet.

Q. And then what is next below that?

A. There is an open space below the Standard Oil dock.

Q. How wide, or how long?

A. About 75 or 100 feet.

Q. And what is below that space?

A. There is the Columbia River Packers' Association.

Q. How long is that dock?

A. Be about 350 feet, 300.

Q. What is below that?

A. The river has an open space below that, and set in from the river there, there is a small boat house, and small ways for hauling up boats and one thing and another.

Q. How long is that on the river?

A. I should judge that would be about 200 feet.

Q. What is next below that?

A. The Elmores have a dock.

Q. Elmore. Now, how long is the Elmore dock?

A. About 250 feet, 225 feet.

(Testimony of Michael Nolan.)

Q. And what is below that?

A. There is an open space there, below the Elmore dock.

Q. How long is that?

A. 50 feet, about.

Q. What is below that?

A. Smith's Cold Storage.

Q. Smith's Cold Storage?

A. Yes.

Q. How long a dock is that?

A. Be about 50 foot, I think.

Q. Now, what is below that?

A. At this present time, now, sir, or at the time of the collision?

Q. At the time of the collision?

A. There was a lot of condemned wharf, the best of my knowledge, with all the old piling exposed. It was the Mack property, Mrs. Mack's property, I believe, was the name of it.

Q. How long was that space?

A. That was either 50 or 75 feet.

Q. What was below that?

A. I made a mistake in that last statement about the Mack property. After Smith's Cold Storage Company, Mr. Hume owned a piece of property in there.

Q. How long is that?

A. That was about 50 feet. Then came the Mack dock.

Q. And that was how long, you think?

(Testimony of Michael Nolan.)

A. Well, the Mack dock is a regular built up with warehouses on it at that time.

Q. How long was that dock on the water front?

A. I should judge that was 100 feet.

Q. The questions I am asking this witness, understand I mean on the water front. You understand I mean how long on the water front?

A. You were asking me in feet. I am describing the water front.

Q. I know. You understand when I ask how long, I mean how long on the water front?

A. Yes, sir.

Q. Yes, that is what I understood. I thought you did. Now, we have gotten down—

A. To the Mack dock.

Q. To the Mack dock. How long did you say that was on the water front?

A. I should judge about 100 or 125 feet.

Q. What was below that?

A. There was an open space again, nothing built on it.

Q. How long was that?

A. Well, I couldn't really say, but I judge 150 feet.

Q. What is below that?

A. Sanborn Cutting Company's cannery.

Q. How long a dock have they?

A. Might possibly have 100 feet in there.

Q. 100 feet. And what is below that?

(Testimony of Michael Nolan.)

A. There is a cannery, and I believe it is the Elmore property below that.

Q. A cannery there on a dock?

A. Yes, that is, I think, a 50-foot building. It is the Elmore property, and on that building, there is where the red light for finding the channel is.

Q. That is what I want. So it is on that building at that point, this red light is as testified about, is located?

A. Yes, sir, on that building.

Q. On the building itself?

A. There is an arm on the building that extends out beyond the building, and the light is an electric light, high there into a red lamp, and the light is on the lower end of that dock.

Q. That is the red light you were testifying about?

A. Yes, sir.

Q. Now, let's go back to the "Chinook." What lights were there on the "Chinook" when you went on deck there at 3 o'clock in the morning?

A. The "Chinook" had an anchor light up forward. She had an anchor light up aft, and at the time I believe I counted the lights between, the whole, and I believe it was seven or eight or in that amount. There was either seven lights between the two anchor lights, or there was eight lights including the anchor lights, and my mind isn't quite clear on that.

(Testimony of Michael Nolan.)

Q. Where were those lights distributed on the boats?

A. The anchor light was on the forestay, the extreme forward end of the "Chinook," and I should judge it to be probably 40 feet from the water, 45 feet from the water. The lights that were abaft of that were lights outside the entrance to the compartments; that is, to the forecastle, right along the deck until you got along to the bridge. That is, when I speak about the bridge, I speak about the bridge house generally, and there was to my opinion two or three other lights in there. There was a light again at where we place the entrance to the engine room, and a light on the after part like where you go into the officer's quarters, and on the extreme end of the ship, the stern anchor light.

Q. Those lights remained burning all the time until after the collision, as far as you recall?

A. I know by experience since that they were burning all that time, and I will answer, I know by experience, that the "Chinook's" dynamo is constantly running, lights always there.

Q. Now, did you ever tow ships from off Young's Bay to Portland?

A. Yes, sir. Now, in stating Young's Bay, Mr. Minor, I wouldn't state exactly at the particular place of Young's Bay, but if you state off of Astoria harbor to Portland, then I will say yes to that question.

Q. I will say Young's Bay.

(Testimony of Michael Nolan.)

A. If you want to say off Young's Bay and above Astoria, and up to Tongue Point, I will say yes.

Q. That is what I want to know. You know the channel along there, don't you?

A. Yes, fairly well.

Q. From where the "Thode Fagelund" was anchored is there any obstruction in the channel as far down as Smith's Point which would obstruct the vision in any way?

A. From where the "Thode Fagelund" was to Smith's Point, to where this red light is, we will say, this red light we have just spoken of, will you call that Smith's Point?

Q. No. I mean clear to Smith's Point. Was there any obstruction to the vision along the river between where the "Thode Fagelund" was anchored on the night of the 23rd, and Smith's Point?

A. Well, we will have to define a point and call it Smith's Point, because Smith's Point is generally taken as the sweep—

Q. Is there a light on Smith's Point?

A. Called Smith's Point light.

Mr. BRISTOL: Is that the Elmore cannery light?

A. Yes, that is the Smith's Point light.

Q. Any obstruction between that point and the place where the "Thode Fagelund" anchored that night?

A. Obstruction in seeing over the water or in the water?

(Testimony of Michael Nolan.)

Q. Obstruction from seeing the middle of the channel?

A. No, sir.

Q. None at all?

A. No, sir.

Q. And about how far, in your judgment, is it from this Smith Point light, you call it, this light on Elmore's cannery, up to where the "Thode Fagelund" was anchored?

A. That is something that I have never given much consideration.

Q. Well, can you tell approximately how far it is?

Mr. SNOW: Doesn't the chart give that distance, Mr. Minor?

Mr. MINOR: I presume it does.

A. Getting it off the chart would be more accurate, and I would sooner do that.

Mr. MINOR: I just want to get his estimate of the distance because he has been giving estimates, and I want to see how accurate his estimates are.

A. That is a longer distance, Mr. Minor, and it is harder to estimate it.

Q. Can't you give your best judgment?

A. No, I don't think I could do justice to myself in doing that in that distance. Now, when we get aboard the ship—

Q. Never mind the argument. You just said you didn't think you could, and that is all. That is all right with me, perfectly satisfactory. If you

(Testimony of Michael Nolan.)

think you couldn't do it, very well. Now, when you went on the "Thode Fagelund," and had the anchor heaved, and gave your first orders, I understand that you had learned the night before that the "Ocklahama" was going down to tow up some vessel. Am I correct in that?

A. That is a minute before?

Q. I understood you to say—I may be wrong—that you had learned in the office that the "Ocklahama," which you said was at anchor at the time you went aboard—

A. To clear up that impression, I would like to go into the details.

Q. No, I don't want to go into detail.

COURT: Did you know the "Ocklahama" had gone down the river?

Mr. MINOR: He knew the "Ocklahama" was anchored there when he went across.

A. The "Ocklahama" was tied up at The Port of Portland dock, at Astoria, abreast The Port of Portland office.

Q. I understood you to say,—I may be mistaken—

A. I will explain.

Q. You didn't say you learned at The Port of Portland office she was going down the river to tow up some vessel?

A. I didn't know the "Thielbek" was in the harbor.

(Testimony of Michael Nolan.)

Q. I didn't say the "Thielbek." I say some vessel. You didn't know that?

A. No, sir.

Q. That is all right. I just wanted to understand. When you went on the "Thode Fagelund," and gave this order to hoist the anchor, did you look down the river to see if you could see any vessel approaching?

A. Yes.

Q. And you didn't see any?

A. No, sir.

Q. And you kept a look-out for vessels down the river from that time until the collision took place, didn't you?

A. I was on deck from three on.

Q. I say, you kept a look-out—you kept looking down the river?

A. Yes, sir.

Q. That was a part of your duties?

A. Yes, sir.

Q. Yet you didn't see the "Thielbek" and the "Ocklahama" until they were about, as you say, from 1400 to 1500 feet from you?

A. About 1500 feet, sir.

Q. This Smith's Point is very much further down the river than the point where you saw them at the time you first saw the "Thielbek"?

A. Yes, sir.

Q. Did those lights on the "Chinook," you think,

(Testimony of Michael Nolan.)

interfere at all with your ability to see down the river?

A. Well, those lights on the "Chinook," yes.

Q. It does?

A. Yes, sir.

Q. And in looking down the river towards Smith's Point, at the time you first went on deck in the morning, you would be looking over the "Chinook," wouldn't you?

A. You would have to look over the "Chinook's" lights. She was closing the channel from the line where she lay to the line of Astoria, therefore you would have to look through her lights and over them, in order to see anything.

Q. And at that time, her stern extended so far you couldn't see—to look behind her, you would look about to what dock on the Astoria side? Understand when you gave the order to hoist the anchor; the light was behind the "Chinook." What point on the Astoria dock would you look at, in your judgment?

A. You mean in looking at the stern of the "Chinook"?

Q. Looking across the stern of the "Chinook."

A. Where I would get clear vision of the Astoria dock.

Q. Looking abreast the stern of the "Chinook."

Mr. BRISTOL: At the time you were pulling your anchor.

(Testimony of Michael Nolan.)

Q. At the time you gave the order to hoist the anchor?

A. To the best of my knowlege, I would place the stern of the "Chinook" into the Elmore dock.

Q. Into the Elmore dock?

A. Yes. Now, that is not the Elmore dock with the light on it.

Q. You mean the upper Elmore dock?

A. The upper dock. In other words, at the foot of Third Street.

Q. The foot of Third Street?

A. Yes, sir.

Q. I don't know the street, but the Elmore dock you have defined was not the one where the light is?

Mr. BRISTOL: You asked where he fixed that point; that is, when the stern of the "Chinook" was down-stream.

A. Swinging up-stream, sir.

Q. At the time he went on when he gave the order to hoist the anchor?

A. That is, I only estimate that now.

Q. I understand that. At that time, supposing that the "Ocklahama" and the "Thielbek" were coming up the river at a speed of from six to seven miles an hour, whereabouts would she be off that point you speak of—the Elmore upper dock?

A. At the time that I weighed anchor?

Q. Yes.

A. 3:20.

(Testimony of Michael Nolan.)

Mr. SNOW: Are you assuming the witness knows when the "Thielbek" left?

Mr. MINOR: He knows when the collision took place. He knows the time it took place, and therefore he knows where these vessels were.

Mr. SNOW: Do you think that question is really fair to the witness?

Mr. MINOR: I do. He knows where it took place.

Mr. BRISTOL: It doesn't contain the leaving time of the "Thielbek."

Mr. MINOR: It doesn't have to. I say, supposing the "Thielbek" and the "Ocklahama," going six or seven miles an hour, which is all they possibly could go, at that time I want to know where, in his judgment, these vessels would have been, from the time you gave orders to weigh anchor?

COURT: In other words, how much space the "Thielbek" would have passed over in that time.

Mr. MINOR: Yes, I want to see, if your Honor pleases, whether they would be down below, so they would have to look over the "Chinook," or what they would have to do.

Mr. BRISTOL: I object to the question in the present form, for the reason it leaves indefinite to the witness the point of departure of the "Thielbek" and the "Ocklahama," the length of time they had been running, because the question of speed, without the element of the point of departure, and the time they left, wouldn't fix the distance alone.

(Testimony of Michael Nolan.)

Q. Judge the distance where they arrived, as near as you can from the point of departure.

COURT: Let him answer if he can. If he has any opinion on the subject.

A. The time I weighed the anchor, between that, in my opinion, that I could have seen those ships in view of Smith's Point, if they held to the star-board side of the channel; that is, I don't believe they would have been up far enough to open out the channel to where I was at that time.

Q. Now, when you stopped your slow bell, and gave the order half speed ahead, assuming that those vessels, the "Thielbek" and the "Ocklahama," were going at the rate of six or seven miles an hour, where would those vessels have been at that time?

A. I couldn't say that.

Mr. BRISTOL: I make the same objection to that. It is unfair to the witness, because it doesn't fix any point of departure, or give the witness anything by which he can form a basis.

A. That is a very impractical question for me to answer.

Q. Well, give your best judgment. I want to know whether, above Smith's Point, say, will be in sight or not, in your judgment?

A. At the time of that, they would be in sight, if the Chinook was not there. Yes, sir, I believe I would have been able to see the vessel.

Q. So, you think then, at that time, the only reason you didn't see the vessels was because you

(Testimony of Michael Nolan.)

would have to look across the "Chinook," was that it?

A. At the time of giving the half speed bell to go ahead?

Q. Yes.

A. Yes, sir.

Q. And you think would have been in full sight, but you would have had to look at them over the "Chinook"; is that right?

A. They would have been in full sight of me, provided the "Chinook" wasn't there.

Q. And that the only reason you didn't see them was because of the lights on the "Chinook"?

A. Yes, sir.

Q. Now, it was about five minutes after that when you did see them, wasn't it?

A. Yes, sir, just about five minutes after.

Q. And during that time, in your judgment, those two vessels would have been in full sight of you, if the lights on the "Chinook" had not been burning?

A. Yes, sir, I believe that is right.

Q. And you would have seen them right over the "Chinook"?

A. I would have seen them if the "Chinook" wasn't in the channel. But if I seen them looking over the "Chinook," I wouldn't state that positively, because I was looking and couldn't see them over the "Chinook"?

(Testimony of Michael Nolan.)

Q. Do those vessels ride high enough to see their lights over the "Chinook," from where you were?

A. The "Chinook" is a high vessel. I presume she was higher than either one of the vessels.

Q. Than either one?

A. Yes, I believe she is.

Q. Either the "Thode," or lights on—

A. Positively sure higher than the "Thode Fagelund," both forward and aft.

Q. Higher than your lights on the "Thode Fagelund," you think?

A. The "Chinook's" lights?

Q. No. I mean the whole vessel that obstructs your vision that you think was higher than the "Thode Fagelund's" lights.

A. The fore part, all the fore-castle head, all the midship section, pilot house and smoke stacks and ventilators and all in there is higher. The after end of the poop deck and all along there is higher.

Q. Through a good part of her length, she is higher than the lights of the "Thode Fagelund"?

A. I should judge more than two-thirds of the length.

Mr. BRISTOL: You mean the running lights, or the masthead lights?

Mr. MINOR: I mean the navigation lights, of course.

Q. In your judgment, is she also in that same space higher than the running lights of the "Ocklahoma"?

(Testimony of Michael Nolan.)

A. The "Chinook"?

Q. Yes.

A. My opinion is that the "Chinook" lights would be higher than the "Ocklahama" running lights, except her two towing lights, and then that would be only for a very short space over the "Chinook," where they would be seen. For two-thirds of the length of the "Chinook" I don't believe the "Ocklahama" running lights would near reach up to the height of the deck house of the "Chinook." That is my opinion.

Q. But the masthead lights, mast lights on both the "Thode Fagelund," and on the "Ocklahama," would be above the line of the "Chinook"?

A. No, sir, the "Thode Fagelund" would, I believe, but the "Ocklahama" would not.

Q. The "Ocklahama" would not?

A. No, sir, in my opinion.

Q. In other words, the "Chinook" was so high, that in your judgment if you looked over the "Chinook," you wouldn't have been able to see even the range lights of the "Ocklahama"?

A. The towing lights you mean now.

Q. No. I mean the range lights.

A. No, sir, I don't believe.

Q. The towing lights are the same thing. That is the same thing?

A. No, sir, I don't.

Q. Are you acquainted with the "Ocklahama"?

A. Been aboard the "Ocklahama" on several

(Testimony of Michael Nolan.)

occasions, and in a casual way, I would say yes. I could go around the vessel, yes.

Q. You never worked on the vessel?

A. Not as a regular employee on the vessel.

Q. It is in evidence here that she has—her running lights are electric lights. Do you know that to be a fact?

A. Yes.

Q. Now, it is also in evidence that the lights of the "Thielbek" were oil lights. Did you notice any difference between the red light you say you saw on the "Thielbek," and the red light you say you saw on the "Ocklahama"?

A. Could I see any material difference?

Q. Did you see any difference in the lights?

A. The "Thielbek's" lights are in light houses that is built a part of the ship. What is meant by that is the forecastle head is located where the lights are placed. The forecastle head is an iron house built up, I would say, probably four or five feet high, and they are fixed permanently and I know by experience and observation that those lights in them light houses are of a larger size than the "Ocklahama" lights would be. That is, the light itself.

Q. That doesn't answer the question. I have no doubt you intended it to, but I say, did you notice any difference between the red light on the "Ocklahama," which you say you saw, and which you think

(Testimony of Michael Nolan.)

you saw, and the red light on the "Thielbek," which you say and think you saw?

A. The only difference is, in my opinion, that the light on the "Thielbek," the port light on the "Thielbek," is a larger light.

Q. And you think it looked larger to you that night?

A. It did.

Q. Now, you have acted as the master or mate on towboats like the "Ocklahama," haven't you?

A. Not on stern wheelers. Not on stern-wheeled vessels. My experience has been on screw steamers.

Q. On towing, I understood you to say you have towed on some of those boats?

A. I have towed with the "Wallula" and the "Oneonta."

Q. Now, in towing with those boats, they have electric lights also, haven't they?

A. Yes, sir.

Q. When you tow with those boats, what do you do with the lights on your tow?

A. The side lights are always put on the off-shore side of the tow. That is, in this way. If the "Wallula" is tied up to a vessel, on the vessel's port side, the "Wallula" port light is burning; the starboard light is put out; on the vessel her port light is put out, and the starboard light is left burning, so the side lights are actually on the outside of the tows.

(Testimony of Michael Nolan.)

COURT: In other words, you only have one red light and one green light.

A. Yes, on the extreme outside of the tows.

Q. What I want to understand is what green lights in that case, do you put on your tows? Use her light or yours?

A. My experience there is always to use the vessel's green light.

Q. The vessel's green light?

A. Yes, or the vessel's red light, whichever was the one called for.

Mr. BRISTOL: Your Honor, so Mr. Minor and Mr. Wood may be advised, in view of the fact Mr. Minor may pursue this at some length, I enter an objection here to this, if he claims any substantive evidence in the line of his case, to justify the "Ocklahoma" and the "Thielbek" in the use of their lights in the manner in which they used them, to this effect; that the Pilot Rules of the waters, the Inland Pilot Rules, and the laws of the United States fix absolutely and without regard to custom and practice, what lights sailing vessels shall carry when being towed, and what lights tugs shall carry when they are towing, and any evidence of practice of this witness or any other pilot on this river, cannot be received, because against the law, if not indicated by that particular regulation. I don't need to point it out now, but I want it in the record.

Mr. MINOR: Pardon me, but I think you will have no occasion to make the objection.

(Testimony of Michael Nolan.)

Q. It is in evidence here, Captain Nolan, that when the "Thielbek" was lashed to the "Ocklahama," the "Ocklahama" took her green light and carried it to the starboard side of the "Thielbek." You understood what Captain Turppa testified in that regard, didn't you?

A. Yes, sir.

Q. Is there anything impractical in doing that?

A. In doing that, Mr. Minor, it all depends on the man that is managing the tow, because the responsibility is on him.

Q. I understand, but is it impractical to do that?

A. I want to explain that.

COURT: It can be done, can it?

A. Personally, for me to do it, I would not do it.

COURT: But can it be done?

Q. Can it be done?

A. Yes, it can be done.

Q. That is what I want to know. Now, Captain, if that were done, and if all the lines lashing the "Ocklahama" to the "Thielbek" were carried away, what effect would that have upon the starboard light carried from the "Ocklahama" to the "Thielbek"?

A. Would put it out.

Q. Would put it out?

A. The electric light.

Q. And if it were put out, what effect would that have upon the "Ocklahama's" red light, if she carried a red light?

(Testimony of Michael Nolan.)

A. If the starboard light was put out, it would have no effect to my knowledge on the "Ocklahama's" red light.

Q. What would become of that cord?

A. The red light is indicated, or the green light?

Q. What would become of the cord which carried the green light over from the "Ocklahama" to the "Thielbek"?

A. Oh, it would have been broken.

Q. Then what would become of it?

COURT: You mean whether it would remain on the "Thielbek," or drop in the water, or what?

Mr. MINOR: That is what I want to know.

Mr. BRISTOL: I don't know how this witness could be expected to tell what became of that, Mr. Minor.

COURT: A hundred things might happen. It might fall in the water.

A. The only thing, it would break at the weakest point, wherever the weakest point was.

Q. If it broke, then what effect would it have on the red light of the "Ocklahama"?

A. Would have no effect on the red light of the "Ocklahama."

Q. Wouldn't make a short circuit?

A. No, sir.

Q. Wouldn't?

A. No, sir; the lights on board the ship are installed—the red light is independent of the starboard lights, and the starboard light is independent

(Testimony of Michael Nolan.)

of the red light, and the towing lights are independent of all other lights, on separate switches in the pilot house, under the man in charge of the ship.

Q. They are not always on separate circuits, I know that. I am experienced, and heard other witnesses testify. Some times they are, and some times not.

Mr. BRISTOL: I apprehend of course, Mr. Minor, as you remarked to me, my statements don't make evidence, neither do yours.

Mr. MINOR: I know, but I don't want him carried off on that idea.

Mr. BRISTOL: I may say I know of separate circuits on the "Ocklahama," and on well-conditioned ships like the "Ocklahama" they are always on separate circuits, and if you haul the green lights clear out of the socket, the red light still continues to burn.

Mr. SNOW: On my part, I don't know anything about that.

COURT: Proceed with the testimony. You and Mr. Bristol will probably not agree on that.

Q. Captain, I want to know this: Did the fact that you saw two red lights, did it bother you at all?

A. Well, at—looking into the two red lights, it would start you to think.

Q. But it didn't at all confuse you as to how you should steer your vessel, did it?

A. It didn't make any difference in my opinion in regard to blowing the passing signal.

(Testimony of Michael Nolan.)

Q. I say, it didn't make any difference to you in regard to how you should steer your vessel, or how should pass?

A. No, sir, not looking into two red lights.

Q. Especially as you also saw, as I understand, the green light?

A. Yes, sir.

Q. And you also saw, as I understand, at that time, the towing lights, or range lights?

A. Yes, sir.

Q. Were those towing lights or range lights open yet, or closed?

A. Towing?

Q. Yes, were they open or closed at that time?

A. There is nothing to put the range light in range with, to tell whether in range or not, because no lights forward on the "Ocklahama" you could put them in range with. They are only a towing light.

Q. Was only one light above the other?

A. Yes, sir, not less than three feet, and not more than six feet apart, is the rule for towing, nothing to put them in range with.

Q. No light, then, on the "Thielbek," towing light, or anything of that kind on her mast?

A. Was starboard light there, and red light on the "Thielbek."

Q. But I say—I don't mean their navigation lights in the sense of red lights and green lights, but I mean mast lights.

(Testimony of Michael Nolan.)

A. White lights?

Q. White lights. None on that?

A. No, sir, no white lights.

Q. Now, the officers and crew of the "Thielbek" have been examined as witnesses in this case, and they have testified that after the collision, they put out their oil lamps. Did you see that done? They say they lighted their oil lamps. Did you see that done?

A. The "Thielbek's" red light, and the "Thielbek's" green light are both oil, and they were both burning before the collision, and I saw them at the collision, and to say that they were put out after the collision; no, sir, they were burning.

Q. I ask, did you see them put out after the collision?

A. The lights were burning after the collision?

Q. Did you see them put out after the collision? They might have been put out by the collision. I want to know whether you saw them set out red and green lights after the collision?

A. I didn't see them put out, no, sir.

Q. You have given estimates here of the distance of these vessels apart; that is, the "Thielbek" and the "Thode Fagelund," at the time the second danger signal was blown. I don't think you have given it at the time the first danger signal was blown. Can you give that?

A. No, sir, I can't give that. I didn't give it at

(Testimony of Michael Nolan.)

the time of the second danger signal, but after that, I believe was the time that it was given, sir.

Q. My recollection is, that you have made plats here showing they were from 250 to 300 feet apart at the time the second danger signal was given.

A. After the second danger signal was given, at about 25 seconds of time.

Q. Twenty-five seconds of time after the second whistle?

A. That is about what was given.

COURT: After the anchor was dropped?

A. Yes.

Q. Well, can you give the distance that these vessels were apart at the time the first danger signal was given? I don't expect you to give it accurately. I just want to know approximately, if you can, how far they were apart.

A. No, sir, I wouldn't want to go on record.

Q. Couldn't give that at all?

A. No, sir, I wouldn't want to do that. Don't believe I could.

Q. Can you give the distance between the vessels at the time the second danger signal was blown?

A. Mr. Wood asked me the same question yesterday, Mr. Minor, and I told him that there was only a difference of about four or five seconds from the time the danger signal was given until the distance was estimated, to be about 250 feet, and 25 seconds, and therefore, I cannot answer that question you ask.

(Testimony of Michael Nolan.)

Q. Then you didn't make any estimate of it?

A. At that time, sir?

Q. But you did at the time you dropped the anchor?

A. Yes, sir.

Q. That is what I wanted to know. Now, Captain, in your report to The Port of Portland, made immediately after this accident, I call your attention to this statement: "I then backed full speed astern, and blew danger signal (four whistles) which was not answered. I then let go port anchor with fifteen fathoms of chain, blew four whistles again, which were not answered." Now, from this report, it appears that you dropped the anchor between the time you blew the first four whistles, and the time you blew the second four whistles?

A. Yes, sir.

COURT: That is what he testified.

Q. I understand, now, from what you just said, that while you gave the distance, in your judgment, between the vessels at the time the anchor was dropped, you couldn't give it at the time the second danger signal was given, but that it was about five seconds afterwards; about five seconds after the second danger signal was given, that you dropped the anchor. Which do you mean? I merely want to get it clear. I am not trying to confuse you.

A. Put that question again, please, for I don't understand it.

Q. I understood you to testify awhile ago, Cap-

(Testimony of Michael Nolan.)

tain Nolan, that while you could give your estimate of the distance between the "Thielbek" and the "Thode Fagelund" at the time the anchor was dropped, and made a diagram showing that, that you couldn't give it at the time the second danger signal was given, but that was about five seconds before the anchor was dropped. That is the way I understood your testimony today. As a matter of fact, I now understand you to say that the anchor was dropped before the second danger signal was given.

A. That has been the testimony all along, and if I said anything at any time in this cross examination, in any other way, I want to rectify it here.

Q. I just want to get your statement.

A. I said the danger signal blown first, the anchor let go, and the danger signal blown afterwards.

Q. I am entirely impartial in this matter. I am trying to defend you as well as the others. I make a defense here in which I am undertaking to defend both.

Mr. BRISTOL: Glad to hear you say that, Mr. Minor.

Mr. MINOR: All right. The answer shows it, does it not?

Q. Now, I will get another matter clear in my head, because I don't altogether understand your testimony on this point; at the time you gave the first passing signal, I understood you to say that if

(Testimony of Michael Nolan.)

you had kept on your course, and the "Thielbek" and "Ocklahama" had kept on the course which they were then pursuing the vessels would have passed starboard to starboard without any trouble. Is that correct?

A. I never made that statement.

Q. What did you say about that?

A. My statement in regard to that question that you put; at the time of the blowing of the first two whistles, had they been answered, and acted on then, there was room to pass?

Q. Well, when you say "acted on," what do you mean by that?

A. The helm put over, and the ship's movement directed that way.

Q. Now, I don't understand that at that time, you put your helm over, did you?

A. Yes, sir. The helm was hard astarboard.

Q. You put it hard astarboard at that time or before that?

A. At what time is this you refer to?

Q. At the time when the first two passing signals were given.

A. The whistles were blown, two whistles were blown, and the order was given, I believe, to hard astarboard.

Q. So the order to hard astarboard, was given after the first two whistles were blown?

A. After, yes, sir.

Q. Now, if the "Thielbek" and the "Ocklahama"

(Testimony of Michael Nolan.)

had continued upon the course which they were pursuing, and you put your helm hard astarboard at the time, or just after you gave those first passing signals, of two whistles, you think there would still have been a collision?

Mr. BRISTOL: That is, you mean, Mr. Minor, if the "Thielbek" and "Ocklahama" had kept going as they were?

Mr. MINOR: I said if they kept their course, Mr. Bristol.

Mr. BRISTOL: I simply wanted to understand what you meant.

A. Repeat that question, please, Mr. Minor.

Q. I say, if the "Thielbek" and the "Ocklahama" when you gave the first passing signal, had kept on their course, and you gave the hard astarboard helm, you think there would, notwithstanding that fact, have been a collision?

A. Yes, sir, there would have been a collision there.

Q. So that, in order to avoid a collision, in your judgment, the "Thielbek" and "Ocklahama" would have had to starboarded their helm and gone to port; is that your idea?

A. In order to avoid a collision, and to answer, if the first two whistles had been answered, and the helm acted on, then there wouldn't have been a collision, in my opinion, in a starboard passing.

Q. Now, Captain, please don't get off. I say, in your judgment, if the "Thielbek" and "Ockla-

(Testimony of Michael Nolan.)

hama," when you gave the first two passing signals, had kept on their course, there would have been a collision, notwithstanding the fact that you had put your helm hard astarboard; is that right?

A. There would have been a collision under those circumstances you mention.

Q. So in order to have avoided a collision at the time you gave the first passing signal, it would have been necessary for the "Thielbek" and "Ocklahama" to put their helm to starboard and gone to port?

A. In order to avoid a collision; yes, sir, starboard passing.

Q. That was the signal you gave?

A. Yes, sir.

Q. Had to put their helm to starboard?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Now, when you gave the second whistle, which I understand was only a few seconds after the first one, you still think there was room for you to have passed the "Thielbek" and "Ocklahama" starboard to starboard, don't you?

A. Yes, sir.

Q. But, in order to do it, the "Thielbek" and "Ocklahama" would have had to put their helm to starboard?

A. Yes, sir.

Q. The failure, therefore, to answer the first whistle, in your judgment, was not the cause of the

(Testimony of Michael Nolan.)

collision, because was time to have avoided the collision when they answered the second whistle; is that right?

A. Repeat that question.

Q. I say, the failure to answer your first passing signal was not the cause of the collision, because, in your judgment, there was room to have passed starboard to starboard, if they had taken the proper course at the time you gave your second signal to them. That is correct, is it?

A. I don't understand the question. At the time of blowing the first whistle, the first two whistles, there was room to pass starboard to starboard, had they been blown and acted on, and it is my opinion at the time that there was room to make a starboard passing and clear at the time of the blowing of the second whistles and answer.

Q. And that's the reason you gave that signal?

A. Yes, sir.

Q. Now, at the time you gave the first two whistles, in your judgment, there was not room to have made a port passing, was there?

A. There is room—that question has got to be looked at from two sides, and I have to answer it in that way. At the time of my blowing the first two whistles, had I blown one whistle, I would have assumed the responsibility of navigating the "Thode Fagelund" clear of the dredge "Chinook," and I would have made a declaration of my opinion to the other man that the channel was clear on ahead. In

(Testimony of Michael Nolan.)

order to do that, I would have had to swing the "Thode Fagelund" at least a point and a half on her starboard on a port helm for to clear the "Thielbek."

Q. To clear the "Thielbek"?

A. To clear the "Thielbek." Yes, she was coming to me. Then I had my chances of a collision on the other side, with the dredge "Chinook," so I assumed, if I was to blow one whistle, the chances of a collision from the "Thielbek," because I considered the distance wasn't far enough between the two vessels to put the helm hard aport, blow one whistle, and tell the other man that I was clear to come ahead with his tow.

Q. As I understand now, to go back to my question, at the time when you gave the first passing signal, in your judgment, you couldn't have passed safely port to port?

A. That is the question; that is the question that settles this point. Had the "Thielbek" blown one whistle, there was room to make a port passing, because she assumed to clear to port there. The "Thode Fagelund" was the ship that was burdened, and would have answered with one whistle, and would only have assumed the responsibility of colliding with the "Chinook." The other vessel had the distance between me and the Callender dock, which was the nearest point of contact, which was 600 feet to navigate in.

Q. You still haven't answered my question. I

(Testimony of Michael Nolan.)

want to know whether in your judgment, at the time you blew the first two whistles, you could have safely made a port passing, between the "Thielbek" and the "Thode Fagelund."

Mr. BRISTOL: I submit he has answered it twice already.

Mr. MINOR: I simply want an answer to the question. I don't care for the reason. I simply want an answer.

COURT: I understand the effect of the testimony is he couldn't.

Mr. MINOR: I simply wanted to know whether that is what he meant.

A. Yes.

Q. In your judgment couldn't have made a port passing?

A. I couldn't have made the passage, and assumed the first blow.

COURT: Couldn't have made a port passage at your suggestion.

A. Couldn't make a port passing at my suggestion.

Q. Could make a port passage at your suggestion?

A. Could not make a port passage at my suggestion.

Q. Now, I understand, if the "Thielbek" and "Ocklahama" at that time had given you the passing signal, that then a port passage was safe?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. All right. Never mind about the reason. I just want to get what your opinion is. And the reason I understand it would have been safe is, if they gave that signal, then it was their duty to have ordered their course to port, so as to give you room to pass behind the "Chinook." Is that right?

Mr. BRISTOL: Not pass to port.

Q. Ordered their course to starboard so as to give you room to pass behind the "Chinook"; is that right?

A. Yes, sir; the man that blows the first whistle is responsible to the other man to give him as much room as possible.

Q. Again, I want you to straighten one thing, because I don't understand it myself. In your report, made on August 24th, you have said that at 3:20 a. m. the "Thode Fagelund" weighed anchor off the O. R. & N. dock, and the other day I understood you to testify that you didn't think the anchor was up for something like two minutes or more after 3:20. Which is right?

Mr. BRISTOL: He didn't say that. Mr. Wood tried to get him to say that, and he wouldn't say that.

A. I didn't say that. Mr. Wood asked that question, and I told him—

Q. I want what you did say.

A. After the anchor was up and reported as being up, I looked at my watch and reported as 3:20.

(Testimony of Michael Nolan.)

Q. That is what I want to get at. Now, in this statement, I want you to explain that to the Court, as far as you can. You say she weighed anchor from off the O. R. & N. dock, and this diagram shows her a good deal above that, does it not, where anchored?

A. That is an error there.

Q. That is an error there?

A. I admit that is an error, because the ship was not anchored there. The testimony doesn't show it.

Q. I know it doesn't, and I want you to explain. I want to be fair.

A. I seen an error in that report when I was off the O. R. & N. dock.

Q. As a matter of fact, this diagram shows where you did weigh anchor.

A. Actually.

Q. And the report is wrong in that particular?

A. The O. R. & N. dock is wrong in that report.

Q. Wrong in that report?

A. Yes, in that, wrong. I noticed that when I read it.

Q. This diagram I mention and call your attention to, is Port of Portland Exhibit 2, and the report of Port of Portland Exhibit 1.

A. There was no intention of getting the wrong idea in there. It was a mistake, more than anything else, in the report.

Q. Now, you have also stated, that in your judg-

(Testimony of Michael Nolan.)

ment there was no change in the course of the "Thielbek" and "Ocklahama" from the time that you first saw them until just before the collision; in other words, after your anchor was down; is that correct?

A. That was the time the lights shut out, and that was the only object that a man—the only objects that a man could have to tell when the change takes place.

Q. That is the only time you saw a change in their course?

A. Yes, sir.

Q. Now, I also understood you to testify yesterday, that when the collision took place, the red lights which you saw were all shut out?

A. Yes, sir.

Q. And also understood you to say that at that time, you couldn't see the "Ocklahama" at all. Is that correct?

A. Yes, sir.

Q. Now, why couldn't you see the "Ocklahama" at all? I don't understand that myself.

A. I will demonstrate that to you, if—

Q. No, just tell me why it was you couldn't see it.

A. The two vessels lying together—

COURT: The view was obstructed by the "Thielbek," was it?

A. Yes, sir.

Q. Was the "Thielbek" high enough to cut the view of the "Ocklahama" entirely?

(Testimony of Michael Nolan.)

A. The height of the bow, and the location of the "Ocklahoma" being tied up to the after part of the "Thielbek," that is what caused her being obstructed from my view.

Q. I just want to know why it was. The "Thielbek," then, stood up so much higher than the "Ocklahoma," that when it got between you, it shut out the "Ocklahoma"?

A. In other words, sir, the difference in the keels of the two vesels, that is, the "Thielbek" and "Thode Fagelund," wasn't parallel with one another; some difference in the two, which caused the "Ocklahoma" to shut out from my view.

Q. You said something about being suspended long prior to the time you said you were discharged. Your pay was the same during that time that you speak of being suspended, wasn't it?

A. I was suspended on the day after the accident.

Q. I say, your pay was the same, wasn't it?

A. Yes, sir.

Q. Got your pay every month the same?

A. Yes, sir.

Q. Were you paid by the month, or how were you paid?

A. Paid by the month.

Q. Now, in order to make another matter clear, Captain Nolan, you seem to resent the course which Mr. Wood took down there. I will ask you whether

(Testimony of Michael Nolan.)

you haven't constantly been in communication with Mr. Bristol?

A. I would like to answer that question this way.

Q. Just answer. You may explain after. Have you not? You have, haven't you?

A. What is the question?

Q. You have been in constant communication with Mr. Bristol?

A. Yes, sir.

Q. And you have given him all the information you could, all he asked, as far as you could give it, haven't you?

A. Yes, sir.

Q. You also have been in communication with me representing The Port of Portland, and given me such information as I asked for?

A. Yes, sir.

Q. But you haven't given Mr. Wood any information since the time you learned he represented the "Thielbek"?

A. Nothing more than on that day.

Q. Since you learned he represented the "Thielbek"?

A. No, sir.

Q. Now, you can give your reasons, if you choose? The witness should have a fair showing before the Court. You can tell the Court why, if you choose.

(Testimony of Michael Nolan.)

A. I have no explanation to make, if the answer is satisfactory I have given.

Q. The answer is satisfactory to me, and I suppose the Court will understand. I do.

COURT: If he wishes to add an explanation, he may do it. I don't know that it is necessary.

Mr. MINOR: I don't either. I merely want to be fair with the witness before the Court.

A. The only thing I had reference to, Mr. Minor, and the only thing that I brought it up here for, was this: The Port of Portland employed me, sent me on board the "Thode Fagelund," to navigate the ship, as I said. The Captain accepted me; every order that I asked for was given willingly. I accepted the responsibility of that ship, and I alone, and after the accident it was my intention, if I had to sever my connection with The Port of Portland immediately, I was going to do so, but I was going to defend my actions on that particular time before this Court, and leave the matter clear before that. I went home. I didn't intend to talk to any one about that collision, and no one could have talked to me, except it was a lawyer employed by The Port of Portland, and when I was telephoned to come down to The Port of Portland office, I went down there and met Mr. Wood. Now, gentlemen, the reason that I spoke about Mr. Wood yesterday was it looked to me, using the language of the street, that there was a nigger in the woodpile. I don't say it was on Mr.

(Testimony of Michael Nolan.)

Wood's part. I don't say Mr. Wood was a party to it, but I do say, acting on the "Thode Fagelund" as her pilot, I was there responsible for those actions. If Mr. Wood was introduced to me by the man in charge of The Port of Portland office, as a lawyer employed by The Port of Portland, representing them, it was given me to understand he was there for my benefit, not as a lawyer hired by the "Thielbek," and any information I would give to him, would afterwards be used against me. That impression wasn't given to me, but it was given me that I would give Mr. Wood all the details. Now, gentlemen, this is pretty serious, and when a man is in this position, he don't want to speak his mind out only to those whom he can trust, and if a lawyer is hired on the "Thielbek," and a lawyer is hired on the "Thode Fagelund" side, and I was on the "Thode Fagelund," wouldn't it be natural for me to resent speaking to the lawyer on the "Thielbek" side?

Q. That is your explanation, is it, Captain?

A. That is my explanation.

Q. Now, one other question. I understood you to say you could see the rigging of the "Thielbek"; is that right?

A. Yes, sir, when I saw the vessel first.

Q. You saw the rigging of the "Thielbek"?

A. When I saw the vessel first, sir, I saw the red light, and in looking at them, I believe I saw

(Testimony of Michael Nolan.)

the topgallant royal yard, over the light on Smith's Point.

Q. The first you saw was the red lights?

A. The first I saw was the red lights.

COURT: That is the time you said you didn't know whether the boat was at anchor or moving?

A. Yes, sir, for a moment, and on further looking, in looking up into the sky, over the lines of trees in Smith's Point, I saw the top yards, topgallant and royal yards.

Q. Of the "Thielbek"?

A. Of the "Thielbek."

Q. Were they above?

A. They were above the woods on Smith's Point—the timber.

Q. Those masts were about as high as the masts of the "Thode Fagelund"?

A. Oh, no, sir; they were much higher.

Q. Be higher than those of the "Thode Fagelund."

A. The lower masts are higher, and has two much higher, the topgallant and the royal, much higher.

Q. The "Thielbek" is a sailor?

A. Yes, the "Thielbek" is a sailor.

Q. She has four or five masts?

A. She has four masts. She is what we call a four-mast bark; three masts are square rigged, and the after mast is a fore and aft sail.

(Testimony of Michael Nolan.)

FURTHER CROSS EXAMINATION FOR
"THIELBEK."

Questions by Mr. Wood:

Q. Captain, I show you Libelant Wilhelmsen's Exhibit 7, Nolan, where you have indicated by the figure "2" the position of the dredge "Chinook."

A. Yes, sir.

Q. And I presume that this marginal line, fixed with a buoy number along it—9, 10, 11, 12, marks the northern side of the channel?

A. Yes, sir.

Q. I call your attention to the fact that the dredge "Chinook" appears to be anchored here with her stem about her own length from the northern edge of the channel. In other words, about 450 feet from the northern edge of the channel, and I want to ask you if that is correct?

A. In placing that position there—

Q. Just say if that is correct or not; then you can change it.

COURT: How far was the "Chinook" anchored from the northern edge of the channel, if you know?

A. It wouldn't be safe to anchor the "Chinook" any closer than the length of the ship, because she had been there three days before the collision, and would have had to have room to swing there, and her swinging movements would be governed by the wind. If the wind was in the southward, she would swing over there, would be swung in low water,

(Testimony of Michael Nolan.)

would swing on the ground if didn't have room to swing.

Q. The "Chinook" is pretty shallow depth.

A. Draws about seventeen feet of water.

Q. Couldn't swing over the shoals on the northern part?

A. No, sir; when on this lower part, the upper part could, but not the lower part, because the bank is quite shallow at low water. In fact, this is dry at half tide.

Q. Is it a fact, she always swung while anchored there with her stern towards Astoria; in other words, that she never did swing over the shoals?

A. That is governed by the winds. If the wind is from the southern, she will swing in any direction.

Q. You said the "Chinook" was anchored there about three days before the collision. Did she remain there continuously during those three days?

A. Yes, sir, she remained there continuously, and I believe one day after the collision. I believe the day after the collision she was taken away. There was some work to be done on the engine room.

Q. The point I want to make was, you knew she was there all the time, and how she was swinging.

A. Yes, sir; I have been there.

Q. But you knew it, and the way she swung with the current?

A. Yes, sir.

Q. That is correct, is it?

(Testimony of Michael Nolan.)

A. She had been swinging to flood and ebb.

Q. That was, you knew all about how she had lain there and swung? You had been right there all the time, hadn't you?

A. I knew the ship had been anchored there and was swinging to flood and ebb tide to an anchor.

REDIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Captain Nolan, in view of Mr. Minor's cross examination, and the questions he asked you about the clearance between the ships, I want you now, if you will, please to give the Court the benefit of your knowledge and observation and experience as a pilot as to what the "Thielbek" and "Ocklahama," when you first saw them, could have done to have avoided that collision, if you know.

Mr. MINOR: If your Honor please, I want to object to that question. Of course, it isn't redirect examination, and in the second place, it is irrelevant. The law, as Mr. Bristol correctly said, tells what the duty of the vessels is, what they could do.

COURT: There are conditions where they can't observe them. Conditions might arise where they can't observe them.

Mr. MINOR: What he would have to do, would be to show what the conditions were, not to show what might have been done; show the conditions. The law of the conditions is what fixes their duty.

COURT: I understand that.

Mr. MINOR: If he wants this witness to testify

(Testimony of Michael Nolan.)

conditions, I have no objections, but if he wants to ask a question, what they could have done, I submit it is not a proper question and not redirect examination; and it is not a proper question, because the law says what should be done under proper conditions.

COURT: I think he can testify as an expert. Let him answer. He can testify as an expert what good navigation would suggest.

Mr. BRISTOL: That is what I am driving at.

Q. Under these circumstances delineated by Mr. Minor on cross examination, I want you to give the Court the benefit of your opinion, as the witness he has qualified you to be, what, if anything, could be done by the "Thielbek" and "Ocklahama," as a matter of navigation, to avoid that collision, if anything. Tell it in your own way, if you can.

A. Gentlemen, in telling it, I would like for you to take into consideration, before I would say anything, that it does not reflect on the other man on the other boat.

COURT: Tell the facts about it. Just your opinion, that is all.

A. At the time of seeing the "Thielbek," and placing the conditions as they were, there was room to pass had the "Thielbek" been navigated, that she was under control to stop, had an emergency arisen to be stopped. The channel was crowded. When I say crowded, there was two ships in a very small space, and the crew of the "Ocklahama" knew that.

(Testimony of Michael Nolan.)

Had the ship been navigated slowly, we will say half speed, she could have been managed in a respectable distance for backing her and stopping her, but as it was, with full speed thereon, had the "Ocklahoma" assumed her right, and held her right, and blown one whistle, it is my opinion there would have been no accident.

Q. Now, about his green light; Mr. Minor has asked you a number of questions in your experience, about a cord being taken across from the tow boat to the towed boat, fastened into the screen, etc., and referred you to Captain Turppa's evidence. My recollection may be good or bad, but my recollection is that Captain Turppa testified that the pilot house starboard screen was about opposite what is called the rear or spanker or jigger mast.

A. The jigger mast.

Q. Jigger mast of the "Thielbek"?

A. Yes, sir.

Q. And that they used a fifty-foot cord, and took the green light across into the shrouds on the starboard side of the "Thielbek."

A. Yes, sir.

Q. Now, if that be the case, I want you to tell whether the green light you saw was the green light on the "Thielbek," in her box proper, or the green light which Captain Turppa said was fastened in that particular place? Do you understand my question?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. All right. Tell the Court what the fact is.

A. The fact of the matter is the green light that I saw was the green light of the "Thielbek" in its proper place on the "Thielbek's" starboard bow.

Q. In her own box?

A. In her own box. Had there been a green light burning at the time of the collision, or just before the collision, in the "Thielbek's" jigger rigging, I could have seen two green lights which I did not.

Q. Now, in the course of your navigating boats, I would like to ask you whether you have as a pilot taken boats up through the Willamette River, to docks in Portland, Oregon.

Mr. MINOR: This isn't redirect.

Mr. BRISTOL: Yes, this is redirect, because it touches your cross examination. It is merely introductory.

A. What is the question?

Q. I say, did you ever take boats up the Willamette River in the course of your occupation as a pilot, and dock them in the Port of Portland?

A. Yes, sir; have docked vessels at the docks and taken them away from the docks from Portland to Astoria.

Q. All right. Have you, or have you not, come up through the Willamette River bridges, known as the North Bank Bridge, the Broadway Bridge, the Burnside Bridge, the Morrison Bridge, and the Hawthorne Bridge draws?

(Testimony of Michael Nolan.)

A. In navigating—

Q. I say, have you done that? Just tell me whether you have brought vessels up through these draws, or not?

A. I have come through the St. Johns bridge; that is, the North Bank; docked with several tows, in there with a screw towboat, which is not so convenient to handle as a stern wheel towboat.

Q. And have you brought vessels up through any of the other bridges?

A. Never have I been in command of a vessel going above the bridges, above the St. Johns Bridge.

Q. Well, put it this way: Have you been on vessels under tow, where you could observe and see whether they were brought through bridge draws?

A. Yes, sir, have been on vessels.

Q. Was it many times? A few times, or just once or twice?

A. Well, I would say half a dozen times.

Q. All right. Now, I want you to tell us whether, having reference to the Willamette River draws, that is the North Bank Bridge draw, the Burnside Street Bridge draw, the Morrison Street Bridge draw, directing your attention for a moment to the way the pier is built, and the draw has to swing, the distance between the pier in the middle of the river, and the edge of the bridge which is open, taking that as a measurable distance in your mind—you understand?

A. Yes, sir.

(Testimony of Michael Nolan.)

Q. Tell us whether or not the distance which your "Thode Fagelund" had from the dredge "Chinook," was approximately that distance, or thereabouts, in your measurement of distances which you approximated for Mr. Minor and Mr. Wood, as the distance the "Thode Fagelund" was away from the dredge?

A. Yes, sir; I believe the distance of the "Thode Fagelund" from the dredge would be about the distance of the average bridge in Portland. That is, take the average, from St. Johns bridge to the upper.

Q. And that would be your estimate of the distance at the time you gave the first and second signals, would it? As you marked it on that plat there yesterday, on that blue print? In other words, what I want to get at, do you want to change that relative distance where you measured distances from where you stood, on top of the pilot house, of the "Thode Fagelund," as being about 350 feet, and the distance in between as approximately 100 or 125 feet, as I understand it?

A. You will have to show me the plat you refer to.

COURT: That is the distance between the dredge and the "Fagelund" at the time of the collision—is that what you refer to?

A. Yes—

Mr. BRISTOL: Well, I was getting at the time when he gave the first call for the courses that he

(Testimony of Michael Nolan.)

wanted the other boat to take, on this question of room, your Honor.

Q. Now, you marked on this plat I am talking about, Nolan's Exhibit 4, the point here as the point where you stood on the pilot house when the "Thielbek" was first seen, and you said, as I understand it, that that distance from where you stood, you estimated to the stern of the dredge, was then about 350 feet, and when Mr. Wood cross examined you, you thought the bow, as I remember it, of your "Thode" at that time was about 100 or 125 feet off the stern of the dredge, about the time you blew the first two whistles, and were coming down, and afterwards you got down a little further. What I asked you was this: Whether your estimate of that distance was equivalent to the distance in the draws of these bridges here?

A. Yes, sir; I would take this—

Q. All right. Now, what I asked you was this: Do you want to change the estimated distances in any way, or is it the way you want them? You still think it is the same way that you put it? I am not intimating by that that you should change it, or anything of the kind, but is there anything about that distance now that is different from what it was when you first testified?

A. Not as I remember. I am perfectly willing to leave that as it is.

Q. Now, Mr. Minor took you down the river from—he started you here at the O. R. & N. dock,

(Testimony of Michael Nolan.)

and he took you down here by 50 feet and 200 feet, and 75 feet, and on down here to this Elmore cannery light which you have marked on this Exhibit 4. I simply, in order to cover the record, want to ask you this: That if your estimate of the distance covered all together, should be less than or exceed the distance actually shown in the scale on this plat, you mean the way you have marked these conditions here, that the scale on the plat shall control in distance, do you?

A. The plat is to control in distance. My opinion, or the answers to the question were only given as an estimate.

Q. When you told Mr. Minor that there was a straight view in the river, from where the "Thode" anchored to the Elmore light, you meant did you, or did you not, that if the straight edge were laid upon the plat or chart, Nolan's Exhibit 4, that it would illustrate the line from the Elmore light to the "Thode Fagelund's" anchorage. Is that correct?

A. Repeat that question.

Q. (Read).

A. Yes.

Q. As a matter of fact, when pilots steer down this river or up this river, having regard to objects on shore and buoys and one thing and another, the line lies somewhere from Gilman's flash light buoy No. 2 down to the edge of the bight at Buoy No. 9, doesn't it?

(Testimony of Michael Nolan.)

A. No, you would head partly for Elmore dock light.

Q. You would?

A. Yes, sir.

Q. Now, Captain, about this green light again—Mr. Minor said there was evidence here by the crew of the "Thielbek," as I understood him that the cord was taken from the "Ocklahama" to the "Thielbek's" starboard box.

Mr. MINOR: I didn't say that.

Q. Didn't you say box?

Mr. MINOR: No, just said "Thielbek."

Q. Didn't fix the position. If the crew of the "Thielbek," if it should be their evidence that this cord was taken from the socket in the starboard screen box of the "Ocklahama" to the part of the boat housing the starboard light of the "Thielbek," can you tell me how long that cord would have to be?

A. Possibly about 300 feet?

Q. 300 feet?

A. Yes, sir.

Q. Your familiarity with the "Ocklahama," does it or does it not, go far enough to say whether there is a cord on the "Ocklahama" that is 300 feet long for that purpose?

A. Never has been on there to my knowledge; never heard about it until this particular question.

Q. So it is quite probable, is it not, that is, in your opinion, that Captain Turppa is probably more

(Testimony of Michael Nolan.)

right than the crew with respect to where that cord was taken.

Mr. MINOR: I don't think that is proper.

Mr. BRISTOL: I am asking his opinion as to facts you drew out.

Mr. MINOR: I don't think it is evidence to ask whether some evidence is more probable than someone else's.

Mr. BRISTOL: I thought it about as good evidence as to say if you say two and two are four—"do I understand you to say two and two are four, and does it make four," mathematically? However, I will waive that question.

RE-CROSS EXAMINATION BY PORT OF
PORTLAND.

Questions by Mr. Minor:

Q. Just one more question, because I think the witness didn't understand, and I think it would be unfair for that statement of the witness to go to the Court. I understood you to say, Captain, that you thought what the "Ocklahama" and "Thielbek" should have done was, when they saw you, to blow one whistle and pass to port. Is that correct?

A. What I thought they ought to have done?

Q. Yes, is that what you said? I understood you to say that.

Mr. SNOW: No, he didn't say that, Mr. Minor.

Mr. MINOR: Yes, he did.

COURT: He said, if I remember the testimony, that if the "Thielbek" and "Ocklahama" had been

(Testimony of Michael Nolan.)

moving at slow speed, and had blown one whistle, that they could have passed safely.

Mr. BRISTOL: That is what he said.

Q. As I understood you to say, when you were asked what they could have done, you said what they could have done, or should have done, was to have blown one whistle, assumed the burden of passing, and have passed to port. Is that correct? Is that what you thought should have been done?

Mr. BRISTOL: No, he said—

Mr. MINOR: Wait a moment. I want to see. I merely want to have it right, because I thought the Captain misunderstood Mr. Bristol's testimony.

A. Put that question again.

Q. I understood you to say—is it a fact—do you think the "Thielbek" and "Ocklahoma"—the "Ocklahoma" saw you as soon as you saw the "Ocklahoma," we assume. Do you think the proper course for that vessel was to have blown one whistle, and taken the burden of passing, and passed to port?

A. Proper course, yes, sir.

Mr. BRISTOL: Pass to port? You mean starboard, Mr. Minor.

Mr. MINOR: No, I don't mean anything of the kind. I said one whistle and pass to port.

Mr. BRISTOL: Passed him to port.

Mr. MINOR: I said pass to port.

Mr. BRISTOL: All right, as long as we are not confused again.

Q. Captain, when you said that, you overlook

(Testimony of Michael Nolan.)

that you have said in your testimony all the time, that the only light on the "Thode Fagelund" which showed to the "Ocklahama" and "Thieilbek," were your green lights. If that were the case, they couldn't, without disregarding the rules, have blown one whistle, and undertaken to pass to port, could they?

A. Yes, sir. Let me explain that position. The Pilot Rule—I am very sorry I didn't bring it down—this is the only day I didn't bring it, and today it dropped out of my coat unexpectedly. The Pilot Rules define the vessel that has the other vessel on her port side, shall hold her course, and speed, and the vessel that has the other vessel on her starboard side, shall slow down, and stop, and back if necessary, and pass astern of the other vessel.

Mr. BRISTOL: Unless changed by signal.

Mr. MINOR: Wait a minute. You are not testifying, Mr. Bristol.

Mr. BRISTOL: I know I am not, Mr. Minor.

Q. Now, I want to know this: If the "Thielbek" and "Ocklahama" could only see your green light, which I understand was a fact?

A. Yes, sir.

Q. It was proper navigation for them to have given a passing signal to pass port to port?

A. One whistle, yes, sir.

Q. Pass port to port?

A. Yes, sir, in other words—

Q. I don't care for any explanation. I just

(Testimony of Michael Nolan.)

wanted to know whether you intended to say that. If you did, it is all right.

A. Yes, sir.

Q. I want you to give your statement correctly, because I think you are mistaken.

Mr. BRISTOL: I think he is right.

Mr. MINOR: It may be. I think that you are mistaken.

Mr. BRISTOL: We will argue that.

Witness excused.

Mr. WOOD: In view of the Captain's testimony and that of Hansen, I want to amend my libel, in alleging the "Thode Fagelund" was negligent in lifting her anchor, when she could, by waiting a few minutes, have cleared the "Chinook."

Mr. BRISTOL: We will resist that upon that ground that it was an afterthought, and on the ground they knew the position of the "Thode" in any event the night before.

Mr. WOOD: I intend to ask leave to amend in another particular, and will take it up after lunch.

Adjourned until 2 p. m.

Portland, Oregon, Friday, Sept. 11, 1914, 2 P. M.

Mr. WOOD: Your Honor, as I said before adjournment, I wish to amend my libel. Do you wish to hear that now? I suppose I ought to make a statement at the close of the testimony.

COURT: You have given notice of it. That is all that is necessary for the present.

CAPTAIN ARCHIE L. PEASE, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Captain Pease, you are known as Captain Archie Pease, the Columbia River Pilot, and Willamette River Pilot, that has been here for years? A member of our Port of Portland, are you not?

A. Yes, sir.

Q. And a member of The Port of Portland yet?

A. Yes, sir.

Q. And master mariner, and pilot of the Willamette and Columbia Rivers?

A. Yes, sir.

Q. Just so we get it right, for I think I got it wrong in my pleadings, your son, who was pilot on the "Ocklahama," his name is Roy Pease, or is it Archie?

A. It is Archie Leroy.

Q. Well, it is all right to call him Archie Pease, Jr., is it?

A. I suppose so.

Q. Now, I show you a map, and I say to Court and counsel what I call Captain Pease for is this. I show you a map of the port of Portland, and ask you to look at it, and tell me if you can identify that as a true and correct map of Portland harbor, say from Ross Island down to St. Johns?

(Testimony of Captain Archie L. Pease.)

A. I don't remember ever seeing this map before.

Q. Well, I got it from your office. I thought you could identify it, and I would like to know if you can?

A. No, sir. I don't think I ever saw this before.

Q. Well, Captain, can you state whether or not it truly represents—I want to be frank with you—the point of it is, I want to know whether this truly delineates the bridges and draws in the Willamette River? I call your attention to the Willamette River Bridges, the North Bank Bridge, to what is said to be here the Broadway Bridge, the Railroad Bridge, the Burnside Street Bridge, the Morrison Street Bridge, and the Hawthorne Bridge.

Mr. MINOR: What is the purpose of it? What has the Portland harbor to do with this case?

Mr. BRISTOL: The Portland harbor has a great deal to do with the case. These are the conditions and you so state in your opening statements, that there was no sufficient room to navigate the "Ocklahama" and the bark "Thielbek," between the dredge "Chinook," and the steamer "Thode Fagelund," at the time, or in fact, you went so far as to say, at any time during the period this case and collision is about. I propose to identify this map by this witness, and to offer to show thereby, as delineated on the official map of The Port of Portland, that the draws, the draw distances in the City of Portland are approximately coincident with, and of the same distance where they navigate such tugs

(Testimony of Captain Archie L. Pease.)

and ships in general, the maritime practice in these waters, all the time, in distances approximately 100 to 125 to 150 feet, and it bears upon the general question of navigation, I suppose at the time, and under the condition of the lights, and anything else.

Mr. MINOR: We insist it is incompetent. The witness can testify regarding the condition disclosed at Astoria.

COURT: The Captain can testify as to the width of these draws and openings. I suppose that is all he wants.

Mr. BRISTOL: That is all I want, your Honor.

COURT: He can testify to that, yes.

Mr. BRISTOL: All I want him to do, if he can, is to identify the map, tell me if it truly represents the bridges and look at the distances, and if it is right as to the width of these draws, is all I want to know.

Mr. MINOR: As to the distances, if you really want to know, I think the proper way to do is to get a statement from someone who knows the width of the draws, and put it in evidence.

COURT: Perhaps the Captain knows.

Mr. MINOR: If he does, I would rather do that than put in the map.

Mr. BRISTOL: I would rather have the map in.

Q. Captain, you navigate this river yourself, the Willamette River, down to the Columbia, and

(Testimony of Captain Archie L. Pease.)

through the Columbia, to the Columbia River bar, and have been doing it all your life, haven't you?

A. From Portland to Astoria.

Q. And you have been going backward and forward through these bridges for years, haven't you?

A. Yes, sir.

Q. Now, you please tell me whether this map truly delineates the draws in these bridges, and the distances of them?

Mr. MINOR: I insist upon the objection.

Mr. WOOD: I join with him.

COURT: Put it in.

A. I cannot identify the map, because I never saw that map before. Of course, I don't see where it gives the width of it.

Q. I will show you that. I call your attention, for illustration, in the first place, starting up the river now, and we will take the new Hawthorne bridge, just below Inman & Poulsen dock; there is the Railway, Light & Power Company place, delineated on the east bank of the river, and over here it says Madison Street. Now, it says, 250-foot lift span. Now, it shows on here the distance between this point and that point, and I want you to tell me whether—what you know of the facts, and if the river way is truly delineated on that map?

A. Well, sir, I don't know. I never thought that bridge was 250 feet wide.

Q. Never thought it was 250 feet wide? Now, here is a bridge, it shows at the foot of Morrison

(Testimony of Captain Archie L. Pease.)

Street, and it shows one side 100 feet, that is on the near shore side. On the west side, and on the other side, it shows 164 feet. Is that truly delineated, as the Morrison Street bridge draw spans in the Willamette River?

A. I couldn't say as to that.

Q. You couldn't say as to that?

A. No, sir.

Q. Well, how about the Burnside Street bridge? The span here is shown to be 150 feet on the west side, the opening, I mean; and between the piers and the other end of the bridge, shown to be 160 feet. How about that bridge? Is that truly delineated?

A. I couldn't say.

Q. Well, Captain, is it just because you are not sure about the map, or because you have no knowledge of these span distances?

A. I really don't know what the distance is, actual distance is, between these bridges.

Q. Between these bridge spans?

A. Between these bridge spans. I have operated between there with vessels, but I couldn't actually say.

Q. You have operated through these bridges with towboats like the "Ocklahama"?

A. I have operated through them with towboats like the "Ocklahama," but I couldn't actually say the actual difference in the clearance between these piers, because I never measured.

(Testimony of Captain Archie L. Pease.)

Q. And you couldn't testify from this map, and can't identify that, although a Port of Portland map?

A. I thought the Morrison Street bridge equally distant on each side of the pier; never knew until I saw it today from one side to the other, although I have operated through there maybe 100 times.

Mr. BRISTOL: I will say for the benefit of counsel, I didn't want to embarrass Captain Pease. I thought he knew. I was told this was a port of Portland map by the man who prepared it.

A. It may be, but I question whether that map is right or not.

Q. You couldn't tell me just offhand, could you, any distance of these pier draws, then, in the Willamette River?

A. No, I am not actually familiar with that.

Q. But you know, as a matter of fact, that the "Ocklahama" has gone through them many times in her operations, as a Port of Portland tug, with ships?

A. Oh, yes, yes.

Witness excused.

Mr. BRISTOL: I have another living witness, but I hesitate to offer him at this time. I have some other testimony, and in that connection, I now offer the log of the "Thielbek."

Mr. WOOD: That is already in the testimony. I said I would offer the whole thing.

Mr. BRISTOL: I know you will, but I would

like to put this in as a part of my case. Don't think this is any insinuation against you; nothing personal about it. I want you to put your case in your way, and I would like to put this in this way. This log is identified in the sworn testimony of Captain Bergmann of the "Thielbek," as taken before Mr. C. E. S. Wood for libelants, and I don't think Mr. Erskine Wood was there, but Mr. Minor and all of us stipulated it should go in as a part of the testimony.

Mr. MINOR: Is that the original log or the translation?

Mr. BRISTOL: In German. I will read the facts in connection with it. The colloquy between Court and counsel was whether this was a true log, and it finally got down to the point where we got a translation of the log book. The captain being excused from the witness stand, and the third officer made a translation of it. Now, this is what I offer (reading from testimony of Third Officer Oehring): "Q. What is the date of the entry? A. 23rd of August." Now, this is what I offer: "On the evening of the same day, about 11 p. m., the tug 'Ocklahama' came alongside to tow the 'Thielbek' to Portland. As we didn't have steam up to heave our anchor, we decided to stay until 2:30 p. m. of the following day."

Mr. MINOR: You only offer that against the "Thielbek"?

Mr. BRISTOL: This is the log of the "Thielbek."

Mr. MINOR: I say you offer it against the "Thielbek," and not against The Port of Portland.

Mr. BRISTOL: Offer against the "Thielbek," and offer this over against The Port of Portland. I understand Mr. Minor to claim that the only green light, or the only lights—and I told your Honor frankly there would be a controversy about those lights—that the only lights that they had on the "Thielbek" was the light Captain Turppa said was carried across from this electric cord. I told your Honor in my opening statement that we would show other lights. Now, so far as that controversy hinges with Mr. Minor's statement and my statement, it is offered against The Port of Portland on that subject, because Mr. Minor claims—I don't want to argue the matter, but I want to show your Honor it is material against The Port of Portland—Mr. Minor has claimed there wasn't any such light to be seen, and our witness Nolan necessarily mistaken. Now, as part of my case, I am offering independent testimony to show as against The Port of Portland and the "Thielbek," that they did have other light. (Continues reading.) "On the evening of the same day, about 11 p. m., the 'Ocklahama' came alongside to tow the 'Thielbek' to Portland. As we didn't have steam up to heave our anchor, we decided to stay until 2:30 p. m. of the following day, and to have everything ready by that time to continue the journey in the tow of the 'Ocklahama.' Everything was done according to this. It was clear weather and bright moonshine, and the day

was just breaking, when, shortly after 3 o'clock, we continued our voyage. The chief officer, W. Eggers, was on watch. The sailor Gerdes was on the lookout and the sailor Thygensin on the wheel. By order of the captain of the tugboat, the wheel was put 'midships. The rest of the port watch was occupied in clearing the deck. The side lights were burning according to regulation."

Now, if counsel desire, I will read the rest of it, but that is the part of the log I want. The log goes on and tells what happens. I offer so much of their log as shows that entry in their log, that the lights on the side of the "Thielbek" were burning.

Mr. WOOD: I desire to comment there, and say it doesn't say the side lights on the "Thielbek." You said just now lights on the "Thielbek." It doesn't say that.

Mr. BRISTOL: This is the log of the "Thielbek." They wouldn't be writing about what was on the "Ocklahama."

Mr. WOOD: Certainly, the two were acting as one vessel.

Mr. BRISTOL: He would be writing up the log of the "Ocklahama" on the "Thielbek"?

Mr. WOOD: I didn't say so.

Mr. BRISTOL: I think you must say so to get around this proposition. This is the log of the "Thielbek," not the log of the "Ocklahama." I might add, if you wish me to, this says that the side lights are burning according to regulation. (Reading) "After we had been going for about fifteen minutes,

a steamer was sighted lying across the channel of the Columbia, to an anchor. This cross line of this steamer was evidently caused by the current of the stream at that time. Right after that there was sighted another steamer, which showed her green light. His green light was forward of us, and he gave two blasts with his whistle, which were heard distinctly by everyone on deck."

Now, in that connection I offer also, as a part of my case, this much of the testimony of the man Oehring, who was afterwards called as an independent witness, and under cross-examination by Mr. Minor, I offer this much of his testimony as a part of my case: "Questions by Mr. Minor: Q. I don't understand these lights. When you made fast to the 'Ocklahama'— A. At about 11 o'clock. Q. (Continued) Her starboard side was next to your ship. Was her green light burning? A. Yes, sir. Q. Her green light was burning too? A. Yes, when she made fast. Q. After she made fast, was her green light burning? A. No. Q. Was her green light burning from that time up to the time of the collision? A. No, it couldn't burn; the cable went from that light over onto our ship. Q. I understand, Mr. Oehring, that the cable was carried from the place where the 'Ocklahama' usually has her green light, over to the 'Thielbek,' and the light which she usually has as her green light, was put on the starboard side of the 'Thielbek.' A. Not her light, but the cable went out from that place where the light of the 'Ocklahama' is fastened."

Now, in that same connection, I offer the testimony of Gerhart Gerdes.

Mr. MINOR: Won't you read that a little further down? You only offered part.

Mr. BRISTOL: Yes, I can read further, if you wish me to.

Mr. MINOR: I say, do you want to stop the offer at that point?

Mr. BRISTOL: The reason I stopped there was because I didn't want to get my contention mixed with your contention, but if you want me to read the rest of it I will.

Mr. MINOR: I think it is much fairer to the witness and the Court, if you read a little further on that.

Mr. BRISTOL: It seems that we unfortunately get into this position. The interpretation that counsel puts upon the testimony is one thing, and what the witness says is another. Now, Mr. Minor's reason for asking me to read is because, in the ingenuity of his examination, he goes along as follows, after the part I read: "Q. Went out from the screen and went across to the 'Thielbek,' and then what about the light that was there? A. The light was an electric light from the 'Ocklahama.'"

Now, that doesn't distinguish the other answer a bit. (Continues reading.) "Q. Was it the same light that was in that screen? A. No. Q. What became of that light? A. I don't know. The watchman took it and put it in the wheel house there."

I don't know what that has to do with my part.

Mr. MINOR: Read a little further.

Mr. BRISTOL: Well, I will let you do that. Now, this man Gerdes, I offer this testimony, where, as a witness for the libelant, that is the "Thielbek," he testifies as follows: "Q. Are you a mariner? Are you a seaman? A. Yes, sir. Q. How long have you been following the sea? A. Two and a half years. Q. How long have you been with the 'Thielbek'? A. Nine months. Q. Were you the lookout this night of the collision, the 24th of August? A. Yes, sir. Q. When did you come on duty as lookout? A. When we got the anchor up. Q. The 'Ocklahama' was towing you? A. Yes. Q. Where was your station as lookout? A. Right forward on the forecastle-head of the 'Thielbek.' Q. You were there from the time you got under way? A. Yes. Q. Are you accustomed to judging speed? Have you any idea how fast you were going? A. No. Q. Did you know anything about the course that was being steered, whether you swung to port or not? A. Yes. Q. What was the fact about that? A. Our ship was swinging around a little to port. Q. How far off the Oregon shore were you going up—the Astoria shore? A. I can't say. Q. Were you fairly near to it? Could you see the lights on the Astoria shore? A. Yes. Q. Would you say you were far off, or not very far off? A. Close to it. Q. When did you see any lights in the river, indicating vessels? A. About ten minutes. Q. After you had been going? What lights did you see? A. Two white lights. Q. Lying on your

course, in relation to your course, what way were they lying, how were they lying as to your course? Port, starboard, or dead ahead? A. About one point to port. Q. What lights did they turn out to be afterwards? Do you know what vessel they were on? A. Yes. Q. Was it the dredge 'Chinook'? A. The 'Chinook,' yes. Q. What other lights did you afterwards see? You saw some lights afterwards, didn't you, on the 'Fagelund'? A. No. Q. You didn't see the 'Fagelund'? A. I saw the 'Fagelund,' but I didn't see its lights. Q. Why not? You were the lookout. A. I didn't take any notice of them. Q. Didn't see the mast-head lights, or green light there? A. No, I can't say. Q. Did you hear any whistles? What whistles were they? A. Two short whistles. Q. Did the 'Ocklahama' answer them? A. No. Q. Didn't answer them? A. No. Q. Did she do anything about stopping her engines? A. I don't know. I couldn't say. Q. Did she change her course any? A. She was swinging a little harder to port. Q. How long after that did you hear any other whistles? A. Two or three minutes. Q. What whistles did you hear? A. Two short whistles again. Q. From the 'Fagelund'? A. Yes, sir. Q. Did the 'Ocklahama' answer them? A. Yes. Q. How did she answer them? A. With two short whistles. Q. Then what did she do? A. I don't know. Q. Swing any more to port? A. Yes. Q. How long after the two short whistles from the 'Ocklahama' before the collision? About what time? A. It wasn't long; a

couple of seconds. Q. It must have been longer than a couple of seconds? A. Not longer. Q. Did you hear the danger signal from the 'Fagelund,' two quick short blasts of the whistle? A. Yes, sir. Q. How long before the collision? A. Just before the collision. Q. Did you hear the anchor go down? A. Yes. Q. How was that in relation to the collision? A. She blew four short whistles and the anchor went down all at once, together, and ran into our ship. Q. Where were you at the time of the collision? Did you keep standing on the fore-castle-head? A. We were close together and they ran into us and then I went back. Q. To get out of the way? A. Yes, sir. Q. Did you notice where the 'Ocklahama' ran to when she broke loose? A. Yes. Q. How far did she run? A. Amidships. Q. Amidships of the 'Thielbek'? A. Yes. Q. What part of her was amidships? A. This is the 'Thielbek,' swinging like that (indicating). (Mr. Wood: Witness indicates the 'Ocklahama' swinging bow on at an angle of about fifty degrees to the 'Thielbek.') Q. Did you hear any conversation between the people on the 'Thielbek' and the people on the 'Ocklahama'? Hear any talk? Hear anybody say anything? A. Yes. Q. What was said? A. They call and ask if we made any water. Q. The 'Ocklahama' called to the 'Thielbek'? A. Yes. Q. Did you hear any talk between the 'Ocklahama' and the 'Fagelund'? A. No. Q. Where did you go after the collision? A. I stayed on the fore-castle-head."

CROSS-EXAMINATION.

(Read by Mr. Bristol.)

By Mr. Bristol:

Q. How far off was the bow of the "Ocklahama" from the "Thielbek"?

Mr. WOOD: Wait a minute.

By Mr. Wood:

Q. Then you notice the dredge "Chinook"?

A. Yes.

Q. How far off from the "Thielbek" and the "Fagelund" lying together, was the "Chinook" after the collision?

A. About half a ship's length.

Q. How far off from the Oregon shore at this time, the Astoria dock, was it? Farther away?

A. Yes. I can't say exactly.

Q. It was just getting daylight, still dark?

A. Yes, sir.

Questions by Mr. Bristol:

Q. How far off was the bow of the "Ocklahama" from the "Thielbek," when you saw her coming up that way?

A. Forty or fifty feet.

Q. Did you see the first mate? Do you know this man here?

A. Yes.

Q. Where was he when you were on the fore-castle-head?

A. He was forward too.

Q. Right by you?

A. Yes.

Q. Right alongside of you?

A. I was first on the forecastle-head.

Q. Where did you stand on the forecastle-head?

A. Forward.

Q. Ahead of the winch? Forward of the anchor winch?

A. Yes, after the jib-boom.

Q. On which side of the vessel?

A. The starboard side.

Q. Then the winch would be between you and the "Ocklahama"?

A. There is no winch on the forecastle-head.

Q. No winch up there? It is underneath?

A. Yes, sir.

Q. Now, when you go down in the fore peak of your vessel, do you go down underneath from where you were standing, or under your deck?

A. I didn't go down there.

Q. Who did?

A. The first mate.

Q. Did you see him go down there?

A. I heard what the captain told him, to go down and see if we were making any water.

Q. How long was that after the "Ocklahama" came up there?

A. Immediately; can't say exactly.

Q. At the time the "Ocklahama" got in that position where you saw her, was it before the mate went down into the forecastle-head, or was it after that, when he came back?

A. It was after that.

Q. After he came back?

A. Yes.

Q. How many times have you been lookout on the forecastle-head of the "Thielbek"?

A. Every night.

Q. What is it your duty to do as a lookout?

A. Look out for lights.

Q. You were looking out pretty sharp for lights that night, weren't you?

A. Yes.

Q. Coming up the river from your anchorage, state whether or not you saw a red light on your starboard bow, any time after you left your anchorage?

A. I didn't see any lights.

Q. I call your attention, as to whether or not you saw a red light on your starboard bow any time after you left your anchorage and prior to the collision? Do you understand me?

A. No.

Q. After the "Thielbek" left her anchorage, when the tug first took you up, and coming along up the river from that place, do you understand?

A. Yes.

Q. Before you saw any other lights at all, except the lights of Astoria, did you see any red light on your starboard hand, any place along there?

A. No.

Q. Was there any other lookout on that vessel with you? You were the only man?

A. No.

Q. You saw no red light on your starboard hand as you came up the river?

A. No.

Q. If I told you there was a buoy light out there that showed red all the time, would you believe it?

A. Yes.

Q. Although you had never seen it?

A. Yes.

Q. These two lights you first saw, what kind of lights were they?

A. White lights.

Q. Where did you see them? On the Astoria side?

A. No, the other side.

Q. How far on the other side?

A. I don't know. They were on the port side.

Q. Now, let me understand it. Suppose there is the fore-castle-deck of the "Thielbek" (indicating); now, her boom extends pretty well out up there, doesn't it?

A. Yes.

Q. Where were you standing, up there, and out at the jib-boom?

A. Right in there (indicating).

Q. How could you see? Your head doesn't come up above that jib-boom, does it? What I want to know is the way this is set on your ship to see whether you looked over this thing, or above it. Is it the way I illustrated it, and you stood there?

A. Yes, I stood there.

Q. Is this jib-boom down there at the prow of the ship, so you have a view over it?

A. No, underneath, on the under side.

Q. So you had a clear view to the port side from where you stood on the starboard bow?

A. Yes, sir.

Q. The first thing you saw two white lights?

A. Yes, sir.

Q. How long after you left anchorage?

A. Ten minutes.

Q. You had run ten minutes before you saw the white light?

A. Yes.

Q. Sure of that?

A. Yes, sir.

Q. How fast had you been going at that time?

A. I don't know. I didn't take any notice.

Q. You know how fast you came with that ship of yours, don't you?

A. I didn't notice.

Q. Didn't you get any bearing lights on the shore?

A. Yes.

Q. You went as fast up the river as you would if your ship was carrying full sail at sea?

A. Yes.

Q. You ran for ten minutes at that speed before you saw white lights?

A. Yes.

Q. The white lights were how far off your port bow when you first saw them?

A. I don't know.

Q. How did they appear? A point or a point and a half, or two points?

A. Two points.

Q. Off your port bow, when you first saw them?

A. One or two points.

Q. Was it one or two?

A. I don't know exactly.

Q. How many times have you been lookout?

A. Every night.

Q. How long?

A. For nine months.

Q. Lookout for nine months?

A. Yes.

Q. Did you ever have an accident before?

A. No.

Q. When you saw those two lights—now, see if you can't remember whether it was a point, a point and a half, or two points off your port bow?

A. One point.

Q. Was it as much as one point? Do you know how much one point is?

A. Yes.

Q. How much?

A. Just like that (indicating).

Q. Do you know in degrees and minutes? Tell me what you think it is, or as near as you can. How much is a point, in degrees and minutes? How many points to your compass?

A. 360.

Q. How many points to your compass?

A. Wait a minute.

Q. Take your time. You must know. I don't want to confuse you. How many points has a sailor's compass got? Great scot, you can box the compass, can't you?

A. Yes, thirty-two.

Q. If there are thirty-two points to the compass, how much is a point off the starboard bow? Was it one point of your compass, or a certain number of minutes and degrees? How much would you have to swing to your ship's head to bring it up to where you saw that light?

A. Just that way (indicating). Eight points; right square.

Q. Is that where the white lights were, off your port bow?

A. No.

Q. How much of that eight points now, was it?

A. It was going that way (indicating). About three points.

Q. When you first saw the white lights you mentioned, you think they were three points off your port bow?

A. That must be about right.

Q. And you ran about ten minutes at that time?

A. Yes.

Q. Now, then, after you had run that far, and ran ten minutes, and saw these white lights—you know what a running light is, don't you? A running light on a vessel? Do you know what a run-

ning light is? Did you notice whether these white lights you saw were upon the land, or upon a vessel?

A. Upon a vessel.

Q. What kind of a vessel?

A. Steamer.

Q. Did she have any other lights on her?

A. No.

Q. She had no other light on her?

A. No.

Q. Didn't have a green light?

A. No.

Q. Didn't have a red light?

A. No. I couldn't see the other side; only saw one side.

Q. That is the only vessel you saw on this whole trip?

A. Yes, sir.

Q. And the vessel you saw only had two white lights on it, and didn't have any green lights or red light?

A. I didn't see them.

Q. You are sure of that, sure you didn't see them?

A. Yes, sir.

Q. When you first saw it, off your port bow, about three points, from where you stood, on the starboard side of the ship, did you report to the pilot of the "Ocklahama" what you saw ahead?

A. Yes, sir, to the first mate.

Q. Where was the first mate?

A. Aft.

Q. On your own ship?

A. Yes, sir.

Q. You didn't report to the pilot on the "Ocklahama"?

A. I first reported to the mate. I reported to everybody after.

Q. What did you say when you saw these two white lights, when they came into view? Did you speak in German or English?

A. I didn't yell out for them lights.

Q. Why not?

A. It was clear.

Q. Could you see everything?

A. Yes.

Q. Yet you didn't see any red light, or any green light?

A. No.

Q. Although you were lookout on the "Thielbek," you didn't see any red light on your right hand or starboard side, as you were coming up the river, but the lights on the shore, you could see those?

A. Yes.

Q. And there were no other lights you saw, except the two white ones in the river?

A. Yes, sir.

Q. What report did you make to the first mate about those lights?

A. I didn't report them to him.

Q. Did you report to the pilot up in the pilot house of the tug?

A. No.

Q. What were you supposed to be doing up there as a lookout?

A. As I said, it was clear, and there was no use to call out.

Q. You take it for granted, when you are lookout, if you see lights, to pass them up to the other fellow to see, and if he doesn't, it is all right, anyhow?

A. I don't understand.

Q. Do you think that is your duty as a lookout?

A. I don't understand.

Q. What do you understand to be your duties as a lookout? You have been lookout on the night watch on the "Thielbek" nine months?

A. Yes.

Q. Who taught you your duties as a lookout? Who taught you what to do as a lookout?

A. The mate.

Q. Which mate?

A. The first mate.

Q. Mr. Eggers?

A. He told me.

Q. When you first went on the "Thielbek," when the captain first hired you, you shipped as an able seaman, didn't you?

A. Yes.

Q. On the "Thielbek"?

A. Yes.

Q. From what port?

A. Montevideo.

Q. And you signed articles as an able seaman?

A. Yes.

Q. How long have you been to sea?

A. Two and a half years.

Q. What ship before this?

A. A steamer.

Q. Did you ever act as lookout on that steamer?

A. Yes, on the sailing ship.

Q. On a sailing ship before that?

A. Yes.

Q. Ever act as lookout?

A. Yes.

Q. Now, then, what are the duties of a lookout?

What do they teach you to do?

A. Look out for the lights.

Q. After you see the lights, then what do you do?

A. Call out.

Q. Didn't do it in this case, did you?

A. No.

Q. That is all.

QUESTIONS BY MR. WOOD:

Q. What orders did you get from the third officer?

A. He told me to keep a good lookout up at the forecandle end.

Q. How do you explain that you didn't see the lights on the "Fagelund"?

A. I am not sure. I cannot say. I might have seen them, and don't remember.

Q. Why didn't you sing out when you saw the lights, because they were clear?

A. I saw the "Fagelund" was coming up, and then I sung out.

Q. You sang out when you saw the "Fagelund"?

A. Yes.

Q. But you say you didn't see the "Fagelund"?

A. First I saw the "Chinook," and then the "Fagelund" came along.

Q. But you say you didn't see the "Fagelund"? Did you see the "Fagelund" at all before you hit her?

A. No, I couldn't see her at all; the "Chinook" was lying across the river, and she came this side down the river.

Q. You did see the "Fagelund" lights some time that night?

A. Yes, when she came around the 'Chinook.'

COURT: Did he say he didn't see the "Fagelund" at all until the collision?

Mr. BRISTOL: Yes, your Honor. I will read that there. (Continues reading deposition.)

"Q. But you say you didn't see the 'Fagelund'?

A. First I saw the 'Chinook' and then the 'Fagelund' came along.

Q. But you say you didn't see the 'Fagelund'? Did you see the 'Fagelund' at all before you hit her?

A. No, I couldn't see her at all. The 'Chinook' was lying across the river, and she came down this side, down the river.

Q. You did see the 'Fagelund' lights some time that night?

A. Yes, when she came around the 'Chinook.'

Q. When the 'Fagelund' cleared the 'Chinook' you saw her?

A. Yes.

Q. What lights did you see then?

A. I don't know.

Q. When the 'Fagelund' cleared the 'Chinook,' what lights did you see on the 'Fagelund'?

A. I don't know. I can't remember.

Q. Did you sing out then?

A. Yes.

Q. What did you say?

A. I said ship right ahead.

Q. To whom did you say that?

A. To everybody aft.

Q. Did you use German or English?

A. German.

Q. You weren't there by the orders of the 'Ocklahama'? Just there by your own ship's orders?

A. Yes.

Q. I will ask the third officer, what orders did you give him when you placed him on lookout?

A. (Mr. Oehring) I told him to keep a good look out, but not to sing out for lights ashore; just for vesels under way.

Q. You didn't want him reporting the lights on the river bank?

A. (Mr. Oehring) No, I didn't want him to sing out all the lights ashore.

Q. Did he make his report back to you or the first officer?

A. To the chief mate.

Q. I will ask the chief mate, did you get a sing out from him?

A. (Mr. Eggars) I didn't get a sing out from him, and sent the third mate forward to the fore-castle-head to keep a good look out.

Q. He says he sang out when he saw the 'Fagelund' coming around the 'Chinook.'

A. (Mr. Eggars) I didn't hear him.

Mr. WOOD: Mr. Gerdes, you are a German?

A. (Mr. Gerdes) Yes, sir.

Mr. WOOD: And Mr. Eggars, you are a German?

A. (Mr. Eggars) Yes, sir."

The following, your Honor, has to do with another matter. It follows with a stipulation:

COURT: Has it appeared in testimony up to this time the distance from where the "Thielbek" was anchored that morning, to the point of collision?

Mr. BRISTOL: Except the fact, your Honor, it has not yet appeared. The point is fixed upon the blue print plat of Captain Turppa, and may be calculated. Captain Turppa did, I believe, say to one of Mr. Minor's questions, my recollection—I don't want to usurp Mr. Minor's recollection about it, but I think says a little over three miles.

Mr. MINOR: Between two and half and two and three-quarter miles.

Mr. BRISTOL: If you took the scale—all I did was to take the scale; on the scale I would have to disagree with you about your estimate. However, we will argue that when we get to it.

I offer so much of the testimony of the witness Eggars as relates to Exhibit A, in the original record,—I haven't it in the copy, and I guess you haven't it either,—as defines his position where he stood on his ship. Cross-Examination, page 60, which I will read in connection with his examination on page 74. Now, I will show your Honor Exhibit A, signed Eggars, attached to the original deposition of Eggars, of the crew of the "Thielbek," and then I read and offer so much of the testimony of Eggars, to fix where Eggars stood, and to identify that exhibit, as follows (Cross-examination):

"Q. When you came aft, the wheel house of the 'Ocklahama' was on your port quarter, and in what position with reference to the place where you stood, right opposite?

A. About square off from me.

Q. Right opposite where you stood?

A. Yes, about; a little bit more ahead of where I stood.

Q. And did you stand at the very edge of the poop deck?

A. No, on the starboard side of the poop deck.

Q. And to the forward end of it?

A. Yes.

Q. Right up near the rail?

A. Yes.

Q. Right in the corner between the poop deck rail and the bulwark rail, on the starboard quarter?

A. Yes.

Q. You took that stand all the time?

A. Yes, sir.

Q. How many feet back of you is it to the wheel of the 'Thielbek'?

A. About 30 feet.

Q. And you had a hand steering gear on the 'Thielbek'?

A. Yes.

Q. Now, then, if I understand, this is your poop rail, and this is your bulwark rail (indicating with pencils and a knife on the table). If I look athwart your ship, there would be the wheel house of the 'Ocklahoma' to my right hand?

A. Yes, sir.

Q. Not more than an eighth of a point ahead of that line?

A. Yes, sir.

Q. And you didn't change from that position all the time to the happening of the accident?

A. No, I always stood there."

Mr. BRISTOL: Now, then, in connection with that, so as to identify that exhibit, these questions and answers on page 74:

"Questions by Mr. Bristol:

Q. Mr. Minor got you to say something about when you saw the two mast lights of the 'Thode' open up and also saw the green light, that she would

be on a certain course with reference to your course. Now, in order to get at exactly what you mean, I wish you would look at this paper, having on it the word 'Eggars' in red with a cross underneath it, and a diagram of a vessel in red design, to represent the 'Thielbek,' and a lead pencil diagram attached to her port quarter, representing the 'Ocklahama,' and a cross on the 'Thielbek' at the corner of the bulwark rail and poop rail representing where you stood?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Will you take the red pencil and mark on here, this being the direction your ship is pointing, will you mark on there some place, the way that you first saw the 'Thode.' (Witness does so.) The witness draws a picture in red on the plat, and I ask him to initial it with his initials, just to tell afterwards, 'W. Eggars,' and at the place where he puts his initials, I ask him if that represents the position of the 'Thode' at the time you mentioned in your testimony?

A. Yes, sir.

Mr. BRISTOL: I offer this in evidence as explanatory of the witness' testimony in that regard. (Marked 'Thode Fagelund' Exhibit A.)"

Mr. BRISTOL: Now, to show who Eggars was, I refer merely to page 46 of the "Thielbek" record: "WILLIAM EGGARS, the mate, called as a wit-

ness for the libelants, having been duly sworn, testifies as follows:

Questions by Mr. Wood:

Q. What is your name?

A. William Eggars.

Q. You are the first officer of the 'Thielbek'?

A. Yes, sir.

Q. How long have you been going to sea?

A. 23 years."

Mr. BRISTOL: Now, if your Honor will indulge me, I will say this: I have another witness who will also probably be Mr. Minor's witness in a way, and I am making him my witness. He was pilot of the "Ocklahama." It will take some time and I would suggest an adjournment.

Whereupon proceedings herein were adjourned until Tuesday morning, September 14, 1914.

Portland, Oregon, Tuesday, September 14, 1914,
10 A. M.

H. F. CAMPION, a witness called on behalf of the Libelant Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Mr. Campion, what is your business?

A. Superintendent towage and pilotage for The Port of Portland.

Q. Superintendent. As superintendent, does the

(Testimony of H. F. Campion.)

operation of the tugboat "Ocklahama" come within your jurisdiction?

A. Yes.

Q. Who was pilot on the "Ocklahama" in 1913?

A. Well, what part of the year?

Q. Well, I will say in the month of August?

A. A. L. Pease, Jr.

Q. A. L. Pease, Jr. Is that the son of Mr. Pease, a member of The Port of Portland?

A. Yes, sir.

Q. When did A. L. Pease, Jr., become pilot on the "Ocklahama"?

A. He was pilot eight days during April?

Q. Eight days during April, 1913?

A. Eight days during April, 1913, and continuously since.

Q. And continuously from April, 1913, down to now?

A. Yes.

Q. Had he been pilot on the "Ocklahama" previous to April, 1913?

A. Well, not regularly.

Q. Well, what I am trying to get at, Mr. Campion, is whether you know, and if you do know, please state when Archie Leroy Pease, Jr., was first employed by The Port of Portland as pilot on the Columbia and Willamette Rivers, and became employed by The Port of Portland as pilot?

A. I think those eight days in April will cover,

(Testimony of H. F. Campion.)

unless some special trip he might have made. I have no memory just at this time of that.

Q. Why do you say eight in April?

A. I mean Captain McNally, who was former master of the vessel, asked for a lay-off, and Captain Turppa, who was his pilot on the "Ocklahama," succeeded him.

Q. As master?

A. Yes, and Pilot Pease succeeded Captain Turppa.

Q. As pilot?

A. Yes, and then Captain McNally left the service the first of April—the first of May. We made Captain Turppa master, and Pilot Pease pilot, and he has been as such continuously ever since.

Q. You can tell me, please, from the first of May, or from the last eight days in April if that is the better time, 1913, to and including August 23, 1913, how many trips, if any, were made under the direction of Pilot Pease of the steam tug "Ocklahama" through the Willamette River and bridge draws of The Port of Portland with loaded ships?

A. I can't tell you that without referring to the records.

Q. I know, but I asked you to do that, didn't I?

A. You asked me to bring my records.

Q. Have you got your records?

A. Yes.

Q. Can you tell from your records? Can you tell from there without your records?

(Testimony of H. F. Champion.)

A. No, I can't without referring to it, and when he was on watch, they split watches six hours on and six hours off.

Q. Haven't you any record in The Port of Portland, in your office, that shows when Pilot Pease, Jr., operated the "Ocklahama" as a tugboat with a loaded ship, or a ballast ship, or any kind of a ship, I mean in the Willamette River, and to and fro through the draws of the port of Portland?

A. No, not without searching all through the record and finding out what time the actual movement of the vessel occurred, and whether he was on watch at that time.

Q. Don't you require your men to keep log books?

A. Yes.

Q. Are those log books in such a condition that they don't show what the fact is?

A. No, they show the fact; they are kept in the pilot house.

(The original log books not being in the court room, they are sent for.)

Mr. BRISTOL: With your Honor's permission, I may return to this subject, but will go on with another one now.

A. I would like to know, Mr. Champion, whether The Port of Portland published what they call a tariff and rules and regulations, or whatever it may be styled. I think I denominated it a tariff in my subpoena.

(Testimony of H. F. Campion.)

A. Yes, we do.

Q. Can you produce me the tariff or rules, or whatever you call it that were in force in 1913?

A. Yes, this is the tariff that was in force in 1913, excepting the notation made afterwards, changed May 1, 1914.

Q. This paper you show me was issued the 15th of March, 1912?

A. Yes, sir.

Q. Now, were there any amendments to this so that it was substantially different, or just as it is here now, say, in August, 1913?

A. No.

Q. That is to say, what I want to get at now,—just follow me and we won't misunderstand each other—this paper that you have shown me called The Port of Portland Tariff No. 1 was the document that you had in use applying to all towage services in 1913, was it?

A. Yes, sir.

Q. And wasn't any other?

A. No.

Q. That applied in August, 1913?

A. No.

Q. And it would be accurate for us all to take these as the Rules and Regulations of the towage and pilot rates and dry dock rates, and that sort of thing, as shown in this paper, as obtaining of the time when we reached the date of August 23rd and 24th, 1913?

(Testimony of H. F. Champion.)

A. Yes, particularly the pilotage and towage. I don't have so much to do with the dry dock, but I think that is the same tariff.

Q. And if there were any changes?

A. I don't know of any changes, only what I have put here.

Q. In pen and ink?

A. Yes.

Q. And you made those notations when? Lately?

A. I made them since April 30, 1914.

Q. Since April 13, 1914. So there were no changes in this paper up to the time—the date of August, 1913?

A. No.

Mr. BRISTOL: I offer this in evidence.

Mr. MINOR: I object. I don't know what they want to prove by it. I think counsel might state what he wishes to prove. I don't see what that tariff has to do with it.

COURT: Put it in as a part of the record, and refer to it later.

Mr. BRISTOL: Am I required to state what I want it for?

COURT: No.

Tariff marked "Libelant's Wilhelmsen Exhibit 10 (Champion)."

1010 *The "Thielbek" and the "Thode Fagelund"*

(Testimony of H. F. Campion.)

**"THE PORT OF PORTLAND
TARIFF No. 1
TOWAGE AND PILOTAGE AND
DRY DOCK RATES
RULES AND REGULATIONS**

Issued March 15, 1912

Dry Dock Rates Effective February 1, 1912

Towage and Pilotage Rates Effective March 5, 1912

By THE PORT OF PORTLAND COMMISSION

Portland, Oregon, U. S. A.

**TOWAGE AND PILOTAGE RATES BETWEEN
PORTLAND AND THE SEA**

(Rates quoted below are for the round trip, not
one way.)

Vessels	Rate
500 to 700 tons net register	\$375.00
701 to 750 tons net register	412.50
751 to 850 tons net register	412.50
851 to 1000 tons net register	412.50
1001 to 1200 tons net register	450.00
1201 to 1500 tons net register	487.50
1501 to 1800 tons net register	525.00
1801 to 2000 tons net register	562.50
2001 to 2500 tons net register	600.00
2501 to 2750 tons net register	637.50
2751 to 3000 tons net register	637.50
3001 to 3500 tons net register	675.00

Hawser charge, \$15.00 each way.

Vessels towed from the sea to Astoria and return

(Testimony of H. F. Champion.)

only, will be charged 70 per cent of the round-trip rate to Portland as named above.

Oil Barges, loaded, towed from the sea to Astoria only, will be charged 52½ per cent of the round-trip rate from sea to Portland, as named above.

Vessels entering the Columbia River in ballast and departing without cargo, and vessels entering for fuel or supplies for use of the vessel so entering, will be towed from sea to Astoria and return for 25 per cent of the rate charged from sea to Portland and return.

1. Harbor Moves—Vessels towed by The Port of Portland under this Tariff will be moved within the harbor limits of Astoria or Portland at a charge of \$20.00 for each steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

2. Steam Vessels—Steam vessels will be moved within the harbor limits of Astoria or Portland at a charge of \$25.00 for each steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

3. Services of Bar or River Towboats used in clearing or recovering ship's anchors, \$10.00 per hour; minimum charge, \$25.00.

4. Additional Charge—The Port of Portland does not assume any responsibility for the acts or omissions of the Columbia or Willamette River pilots, and any unnecessary detention of towboats caused by fault of the ship of Columbia or Wil-

(Testimony of H. F. Champion.)

lamette River pilots thereof, will be charged for at the rate of \$8.00 per hour for the first 12 hours or less, and \$4.00 per hour for each additional hour, except that as to moves within the harbors at Portland or Astoria, no charge will be made for the first hour of such detention.

5. Agreement—It must be understood that the rates provided herein are for the round trip, except as otherwise provided, and in accepting service from The Port of Portland's boats on entering the river, ships agree to the payment of same and all the conditions of this Tariff.

6. Conditions—To obtain the rates named in this Tariff, vessels are required to use the steamboats of The Port of Portland for all tows and port moves.

7. No reduction from rates provided in this Tariff will be made in case of failure of ship to employ a Port of Portland tug in either direction.

8. Towage Through Draw Bridges at Portland, Oregon—The Port of Portland reserves the right to decline to tow vessels through draw bridges at Portland when deemed unsafe, account unfavorable weather or water conditions.

9. Rates named herein for tows, harbor moves, etc., are subject to The Port of Portland's convenience, and will not apply for emergency service; rates for such service will be subject to special contract.

10. Steam Vessels—The bar pilotage rates on

(Testimony of H. F. Champion.)

steam vessels entering or leaving the Columbia River, when The Port of Portland furnishes a bar pilot, will be two dollars and fifty cents (\$2.50) per foot draft and one (1c) cent per ton net registered tonnage in each direction.

The same rate to apply on sailing vessels not towed by The Port of Portland when their pilot is aboard.

A reduction of twenty-five (25) per cent from regular bar pilotage rates will be allowed on steamers of all regular lines having not less than twelve (12) vessels from Portland annually, said reduction to be given in the form of a refund at the end of twelve (12) months; provided that freight rates on shipments from Portland on such steamer are as low as from other Pacific Coast ports.

11. Application—Rates named herein do not apply on vessels engaged in Coastwise lumber service.

**TOWAGE AND PILOTAGE RATES BETWEEN
PORTLAND AND SEA ON LUMBER
VESSELS.**

(When plying between Pacific Coast Ports.)

Rate in cents
per M feet
of lumber;

From	To	See note	Remarks
Pacific Ocean	Astoria, Knapp- ton and return.	.25c.	No charge for hawser- Skamokawa,

(Testimony of H. F. Champion.)

Westport, Stella,
Mayger and re-
turn40c. No charge for hawser
Prescott, Rainier,
Goble, Kalama, St.
Helens, Columbia
City and return. 45c. No charge for hawser
Portland, St.
Johns, Linnton,
and return50c. No charge for hawser

NOTE—Charges will be computed on the actual number of feet of lumber carried outward bound, subject to minimum charge based on 300 M feet of lumber.

MOVES IN HARBOR AT PORTLAND AND ASTORIA.

1. Sailing vessels towed by The Port of Portland under this Tariff will be moved within the harbor limits of Astoria or Portland at a charge of \$20.00 for each towage steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

2. Steam Vessels—Steam vessels will be moved within the harbor limits of Astoria or Portland at a charge of \$25.00 for each steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

MOVES BEYOND HARBOR AT PORTLAND

3. Lumber steamers, between Portland and Vancouver, \$50.00 for each towage steamer used for each move.

(Testimony of H. F. Champion.)

ADDITIONAL MOVES.

4. When vessels towed under this Tariff are given additional service to complete loading or unloading, charge for additional moves will be as follows:

Lumber Vessels (except Steamers) — Between Portland and Vancouver and points beyond, or between Portland and points above Tongue Point and between intermediate points, a charge will be made subject to conditions existing at the time the service is performed.

5. Services of Bar or River Towboats used in clearing or recovering ship's anchors, \$10.00 per hour; minimum charge, \$25.00.

6. Additional Charge—The Port of Portland does not assume any responsibility for the acts or omissions of the Columbia or Willamette River pilots, and any unnecessary detention of towboats caused by fault of the ship or Columbia or Willamette River pilot thereof, will be charged for at the rate of \$8.00 per hour for the first 12 hours or less, and \$4.00 per hour for each additional hour, except that as to moves within the harbors at Portland or Astoria no charge will be made for the first hour of such detention.

7. Agreement—It must be understood that the rates provided herein are for the round trip, except as otherwise provided, and in accepting service from The Port of Portland's boats on entering the river,

(Testimony of H. F. Campion.)

ships agree to the payment of same and all the conditions of this Tariff.

- 8. Barges, empty\$10.00 per move
- Barges, loaded\$10.00 per move

9. Conditions—To obtain the rates named in this Tariff, vessels are required to use the steamboats of The Port of Portland for all tows and port moves.

10. No reduction from rates provided in this Tariff will be made in case of failure of ship to employ a Port of Portland tug in either direction.

11. Towage Through Draw Bridges at Portland, Oregon—The Port of Portland reserves the right to decline to tow vessels through draw bridges at Portland when deemed unsafe, account unfavorable weather or water conditions.

12. Rates named herein for tows, harbor moves, etc., are subject to The Port of Portland's convenience, and will not apply for emergency service; rates for such service will be subject to special contract.

13. Steam Vessels—The bar pilotage rates on steam vessels entering or leaving the Columbia River, when The Port of Portland furnishes a bar pilot, will be two dollars and fifty cents (\$2.50) per foot draft and one (1c) cent per ton net registered tonnage in each direction.

The same rate to apply on sailing vessels not towed by The Port of Portland when their pilot is aboard.

(Testimony of H. F. Champion.)

A reduction of twenty-five (25) per cent from regular bar pilotage rates will be allowed on steamers of all regular lines having not less than twelve (12) vessels from Portland annually, said reduction to be given in the form of a refund at the end of twelve (12) months; provided, that freight rates on shipments from Portland on such steamers are as low as from other Pacific Coast ports.

14. River Pilotage is not required between Astoria and Portland when vessels are towed.

COLUMBIA RIVER PILOTAGE

(Columbia River Pilots' Association)

Between Astoria and Portland

Steam Vessels—\$2.00 per foot draft and 2 cents per ton (net tonnage) in each direction.

DRY DOCK RATES

Steam Vessels on Gross Tonnage

	First Day	Lay Days
Up to 999 tons	18c per ton	10c per ton
1000 to 3999 tons	16c per ton	10c per ton
4000 tons and over	14c per ton	10c per ton

Sailing Vessels on Net Tonnage

	First Day	Lay Days
Up to 599 tons	18c per ton	10c per ton
600 to 999 tons	16c per ton	10c per ton
1000 tons and over	14c per ton	10c per ton

Sea-Going Barges and Dismantled Ships

Same rate as sailing vessels.

1018 *The "Thielbek" and the "Thode Fagelund"*

(Testimony of H. F. Campion.)

Scows and Barges (Except Sea-Going Barges and
Dismantled Ships)

	First Day	Lay Days
100x25, or equal to 2500 square feet deck area	\$30.00	\$10.00
Over 2500 square feet deck area.	40.00	10.00

1. Minimum charge for any vessel, \$50.00.

2. Docking charges include use of dock for twenty-four hours from time deck of dock is above water. Twenty-four hours or less constitute the first day.

3. Twenty-four hours or more than five hours constitute one lay day. Five hours or more than one hour constitutes one-half lay day. Minimum charge, \$50.00.

4. Vessels in any class will have the advantage of the minimum charge in the next larger tonnage class.

5. Cargo will be charged for at 50 per cent of tonnage rates. No charge made for ballast.

6. In case a vessel is raised or lowered on Sunday or a holiday, or after working hours, a charge for labor and other additional costs will be made against the vessel.

7. No charge will be made for vessels in dry dock on Sunday or holiday unless work is performed on the vessel, in which case regular rates will apply.

8. Wrecked or other vessels requiring extra blocking will be charged for the additional labor and material required in preparing and clearing the

(Testimony of H. F. Champion.)

dock; a charge will likewise be made for all keel and bilge blocks damaged by removal to effect repairs to a vessel.

9. All bills are due and must be paid when vessel is undocked. Berth rates: Waiting, free. Laying up, \$1.00 per day per thousand gross tons or fraction thereof.

An electric derrick of 10 tons capacity, placed on the wharf at the west end of the dock, is available for lifting propellers, tail shafts, etc., and for other purposes.

There is a small shop on the dock containing an electrically-operated air compressor, a radial drill and a large blacksmith forge.

Compressed air for operating air tools, and 500 volt D. C. electricity for operating electric tools, will be supplied according to the accompanying schedule.

The contractor or the ship must hire and pay the mechanics direct, as The Port of Portland does not do any repair work on vessels.

DIMENSIONS OF SECTIONAL DRY DOCK.

(Five pontoons)

Length	468 feet
Width between wings	82 feet
Depth of water over keel blocks	25 feet
Lifting capacity, tons dead weight	10,000
Will lift vessels 500 feet long.	

(Testimony of H. F. Campion.)

RULES AND REGULATIONS

1. All vessels requiring the use of the dock or wharves must furnish men to handle the vessel, and warp it into and out of the dock, also furnish all hauling lines to steady the vessel while being docked.

2. All vessels using the dock or wharves must at all times keep the same clear of dirt and rubbish, and thoroughly clean, and sweep the dock before the vessel is floated.

3. Sufficient stage planks, spauls and trestles to go around vessels while on the dock will be furnished by the dock on application to the superintendent. Vessels will be required to furnish all ropes for hanging stages. No ropes or chains of any kind will be furnished by the dock. Vessels or contractors may bring their own staging to the dock, but must remove same from dock and wharves upon completion of the work.

4. All water closets and urinals on vessels shall be locked up or fastened securely, and not used while the vessel is in the dock, under penalty of twenty dollars (\$20.00) for infraction of this rule. In the event of any infraction of this rule, both the vessel and the owners shall be liable for said penalty, and the same shall be included in, and form a part of the charges against the vessel and owners for the use of said dock.

5. All vessels, while using wharves or dock, shall furnish and display lights during the night time, at each end of all gangways in use.

(Testimony of H. F. Campion.)

6. All vessels lying at the wharves of the dry dock shall move at any time they are requested to do so by the superintendent or his representatives.

7. Vessels to be docked must be put on even keel, abeam, and as nearly as possible on even keel fore and aft. This rule is imperative and vessels will not be docked unless it is complied with.

8. Lockers will be furnished by the dock for the storage of tools and the mixing of paints and the keeping of same while vessels are in dock or at the wharves. But no kerosene, turpentine, naphtha, gasoline or other inflammable materials in quantity of more than five gallons will be allowed to remain in lockers or on the dock or wharves over night. A duplicate key to each locker so in use will be given to an officer of the vessel or other person authorized to act for same.

9. All staging and other gear of all kinds shall be put away and secured where ordered, before the vessels are floated.

10. Any vessel desiring to work in the night time must give notice in writing before 3:00 p. m. of the day preceding the night during which it is desired to work.

11. Vessels desiring to lie at the wharves of the dock to complete repairs, or for any other purpose, may be permitted to do so if the wharves are not otherwise occupied, upon making application in writing to the superintendent and paying the proper charge.

(Testimony of H. F. Campion.)

12. Vessels lying at the wharves or in the dock are strictly prohibited from dumping ashes or rubbish of any kind on or about the same.

13. Electric wires must not be interfered with under any circumstances.

14. Keel blocks, bilge blocks or shores must be moved and replaced only under the supervision of the superintendent or his representative and at the expense of the contractor. However, contractors for cleaning and painting will always be required to shift, and to clean and paint the vessel under all bilge blocks and shores unless forbidden in writing by the master.

15. Any damage to the dock or wharves, or property connected therewith, caused by negligence or any other fault of the vessel, will be charged to the vessel.

16. Any person employed on or about any vessel who shall fail or neglect to observe these rules or the orders of the superintendent, or shall use profane or indecent language, or otherwise render himself obnoxious, shall be immediately discharged, and shall not again be allowed upon such vessel while in the dock or at the wharves of The Port of Portland.

17. Vessels docked with ballast logs alongside are taken at the vessels' risk. The Port of Portland assumes no responsibility in such cases for damage to dock, ship or cargo.

18. Scows shall vacate the dock upon order of

(Testimony of H. F. Champion.)

the superintendent whenever the dock is required for other work, said scow to be re-docked without expense to owner except for lay days as provided by tariff covering same.

19. When it is found necessary to raise a vessel again, after beginning to sink the dock, she will be charged lay day rates plus all additional expense caused the dock therefor; provided, however, if the vessel is floated and it is necessary to inspect the keel and bilge blocks before she can be raised again, the charge will be half regular docking rates (minimum \$50.00) and all additional expenses.

20. The dock master makes all arrangements for the use of the dock. All bills are made out by and all payments are to be made to the clerk of the board, at the main office, City Hall.

21. These rules and regulations are subject to change at the pleasure of The Port of Portland.

RATES.

For the electricity consumed as follows:

Kilowatt Hours	Per K.W.H.
100 or less	7
100 to 200	6½
200 to 300	6
300 to 400	5½
400 to 500	5¼
500 to 600	4¾
600 to 700	4½
700 to 800	4¼
800 to 1000	4

(Testimony of H. F. Campion.)

1000 to 1500	$3\frac{3}{4}$
1500 to 2000	$3\frac{1}{2}$
2000 to 3000	3
3000 to 4000	$2\frac{1}{2}$
4000 to 6000	$2\frac{1}{4}$
6000 to 8000	2
8000 to 10000	$1\frac{3}{4}$
10000 to 15000	$1\frac{5}{8}$
15000 to 20000	$1\frac{1}{2}$
20000 to 25000	$1\frac{3}{8}$
25000 to 30000	$1\frac{1}{4}$
30000 to 40000	$1\frac{1}{8}$

Electric Derrick, \$1.50 per hour, with engineer, while being used. Minimum charge, \$5.00.

Air Compressor	\$1.50 per hour
Radial Drill .....	.50 per hour
Blacksmith Forge, including coal ....	.50 per hour
Band Saw .....	.50 per hour

Above charges include the services of the engineer in charge of the electric motor operating the shop, and the ordinary wear and tear on tools; but a charge is made for the electric current used and for any damage to tools or appliances.

Water will be furnished at 30c per thousand gallons, with a minimum charge of \$2.50.

Vessels requiring the dock more than four weeks will be allowed to have the same only by special arrangement with the board.

No one has authority to vary the above rates in any way.

Previous rates are hereby canceled."

(Testimony of H. F. Champion.)

Q. Now, referring to those books which I am told are the log books, and I have no reason to doubt that, I would like you to look at them and see if you can tell me what they are. I show you book and ask you to look at page 83 of it, and tell me, if you can, what that book is.

A. It is the engineer's log book of the steamer "Ocklahama."

Q. Engineer's log book of the steamer "Ocklahama." Does that contain the dates from the eight days in April? The first part of May to the 24th of August, 1913?

A. Supposed to be from April 15, 1912.

Q. Will you please look at that book, if you can, and tell me what ships—I understood you to say that that book would contain the record of the ships towed by the "Ocklahama" through the bridges in the City of Portland. If that be true, will you please look at it, and tell me when Pilot Pease, Archie Leroy Pease, Jr., operated the "Ocklahama" as pilot with a tow, either in ballast or loaded, through the bridges of the Willamette River in and in the vicinity of the City of Portland.

Mr. MINOR: I want to object to that also as irrelevant and immaterial.

A. This book won't show when Pilot Pease.

Q. That book won't show. That log that you call the engine man's log won't show when the "Ocklahama" towed ships through the bridges of the Willamette River.

(Testimony of H. F. Champion.)

A. No, I didn't say that.

Q. Will it show?

A. It won't show when Pilot Pease was on it.

Q. All right. Will it show when it towed a vessel through the bridges of the Willamette River?

A. Yes, sir.

Q. Between those dates?

A. Yes.

Q. That is 1912, you have there?

A. Let's see.

Q. I think you made a mistake; I think you said it showed from April, 1912.

A. It carries to the date of the collision.

Q. Now, then, I am getting at it. Won't you please look at that you have denominated engine man's log of the "Ocklahoma"? That is right?

A. Yes, sir.

Q. Start in the first of May, when you fix the time that Pease was in the permanent employ, as I understand it, as your pilot, and tell me from that book, if you can, and if you can't say whether or not you can—that shows in that log when the "Ocklahoma" towed a ship loaded or in ballast through the bridges of the Willamette River, in the vicinity of, or in the harbor of Portland.

Mr. WOOD: I don't know whether this is directed against the "Thielbek" or not, but if it is, I wish to have my objection noted as immaterial and irrelevant.

Mr. MINOR: Subject to my objection.

(Testimony of H. F. Campion.)

Mr. BRISTOL: This is offered against both, as I told you the other day, and for the purposes then stated.

Q. I notice, for instance, Mr. Campion, to direct your mind to what I am trying to arrive at, "Moved steamer Beaver from S. P. & S. dock to Ainsworth dock." Would that be movement through any bridges?

A. April, 1913; I don't recall the date the Broadway Bridge was in operation. If it was, that would be through the Broadway Bridge.

COURT: Louder.

A. I don't just recall the date the Broadway Bridge was in operation. If that was in operation at this date, it would be through one of the bridges.

Q. That is April 29th or 30th?

A. April 30th.

Q. April 30th. "Ocklahama" moved steamship "Beaver" from S. P. & S. dock to Ainsworth dock on the Willamette River, did she?

A. Yes, sir.

Q. Whether Pilot Pease was pilot at that time, you don't know?

A. No, and would be another pilot in charge of "Beaver," in charge of "Ocklahama." If he was on duty in the pilot house in the "Ocklahama," he would take his orders from the pilot house, in charge on board the "Beaver."

Q. He would?

A. Yes, he would, if you will allow me to

(Testimony of H. F. Campion.)

explain. That is, we move a steamer, a vessel under steam power, they are moved by a Columbia River pilot, who is in charge of the entire tow, and the captain or pilot on watch in the pilot house of the towboat takes his orders from the pilot.

Q. On the steamer?

A. Yes, when we move a sailing vessel—

Q. How about that?

A. She is moved under The Port of Portland pilot.

Q. That is what I want to get at.

A. So I will have to get a sailing vessel.

Q. The "Beaver" situation here, I just wanted to illustrate, because I noticed that in there. The "Beaver" situation would have no application to handling the sailing vessel tow, would it?

A. No.

Q. Now, will you please look at the log, and see where you moved this sailing vessel, or towed a sailing vessel through the bridges. I will fix the dates about the bridges later, if you become confused. I don't want to confuse you.

A. Very seldom moved them, is the reason—we will have to get a sailing vessel. Well, here is a case.

Q. What is the date?

A. July 5, 1913. Pilot Pease may not been in charge.

Q. Pilot Pease, you say, may not have been in charge, but the log book shows what?

(Testimony of H. F. Campion.)

A. The "Ocklahama" moved the schooner "Sehome," American Can dock to Portland Lumber Co.

Q. Portland Lumber Company is where, with reference to American Can dock, if you know?

A. The American Can Company is at the foot of Seventeenth Street North, and the Portland Lumber Company is at the foot of Lincoln Street, south.

Q. So the movement would have to be through the bridges, would it not?

A. Yes.

Q. All right. Now, see if you can see another. I understand you say that you don't know whether that movement on July 5 was with Pilot Pease or not, but it was made by the "Ocklahama"?

A. Yes.

Q. All right. Now, give us another one.

Mr. WOOD: It is understood my objection goes to all this.

COURT: Yes.

Mr. BRISTOL: I understand that, Mr. Wood.

A. One in here I can't just decipher the last word. "Moved schooner ——." I can't read that. July 23, 1913, Moved barkentine "Lahaina" from Port of Portland dry dock to Inman & Poulsen upper dock.

Q. The location of Inman & Poulsen's upper dock from your knowledge as superintendent of The Port of Portland would make that journey above the bridges, would it not?

A. Yes.

(Testimony of H. F. Campion.)

Q. Any more on that date?

A. No, not that date.

Q. Now, you are reading from the engine man's log of the "Ocklahama," are you not?

A. Yes.

Q. Now, any more?

A. August 5, 1914, "Moved schooner 'Robert Searles' from Portland Lumber Company."

Q. From Portland Lumber Company to where?

A. To "through the bridges."

Q. Any more?

A. All on that date.

Q. Well, I don't want you to go beyond Aug. 23d.

A. August 13, 1913, "Moved schooner 'Rosamond.' "

Q. Where from to where?

A. West Side Lumber & Shingle Company to North Pacific Lumber Company.

Q. That would be through how many bridges?

A. Six.

Q. Now, any more?

A. August 13, 1913, "Moved schooner 'Omega' from Port of Portland dry dock to West Side Lumber & Shingle dock." August 15, 1913, "Moved barkentine 'John Palmer' from Port of Portland dry dock to Portland Lumber Company." August 18, 1913, "Moved barkentine 'Letaina' from Inman-Poulsen mill to tug Wallula in lower harbor."

Q. How about August 19th?

(Testimony of H. F. Champion.)

A. August 19th, "Moved schooner 'William Nottingham.'" "

Q. Schooner "William Nottingham"?

A. From Clark & Wilson's to Eastern & Western.

Q. Now, that was from Linnton—that would be from Linnton up to the Eastern & Western, that wouldn't be through a bridge, would it, except through the North Bank?

A. North Bank, yes.

Q. Is that the only entry made there on that date, of moving a vessel? August 19th, I am drawing your attention to in that engine man's log of the "Ocklahama."

A. Through a bridge?

Q. Yes, through a bridge?

A. Yes.

Q. Did you say that was all, or that there was another?

A. No, I am answering. I am saying that this entry I have read, "William Nottingham" is all the entry in the engine man's book of August 19th, where some vessel was moved through a bridge.

Q. Is there any entry in that log there about the steamer "Thode Fagelund" on that day?

A. Yes.

Q. And the steamer "Thode Fagelund" was moved from where to where, by that engine man's log?

(Testimony of H. F. Champion.)

A. From Portland Lumber Company to North Pacific Lumber Company.

Q. And that is the same Portland Lumber Company as you described above all the bridges?

A. Yes.

Q. And down to the North Pacific Lumber Company would be through all the bridges, except the North Bank bridge, would it not?

A. Yes.

Q. Now, any more?

A. No other bridges.

Q. I notice now, just so as to get this complete, this engine man's log you have been talking about is a log that you, as superintendent, require your engine man on the "Ocklahama" to keep, is it not?

A. Yes.

Q. And from that log they base daily reports or advices to you, as superintendent of the operations of the tugboat, don't they?

A. Yes.

Q. And by the information from that log, is how you for The Port of Portland operate that steamer, isn't it?

A. No.

Q. And direct its movements, I mean.

A. No.

Q. As superintendent?

A. No.

Q. Why is it not?

A. Why, operated in what way?

(Testimony of H. F. Champion.)

Q. With respect to the number of tows she has made, the number of stops she has made, and where she has gone.

A. No.

Q. You have another record besides this?

A. Yes, the Captain's record.

Q. The Captain's record? Have you any reason to state—I don't want to go into the long length of it—have you any reason to state that the Captain's record would be different from that engine room record?

A. Not so far as—

Q. The items you have read.

A. Yes.

Q. You think would both agree?

A. Yes.

Q. So there is no use getting the Captain's record, in your opinion. Wouldn't be any more accurate, or wouldn't be of any more information.

A. It shouldn't.

Q. It shouldn't. That is what I want to get at. Now, I draw your attention to the engine man's log at page 83, I think, and ask you to look at the entry on August 24th, and be kind enough to read that entry into the record, if there is such an entry, relative to the operation of the "Ocklahama" in connection with the ship "Thielbek," and the collision with the "Thode Fagelund." And read all that log says.

A. Did you want any of the 23d, to get a start?

(Testimony of H. F. Champion.)

Q. Well, you can read so much of the 23d as you as superintendent think relates to the case, if there is any, I suppose. We have been told here that the collision business occurred on the night of the 24th. Every entry, as a matter of fact, that relates to it, that came before you as superintendent of The Port of Portland, that you see in that log, as you saw it at the time; be kind enough to state what it is, from that log.

A. She was under way with the ship "Thielbek" in Young's Bay, 3:05 a. m., August 24th.

Q. Then what?

A. Collided with steamship "Thode Fagelund" off Astoria dock, steamship "Thode Fagelund" and ship sticking together, 3:25.

COURT: Read it just as it is.

Q. I want you to give it just as it is, and I will go into the other matter. That is just exactly what I am after.

A. (Reading) "Cleared wreck and under way, 4:55."

COURT: Read back a little, will you, Captain?

A. "Under way, 3:05 a. m. Collided with steamship 'Thode Fagelund,' ship and steamship sticking together 3:25, cleared wreck and under way 4:55; anchored ship at Tongue Point 5:30; alongside 'Thode Fagelund' off Astoria dock 5:40; Astoria dock 5:50." Just a minute and I will ask you for some information. These are the leaving hours, and

(Testimony of H. F. Champion.)

these are the arriving hours, and the time is the time intervening.

Q. Just read what it shows. The next item is alongside—near Astoria.

A. "Astoria dock 5:50."

Q. Astoria dock 5:50; all right.

A. "Alongside ship 'Thielbek' 6:35."

Q. Then it says Astoria dock again, don't it?

A. Well, yes, the Astoria dock 7:35.

Q. Now, over in the margin here is a bracket on this log book. Over in the margin it says August 24th, another entry in there.

A. Yes. I read that.

Q. "Collided with ship 'Thode Fagelund' off Astoria dock," is that correct?

A. Yes.

Q. Now, call your attention to the fact that is in a writing that is similar apparently to the other, the words "off Astoria dock."

A. Yes.

Q. And off Tongue Point?

A. Yes.

Q. All on that date?

A. Yes.

Q. Also the same writing in blue pencil?

A. Yes.

Q. Can you tell me whether that is in the condition that it came to you?

A. Yes, sir.

Q. Do you know who put that writing in there?

(Testimony of H. F. Campion.)

A. Well, from knowing the handwriting, I can say who I think put it in there.

Q. You don't know sure?

A. No, it was put in in Astoria, and I wasn't there.

Q. You don't know for sure who put it in?

A. No.

Q. You see put in, however, in the log, the dissimilarity in handwriting between the engineer and the man who put in the location in these points. That is quite clear, to your mind, from looking at it, isn't it?

A. Yes, I am satisfied this is the log as I first saw it after the collision, with these entries in.

Q. Did you prepare, or have prepared from that log, a statement by the engineer of the "Thode Fagelund"—I mean to say the engineer of the "Ocklahoma"?

A. No.

Q. You didn't?

A. I made a copy; personally I made a copy of that.

Q. You made a copy of that?

A. Yes, sir.

Q. You would recognize the copy if you saw it?

A. Yes, sir.

Q. I show you a paper, or a sheet. It is attached to several other sheets, and ask you if you recognize that as a copy of the log that you made or had made; that is of date August 24th?

(Testimony of H. F. Champion.)

A. I made a similar copy.

Q. Well, in order to be fair with you, Mr. Minor gave me that, and I am just trying to find out who made it. Is that the one you gave to Mr. Minor?

A. I didn't give any to Mr. Minor.

Q. Did you give it to Mr. Talbot?

A. Yes, sir.

Q. Mr. Talbot, your superintendent or manager, or whatever it is, he gave it to Mr. Minor—is that right?

A. Yes.

Q. What I am trying to arrive at, Mr. Champion, is simply that, that you, as superintendent, know that to be a true copy of the log and this log is in the original condition as it came to you as superintendent. Are those two facts correct?

A. I think this is a copy. Unless I checked it all over—

Q. All right. Please check it over, if you will, to be sure. That is what I want to get, because we can't keep the log book here, you know. We have to release the log book, and I want to find out what the fact is. Page 83 is where you were. The engine room's log. I am not caring about August 22d and 23d. All I am asking about is August 24th, where you commenced to read. Where you said that—just to get the identification, it commenced August 24th, with the words "Under way," don't it? "3:05 a. m."? Isn't that what you read?

A. I am checking it. I would like to explain

(Testimony of H. F. Champion.)

that it says, "Collided with steamship 'Thode Fagelund'—ship and steamship sticking together 3:25 a. m. 4:35 a. m., that that 4:35 a. m., this should be 3:25 a. m., and the 4:35 means that she was alongside the vessel that many hours from the night before, from the night of the 23d.

Q. How do you know that and why do you state that?

A. Reading on the—from his log of the 23d, he says: "Astoria dock, 9:35 p. m.," or left Astoria dock 10:20 p. m. Alongside ship "Thielbek," Young's Bay, 10:30 p. m., 11:15 is running time, so from 10:30 to 11:15, until he was alongside.

Q. So he was alongside the "Thielbek" at 11:15; is that what you mean?

A. Yes, the night of the 23d. Then he got under way at 3:05 in the morning.

Q. Yes.

A. I think he meant that to figure four hours and 45 minutes.

Q. At any rate what I am trying to arrive at from the entries in that log, how can you tell—just explain how you can tell, please?

A. I may be wrong about that, too. It is so dim, I can't read that very well.

Q. Well, if you can let me know what the condition is in respect to the state of the log as you would now find it in regard to that copy that I show you I would like to know. Now drawing your attention to that log again, so as to relieve your embar-

(Testimony of H. F. Campion.)

rassment, you say, as I understand, that the copy is all right except the 3:25 and 4:35 meant elapsed time. Now, I ask this direct question, and see if it don't straighten it out: Isn't the 4:35 in there, in the right hand column, page 83, of that engine room log, put there for the purpose of showing that those vessels were together an hour and ten minutes; in other words from 3:25 to 4:35, before they got apart. Isn't that what it shows? Isn't that what it means?

A. I wouldn't take that from the condition of the log.

Q. All right then. Why do you take it some other way?

A. This first column is leaving time—and the second column—

Q. Isn't it arriving time, where he gets to the collision? Isn't 3:25 arriving time at the collision?

A. Yes, sir.

Q. How can it be leaving time then?

A. Well, it is meant to be; it is meant to be leaving time.

Q. It is meant to be leaving time. All right.

A. He put it in the wrong column.

Q. He put it over in the wrong column. All right, then let's take it that way; the time that the ships collided, according to that log, is 3:25.

A. Yes.

Q. And the next item shown in there in the right hand column is 4:35. That should indicate, should it not, the ships together an hour and ten minutes?

(Testimony of H. F. Champion.)

If it don't indicate that, what does it indicate?

A. Yes, I think it does.

Q. You think it does?

A. Yes.

Q. Now, Mr. Champion, were you able to tell, as superintendent from the entries in that engine room log, without regard to independent statements from your employes, just what happened between those ships?

A. Can I? What way?

Q. Well, just what I said. Were you able to tell from the entries in that log, when you first saw them, just what happened between those two ships—the "Thode Fagelund"—the three ships, for that matter—the "Thode Fagelund," the "Thielbek" and the "Ocklahama"?

A. I was able to tell they were in collision.

Q. Is that all?

A. Yes.

Q. Then, as I understand it, you had to get independent statements from your employes to enlarge upon the meager entries in that log, to find out just what did happen—is that right?

A. Well, let me understand you, to what extent, the extent of the damage?

Q. Well, you naturally wanted to know, as superintendent, when you heard that your tugboat the "Ocklahama" had a collision with a tow, that she had, and some other ship, you wanted to know

(Testimony of H. F. Campion.)

all the particulars, wouldn't you naturally, as superintendent?

A. Yes, sir.

Q. Well, now you didn't get all the particulars in that log, did you?

A. No, and I couldn't get them all in it.

Q. You couldn't. All right. That is just simply because the log didn't give them, isn't it?

A. Yes.

Q. Now, where did you get the particulars of that collision?

A. From the written statements from the pilots that were in charge, and—

Q. Attached to this paper that I show you, and ask you to compare with your log, and purporting to be a copy of the log, are you satisfied it is a true copy of the log?

A. Yes, I think it is true.

Q. All right. Now, just so as to be sure that I give this right, and don't overlook anything, just initial that "F. H. C.," will you, opposite that 24 there, so as to be sure that it is right. (Witness initials.) Now, I show you what purports to be a copy called in the paper a Port of Portland Casualty Report. I want you to look at that thing, and tell me whether that was one of the papers, and whether it is a true copy of one of the papers that you obtained from your employes, and if so, from whom, in order, together with that engine room log—to find out what was the matter?

(Testimony of H. F. Champion.)

A. Well, you said you would show me a copy.

Q. It is there with your log. The reason I do this, as an explanation of the record, is because the papers kindly furnished me by proctor for The Port of Portland, are all attached together, and I have to take them one at a time to get the witness to explain it, in connection with the log that lays in his lap. Now, the papers I have handed you, is headed at the top—I am assuming that this is copy of a form—I don't know.

A. Yes.

Q. It is headed at the top, "The Port of Portland Casualty Report. Date of Accident, August 24, 1913. Location, Astoria Harbor."

A. Yes.

Q. Now, will you go on and look through there, and tell me how you made that out, and if that is what you got in connection with the log?

A. I believe that is a copy of the Casualty Report.

Q. Now, this Casualty Report has attached to it a statement which says, "Particulars of Accidents or Casualties you cannot describe too fully."

A. Yes.

Q. That is a requirement of The Port of Portland, isn't it?

A. Yes.

Q. Under that head, what do you find?

A. Read it.

Q. No, what do you find?

(Testimony of H. F. Campion.)

A. Get a description of the collision.

Q. By whom?

A. A. L. Pease, Jr.

Q. The same Pease you referred to awhile ago?

A. Yes.

Q. Who signed the Casualty Report?

A. Captain Turppa, A. L. Pease and myself, as superintendent.

Q. Are those papers now, which you will notice have attached to them also a statement purporting to be from M. Nolan, Columbia River pilot, copy taken by H. F. C.—are those your initials?

A. Yes.

Q. Are you the man who took that copy?

A. Well, I made a copy of it. I don't know as this is the particular one.

Q. Well, is there anything wrong with that copy? I mean by that, is it a true copy?

A. No, I believe it is a true copy of the record.

Q. Of the original?

A. Yes.

Q. That is a true copy, then, of the Casualty Report made to you as superintendent, and in its original condition as received by you—is that right?

A. Yes, sir.

Q. Now, I call your attention to the fact, next attached is the sheet which you have identified with your initials. Is that right?

A. Yes.

(Testimony of H. F. Champion.)

Mr. BRISTOL: Now, I offer the whole business in evidence.

Mr. WOOD: As against the "Thielbek"?

Mr. BRISTOL: As against the "Thielbek" and The Port of Portland.

Mr. WOOD: I would like to take it and look at it. You have seen it, have you, Mr. Minor?

Mr. MINOR: I gave it to them.

Mr. WOOD: I object to this as incompetent as against the "Thielbek," and object also to the log, both logs, as to the "Thielbek." I don't want to be interrupting all the time.

Papers marked "Libelant Wilhelmsen's Exhibit 11 (Champion)."

Mr. BRISTOL: I may say to Mr. Wood's objection, and I think the Court should know it, they are offered more particularly against the "Thielbek." We filed interrogatories, and the "Thielbek" answered, as we say, somewhat evasively, by saying we don't know anything about the "Ocklahama"; therefore I am trying to get the best source the "Thielbek" referred me to.

THE PORT OF PORTLAND CASUALTY REPORT

Date of Accident, August 24, 1913.

Location, Astoria Harbor.

Nature of Casualty, Head-on Collision.

Name of Steamboat, Barge or Dredge, "Ocklahama" towing Brk. "Thielbek," and "Thode Fagelund."

On Trip from Astoria.

(Testimony of H. F. Campion.)

DAMAGE TO PROPERTY OTHER THAN THE PORT OF PORTLAND.

Under this head report all accidents resulting in any damage or loss to wharves, vessels or other property other than Port of Portland. State exactly what was damaged, the amount, what action was taken after accident to prevent further loss, and what was done toward repairing damages.

S.S "Thode Fagelund" had a large hole stove in her port side a few feet from her bow and extending from the deck of her forecandle head to a little below her water line.

Brk. "Thielbek" had a couple of plates stove in on her starboard side and a number of others dented on both sides of her bow.

DAMAGE TO THE PORT OF PORTLAND PROPERTY.

Under this head report all accidents to steamboat, barge, dredges, wharves, dry dock, or other board property. Estimate amount of damages; state how caused and what was done to prevent and repair the damages, and by whom assistance was rendered, if any; force of wind; state of weather, and if at night whether dark, moonlight or starlight.

All the Str. "Ocklahama's" lines carried away, consisting of:

One wire tow line.

One rope head line.

(Testimony of H. F. Campion.)

Two rope breast lines.

Three rope stern lines.

INJURY TO PERSONS.

Under this head report every accident to employes, or other persons, giving name and address of witnesses, preferably those nearest the scene of the accident. *A written statement from at least two witnesses, signed and signatures witnessed, must accompany each report.*

Name,

Residence,

Occupation,

Employe, or other,

Nature and extent of injury,

How caused,

What disposition was made of the injured person?

What was done with the personal effects and papers belonging to the injured person?

Witnesses,,

Address,,

Pilot, A. L. Pease, Jr., on watch.

H. F. Campion, Supt. I. Turppa, Captain.

PARTICULARS OF ACCIDENTS OR CASUALTIES YOU CANNOT DESCRIBE TOO FULLY.

Under this head a full and complete report must be given of the accident, also any fact or circumstances that may occur to you and not accounted for, on other side of this blank.

(Testimony of H. F. Champion.)

At about three-twenty on August twenty-fourth as I was passing Callendar dock in Astoria Harbor with the Brk. "Thielbek" in tow I saw the green light and the two mast-head lights of a steamer on my port bow. I could see the lights of this steamer but could not see the steamer herself on account of the dredge "Chinook" being anchored on my port bow and between the steamer and myself.

As soon as I saw the steamer's lights I slowed down and she blew me two whistles and I put my helm hard a starboard but hesitated to answer her signal until she came out from behind the dredge. As she was coming out from behind the dredge she blew me two whistles again and as it looked to me as she could pass on my starboard side I answered her and shortly after stopped and backed full speed on a port helm.

The steamer instead of swinging to her port or even holding her course kept swinging to her starboard until I could see her red light.

After I had been backing full speed for between three and four minutes and had most of the headway off the bark, the steamer let go her anchor and a few seconds later the bark and the steamer came together head on. (Signed) A. L. Pease, Jr.,

Pilot Str. "Ocklahoma."

1048 *The "Thielbek" and the "Thode Fagelund"*

(Testimony of H. F. Campion.)

Astoria, Oregon, Aug. 24th, 1913.

Mr. H. F. Campion,

Supt. of Pilotage and Towage,

Port of Portland, Portland, Oregon.

Dear Sir:

The steamer "Thode Fagelund" was anchored off the Railroad dock in Astoria harbor at three-twenty a. m., started ahead on the slow bell in about five minutes time speed was increased to half speed ahead, the dredge "Chinook" was to an anchor off and about the middle of the O. W. R. & N. dock laying directly across the channel which left the channel obscured that one could not see an approaching vessel when within about one ship's length from the dredge "Chinook" which was swinging to flood tide and stern towards the Astoria side of the channel I saw a sailing vessel under tow almost head on or about a quarter of a point on our starboard bow. I blew two whistles to pass on the starboard side and received no answer. I stopped our engines, blew two whistles again and was answered by two whistles from the steamer "Ocklahoma" which was towing the ship "Thielbek." I then backed full speed astern blew four whistles a danger signal which was not answered. I then let go the port anchor with 15 fathom of chain, blew four whistles again which was not answered as the steamer "Thode Fagelund" headway was about stopped and anchor down with 15 fathom of chain, engines backing full speed which caused the steamer "Thode

(Testimony of H. F. Campion.)

Fagelund" head to swing to starboard about a half point, the ship "Thielbek" struck the "Thode Fagelund" at three thirty-two a. m. on the stem head, cutting her on the port bow below the water line, the "Thode Fagelund" headway was about stopped, engines backing full speed astern, port anchor down with 15 fathom of chain on it when the ship "Thielbek" struck her; the steamer "Thode Fagelund" was under way only twelve minutes when struck and had gone about a thousand feet and had very little more than steerage way on her up to the time of getting struck. The ship remained in the same position all day after being struck at the wishes of Capt. Hansen.

Yours very truly,

(Signed) M. NOLAN,

Columbia River Bar Pilot.

Copy taken by H. F. C.

THE PORT OF PORTLAND
COPY OF LOG-BOOK, CHIEF ENGINEER,
STEAMER "OCKLAHAMA,"

Aug. 23, 24, 1913.

Aug. 22	Alongside Schooner "Rosamund" Lower Harbor, under way	.....12:50	1:20	M
Aug. 23	Anchor'd schooner off Tongue Point	.....12:30	12:50	AM
	Astoria Dock	.....	1:15	AM
	Left Astoria Dock	.....	8:10	AM
	Slaughters	.....12:35	12:45	PM

1050 *The "Thielbek" and the "Thode Fagelund"*

(Testimony of H. F. Champion.)

	Cowlitz Boom, pulling		
	snags	12:50	1:40 PM
	Prescott	2:05	
Aug. 23	Alongside Schooner "Andy Mahony" at Prescott.....		3:05 PM
	Anchored schooner off		
	Tongue Point	9:10	9:25
	Astoria Dock	9:35	PM
	Left Astoria Dock		10:20 PM
	Alongside Ship "Thielbek"		
	Youngs Bay	10:30	11:15 PM
Aug. 24	Under way		3:05 AM
	Collided with SS "Thode Fagelund"—Ship and S. S. sticking together	3:25	4:35 AM
	Cleared wreck and under		
	way	4:55	AM
	Anchored ship off Tongue		
	Point	5:30	AM
	Alongside SS "Thode Fagelund" off Astoria Dock...	5:40	5:45 AM
	Astoria Dock	5:50	6:25 AM
	Alongside Ship "Thielbek"		
	off Tongue Point	6:35	7:15 AM
	Astoria Dock	7:25	AM
	Left Astoria Dock	3:35	PM
	Alongside Bark "Thielbek"		
	under way off Tongue Pt..	3:45	4:30 PM
Aug. 25	Linnton—Anchored ship in		
	the stream	6:20	7:12 AM

(Testimony of H. F. Champion.)

Q. Perhaps you can tell me if you can look at that page 83. Whose handwriting is that log in? I mean the entries relating to the time and what you read.

A. Part of it is in the chief engineer's handwriting, and part of it is in the assistant engineer's.

Q. The main body of the log book is made up in whose writing on that date, having regard to the entries in writing, and to the figures in the columns on that page, on the date of August 24, 1913? Whose hand are the most of those entries made in?

A. Most of them—a number of entries were made by the assistant engineer.

Q. Then when you say a number of them, will you point out now, which were made by the assistant engineer? Now, that is August 23rd you are pointing at. Take the word "Under way." Starting hand are the most of those entries made in?

A. The assistant engineer's.

Q. Assistant engineer, and that handwriting holds good practically all the way down the page to the word "Astoria dock," that you have read into the record, from 3:25 in the morning until 7:25 in the morning, does it?

A. Between that word "collided" is not his handwriting. I think it is in the chief's writing.

Q. That word "collided" you think is in a different handwriting?

A. Yes, sir.

(Testimony of H. F. Campion.)

Q. Right below the word "collided" I call your attention to the word "cleared." Does it bear any evidence of having been changed or re-written?

A. I think it was originally in just the same wording.

Q. You think was and—

A. And probably been—

Q. (Continuing) Written over.

A. (Continuing) Writtten over to—

Q. How about the word "wreck" there?

A. I think the "wreck" is the same, and the word "of."

Q. Whose writing is that in?

A. The "cleared" and "wreck," I think has been—the assistant engineer, or the chief engineer, I think, made the word "clear" plainer.

Q. And how about the word "wreck"? Made that plainer too?

A. Either one of them might have done that.

Q. Either one of them might have done that? Now, then, drawing your attention to the words outside of the bracket to the left hand side of the page, consisting of, and being immediately under the date of August 24th, the word "colided" spelled with one "l," and the sentence reading "colided with steamship 'Thod Fagelund' off Astoria dock," whose writing is that?

A. Chief engineer.

Q. Can you tell me whether the writing of the assistant engineer, and the chief engineer, were put

(Testimony of H. F. Champion.)

therein of the date and time that entry purports to be made, or afterward?

A. I believe they were.

Q. Put there at the time?

A. I have no reason—

Mr. WOOD: I object to this as incompetent against the "Thielbek," and also object to the log.

Q. Now, Mr. Champion, I show you another book, and draw your attention to page 53, and ask you if you can tell me what book that is?

A. The Pilot House Log Book of the steamer "Ocklahama."

Q. And kept as of August 24th by whom?

A. The pilot started it.

Q. The pilot started it, and who finished it?

A. I think he did.

Q. You think he did? Was that the pilot you referred to as Archie Leroy Pease, Jr.?

A. A. L. Pease, Jr., yes, sir.

Q. Then the whole entry of August 24th, page 53, Pilot House Log of the "Ocklahama" is in the handwriting of Archie Leroy Pease, Jr., is it?

A. No, this isn't.

Q. Well, what do you say this isn't?

A. This part isn't.

Q. That is on page 54. Whose handwriting is that in?

A. Captain Turppa.

Q. Captain Turppa. Now, will you be kind enough to read the entries of August 24th from the

(Testimony of H. F. Champion.)

Pilot House Log, as you saw them first. Did you see them immediately after the collision?

A. No.

Q. Well, how soon?

A. Well, in a few days, probably.

Q. A few days. Did you order the log to be brought to you?

COURT (after a pause): Answer the question, will you please?

A. I am trying to think, Judge. At the time I looked at it I ordered the log.

Q. When was that? When was that? Can you give the answer to that question?

A. I don't remember just when it was. I might have seen it a day or two after the collision happened; been aboard the boat and read both of them.

Q. Just tell me the facts. Did you go down aboard the "Ocklahama," as soon as she came in town with the "Thielbek"?

A. No.

Q. Did you go down to the Linnton dock?

A. No.

Q. How soon did you go on board?

A. Might have been a day or so; I went down and looked at the log book.

Q. Might have been a day or so. Then she might have made some intervening trips before you saw the log book?

A. No, she didn't. She tied up for inspection right afterwards; the morning she came back.

(Testimony of H. F. Campion.)

Mr. BRISTOL: I would digress a moment, as I think Mr. Mears is anxious to get away. I summoned you and Mr. Mears to bring a brochure of *The Port of Portland*. Are you aware whether these books are books of *The Port of Portland*? Can you testify to it?

A. I have seen it, and know it to have been issued by *The Port of Portland*.

Q. And you know all about it, do you?

A. Not the details.

Q. So I don't have to keep Mr. Mears?

Mr. BRISTOL: Will you allow Mr. Mears to be excused with this understanding: If Mr. Campion's information seems to be meager about this, I will call him again. I want him to get away. He is the *Portland Cordage* man and he has to get back.

COURT: Very well.

Q. Now, going back to this pilot house log. You think about a day or a day and a half after the collision that you saw it?

A. Yes, when I saw it first, as I remember.

Q. When you saw it first; all right. That is as near as you can fix it?

A. Yes.

Q. Looking at that log on page 53, are the entries there in a similar condition as when you first saw it?

A. Yes.

Q. I call your attention on page 53, to erasure on line on the bottom of the entry, and then below

(Testimony of H. F. Champion.)

that, there is one, two, three, four, five, six blank lines, isn't there?

A. Yes, sir.

Q. This entry continues over on page 54 in Captain Turppa's handwriting you say?

A. Yes.

Q. And consists of four entries. Those four entries consist of four lines on the top of page 4?

A. Well, he didn't write that.

Q. He didn't write that?

A. No; I want to be particular in this.

Q. That is what I want you to do. You said this over on the other page was written by Captain Turppa?

A. No, started.

Q. No, you said written. Now, the first two lines were written by whom, on page 54? The continuation of August 24th. Who was the entry of that log written by, the first one?

A. Yes, Captain Turppa wrote the first line.

Q. Who wrote the second one?

A. Pilot Pease.

Q. Who wrote the third one?

A. Pilot Pease.

Q. All right; the fourth line at the top of page 54?

A. Well, you are calling back a line (indicating)?

Q. Yes.

(Testimony of H. F. Champion.)

A. Well, then Captain Turppa wrote the first and second line.

Q. Captain Turppa wrote the first and second lines. Who wrote the third and fourth lines?

A. Pilot Pease.

Q. Pilot Pease?

A. Now, it is, as far as I know, their handwriting, between the two men. I didn't see them write it.

Q. Well, you recognize the handwriting of Pease, don't you?

A. I recognize as much as—

Q. Yes, you recognize that as Turppa's, don't you?

A. Well, sometimes they get pretty close together.

Q. Well, then, they do. In order to obviate that instance, let's see if they do. Whose handwriting is this paper in? I show you what purports to be Towboat Captain's report, and ask you to look at it.

A. Captain Turppa's.

Q. Happens to be signed, you see, this time. Now, I show you another one. That first one I showed you was marked with your stamp, August 25, 1914?

A. Yes.

Q. Now, I show you another one marked with your stamp, August 25, 1913, and ask you what that is?

(Testimony of H. F. Campion.)

A. That is the original report of the "Ocklahama."

Q. That is the original report of the "Ocklahama"?

A. Yes, Captain—

Q. Made by Captain Turppa?

A. Made by Captain Turppa.

Q. Now, then, if that be the case, will you compare, if you please, that handwriting with what you find at the top of page 54, and tell me whether you are certain now, whose handwriting it is?

A. I think Captain Turppa wrote the first two lines, and I think Pease wrote the second two.

Q. All right. Now, in order to have that just the way you testified to it, I offer this paper you call the original report of Turppa in evidence, as part of your examination, as to the first two lines on page 54.

Marked "Libelant Wilhelmsen's Exhibit 12 (Campion)."

THE PORT OF PORTLAND
TOWBOAT CAPTAIN'S REPORT.

Aug. 24th and 25, 1913.

Steamer "Ocklahama" Bk. "Thielbek" in tow,
draught 13.6 feet.

2644 tons register. Pilot.

Under way Youngs Bay 8/24, 1913, at 3:03 o'clock
a. m.

Arrived at Tongue Pt. 1913, at 5:30 o'clock a. m.

(Testimony of H. F. Campion.)

Returning..... in tow, draught....feet....
tons register.Pilot.

Under way Tongue Pt. 1913, at 4:30 o'clock p. m.

Arrived Linton 8/25, 1913, at 6:03 o'clock a. m., and
and landed tow at.....

Time consumed at anchor and aground.....hours.

Time consumed during round trip.....days.

Under steam during round trip.....hours.

Total fuel consumed during round trip.....

HARBOR WORK.

.....

(Over)

Steamer "Ocklahama."

Date Aug. 24 and 25, 1913.

DOWN TRIP

.....

UP TRIP

.....

Incidents: Aug. 24th collided with SS "Thode Fagelund" at abreast of Astoria. Damaging SS "Fagelund" and Bk. "Thielbek" in great extent. No damage to "Ocklahama" only carrying away all of her lines. "Ocklahama" was then in charge of Pilot Pease.

I. TURPPA, Master.

Under the head of Incidents report all casualties, cause of delays, number of days lay over, the actual time of day and day of month ship is aground and the time again under way, and all items of interest to the Company.

(Testimony of H. F. Campion.)

Q. Now, to go back to page 53, will you be kind enough to read the entire entry as shown in the log book, that you say is in the condition you saw and received it, as of that date? August 24th. Being the pilot house log of the "Ocklahama" at that time?

A. Now, before I answer that question, can I go back a minute to clear you on the matter we were in doubt, seemed to be in doubt at first, and couldn't recall at the time?

Q. Certainly.

A. It just occurred to me some of those records, I believe, I haven't seen for a long while. Also in the copy of the engineer's log of the "Ocklahama" where I questioned about that 3:25 to 4:35.

Q. Yes, gave a copy of the log.

A. I said I thought it was the arriving time from the night before, and I said I believed it was the time they were together.

Q. Yes.

A. I want to make myself clear. I really think that is a fact.

Q. That is what I want you to do. Thank you very much. Now, what I asked you to do was to read for us the entire entry on page 53 of the Pilot House Log of the "Ocklahama" for the date August 24th.

Mr. WOOD: Same objection to this log also.

A. (Reading) "Under way at Young's Bay with bark 'Thielbek,' 3:05 a. m. Head-on collision with

(Testimony of H. F. Campion.)

S. S. 'Thode Fagelund' opposite O.-W. R. & N. Co. dock 3:25 a. m. Backed bark 'Thielbek' away from steamship 'Thode Fagelund,' 4:55 a. m." There is a side entry, 2644 tons, 13.6 feet, draught.

Q. I notice you read—it says "Backed bark 'Thielbek' away from 'Thode Fagelund' 4:55 a. m.

A. Yes.

Q. What is the next line?

A. Anchored bark "Thielbek" at Tongue Point 5:30 a. m. Alongside S. S. "Thode Fagelund" 5:40 a. m. Landed at Astoria dock 5:50 a. m. Alongside bark "Thielbek," 6:35 a. m. Left bark "Thielbek," and landed at Astoria dock, 7:30 a. m. Left Astoria dock 3:30 p. m. Left Tongue Point with bark "Thielbek," 4:30 p. m.

Q. Now, as to the entries in that log, the same is true, is it not, with reference to your getting the particulars of the accident?

A. Yes.

Q. That is, you had to rely upon your captain's report, Libelant's Exhibit 11, which you saw before?

A. Yes, sir.

Q. How did you find out, in this Casualty Report,—did the first you knew of the item, "All the steamer 'Ocklahama' lines carried away, consisting of one wire tow line, one rope head line, two rope breast lines, and three rope stern lines"—was the first you knew of it only after the Casualty Report came to you, or did you know it from anyone on board ship?

(Testimony of H. F. Champion.)

A. No, I took it—as soon as I had a chance to talk with the crew, I found out that their lines carried away. I talked to the pilot, and talked with the captain probably before that report was actually made out.

Q. Probably before. Did you give any directions as to how this Casualty Report was made out?

A. Nothing more than to ask for a casualty report in detail, covering the accident, the collision.

Q. And in connection with that, this statement made by Mr. Archie L. Pease, Jr., pilot steamer "Ocklahama," which is a part of this exhibit, I believe you said was the report you received from him at that time?

A. Yes, sir.

Q. Now, will you take that log, that Pilot House Log, and having reference to the handwriting, start with April 1st, or May, I mean, 1913, as you did in the other, and tell us, if you please, if you can from that log, what ship movements were made by the "Ocklahama" in and between and through the bridges in the harbor of the port of Portland, by Archie L. Pease, Jr., pilot?

Mr. MINOR: I object to this also.

Mr. WOOD: I join in the objection.

Mr. BRISTOL: Same questions as before and for the same purpose, only from the pilot house log this time.

Q. Directing your attention to the identification of Pease's movements, as to the handwriting in

(Testimony of H. F. Champion.)

pilot house log, if that would indicate to you whether Pease moved the vessel or not?

A. Well, I think the shortest way would be to say that there will be nothing in here telling whether he actually handled the vessel or not, whether he was actually pilot in charge of the movements of the vessel.

Q. Then what is the fact as to whether Archie L. Pease, Jr., ever was in charge of any vessel moved by The Port of Portland, in cargo or in ballast through the bridges of the City of Portland, during the period prior to the collision with the "Thode Fagelund"?

Mr. MINOR: I object to that also as incompetent and irrelevant.

Q. And in the year 1913, between the time he was employed by you up to the time of the collision.

Mr. MINOR: If you don't know, you can say so, Mr. Champion.

A. Well, I don't know. Let me have the question again.

Q. (Read.)

A. Well, there is nothing that I could take from these log books to show that he was actually in charge. The fact that he made an entry wouldn't necessarily show he was in charge. He might have made an entry while the captain was on watch. I want to be—

Q. Very well; very well. I may be entirely

(Testimony of H. F. Campion.)

wrong about the entry. I only suggested that to indicate to your mind.

A. Now, as I understand—

Q. Tell me by your own knowledge then, as superintendent of The Port of Portland, whether Archie Pease, Jr., moved any ship in ballast or loaded, through the draw piers of the bridges of the City of Portland?

Mr. MINOR: Object to that also.

A. Steamer or sail?

Q. I don't care.

A. Yes, he has been in charge of tows.

Q. What ones?

A. You mean where he was absolutely in charge?

COURT: Where he was in charge, yes.

Q. Where he was in charge; I don't say absolutely, because I don't know of anything in human affairs that is absolute.

A. What I mean by that, Mr. Bristol, where he was in the pilot house operating the entire tow.

Q. I mean while he was in the pilot house as pilot, for The Port of Portland, operating the "Ocklahoma" as a towboat; that is what I mean.

A. Well, I can't call an instance off-hand.

Q. All right. Will you look at the entry of August 19th, of the pilot house record of the "Ocklahoma," and tell me whether or not the "Ocklahoma" moved the "Thode Fagelund" in and around

(Testimony of H. F. Champion.)

among the bridges of the City of Portland or the port of Portland on that date?

A. Yes, there is an entry "Moved steamship 'Thode Fagelund' Portland Mill to North Pacific Mill."

Q. Portland Mill to North Pacific Mill. That would be the Portland Lumber Company up here above the Hawthorne bridge to the North Pacific Mill, below the Broadway bridge, wouldn't it?

A. Yes, and that tow would be in charge of a Columbia River pilot on the "Thode Fagelund," and the "Ocklahoma" pilot, Pease, would be acting under instructions from the pilot aboard the "Thode Fagelund"?

Q. He would?

A. He would, yes.

Q. Therefore, he wouldn't be acting as pilot for The Port of Portland then?

A. No.

Q. What would he be doing in the wheel house?

A. He would be taking his instructions from the pilot in charge of the tow.

Q. Then do you undertake to tell me that Pilot Pease, acting as the tugboat captain through the bridges, moving the "Thode Fagelund" had no responsibility at all?

Mr. MINOR: He didn't say that, Mr. Bristol.

Mr. BRISTOL: I wanted to find out whether that is what he said.

A. I didn't say that.

(Testimony of H. F. Campion.)

Q. Well, what do you mean?

A. He takes his orders from the pilot in charge. He is responsible to him for his actions. He isn't removed entirely from responsibility; the pilot, for instance, says, "Port," and he goes that way. Or 'midships or starboard, or signals him to go ahead slow, or back. He does that.

Q. Now, the office, then, that Pease was executing on your tugboat "Ocklahama," would be simply the office of an ordinary able seaman at the wheel, would it?

A. Well—

Q. Now, you know, Harry. What is it?

A. No.

Q. Well, what was it?

A. He would have to have a license to be there.

Q. He would have a license to be a pilot, wouldn't he?

A. Yes, and an able seaman wouldn't.

Q. Then Pease is more than mere automaton when making these movements in the harbor?

A. Yes, sir.

Q. When you moved the "Thode Fagelund" that day with the "Ocklahama," do you know how she was moved? As superintendent of The Port of Portland, do you know how she was moved?

A. In what way?

Q. Down the river from the Portland Lumber Company to the North Pacific Mill?

(Testimony of H. F. Campion.)

A. Yes, she was moved by the "Ocklahama"—with the assistance of the "Ocklahama."

Q. With the assistance of the "Ocklahama," and you directed—did you give the order for Pease to go up there with the "Ocklahama" to get her?

A. No, I gave the order to the Captain of the "Ocklahama."

Q. Captain Turppa?

A. Yes.

Q. And Captain Turppa and Pease went up to get her and bring her down? Is that right?

A. There was a pilot besides.

Q. Who was the pilot?

A. I don't know who was on the "Thode Fagelund," one of the Columbia River pilots.

Q. One of the Columbia River pilots?

A. Yes.

Q. And that Columbia River pilot was selected by you, was he?

A. No.

Q. Who selected him?

A. Whoever authorized the movement of the steamer.

Q. Whoever authorized the movement of the steamer?

A. I tell you when you move a steamer in the harbor, one of the Columbia River pilots is in charge of the entire tow, and The Port of Portland furnishes boat assistance in order to take their head-

(Testimony of H. F. Campion.)

way off them, going through bridges, and right them up for bridges. .

Q. Right them up for bridges?

A. Yes.

Q. In other words, the tugboat is furnished to keep the ship clear in the channel, is that right?

A. Yes, sir.

Q. And I understand there are two classes of pilots, a class of pilots you have nothing to do with, or maintain you don't?

A. Yes.

Q. And a class of pilots your employes, is that right?

A. Yes.

Q. The class of pilots you have nothing to do with, you claim to be what you call—

A. Columbia River pilots.

Q. (Continuing) Columbia River and Willamette River pilots?

A. Columbia River Pilots Association.

Q. Columbia River Pilots Association. You have nothing to do with those fellows?

A. No, not as far as giving orders.

Q. I mean, not employes of The Port of Portland?

A. No.

Q. And not acting under your jurisdiction?

A. No.

Q. The only pilots you have are men employed by you, is that right?

(Testimony of H. F. Campion.)

A. Yes.

Q. So that, I am to understand then, that you claim that the only office the "Ocklahama" and her man were performing in moving the "Thode Fagelund" through these bridges at that time, was merely the office of keeping her straight in the river and through the bridges?

A. Yes, sir, and the pilot, or whoever was on watch on the "Ocklahama" taking his orders about the movement, from the pilot who was in charge of the entire tow.

Q. If I understand what you mean by that, would be this: That if the pilot that you would claim as The Port of Portland, as I understand—and if I am wrong correct me, for I want a correct understanding; as I understand in this operation, your position would be that if the pilot, the Columbia River pilot, who you say was in charge of this movement should have given an order that would throw the "Ocklahama" into the bridge, you would have said that the man responsible for that was not Archie Pease, or captain of the tug, but this Columbia River pilot, wouldn't you?

A. Why, yes.

Q. Now, if she had gone into the—if, on the other hand, the ship had gone into the bridge or any of the bridges, or struck an obstruction, you would still claim it wasn't the fault of the "Ocklahama," I mean now, some other operation, yet as a matter of law, as a matter of practice and operation, you

(Testimony of H. F. Campion.)

would still claim that was negligence of the pilot in charge of the "Ocklahama," wouldn't you?

A. Yes, sir.

Q. Now, I show you a book. I ask you in the subpoena to bring the brochure issued by the The Port of Portland?

A. Yes, sir.

Q. Did you bring it?

A. Yes.

Q. Will you please produce it (taking book). This book purports to contain a foreword at the bottom of it, on page 2 thereof, in the front. "The Port of Portland Commission"—signed "The Port of Portland, Portland, Oregon, U. S. A., Jan. 1, 1912"?

A. Yes.

Q. Do you know, and if you know, will you please state whether The Port of Portland issued that book?

A. Yes, they did, as far as I know.

Q. Well, do you know any reason that they didn't issue it?

A. No.

Q. In this book is a map, which purports to show considerable data on the bridge draw locations of the City of Portland, with respect to the Willamette River. That map is marked of February 1, 1912. That map was with the book when it was issued, wasn't it?

A. Yes, sir.

(Testimony of H. F. Champion.)

Q. Showing you the book, on page 2, again for identification, I read to you: "Foreword. The Port of Portland Commission, in presenting this brochure to the shipowning public, has endeavored to give only facts obtained from the most reliable sources, together with exact data relating to this port's conditions and charges."

A. Yes, sir.

Q. Is that right? That is the way it was issued, wasn't it?

A. Yes, sir.

Q. Now, do you know whether that book was put out—it also has in it the towage and pilotage rates, and some other stuff—do you know whether that book was put out generally by The Port of Portland for the ship owning public?

A. I think it was.

Mr. BRISTOL: I offer this in evidence.

Marked "Libelant Wilhelmsen's Exhibit 13 (Champion)."

(Foreword and Shipping Directions from Wilhelmsen's Exhibit 13.)

FOREWORD.

The Port of Portland Commission in presenting this brochure to the ship owning public, has endeavored to give only facts obtained from the most reliable sources, together with exact data relating to this port's conditions and charges.

Any more information required regarding shipping matters or commercial conditions of this sec-

(Testimony of H. F. Champion.)

tion will be cheerfully supplied upon application, either to The Port of Portland Commission, City Hall, Portland, Oregon, or the Portland Chamber of Commerce, Fifth and Oak Streets, Portland, Oregon.

THE PORT OF PORTLAND.

Portland, Oregon, U. S. A., Jan. 1, 1912.

THE PORT OF PORTLAND.

The intent of the law incorporating The Port of Portland is, to maintain a deep, safe channel, for the largest vessels, from Portland to the sea, and to cheapen port charges.

The Commission has, by the various acts of the State Legislature, been authorized as follows:

First. To build and operate dredges and dredge machinery, and build dykes, for the improvement of the harbor and of the ship channel between Portland and the sea.

Second. To inaugurate and maintain a towage and pilotage service between Portland and the sea.

Third. To build and operate a dry dock.

Fourth. To establish rules and regulations for the navigation of the harbor, and of the Willamette and Columbia Rivers between Portland and the sea.

Fifth. To sell bonds and levy taxes for the carrying out of the various objects named above.

The present depth of the channel from Portland to the sea is 26 feet. The U. S. Government and The Port of Portland are now at work on what is known as the 30-foot project, which means a mini-

(Testimony of H. F. Champion.)

mum depth of 30 feet from Portland to Astoria. By the time this project is completed, it is expected that there will be 40 feet of water on the Columbia River bar.

PORT OF PORTLAND DRY DOCK.

Facilities for Docking Large Merchant Vessels.

(Five Pontoons)

DIMENSIONS OF DOCK.

Length468 feet
Width between wings 82 feet
Depth of water over keel blocks..... 25 feet
Lifting capacity, tons dead weight.....10,000
Will lift vessels 500 feet long.

DRY DOCK RATES

Effective February 1, 1912.

Steam Vessels on

Gross Tonnage	First Day	Lay Days
Up to 999 tons.....	18c per ton..	10c per ton
1000 to 3999 tons.....	16c per ton..	10c per ton
4000 tons and over	14c per ton..	10c per ton

Sailing Vessels on

Net Tonnage	First Day	Lay Days
Up to 599 tons.....	18c per ton..	10c per ton
600 to 999 tons.....	16c per ton..	10c per ton
1000 tons and over.....	14c per ton..	10c per ton

Sea-going Barges and Dismantled Ships same rate as sailing vessels.

(Testimony of H. F. Campion.)

Scows and Barges

(Except sea-going barges and dismantled ships).

	First Day	Lay Days
100x25 or equal to 2500 square feet deck area	\$30.00	\$10.00
Over 2500 square feet deck area..	40.00	10.00

RULES AND REGULATIONS.

1. Minimum charge for any vessel, \$50.00.
2. Docking charges include use of dock for twenty-four hours from time deck of dock is above water. Twenty-four hours or less constitute the first day.
3. Twenty-four hours or more than five hours constitute one lay day. Five hours or more than one hour constitute one-half lay day. Minimum charge, \$50.00.
4. Vessels in any class will have the advantage of the minimum charge in the next larger tonnage class.
5. Cargo will be charged for at fifty per cent of tonnage rates. No charge made for ballast.
6. In case a vessel is raised or lowered on Sunday or a holiday, or after working hours, a charge for labor and other additional costs will be made against the vessel.
7. No charge will be made for vessels in dry dock on Sundays or holidays unless work is performed on the vessels, in which case, regular rates will apply.
8. Wrecked or other vessels requiring extra

(Testimony of H. F. Champion.)

blocking will be charged for the additional labor and material required in preparing and clearing the dock; a charge will likewise be made for all keel and bilge blocks damaged by removal to effect repairs to a vessel.

9. All bills are due and must be paid when vessel is undocked. Berth Rates; waiting free. Laying up, \$1.00 per day per thousand gross tons or fraction thereof.

An electric derrick of ten tons capacity, placed on the wharf at the west end of the dock, is available for lifting propellers, tail shafts, etc., and for other purposes.

There is a small shop on the dock containing an electrically operated air compressor, a radial drill, and a large blacksmith forge.

Compressed air for operating air tools, and 500 volt D. C. electricity for operating electric tools, will be supplied according to schedule.

The contractor or the ship must hire and pay the mechanics direct, as The Port of Portland does not do any repair work on vessels.

TOWAGE AND PILOTAGE RATES

Effective Nov. 7, 1911.

Between the Pacific Ocean to Portland and Astoria and Return, and Moves in the Harbor.

Vessels	Rate
500 to 700 tons net register.....	\$375.00
701 to 750 tons net register.....	412.50
751 to 850 tons net register.....	412.50

1076 *The "Thielbek" and the "Thode Fagelund"*

(Testimony of H. F. Champion.)

851 to 1000 tons net register.....	412.50
1001 to 1200 tons net register.....	450.00
1201 to 1500 tons net register.....	487.50
1501 to 1800 tons net register.....	525.00
1801 to 2000 tons net register.....	562.50
2001 to 2500 tons net register.....	600.00
2501 to 2750 tons net register.....	637.50
2751 to 3000 tons net register.....	637.50
3001 to 3500 tons net register.....	675.00

Hawser charge \$15.00 each way.

Vessels towed from sea to Astoria and return only, will be charged 70 per cent of the round-trip rate to Portland and return, as named above. Vessels entering the Columbia River in ballast and departing without cargo, and vessels entering for fuel or supplies for use of the vessel so entering, will be towed from Sea to Astoria and return for 25 per cent of the rate charged from Sea to Portland and return.

Oil Barges, loaded, towed from the Sea to Astoria only, will be charged 52½ per cent of the round-trip rate from Sea to Portland, as named above.

1. Harbor Moves. Vessels towed by The Port of Portland under this Tariff will be moved within the harbor limits of Astoria or Portland at a charge of \$20.00 for each steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

2. Steam Vessels. Steam vessels will be moved

(Testimony of H. F. Campion.)

within the harbor limits of Astoria or Portland at a charge of \$25.00 for each steamer used for each move, when service is performed under ordinary conditions and with reasonable dispatch.

3. Services of Bar or River Tow Boats used in clearing or recovering ship's anchor, \$10.00 per hour; minimum charge, \$25.00.

4. Application. Rates named herein do not apply on vessels engaged in Coastwise lumber service.

5. River Pilotage is not required between Astoria and Portland when vessels are towed.

LUMBER VESSELS.

When Plying Between Pacific Coast Ports.

	Rates in Cents per M Ft. Lumber
<i>From Pacific Ocean to</i>	
Astoria, Knappton and return.....	\$.25
Skamokawa, Westport, Stella, Mayger and return .....	.40
Prescott, Rainier, Goble, Kalama, St. Helens, Columbia City and return.....	.45
Portland, St. Johns, Linnton and return....	.50

Remarks—No charge for Hawser.

NOTE—Charges will be computed on the actual number of feet of lumber carried outward bound, subject to minimum charge based on 300 M feet of lumber.

(Testimony of H. F. Champion.)

MOVES BEYOND HARBOR AT PORTLAND.

1. Lumber steamers, between Portland and Vancouver, \$50.00 for each towage steamer used for each move.

ADDITIONAL MOVES.

2. When vessels towed under this Tariff are given additional service to complete loading or unloading, charge for additional moves will be made as follows:

Lumber Vessels, Except Steamers—Between Portland and Vancouver and points beyond, or between Portland and points above Tongue Point and between intermediate points, a charge will be made subject to conditions existing at the time the service is performed.

3. Services of Bar or River Tow Boats used in clearing or recovering ships' anchors, \$10.00 per hour; minimum charge, \$25.00.

4. Barges, emptyPer move \$10.00
Barges, loadedPer move \$10.00

ADDITIONAL RULES AND REGULATIONS.

1. Additional Charge. The Port of Portland does not assume any responsibility for the acts or omissions of the Columbia or Willamette River pilots, and any unnecessary detention of towboats caused by fault of the ship or Columbia or Willamette River pilots thereof, will be charged for at the rate of \$8.00 per hour for the first twelve hours or less, and \$4.00 per hour for each additional hour,

(Testimony of H. F. Campion.)

except that as to moves within the harbors at Portland or Astoria, no charge will be made for the first hour of such detention.

2. Agreement. It must be understood that the rates provided herein are for the round trip, except as otherwise provided, and in accepting the services from The Port of Portland's boats on entering the river, ships agree to the payment of same and all the conditions of this Tariff.

3. Conditions. To obtain the rates named in this Tariff, vessels are required to use the steamboats of The Port of Portland for all tows and port moves.

4. No reduction from rates provided in this Tariff will be made in case of failure of ship to employ a Port of Portland tug in either direction.

5. Towage through Draw Bridges at Portland, Oregon. The Port of Portland reserves the right to decline to tow vessels through draw bridges at Portland when deemed unsafe account unfavorable weather or water conditions.

6. Rates named herein for tows, harbor moves, etc., are subject to The Port of Portland's convenience, and will not apply for emergency service; rates for such service will be subject to special contract.

7. Steam Vessels. The bar pilotage rates on steam vessels entering or leaving the Columbia River, when The Port of Portland furnishes a bar pilot, will be two dollars and fifty cents (\$2.50)

(Testimony of H. F. Campion.)

per foot draft and one (1) cent per ton net registered tonnage in each direction. The same rate to apply on sailing vessels not towed by The Port of Portland when their pilot is aboard.

8. A reduction of twenty-five per cent (25%) from regular bar pilotage rates will be allowed on steamers of all regular lines having not less than twelve (12) vessels from Portland annually, said reduction to be given in the form of a refund at the end of twelve (12) months; provided, that freight rates on shipments from Portland on such steamers are as low as from other Pacific Coast ports.

Columbia River Pilotage (Columbia River Pilots' Association). Between Astoria and Portland. Steam Vessels—\$2.00 per foot draft, and 2 cents per ton (net tonnage) in each direction.

WITNESS: I had nothing to do with the distribution of it.

Q. Well, you, as superintendent, would know whether you had them for the purpose of distribution?

A. No, I didn't have it. They were distributed through Mr. Talbot.

Q. They were distributed through Mr. Talbot?

A. Yes.

Q. Mr. Talbot is what?

A. General manager. Probably I didn't have personally but one or two of them.

Mr. WOOD: I object to that as incompetent.

(Testimony of H. F. Campion.)

Mr. BRISTOL: I offer the book in evidence, in line with my previous offer, for the purpose I had in mind when I offered the tariff, as also this other examination. In order for counsel to understand me, I don't claim anything for the map in the front of the book, and the map in the back of the book, and I make this statement now so it cannot be understood to be any evidence of any kind, if it comes to that. These maps are to be included—only the map of the harbor here in the center of the book, and the statement made by The Port of Portland in connection with this foreword and the Tariff at that time of the issue in that book.

Mr. MINOR: Can you tell me for what purpose it is offered?

Mr. BRISTOL: I am perfectly willing if you want me to disclose what it is, but the Court said I didn't have to just now.

Mr. MINOR: I object to it.

Mr. BRISTOL: I will say this: Mr. Minor asserted, standing here at this table—your Honor has already ruled The Port of Portland can't do certain things. Mr. Minor publicly reiterated to us here that he was going to reopen that matter to your Honor. I want to show the position this Port puts itself in generally to the shipping public.

Mr. MINOR: As far as that is concerned, I object to all of this evidence, and the book in particular.

(Testimony of H. F. Champion.)

COURT: I suppose this offer is bearing on the question of the right to limit the contract.

Mr. BRISTOL: Yes, your Honor.

Mr. MINOR: As far as the alleged contract limiting liability, I don't think that that has to be in a book. We claim that is a public statute. Your Honor takes notice of that. I say I wish to object to this book, and to all this evidence regarding the bridges, and the towing of the "Ocklahama" up here in the Port of Portland, I mean here in the river, through the bridges, etc., upon the ground same is irrelevant and incompetent for any purpose, has nothing whatever to do with this accident, which occurred out in the Columbia River near Astoria, doesn't tend to sustain any issues made by the pleadings in the case, nor show that Pease or the "Ocklahama" were negligent in any particular.

COURT: It will go in subject to your objection.

Mr. BRISTOL: I will say this: There will be other evidence connecting up with this evidence about these bridges.

WITNESS: I want to say I am not very familiar with that book, as far as any contents of it.

Q. The only question is, it was issued. That is all.

A. Yes, I don't know—

Q. That is all I care about.

Witness excused.

G. B. HEGARDT, a witness called on behalf of Libelant Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. BRISTOL: With your Honor's permission, I am going to call this witness so as to let him off.

Questions by Mr. Bristol:

Q. You are the chief engineer for the Public Docks Commission?

A. Yes, sir.

Q. And have a meeting this morning, I understand?

A. Yes, sir.

Q. In order to get this matter quickly before you, I show you a map, which I understand now is a map prepared by you as chief engineer of the Public Docks Commission in the State of Oregon.

A. Yes.

Q. Will you start, please, at the upper part of the river, in the vicinity of the Hawthorne Bridge, and reading down to the Willamette Bridge, give us both sides, east and west side of the river, the distance between the draw spans in the bridges in the City of Portland, from the vicinity of the Portland Lumber Company's mill to down through the North Bank Bridge.

Mr. MINOR: Objected to as incompetent and irrelevant. Furthermore, he is now reading from a map. I can as well read from a map myself.

COURT: He can look at that map and tell the distances.

(Testimony of G. B. Hegardt.)

Mr. WOOD: I make the same objection.

Q. Did you prepare this map?

A. It was prepared under my direction.

COURT: You know the map?

A. Yes.

Q. And the man who made the measurements, made them at your direction?

A. Yes, sir.

Q. And you are the chief engineer of this Commission?

A. Yes, sir.

Q. And that map is relied upon by you for the very information I am asking for?

A. That has been checked.

Q. Can you give me the distances between the draw piers, the draw swings on, and the end of the bridge piers in the river at this particular place?

A. Yes, sir.

Mr. MINOR: Objected to as immaterial and irrelevant.

Mr. WOOD: I followed his objections throughout about those bridges.

A. Well, take first the Hawthorne Bridge.

Q. Yes, take first the Hawthorne Bridge. Give the distance between the pier on the west side of the river and the draw.

A. There is a clear opening of 250 feet.

Q. Now, from the draw on the other side.

COURT: That is a lift draw.

(Testimony of G. B. Hegardt.)

Q. That is a lift draw, and no pier in the middle of it.

A. No pier in the center.

Q. Now, go on over and give me another bridge.

A. Morrison Street Bridge. That is a draw bridge with center rest.

Q. What is the distance between the center rest on the west side, and the first fixed pier?

A. 150 feet.

Q. And what is the distance on the east side?

A. 154 feet.

COURT: That is in the clear?

A. That is in the clear, yes.

Q. Now, then, down further.

A. Go down to the Burnside Bridge.

Q. Go down to the Burnside Bridge.

A. On the west side of the river, the clearance between the bridge and draw rest is 158 feet.

Q. And on the east side?

A. 161 feet.

Q. Now, then, down here.

A. Now comes the Steel Bridge.

Q. The Steel Bridge?

A. That is a lift bridge.

Q. Single lift draw.

COURT: You omitted the Burnside.

A. The Burnside has a draw opening. You remember I gave the clearance.

Q. You gave the Morrison.

(Testimony of G. B. Hegardt.)

A. The clearance of the Burnside on the western end was 158, eastern end 161.

Q. What is this? The Broadway?

A. Next is the Steel Bridge. Is a lift bridge, and the clearance is 205 feet.

Q. Now, what is the Broadway Bridge?

A. The Broadway Bridge has no center piers. That also is a lift bridge, of a different type, and the clearance there is 250 feet.

Q. Now, the North Bank Bridge in the vicinity of St. Johns, as you know, up the river.

A. That is also a draw bridge on central rest. The clearance on the west side of the river is 230 feet, and on the east side of the river is the same, 230 feet.

Q. Now, can you give me the distance, if you please, starting down the river again, from the Portland Lumber Company's dock, shown on this plat, and having reference to it, can you give me the distance that dock is above the Hawthorne Street Bridge? Just to get those distances.

Mr. MINOR: I object also as irrelevant and incompetent.

Mr. BRISTOL: This is for the purpose of getting the distance from the point of departure between the bridges. (Witness takes scale.)

A. Take the center of the dock.

Q. Yes, so as to give me the approximate distance from the Portland Lumber Company dock. I

(Testimony of G. B. Hegardt.)

want to go clear down the river between the bridges, and down to the North Pacific Mill.

A. From the Portland Lumber Company's dock down to the Hawthorne Avenue Bridge, the distance is approximately 2250 feet.

Q. All right. Now, between the Hawthorne Bridge and the Morrison Street Bridge; how far is that?

A. Approximately 1400 feet.

Q. And from the Morrison Street Bridge, to the Burnside Street Bridge; how far is that? I mean, from the center of the draws—between the two bridges?

A. About 2250 feet.

Q. Now, then, from the center of the Burnside Street to approximately the center of the Railroad Bridge or Steel Bridge draw?

A. Approximately 1700 feet.

Q. And from the Steel Bridge draw to the Broadway Bridge draw?

A. Approximately 2000 feet.

Q. The other bridge, the S. P. & S. Bridge, is way down the river several miles?

A. Several miles below.

CROSS EXAMINATION ON BEHALF OF PORT OF PORTLAND.

Questions by Mr. Minor:

Q. Mr. Hegardt, the draw spans on these bridges, which have a rest pier, have also what is known as a draw span?

(Testimony of G. B. Hegardt.)

A. Yes, sir.

Q. And that draw span rests upon a—

A. Pivot or pier.

Q. (Continuing) Pivot and revolves?

A. Yes, sir.

Q. And that draw span is the same length on either side of the pivot, is it not?

A. Yes, sir.

Q. So the distance between the east and west side is made up by what?

A. That depends on the angle of the draw rest to the line of the bridge itself. That is the reason that the opening differs a little bit, the approach to it.

Q. Then you haven't given the opening or the length, I should say, of the draw span on either side of the draw pier upon which it rests, have you?

A. Our drawing simply shows the absolute clearance for a vessel to pass through those bridges.

Q. I see. But you haven't given me the length of the draw rest pier?

A. Yes, I have.

Q. The draw rest pier, not the rest. I mean the pier, where the table is on which it revolves.

A. That I don't know.

Q. But they are the same length?

A. Yes.

Q. On either side?

A. Yes.

Q. They must be; otherwise the bridge would be

(Testimony of G. B. Hegardt.)

top-heavy, so the difference you make up merely comes from this angle.

A. The angle of the draw rest and the bridge itself.

Q. And the draw rests are supposed to be put in with the line of the current, aren't they?

A. Yes.

Q. Put in with the line of the current?

A. With the line of the current, yes.

CROSS EXAMINATION ON BEHALF OF
KNOHR & BURCHARD.

Questions by Mr. Wood:

Q. Mr. Hegardt, some years ago nearly all the bridges were draw bridges and not lift bridges, were they not? The lift bridge is of a recent type, is it not?

A. Yes, sir.

Q. Why has the lift bridge been adopted as preferable to the draw?

A. It is much quicker in operation one thing; cheaper in construction.

Q. Has the fact that vessels have more room to go through a lift bridge than a draw bridge had something to do with it?

A. I wouldn't be familiar with the reason for it.

Q. Could you say whether these spaces in the draw bridges, what you gave, I don't remember the exact number, were comparatively narrow, or whether there was plenty of room for vessels to pass through, as compared to lift bridges?

(Testimony of G. B. Hegardt.)

A. The beauty of the lift bridge, is that you can make a much larger opening at less expense. Take the North Bank Bridge is the largest draw bridge in the world, a clear opening, if I remember correctly, of 230 feet. The lift bridge here has a much larger opening and much less expense.

Q. Are the openings in the draw bridges here considered plenty wide enough for vessels to go through without touching either side?

A. Under ordinary conditions, I would think so. All subject to approval of the United States War Department.

Q. Is it a fact that vessels going through the bridges here frequently hit them, or not?

A. I don't think that is a frequent occurrence. Probably once in a while.

Q. Is it a fact that vessels going through the bridges here, in the harbor, frequently require two tugs?

A. Yes, I think they require two tugs at a time. That is, I don't know if require them to have them.

Q. Deem it advisable to have two tugs.

A. On account of the class of towboats used for that purpose.

REDIRECT EXAMINATION ON BEHALF OF WILHELMSEN.

Questions by Mr. Bristol:

Q. I don't know whether you quite well understood Mr. Minor's cross questioning, which was directed to this: Did you measure the distances

(Testimony of G. B. Hegardt.)

which you gave, using your leg here between the door of the witness box as the center of the draw pier, did you measure the distance you gave me from there, the edge of the pier, or measure from inside the bridge draw structure?

A. Yes, sir.

Q. You gave me the actual clearance?

A. The actual clearance in every instance.

Q. You gave me the actual clearance in every instance?

A. Yes, sir.

Witness excused.

F. H. CAMPION resumes the stand.

DIRECT EXAMINATION—Continued

Questions by Mr. Bristol:

Q. Now, I understand that you adhere to the belief that you can't take that pilot house log, and give me accurately the movements of the "Ocklahoma" with ships through those bridges, and whether Pease did the shifting?

A. No.

Q. Is there any record that you have, and I ask you for this and don't want to put you to a whole lot of trouble, but is there any record you have that will show when Archie L. Pease, Jr., shifted ships like the "Thielbek," for instance, through the bridges of the City of Portland?

A. No. As a rule, on all those sailing vessels, or any vessel in which The Port of Portland is

(Testimony of H. F. Campion.)

responsible for the movement of the ships, the captain is in charge.

Q. The captain is in charge?

A. The captain is in charge. And the lighter vessels, the lighter lumber schooners, the pilot may take him up, and do the operating of the boat, but the captain is very likely in the pilot house to oversee it.

Q. And what would you say of a case when the captain is not in the pilot house, and is asleep in his bunk?

Mr. MINOR: Objected to as incompetent and irrelevant.

A. Well, that wouldn't be likely to happen.

Q. Now, then, I understand you to say that Mr. Pease, as a pilot for The Port of Portland, wouldn't take a ship through these bridges.

A. No, I didn't say that.

Q. I mean a rigger, a square rigger. What is known as a barkentine or bark.

A. No, not if she was deep loaded.

Q. Not if she was deep loaded. Well, suppose she was in ballast.

A. Well, going up through the bridges, he might be operating the boat.

Q. He might be. Can you give me any instance, from your record, where Mr. Archie L. Pease, Jr., prior to August 24, 1913, performed such service for The Port of Portland?

A. No.

(Testimony of H. F. Champion.)

Q. No record of that?

A. No.

Q. Well, do you think Mr. Archie L. Pease himself would know?

A. Yes.

Q. And doesn't he give you, whenever he acts as pilot, a written report of his operation during the day?

A. No.

Q. He doesn't?

A. The captain makes a report of the boat.

Q. And you take no statements from your pilot at all?

A. No.

Q. How does it come, then, if the reports are always from the captain, that Mr. Archie Pease, Pilot, writes up the log? Will you explain that to me?

A. Yes.

Q. Calling your attention to the pilot house log.

A. Yes. We might be taking a sailing vessel up or down through the bridges, and he would be in the pilot house, and the captain be operating the boat, and he would tell the pilot to make that entry in the book; that he left Inman-Poulsen's at a certain hour.

Q. How about the entry of August 24, 1913. Can you give me any information as to the method or manner that entry was made?

A. When he is towing on the river, he takes

(Testimony of H. F. Campion.)

his six hours on and six hours off, under ordinary conditions, if the weather is good. We hold the master of the boat responsible for the boat. In fog or in thick weather, if in his judgment, conditions arise, he is supposed to take the charge of the boat from the pilot, anchor the vessel, or continue with it.

Q. Well, if conditions arise. Now, do you limit those conditions only to fog and smoky or murky weather, or any other conditions—

A. Any condition.

Q. That you, as superintendent, might think needed the captain's performance of duties?

A. Yes, the captain aboard his own vessel away from port here.

Q. The captain aboard his own vessel, away from port here, even in that case would require the captain to be on duty if there were conditions?

A. Yes, if the captain left here with a deep tow.

Q. Now, it is in evidence here, as I understand it, and I am only trying to quote this for the purpose of getting your idea as superintendent of The Port of Portland, whether this rule you have stated, of operation now, as to the captain being the man in charge of a boat, applied, if they start somewhere from Prescott, and took a tow down there at Tongue Point, and they anchored the tow at Tongue Point. Then they go down to The Port of Portland dock, where Mr. Astrup or Mr. Titley reside, there in Astoria—where is that?

A. Astoria. -

(Testimony of H. F. Campion.)

Q. Upper end of the O. R. & N. dock?

A. Yes, sir.

Q. They go down there and dock; then they go down the river, and in the Port of Astoria there are ships anchored and it is night time, and you are going to bring a tow, as I understand it—it is known some way or other that you are going to bring a tow, or vessel, that came inward from the sea up to Portland, to load cargo outward in the course of her business. Now, what I want to know is—I will add to that statement that the tide was flood; that, outside of the fact that it was the Astoria harbor with shipping probably at anchor, and other ships likely to move therein, as you may or may not know the fact to be, why, there was nothing remarkable about the night. Would that be a case under your rule for Captain Turppa to be in the pilot house, looking after his ship, or would it be a case for the pilot?

Mr. MINOR: Objected to as incompetent, irrelevant and immaterial.

Q. In your rule now, as you have it, for The Port of Portland, you having said you would look to the master of the tow boat. Now, I want to know under those circumstances, what you would expect: whether Turppa should be in the pilot house looking after his tug, or whether it should be left to Pease?

A. Left to the captain in this way, that they

(Testimony of H. F. Campion.)

arrived in Astoria early the night before, and they went down and laid alongside the vessel.

Q. How do you know that?

A. Saw it in the log book the night previous, where I read they left Astoria at 10:20.

Mr. MINOR: Arrived down there at 10:20.

Mr. BRISTOL: No, left Astoria at 10:20. Didn't arrive down there at 10:20. Now, we will look at that log again. You said 11:15, when arrived down there this morning. In order to get that right we will have a look at it again. Mr. Minor says arrived down there at 10:40.

COURT: One says 10:30.

Q. I want to get this right. Read from that log book when you arrived with the "Ocklahama" alongside, or when you passed that night alongside the "Thielbek," and read the time it says you got there?

A. 10:30 p. m.

Q. 10:30 p. m.

A. Yes, 10:30 p. m.

Q. What is this 11:15 out here?

COURT: You are referring to the engineer's log.

Q. Yes, engineer's log. I want to know what that 11:15 is. One place 11:20, another 11:15, another 10:30. Mr. Minor says 10:30.

A. Alongside ship "Thielbek," 10:30.

Q. What is 11:15?

COURT: If you don't know, Captain, say so.

A. It just says she was lying alongside there from 10:30 to 11:15.

(Testimony of H. F. Campion.)

Q. Where did she go after 11:15?

A. Stayed there until got on the way next morning.

Q. How do you know laying alongside from 10:30 to 11:15?

A. Because it don't show any other movement between that time.

Q. What is the 11:15 for? What did he put it in for? Is that arriving time, leaving time, or elapsed time?

A. It just elapsed time.

Q. From 10:30 to 11:15, what did the "Ocklahoma" do?

A. Simply alongside the ship.

Q. Simply alongside the ship from 11:15 to when?

A. 3:05.

Q. Just simply alongside. So would it be correct to say she was alongside the ship from 10:30 the evening before until 3:05, or from 11:15 to 3:05—which?

A. She got there about 10:30. Then, by the time she was made fast, and they told him when to be ready to get the anchor up, and get under way, it was 3:05. That is the time she absolutely got under way with the vessel.

Q. All right. Now, I think you have answered my question, but I would just like to be sure again, so you are not confused. I understood you to say that that night, and under those conditions, that it

(Testimony of H. F. Champion.)

would be up to the captain to look out for his tug and tow.

A. Well, he was off watch at 12 o'clock.

Q. I am not speaking about the fact as to his being off watch. I am talking about this rule you gave me, which was, you looked to the captain as the responsible person to look after the tug and tow. Now, is that true, and if true, was it true on this particular night?

A. Well, yes, we always—

Q. All right. That is all.

Mr. MINOR: You always what? Finish your answer.

COURT: Go ahead and finish.

Mr. BRISTOL: Yes, finish it.

A. You walked right away, so I didn't want to talk while you were going.

Mr. BRISTOL: Go ahead and finish, if you have more to say. I understood you answered the question.

A. I will go back and say we hold the captain responsible all the time.

Q. That is all I want to get at.

A. And the pilot too; and the pilot to a certain extent; naturally while he is on watch, and we expect that his judgment, leaving up with tows, or handling up a tow, is all right to a certain extent, but if any extreme condition comes up, we expect the captain to take charge of the tow. Now, this captain probably handled the tow to Astoria, and

(Testimony of H. F. Champion.)

he went off watch at 12 o'clock at night after the vessel was alongside, and he will say to the pilot, "As soon as conditions are favorable, leave up in the morning." And the pilot considered them favorable, and left up at 3:05, and the captain was asleep.

Q. That is all.

CROSS EXAMINATION FOR THE PORT OF PORTLAND.

Questions by Mr. Minor:

Q. Now, Captain, I want to ask you a few questions. How long have you known A. L. Pease, Jr.?

A. Well, nearly all his life.

Q. How long has he been engaged in work on the rivers, to your knowledge?

A. Well, he has been engaged with me directly more or less for the last five years, since July 1, 1909, and he was engaged for The Port of Portland previous to that.

Q. Previous to 1909?

A. Yes, I think so.

Mr. BRISTOL: Is this going to his pilot, Mr. Minor?

Mr. MINOR: I have a right to cross examine the witness.

Mr. BRISTOL: Of course you have.

Mr. MINOR: Then keep quiet, please.

Mr. BRISTOL: You asked me awhile ago what I claimed for certain facts. I asked then whether you claim now this testimony you are pursuing with this witness—if Mr. Pease worked in any capacity

(Testimony of H. F. Champion.)

for The Port of Portland, on any vessel, or any old time that qualifies him as a pilot.

Mr. MINOR: This is merely a preliminary question. As soon as the testimony develops, you will understand.

Mr. BRISTOL: All right; thank you.

Q. Now, Mr. Champion, in what capacity was Mr. Pease working for you in that five years?

A. As I told you, he was on deck a little bit, a few days, probably a month. I can't recall the actual amount of time. He was watchman and mate.

Q. For how long a time was he mate?

A. He received a mate's license October 4, 1910.

Q. From whom did he receive that mate's license?

A. United States Local Inspector of Steam Vessels.

Q. And do you know what are the requirements of the United States Local Inspectors, for a mate?

A. Well, he has to know how to store cargo, and how to look out for a boat in rather a general way; something about lights and color blindness; how to make a boat fast.

Q. And navigate a boat?

A. Not much to navigate a boat.

Q. Do you know whether the license gave him authority to navigate?

A. Not now.

Q. Did it then?

A. I don't think so.

(Testimony of H. F. Champion.)

Q. How long, do you know, has he held a license as pilot?

A. Since April 25, 1912.

Q. Since April 25, 1912, and by whom was that license issued?

A. His mate's license was endorsed by the United States Local Inspectors of Steam Vessels. I am taking this information off his license.

Mr. BRISTOL: You are reading from a little memorandum book, and I suppose you copied that to refresh your recollection?

A. Yes, and I took it from his license.

Q. During the time you have known him, I would like you to state what manner of man you have found him to be? Whether been a man steady, and sober and industrious?

A. Yes, he was.

Q. And careful or not?

A. Yes, since he has been in the service, he has been careful.

Q. Now, you said that you always hold the captain of the ship, or the boat, rather, responsible. Do you mean by that to say that you expect a captain to navigate a boat at all times?

A. No, not at all times.

Q. When do you expect the captain to navigate it, and not the pilot?

A. Well, the captain's watch is from six in the morning until twelve noon, and from six night to twelve midnight in ordinary conditions?

(Testimony of H. F. Campion.)

Q. Yes.

A. But should they meet foggy weather, or stress of weather, and the pilot be on watch, we would expect the captain would take charge of the tow and anchor her, or continue, according to the conditions.

Q. Now, who is the judge of that? Yourself up here?

A. No.

Q. Or somebody else? Who?

A. Whoever is on board the boat.

Q. The captain, if he is in charge?

A. The captain, if he is in charge, or the pilot, if he is in charge.

Q. Now, the evidence in this case by the Libelant Wilhelmsen is this: The night was a clear night, practically no wind and no fog, and that there was anchored, so far as it is shown, in the Astoria harbor the "Thode Fagelund" and the "Chinook," and the "Thielbek" at the lower end of the harbor. Now, under those circumstances, which is all the records so far show, what would you expect in regard to the operation of the boat "Ocklahama" with her tow?

A. I expect her to go right along with her tow.

Q. And who would you expect to be operating her?

A. If it was during the hours—well, at the hour it did start—I will make it that way—at the hour it did get under way, I would expect the pilot.

(Testimony of H. F. Campion.)

Q. And would expect him to keep in charge how long?

A. Until he was relieved at six in the morning by the captain.

Q. Until he was relieved by the captain?

A. Or 6:30.

Q. You said something about the Columbia River Pilots Association, and their being in charge of steam vessels.

A. Pardon me just a moment. At the same time, we would expect that the pilot and captain of the boat would have an understanding about starting up in the morning, about as to when to get ready and to start, if conditions were favorable.

Q. What I want to get at now is this: You said something about Columbia River Pilots Association, and the pilots from that association being in charge of steamers?

A. Yes, sir.

Q. When being towed by your vessels. And I understood you to say that these Columbia River pilots were not employed by The Port of Portland, and you had nothing to do with them.

COURT: What is the answer?

A. He hadn't finished the question.

Q. As I understood, you say that such pilots would not be employed by you at all, this Columbia River Pilots Association?

A. Not on steam vessels.

Q. Now, there is some evidence here to the effect

(Testimony of H. F. Campion.)

that the "Thode Fagelund" at Astoria, on this occasion, was in charge of Nolan, who was, I understand, a pilot employed by The Port of Portland?

A. Yes.

Q. Explain that to the Court.

A. The Columbia River Pilots Association, pilot vessels, steam vessels, between Portland and Astoria.

COURT: They don't do the bar service?

A. They don't do the bar service. The Port of Portland hire the bar pilots.

Q. I just want you to explain that, because it seems to be kind of muddled.

A. And I might say that in towing sailing vessels on the river, we don't use a Columbia River pilot. The only case we would use one, if we happened to have our tug up here, and take her down with the Columbia River pilot, because the tug's master probably hasn't a license for the Columbia River. They would tow that vessel down the Columbia River.

Q. These logs, Mr. Campion, which you have introduced in evidence, I understand came to you in that form, and you have furnished copies of all the logs to the other side?

A. Yes, sir.

Q. And you didn't make those logs?

A. No, sir.

Q. And the logs, as far as you know, are correct?

(Testimony of H. F. Champion.)

A. Yes, sir.

Q. Turppa was mate, as I understood you to say until some time in April, 1913, mate on the "Ocklahama"?

A. Pease.

COURT: Pease.

Q. I understood him to say that until some time about April, 1913, Turppa was mate, and somebody else was captain, and he left in April, 1913.

A. I said Captain McNally was master of the "Ocklahama."

Q. About some time in April, 1913.

Mr. BRISTOL: And Turppa was pilot.

A. And Captain McNally asked for a lay-off.

Q. And Turppa was pilot?

A. Turppa was pilot.

Q. And at that time, while those two men were in charge, was Pease on the "Ocklahama"?

A. Yes.

Q. In what capacity?

A. Mate. Turppa then went captain, and Pease went pilot. Then Captain McNally, the last day, I believe, of April, left the service entirely, and Captain Turppa went from pilot to master, and Mr. Pease went from mate to pilot. That is, he had been pilot for a few days.

Mr. SNOW: That is April, 1913?

A. 1913.

Q. I wish you would tell the Court, something

(Testimony of H. F. Campion.)

about the size and power of the "Ocklahama"; how large is she?

A. She is, I think, about 180 feet long.

Q. And what is her power?

A. I think about 1200, seems to me, horse power; between 1000 and 1200.

Q. Is she a boat which is used commonly in towing vessels such as the "Thielbek," on the river?

A. Yes.

Q. How does she compare with the other towboats operating on the Columbia River? Columbia and Willamette?

A. She is as good as any of them now and at that time.

Q. Was at that time, and is now?

A. Yes.

Q. Has as much power?

A. Yes, about as efficient as a towboat.

Q. How old a hulk is she—how old is she?

A. Her hull?

Q. I don't care about her hull. How old are her engines, etc.? Comparatively new boilers and engines?

A. Her boiler was installed in 1903, and her hull was rebuilt in 1910, and overhauled in 1914.

Q. 1914?

A. She had new cylinder timbers installed in 1914, new deck.

Q. How much steam is she allowed to carry?

A. 150.

(Testimony of H. F. Champion.)

CROSS EXAMINATION ON BEHALF OF
KNOHR & BURCHARD

Questions by Mr. Wood:

Q. Mr. Champion, referring to the testimony you gave about vessels passing through bridges in the Portland Harbor, state whether or not that is considered more or less a risky passage?

A. Through the bridges?

Q. Yes.

A. Always.

Q. State whether vessels, in passing through the bridges, come in contact with them frequently, or not?

Mr. BRISTOL: When towed by the "Ocklahoma," you mean, Mr. Wood?

Q. All right; I will put it that way. I mean generally. First, you can answer that.

A. No, it is an exception.

Q. Is it ever necessary that a vessel be assisted through the bridges by two tugs instead of one?

A. Yes, sir.

Q. One is sometimes considered not sufficient?

A. Yes, sir.

Q. At what speed does a tug putting a vessel through the bridges approach the bridge?

A. Well, it depends. If she—if the pilot considers he is going to get a bridge opening, he will take the headway absolutely off his vessel. If he sees he is not, had very little headway; as a rule

(Testimony of H. F. Champion.)

they have very little headway in going through the bridge, almost drifting.

Q. The passage through the bridges, then, is always considered a more or less difficult operation; is that right?

A. Yes, sir.

Q. Mr. Champion, when steamers such as the "Thode Fagelund," for example, are passing through the bridges in the Portland harbor, don't they always get the assistance of a tug to help them through?

A. Yes, that is coming down.

Q. Going up how is it?

A. Going up, they have gone up without assistance.

Q. But which is more frequently done, going up with the tug, or without?

A. Well, during the summer weather, they might go up without them, but it is seldom they come down without the assistance of the tug.

CROSS EXAMINATION ON BEHALF OF
GRACE & COMPANY

Questions by Mr. Snow:

Q. I would like to ask a question. I didn't understand; you say that Mr. Nolan was in the employ of The Port of Portland.

A. Yes, sir.

Q. And he was employed on salary, was he?

A. Yes, sir.

(Testimony of H. F. Champion.)

Q. He was paid a flat salary, whether he worked or whether he didn't work?

A. Yes.

Q. And your charges or the charges of The Port of Portland, for pilotage service, are based upon tonnage?

A. Net tonnage.

Q. So you would charge, on a net tonnage basis, for the "Thode Fagelund" out over the bar, based upon her net tonnage?

A. Also her draught.

Q. Now, I don't understand quite what you mean by pilot and captain. Do you mean to say that if you are upon a tug boat on the river, that you always have a captain and pilot on that tug?

A. If you are operating a boat over, or during the entire 24 hours, you must have a licensed master and a licensed pilot. That is the rule of the United States Steamboat Inspectors.

Q. A licensed master, and a licensed pilot.

A. The master must have a pilot license, that is, he must have a license to operate his boat on the routes on which it runs, and a pilot also must have that license. The difference between a master and a pilot is one can take command of a boat and the other can't.

Mr. BRISTOL: Which one takes command? The master, doesn't he?

A. The master, yes. You must have a master in command.

(Testimony of H. F. Champion.)

Q. Then the pilot, under your terms of employment and regulation, has no control over that boat; if the captain wants to give an order for the vessel, that order goes regardless of what the pilot might think of it—is that it?

A. Well, yes, he is in charge, if they can't decide it.

Q. Then your pilot is a species of assistant master, isn't he, so to speak? He has no pilot's duties, as such. I suppose the pilot would control the question if that one should come up—that the pilot could give an order, and the master must obey an order.

A. Not on the ordinary boat.

Q. What do you mean by the ordinary boat?

A. The ordinary river boat.

Mr. BIRSTOL: Not on the "Ocklahama."

A. Not on the "Ocklahama." The master of a vessel never loses his identity.

COURT: The master has the right to supersede the pilot at any time, I suppose?

A. Yes. I am talking now to illustrate—the "Thode Fagelund," her master has no license for this river, and, although she would take a Columbia River pilot to operate the vessel, bring it from Astoria to Portland, if it came to a difference of opinion, the master of that "Thode Fagelund" would still be in command. The question of anchorage in fog, or whether to run that vessel. That is what I mean. If the pilot considered it right to run the

(Testimony of H. F. Champion.)

vessel, and the captain thought he didn't, the vessel must stop and anchor under the captain's command.

Q. I will ask one more question. As a matter of fact, your charges for pilotage of the "Thode Fagelund," were based upon her tonnage register, and her draught?

A. Yes, sir.

Q. Exceeding the amount that you would pay Nolan for pilotage service of that vessel?

A. Yes, sir.

Q. In other words, you make a profit off the pilotage business, don't you?

A. Well, not at the end of the year.

REDIRECT EXAMINATION ON BEHALF OF
LIBELANT WILHELMSEN

Questions by Mr. Bristol:

Q. Just a moment. Mr. Minor got you to say the horse power of the "Ocklahama" was about 1000 or 1200. Are you right about that?

A. I don't know whether right or not.

Q. I want to reconcile what you say to Captain Turppa over here, who says that the horse power of the "Ocklahama" was 700. Which is right?

Mr. MINOR: 750, I think he says.

A. I was going to say 800, but I thought it was more.

Q. It is more likely nearer 800 than 1000, isn't it, because it wasn't until 1914 that you changed her?

A. Then we didn't—she hasn't been improved

(Testimony of H. F. Campion.)

since the first, as far as the engine or boiler. I guess 800 would be nearer right.

Q. Mr. Wood got you to say there was a little difference in the operation of these ships summer time and winter time. You would consider August, 1913, summer time, wouldn't you, under that explanation?

A. Yes, sir.

Q. Ordinary conditions in the Willamette River in 1913, in August.

A. Yes.

Witness excused.

Adjourned until 2 p. m.

Portland, Ore., Tuesday, Sept. 15, 1914, 2 p. m.

ARCHIE L. PEASE, Jr., a witness called on behalf of Libelant Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Bristol:

Q. Mr. Pease, you are the Archie Leroy Pease, Jr., that has been mentioned in this case so much since we started, are you not?

A. Archie L. Pease, Jr., yes, sir.

Q. Pilot of the "Ocklahama"?

A. Yes, sir.

Q. Now, will you tell me, please, how long you have been pilot on the Willamette and Columbia Rivers? When did you get your papers as a pilot?

(Testimony of Archie L. Pease, Jr.)

A. Let's see. About, I should say practically. about two years ago.

Q. About two years ago?

A. Yes, two years and a half ago, about.

Q. Two years and a half, and have you been pilot on the "Ocklahama" all that time since?

A. No, sir; about a year and a half.

Q. A year and a half on the "Ocklahama"?

A. About, yes.

Q. That would be continuous, would it?

A. Yes, sir.

Mr. SNOW: I understand the record to be that this witness got his pilot papers in April, 1913.

Mr. MINOR: 1910.

Mr. BRISTOL: I am going to find that date out, in the meantime, if I can pursue it a little further.

Q. You haven't got a date on any paper you can refer to, as to when you got your pilot's license, have you?

A. I can refer to my pilot's license, yes.

Q. Have you it with you?

A. Yes, sir.

COURT: A previous witness testified to that date, didn't he?

A. Yes, sir.

Mr. BRISTOL: I don't know whether he did or not. I think he testified to what he thought the date, but I thought Mr. Pease would probably know better than Mr. Champion.

A. He got that from my license, I am sure.

(Testimony of Archie L. Pease, Jr.)

Q. Got that from your license?

A. Yes, sir, pretty sure.

Q. And your pilot's license was given in 1912, then, by the endorsement of your mate's license?

A. Yes, sir; I am not sure about the date.

Q. But you know it was in the year 1912?

A. I think it was. I know that I was mate on there with pilot's papers for about a year, and then I have been pilot, the capacity of pilot for about a year and a half since then; that is, just in round numbers.

Q. You were mate on the "Ocklahama" with pilot's papers for about a year and a half, and then this change between McNally and Turppa took place. That was April, 1913?

A. I think it was.

Q. And since that time, you have been pilot on the "Ocklahama"?

A. Yes, sir.

Q. Now, as pilot on the "Ocklahama," you have what is known as a course book, haven't you?

A. Yes, sir.

Q. Of the courses you steer on in the river?

A. Yes, sir.

Q. I will ask you to, and I guess you have it, whether you brought your course book showing the courses in the river usually followed by ships in the Columbia River channel way between what you call quarantine or the anchorage ground to, say, Tongue Point?

(Testimony of Archie L. Pease, Jr.)

A. Well, I have no courses running down below Astoria.

Q. Below Astoria?

A. Very accurate, and I have none coming back.

Q. Below Astoria. Well, what do you mean by below Astoria?

A. Below the O. R. & N. dock.

Q. Below the O. R. & N. dock?

A. Yes.

Q. You mean to say you have no courses in your book?

A. No, sir.

Q. No pilot courses as pilot of The Port of Portland?

A. No, I have got a book; I have some going down, and I wouldn't state to their being so very accurate, for the simple reason—

Q. Did you bring the book with you?

A. Yes, sir.

Mr. MINOR: Let him finish his answer.

A. I was going to say, for the reason if the weather is thick, where we have to run by compass, when we get to Astoria, we would lay at the dock; wouldn't go down with the vessel, because we wouldn't start with a vessel, so we don't need them. So when we have to run by compass down there, we wouldn't run down there.

Q. Your pilot's license takes in the Columbia and Willamette Rivers, to the mouth of the Columbia River, don't it?

(Testimony of Archie L. Pease, Jr.)

A. No, sir.

Q. Where does it stop?

A. Takes in the lower harbor of Astoria. That is, down, you might say, to about Young's Bay.

Q. Young's Bay?

A. Or along Flavel. The mouth of the Columbia River would be out on the bar.

Q. How far does your pilot's license extend, and allow you to operate as pilot in the lower Columbia River?

A. It would take from the lower harbor of Astoria.

Q. From the lower harbor to Astoria?

A. Of Astoria, yes.

Q. Now, when you say lower harbor, do you mean down as far as the Flavel dock?

A. Well, I should say a short distance this side of there.

Q. Well, I call your attention—

A. I don't know. I have never—

Mr. MINOR: It is defined in the statute?

Mr. BRISTOL: What is defined in the statute?

Mr. MINOR: The bar pilotage and the river pilotage.

Mr. BRISTOL: That may be; I don't know whether it is or not. That isn't what I am asking. I am asking how far down his license extends to allow him to operate ships. That is what I want him to fix.

Q. I show you a Columbia River chart.

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. No. 6140, Libelant Wilhelmsen's Exhibit 3 (Nolan), and call your attention to the point marked Astoria.

A. Yes, sir.

Q. And Young's Bay?

A. Yes, sir.

Q. And to the place marked "post light" opposite Flavel, and I ask you to tell me where the limit of your pilot's license stops in this lower Columbia River below Astoria.

A. Well, I would say that it stopped—I don't know whether the exact—what they really called the exact lower harbor of Astoria. I know their anchorage ground is in the lower harbor, but where it ends, I don't know. But my papers call from Astoria to Portland; that means the lower harbor at Astoria to the upper harbor of Portland.

Q. What I am getting at, Mr. Pease, and I want to be perfectly accurate about it, and fair to you.

A. Yes, sir.

Q. You claim, do you not, that you had a license to take this ship "Thielbek" from her anchorage up to Astoria?

A. Yes, sir.

Q. You claim that, don't you?

A. Yes, sir.

Q. And The Port of Portland claims that, don't it, as far as you know?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. Did you ever take a ship from the anchorage below where you took the "Thielbek," under your license?

A. Not for any great distance.

Q. How much difference? Did you ever take from opposite Flavel?

A. No, sir; not that far down. No, I mean their anchorage. May have been a matter of a few hundred feet in that vicinity, where she was. The anchorage is the farthest down I have ever taken a vessel.

Q. You know where Buoy 14 is, out in the harbor?

A. Yes, sir.

Q. We have evidence that shows Buoy 14 is a little bit starboard of where the "Thielbek" was picked up. She was on a line between the post red light and the fish oil tank?

A. Yes, sir.

Q. And that is a little bit westerly. I don't care about the distance, except a matter of a quarter of a mile westerly from Buoy 14.

A. Yes, sir.

Q. What I mean is, your pilot's license never took you more than outside a distance below that 14 buoy of, say, a mile westward, and from that up to the Port of Astoria. Is that right?

A. Well, from this fish oil plant, I have never taken a vessel from down that far.

Q. From the fish oil plant?

(Testimony of Archie L. Pease, Jr.)

A. No, sir; have always been up from there.

Q. So it is the first vessel you ever took, as far down as the fish oil tank.

A. No, have taken other vessels from where the "Thielbek" was lying, but right around in that vicinity is where they anchor the vessels.

Q. Would it be much trouble for you to get your license as a pilot?

A. No, sir.

Q. And produce it here?

A. No, sir.

Q. Will you do that for me?

A. Yes, sir.

Q. And it will be considered that you will do it at your early convenience?

A. Yes, sir.

Q. In other words, have it in Court tomorrow morning?

A. Yes, sir.

Q. Because I might finish my examination.

A. If they are through with me, I can send it up with one of the other men, coming up.

Q. If you will, please.

A. Yes, sir.

Q. I would like to have from that position of pilot—showing you the reduced plat of the blue print of Astoria, and Columbia River pilotage ground, there in the vicinity of Buoy 14, the fish oil tank, and the post red light, as shown on the larger map, this being simply reduced for convenience?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. And assuming those locations to be approximately correct, I want you to refer to your course book, which I understood you to say you have with you in obedience to my subpoena, and tell me what your course from that anchorage, where the "Thielbek" lay, up the river, is?

A. Well, I will tell you approximately what my course is.

Q. Well, we will get to your course—

A. Well, I haven't that course.

Q. You mean you haven't that course at all?

A. No, sir.

Q. Now, have you got the next course?

A. No, sir.

Q. Have you got the next course?

A. No, sir.

Q. Then I understand, as a pilot, you have no book of courses at all from the anchorage grounds, we will say, up to a point opposite your Port of Portland dock in Astoria?

A. No, sir; I have no course.

Q. You have no courses?

A. No, sir.

Q. And am I to understand from that, that if, for instance, so you will see what I am after, every other captain or mariner should testify to courses up the river from the proximity of that red post light, as to the course of vessels usually plying in

(Testimony of Archie L. Pease, Jr.)

the Columbia River, would you say or not those courses were the proper courses?

A. Nobody could say they were the proper courses.

Q. Why not?

A. Because, for instance, I have what I claim is proper for my course going down the river.

Q. How far do your courses go down the river?

A. From Portland to Astoria, and I could go and get the course books of other masters on their boats, and they wouldn't agree with me. That is, you couldn't run another boat on the "Ocklahama's" course book, and nobody could say whether those courses are correct, unless they had been with that boat.

Q. Aren't there ranges marked on the Columbia River in the vicinity of Astoria and the quarantine ground, by buoys red and black, on both sides of the channel?

A. There is red and black buoys, yes, sir.

Q. Red and black buoys in the daytime, and red and white lights at night, are there not?

A. There are lights at night, yes.

Q. And you mean to testify as a pilot with a license since last April, as I understand it—now, please don't think this is to insinuate anything, because it isn't. I just want to get at the facts—that as far as you are concerned, you maintain that there is no course; that is, no course, usual course that vessels would steer on coming up from the

(Testimony of Archie L. Pease, Jr.)

vicinity of that anchorage, where you found the "Thielbek," a point about approximately opposite your Port of Portland office, at the eastern end of the O. R. & N. dock.

A. There may be that. What I said was, that no man could swear that a course was accurate on another man's boat.

Q. Have you that usual course that vessel steers on from the vicinity of Buoy No. 14, up the Columbia River, to the approximate point, say Gilman's Flashlight Buoy No. 2?

A. I haven't those courses.

Q. Did you have them in August, 1913? August 24, 1913?

A. No, sir, I did not have them.

Q. Now, then, you must have steered—you didn't steer—then as I understand it, you didn't take any compass bearing to steer the vessel at all?

A. No, sir.

Q. That is true, is it?

A. Yes, sir.

Q. I believe it is in evidence, either through Mr. Campion, or Captain Turppa—if I am wrong, you can correct me later, that you took your watch at midnight, on the 24th of August—12 o'clock August 24th?

A. I didn't take the watch at that time. My watch commences at that time.

Q. When did you take it?

A. I took it when we started out.

(Testimony of Archie L. Pease, Jr.)

Q. When did you take your watch?

A. I took it—as near as I remember, I was called shortly before 3 o'clock, about half past two.

Q. And then you went on watch?

A. Yes, sir.

Q. Can you tell me—now, here is what I am trying to arrive at, and then you will know better how to answer. I want you to tell me so the Court will understand, if you didn't follow your compass bearings and your courses, as I understood you did, how you did determine your course, and what you steered by, or to; objects or lights going up that river? Can you do that for me?

A. Yes.

Q. I hand you this little plat here, so as to get it down; Captain Turppa fixed the anchorage of the "Thielbek"; I draw a line between red post light and he fixed the light in here. You can disagree with him, if you like, but it was on that line of vision where you started from?

A. Yes, sir.

Q. Now, you place where you started, and what I want you to do with the pencil, if you will?

A. Trace my course?

Q. Yes, if you will, as near as you can now.

A. Yes.

Q. Turn the plat any way you want to, this being as you look at it flat, the north side is the top, the right-hand side or eastern side, the left-hand

(Testimony of Archie L. Pease, Jr.)

side or western side, and the bottom of the map is Astoria, or the southern side?

A. Yes, sir.

Q. Now, starting anywhere in here with a pencil, and I will get to a straight edge in a minute, if you can show us what you bore on; for instance, your object, if you didn't steer a course?

A. Yes, sir.

Q. And where you steered for, and how you did it?

A. Right down on one of those docks, I don't know which one, I know which dock, but I can't pick it out, is the Elmore light.

Q. I make a mark on what purports to be, I will mark it X, and we will agree on the Elmore cannery dock light.

A. Yes, sir. Well, I got my bearing from this red light.

Q. This red light? Let's get that fixed. That is the red post light?

A. Red post light.

Q. On your port side of the channel going up?

A. Yes, sir.

Q. It is on the edge of the Desdemona Sands?

A. They have a number of different names for it, a black dolphin with a red light on it. I steer right along for outside of this light.

Q. First you come up from the anchorage to this buoy?

A. Yes, we were around in here some place; I

(Testimony of Archie L. Pease, Jr.)

believe, in fact, we were about here, pretty close to abreast of it, on that evening; that is, we were close to the red light, so I could get my bearings from that red light.

Q. The red light. You crossed immediately from the northernmost side of the river, where you found the "Thielbek"?

A. Yes.

Q. You came up; as sailors say, bore your ship up as soon as she commenced to move, to a point which you took your departure from, that red light there?

A. I had to turn her around. I believe she was headed down that way. And after turning her around, I took my bearings on this red light, beacon light, and ran for just outside the Elmore dock red light, ran about like this.

Q. That was to put you—

A. About out in there.

Q. That was to put you off the Elmore dock light; how far did you calculate to pass?

A. Well, I should say a couple of hundred feet.

Q. Out in the stream?

A. Yes, sir.

Q. And now, as I understand it, when you picked up the "Thielbek," she was headed down-stream; that is her bow was down-stream, and the bow of your "Ocklahama" was down-stream. I mean when you picked up, that is, when you got your anchor weighed and started to go up the river?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. When you took the wheel?

A. Yes, sir.

Q. And you turned her around or maneuvered in the river to your starboard?

A. I don't remember exactly. I remember I did a good deal of backing and turned her around; that is, I wasn't so she was headed—I wouldn't say exactly the way she was headed, but I know I had to turn her around some before starting up.

Q. That is what I want to get at. When you did start up, can you tell me whether your boat, your pilot house, your port side, was towards this red light?

A. Yes, sir.

Q. Or were you beyond it?

A. Well, it was—I think, if anything, I was a little bit this side of it.

Q. That is down-stream. You were west of that light when you did straighten up?

A. Yes, sir.

Q. Now, we will say along up here to the Elmore cannery light, and about 200 feet off the dock, is that correct?

A. Yes, sir.

Q. Will you place a mark on there where you set your next course, if you set any, and for what object?

A. I followed the docks around about 150 or 200 feet off. Just followed the shore line, is what I

(Testimony of Archie L. Pease, Jr.)

was following; got out in here, and was headed over that way. The reason that I did that, sometimes when we get here, we cut right across for, I believe that is the light. I am not sure, but I think that is Gilman's.

Q. That Gilman Light Buoy No. 2?

A. A flash light; sometimes when we get there we head right across there; now, that light that is out here, that isn't burning now. It isn't on here, I don't believe. Sometimes, now, we head along there by that. There is good water all around in here.

Q. But that wasn't there in 1913?

A. It wasn't there then, but usually we head up for Gilman Buoy.

Q. That is you head in about 150 feet; you close in a little on the docks?

A. Yes, sir.

Q. In other words, if you were 200 feet off the Elmore light when you reached that bearing abreast of you, you then closed in a little on the dock, and went to your starboard, and followed along about 150 feet until you came opposite the Callender dock, is that correct?

A. I followed along the dock. Whether I closed in, it is hard to tell 150 from 200 feet, but was close to the dock.

Q. You had to turn some?

A. Yes, had to turn some.

Q. You had to turn some to your starboard to get in?

(Testimony of Archie L. Pease, Jr.)

Q. Yes.

Q. Now, the next place you started to change the course, if any, was it above or below the Callender dock?

A. Was, I should say, a little bit below.

Q. Can you fix that number of feet off for me? I know it is hard to estimate, but can you tell? Take your time, don't be in a hurry. What I am trying to get at is this: Suppose, as you came along with the ship, illustrated by the pencil—I will draw to show what I mean—suppose this point here is the Callender dock, and you came along here with your vessel?

A. Yes, sir.

Q. Now, I want you to tell me, as near as you can, after you think it over, how far you think you stood out with your tow. Of course, the ship would be between you, but how far you think out there before you made the next change in your course? Not after you made it, but before you made it, how far do you think you were out?

A. Well, I would say about from 150 to 200 feet. That is, I was close in for running at night time.

Q. Now, how far do you think you were below, down the river, from that Callender dock? Were you as far below it, as you were out in the harbor?

A. Well, when I noticed the course, this brings something else in, but when I noticed the steamer coming down, I glanced over the bow of the vessel,

(Testimony of Archie L. Pease, Jr.)

I would say it would make the Callender dock about 150 or 200 feet ahead of me.

Q. Off the bow of the "Thielbek"?

A. Yes, a little bit back of the bow. I wouldn't be accurate on this, but that was as near as I could say.

Q. So we get that fixed here, is what I want, not trying to limit you, but so we can get an idea of your explanation, I draw an arrangement with a tail on it and a square, and mark that "Callender dock." I draw approximately a distance off a line out here, you said about 150 feet.

Mr. MINOR: 150 to 200, Mr. Bristol.

A. 150 feet; will put it 200, if you want me to. I am only trying to get the fact, and I place a cross there, and draw a line back this way, representing approximately of course, as I understand; we will place this, now, say this distance, drawing the figure of the ship along that line, with four masts, represented by four dots, and place you on her port quarter in the pilot house of the "Ocklahama," and marking your position, and approximately the course that you looked across the bow of your ship in this direction, marked on the line B on the back of this little blue print plat, and you estimate that distance from there, from where that line strikes the bow of your tow to the edge of the Callender dock, to be how far?

A. Well, I would say that the docks along here, any place in along here, was from 150 to 200 feet.

(Testimony of Archie L. Pease, Jr.)

This would be a little bit—this would be further.

Q. So that the Callender dock was further up the river, and over the starboard bow of your tow?

A. If I had kept my course the way I figured, the Callender dock would be about 150 feet. Of course, my line of vision would make it a little over that.

Q. That is what I want to arrive at, if we can. You say you can't tell me how far you were from this point, so I want to get this line across here. If I knew this angle, I wouldn't ask those questions, but I don't. But what I am getting at, can you estimate for me, from the starboard bow of your tow, how far you were below on that angular line of the Callender dock at this time?

A. How far I was below, in this direction, you mean?

A. Yes.

A. That is what I said before, I did not.

Q. I thought you did, but I wanted to be sure about it.

A. Well, I don't know what to estimate. I think about 150 or 200 feet this side of the dock.

Q. Then I put you out abreast this way; the bow of your ship would be 150 feet to 200 feet below the Callender dock?

A. Approximately.

Q. Now, you think that is correct, do you?

A. I think that is as near as I could guess it.

Q. And that is where you came to the end of

(Testimony of Archie L. Pease, Jr.)

this second course, before you made the third change?

A. I say the bow of the boat would be pretty near abreast of Callender's dock; the bow of this boat would be nearer. I am figuring from my view 150 to 200 feet, and she is, I should say, 100 feet beyond me, you see.

Q. All right, now.

A. That would make this distance here, I should say, about from 50 to 100 feet.

Q. That is the bow business?

A. Yes, the bow of this boat would be 50 to 100 feet.

Q. Your position was 150 to 200 feet, and the bow of this boat—

A. Would be from 50 to 100.

Q. The bow of the "Thielbek," about 50 to 100 feet below Callender dock. The position of the witness about 150 to 200 feet below Callender dock. Is that right?

A. Yes.

Q. Now, that shows these two lines. Now, I understand at that point was when you set up on your third course?

A. Yes, sir.

Q. Now, will you please mark on that plat, and with your permission, I will just fix that line a little bit where it was. Now, there is approximately, we will say, marking that as the point you have described on the dock, because the scale is so small,

(Testimony of Archie L. Pease, Jr.)

is why I draw it; assuming that is the place where you set up on your third course, now, will you take the straight edge, and draw as near as you can how you set up the river from that point?

A. Well, where—I then just started to swing a little bit, to head for Gilman's Buoy. I just started to swing this way.

COURT: Gilman Buoy No. 2?

Q. Gilman Buoy No. 2.

A. I just started to swing there, and was swinging to my port a little bit when I received these whistles. That is the position I was in about, or when I first saw her, rather.

Q. So you were still hugging the shore here beyond that point?

A. Yes, sir.

Q. That is getting pretty close to the point of collision, now. When you came up here, referring to lines drawn from post red lights on Desdemona Sands, where you start to the Elmore cannery light, can you give me your estimate of the time you were running; that is, I mean, how long did it take you from when you saw that red light to come up to the Elmore cannery light?

A. I should say, roughly speaking, about 15 minutes.

Q. About 15 minutes. Can you tell me how long, and understand, I am not trying to limit you now, as to the exact limit of time, but can you tell me how long it was from the Elmore cannery light to

(Testimony of Archie L. Pease, Jr.)

the position you have marked off the Callender dock?

A. Roughly speaking, I should say, about four or five minutes.

Q. Four or five minutes. So, you had been running then, about twenty minutes before you saw the "Thode Fagelund"?

A. Approximate, of course you know. Now, later on in these questions, I might make a statement that wouldn't agree with that, because it is all guess-work with me, you know, because that is all guess-work, and a person, when they are making guesses, they can very easily contradict themselves, because this is all really guess-work. No man can tell the distances or time like that in the night, or anywhere near the distances.

Q. Now, in order that I may identify this sheet, will you please just put—I mark the day of the month on here—9/15/14; will you please just sign your name on that. (Witness signs.) Witness marks under 9/15/14, and on the back of the blue print, which has a drawing of the Callender dock, and position of the ship at the end of the second course, and I offer that plat in evidence, as illustrative of his testimony.

Marked "Libelant Wilhelmsen's Exhibit 14 (Pease, Jr.)."

Q. Now, it wouldn't then be true to say that, as far as your steering that night was concerned, that you did otherwise than hug the shore line after you

(Testimony of Archie L. Pease, Jr.)

passed that light. In other words, you had no real set course, were just trying to keep off 150 feet?

A. I could have made other courses, and just as accurate, but that was the course I was holding for the reason—well, do you want me to state my reasons for holding that course?

Q. No. You can if you want to, but I am not after reasons, and what I am after is what you did.

A. Really, before I started out from the anchoring, I laid a course myself, you might say, in my mind; that is, I would follow the docks clear around, until I got way down off Gilman Buoy, and then head up the channel. That would leave lots of clearance for anything anchored there, and I knew a couple of vessels were anchored there, or had reason to suppose there was, was led to suppose there was, and was going to give them a clear sweep, where I probably could go close to Gilman Buoy on account of the water.

Q. On account of the lighter draught of your vessel?

A. Yes. That was the reason for my course, following the shore line.

Q. Now, so we connect this matter, I want to see about this estimate of time that you qualified, with reference to your statement about when you passed that red light. One of the ship's officers testified that you had been running from 15 to 20 minutes when he saw the red light abreast of the "Thielbek," from where he stood. Now, he having

(Testimony of Archie L. Pease, Jr.)

estimated it 15 or 20 minutes, and you having estimated it at 15 minutes, would you think it was more or less?

A. I wouldn't say.

Q. Well, you think your estimate of 15 minutes is nearer right, in view of his testimony, than it was if you gave the estimate alone, don't you?

A. No, I don't know. I gave the estimate as practically a guess on my part; probably it might be a few minutes shy, or might be a few minutes more. I couldn't say to that.

Q. Well, put it this way: Would you desire, from your position as pilot, and his position which was—so you will understand—on the starboard quarter of his vessel, near the poop rail in that little angle there?

A. Yes.

Q. You were about in equivalent positions, each of you, to see the instant when you passed that red light, weren't you?

A. Yes, sir.

Q. Now, if you fix it at 15 minutes, and he fixes it at 15 or 20 minutes, that would be about as near as we could, in any human experience, arrive at when you passed that light, is it, or do you know of any other reason that would qualify it?

A. No, although there may be other men that would have a different estimate of it; that appears to be his guess and my guess.

Q. Now, Mr. Pease, I show you page 83 of the

(Testimony of Archie L. Pease, Jr.)

log of the steamer "Ocklahama," August 24, 1913, and ask you to look at it, and tell me what log that is, if you know?

A. That is the engineer's log.

Q. Do you have anything to do with the entries in that log?

A. No, sir; not—at different times, I might have something to do; now, like, for instance, in a move, sometimes, when we start from a dock, and we forget to put it down, or something like that once in a while we whistle down to the engine room, and ask what time we started this move; once in a while where it slips our memory, just for marking it up, something like this, but for the entries on there, no.

Q. You didn't yourself have anything to do with these entries, did you?

A. No, sir.

Q. I show you the other log book, which has been called here the pilot house log, and show you the entry on page 53, and ask you who made that entry, if you know?

A. I did.

Q. You did?

A. Yes, sir.

Q. And when did you make that entry?

A. I made them on the morning of August 24th.

Q. The night of August 24th?

A. The morning; I think it was morning, yes.

Q. The morning of August 24th?

A. Yes.

(Testimony of Archie L. Pease, Jr.)

Q. Then it was made right at the time of the collision, practically?

A. Yes, some of it was put down before the collision; that is, like getting under way down below, and some of it shortly after the collision.

Q. Now, this part that Campion describes, on page 54, he says that the first two lines there are in Turppa's handwriting, and the last two are in yours. That is right, is it?

A. You are counting this as the first line?

Q. Yes.

A. Yes, sir.

Q. And, as I understand it, you have some sort of a system in making these entries in this log book, haven't you? That is, you are required by The Port of Portland to make sundry entries in the log book?

A. Not that I know of. We keep a log of the moves and times, and everything, and of course, it is for them to look over, but it is more to help the captain make out his reports than anything else.

Q. And so you don't pretend to enter in the log at the time of the happening of the event, just exactly, or as we say, with certainty, all of the facts and things that happened, but you leave that afterwards for more mature deliberation on a casualty report?

A. Yes, sir; I would even state that these times, lots of times in the log book are, you wouldn't say exact, just to the minute. I don't believe if you look through this whole log book, you would find minutes

(Testimony of Archie L. Pease, Jr.)

like one, two or four minutes; or six, seven, eight or nine minutes. It will be all in even numbers; for instance, take any hour, 6:07, why we would put it either 6:05 or 6:10; that is, not accurate.

Q. Not accurate?

A. That is, to be right down to the minute.

Q. And you don't mean it to be accurate, when you make the entry, do you?

A. Well, in a number of cases, where it is anything serious, why, we try to be accurate in a case of that kind.

Q. A collision is pretty serious, ain't it?

A. Yes, and that time, if we knew the minute down to seven minutes, or something like that, we would certainly put it in.

Q. Now, Mr. Pease, that is just exactly what I want to get. That log, or your entry that you made doesn't state all the facts that happened on your boat, and with the "Thielbek" at the time of the collision, does it?

A. Well, how do you mean? The actions of the boat like stopping and things?

Q. I mean just what I say.

A. What did you say then? Will you repeat it again, please?

Q. I say that entry doesn't contain a full account of all of the actions upon the part of the "Ocklahama" and "Thielbek," does it?

A. Well, I wish you would define that "actions" a little.

(Testimony of Archie L. Pease, Jr.)

Q. Well, for instance, and because the witness asks me to, your Honor—"under way at Young's Bay with bark 'Thielbek,' 3:05 a. m." Now, you described to me on the plat here that you executed turning movements; that your ship's head lay downstream, and that you came up and took your departure from the red post light?

A. Yes, sir.

Q. Wouldn't it be natural for most mariners to enter in their log "under way at Young's Bay with bark 'Thielbek' at 3:05 a. m., red post light bearing port," so that we would know where you started from?

A. It has never been the custom on this boat.

Q. That is what I am getting at. You and I are not going to have any trouble.

A. I say, no. If those are the movements that you spoke of as actions, everything is not put down in the book.

Q. It isn't?

A. No, sir, not those actions.

Q. Now, then, that being the case, the log, as you people keep it, really isn't a log of the events at all, is it?

A. Yes, a log of the events.

Q. Now, for instance, you say here "head-on collision with S. S. 'Thode Fagelund,' opposite O. R. & N. dock, 3:25 a. m."

A. Yes, sir.

Q. Now, there isn't anything in that log that

(Testimony of Archie L. Pease, Jr.)

discloses what happened before you had that head-on collision, is there?

A. It shows the start, where we got under way from.

Q. Yes, but that is all, isn't it?

A. That is all.

Q. All of this matter that you have described to me on Libelant's Exhibit 14 isn't contained in the log at all, is it?

A. No, sir.

Q. And the speed at which you were running isn't recorded in the log, is it?

A. No, sir.

Q. Now, I understand, therefore, in order that you might have your superior officers advised as to the details which are not in the log, as I understand it—

A. Yes, sir.

Q. (Continuing) You make out a Casualty Report, is that right?

A. Yes, sir.

Q. And this Libelant Wilhelmsen's Exhibit 11 contains the signature of yourself and the captain, doesn't it, and that of Mr. Champion as superintendent?

A. Yes, sir.

Q. And will you please look at that, under the head "Particulars of Accident or Casualties," which says, "You cannot describe too fully," and let me know whether you signed that statement there

(Testimony of Archie L. Pease, Jr.)

which purports to be on pages 2 and 3, A. L. Pease, Jr., pilot steamer "Ocklahama."

Mr. MINOR: Is that the original, Mr. Bristol?

Mr. BRISTOL: This is the one you gave me, and the one Campion identified this morning. I think it is identical. I have never seen the original, and I don't know.

A. I believe that is a copy of the report that I handed in.

Q. Well, is it in accordance with the fact?

A. Yes, I believe so.

Q. Well, do you want to change it any, or add to it, or take away from it?

A. No, I would let it go the way it is. I would state it that way.

Q. It would be correct to say that would be your casualty report to your owner, of the events that occurred at the time of the collision referred to in the log?

A. Yes, sir.

Q. Now, I offer that much of Libelant's Exhibit 11, in connection with this witness, as contained in that statement.

Mr. MINOR: I think that is all in.

Mr. BRISTOL: I understand, but I want it in connection with this witness.

(Testimony of Archie L. Pease, Jr.)

**"PARTICULARS OF ACCIDENTS OR
CASUALTIES**

YOU CANNOT DESCRIBE TOO FULLY.

Under this head a full and complete report must be given of the accident, also any fact or circumstance that may occur to you, and not accounted for on other side of this blank.

At about 3:20 on August twenty-fourth, as I was passing Callender Dock in Astoria Harbor with the bark 'Thielbek' in tow, I saw the green light, and the two mast head lights of a steamer on my port bow. I could see the lights of this steamer, but could not see the steamer herself, on account of the dredge 'Chinook' being anchored on my port bow, and between the steamer and myself.

As soon as I saw the steamer's lights, I slowed down, and she blew me two whistles, and I put my helm hard astarboard, but hesitated to answer her signal until she came out from behind the dredge. As she was coming out from behind the dredge she blew me two whistles again and as it looked to me as she could pass on my starboard side I answered her and shortly after stopped and backed full speed on a port helm. The steamer, instead of swinging to her port, or even holding her course, kept swinging to her starboard until I could see her red light.

After I had been backing full speed for between three and four minutes, and had most of the headway off the bark, the steamer let go her anchor and

(Testimony of Archie L. Pease, Jr.)

a few seconds later the bark and the steamer came together head on.

(Signed) A. L. PEASE, Jr.,
Pilot Steamer 'Ocklahama.'"

Mr. MINOR: That's the captain's statement?

Mr. BRISTOL: He says the same.

A. I don't know, but I think it is. I would state it that way today, and it would be all right.

Mr. WOOD: I object as incompetent, as against the "Thielbek."

COURT: Very well.

Mr. BRISTOL: Perhaps Mr. Wood might be right about that, just as it stands.

COURT: Very well; go ahead.

Mr. BRISTOL: But I shall connect it a little further in regard to the "Thielbek."

Q. Now, do you recollect whether, in connection with that report, you made any other report, and if so, where and to whom?

A. Well, I believe I made a rough diagram.

Q. Rough diagram?

A. Yes, just a rough sketch of the position.

Q. Then this isn't all your report?

A. No.

Q. Just what I wanted to find out.

Mr. BRISTOL: Mr. Minor, I asked you for Mr. Pease's report, and I supposed you gave me all you had at the time. Did you get the diagram?

Mr. MINOR: That is all the report.

(Testimony of Archie L. Pease, Jr.)

Mr. BRISTOL: This diagram attached to your report, was it?

A. Not that I know of, it wasn't attached to the report.

Q. It wasn't attached to the report?

A. No, sir.

Q. Who did you hand this diagram to?

A. Well, Mr. Campion wanted a diagram of that, a couple of copies.

Q. Did you give it to him?

A. I gave it to him.

Q. When did you give that to him?

A. Well, I believe it was about the same time as the other report.

Q. You were in Court, and you heard Mr. Campion say that that was the whole report, didn't you?

A. Well, I don't remember his statements exactly.

Q. Well, if there is any, if you want to state that there was a map, or diagram handed in with that report, I would like to know whether that was the fact?

Mr. MINOR: He said was none handed in with it.

Mr. BRISTOL: We will find out.

Mr. MINOR: He said none with it.

Mr. BRISTOL: Let's see if he did.

Q. Did you give this diagram to Mr. Campion at the time and as part of this report of yours?

A. Well, I drew a diagram explaining my

(Testimony of Archie L. Pease, Jr.)

actions. What they did with that, I don't know. It was just a like a person would sit down to a table and draw a diagram; it was just rough, and I don't know what became of it. I don't know whether—I don't know who got that.

Q. What I am trying to get at is whether you handed that in at Mr. Campion's direction at the time Campion told you to make out this statement, so as to derive the fact as to whether it was the same transaction. Now, that explains it to you. That is all I am trying to get at.

A. Well, I drew a rough sketch showing him, and whether they wanted it in connection with my actions or the report, I don't know. I don't know whether it went in with the report or not. I know it wasn't attached to my report when I made out my report. I know that went alone, and that is all I know. That is all I handed in.

Q. Did you hand this rough sketch in a couple of days—

A. No, it was shortly after that.

Q. The same day as Libelant's Exhibit 11?

A. As near as I can remember, I handed in—I sketched it, and showed it, and he told me to make a couple of copies of it, which I did, and I kept one myself. I haven't that one. I believe the inspectors have that one.

Q. What inspectors?

A. The United States Inspectors.

Q. Did you make out a copy of your report to

(Testimony of Archie L. Pease, Jr.)

The Port of Portland that you made to the inspectors?

A. I have a copy of that.

Q. I show you a paper which purports to bear your signature, and upon it "The Port of Portland, August 27, 1913. General Office." A stamp. And the other side "The Port of Portland, August 25, 1913, Portland, Oregon," is stamped. The paper being dated August 24, 1913, and I ask you to look at it and tell me if that bears your signature?

A. Yes, that is my report to the inspectors.

Q. It is? Is it in its condition as originally made? That is, I mean the contents of that paper correctly show what it was you reported to them?

A. Yes, sir.

Q. And that is the copy, or one of them, that you gave to The Port of Portland, is it?

A. Yes, sir.

Mr. BRISTOL: I offer that in evidence.

Mr. WOOD: Same objection on behalf of the "Thielbek."

Mr. BRISTOL: This is offered directly against the "Thielbek," and The Port of Portland.

A. I am not sure I gave one of these to The Port of Portland. I may have. I have two or three copies of it.

Q. At least, you signed that paper, and intended it to be used as a statement?

A. Yes, that is my signature.

Q. Is that right?

(Testimony of Archie L. Pease, Jr.)

A. That is my signature there, yes, sir.

Mr. MINOR: No objection to it.

Report marked "Libelant Wilhelmsen's Exhibit 15 (Pease)."

"Astoria, Oregon, August 24, 1913.

U. S. Local Inspectors,

Messrs. Edwards and Fuller,

Portland, Oregon.

Dear Sirs:

At about three twenty on August twenty-fourth, as I was passing Callender dock, in Astoria Harbor, with the bark 'Thielbek' in tow, I saw the green light and the two mast head lights of a steamer on my port bow. I could see the lights of this steamer, but could not see the steamer herself on account of the dredge 'Chinook' being anchored on my port bow, and between the steamer and myself. As soon as I saw the steamer's lights I slowed down, and she blew me two whistles, and I put my helm hard astarboard, but hesitated to answer her signal until she came out from behind the stern of the dredge. As she was coming out from behind the dredge, she blew me two whistles again, and as it looked to me that she could pass on my starboard side, I answered her, and shortly after stopped, and backed full speed on a port helm.

The steamer, instead of swinging to her port, or even holding her course kept swinging to her starboard until I could see her red light.

After I had been backing full speed for between

(Testimony of Archie L. Pease, Jr.)

three and four minutes and had a great deal of the headway off the bark, the steamer dropped her anchor and a few seconds later the steamer and the bark came together head-on tearing a large hole in the steamer on her port side a few feet from the bow and driving the bark's anchor through a few plates and denting a number of others on both sides of her bow.

This collision occurred at about three twenty-five in the morning abreast the O.-W. R. & N. dock.

I got the two vessels apart in about one hour and a half, and as the steamer said she needed no assistance I left her anchored there.

Respectfully,

A. L. PEASE, Jr.,

Pilot Steamer 'Ocklahama.' "

Q. Now, in what I am about to say to you, I want to preface by saying it is said in the best of good part, and simply to find out if I can what the explanation of it is. I show you this same Libelant's Exhibit 11, wherein you had this report that you made to The Port of Portland, known as your Casualty Report, and now I show you this Libelant's Exhibit 15, the account of the same collision, and ask you to hold the last one you identified in your hand, and the first paragraph we will read together, and we will see that it is the same thing: "At about three twenty on August twenty-fourth, as I was passing Callender dock in Astoria Harbor with the bark 'Thielbek' in tow, I saw the green

(Testimony of Archie L. Pease, Jr.)

light and the two mast head lights of a steamer on my port bow. I could see the lights of this steamer, but could not see the steamer herself on account of the dredge 'Chinook' being anchored on my port bow and between the steamer and myself." You find the paragraph of the Casualty Report, and the first paragraph of that report to be the same, don't you?

A. Yes.

Q. I read the second one: "As soon as I saw the steamer's lights, I slowed down, and she blew me two whistles and I put my helm hard astarboard, but hesitated to answer her signal until she came out from behind the dredge. As she was coming out from behind the dredge, she blew me two whistles again, and as it looked to me as she could pass on my starboard side, I answered her, and shortly after stopped and backed full speed on a port helm." That is the same, isn't it?

A. Practically. A few words different is all.

Q. A few words different, but it practically expresses the same sense and acts; substantially no difference, is there?

A. No.

Q. The next paragraph, being the third: "The steamer instead of swinging to her port, or even holding her course, kept swinging to her starboard until I could see her red light." That is the same, isn't it?

A. Yes.

(Testimony of Archie L. Pease, Jr.)

Q. I call your particular attention to the fourth paragraph in the paper which you signed August 24, being Libelant's Exhibit 15, and I read the fourth paragraph of this Casualty Report: "After I had been backing full speed for between three and four minutes, and had most of the headway off the bark, the steamer let go her anchor, and a few seconds later, the bark and steamer came together, head on." Are those the same?

A. No, sir.

Q. Now, then, this paragraph that we have found is different, we will both look at it together, and we will read it along. It is the same: "After I had been backing full speed for between three and four minutes," then this one says "And had most of the headway off the bark."

A. This one says "and had a great deal of the headway off the bark."

Q. "And had a great deal of the headway off the bark. The steamer dropped her anchor, and a few seconds later the steamer and the bark came together, head on, tearing a large hole in the steamer on her port side, a few feet from the bow, and driving the bark's anchor through a few plates, and denting a number of others on both sides of her bow." Now, I call your attention to the difference in the condition of the paragraphs as to two things: The speed and effect of the collision, and ask you to please tell me why, if there is any reason, there is any difference in those two statements?

(Testimony of Archie L. Pease, Jr.)

A. No. You could use it as most of the speed, or a great deal of the speed taken off. I couldn't state how much speed was taken off.

Q. Well, I mean—I have more particular reference, not so much to the choice of mere words, as to the subject matter. Directing your attention to two things. The speed, perhaps, you have answered about; now, was there any occasion to minimize the injury to the "Thode Fagelund" and the "Thielbek," as a consequence of the collision?

A. No, sir.

Q. Well, how does it come—what I am trying to arrive at is, why it was that in the inspector's report, you stated particularly the details of the injuries, but you didn't say anything in your casualty report to The Port of Portland. Do you remember why that was?

A. No, sir, there is no reason that I could say.

Q. No reason you know. In other words, after you had thought over—which did you make first, this one of August 24th to the inspectors, or the casualty report to The Port of Portland?

A. I don't remember.

Q. Well, I can't help you. I wish I could help you, but this thing is dated August 24, 1913.

Mr. MINOR: Both bear the same date.

Mr. BRISTOL: And this is dated August 24, 1913.

A. I think they were both made at the same time, but I can't say which was made first.

(Testimony of Archie L. Pease, Jr.)

Q. Both made at the same time?

A. Practically, I think.

Q. And you don't know any reason for the difference as to those two matters, the speed and the injuries, in those two reports?

A. Well, one reason I would state as a reason—I don't know whether it was a reason at that time, or not, but I knew that the inspectors wanted to know something about what happened, and I knew that I would have to have a conversation with both the superintendent and the manager about the collision. And in that way, they would want to know what damage was done and I could tell them by word of mouth, but I don't know as that entered into it at the time. It may have. I don't remember what my idea was, if any, in making that difference in the two.

CROSS-EXAMINATION ON BEHALF OF
KNOHR & BURCHARD.

Questions by Mr. Wood:

Q. You say in the inspector's report, Mr. Pease, that the steamer dropped her anchor, and a few seconds later the steamer and the bark came together head on, tearing a large hole in the steamer, on her port side, a few feet from the bow, and driving the bark's anchor through a few plates, and denting a number of others on both sides of her bow. Can you state the damage to the "Thielbek" in any more detail than that?

A. No. I would just say that the starboard

(Testimony of Archie L. Pease, Jr.)

anchor was hanging from the—well, I forget now whether hanging from the cat-head, or through the pipe. I wouldn't state. But anyway the anchor was shoved through two or three plates, tearing a hole in them, and a number of other plates on each side were damaged; that is, bent and things like that. That is a matter I didn't notice particularly, and that is about all I could state about the damages.

Q. Were there any other holes shoved in her besides that one?

A. Well, there may have been. I didn't notice particularly.

Q. When you came up abreast, just about 100 feet or 150 feet below the Callender dock, is that the time that you first saw the "Thode"?

A. Yes, I would say in the vicinity of Callender dock, that is when I first saw her.

Q. At that time you were proceeding, as I understand it, on a course following the dock line up towards the Gilman Ledge Flash Buoy?

A. Yes, sir.

Q. And about 150 or 200 feet off the dock?

A. Yes, sir.

Q. When you received the first two signals from the "Thode," about how far away were you?

Mr. BRISTOL: Now, just a moment. I have no objection to Mr. Wood pursuing this question of signals, if he wishes to make the witness his own witness, but I didn't go into the signals with Mr.

(Testimony of Archie L. Pease, Jr.)

Pease, or call him for that purpose; merely for the purpose of courses and sundry things that he was specifically examined about. I have no objection to Mr. Wood's pursuing that, if he makes him his own witness.

Mr. WOOD: I think the objection is well taken, and most of what I want to ask the witness relates from the time of the two signals, and perhaps I had better wait until I make him my own witness, and turn him over to Mr. Minor for cross-examination.

CROSS-EXAMINATION ON BEHALF OF PORT OF PORTLAND.

Questions by Mr. Minor:

Q. I have a few questions to ask. Mr. Pease, I show you this paper, and ask you whether that is the original casualty report that you gave?

A. Yes, sir, it is signed by me.

Q. That is the original, isn't it?

A. I believe it is, yes, sir.

Q. Now, I call your attention to this original, which is also contained in the copy, that under the head of damage to property other than The Port of Portland, there is practically the same statement of the injury to the "Thode Fagelund," and the injury to the "Thielbek," as contained in your report to the inspectors, isn't there?

A. I believe so, yes, sir.

Q. And that is contained in this paper also, under the head of "damage to property" on the

(Testimony of Archie L. Pease, Jr.)

first page of this paper, Mr. Bristol offered in evidence. Did you notice that?

A. Yes, sir.

Q. So that the difference between the form on which the report is made to the inspector, and the form on which the report was prepared by you to The Port of Portland would probably explain the reason that in the report to the inspectors, that last clause differs from the last clause of the report sent by you to The Port of Portland, would it not?

A. Yes, sir, at the time I made the statement to Mr. Bristol, I said that may have been the reason for explainig to the inspectors; I couldn't remember at the time what the reason was.

Mr. MINOR: I offer in evidence the original of this report, so the Court may see the form in which it was.

Mr. BRISTOL: I have no objection to the original. I asked for its production in the first place, and Mr. Minor gave me a copy. This is a copy.

Mr. MINOR: This is a copy, and contains everything in it.

Mr. BRISTOL: The controversy hinges—just one moment, so the Court will understand it—as to the statements contained in that report signed by Mr. Pease to The Port of Portland, and the statement to the United States Local Inspectors, a copy of which was also furnished to The Port of Portland. Now, he has also introduced the original report, he says, and for whatever it shows, all right.

(Testimony of Archie L. Pease, Jr.)

Mr. MINOR: The copy which he has, your Honor, which I gave Mr. Bristol, was a true copy.

Mr. BRISTOL: Mr. Minor furnished me with a copy.

Mr. MINOR: It is a true copy, Mr. Bristol, just isn't in exactly the same form.

Original report marked "Port of Portland Exhibit 5 (Pease)."

THE PORT OF PORTLAND CASUALTY REPORT.

Date of Accident, August 24, 1913. Location, Astoria Harbor.

Nature of Casualty, Head-on Collision.

Name of steamboat, barge or dredge, "Ocklahoma" towing bark "Thielbek" and "Thode Fagelund."

On trip from Astoria.

DAMAGE TO PROPERTY OTHER THAN THE PORT OF PORTLAND.

Under this head report all accidents, resulting in any damage or loss to wharves, vessels or other property, other than Port of Portland. State exactly what was damaged, the amount, what action was taken after accident to prevent further loss, and what was done toward repairing damages.

S. S. "Thode Fagelund" had a large hole stove in her port side a few feet from her bow and extending from the deck of her fore-castle-head to a little below her water line.

(Testimony of Archie L. Pease, Jr.)

Brk. "Thielbek" had a couple of plates stove in on her starboard side and a number of others dented on both sides of her bow.

**DAMAGE TO THE PORT OF PORTLAND
PROPERTY.**

Under this head report all accidents to Steamboat, Barge, Dredges, Wharves, Dry Dock, or other Board property. Estimate amount of damage; state how caused and what was done to prevent and repair the damages, and by whom assistance was rendered if any, force of wind; state of weather, and if at night, whether dark, moonlight or starlight.

All the Str. "Ocklahama's" lines carried away consisting of

- One wire tow line
- One rope head line
- Two rope breast lines
- Three rope stern lines.

INJURY TO PERSONS.

Under this head report every accident to employes, or other persons, giving name and address of witnesses, preferably those nearest the scene of the accident. A written statement from at least two witnesses, signed and signatures witnessed, must accompany each report.

Name

Residence

Occupation

Employe, or other.....

(Testimony of Archie L. Pease, Jr.)

Nature and extent of injury.....

How caused

What disposition was made of the injured person?

What was done with the personal effects and papers belonging to the injured person?.....

Witnesses, { Address, {

Pilot A. L. Pease, Jr., on Watch.

H. F. CAMPION,
Supt.

I. TURPPA,
Captain.

PARTICULARS OF ACCIDENTS OR CASUALTIES

YOU CANNOT DESCRIBE TOO FULLY.

Under this head a full and complete report must be given of the accident, also any fact or circumstances that may occur to you and not accounted for on other side of this blank.

At about three twenty on August twenty-fourth, as I was passing Callender dock in Astoria harbor with the Brk. "Thielbek" in tow I saw the green light and the two mast-head lights of a steamer on my port bow. I could see the light of this steamer but could not see the steamer herself on account of the dredge "Chinook" being anchored on my port bow and between the steamer and myself.

As soon as I saw the steamer's lights I slowed down and she blew me two whistles and I put my helm hard astarboard but hesitated to answer her

(Testimony of Archie L. Pease, Jr.)

signal until she came out from behind the dredge. As she was coming out from behind the dredge she blew me two whistles again and as it looked to me as she could pass on my starboard side I answered her and shortly after stopped and backed full speed on a port helm.

The steamer instead of swinging to her port or even holding her course kept swinging to her starboard until I could see her red light.

After I had been backing full speed for between three and four minutes and had most of the headway off the bark, the steamer let go her anchor and a few seconds later the bark and the steamer came together head on.

A. L. PEASE, Jr.,
Pilot Str. "Ocklahoma."

ORIGINAL.

Superintendent's No.

THE PORT OF PORTLAND

CASUALTY REPORT

—ON—

Property or Person.....

August 24, 1913.

—FOR—

.....

INSTRUCTIONS

This report is to be made in duplicate, filled out properly and forwarded to the office of The Port of Portland promptly for

Delays,

(Testimony of Archie L. Pease, Jr.)

Accidents to persons or property,
Deficiency in full and provisions,
Neglect of duty by employes,
Defective or broken machinery, or any items of
interest to the Board.

Q. Mr. Pease, I understand from you that if the weather is such that is not safe to navigate below Astoria, without the course book, the "Ocklahoma" does not undertake to go below Astoria—is that correct?

A. If the weather was such that we would have to use the compass, to go below Astoria, I wouldn't go.

Q. How about the boat?

A. Sir?

Q. And the boat?

A. The chances are the boat wouldn't; if the captain happened to have some courses and wanted to take the responsibility, that would be up to him, but I don't think he would take the responsibility in a case of that kind, because there would be nothing to be gained by it.

Q. How long have you been engaged in navigation on the river?

A. Well, I believe I started in six or seven years ago.

Q. You mean by that, you have had a position on the boats six or seven years?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And how familiar are you with this river channel?

A. With the width of the channel?

Q. No, with the river channel.

A. Well, of course, everybody has their own opinion. I don't think there is anybody knows it any better.

Q. Even before you had a position on the boat, were you frequently on the river, and if so, in what capacity?

A. That question again, please?

Q. Even before you had a position on this boat, as mate or pilot, were you frequently on the river, and if so, in what capacity?

A. Well, not with the whole river. Until I went with The Port of Portland on the "Ocklahama," I wasn't—well, I didn't know the whole river. I knew parts of it.

Q. Your father was a pilot before you, I believe?

A. Yes, sir.

Q. And were you ever with him when he was piloting?

A. Well, I was with him, not when he was—well, when he was master of boats, I have been with him from the time, you might say, that I was three or four months old, at different times, but I don't remember much then. I don't remember; I didn't pay much attention.

Q. You were practically raised on the river, weren't you?

(Testimony of Archie L. Pease, Jr.)

A. No, sir.

Q. I mean by that, you were on the river very frequently. You were acquainted with the river business from the time you were a little boy.

A. No, sir.

Q. When did you first have to do with river business?

A. About six or seven years ago.

Q. And then you entered—soon after that you entered the employ of The Port of Portland.

A. I started with The Port of Portland.

Q. And you started as—

A. Deck hand.

Q. Deck hand; and then from deck hand you went up to mate, as I understand?

A. Well, I went watchman.

Q. Watchman?

A. Yes, sir.

Q. And then?

A. Then mate.

Q. Then mate. And from mate you went to pilot.

A. Yes, sir.

Q. And your license would show at what time your pilot—you were authorized to act as pilot?

A. Yes, sir.

Q. The exact time you don't remember yourself?

A. No, sir; before I took the position of pilot, why, I did a good deal of work in piloting. I had pilot's papers, and was allowed to do it.

Q. Before you took the position?

(Testimony of Archie L. Pease, Jr.)

A. Before I took the position, a year before, in fact. All the time I had pilot's papers, and even when I was mate, without pilot's papers, why, I learned a great deal about it.

Q. During that time, was the "Ocklahama" running on this same course, between the anchorage ground at Astoria and the City of Portland?

A. Yes, sir, I believe she had been running on that about five years, I believe, and I have been on her since she started with The Port of Portland.

Q. And was running—did she run during that time, as far down as the place where you picked up this "Thielbek" on that night?

A. Yes, sir.

Q. How often do you think?

A. Well, I should say we picked up about—well, I should say roughly speaking, about three-fourths of the vessels down there.

Q. Three-fourths of the vessels down as low as that?

A. Yes, sir.

Q. About how many vessels has she towed up the river since you have been on her?

A. Well, I should say she would average probably from 45 to 70 a year.

Q. Now, Mr. Pease, I don't know whether Mr. Bristol asked you or not, but I think he asked you whether you turned the boat around, and you said yes. And then he asked you what time you started.

(Testimony of Archie L. Pease, Jr.)

Now, your report says in your log book, under way at 3:05.

A. Yes, sir.

Q. And your attention was called also to the testimony of Mr. Eggars, I think it is, in which he says that he had been running about 15 or 20 minutes before you got to this light. Now, what do you mean by "under way"?

A. I mean after the vessel was turned around and on her way, had headway.

Q. Had headway on her way up the river?

A. On her way up the river, yes.

Q. So when you say in your log book, under way at 3:05, it means that you have already turned your vessel around and started up the river?

A. Yes, sir.

Q. And the time which you reckon as from fifteen to twenty minutes from the time you left your anchorage ground, to this light on Elmore cannery, means from the time you started up the river?

A. Yes, that has nothing to do with the time that was spent in turning her around.

Q. The distance from the Astoria docks you gave as from 150 to 200 feet. I understand that is an estimate only?

A. Yes, sir.

Q. And I understand that is an estimate of the distance from where you stood in the pilot house?

A. Yes, just a guess.

Q. From where you stood in the pilot house?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. Not from where the "Thielbek" was?

A. Yes, sir; all that distance throughout is guess-work.

Mr. MINOR: I have no other questions to ask this witness on cross examination.

REDIRECT EXAMINATION FOR LIBELANT
WILHELMSEN

Questions by Mr. Bristol:

Q. Your Honor, I forgot one thing when Mr. Pease was here I had all along intended to ask him, but it escaped my attention in the zeal of the trial entirely, and that is about this entry here: I show you August 19th, for instance, in this pilot house log. Won't you please look at it there, and see where the "Thode Fagelund" was moved from the North Pacific Mill, ain't it, down to—no, this move from Portland Mill.

Mr. SNOW: Portland Lumber Company.

Q. Portland Lumber Company to the North Pacific Mill?

A. Yes, sir.

Q. Now, I asked Mr. Champion to tell me whether that move was made by you in charge of the "Ocklahama," and he said he couldn't. Now, I want to know if you could tell me whether that move was made—were you pilot on the "Ocklahama" when you made that move?

A. The move was started by the master. You can see the time; the steamer "Fagelund"; I wrote

(Testimony of Archie L. Pease, Jr.)

N. P. Mill in here. He didn't know where she was going to, because hadn't arrived yet, and from 12 to 2 p. m.—but from 12 to, I should say 12:20, I would be at dinner. I would relieve him about 12:20, maybe be 12:30 that day, but I would have charge of the vessel at that time about 2 o'clock, from where I relieved him.

Q. You went on watch in accordance with this six on and six off?

A. Well, it is twelve and a half on for one man and eleven and a half for another; approximately, we change at meal time.

Q. Change at meal time; if you are a few minutes over-time eating your meal, he stands trick for you while you eat?

A. Yes.

Q. Do you remember when you took the wheel there, whether you were above or below those bridges, or had you left the Portland Lumber Company dock, or what?

A. I am very sure, although I wouldn't swear to it, that we were above the bridges.

Q. And you went down with the "Thode Fagelund," through the bridges, to the North Pacific Dock, and you were at the wheel?

A. I believe so.

Q. That is all I want to find out. Now, I don't understand that either you or—of course, you don't know what Mr. Minor claims; we will find that out later—but you don't claim, as I understand it, that

(Testimony of Archie L. Pease, Jr.)

this original report is any different than the one I showed you before, is it?

A. Well, taken all in all, no.

Q. No, this was—

A. Wait a minute.

Q. Explain it to me just what you mean. That is what I want to get at.

A. The original report. Well, could I see all of that report?

Q. Sure. Here is the whole thing. That is the way it was handed to Mr. Campion, and he said that was the way it was made up.

A. Well, I think that is practically the same.

Q. So you don't claim any difference for this original, now, that has been offered as against the paper that I offer?

A. I hardly think so.

Q. That is all I want to get at. Now, can you tell me, looking back just for a few days, if you will—I don't want to take any extended time at it, but I tried to get Mr. Campion to do it, and he told me he couldn't do it—can you take your log book here, and going back approximately close to August 24, and down for a few days—back into July or June—whether you moved any other ships, either loaded or in ballast, to and from the mills, and through the river to the docks, when you were pilot?

A. I will see if I can.

(Testimony of Archie L. Pease, Jr.)

Q. Yes, please. Just give me such instances as you happen to see.

A. Before what date?

Q. Before the collision; any time before the collision, and down as far back as April of that year. Just only through the bridges, is all I want. Perhaps you could reach it for me from general recollection without looking for particular instances. Could you answer this question? Could you say with reasonable accuracy, how many vessels, while you were acting as pilot on the "Ocklahama," you moved either up or down stream in the Willamette River, through draws of the bridges, prior to August 24, 1913?

A. Well, I believe I had taken some schooners through the bridges; I had taken loaded vessels, and I don't know about light vessels; I think loaded vessels and light vessels; that is a long time ago. I think had taken them through the Railroad Bridge.

Q. That is the St. Johns Bridge?

A. That is through the St. Johns Bridge, but as far up in the harbor as the other bridges, I think a few schooners, but I don't believe any square riggers.

Q. No square riggers like the "Thielbek"?

A. No, sir, I don't believe so. You see the captain is held responsible for those kind of things, and it is practically a company order for him to take charge of them, and be responsible through

(Testimony of Archie L. Pease, Jr.)

the bridges, because it is considered a little bit risky.

Q. Still you took the "Thode" through all right?

A. Well, yes, sir, I took the "Thode" through all right, but I wouldn't—I was under another man at that time. I was under—following out the orders of the pilot on the "Thode Fagelund"; in fact, you might say that I was fulfilling the position of a quartermaster or something of that, although in cases where—lots of times they will say keep close to the draw pier but don't touch it; something like that. They rely some on you at times, but you are really under their orders.

Q. In other words, you are supposed, when you are pilot, to be a man of common maritime sense, as would manipulate your towboat so as to do what is expected of you to put that ship down the river safely, now, aren't you?

A. Well, they are supposed to be with you and you are supposed to help them out as much as you can.

Q. Well, all right; you are supposed to help them out. If you didn't do your duty fully as pilot of the "Ocklahoma," the fellow that would be on the "Thode Fagelund" couldn't do anything, could he?

A. Well, if I disobeyed his orders, it might result in trouble.

Q. Now, you think how many instances?

A. I couldn't state the number. In fact, there would be a few, but I have a poor memory as it is.

(Testimony of Archie L. Pease, Jr.)

Q. Now, I ask you the other day—

A. I said probably six or seven, or something like that, I would state that I was on; I could tell; it would take me an hour or more. I could tell practically the amount of them to read through the log; that is, it might recall them to my memory. But even then, I couldn't swear to it, because I may have been making that entry for the pilot.

Q. I see. At any rate, it is regarded by you as a very ticklish business to go through these bridges.

A. No.

Q. No?

A. Not by daylight; what I mean, I think I can do it as well as the master of the boat can do it, but the master has to stand responsible, and nobody likes to stand responsible for another man's work.

Q. It is rather a situation, that condition of relation of captain and pilot bear to the matter, than the mere operating of the towboat, isn't it?

A. Well, in a way. I have this privilege, of course. If anything comes up, I don't think it would be safe navigation, I have the privilege of calling the master, consulting him. If he says go ahead, I go ahead; if he says, "Maybe it doesn't look very safe, I better take her myself," then he takes her. In other words, it is up to him in cases of that kind.

Q. In other words, take for illustration, going down the river with the "Thode" that day, suppose

(Testimony of Archie L. Pease, Jr.)

this pilot on the "Thode" had given you, to use the vernacular, some fool order. Wouldn't you be able to exercise your judgment as to whether that order should be obeyed, or not?

A. Well, I think that I would repeat the order, and if he insisted on it, I think that I would follow it out, if it didn't do any damage to the boat.

Q. Well, you don't mean that you would run under any circumstances—as an illustration, if you were coming down, say, take the first bridge after you moved out from the dock, and he gave you some orders, that you, knowing the swing of the current, and everything else, knew would carry you into a pier of the bridge; you don't mean to tell us you would execute that order, do you?

A. That's a hard position to place me in.

Q. I know it is, but I want to have the Court advised as to what you do mean. You are all technical gentlemen, understanding this business, and I want the Court to understand how you regard it between each other. Now, that question puts it up exactly as I want it to appear here. Mr. Campion has said, and I suppose—

A. I know what you mean, and this is what I would answer to that question: If he gave me an order that I knew was not a good order for the simple reason that it might back me into the bridge, or something like that, why, I would repeat the orders, and ask him if it was right, and if he said yes, I would back into the bridge.

(Testimony of Archie L. Pease, Jr.)

Q. You would?

A. Yes, sir.

CROSS EXAMINATION ON BEHALF OF
KNOHR & BURCHARD

Questions by Mr. Wood:

Q. That opened up a new subject. I would like to ask a question or two. In going through the bridges with vessels here in the Portland harbor, is it a frequent or infrequent thing for a vessel to touch the bridge, either the drawrest or a pier?

A. Well, a great many of them do touch. Lots of times they touch on purpose. Lots of times they will ease a vessel up against a pier rest to help them out, and a number of them do touch. I wouldn't try to make an estimate. A number of them come down all right, but I should say maybe one out of seven or eight might touch a little bit, and I wouldn't say it would do a terrible lot of damage, or anything like that, but she would graze a little bit, either her or the towboat.

Q. How often is it necessary to take a vessel through with two tugs?

A. Well, that is a matter that depends a good deal on the current or wind at the time.

Q. But it often is necessary?

A. It often is necessary. In fact, there is times when I believe they have used three boats.

Mr. WOOD: That is all.

Witness excused.

Mr. SNOW: We have described Mr. Pease as Roy Pease in our libel, and I would like the record here to show he is Roy Pease.

Mr. BRISTOL: I offer as part of my case in chief, if your Honor please, the testimony of the pilot that I promised your Honor to connect with the testimony of Captain Hansen and Captain Bailey, with respect to the allegations of Mr. Minor for The Port of Portland, that the "Thode Fagelund" had defective steering gear and propeller, and I offer this testimony in connection with that matter.

Whereupon Mr. Bristol proceeds to read the testimony of Michael Moran, Captain Sandstrom and Captain Julius Allyn. (See pages 2 to 7 inclusive of this transcript.)

Mr. BRISTOL: With the understanding, your Honor, between myself and Mr. Wood, that when he comes to read, he will read most of the testimony, or all he wants of the "Thielbek," and I have the privilege of offering such portions, if any, as he may not offer, that is my case in chief.

LIBELANT WILHELMSSEN RESTS

Mr. SNOW: Some application to amend some libel, and probably to amend some answer, has been undisposed of.

COURT: I think that better stand over until the testimony is in. It is already in the record, and you can submit that at the same time you submit the testimony.

Mr. SNOW: Our case, as far as liability is con-

cerned, may rest with the proof already in. If we don't reach a stipulation on the question of damage, we will have to take depositions on that.

GRACE & COMPANY AND DUPONT POWDER
WORKS REST

Mr. WOOD: I offer, first, the testimony of Captain A. Bergmann, which was taken pursuant to stipulation, all parties being represented.

Depositions read as follows: Captain A. Bergmann, Herman Oehring (translation of log), William Eggars.

Whereupon proceedings herein were adjourned until 10 a. m. tomorrow morning.

Portland, Ore., Wednesday, Sept. 16, 1914, 10 a. m.

Mr. BRISTOL: May it please your Honor, I have, through the kindness of Mr. Pease, the license that he was to produce while on the stand, and I have exhibited it to counsel, and with their consent read it into the record, so it may be given back to Mr. Pease. This license is No. 3941, File L-1052, No. 1.

COURT: Wouldn't it be sufficient to read into the record the date?

Mr. BRISTOL: Except one endorsement. Its original issue bears date October 4, 1910, by E. S. Edwards and George F. Fuller, and it bears an endorsation for examination for color blindness, under date of April 21, but the year is scratched out, and is not given; surgeon's certificate on file in the office of the United States Local Inspectors,

as per endorsement, signed by inspectors and across the end of it is the endorsement referred to in the testimony: "Portland, Oregon, April 25, 1912. Authorized to act as first-class pilot Columbia River between Portland and Astoria."

COURT: Is that date just before he went aboard of this vessel?

Mr. MINOR: No, the year before.

Mr. BRISTOL: No, the year before. Champion testified he went aboard in April, the last days of April, 1913, and this license is issued April 25, 1912, authorized to act as first-class pilot Columbia River between Portland and Astoria, and signed by Edwards and Fuller, Local Inspectors.

Mr. Wood continues to read depositions of Herman Oehring and Gerhart Gerdes.

Mr. WOOD: Your Honor, I have a list of receipted bills here, and some sort of a vague understanding between counsel and myself, they will be admitted. I don't precisely understand it. As I understand it—they can correct me—I will introduce these bills, and it is admitted by them that this money as shown on these bills was paid as a consequence of the collision, but they, or at least, Mr. Minor, reserves the right to contend that some of them are not legitimate collision damages. That is right, Mr. Minor?

Mr. MINOR: I won't state about as a result of the collision. I admit them to be those bills. I won't say they paid them, as a result of the collision.

COURT: You don't controvert the amount of

the bills, but reserve the right to question their pertinency in this controversy.

Mr. MINOR: Yes, I say some of them not paid on account of the collision at all, and I say that some of them seemingly are unreasonable on their face. I didn't mean to admit that because they have paid them, that therefore they are entitled to recover, unless reasonable on the face. In other words, your Honor will recall some testimony of Mr. Veysey, who said that although the bill of the Portland Boiler Works, \$7200, or something like that, they only paid something like \$5750, and it went in the record here for \$7500—\$7250, something like that.

Mr. WOOD: In the record, that is the contract price. Captain Bergmann testified that was the contract price.

Mr. BRISTOL: For my part, so Mr. Wood may be assured of no uncertainty as to my position—I want to be perfectly courteous to him—I told him this—these are the same bills I saw in my office, I take it—and I told him the only bill as far as I was concerned, I would take issue with him about was this bill of the Portland Boiler Works concerning which I examined Captain Veysey, and my point of objection to this account was this: That regardless of whether the contract price was \$7250 or not, the bill is receipted and paid for \$5950, and in the item on the bill representing the \$1300 difference, it says, "Less 13 days demurrage at \$100 a day," and I resist the payment of any demurrage,

because it is not properly chargeable to my client in any event, and not proper collision damages, because it didn't grow out of the collision. With that exception, I am willing Mr. Wood should prove his bills.

Mr. MINOR: The bills may go in. I will not take time to go into the offer, but reserve the right to object at the argument.

Mr. WOOD: That brings up the point I am trying to arrive at. If Mr. Minor is going to object to certain of these bills, I must know which they are, in order to bring witnesses here to substantiate them, and unless I introduce them, one by one, and note his objections, I don't know how to prepare the case.

Mr. MINOR: I haven't a list of them, and if you will give me a list, I will try to go over them during the noon hour. I didn't have them personally. They were given to me under an agreement I had with Mr. Wood that I would refer them to The Port of Portland, and they were referred to The Port of Portland.

Mr. WOOD: It occurs to me it would probably have been wise to first determine the question of liability, and leave the question of damages later.

Mr. SNOW: That occurs to me as the correct thing.

Mr. WOOD: I have no objection to that, provided we can reach the question of damages within a reasonably short time after the liability is deter-

mined, but I have a case in this Court, where it has dragged for three years.

COURT: I presume, in case the Court should decide you are entitled to damages, but if it should go the other way, you wouldn't be in such a hurry about it.

Mr. WOOD: No, I agree with you.

Mr. SNOW: The understanding I have is, if we don't reach an agreement on my bill, and for damages, I will prove the deposition.

ARCHIE LEROY PEASE, Jr., a witness called on behalf of Knohr & Burchard, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Wood:

Q. Mr. Pease, you are the Archie L. Pease, the same one that testified before, and you are usually called Roy Pease, are you not?

A. Yes, sir.

Q. What is your age?

A. Born February 10, 1886.

Q. Now, you took hold of the "Thielbek" on the night before the collision. I am not going to rehearse all that, about how you went down there, because you have already told that on Mr. Bristol's examination. Take it up from there. When you took hold of her that night, who was it that superintended the putting out of the side lights on the two vessels?

(Testimony of Archie L. Pease, Jr.)

A. Well, the watchman superintended the putting out of the lights.

Q. The watchman of what boat?

A. The "Ocklahama."

Q. What is his name?

A. W. R. Eckhart.

Q. When were they put out?

A. Well, I couldn't say exactly when they were put out.

Q. I mean, in relation to the time that you started up the river.

A. They were lighted at the time the anchor was up.

Q. About when you were under way, then?

A. Yes.

Q. Under whose orders did Eckhart put the lights out?

A. Under my orders.

Q. What orders were they? What did you tell him?

A. I asked him if they had our green light out, and he said yes, he was just lighting it. I sent him forward to see there was no lights burning on the bow of that vessel.

Q. Bow of which vessel?

A. The "Thielbek."

Q. When you asked him if he had the green light and he said yes, what did you mean? Out where?

A. If he had it burning on the rigging of the "Thielbek."

(Testimony of Archie L. Pease, Jr.)

Q. And you sent him forward, as I understand it, on your boat. Is that it?

A. On the "Thielbek."

Q. On the "Thielbek." For what purpose?

A. To see that—I had already told them that we wouldn't use any other lights.

Q. You told the "Thielbek" that?

A. Yes, sir, and I sent him forward for a double precaution, to see they weren't burning.

Q. Did he come back to you and report?

A. He reported that there were no lights burning.

Q. No lights burning at all?

A. That is neither their red light nor their green light was burning.

Q. But the green light that he had placed over there on them was burning?

A. I could tell that was burning myself.

Q. How? Could you see that?

A. The top of the light comes a little above the screen, and you can see whether a light inside of it. The top is a little bit perforated. You can see a light burning in there. Sometimes you can see the reflection. You can't see the light itself.

Q. What was the relative height of the red light on the side of the "Ocklahama" and the green light on the side of the "Thielbek"?

A. Practically the same.

Q. And what part of the "Thielbek" was the

(Testimony of Archie L. Pease, Jr.)

green light on? That is, how far forward midships or aft?

A. Well, it was on her spanker rigging.

Q. How would that be in relation to the red light of the "Ocklahama," forward or aft of that?

A. Well, I would say it would be in line; that is, there wouldn't be more than a few feet difference either way, a little bit forward, I should say.

Q. I understood, or I think you have already stated that he took an electric light from your boat over with a cable. Did you say that?

A. Yes, sir, the cable was made fast to our side light screen, our green side light screen.

Q. How long a cable is that, do you know?

A. I should say between fifty and seventy feet.

Q. When you started up the river, under way, and as you have described it already, keeping along the line of the Astoria docks, what orders, if any, did you give to the "Thielbek" as to how she should conduct herself, and manage her helm?

A. Told them to keep it midships, and not change it unless they were ordered to.

Q. Did they do that, as far as you know?

A. As far as I know they did; that is, they didn't move it any so that it would interfere with my steering; from the way that I was steering, and the way that she was handling, why it would appear that they had not moved it.

Q. Does that apply to the whole time from when you started up to the collision?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. You said, I think yesterday, that you first saw the "Fagelund" when you were just a little below Callender dock?

A. I should judge that was about the place.

Q. At that time you received the two whistles from the "Fagelund."

A. Well, shortly after I saw her; matter of seconds; about that time, yes. They blew their whistle just as the green light was shutting out by the stern of the "Chinook."

Q. So you saw her for an instant or two before she whistled?

A. Yes, sir.

Q. Where was it in relation to the dredge "Chinook" when you first saw her?

A. She was above the "Chinook" coming down.

Q. And about how far away from you?

A. You mean approximately?

Q. Yes.

A. Oh, about a quarter of a mile.

Q. And can you give an approximate estimation of the distance the "Chinook" was from you at that time?

A. Well, approximately the same distance. Maybe a couple of hundred feet. I couldn't say exactly how far she was on the other side.

Q. In other words, you think she was close down to the "Chinook"?

A. She was close to the "Chinook"?

(Testimony of Archie L. Pease, Jr.)

Q. What did you see of her? Of the "Fagelund" on this first sight?

A. Well, I saw four bright lights, of course. That is, the anchor lights of the "Chinook" the range lights of the "Fagelund," and her green light.

Q. And how did the range lights of the "Fagelund" and her green light appear to you in relation to the "Chinook"?

A. Well, I wouldn't state the exact position.

Q. Well, I want to get at the fact, whether you saw them clear of the "Chinook," or not?

A. How do you mean clear of the "Chinook"?

Q. Well, I mean was the "Chinook" between you and the "Thode," or was she not?

A. She was.

Q. When you first received the first two whistles from the "Fagelund," what did you do?

A. I had already slowed down.

Q. Then I will ask you when you slowed down?

A. When I first sighted her.

Q. When you first sighted her?

A. Yes, sir.

Q. What did you put your engines at? Did you stop her, or did you put her—

A. Half speed, one jingle.

Q. Then when you got her two whistles, what did you do, if anything?

A. Well, I was swinging to port at the time a little bit.

Q. At the time?

(Testimony of Archie L. Pease, Jr.)

A. At the time. Clearing the docks, and I let her swing a little bit more. When she came out from behind the stern of the "Chinook," and blew the two whistles, at that time she was coming very near on the port. That is, she was swinging to her port just about as fast as we could swing her.

Q. That is, you mean your boat was?

A. Yes, sir.

COURT: You mean the bow was swinging to port? Is that what you mean?

A. I mean—yes, sir, that we were steering the tow to the port side of the channel.

Q. At the time of the second whistle?

A. At the time of the second whistle.

Q. From the "Thode"?

A. As soon as I answered it—as soon as I answered her two whistles, why I kept her going away from the docks about as fast as I could.

Q. What was your reason for not answering the first two whistles?

A. Well, she was coming—she was just the other side of the "Chinook." I figured that she would be out from the "Chinook" in just a matter of a few seconds. I could see the outline of the "Chinook" easily. Therefore, when she came out I would be able to see the outline of her, and I thought it was good action to wait, and see her outlines for sure, and then see whether I could pass her according to the two whistles.

Q. As she requested?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. But as I understood you—

A. You see it was an unusual whistle. It was an unusual signal. It was a signal that should not have been given unless there was some reason for it with the other vessel.

Q. As I understand, you were swinging a little to port, to clear the docks when you first saw her?

A. Yes, sir.

Q. I am merely rehearsing your testimony now. That is, when you first saw her, you slowed your engine half speed, and swung a little more to port before her first whistle?

A. Not before her first whistle.

Q. At the first whistle.

A. I didn't swing her any more until after she had blown her two whistles.

Q. I see. That is what I want to find out. When she blew her second two whistles, what did you do with your whistle?

A. I swung her over to port—

Q. With your whistle?

A. Oh, my whistle. I answered it with two whistles.

Q. And what did you do with your helm?

A. Well, at that time she was swinging just about as fast as she could to port. I kept her swinging as fast as I could to our port; shortly after I stopped.

Q. Shortly after you stopped what?

(Testimony of Archie L. Pease, Jr.)

A. Shortly after I stopped the vessels; stopped my boat.

Q. Stopped your engines entirely?

A. Yes, sir.

Q. How long after the answer that you gave to the "Thode," assenting to her passage, did you stop your engines?

A. I say shortly. I wouldn't state the time, but shortly after that.

Q. When you saw the "Thode," I understand you to state her range lights appeared to you. How did they appear to you?

A. Open.

Q. Much or little?

A. Quite a bit.

Q. Were they the same position when you exchanged whistles with her?

A. Yes, sir.

Q. At that time, her red light had not appeared?

A. Had not appeared; no, sir.

Q. After you had put your boat's bow to the port, as you have testified, to carry out the passage that the "Thode" had requested, and that you had assented to, how was the course of your tug and tow in relation to the stern of the "Chinook"? How were you bearing upon the stern of the "Chinook"?

A. Before the two whistles?

Q. Well, I meant at the time that you assented—at the time that you assented to the passage, and

(Testimony of Archie L. Pease, Jr.)

attempted to carry the passage out. You can give it to me before too, if you like.

A. Well, I would say before their first two whistles were given, I should say I would have cleared the stern of the "Chinook," by probably a matter of 700 or 800 feet. That was my intention. After that, of course, to swing her head about half way between the "Chinook" and the shore; then when they blew their two whistles, and after the signals were answered, why, I swung so I was heading for the "Chinook."

Q. After you gave the answer assenting to her two whistles, you headed for the stern of the "Chinook"?

A. Yes, about the stern of the "Chinook." Just so as to practically clear it, just about four—I should say a little bit astern of her, but heading practically about as far over as I could.

Mr. BRISTOL: Having no desire to interfere with your examination, but just for accuracy, I might remind you with respect to these headings: This gentleman is on his own vessel, the "Ocklahoma," and the "Thielbek" was forty feet away from him. Wouldn't it be wise to fix just what that heading represented; he has a range from—his own pilot house, or the bow of the "Ocklahoma."

Q. All right. You can answer that.

A. Well, the distance, as I would say, and as far as it is possible to give an accurate estimate of

(Testimony of Archie L. Pease, Jr.)

it, the difference in that distance wouldn't be material, because it is neither accurate.

Q. Then you mean your combined tug and tow took a course for the stern of the "Chinook." Is that what you mean?

A. Yes, that is practically the stern.

Q. While we are on this question, how wide is the "Ocklahama"? What is her beam?

A. I wouldn't say for sure, but I think somewhere in the neighborhood of 34 feet.

Q. Now, you said that the whistle that you received from the "Fagelund" was an unusual one. I would like to ask you what course you had intended to pursue, before you saw the "Thode," as you went up the river; the course you intended to follow, and why, if her whistle was unusual, you departed from it and assented to her request.

A. Well, the course that I intended to pursue, was following the docks around, giving the vessels which were anchored there a wide berth.

Q. Giving the vessel that were anchored where?

A. Where the "Thode Fagelund" had been anchored, and where the "Chinook" was anchored. I intended to give them a wide berth. They blew me two whistles, which was an unusual whistle; evidently they had a reason for it. They should have a reason for it. Anyway, I saw that I could steer so as to give them plenty of room for their whistles, if they wanted that. I gave it to them, not knowing their reasons for wanting it, but seeing I

(Testimony of Archie L. Pease, Jr.)

could help them out and give them room, so they would have plenty of room to pass on that signal.

Q. You said something about having stopped your engines entirely. I will ask you what other maneuvers you made with your engines immediately following, the next after they had stopped. What did you next do with them?

A. Full speed astern. That is, the way we get full speed astern, we usually back up with the jingle and then open her out to full speed astern.

Q. About how long was that after you had brought your engines to a stop?

A. Well, a very short period of time.

Q. Now, why did you put your engines full speed astern?

A. I wanted the "Fagelund" to get by me.

Q. To get by you?

A. To get by me before I came up to the "Chinook." That was my first reason.

Q. Let me understand that. Did you reverse them from fear of a collision with the "Fagelund"?

A. Not at first; no, sir.

Q. Then what was your fear?

A. My fear was that I might possibly have to go to my starboard to clear the "Chinook" and I couldn't very well go to my starboard after giving two whistles until the vessel was by me.

Q. Until the "Thode" was by you?

A. Until the "Thode" was by me. Then I could

(Testimony of Archie L. Pease, Jr.)

swing back to my starboard so as to be sure and clear the "Chinook."

Q. I see. You checked your speed then, as I understand it, in order to keep from hitting the "Chinook," and to let the "Fagelund" get by so you could then pass around the stern of the "Chinook"?

A. Yes, sir.

Q. Is that it?

A. Yes, sir.

Q. I wish you would describe to the Court how you held the course of your vessels for the stern of the "Chinook." By that I mean, what did you do with your helm, and explain the action of the reversing the wheel upon your rudder, and all about that. I want the Court to understand it.

A. You mean when I first started to go astern?

Q. I mean when you took your course for the stern of the "Chinook."

A. Well, when I was going full speed astern, I was going on port helm full speed astern; that would swing her bow to port; every once in awhile I would switch my wheel to midships, but was backing really between port and midship helm. The reason I would put to midships once in awhile was to keep her from going broadside against the channel, and keep her swinging as much as I could to port.

Q. What was the effect of the reversing of the wheel on your steamer, throwing the water against

(Testimony of Archie L. Pease, Jr.)

your rudders? In the first place, where are your rudders?

A. There are four rudders forward of the wheel and two rudders abaft the wheel.

Q. Then, under a port helm, when you reverse, how does the action of the water on the rudders forward of your wheel affect the direction of your ship?

A. When I back on a port helm, it throws the bow of the vessel to the port. When I back on a starboard helm, it throws the bow of the vessel to the starboard.

Q. Now, you said you had to occasionally change from this port helm to midships helm, in order to keep from throwing your stern upstream, and your vessel across the channel. That is what you said. I would like you to explain why you wanted to avoid that position across the channel.

A. If I had backed on a port helm entirely, all the time, about the time that the "Fagelund" would be coming along, I would be taking up probably 400 feet of the channel, while the other way I would practically take up 100 feet. Those are just estimates of the distance, roughly speaking.

Q. Now, then, it is charged in Mr. Bristol's libel that you held varying and alternating courses, an uncertain course toward the stern of the "Chinook"?

Mr. BRISTOL: Well, that is a little broader than the libel alleges it. I said alternating and uncertain course, and varying helm.

(Testimony of Archie L. Pease, Jr.)

A. Why, I would say about my course, that at no time after I blew two whistles did my vessel swing to a starboard—at no time.

Q. Was the effect of this helm of yours, and the action of your engines, to keep your boat on a steady course towards the "Chinook," or did it vary and swing from side to side?

A. No, my backing would cause my boat to swing this way.

Q. To swing with her—

A. Bow to port.

Q. Bow to port?

A. When I put her amidships, would kind of steady her stern, and keep her stern from going down.

Q. Going which way?

A. Going to starboard. And she would keep on swinging. She would slow up some; when she began to swing up some, I would put her to port again, and she would swing lively; then I would put midships; then when she began to slacken up her swinging, I would put her to port again, and she just kept going. It would keep her going practically in this direction, more, in fact, than the way you can work a propeller boat; I wouldn't say you could make her go sideways through the water, but you can make her come very close.

Q. In other words, in this way you kept—

A. Going as far to my port as I could, and kept

(Testimony of Archie L. Pease, Jr.)

her going to my port as far as I could without swinging broadside across the channel.

Q. And on a steady course for the "Chinook," but with your vessels going slightly sidling through the water.

A. Well, you could call it that, yes, sir. .

Q. As you approached the "Chinook" and the "Thode Fagelund," did you notice any change in the range lights of the "Thode Fagelund," mast-head lights?

A. As we approached?

Q. Yes.

A. Yes, sir.

Q. What change was there?

A. When I first saw their lights, their lights were open, and I could see their green light. The lights kept closing up and closing up, until they came in range, and I could see her green light—

Q. By in range, you mean one light behind another?

A. Yes, sir. When they came in range, I could see her green light and her red light; then they began to open on the other side, and her green light shut off, and I could see nothing but her red light.

Q. When you first saw her, can you give any idea of how wide apart her range lights were?

A. No, but I could give a rough estimate from when I saw her, about the number of points she would swing to her starboard.

Q. All right.

(Testimony of Archie L. Pease, Jr.)

A. I would say she swung pretty near eight points of the compass to her starboard, after giving me two whistles. I would say she swung pretty near at right angles.

Q. From the two whistles to the time of the collision?

A. Yes, sir.

Q. You judge that from the way her lights changed?

A. Yes, sir.

Q. How long before the collision do you think it was until her red light appeared to you?

A. That was shortly before the collision.

Q. Do you care to give an estimate in time?

A. Well, not to be accurate. I would say less than a minute.

Q. What other whistles did you hear from her—from the "Thode Fagelund"?

A. I heard a danger signal.

Q. Was that before or after the red light came in view, if you remember?

A. I wouldn't state.

Q. Did you hear her anchor? It has been testified to that she let go of her anchor.

A. Yes, sir.

Q. How long was that before the collision?

A. About two seconds; that is, it was a very short time. It hadn't been shut off. It was still paying out.

Q. What was?

(Testimony of Archie L. Pease, Jr.)

A. Her anchor chains when they came together, her anchor chain wasn't holding anything. It was still paying out. You could hear it running out of the pipe.

Q. You could?

A. Yes, sir.

Q. How many danger whistles did she blow?

A. She blew me one before the collision.

Q. Did she blow you any more?

A. Well, I don't know whether you would call it a danger signal or not. She blew a danger signal. If there was such a thing as an answer for a danger signal, I might have been able to blow maybe two whistles before they came together. That is, when her danger signal was finished, it was a matter of a couple of seconds when they came together, and then her whistles was blowing continuously, and the number of them I don't know.

Q. Now, let me understand you. Do you mean that the first danger signal she blew was just a very few seconds before the collision?

A. I should say that the four whistles was blown, had finished blowing maybe two seconds before they came together, probably when they were fifty or seventy-five feet apart.

Q. And that was the first danger whistle.

A. That was the first danger whistle. That was the only danger whistle before the collision.

Q. And after that there were other whistles

(Testimony of Archie L. Pease, Jr.)

which you hesitate to characterize as danger whistles.

A. Well, I wouldn't say what they were, but say that maybe there was six, and maybe there was fifteen.

Q. Is there a difference between the terms danger signal and distress signal?

A. I don't know what a distress signal is. In fact, of course, that is in law, or anything like that—what I mean, probably if a man was in distress, he would keep blowing his whistle continually probably. He could use his own judgment as to that, and I should say that that was more than four whistles; might have been meant for a distress signal.

Q. At the moment of the collision how far were you from the "Chinook"?

A. You mean the bows of the two vessels from the "Chinook"?

Q. Yes, the bow of the "Thode" and the "Thielbek"?

A. Hard to state. I should say between 100 and 150 feet.

Q. About how was the "Chinook" laying in the stream?

A. Well, her stern was upstream. It was pointing towards the upper end of Astoria, I should say.

Q. Had her stern swung completely with the tide yet, or was it still swinging?

A. Well, I wouldn't say completely. It had

(Testimony of Archie L. Pease, Jr.)

swung a great deal, but I think she was still swinging.

Q. Can you give me an idea of the state of the tide?

A. Of the tide?

Q. Of the tide; yes.

A. Well, I would say it was flood tide, not very strong. That is to say, it wasn't the strongest point of the tide.

Q. About how many miles an hour would the current be?

A. I wouldn't say.

Q. Was the tide just commencing to flood, or was it strong flood?

A. Well, the tide had been—was flood. There is no doubt about that. It was swinging the vessels, and when we figure it is the strongest part of the tide is about from one half to an hour before high water and during high water.

Q. She hadn't reached the strongest part, then?

A. No, sir.

Q. I know that this is nothing but the roughest kind of a guess on your part, but I would like, if you can, for you to give me some estimate of the speed of that tide—if you could?

A. I couldn't.

Q. You have no idea?

A. I couldn't state as to that.

Q. I showed you these models Mr. Bristol has had prepared; they are not purported to be to scale,

(Testimony of Archie L. Pease, Jr.)

and I want you to place them—I think you had better step down here. Place them on this paper about the way you think the vessels lay at the instant of collision. Better make one side Astoria.

A. (Arranging blocks) Astoria would be along here. There, it would be something like that way.

Q. The location of the boats at the instant of the collision?

A. Something about like that.

Q. That is at the moment of the collision?

A. Yes, sir; that is approximately. In fact, I think probably were a little further to this side.

Q. Change them, if you like.

A. Might have been further up, about like that. That is what I think they were.

Q. Very well, change it.

A. (Rearranging blocks) This is just the way it appeared to me. That is just about the way, something in that way. I wouldn't state exactly.

Mr. BRISTOL: Now this is at the time of the collision. With this distance between the bows of the vessels, about 150 feet to the dredge.

A. Well, I should say maybe it was a little less than that, than 150. The way I looked at a thing of that kind—if you ask ten men that were right up there in the pilot house, to come up here separately and put a position, they would all differ more or less, because it isn't accurate.

Q. This arrow is fixed you mean to be down

(Testimony of Archie L. Pease, Jr.)

stream. I don't mean the current, but the mouth of the river.

A. Astoria is further over here.

Q. The distance between the bows of the "Thielbek" and "Thode Fagelund," as they were stuck together, and the "Chinook," at the moment of the collision, you estimate to be what?

A. Well, I would say—I would say between 100 and 150 feet.

Q. On the angle that the "Chinook" was laying in relation to the "Thode," according to the diagram, the stern of the "Chinook" would appear to be less than that.

A. That is nearer the 100 mark probably.

Q. 100 feet?

A. Well, approximately. I wouldn't say. I saw her from 100 to 150 feet, that would naturally be less. I wouldn't say how much less, or anything about it.

Q. We will say approximately 100 feet. Do you want to say that?

A. I would say here approximately 100 feet; about between 100 and 150, and that would be less; how much less, I wouldn't say.

Q. How far is it from the bows of the boat to the Astoria dock?

A. Roughly speaking, I would say probably 800 feet. I say between 700 and 800 feet.

Q. About how wide is the channel at the place of collision?

(Testimony of Archie L. Pease, Jr.)

A. Well, I have heard them say that it is 1600 feet. I think really it is about 1200 feet. That is what I think.

Q. Just sign your name to that.

(Witness signs.)

Mr. WOOD: I offer this in evidence, representing Pilot Pease's approximate location of the vessels at the instant of collision.

Drawing marked "Knohr & Burchard's Exhibit No. 5."

Whereupon proceedings here adjourned until 2 p. m.

Thursday, September 16, 1914, 2 P. M.

A. L. PEASE, Jr., resumes the stand.

DIRECT EXAMINATION.

(Continued.)

Questions by Mr. Wood:

Q. Mr. Pease, you have stated the distance apart of the "Thode Fagelund," and your tug and tow, when you first saw them, approximately a quarter of a mile. I forgot to ask you to state the course that your tug and tow were then pursuing in relation to the "Thode Fagelund." That is, what one of your running lights, if any, would show to the "Thode Fagelund" at that time?

Mr. BRISTOL: Of course, we object to that upon this ground: that in admiralty cases, usually the man who is in a position to see the light from his own vessel, is the man who can fix what he saw

(Testimony of Archie L. Pease, Jr.)

from that ship, and the man on the ship whose light was seen, is certainly not in position to testify what the other fellow saw.

Mr. WOOD: I want to know the course of the vessel.

Mr. BRISTOL: I have no objection to that.

COURT: Let him state the course of the vessel, and if he knows what light, let him state that.

A. I think I would be showing him my red light.

Q. You would be showing him your green light?

A. I don't think so.

Q. Then the courses of the approaching vessels were diagonal?

A. Close to right angles.

COURT: Draw that on here.

A. (Drawing) I would be headed about this way, and they about that way.

Mr. BRISTOL: Mark her, will you, the "Thielbek"?

COURT: How far do you think it was from you?

A. Probably a quarter of a mile.

Q. Mark that a quarter of a mile.

Mr. WOOD: I will introduce this in evidence.

Marked "Knohr & Burchard's Exhibit 6."

Q. The "Thode Fagelund," then, as I understand your diagram, had the "Ocklahama" and her tow on her starboard hand?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. The two vessels approaching on a diagonal course?

A. Yes, sir.

Q. Mr. Pease, about what speed were you running up the river when you first sighted the "Thode Fagelund"?

A. You mean what speed was the "Ocklahama" going?

Q. Yes.

A. She was running under a full speed bell.

Q. Can you tell me about what speed that would be past the land?

A. Probably about six miles an hour.

Q. About what speed would that be through the water?

A. Well, I wouldn't say. I told you I couldn't tell about the tide before, you know.

Q. What time do you estimate you were under way from the anchorage until the collision? There have been various estimates given.

A. I think I—well, my log book would show that. I think it was 3:05. I am not sure.

Q. When you weighed anchor?

A. When I got under way.

Q. And the collision you estimate at about what time, if you know?

A. I think about 3:25. I am not sure. My log book, the log book that you had here, would show that.

COURT: 3:25 is what he read out of the log

(Testimony of Archie L. Pease, Jr.)

book. 3:05 under way, and 3:25 the collision; in other words, you were twenty minutes getting from your anchorage to the point of collision?

A. Yes, sir. Yes, sir, I think it was about that. Of course, that is quite awhile ago. That book would show that, and I think tells about twenty minutes.

Mr. BRISTOL: You got the log,—you got the entry, 3:05 under way until 3:25 recorded in the log?

A. Yes, sir.

Mr. BRISTOL: What the Court wants to know is whether the time elapsed is greater or less than that when you hit the boat?

A. Why, it was the same.

Q. Mr. Pease, I show you a diagram, which Mr. Minor has knidly let me have, marked "Port of Portland, August 27, 1913, General Office," and I will ask you to look at it and state what it is?

A. Well, that was a rough sketch that I made showing the positions of the vessels at the time of the first signal, the second signal and the time of the collision.

Q. Just show that to His Honor.

A. (Showing paper to Court) That was made at the time and just a rough sketch, without paying very much attention to it, but just showing them how it occurred.

Q. How long after the collision was it made?

A. In fact, at the time of the collision, I might

(Testimony of Archie L. Pease, Jr.)

make a few corrections in that, if I wanted to be more exact, and then I might not; but that was just a rough sketch at the time, as I drew it out.

Q. About how long after the collision was it made? I mean, a day or a week?

A. About a day or so. In fact, I believe now, in that last position, I believe that was even swung around further up-stream, the dredge. Of course, it was just a rough drawing at the time, showing practically the position of the two vessels, and the way they swung. I just drew it right off hand.

Mr. BRISTOL: Just for the purpose of getting your idea: You said this diagram showed the position at the time of the first whistle, the position at the second whistle, and the position at the collision, and I notice that it is divided into three parts?

A. Yes, sir.

Mr. BRISTOL: The top part is the time of the first whistle, or when you first saw the "Thode Fagelund"?

A. Well, it was about—it would be practically the same thing.

Mr. BRISTOL: The same thing. And the next paragraph is when you approached still further?

A. Yes, sir.

Mr. BRISTOL: At the time of the second whistle?

A. Yes, sir; well, that would be even after the second whistle. You understand now, this is just

(Testimony of Archie L. Pease, Jr.)

a rough drawing. If I was pinned down to be exact in position, I would change around a little. For instance, the dredge really would swing upstream a little more. Here I don't believe was quite that far up. I was just making three positions; at the time of the signals and the collision is what it represents.

Mr. BRISTOL: I reserve the right to examine him on it later, your Honor.

Mr. SNOW: Of course, if your Honor please, these are self-serving declarations. It is our province to put these in instead of counsel's. No witness can put these in.

Mr. WOOD: I offer these on behalf of the "Thielbek," not for The Port of Portland.

Mr. BRISTOL: I understand Mr. Minor is not offering it. He simply gave it to you.

Mr. WOOD: I am offering this for the "Thielbek."

Mr. BRISTOL: I understand you and not Mr. Minor is offering it?

Mr. WOOD: Yes.

Mr. BRISTOL: That is the reason I don't object to it.

Mr. SNOW: Are you going to impeach the witness by that? Is that the proposition?

Mr. WOOD: No, I am not trying to impeach him.

Marked "Knohr & Burchard Exhibit 7."

(Testimony of Archie L. Pease, Jr.)

CROSS-EXAMINATION.

Questions by Mr. Bristol:

Q. Now, Mr. Pease, I would like to know whether you can fix the place in distance, for the Court, where you were with respect to the Callender dock at the time you first saw the "Thode Fagelund," and before she whistled? And before you answer that question—

COURT: Wasn't that the position he fixed yesterday? Didn't he draw you a diagram of that?

Mr. BRISTOL: Just exactly; this being cross-examination, I am going to speak to that point. Just a moment, your Honor. I want to show him that diagram.

Q. Showing you, in order that you may have your recollection refreshed in that regard, Wilhelmsen's Exhibit 14, the little plat, and showing you on the back where we were the other day, and I believe you fixed that for me in the position where you first saw her, you standing in your pilot house, the Callender dock bore over from you on the diagonal of a rectangle, which would be 150 feet off the dock, and 150 feet back along the dock line, measured on the square from your position in your pilot house to the edge of the dock; is that right?

A. Approximately, yes.

Q. Now, is that the place where you stopped, or what you river men would say rang down?

A. That is about the position I slowed down.

(Testimony of Archie L. Pease, Jr.)

Q. That is where you gave the first bell from full speed ahead, to half speed?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, so that we get this connected together, I want to know whether this diagram that Mr. Wood offered, Knohr & Burchard's Exhibit 7, having reference to the position the time of the first signal, which you have on this diagram that you gave to The Port of Portland, marked August 27th—I notice the words you have marked there in your handwriting "Callender dock."

A. Yes, sir.

Q. You put yourself right square opposite the Callender dock at the time of the first signal?

A. I have there, yes, sir.

Q. So you should have marked it up then, as I understand?

A. About 100 or 150 feet.

Q. Well, say, roughly your ship's length?

A. Yes, sir.

Q. When you heard the first signal?

A. Yes, sir.

Q. Now, I understood you to say to Mr. Wood—

A. Well, it would not have been less than the ship's length.

Q. Well, whatever it was, it was opposite the dock.

A. Well, just about, yes.

(Testimony of Archie L. Pease, Jr.)

Q. Well, here is what I am trying to get at: You told Mr. Wood that at the time you rang down that you brought your wheel up, and your ship's head was paying off to port?

A. Yes, sir.

Q. Is that right?

A. At the time that I stopped?

Q. Yes.

A. At the time that I stopped my boat, she was going to her own port, yes, sir.

Q. At the time you rang down on the engine?

A. Oh, at the time I rang down on my engine, was going to port, slow to port.

Q. Just following the swing?

A. Just following the dock down.

Q. Then she went a little more quickly. By the time you got opposite the Callender dock, she was coming up quicker by the head, was she not?

A. No, sir, about the same, still swinging a little bit.

Q. Then she had swung from the time you rang down on the half speed bell, until she got opposite the Callender dock. She was on a gentle swing to port?

A. Yes, sir.

Q. Now, as I understand, you saw the "Thode" before she whistled?

A. Just before she whistled.

Q. Now, that word "just"—

A. Means very shortly.

(Testimony of Archie L. Pease, Jr.)

Q. I don't want to banter words with you, but what do you mean by "just"? I might mean that as very close, as much as a man might count twenty-five, and you might think almost instantly. What do you signify by the word "just"?

A. I looked and saw the lights, and came to the conclusion it was a vessel under way, and about that time she whistled. That is, I should say, probably from the time she whistled, and the time I saw her, was a few seconds.

Q. Would it be as much as—using Nolan's way of getting at it—I don't know if you like that way—but would it be as much time as a man would take in ordinarily counting ten, like one, two, three, four, five, six, seven, eight, nine, ten?

A. Probably about that time. I think maybe a little bit longer than it took you to count ten then.

Q. You think it would be?

A. A little bit.

Q. Then the next thing you did, as I understand it, was to bring your wheel still over, so you could bring your ship's head up to port?

A. Yes, sir.

Q. And then you stopped entirely?

A. I didn't stop until after the second two whistles had been given and answered.

Q. All right; now, let's get down to that. I don't want to go too fast. Between the time that you got opposite the Callender dock, and saw the "Thode Fagelund," as you have described, you waited, as

(Testimony of Archie L. Pease, Jr.)

I understand, to see the "Thode" clearly, as I believe you expressed it. That is right, is it?

A. Yes, sir.

Q. And you were going then half speed?

A. Right after I sighted them, yes, sir.

Q. Now, then, she blew her two whistles, and you were still going half speed?

A. Yes, sir.

Q. How long did you continue to go half speed before you blew two whistles, in answer to her two?

A. Well, I should say a matter of—well, before she blew her first signals I was going half speed for probably, well, roughly speaking, as you said about while you would count ten; then I was going half speed when she blew her second whistles.

Q. You were still going half speed?

A. Yes, sir.

Q. And were still going half speed when you answered her second whistles?

A. Yes, sir.

Q. And you still continued to go half speed after you answered her second two whistles?

A. For a short time.

Q. For a short time?

A. Yes, that is, shortly after that I stopped.

Q. Now, let's fix it for you and I might or might not agree upon just what that meant—a short time. Would that short time represent the interval of many seconds, or about the interval that I counted ten?

(Testimony of Archie L. Pease, Jr.)

A. Well, it would be longer than that. I should say may be, well, I should say close to twenty seconds, twenty or thirty seconds.

Q. About a half a minute? That is about what I thought, about a half a minute, then, you stopped?

A. Yes, sir.

Q. Then did you instantly give the full speed astern bell?

A. After I gave the stop bell, I gave—

Q. You gave the jingle first?

A. In a matter of a couple of seconds, I gave—I reversed her engines, and went half speed; then opened her out right away.

Q. So we get that right: When you are running along—get collision out of your head for a minute—when you were running along with the "Ocklahoma," and we will say she is running full speed ahead, she is running what you river men call hooked up?

A. Yes, sir.

Q. Now, you want the engineer to give you half speed, and you reach into your bell pulls right by your wheel, and you pull the jingle bell, don't you?

A. Yes, sir.

Q. Now, he immediately operates the throttle from where it is hanging on the hook, and he shoves that lever down to half speed, doesn't he?

A. Yes, sir.

Q. And when you want him to stop, you reach

(Testimony of Archie L. Pease, Jr.)

to your other little bell cord, and pull one gong, don't you?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, the next movement, if you want to take the headway off your vessel, is to reach over to the bell cord where you pull, and you pull your two gongs?

A. Either that, but usually we give them the jingle first.

Q. You give the jingle first? That is what I wanted. Your practice is to give the jingle first?

A. Unless in a very great case of emergency.

Q. That is what I wanted to find out. Did you give him the jingle first, or did you give him in this case the two gongs right quick?

A. Gave him the jingle first.

Q. You didn't think, when you gave him the jingle, you were in any case of immediate danger?

A. No, was doing it more as a precaution.

Q. You gave him the jingle, and how long was it—was it almost immediately or as a man would reach for the bell—were you steering with hydraulic lever?

A. Yes, sir.

Q. So, when you moved the lever this way and that way,—it is a hand lever that extends out—using the Court's bench to be the edge of the wheel,

(Testimony of Archie L. Pease, Jr.)

the front about here, this lever extends out about a couple of feet, does it not?

A. Yes, sir.

Q. And that operates pistons and valves down below, with cord plungers attached to your rudders, that pull them one way or the other?

A. Yes, sir.

Q. And when you moved this lever in one direction, that operates and pulls the lever over this way, and when you move it back it is in the other direction?

A. Yes, sir.

Q. And the wheel is kept with all ropes attached, and it goes around in each direction as you pull the lever over; so, if anything happens to the hydraulic steering gear, you could use your wheel?

A. Yes, sir.

Q. I have described it right?

A. Yes, sir.

Q. And these bells, you think about as you stand at the wheel, are as close as I am, 18 inches here, at the end here, and you reach out and pull the bells, don't you?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. And in that regard, this jingle was just as close to you as the bell pull for full speed astern, wasn't it?

(Testimony of Archie L. Pease, Jr.)

A. Practically. Now, there is a board goes down this way.

Q. In front of the wheel?

A. In front of the wheel, and your lever comes out from the center of that part, and the gong is right on that part, on this side of the lever, and your jingle is on the other side.

Q. On the right-hand side?

A. Yes, sir.

Q. So you didn't think it was emergency enough to give her the two gongs, but you gave him the jingle first, and then was it instantly, or a little space of time before you gave him the two bells for astern?

A. Well, it would be just like a person would ring his jingle, and then two gongs. It is taking his time to do it in no hurry.

Q. And of course she immediately answered that, and as I understand, you immediately put your rudder over so you, what you river men describe, commenced to work, to give your ship her port helm?

A. Yes, sir.

Q. And you backed against that port rudder hard over, did you?

A. Yes, sir.

Q. Now, at that time, will you please tell me how far do you estimate—and I have in mind that you told Mr. Wood you didn't want to state, or wouldn't state that, but going along with me, as I have taken you, step by step, can you tell me now,

(Testimony of Archie L. Pease, Jr.)

how far you think the "Thode Fagelund" was away from you when you executed that move?

A. Well, I should—as I stated—a quarter of a mile—I would say probably 1000 feet. It is just roughly. I couldn't state it for sure.

Q. Now, at least, you have moved up—if a quarter of a mile is 1320 feet, you have moved up at least a ship's length. If the "Thielbek" was 300 feet long, you have moved up at least a ship's length in this movement of getting her head more to port and giving these gongs you and I have talked about?

A. Yes.

Q. That is right?

A. Yes.

Mr. MINOR: What do you mean by a ship's length?

Mr. BRISTOL: A ship's length would be, as applied to him, the length of the "Thielbek." The ship's length, as applied to the man on the "Thode Fagelund," would be the length of the "Thode Fagelund." Is that not right, Mr. Pease?

A. Well, yes—

Q. As you speak of a ship's length, you are speaking of the ship you are then on?

A. You say moving practically 300 feet ahead; practically yes. I mean was between 150 and 500 feet. That is as far as judging distances at that time, I couldn't state exactly.

Q. Put it that way, if you wish to.

A. No, I don't wish to put it any way, as far as

(Testimony of Archie L. Pease, Jr.)

that goes. That is a question I rather not answer at all, because I can't answer it accurately. I don't believe anybody could answer it accurately.

Q. Of course. You told Mr. Wood you could see the outline of the dredge distinctly, and told Mr. Wood you could see the outline of the "Thode" distinctly, as she came out from behind the dredge as you put it?

A. Yes, sir.

Q. Now, a man has some relative idea at those times of distances?

A. Not if he travels very much on a boat, he wouldn't have. He would soon get them out of his head.

Q. You and I can both look out of this window across this street?

A. Yes, sir.

Q. And can relatively estimate the distance from here to the Corbett Building or to the Good-nough Building?

A. Yes, sir.

Q. You and I wouldn't differ very much upon that estimated distance, do you think so?

A. Well, I think we would.

Q. You think we would?

A. Yes, sir; I don't think on a guess—now, that is a short distance too, and I don't think, on a guess, you and I—I think we would be all of 100 feet apart.

Q. You think we would be 100 feet apart?

A. I think we would; pretty close to it.

(Testimony of Archie L. Pease, Jr.)

Q. From here across the street?

A. From here across the street.

Q. And so with the same accuracy, you think your estimates of position and places you have put those ships in, are subject to that same correction?

A. I think they are.

Q. I understand you were sailing up this river, for the purpose of hugging the dock line about 150 feet off?

A. Yes, sir.

Q. In order to make the Gilman Flashlight Buoy No. 2?

A. Yes, sir.

Q. And as you fix the position of the ships, at the point of collision, there was, as I think you told Mr. Wood, approximately 700 feet between these vessels, and the Astoria dock line?

A. Approximately, yes, sir.

Q. Now, when you first saw the "Thode Fagelund," therefore, before as you put it, in a position where you saw her green light, and her mast head light, she had not yet come from behind the dredge, you would be in a position, I judge, naturally over on the outside of that 150 feet, the width of the beam of the ship "Thielbek," wouldn't you?

A. What is that?

Q. You would be over in that distance, the width of the beam of the ship "Thielbek" where you stood?

A. I wish you would ask that question again.

Q. What I am trying to get at is this: In your

(Testimony of Archie L. Pease, Jr.)

estimate of this distance, at the place you stood, it is about 150 feet, you have estimated?

A. Yes, sir.

Q. That is along the line of the "Thielbek." Now, you would still be over, where you stood, the width of the beam of the "Thielbek," and half the width of your own ship, wouldn't you? You stood at the center of the pilot house?

A. Probably.

Q. And you think the "Ocklahama" is 34 feet wide?

A. Somewhere along there.

Q. And it took, I think you said, from 50 to 70 feet of this cord, and it took that 50 or 70 feet of cord from your ship to go across to the spanker rigging to put out that green light, didn't it?

A. I don't know as it would take that distance, no.

Q. What was that distance, approximately?

A. I wouldn't say—I would say it would probably be 45 feet.

Q. 45 feet?

A. Or something like that way.

Q. Did your wheel house lie, with respect to where you stood, as you looked across the beam of the "Thielbek," directly opposite that spanker rigging?

A. Well, I am not sure. I wouldn't state that for sure. I don't remember. I remember seeing the light, too. As I say, just as a person would look

(Testimony of Archie L. Pease, Jr.)

out of the window and see it. Might be a few feet back or forward. I think was a few feet back.

Q. You don't know, do you, how high your pilot house is, where you stand, from the water?

A. I know how far my eyes would be, standing in the pilot house, from the water.

Q. I wish you would tell me. That is exactly what I want to get at.

A. 33 feet.

Q. 33 feet?

A. Yes, sir.

Q. Do you know how high the bow of the "Thielbek" and her jib-boom was above the water?

A. No, sir.

Q. Could you see over it?

A. Yes, sir.

Q. From where you stood?

A. Yes, sir.

Q. In order to get that, so as to get it in the record, I show you a picture. Can you tell me whether it is a correct delineation as it purports to be, of the "Thielbek"? In the way of a photograph, and merely for the purpose of illustration, of how she looked at the time you towed her; that is, of course, right after the collision?

A. Yes, that is a picture of her.

Q. And you think it correctly represents her bow, and about the position of her forward yard arm, and everything, as of that time?

A. Yes, sir; from that picture, of course, I think

(Testimony of Archie L. Pease, Jr.)

her bow looks higher than it really is, from the way the photograph is taken. I wouldn't know that.

Q. You think it does?

A. Yes, I think it does. I wouldn't know, though, from the looks of it—yes, I think that picture was taken, from the looks of it, from down below.

Q. And you think, probably, that would show the bow of the "Thielbek" to be a little higher?

A. No, I say, a person looking right at the "Thielbek," she looked higher out of the water than I really believe a person would be led to believe; that is, would be led to believe by that picture she is really higher than she is.

Q. But she is a ship, is she not? Or did you notice whether she was or not, that has what may be called a high sheer?

A. A high what?

Q. Sheer.

A. High sheer. Well, she was just the same as the ordinary ship in ballast, that we tow.

Q. She was the same?

A. Yes, sir.

Q. What is the average height of the prow of the ordinary ship in ballast, that you tow drawing thirteen foot six above the water line?

A. I wouldn't say for sure. I would say probably 20 or 22 feet, along there, average. I wouldn't say for sure, though.

(Testimony of Archie L. Pease, Jr.)

Q. Then her bowsprit and jib-boom would extend forward of that, would it not?

A. Yes, sir.

Q. And the "Thielbek" had four masts?

A. Yes, sir.

Q. And she had her yard arms?

A. Yes, sir.

Q. But her sails were furled to those yard arms?

A. Yes, sir.

Q. At the time you towed her, she had the usual paraphernalia of ships, her shrouds and ratlines and all that sort of business?

A. Yes, sir.

Q. Now, in your position, from where you were in the pilot house, you could see the Gilman range light, couldn't you?

A. The Gilman Buoy light?

Q. Yes.

A. Yes, sir.

Q. Gilman Buoy light. Beg pardon, I said range light. That is right, the Gilman Buoy light. And it was perfectly clear to you?

A. Yes, sir.

Q. And there continued to be, up to the time that the "Thode" blew her second two whistles, and you answered them, a full, clear space in there, of at least 700 feet?

A. Between the Gilman Buoy?

Q. In between the docks. Towards that Gilman Buoy light, between the docks and the position of

(Testimony of Archie L. Pease, Jr.)

the "Thode Fagelund," when you answered the second two signals, a clear distance in there of 700 feet?

A. It looked to me that there was about 700 feet off the docks, or 800.

Q. Now, I understand you to say, while you were swinging this little bit to port, gently to port as you said, that point and place, and while you could see the "Thode's" lights, and this Gilman Buoy light—

A. I didn't notice the Gilman Buoy light after the two signals were given.

Q. Didn't notice it?

A. No, sir, I didn't even notice the shore.

Q. Didn't notice the shore? Why not?

A. I was busy watching the "Fagelund" and the dredge "Chinook."

Q. Busy watching the "Fagelund" and the dredge "Chinook." Now, if you intended to go up through there, 150 feet off the dock line, and give these ships a wide berth, why didn't you stick to it?

A. Because he had blown me two whistles.

Q. I know, but you told Mr. Wood that that signal should not have been given.

A. Certainly, unless he had a reason, I say.

Q. Well, I know, we are going to, you and I are going to pursue this question now as to your statement that that signal should not have been given, by the "Thode Fagelund," and I asked you why, when you saw her and before she had given any

(Testimony of Archie L. Pease, Jr.)

signals at all, why didn't you blow one whistle, and go right up that river the way you started to do?

A. If I had blown the first whistle, I would have blown one whistle.

Q. I say, why didn't you?

A. After she had blown two?

Q. No, before she had blown any. After you first saw her.

A. After I first saw her?

Q. Yes, and before she blew any whistles at all, why didn't you blow one whistle, and go right along, and hold your course?

A. Because I wasn't ready to blow my whistle at that time.

Q. Why not?

A. Because I wasn't positive about her position yet. As soon as she had come out from behind the stern of the "Chinook," if she hadn't blown a signal, I would have given her one whistle, when she came out there, but before that time, she had given me two whistles.

Q. I know; let's you and I keep our minds on the same thing, and we will get right along to all these points as we proceed. You see, I am trying to get this so the Court understands it, as well as you and I do. That is what I am trying to arrive at. Now, you say the "Thode Fagelund"—or Mr. Wood got you to say you saw the "Thode Fagelund" behind the dredge?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And you told him you saw her two mast head lights, and her green lights, and her space was open to you quite wide?

A. Yes, sir, it appeared that way.

Q. And he pursued that inquiry, and got you to say she turned off her course eight points?

A. Yes, sir.

Mr. WOOD: I didn't get him to say that, Mr. Bristol.

Q. Just a moment. Now, then, I am trying to direct your mind to that testimony when you first saw the "Thode Fagelund." In that position, where you first saw her, she hadn't blown any whistles and you were approximately 150 feet off the shore line, or dock line of Astoria, heading for the Gilman Buoy. Why didn't you blow one whistle and hold your course?

A. As I said before, if I had blown the first whistle, I would have blown one whistle.

Q. Yes. Now, I want to ask you why you didn't blow that one whistle and hold your course when you had 700 feet to get through there?

A. Well, that is just a matter of—you know lots of times when we first sight a vessel, and even when we know our course, we don't always blow the whistle the minute we sight her.

Q. That may be true.

A. As I told you, it was a very short time, a matter of time while you count ten, from the time I saw her until she blew her whistles.

(Testimony of Archie L. Pease, Jr.)

Q. All right. Now, in that time that you count ten, there was time for you to blow your one whistle, was there not?

A. Yes, there was time for me to blow my one whistle.

Q. All right. Now, I say why did you not do it?

A. When a man sees a vessel, he will usually count—that is he will usually wait that length of time before he blows any whistle at all.

Q. Well, is that the only reason you had for waiting?

A. I had no other reason for waiting. We were quite a distance apart, and he was off on my port side, and I knew that he was coming down, and I knew that, and the chances were he was going to swing around the stern of the "Chinook." When he comes aft the stern of the "Chinook," then would be plenty of time to give him a one whistle signal.

Q. So you waited and didn't give him the one whistle signal?

A. I didn't give him the one whistle signal at that time, no, sir, when I first sighted him.

Q. Then why do you say his whistle was wrong?

A. Because he had me on his starboard bow—I didn't say it was wrong.

Q. You say it should not have been given?

A. Unless he had a reason for it, I said.

Q. Well, if he had a good reason, and he did give you the signal, and you answered it, then it was up to you to follow a course to clear him, wasn't it?

(Testimony of Archie L. Pease, Jr.)

Mr. MINOR: I object to that, your Honor. That is governed entirely by the law, not by what this witness may say. The law in that regard, your Honor, is different from what Mr. Bristol states it.

Mr. BRISTOL: We will argue that, your Honor.

Mr. MINOR: That is true, but what I want to say is this: The law, as I understand it, is that it is not the duty of the vessel so signaled to get out of the way of the other one. It is the duty of the other vessel to get out of the way of the one she has signaled.

Q. Very well. Let him answer the question, anyway, to see his judgment about it.

Q. (Read.)

A. Not necessarily. If when—

Q. Why not?

A. When he blows a signal, he means that he can get by me if I hold my course, if I do nothing. I am not supposed to do anything against him, knowing that course, that is, if I answer two whistles, I am not to go to my starboard. I can hold my course, or go to my port.

Q. You mean to tell me, as a pilot on this river, that when you meet a vessel coming down-stream, and you are going up, and she first signals you with two whistles for a starboard passing, that you can hold your course?

A. Yes, sir.

Q. You state that upon your knowledge as a pilot, do you?

(Testimony of Archie L. Pease, Jr.)

A. I say, if I am holding a course, and a man blows me a signal, I can hold my course.

Q. Is that the reason for saying Mr. Nolan gave you the wrong signal?

A. No, I don't think Mr. Nolan could have passed me if I had held my course, but I was willing to give him room and I gave him room.

Q. You have no other reason for saying that the two whistle signal was wrong, other than you have given, have you?

A. I don't say the signal was wrong. I said it was an unusual signal.

Q. Then I will put it this way to you—

Mr. SNOW: What do you mean by that?

Mr. BRISTOL: I will find out what he means if I can.

Q. Why did you answer the two whistles of the "Thode Fagelund" if it was a signal that should not have been given?

A. It was an unusual signal. I did not say that it was a signal that should not have been given.

Q. You tell me that the starboard to starboard passing signal is unusual?

A. A starboard to starboard passing signal is unusual in passing vessels in these positions.

Q. Why?

A. For the simple reason one vessel has to cross the bow of the other vessel.

Q. Now, isn't it true, Mr. Pease, and don't you know it to be a fact, that as a pilot in these waters,

(Testimony of Archie L. Pease, Jr.)

that the Pilot Rules practically prescribe—and in order that you may understand what I mean and not be confused, I read to you, directing your attention, in view of your answer, to Article 22 of the Pilot Rules. Have you got them?

A. I have them.

Q. You have them there, have you?

A. What page is that?

Q. On my copy it is page 9.

A. Which Article?

Q. Article—well, along there, Rule 9.

A. Yes.

Q. Article 21. Now, look at it.

A. Yes, sir.

Q. "Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed."

A. Yes, sir.

Q. Now, you maintain, then, as I understand it, that Mr. Nolan had no business to give you the two whistle signal, as it was up to him to keep out of your way; is that right?

A. I don't say he had no business to give them.

Q. Well, in view—

A. I say, that when the vessels were laying in that position, Mr. Nolan or I, whoever happened to give the first signal, should have given one whistle, and in the case of that position, it was Captain Nolan's place, it was the "Fagelund's" place to keep out of my way.

(Testimony of Archie L. Pease, Jr.)

Q. Well, I am putting it the other direction. I am putting it on the theory that Mr. Minor takes. He says, and stated to the Court here, that he was going to claim that you were the privileged vessel, and your testimony seems somewhat to indicate you have that idea by saying that the "Thode" should not have given the signal that she did. I have called your attention to the rule that you could rely upon in support of your point, and ask you to question why you didn't hold your course?

A. I told you because she blew two whistles.

Q. Well, suppose she did. If that was wrong, you didn't have to obey it, did you?

A. I thought she had a reason for it, or she wouldn't blow it, and I thought I would help her out, yes.

Q. Then you blew two whistles assenting to that, saying you would execute the maneuver the "Thode Fagelund" invited you to, didn't you?

A. Yes, sir.

Q. You had plenty of room to do it too, didn't you?

A. Yes, sir.

Q. I understood you to say from the night before, you knew where the "Thode Fagelund" and the dredge "Chinook" were, and that in your maneuvering up the river from your anchorage, it was your purpose to run around close by the docks on the 150-foot clearance, and up through the Gil-

(Testimony of Archie L. Pease, Jr.)

man Buoy so as to give them a wide berth—is that right?

A. Yes, sir.

Q. Why did you not adhere to that intention?

A. I think that was answered just a few moments ago.

Q. I know, but I want you to tell me now why you changed your position?

A. I said because they blew two whistles.

Q. And the only reason you changed your course was because they blew two whistles?

A. Yes, to help them out; I changed my course because they signified they wanted that passing, and I saw I could give them that passing, and steered accordingly to give them that passing.

Q. How many points—eight points in the ship's course would be a right angle, wouldn't it?

A. Yes, sir.

Q. 32 points to the compass, and eight points is 90 degrees, isn't it?

A. Yes, sir.

Q. At no time prior to the collision did you show any green light?

A. Yes, sir.

Q. When?

A. After I started to swing, my green light would come into view.

Q. Yes, naturally. Now, I understand you to say that this plat, being Knohr & Burchard's Exhibit 7, that if you were making a map now you

(Testimony of Archie L. Pease, Jr.)

would make some corrections. Now, drawing your attention to the position in the middle of the diagram, marked as position at the time of the second signal—position at time second signal—that is, when the "Thode Fagelund" blew her second two whistles. Is that when that means?

A. Yes, sir.

Q. And when you answered that?

A. You mean, is that position correct?

Q. Yes.

A. As I stated at the time, I just drew these off. I wasn't pinned down at the time. This was just to show the people in the office. I wasn't pinned down to make it exact, I would say; if I was pinned down to make it nearer, I would put this bark further back. I would put her back in here, and I would swing that dredge up a little further in, too.

Q. On this plat No. 7?

A. At the time of the two whistles, I would say further back here.

Q. Would put the stern of your ship further back towards the Callender dock?

A. Yes, and would put him near that way, and would put the dredge up a little more that way. That, I believe, would be a little more correct. They wanted me to make three drawings, and I sat down and drew them off, the way a person would naturally do in explaining things, showing I was at right angles, the way we came—the way we came together; that is where we were in the first place.

(Testimony of Archie L. Pease, Jr.)

That is where we were in another position. That is the position where we came together, just showing the way they came. At the time of the second signal, I think I was further back here.

Q. Clear of the Callender dock, that is, but headed up in about the relative position you show on the plat?

A. That is the course I was in, yes.

Q. The "Thode's" position shown in that second position, you wouldn't change, but would swing the dredge a little bit more up-stream?

A. Yes, would change the steamers too. The steamer wasn't headed that way; was headed more this way. That is, was just coming out. What I mean. Here is three position, and it is another position, as they came closer; and this is another position, as they came together, as far as it goes; I would say these are the course they pursue from start to finish. That is the collision and the start, and practically in between that time, as they came closer together.

Q. Now, that position, at the time of the second signal there, you would move your ship back to the Callender dock. You would move the dredge a little further up-stream, and the "Thode" would be further back from the dredge.

A. And headed different.

Q. She wouldn't head right across the stream, would she?

A. She would be headed—yes, pretty near.

(Testimony of Archie L. Pease, Jr.)

Q. Across the stream?

A. Pretty nearly, yes.

Q. Across the stream?

A. Yes, sir, headed that way.

Q. In other words, would take a position right across the stream?

A. Well, she would be headed practically—well, you know the channel goes down this way. She would be headed down the channel. That would be really, if she kept the course, her course, if she kept it, would run her into the O. R. & N. dock.

Q. And that is the way you would change it, if you were—

A. Yes, if I was pinned down to make it accurate. But it really don't mean the time of this second signal. It means from the time that we first saw her, and the time they came together, and the position in between that. That is what it really means.

Q. Now, I call your attention to Rule 7, on page 19, of the Pilot Rules. Have you got that rule?

A. Yes.

Q. I read this part of it to you: Rule 7. "When two steam vessels are approaching each other at right angles, or obliquely, so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side, shall hold her course and speed."

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And continuing the rule, I will read on: "And the steam vessel which has the other on her own starboard side, shall keep out of the way of the other, by directing her course to the starboard, so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed, or stop or reverse. If, from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent, by blowing the danger signal, and both steam vessels shall be stopped and backed, if necessary, until signals for passing with safety are made and understood."

A. Yes, sir.

Q. Do you mean that you complied with that rule?

A. Not with that rule.

Q. Why not? You were approaching obliquely, were you not?

A. Yes, sir.

Q. Why did you not comply with that rule?

A. For the same thing that I answered before. I got two whistles.

Q. I am talking about before you got the two whistles.

A. Before I got the two whistles, there was no whistle given.

Q. Well, why didn't you comply with that rule?

(Testimony of Archie L. Pease, Jr.)

A. There was no rule to comply with until the signals are given. That is—

Q. Then your attitude, as I understand it, Mr. Pease, seems to maintain that you had nothing to do until Mr. Nolan blew, and then you governed your course accordingly; is that right?

A. Or until I had blown.

Q. Why didn't you blow a whistle, if you wanted to hold your course the way you were going, and follow up around, why didn't you blow him one whistle?

A. I would have, if I had had a little more time. There is no hurry about blowing a whistle.

Q. Well, if there was no hurry about blowing a whistle, you had plenty of time, didn't you?

A. If I had thought he was going to blow two whistles, and had known the time he was going to blow them, I think I would have blown one whistle before he had a chance.

Q. You say—

A. After he blew his two whistles, I couldn't blow one whistle, without blowing the danger whistle and one whistle.

Q. But, my dear friend, you waited until he blew you two whistles, didn't you?

A. Yes, sir.

Q. If you didn't want to consent to that signal, you could have refused, under that rule, when he blew the first two whistles, couldn't you?

(Testimony of Archie L. Pease, Jr.)

A. Certainly, and could have refused that on his second whistle.

Q. Why didn't you refuse that?

A. Because I considered I could pass on a star-board passing.

Q. Well, if that be true, why should not—why wasn't it proper for the "Thode Fagelund" to give two whistles?

A. I guess maybe it was.

Q. All right.

A. I didn't say it was improper. I just said it was an unusual signal.

Q. Well, there is nothing unusual about a man's signaling the course he wants to go, is there?

A. There is, in a way.

Q. Why?

A. He is supposed to give when the vessels are in that position, a one whistle as the signal, he is supposed to give that unless he has another reason. If he has another reason he should—if he has a reason for that other passage, it is all right. It is nothing against his signal, but as a rule, when vessels are meeting that way they usually pass on a port signal, port passing. That is why I say it was unusual. It is not—it is done.

Q. Mr. Pease, aren't we becoming a little confused, you and I, about this matter?

A. I am not.

Q. All right. If you are not, let's see. Let me

(Testimony of Archie L. Pease, Jr.)

call your attention to Rule 4. Now, this is starboard passing.

A. On what page?

Q. Rule 4, page 18, Pilot Rules.

A. Yes.

Q. Now, this starboard passing, you are talking about, is only to be given, is it not, when the vessels are head on, or nearly so, isn't that true?

A. Is only in that rule.

Mr. MINOR: Starboard?

Mr. BRISTOL: Just a minute, Mr. Minor.

Mr. MINOR: I want to hear what you said.

Mr. BRISTOL: All right. We will ask to have the question read. (Question read.)

A. That is one of the conditions.

Mr. MINOR: Starboard passing, did you say?

Mr. BRISTOL: Yes, I said starboard passing distinctly.

A. Starboard passing, yes.

Q. Now, the other reason, is it not—

A. Wait a minute. Starboard passing is starboard to starboard; when vessels meeting head on supposed to go port to port.

Q. This is head on or nearly so. Now, you are talking about this other thing again.

A. I am talking about Rule 4.

Q. I haven't come to that yet. I am talking about a starboard passing, and am coming to Rule 4. Now, where Rule 4 obviates that situation is under the circumstances set out as follows, and

(Testimony of Archie L. Pease, Jr.)

I read it: "Rule 4, Situations. When steam vessels are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other."

A. Yes, sir.

Q. "But, if the courses of such vessels are so far on the starboard of each other as not to be considered as meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other." Isn't that right?

A. Yes, sir.

Q. Now, the foregoing only applies to cases where vessels meeting one another, end on, or nearly end on, in such a manner as to involve risk of collision; in other words, to cases which, by day each vessel sees the masts of the other in a line, or nearly in a line with her own, and by night, to cases in which each vessel is in such a position as to see both the side lights of the other. Isn't that right?

A. Yes, sir.

Q. "It does not apply by day to cases in which a vessel sees another ahead crossing her own course,

(Testimony of Archie L. Pease, Jr.)

or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light, without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead." You are familiar with that rule, are you not?

A. Yes, sir.

Q. Now, in view of that rule, I would like you if you can, and I don't want to confuse you, nor do I want to be importunate to you, but tell me why it is you still say that the whistle of the "Thode Fagelund"; that is, I am speaking of a starboard passage; the whistle of the "Thode Fagelund," the two whistles, were not answered by you? Then an interval of time comes, and she blows two again, and then you assent to it—do you still claim that signal should not have been given?

A. No, I don't say that whistle should not have been given.

Q. All right.

Mr. MINOR: He never said that, Mr. Bristol.

A. I haven't said that at any time.

Q. What is that?

A. I said that it was an unusual whistle, but it isn't a whistle that is never given. It is used; it is done that way.

Q. And Nolan did it in just the way it is done, in a number of instances, didn't he?

(Testimony of Archie L. Pease, Jr.)

A. It is done that way in a number of instances, yes.

Q. And you had plenty of clear space when it was given, to have cleared the vessels either side, didn't you?

A. Yes, sir, that is, when I saw that there was room to clear and I say that there was room to clear, I answered his whistle.

Mr. SNOW: Room to clear—what do you mean by that, Mr. Pease?

A. I mean when he blew his second two whistles, I saw there was room for a starboard passage, and I answered the signals.

Q. What means did you take to ascertain whether the steersman, or the helmsman on the "Thielbek," kept his helm midship?

A. He was told to keep it midships.

Q. Well, was that the only means you took to ascertain that he did?

A. That is all that I needed. I could tell from the handling of the vessel, she was handling all right, and naturally could tell if he was handling his wheel. I could tell from the tow, he was doing that.

Q. Suppose he was very gently, when you were executing the steadying of your own helm, and evolving those movements that Mr. Wood had you describe, supposing he very gently moved his wheel could you have told?

A. Probably I wouldn't have been able to tell;

(Testimony of Archie L. Pease, Jr.)

probably I would have given the vessel, my vessel, a little more wheel to overcome it, or something like that. But what I mean is, if he moved it, you know, materially; that is, because the vessel was being handled just the way I wanted her to handle, and was doing just as I wanted her to do. She was under full control.

Q. And so I get your idea, that as far as the "Thielbek" was concerned, the cause of her running into the "Fagelund" would not have come about, had it not been for the motive power of the "Ocklahama"?

A. No. You want to know, you say, that they wouldn't have come together, if it wasn't for the motive power of the "Ocklahama."

Q. She wouldn't have run into the "Thode" if it hadn't been for the motive power of the "Ocklahama"?

A. She wouldn't have run into the "Thode" if they held their course, or done any kind of steering.

Q. Do you know that the "Thode" didn't do any kind of steering?

A. I know that from her whistles, they had no right to swing the way they did swing.

Q. You told Mr. Wood that your own vessel with four rudders forward of the wheel, and two monkey rudders on the fantail section behind the wheel—

A. Yes, sir.

Q. On a port helm, would back your ship's head to port, didn't you?

(Testimony of Archie L. Pease, Jr.)

A. I said on a port helm would back the ship's head to port?

Q. Did you say that?

A. Yes, sir.

Q. Do you know anything about whether at the time you speak as you do of the steering of the "Thode Fagelund," whether her engines were going full speed astern or not?

A. I do not.

Q. And if they were, and if she had a hard astarboard helm, and she had a right-hand screw, do you know what action would naturally take place on such a propeller and such a ship, at such a time?

A. I could imagine what would happen.

Q. What?

A. The minute they started to back, they would lose control over the steering of the vessel.

Q. And what would happen?

A. It is hard to tell what would happen.

Q. Well, what would happen?

A. Well, might happen one thing, and might happen another. In this case the collision happened.

Q. You think the collision in this case happened because he backed full speed astern?

A. If he backed full speed astern, I think that has a good deal to do with it.

Q. You think that had a great deal to do with it?

A. Yes, sir.

Q. And calling your attention to this Rule 4

(Testimony of Archie L. Pease, Jr.)

you and I read together---no, Rule 7 that you and I read together, "shall slacken her speed, or stop or reverse," therefore, if he complied with that rule, he was executing a wrong maneuver, was he?

A. He didn't comply with that rule. That was for a port to port passing, not a starboard to starboard passing.

Q. Don't get confused.

A. I am not confused.

Q. "When two vessels, approach each other obliquely."

A. Yes, sir.

Q. "So as to involve risk of collision."

A. Yes, sir.

Q. That is the way you drew that vessel?

A. Yes, sir.

Q. When she blew two whistles. "The steam vessel which has the other on her own port side."

A. Yes, sir.

Q. "Shall hold her course, and speed: And the steam vessel which has the other on her own starboard side,"

A. Yes, sir.

Q. "Shall keep out of the way of the other by directing her course to the starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse."

A. Yes, sir.

Q. Now, do you still say Nolan was wrong when he reversed?

(Testimony of Archie L. Pease, Jr.)

A. I say he didn't have to reverse on that rule there.

Q. You say he didn't have to reverse?

A. Yes, sir.

Q. Why?

A. The stopping and reversing of the engine that it speaks of in this rule is so he can go astern of me, and he has whistled to go ahead of me.

Q. When he reaches a point—when you reach a point as a pilot, in which there is an apparent imminent risk of collision, is it your duty to continue full speed ahead, or to stop and reverse promptly.

A. Well, it is your place to use your judgment.

Q. Then your judgment in this case was to go half speed, and then stop, and then full speed astern?

A. Yes, sir.

Q. And if Nolan executed a like movement, he would navigate with just as much accuracy as you did, would he not?

A. No, sir.

Q. What?

A. No, sir.

Q. He wouldn't?

A. No, sir.

Q. That is what I want to get at.

A. Not necessarily—

Q. In other words, the maneuver is right for your ship, but it is wrong for his?

(Testimony of Archie L. Pease, Jr.)

A. In that condition, I think the chances are yes. I would like to state the reasons for that.

Q. All right, give you reason.

A. The reason is that we can go full speed astern, and handle our vessel both one way or the other, where a propeller boat cannot. I can steer a vessel going astern just as good, if not better, than I can going ahead.

Q. What vessel are you talking about?

A. Well, a tow. I can have a tow, and the "Ocklahoma" made fast alongside, and by backing up, can handle that vessel, and swing her either way that I want to, which a propeller boat will not do. That is one reason why they use the propeller boats, that is, stern-wheel boats, in moving vessels through the bridges, or one thing or another, because if a propeller boat has to back, she gets herself all out of line to go through the bridges, and they have a stern wheel boat alongside, so if the bridge don't open promptly, the stern-wheel boat can back and hold her right in position, in any position they want to.

Q. Now, I call your attention to Rule 11, page 20: "In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger." Now, referring to that rule, will you point out to me,

(Testimony of Archie L. Pease, Jr.)

please, why it is that you say that Nolan's maneuver was wrong.

Mr. MINOR: I don't think he said it was wrong.

A. I never said it.

Mr. BRISTOL: I have a definite recollection of what the witness testified to, and I think the Court has, and I am trying to conduct this examination with freedom and justice to everybody.

A. I said that I thought his backing—

Q. Was the cause of the collision.

A. (Continuing) had a good deal to do with the cause of the collision, yes, sir. What I mean, at the time of the collision, I didn't know whether he was backing or what he was doing, but this is from after we found out these things. Of course, now, although I have heard — excepting from just the testimony I have heard, is the only reason that I know he was backing. At the time of the collision, he was swinging to the his starboard. I couldn't tell why he was swinging to his starboard, when he told me in so many words, he was going to his port. Later on, when I heard the testimony that he was backing that gives me a reason for why he was swinging to his starboard.

Q. Did you tell Nolan you were backing?

A. No, sir.

Q. Why not?

A. For the simple reason I could handle my tow in backing.

(Testimony of Archie L. Pease, Jr.)

Q. Don't you claim Nolan should have told you he was backing?

A. Yes, I do.

Q. You do?

A. Yes, sir.

Q. So you didn't have to tell Nolan that you were backing, but Nolan had to tell you that he was backing?

A. In fact, I am supposed to state—when your vessel is going astern, you are supposed to say—to give three whistles. I am supposed to, as well as Captain Nolan is supposed to, and another thing—

Q. But neither one of you did it in this case?

A. Neither one of us did it. And my reason for not doing it is, of course, as it says here in this risks of collision, anybody is allowed to go against them if they want to. In fact, I didn't want Captain Nolan to know I was going astern. I could handle my vessel the same going astern as I could going ahead, and if I told him I was going astern, probably the first thing he would do would be to start going astern himself. What I wanted him to do was to come ahead on the starboard helm. That is what I wanted him to do.

Q. Did you hear the testimony of Captain Nolan? You have been present during the testimony of all of the witnesses?

A. I heard a good deal of it, yes, sir.

Q. And you heard Captain Nolan swear he was hard astarboard helm, didn't you?

(Testimony of Archie L. Pease, Jr.)

A. I don't remember exactly. I heard him saying he was going to stern.

Q. I said helm.

A. I don't know about the helm. I don't remember.

Q. If the testimony of Nolan is, he was on a hard astarboard helm?

A. Yes, sir.

Q. All the time from the time you saw him up to the time of the collision.

A. Yes, sir.

Q. Would that be a helm, according to your knowledge of pilotage, at that point and place and time, and under those conditions, that he should properly have navigated his ship?

A. That would have been the finest kind of a helm if he had been going ahead.

Q. You knew, of course, the "Thode" was a heavily loaded ship?

A. I did.

Q. You saw her that way the night before?

A. I saw her that day, the week before, I guess, or a few days before.

CROSS EXAMINATION (Continued)
ON BEHALF OF THE CARGO OF THE "THODE
FAGELUND"

Questions by Mr. Snow:

Q. Mr. Pease, had you seen the "Thode Fagelund" at anchorage there the night before this occurrence?

(Testimony of Archie L. Pease, Jr.)

A. No, sir.

Q. You knew she had been loaded in the harbor, and knew she was down at anchorage in the Astoria harbor?

A. Yes, sir.

Q. And knew she was likely to go to sea, didn't you?

A. I didn't know anything about that.

Q. You knew she was anchored in the harbor ready to go to sea, about to go to sea, didn't you?

A. I knew that she was in the harbor, anchored in the harbor, and naturally that she was going to sea, but when I had no way of knowing.

Q. When you came up the harbor that night, and about, as you say, 200 feet off the dock line of Astoria—

A. About 150 to 200 feet.

Q. Say 150 feet, then. You were headed as you say, for this Gilman Buoy?

A. Yes, sir; in that vicinity.

Q. Now, that was in order, as you said, to give clearance to the vessels in the harbor. What vessels did you mean?

A. I knew that the "Fagelund" and the "Chinook" were anchored there.

Q. Were they the vessels you had in mind?

A. I knew they were anchored there; yes, sir.

Q. Those are the vessels you had in mind, are they?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. Now, between the anchorage point of the "Chinook," and the Astoria dock line was about what distance there?

A. Well, do you mean from the position where her anchor was down?

Q. Well, where she would be riding on her anchor with the tide.

A. Well, with that tide, well, she would be swinging—I should say that if she was up and down the channel she would be probably 1200 feet or something.

Q. Now, then, you didn't have to go close to the Astoria dock line, 150-foot contour line, in order to steer clear of the "Chinook," did you?

A. No, sir.

Q. Then the "Chinook" was not one of the vessels you had in mind in order to keep close to the Astoria line?

A. Yes, sir.

Q. You say it was?

A. Yes, sir.

Q. Well, now, there was no danger of running against the "Chinook."

A. No, sir; but this is the way I figure that: Just as well—I knew the docks weren't going to move, or anything; in fact, I wasn't expecting the other vessels to move, but I could see the shore all lit up and everything, and I think it is better to go 800 or 900 feet, or a mile away from a vessel than it is to go within 200 feet of them, although

(Testimony of Archie L. Pease, Jr.)

you could go within 200 feet or 300 feet of them safely.

Q. You anticipated, didn't you, that the "Thode Fagelund" was going out to sea that morning, didn't you?

A. I didn't know anything about her going to sea that morning.

Q. Well, you got close enough to this dock line, the Astoria dock line so if she be going to sea, you would try to give her clearance. Wasn't that in your mind?

A. That wasn't in my mind, no, sir, but from the position when going around, or making that passage, or being anywhere in that vicinity, I was clear of everything.

Q. Where was the "Chinook" anchored with reference to the O. R. & N. dock?

A. She was right about off the O. R. & N. dock, probably near the lower end of the dock.

Q. That means the lower end, down the river end.

A. No, I mean the upper end.

Q. And how far is the upper end of the dock from the Callender dock?

A. Oh, I don't know. I should say—well, I wouldn't state exactly. Maybe about 1400 or 1500 feet. I know that the O. R. & N. dock is a very long dock.

Q. Now, you got the Callender dock on approximately—

(Testimony of Archie L. Pease, Jr.)

A. I wouldn't say that. I would say less than that. I wouldn't state exactly. Now, here it is a long dock there, and from one end of the O. R. & N. dock to the Callender dock, I don't know. It is hard to tell. I would say it was probably—well, probably 1000 feet. That would be nearer it, I think, but I wouldn't state exactly the distance.

Q. Now, when you got pretty near to the Callender dock, or in the vicinity of the Callender dock, you were going up about six miles an hour—up that stream?

A. I should judge about six miles an hour.

Q. You knew where the "Thode" was anchored, and knew where the "Chinook" was anchored?

A. I knew where the "Chinook" was anchored, and knew the "Thode Fagelund" was anchored above there.

Q. The "Fagelund" was anchored about 1000 feet above the "Chinook," was she?

A. I don't know.

Q. You can't now identify to your mind—

A. That is one reason, and another reason for my holding—

Q. Wait a minute. Answer my question, and we will get along faster.

A. All right, sir.

Q. You can't locate in your mind now where the "Thode Fagelund" was anchored with reference to the "Chinook"; that is, how far from the "Chinook"?

A. No, sir.

(Testimony of Archie L. Pease, Jr.)

Q. Now, when you got to the Callender dock, you saw the "Thode Fagelund"? And you saw her green light?

A. Just saw it and it shut out.

Q. Shut out. What do you mean by that?

A. I mean that I saw her over the "Chinook." And the stern of the "Chinook," is higher than the body of the "Chinook," and her light was just going by that stern, come to it and shut out.

Q. Then it came into view again?

A. Then it came into view again, as she cleared the stern of the "Chinook."

Q. Now, when you first saw them, the "Thode Fagelund," you were coming up, you say, on what sort of a helm? Port helm?

A. Well, I wouldn't say what sort of a helm. I think she was swinging a little bit to her port. We were just keeping clear of the dock.

Q. I ask you how you were coming up.

A. We were just coming up about just clear of the docks.

Q. You were coming up on a little slight port helm?

A. Well, I think it was a slight port helm.

Q. Then you saw the green light again, of the "Thode Fagelund"?

A. Yes, sir.

Q. And you saw the range lights of the "Thode Fagelund"?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And they were wide open?

A. Yes, sir.

Q. That indicated that the "Thode Fagelund," if she kept her course, was bound to cross your course?

A. Yes, sir.

Q. And you kept your course?

A. Yes, sir.

Q. Now, at that time, you didn't blow one whistle?

A. I had already received two whistles at that time.

Q. I am talking about before you received any whistle at all.

A. I didn't see her green light the second time before she blew any whistle at all.

Q. After you saw her green light, you say over the "Chinook," you saw her green light again, before she blew the second whistle, didn't you?

A. No, sir.

Q. You didn't see any green light until she had blown her whistles?

A. I didn't say that. I said I saw her, and about the time I saw her, she blew her two whistles. That is, as I saw her lights a couple of seconds, she blew her two whistles and her green lights was just shutting out on the stern of the "Chinook."

Q. Then she blew her two whistles the first time you saw her; that is, after you saw her green lights.

A. No, sir; as I say, it might have been a

(Testimony of Archie L. Pease, Jr.)

matter—here, of course, we are getting down to pretty short times. I will explain that. Of course, I have used the expression "that is a very short time." Now, I would say I saw the vessel, and I saw her green light, and after I saw her green light, she blew two whistles, and the green light shut out immediately on her stern as she blew those two whistles.

Q. As she blew the two whistles, her green light was shut out, by reason, you say, of the "Chinook"?

A. Yes, sir.

Q. When you saw the green lights, you knew the vessel was in motion?

A. Yes, sir.

Q. The minute you see a vessel with side lights out, of any kind, either green or red lights, you know the vessel is in motion?

A. Yes, sir.

Q. You knew that vessel was headed down and out of the river?

A. Yes, sir.

Q. Can you tell about how far she was from you at that time?

A. At the time she rounded the stern?

Q. At the time she blew her whistles.

A. I think I stated that as about a quarter of a mile.

Q. About a quarter of a mile. Now, at that time she blew the two whistles, did you make up

(Testimony of Archie L. Pease, Jr.)

your mind that there was any trouble about making a starboard passing that she had asked for?

A. Well, not exactly trouble, but I thought, in a matter of ten or twenty seconds.

Q. Well, why?

A. That is, what I could see would then be the whole vessel, and I couldn't very well make a mistake, and I think it was—that by my better judgment, that what I would see and the delay—that what I would gain by it would be more than the delay would.

Q. Now, then, right there: You knew the way the vessel was traveling by the appearance of her lights?

A. Practically.

Q. And you didn't have to see the vessel in order to give you an idea how she was traveling?

my judgment, it would be a very good idea to wait

A. Not exactly.

Q. Now, then, at the time, as I say, she blew two whistles, you made up your mind, did you, that you could readily accede to her request?

A. At the first?

Q. Yes.

A. Why, I wasn't positive of it; no, sir, I thought I could.

Q. You thought you could, but you thought you would wait to see her in order to determine whether you could?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And you think by seeing the vessel, you could determine that question without regard to—you could see his lights just as well before as after, you could see her green lights and could see her range lights?

A. Yes, sir.

Q. And knew the course she was on? I want to know why you had to wait to see that vessel, in order to determine whether or not the starboard passing she requested was safe.

A. Well, here is one thing. I was pretty positive about the lights I saw. Of course, there was two lights on the dredge, but they were stationary lights.

Q. They were mast lights.

A. They were stationary lights, as I thought, but they didn't confuse me, but it would be a matter of but a few seconds when she would be out there; and a man can certainly tell more accurately from seeing a vessel than he can by the lights. He can tell by the lights, yes, but he can't be anywhere as accurate from the lights as he can by seeing the vessel.

Q. All right. Now, then, when she came out from behind the dredge, and she then blew her second two whistles, did she?

A. Yes, sir.

Q. And how far was she from you then?

A. Practically the same distance.

Q. A quarter of a mile?

(Testimony of Archie L. Pease, Jr.)

A. Practically.

Q. Because she couldn't travel very far, of course?

A. No, sir.

Q. In that short time?

A. No, sir.

Q. What time elapsed between the first two and the second two whistles?

A. About, I should say, a matter of twenty or thirty seconds.

Q. Twenty or thirty seconds.

A. A few seconds. I couldn't state that. That was a very short time. I rather put it down as a very short time.

Q. When she blew her second two whistles, then you answered those two whistles?

A. Yes, sir.

Q. And you made up your mind that it was safe to make that passing which she had requested?

A. Yes, sir.

Q. Then you started to turn your vessel so as to make that passage. Is that right?

A. Yes, sir.

Q. Now, how long did the other vessel continue her course, and how long did you continue your course, before there was any apparent change of that other vessel's course?

A. Her vessel—the time that I blew the answer to her whistles and started to swing, she seemed to swing right with me.

(Testimony of Archie L. Pease, Jr.)

Q. You mean she seemed to swing right with you?

A. She seemed to follow me up, as I would swing; she seemed to be just following me up as I would swing.

Q. You judged that by what?

A. By her range lights.

Q. Then her range lights began to close up, is that it?

A. Her range lights began to close up; yes, sir.

Q. Then from the time she blew the second set of whistles, you could see that she was changing her course so as to not carry out the invitation she had given you of that passing. Is that right?

A. Yes, that was after I had answered her whistles.

Q. After you had answered her whistles. Then when you answered her whistles, is the time you saw her making this change in her course?

A. Yes, sir.

Q. Now, how far were you apart when the second whistles were blown, you say?

A. Well, as I say, would be practically the same distance. I would probably be a few hundred feet nearer and she would be a couple of hundred feet nearer me, but it would be only, as I say, about 20 seconds difference in time. That would put them a little closer together. You couldn't state it in feet.

Q. If they were about a quarter of a mile apart—

(Testimony of Archie L. Pease, Jr.)

A. They would practically probably be three or four hundred feet nearer each other at the time of the second whistle.

Q. Now, there is 5280 feet in a mile.

Mr. BRISTOL: 1320 feet to the quarter.

Q. Then you would be about 1000 feet apart, approximately?

A. Well, practically that; yes, sir.

Q. Now you heard her danger signals then, did you?

A. When?

Q. You heard the danger signals?

A. I heard her danger signals; yes, sir.

Q. At that time, how were you going? How was your engine?

A. At the time of the danger signal?

Q. Yes.

A. Full speed astern.

Q. Full speed astern. Why were you going full speed astern?

A. I had been going full speed astern at the start; that is, so she could get by me, so I could swing back and clear the "Chinook" by plenty of room. At that time I was—at the time of the danger signal, why, it was just a case of my getting as much speed—as much headway off the barque that I had in tow, as possible. It was a foregone conclusion at the time of the danger signal that there was going to be a collision.

Q. At the time she gave you the danger signal?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir, at the time she gave me the danger signal.

Q. It was a foregone conclusion was to be a collision?

A. At the time she gave me a danger signal, a collision couldn't have been avoided.

Q. Now, when you got your passing signals, and you answered those passing signals, were you of the impression then, or is that your idea then, that you were under the impression that you would have to back your vessel in order to accomplish that passing?

A. No, sir.

Q. But when you got nearer to her, you found you would have to do that, is that right?

A. Not exactly nearer to her. As the further ahead I went, and the more she crowded me, yes.

Q. When did you first anticipate a collision?

A. With the "Fagelund," you mean?

Q. Yes, with the "Fagelund." That is what I mean. That is the vessel we are talking about.

A. It was probably a minute before the collision.

Q. Probably a minute before the collision. Was it before the danger signals were blown that you thought a collision was imminent?

A. Yes, I thought before the danger signals were blown that a collision might occur.

Q. Why didn't you blow the danger signals then?

A. I had no reason to blow a danger signal.

(Testimony of Archie L. Pease, Jr.)

Q. Well, you thought that a collision was imminent. Why didn't you blow the danger signal?

A. Well, what would a danger signal mean?

Q. Well, I am not discussing that question with you.

A. I had no reason to blow a danger signal.

Q. Although you thought that a collision was imminent, before you heard any danger signals at all, you didn't blow your danger signal?

A. No, sir, I didn't.

Q. Now, then, at what time was it you say that the green light was shut out? The green light of the "Thode Fagelund" was shut out, and the red light exposed?

A. Just before the danger signal.

Q. Just before the danger signal?

A. Yes, sir.

Q. You didn't then know whether she was backing or not, did you?

A. No, sir.

Q. You didn't indicate to the "Fagelund" that you were backing?

A. No, sir.

Q. And he didn't indicate to you that he was backing?

A. No, sir.

Q. And you think, do you, that it was his backing that in part contributed to this collision?

A. I think so.

(Testimony of Archie L. Pease, Jr.)

Q. What other things contributed to it besides his backing?

A. Well, I couldn't tell at that time. It might have been that he was going ahead under a port helm.

Q. Well, suppose that he was backing just the same, and wasn't going ahead.

A. Yes, sir.

Q. What else contributed to the accident. You say that in part contributed to the collision.

A. I don't think anything else contributed to the accident.

Q. Then you attribute this collision entirely to his backing—is that right?

A. Yes, sir.

Q. And because he had a right-hand propeller which, when she backed threw him over so as to expose his red light, you attribute that as a cause of this accident, this collision?

A. Yes, sir.

Q. How long was the red light in view before the collision took place—in your view, I mean?

A. That wasn't very long. Probably—well, the red light came in view, and the green light shut out, and then shortly they came together.

Q. Now, Mr. Pease, you are a son of A. L. Pease, are you?

A. Yes, sir.

Q. And A. L. Pease is a member of The Port of Portland?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. And how old are you?

A. I was born February 10, 1886.

Q. That makes you about 28 years of age, approximately?

A. 28, I believe.

Q. Have you ever had any trouble with Pilot Nolan? I don't know whether you have or not.

A. Trouble?

Q. Yes.

A. No, sir.

Q. Ever had any enmity between you that you know of?

A. No, sir.

Q. Now, just one question more, than I am through. You say that when you were coming up the river near the Callender dock, and then you got the signal for a starboard passage, and answered that signal for a starboard passage, that you were under no obligations to change your course?

A. Well, if I answered—

Q. Just answer my question. I understood you to say that. Is that correct?

Mr. MINOR: I object to that. That is a question of law.

Mr. SNOW: It goes to the competency of this witness.

A. Well, I said, the way I want to—

Q. Did you state that on your direct examination?

(Testimony of Archie L. Pease, Jr.)

Mr. BRISTOL: Stated it on his cross to me.

A. I don't remember. But I knew that I would have to steer some for that. I knew that I would have to go to port for that passing, and I was willing to do it.

Mr. BRISTOL: But Mr. Snow's question is, when you answered the two whistles of the "Thode."

A. Yes, sir.

Mr. BRISTOL: What Mr. Snow asked was this: Did you assent the "Thode" should make that maneuver with you?

Mr. SNOW: That is not exactly my question, Mr. Pease.

Q. I understood you to say to Mr. Bristol that when the two signals were given, the two whistles blown by the "Thode," which you answered, that you were under no obligation, as you understood under the rules, to change your course? That was correct?

A. In a way—

Q. Did you say that to Mr. Bristol?

A. I don't remember.

Q. Now, give your answer. What did you mean?

A. This is what I mean. Whenever we meet a vessel, we figure on giving a signal that we can get by on, if you hold your course.

Q. You mean you expected him to get by you if you held your course?

A. No, sir; I didn't expect him to get by me. I knew he couldn't get by me.

(Testimony of Archie L. Pease, Jr.)

Q. Oh.

A. But a man in blowing a whistle, should give a signal in navigating his boat, he can get by that other boat on, if she holds her course.

Q. I don't understand.

A. I mean if I blow a whistle to pass a boat on her starboard side, I figure, if she holds her course, I can pass her, on her starboard side. She doesn't have to help me; and if I blow for the other passing, I figure I can get by if she holds her course. That is it.

Q. Then you figured out, when he blew two whistles for a starboard passage, you had a right to keep your course, and he would clear you?

A. No, I wouldn't exactly have a right to do that.

Q. That is not what you would have us understand?

A. I have got to avoid a collision. I am put in that position.

Q. But you are the privileged vessel, according to your theory?

A. Privileged vessel, yes.

Q. You are the privileged vessel according to that theory? Now, you are the privileged vessel—you say you are the privileged vessel, and I concede for this question: When you blew two whistles, you expected he would clear you and still you keep your course?

A. Well, on this river, a man can have ten col-

(Testimony of Archie L. Pease, Jr.)

lisions, and still be the privileged vessel, if he holds his course.

Q. Your answer is that—

A. I answer that the privileged vessel has got to do all he can to keep from a collision.

Q. All vessels have to do that much?

A. Yes, sir.

Q. Whether privileged or not privileged. All have to do all they can to avoid a collision.

A. Certainly; and I couldn't hold my course and be doing all I could to avoid a collision.

Q. Then that isn't correct?

A. Not exactly, no.

Q. That you, being the privileged vessel, gives you the right to keep your course, and he has got to clear you.

A. I think—of course this is—I think a man has to do all he can, even though he is the privileged vessel, to avoid a collision.

Q. I agree with you that it is the duty of all vessels. That still doesn't reach the question of whether or not you had a right to hold your course, and he was going to clear you.

A. As I was stating before, if I had held my course, I wouldn't have been doing all I could to avoid a collision.

Q. The collision would have been sure if you had held your course?

A. If I had held my course, he couldn't have passed me, starboard to starboard.

(Testimony of Archie L. Pease, Jr.)

Q. Of course he couldn't.

A. No, sir.

Q. That goes without saying that he couldn't.

RE-CROSS EXAMINATION ON BEHALF OF
LIBELANT WILHELMOSEN

Questions by Mr. Bristol:

Q. Just in connection with Mr. Snow, so Mr. Minor can have it together when he starts. I show you Pilot Book Rules, page 22, fifth situation, which has a diagram on it, showing vessel approaching in the position where you had the "Thode Fagelund" that night.

A. Yes, sir.

Q. That represents the situation in a general way when you first saw her, doesn't it?

A. Yes, sir.

Q. And the rule in regard to that is that: "In this situation, two steam vessels are approaching each other at right angles or obliquely, in such a manner as to involve risk of collision, other than where one vessel is overtaking another. The steam vessel which has the other on her own port side shall hold course and speed, and the other shall keep clear by crossing astern of the steam vessel that is holding course and speed, or if necessary to do so, shall slacken her speed, or stop or reverse."

A. Yes, sir.

Q. You are familiar with that rule, aren't you?

A. Yes, sir.

(Testimony of Archie L. Pease, Jr.)

Q. And the testimony you have given is nevertheless with that rule in your knowledge?

A. Yes, sir.

Q. And you don't desire to change your statement to Mr. Snow that while there was room for you to have continued on your course in that 700 feet, and to have given one whistle—

COURT: That is the overtaking vessel.

Mr. BRISTOL: No, no, except when overtaking. It was distinguished. "Other than where one vessel is overtaking another." It has a diagram of two vessels approaching obliquely in the fifth situation.

A. Now, that is where you are getting me on the hold your course proposition.

Q. No, I don't mean to get you.

A. No, I didn't mean to get me, but that is what I have been trying here in a way. If a one-whistle signal had been given, I should have held my course.

Q. Now, there is no other condition. Just let's stop there.

A. Yes.

Q. There is no other condition, is there, than that, when the other fellow blows, that you can hold your course, is there?

A. Well, if I consent to it, I have got to help him out then.

Q. In other words, unless you blow first and hold your course in the fifth position—

A. I have to help him out.

Q. And the other fellow blows first, then you

(Testimony of Archie L. Pease, Jr.)

are bound, under the rules, to give him clearance, aren't you?

Mr. MINOR: I object to that as not a proper question.

Q. I am willing to argue that with you, Mr. Minor, to the full extent of the law, but I am trying to get at the pilot practice now.

A. Yes, sir, I have to give him clearance.

Mr. BRISTOL: That is all I want to get at.

Mr. MINOR: I would like to have, if your Honor please, this witness excused, in order that I may ask Captain Allyn a few questions. He is in the court room and wants to get out tonight.

Witness excused temporarily.

A. L. PEASE resumes the stand.

CROSS EXAMINATION ON BEHALF OF THE PORT OF PORTLAND

Questions by Mr. Minor:

Q. I want to ask you first whether you saw the lights of the "Thielbek" and the "Ocklahama" the night of the collision, and before the collision took place?

A. I could see the red lights on the "Ocklahama," I could see that the green light was burning. That was all the lights that I could see. I couldn't see the green light, but I could see that it was burning.

Q. Now, I want to ask you, what effect the collision had upon the lights, if any?

(Testimony of Archie L. Pease, Jr.)

A. Why, it carried away the cord which lit the green light on the "Thielbek."

Q. What?

A. It broke—that is, it carried away the connection between the "Thielbek" and the "Ocklahoma," which lit the green light that we had on the "Thielbek."

Q. And what did you do after that regarding the lights, if anything?

A. Well, right after that, I didn't pay much attention to the lights.

Q. Now, if there had been a red light on the "Thielbek," were you in a position where you would have seen it before the collision?

A. No, but I would have been in a position to know that it was lighted.

Q. Why?

A. For the simple reason that it would have been reported to me by the watchman.

Q. Wouldn't you have been able to see the reflection of that?

A. No, sir.

Q. If it was on the "Thielbek"?

A. No, sir.

Q. Now, taking this diagram that Mr. Wood offered in evidence, Captain, I understand that you don't claim that these positions in the river, that is to say, along the channel of the river, are accurate?

A. No, sir.

(Testimony of Archie L. Pease, Jr.)

Q. I understood you to say that you do claim that you know that at the time you first saw the "Thode Fagelund," you were about 100 feet or 200 feet or between 100 and 200 feet west or down the river from the Callender dock.

A. I remember seeing the Callender dock. That is, glancing kind of off and a little bit back the bow of the "Thielbek," and seeing the Callender dock, and looking the other way and seeing just about that time seeing the lights on the "Thode Fagelund."

Q. And you at that time are sure, are you, that you were down the river from the Callender dock?

A. I think I was. I wouldn't say how far, but I was just a little below the Callender dock.

Q. Now, I will ask you if you had pursued the course which you say you did pursue, and which you did pursue, we will assume, and the "Thode" had pursued the course which she was pursuing at the time she gave you either the first or second passing signal, would there have been any collision between the vessels?

Mr. BRISTOL: I object to that for this reason: This is the ultimate fact that this Court, being in possession of the testimony as to the movements of the "Thode," on the one hand, and as to the movements of the "Thielbek" and the "Ocklahama" on the other hand, will then determine.

Mr. MINOR: Exactly the same question he asked Mr. Nolan, your Honor.

(Testimony of Archie L. Pease, Jr.)

COURT: I remember Mr. Nolan expressed his opinion about it.

Mr. BRISTOL: I have no objection to his opinion for your guidance, but he is asking for the fact.

COURT: His opinion is all he can testify to.

A. You mean the course I held up to the time of the collision?

Q. Yes, if you had pursued the course you had pursued up to the collision, and the "Thode" had pursued the course on which she was going at the time she gave the first or second whistle, would there have been any collision?

A. I don't believe—I think there was plenty of room to have passed, and given me plenty of room to have passed the "Chinook" which was anchored. In fact, I went further than I wanted to go. I went further than I should have gone. I went so far that it really put me in a dangerous position with the "Chinook," and if she had held her course, I believe that I wouldn't have had to go anywhere near that far, and still there would have been plenty of room to pass; that was my opinion.

Q. Now, you have testified that at the time you were passing along the Callender dock, and until you slowed down—that was about the time you saw her coming up by the Callender dock, and before you slowed down, you were traveling, you say, about six miles an hour?

A. I think about six miles an hour.

(Testimony of Archie L. Pease, Jr.)

Q. And when you slowed down, what was your speed, in your judgment?

A. I couldn't say.

Q. What is your best judgment about it?

A. Well, I couldn't even make a good judgment.

Q. And about how fast do you think you were traveling at the time of the collision?

A. I wouldn't—couldn't judge that either.

Q. Now, could you tell, at the time of the collision, whether the "Thode" had any headway on?

A. I am pretty sure that the "Thode" had headway on her. I would like to state my reasons for that.

Q. Well?

A. Because I would really naturally have no reason for knowing she had headway on, only that she dropped her anchor, and her anchor was still paying out when they came together. That is the only thing I have to go by. Now, that might not—that may mean she has headway; it might mean her bow was swinging and the chain paying out, but I know at the time they came together her anchor chain was paying out.

COURT: Would it pay out if it was going astern?

A. It might pay out if she were going astern, or if she were swinging. That is why I say I have no real way of knowing; she was either swinging a good deal, or going ahead, or if she had been going astern and dropped her anchor, and hadn't put on

(Testimony of Archie L. Pease, Jr.)

the brake, the anchor chain would pay out in the same way.

Q. Coming now to this first, and the only real danger signal, which you testify to being given by the "Thode Fagelund," was that given before or after you saw her red light?

A. Well, I wouldn't state accurately, but I think that her danger signal was given after I saw her red light, I think. I wouldn't swear to that.

Q. Those two events happened then, so close together, that you can't tell which happened first?

A. I can't tell.

Q. Now, until you saw her red light, until that came in view, was there any danger, in your judgment, of collision?

A. Well, there was in this way: That was that she was swinging all the time, and from her range lights I could tell if she kept on swinging the way she was swinging, it was only a matter of time until her red light would show.

Q. But until the red light did show, did you consider there was any danger of a collision?

A. Well, I thought that probably until the red light did show, a collision could have been avoided.

Q. You think a collision could have been avoided up to that time?

A. I want to make myself plain on that. This is what I was figuring on all the time. A man is thinking of something, of course, just before a collision of that kind, and what I was really expect-

(Testimony of Archie L. Pease, Jr.)

ing—the other vessel kept swinging to her own starboard, and I was expecting her any minute to swing the other way. Might have been swinging that way to clear the "Chinook," and if she was going ahead, or anything, and could handle herself, I was expecting her any minute to swing to her port; why she wasn't doing it, of course, as I said before, after things have come out, as I found, she was going astern. I can see why she didn't swing to her port.

Q. Had you continued on the course which you were pursuing, from the time you answered the passing signal, up to the time of the collision, how far, if at all, would you have passed the stern of the "Chinook"?

A. Well, at the course that I was forced to pursue, I doubt if I would have passed the "Chinook." It was doubtful. In fact, here was the thing: I started, of course, and had to keep going longer than I expected to have to go. In fact—what I mean is, I was crowded. I was crowded until I had very little room, if anything. It was doubtful if I could have gotten by the "Chinook." I don't think I could have.

Q. Now, when were you backing? For what purpose were you backing?

A. At the first part of the time I was backing more to keep from going ahead so fast; to get the headway off so the other vessel could get by me, and then after she got by me I could swing any way I

(Testimony of Archie L. Pease, Jr.)

wanted. I could swing to my starboard so I could be sure and clear the "Chinook" by plenty of room.

Q. And afterwards, what were you backing for?

A. Afterwards, I was backing up both to get the headway off—to keep from running into the "Chinook" and to get the headway off the vessel, because there was liable to be a collision with the other vessel at that time.

Q. Tell me how does the "Ocklahama" steer with a tow of that kind?

A. Why, good to steer.

Q. I say how does she steer, well or otherwise?

A. Well. That is, I would like to give my statement of that. Now, like steering a sailing vessel, simetimes we do it to tighten up our lines, or something like that. They can put their wheel hard over one way, and we put our wheel hard over the other way, and we will turn them right around.

Q. Turn them right around?

A. Yes, regardless of their wheel.

Q. So the "Ocklahama's" steering apparatus is more powerful than that of any vessel you have towed?

A. Yes, sir.

Q. How much headway do you think there was on the "Thielbek" at the time of the collision?

A. I couldn't say. As I said, I had a great deal of it off—know from the time I was backing; but, as far as the rate, what headway I did have, would

(Testimony of Archie L. Pease, Jr.)

be doubtful. I am pretty sure I didn't have all the headway off, but I really think I had a great deal of it off.

Q. Now, Mr. Pease, in your judgment, if you had not collided with the "Thode Fagelund," I will ask you whether you had so much of the headway off the "Thielbek," that in your judgment you would have been able to stop her before you reached the "Chinook"?

A. That is doubtful. What I mean by that, is probably I would have, and probably I wouldn't have.

Q. You wouldn't be sure of it?

A. I wouldn't be sure of it either way. As I say, it would have been a close call. That is, it would be very near. It would just be avoided, or not quite avoided.

Q. Now, Mr. Pease, was it possible for you to have given the "Thode Fagelund" any more clearance way than you did?

A. Impossible.

Q. Impossible. The maneuvers which you gave to your boat were, as I understand, calculated to, and did carry your tug and tow to your port.

A. Yes, sir.

Q. Now, were there any other maneuvers which you could have executed to have carried the tug-boat and tow more to your port?

A. Well, there was no—I would rather state that—there was no maneuvers that I could have

(Testimony of Archie L. Pease, Jr.)

made, whereby I could have given the other vessel more clearance on my starboard side.

Q. Now, Captain, had you sounded a danger signal—

A. Yes, sir.

Q. (Continuing) At the time you first apprehended there was any danger, would, in your judgment, a collision been thereby avoided?

A. No, sir.

Q. Why?

A. Well, I couldn't have done any more. The only thing that the danger signal would have given to the other man—the only thing that that would signify to him would be "Look out, there is liable to be trouble." And the other man would really know that there was liable to be trouble, if he kept swinging to the starboard.

Q. And the fact that he gave the danger signal, what did that signify to you?

A. Nothing.

Q. Nothing at all?

A. Nothing at all.

Q. Why?

A. For the simple reason that he just tells me to look out. If a man gives me a danger signal, maybe I will start to back, or do something else. All he does is tell me there is trouble, look out, and I was looking out for that all the time.

Q. At what rate of speed is the "Ocklahama"

(Testimony of Archie L. Pease, Jr.)

capable of towing a ship such as the "Thielbek," on the Columbia River?

A. Well, of course, there is winds and tides, and things like that.

Q. I mean where there is no wind—

A. Ordinary condition, I would say she wouldn't tow her faster than seven miles an hour.

COURT: In this instance, she went about three miles in twenty minutes.

Mr. BRISTOL: A little bit over. Three miles and sixteen hundred and twenty feet by the scale.

COURT: That would be at the rate of about nine miles an hour.

Mr. MINOR: My scale, your Honor, doesn't agree with Mr. Bristol's, but he may be right.

Mr. BRISTOL: I will prove my scale when I get to it.

COURT: I don't know about the scale, but Captain Turppa testified, as I understood him, that it was about three miles from the place of the collision to where the ship anchored.

Mr. BRISTOL: Captain Bergmann testified four.

COURT: I know; that is an estimate.

Mr. MINOR: Your Honor may have noticed a very peculiar contradiction in it. The "Ocklahoma's" time is 3:05 to 3:25, and makes the collision take place at 3:25. The other boat's time is 3:20 to 3:32, and makes the collision take place at 3:32.

COURT: I know there is a difference in time.

(Testimony of Archie L. Pease, Jr.)

Mr. MINOR: Now, of course, this is very largely a matter of guess work.

COURT: I was getting the log of the "Thielbek."

A. I would like to state on that too, that our time of starting is after we are turned around, and are under way, and have got good headway on the boat. Then you turn around and put it down. Now, I may have gone probably a quarter of a mile, something like that, may be not as far, but when we got turned around, and under way, and making good headway with the vessel, we put down under way.

Q. Now, in putting the time in your log, I note that it is nearly always in round figures; that is to say, they are in five minutes, or even ten minute figures?

A. Yes, sir.

Q. Tell the Court how that happens.

A. Well, the time isn't to a minute, to be perfectly accurate. It is to help us out, not particularly the time, like they figure on a boat how long it takes you to move another boat, like around the harbor, or anything. They put it down approximately. I don't believe in our pilot log book they will find a seven, or eight, or nine minute time in it. Might have been a couple of minutes after five, and we put it down—couple of minutes after three, rather, and we put it down five minutes after three.

COURT: The engine room log is kept by one man, isn't it?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

COURT: And the pilot house log by another?

A. Yes, sir.

COURT: And they are supposed, each of them, to put down the time without reference to one another?

A. Yes, sir, and from the way it occurs I know that the engineers, when they are well under way, they figure the same. Sometimes we come about the same, sometimes there are two or three, or four or five minutes' difference, that is, five minutes difference; something like that; they figure they are under way, too. They probably work ahead a few minutes, and see they are making good headway, and put it down in the log.

Q. Now, do you know whether or not it is an unusual or dangerous rate of speed for the "Ocklahoma" to tow a vessel such as the "Thielbek" at seven or even eight miles an hour?

Mr. BRISTOL: That is submitted to the Court as a question that the Court will determine in this case, not the witness.

Mr. MINOR: I said "unusual," your Honor. I have a right to show that.

A. I have been on that boat for five years. They pick up a vessel at the anchoring grounds, in the vicinity of where we picked this one up, turn her around, and start ahead with her, going on full speed bell, and that is what they travel on from Astoria to Portland is the full speed bell.

(Testimony of Archie L. Pease, Jr.)

Q. That carries her how fast, you say about seven miles?

A. I should say probably seven miles an hour. If they had a good current, at times they make nine miles an hour, something like that.

Q. How about other tow boats on this river? What rate of speed do they usually make?

A. When they hook on a tow, they go full speed. Whatever speed their boat can make, they make.

COURT: Through the Astoria harbor?

A. Through the Astoria harbor, through the Portland harbor. We at no time figure that we exceed a speed limit with a tow, unless, of course, it happens to be something like a light schooner that won't hold us back. I mean, with a vessel of this kind, we don't figure we can possibly exceed any speed limit.

Q. How does the "Ocklahama" compare in efficiency with other tow boats engaged in like service on this river?

A. In the opinions that are given by pilots and men that have handled tows with the boats such as steamers and things, they seem to prefer the "Ocklahama" to other boats.

Q. How about her power?

A. I think that her power is as good, and I think that her steering power is a little bit better than any other boat engaged in that business.

Mr. SNOW: What is her power?

A. I should say about 750.

(Testimony of Archie L. Pease, Jr.)

Mr. MINOR: I think that is all I want to ask on cross-examination.

Mr. WOOD: Your Honor, I have a German captain here who wants to get back to Astoria tonight.

Mr. BRISTOL: Can I have Mr. Pease back? Mr. Minor has drawn out one or two things.

Mr. WOOD: Yes. This is merely a question of demurrage.

Witness excused temporarily.

ARCHIE L. PEASE, Jr., resumes the stand.

RE-DIRECT EXAMINATION ON BEHALF OF
KNOHR & BURCHARD.

Questions by Mr. Wood:

Q. Mr. Pease, Mr. Bristol asked you something about the jib-boom and the rigging up on the forward part of the "Thielbek," and about your ability to see over the bow of the "Thielbek," which I think you estimated to be about 23 feet above the water.

A. I think about that. I don't know for sure.

Q. Did that jib-boom, shrouds or rigging, or anything there interfere with your vision?

A. No, it didn't interfere with my vision, and the bow of the vessel wouldn't interfere with my rigging except—it would in a way, now. I want to explain this. If, when you get very close up, say, a matter of 20 feet, something that is down in the water, and very close to the boat, it would, but from a distance, say, 40 or 50 feet ahead, from that

(Testimony of Archie L. Pease, Jr.)

on, I could see; anywhere along there, unless very close up under the bow, I could see.

Q. How near was the "Chinook" anchored, if you know, to the north side of the channel?

A. I think she was pretty well over on the north side of the channel.

Q. Do you think she had room to swing clear without touching the sands on the north side?

A. I don't know about that.

Q. Who was the man in the pilot house with you?

A. The watchman, W. R. Eckhart.

Mr. BRISTOL: This is a question you didn't ask him before. No one has ever asked him. Now, you make him your own witness, do you?

Mr. WOOD: All right.

Mr. BRISTOL: This is a new element.

Q. Captain Turppa testified that when he came into the pilot house, just a very short time after the collision, he didn't meet or see Eckhart?

A. No, sir.

Q. I wish you could explain that?

A. The captain's room is in the texas, right after the pilot house. From the pilot house, which is up from the deck, there is a pair of stairs going down to the deck. There is about four feet then; then the door goes out on the deck; and there is another door that comes from the captain's room right inside the pilot house, right at the foot of those stairs. At the time the collision occurred, I

(Testimony of Archie L. Pease, Jr.)

sent Mr. Eckhart down below to take care of the lines, and get the men up, and things like that, and take charge of them, and I should judge that Mr. Eckhart was just about the captain's door that opens on deck, as the captain comes into the door that opens into the pilot house; and the captain came up that quick (snapping fingers) after the collision. He had no clothes on whatsoever, except his night gown. I should judge he was up there in a very few seconds after the collision.

Q. And you sent Eckhart down immediately?

A. Down just after the collision, and he would just about have had time to get out of the pilot house and the captain came in.

Q. Had Eckhart been in the pilot house with you from the time of the first sight of the "Thode Fagelund" up to the time of the collision?

A. Yes, sir.

Q. What was his duty?

A. Well, his duty was really to be there where I could send him any place that I wanted to, and where he could help me as a lookout if I needed him.

RE-CROSS EXAMINATION ON BEHALF OF
WILHELMSSEN.

Questions by Mr. Bristol:

Q. Lookout if you needed him?

A. Yes, sir.

Q. Now, do you want to give this Court to understand that the watchman on the "Ocklahama" is employed as a lookout?

(Testimony of Archie L. Pease, Jr.)

A. If we need him.

Q. What?

A. Yes, sir.

Q. And you swear to that?

A. When we are running in a fog—

Q. Nothing on a night like this one?

A. Night like this one we didn't need him, no, sir.

Q. You didn't use him as a lookout, did you?

A. Not as a lookout; didn't use him as a lookout.

Q. Now, what did Captain Turppa say to you when he came into that pilot house?

A. Well, I don't—I don't remember. That is a long time ago.

Mr. MINOR: I don't think, if this Court please, this is cross-examination.

Mr. BRISTOL: I would like to know why it isn't.

COURT: Yes, it is.

Mr. MINOR: I didn't ask about that.

Mr. BRISTOL: No, but Mr. Wood did.

Mr. MINOR: He didn't ask what Captain Turppa said.

Mr. BRISTOL: No, but he introduced Turppa into the pilot house, and I am going to follow up about it. I have a right to.

Q. What did Captain Turppa say?

A. I don't remember very well. I don't think he said anything. That is a long time ago.

(Testimony of Archie L. Pease, Jr.)

Q. Didn't say anything at all?

A. I think as near as I can remember, I said something like, well, it's a smash-up, or something like that.

Q. What did he say?

A. I think he said something about making fast again, and I said, "Hadn't we better see if the 'Thielbek' is all right—if the 'Fagelund' needs any help?" He says, all right.

Q. Then what did he do?

A. Then I think he sung out and asked the "Thielbek" her condition, or something, whether she was making water or something; I don't remember exactly.

Q. Then what did he do?

A. Well, then I did. I ran up by the "Fagelund."

Q. You ran up by the "Fagelund"?

A. Yes, sir.

Q. Still room for you to run between the stern of the dredge, and up alongside of the "Fagelund," wasn't there?

A. Yes, sir.

Q. And you did it, didn't you?

A. Yes, sir.

Q. And you asked the "Fagelund" whether they were in need of any assistance, didn't you?

A. Yes, sir.

Q. And Captain Turppa was there all the time, wasn't he?

(Testimony of Archie L. Pease, Jr.)

Mr. MINOR: This is not cross-examination.

A. I believe he was.

Q. In the pilot house with you?

A. I think so.

Q. Did he take the wheel at any of those times?

A. No, sir. Of course, these questions, that is a long time ago, and as far as remembering a conversation of over a year ago, why, why, it was just talk, like a person would talk back and forth, and slip right out of their memory. Something was said about these things, and that is about all there is to it. As far as the actual conversation goes, I couldn't repeat it. And if any, there wasn't much said, as far as that goes.

Q. You didn't discuss the smash-up at all?

A. Oh, no we didn't discuss the smash-up.

Q. Didn't discuss between you as to the movements you had taken, or how you got into it, or anything of that kind?

A. I don't think—I don't remember saying anything about it.

Q. Or he to you?

A. No, I don't remember him saying anything.

Q. So you have detailed all the conversation that occurred between you and the master?

A. Yes, that is all I can remember of, and the way we spoke about it.

Q. Up to that time, as far as you know, Turppa had been asleep in his cabin?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir, as far as I know, up to the time of the collision, he was in bed.

Q. Now, in connection with this, at the time of the signal, Mr. Minor used the expression in examining you—he said, "Now, at the time of this real danger signal," the condition was thus and so, and you rejoined with the answer that the danger signal signified nothing. Do you still adhere to that answer?

A. I mean, it just signifies there is danger. It calls for no answer to it.

Q. Will you please look at your Rules, page 18, Rule 1, Pilot Rules Inland Waters, here. You read that rule now: "If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle, the danger signal." Are you familiar with that rule?

A. Yes, sir.

Q. Were you at the time you answered Mr. Minor's question?

A. Yes, sir.

Q. Then if he blew six or seven whistles, or six or fifteen whistles, it would still be a danger signal, wouldn't it?

A. That is what I—at one time, in one of my statements I said that I wasn't familiar with what

(Testimony of Archie L. Pease, Jr.)

was called a distress signal. I said they may use it as a number of blasts, but I don't know it as such.

Q. But Mr. Minor, having used the words "real danger signal," I am trying to arrive at this point. The rules say not less than four.

A. Yes.

Q. Don't limit it to four, may be half a dozen?

A. Yes.

Q. Nolan blew this signal?

A. Yes.

Q. And he blew that twice, didn't he? That is, two successions of signals of four blasts?

A. I said he blew one danger signal before they came together. Then after they came together—

Q. After the ships did come together?

A. After the ships were together, he was blowing his whistle, and how many I didn't pay any attention to.

Q. That was after you had run clear into him, and you had broken loose?

A. Yes.

Q. And after you came up alongside, and asked if was making any water, was he still blowing the whistles?

A. No, sir, I didn't say that.

Q. How long did he blow it?

A. I can't state how long he blew it. Maybe it was five or six blasts, maybe it was twelve. I know he was blowing the whistles a number of short blasts.

(Testimony of Archie L. Pease, Jr.)

Q. And you heard the four blasts which Mr. Minor denominates the real danger signal, before you came together?

A. Yes, sir, after he finished blowing the four whistles that we are speaking of, they came together, practically in two seconds, about.

Q. Two seconds?

A. That is, in a very short time. That is, if there had been any kind of signal, which there isn't, to answer a danger signal with, why, I wouldn't have had time before the collision to answer it.

Q. And danger signal don't have to be answered, of course?

A. Well, there is no whistle answer for a danger signal. This is the way I think a danger signal is meant for. It is meant to show a person that there is danger, to look out. That is all; as far as answering it, sometimes a danger signal is answered. The way—if there is any answer to a danger signal, the answer I would give, probably under some circumstances, if a man blew me a danger signal, maybe I would blow him three whistles, telling him I was going full speed astern.

Q. This time you didn't?

A. This time I couldn't.

Q. Why not?

A. I wouldn't have time.

Q. You were going full speed astern before you hit him?

A. Certainly.

(Testimony of Archie L. Pease, Jr.)

Q. Why didn't you tell him so?

A. I said why I didn't before. That has been said before.

Q. I understood you to tell Mr. Minor that at the point where you determined whether or not the two whistle passing signal could be exchanged, and you did exchange it, that you think that is about a thousand feet away?

A. I said that before.

Q. And then as you proceeded along, there came a time when there was just a vestige of the mast head lights commencing to change. Then they changed more—I mean the mast head lights of the "Thode"—and they changed more until finally the red light came in view. Now, within that thousand feet, and within that maneuvering there, I understand you to say you could have done nothing to avoid a collision—is that right?

A. Under the circumstances, no.

Q. In that thousand feet, with your ship going astern, your towboat, I mean, full speed astern you could have done nothing to have avoided that collision?

A. And protected myself, no.

Q. What could Nolan have done to have avoided the collision?

A. When he was a thousand feet away?

Q. When he was right in that same state of time. Now, when you say you could have done

(Testimony of Archie L. Pease, Jr.)

nothing, what could Nolan have done to avoid a collision?

A. I would like to know at what time now.

Q. Right at the time we are talking about?

A. What I mean is, that at no time could I have done anything else.

Q. All right. At what time could Nolan have done anything when you saw that condition, when you saw the mast lights commencing to swing and keep swinging until the green light went out, and the red light came in, during that passing of time, where you noticed the swing of the "Thode Fagelund," and where you say you couldn't have avoided the collision, what could Nolan have done to avoid the collision?

A. Nolan could have blown three whistles when we were a good distance apart.

Q. That would have avoided the collision, would it?

A. No, but it would have given me a chance to know why he was swinging to starboard.

Q. But you say you couldn't have executed any maneuver at that time, to have avoided the collision?

A. No, sir.

Q. All right. If that be the case, what difference would it have made, if Nolan blew you three whistles, or any other old number?

A. That would have given me a chance to do something else I couldn't do otherwise.

(Testimony of Archie L. Pease, Jr.)

Q. Then if Nolan blew three whistles, you would have had a chance to do something else?

A. I could.

Q. Because Nolan didn't blow three whistles, you didn't have a chance to do anything else?

A. No, sir.

Q. Is that right?

A. That is right.

Q. That is your full explanation. Now, if you want to explain that, Archie, I want you to do it.

A. Now, here. If he signaled to me when we were a good distance apart, that is, before he blew the danger signal, which I say—if the danger signal had been three whistles instead of the danger signal, it wouldn't have been time enough for me to do anything, but if he had blown three whistles when we were a reasonable distance apart, then I could not have cross signaled him, but it would have given me a reason to know he is going full speed astern and, as long as he is going full speed astern, he is going to swing to his starboard; I could arrive at it that way. I may blow a danger signal and one whistle; if you are backing up, it is causing you to go to starboard. "Will you let me go on the other side?" And I couldn't swing and go the other side of him unless I blew the danger signal and one whistle.

Q. Now, looking at Rule 1 again, let's you and I get our minds together on this, instead of being at cross purposes. I am not trying to confuse you, and I want to get the facts. This rule distinctly

(Testimony of Archie L. Pease, Jr.)

says, if the other fellow fails to understand you, or your course and intention, then he shall blow four whistles?

A. Yes, sir.

Q. That was significant to you, wasn't it, and did mean he didn't understand what you were doing under that rule, wasn't it?

A. Well, yes, in a way, but—

Q. All right. Now, then, why didn't you tell him right then and there, "Now, Nolan, this whole thing is wrong, that you are getting me in here, and I want to get out of it"?

A. Yes.

Q. Why didn't you do that?

A. He didn't give me time from his danger signal.

Q. Then your claim is that while you were 1,000 feet, or thereabouts, apart, as you have testified, that there wasn't time for you to have executed any move whatever?

A. I say at the time of the danger signal.

Q. You told Mr. Minor you were a thousand feet apart at that time.

Mr. MINOR: He didn't say anything of the kind. I asked nothing about that. You got that thousand feet.

A. I said the danger signal was blown, and we came together a couple of seconds after.

Q. That is the last danger signal?

(Testimony of Archie L. Pease, Jr.)

A. That is the first danger signal, the only danger signal before the collision.

Q. There was no danger signal blown with a greater interval of time than two seconds?

A. I say approximately two seconds; I would say when he started his danger signal, they were not over 100 feet apart.

Q. When he blew his four whistles?

A. When he blew his four whistles, when he finished—

Q. Let's get how far you were when Mr. Minor took you—

Mr. MINOR: I didn't ask about a thousand feet apart.

Mr. BRISTOL: All right. I have a very retentive memory, but I may be wrong. The testimony will show.

Q. Now, you told Mr. Minor how far you were apart, when you blew your two whistles?

A. Yes, sir.

Q. What distance was that?

A. Well, I think I said—I am not sure—I think I stated it at about a thousand feet.

Q. Now, you were going to stern at that time, weren't you?

A. No, sir.

Q. When were you going to stern?

A. Shortly after.

Q. How much after?

A. I wouldn't state the time.

(Testimony of Archie L. Pease, Jr.)

Q. Had you gone a ship's length more?

A. Yes, sir.

Q. Or had you gone five minutes?

A. No, I hadn't gone—as I say, I answered the two whistles, and shortly after that, a matter of maybe twenty or thirty seconds, I stopped and started going astern.

COURT: You mean stopped the engines.

A. I stopped the engines.

COURT: When you speak of stopping—

A. I stop the engines.

COURT: You don't stop the vessel?

A. No, just stop the engines. I say I don't believe my vessel was entirely stopped at the time of the collision.

Q. In other words, if you can tell me, I want to get at this: When you stopped your engines, and when you went full speed astern, how far were you off that "Thode Fagelund"?

A. Well, I should say maybe about in the vicinity of 700 feet.

Q. And you were going full speed astern at that time?

A. Yes, sir.

Q. And saw her green light then, close in to you?

A. The "Fagelund's" green light?

Q. Yes.

A. It was visible to me.

Q. At that time?

(Testimony of Archie L. Pease, Jr.)

A. Yes, sir.

Q. And you were backing full speed astern at a distance of 700 feet?

A. Yes, sir.

Q. And the "Thode Fagelund's" red light had not yet come into your view?

A. It had not.

Q. Why was it, then, that you couldn't get by her?

Mr. WOOD: On which side?

Mr. BRISTOL: I don't care. Any old side. Let him state.

A. I couldn't get by her—well, at that time—

Q. You were going full speed astern?

A. (Continuing) If she had gone in the position that she was lying in then, I could have gotten by.

Q. Why didn't you right then and there bring the head of your ship up to starboard when you were backing at full speed, swing her to the starboard, and slide around the end of the "Thode Fagelund" in the other way? You had 700 feet, you say, to go in?

A. Yes, sir.

Q. Why didn't you do that?

A. Supposing I had done that, and there had been trouble, I say, and protect myself.

Q. Suppose you did do that, was it impossible for you to do it?

A. No.

(Testimony of Archie L. Pease, Jr.)

Q. Of course, I know you didn't do it, but it wasn't impossible for you to have done it.

A. No, it wasn't impossible, but it was—to protect myself, before I could do that I would have to get the other man's permission.

Q. I understand.

A. He was telling me he was going to port. If I had started—I was expecting him to swing to his port at any time, and if I had started the other way, and he had started to swing to port, there would have been a collision, and there would have been nobody to blame but me.

Q. Yes. And now, in the situation that we were in at that time, 700 feet distant, you saw the "Thode" range lights commencing—

A. To close up.

Q. (Continuing) To swing, and you were going to the port all that time when you were 700 feet away, and you still kept in that same direction, and let the "Thode Fagelund's" red light swing into view, but you still go in the same direction, and ran the bow of your ship into the "Thode"—is that right?

A. I kept edging over as far as I could, and she kept swinging to her starboard.

CROSS EXAMINATION ON BEHALF OF PORT OF PORTLAND.

Questions by Mr. Minor:

Q. You said something about going up and ascertaining whether the "Thode Fagelund" had

(Testimony of Archie L. Pease, Jr.)

received any injury or needed any help. How far up on the "Thode Fagelund" did you run?

A. Well, I should say that I went up by her bow; I don't remember exactly, but I should say we went up so we could speak to them on the bridge. I don't believe we went past the bridge. I wouldn't swear to that. I don't know exactly my maneuvers since then. There were a number of them. Then we came back and made fast again. The only reason we went up there was to ask them, and they told us they were all right, to make fast and try to pull them apart.

Witness excused.

Portland, Ore., Thursday, Sept. 17, 1914, 2 p. m.

W. R. ECKHART, a witness called on behalf of Knohr & Burchard, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Wood:

Q. What position did you hold on the "Ocklahoma" on the night of the collision with the "Thode Fagelund"?

A. Watchman.

Q. What does that mean on a river towboat? What are the duties of a watchman?

A. Look out for the lights; make fast to the ships in the night time; watch the boat in general.

Q. Who was it that placed the lights on the

(Testimony of W. R. Eckhart.)

"Thielbek" and the "Ocklahama," on the night of the collision?

A. I was.

Q. Pursuant to whose orders did you act?

A. Captain Pease.

Q. What did Captain Pease tell you; what orders did he give you?

A. He asked me if the lights were put out on the "Thielbek." I told him yes.

Q. Did you go and put the lights out on the "Thielbek" yourself?

A. I did, sir.

Q. Did you do that of your own accord, or did the captain tell you to do it?

A. Well, it is a rule to put them out as soon as we make fast to the ships. I always put them out right away.

Q. You follow the—

A. I follow the rules.

Q. I see. Now, describe the lights that you put out.

A. It is a side light screen, with a green light in it.

Q. Where did you put it?

A. I put it in the spanker rigging.

Q. What?

A. Spanker rigging.

Q. Where is that on the ship?

A. On the starboard side of the half deck—poop.

(Testimony of W. R. Eckhart.)

Q. About how far would that be aft of the stem of the vessel?

Mr. BRISTOL: Now you mean aft of the stem of the "Thielbek."

Q. Yes.

A. I don't know how far it is.

Q. All right if you don't know, say so. What sort of light was this you put out—electric or oil?

A. Electric light.

Q. Where did the current come from?

A. From the "Ocklahama."

Q. How was it carried over?

A. On a wire.

Q. From the "Ocklahama"?

A. From the "Ocklahama."

Q. That green light was on the starboard side of the "Thielbek"?

A. Starboard side, sir.

Q. Was there any light on the port side of the "Thielbek"?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. What light was there on the port side of the "Ocklahama"?

A. Red light.

Q. How were those lights, the red light and the green light, placed in relation to each other, as regards to their height?

A. Well, about the same height.

(Testimony of W. R. Eckhart.)

Q. And was one forward of the other, or were they both about—

A. Pretty close abreast of each other.

Q. Abreast of each other?

A. Yes.

Q. Captain Pease said yesterday that he told you to walk forward on the "Thielbek" at about the time you got under way, and look aft to see whether the lights were all right. I will ask you whether or not you did that?

A. Yes, sir.

Q. Where did you go on the "Thielbek" to take a look at the lights?

A. On the forecastle head.

Q. State whether the lights were burning in accordance with regulations?

A. Our side lights were burning, yes.

Q. What?

A. Our side lights, yes; the ones we put out were burning.

Q. Were there any side lights—

A. The side lights on the "Thielbek" were not burning.

Q. About what time was this that you went forward to look at the lights? I don't mean by the clock. Before you weighed anchor, or after, or about how long after?

A. After we was under way.

Q. About how long after you were under way?

A. Oh, I don't know the exact time.

(Testimony of W. R. Eckhart.)

Q. Well, a short time, or a long time?

A. It was quite awhile after we got under way.

Q. Quite awhile after you got under way?

A. Yes, had got headway on.

Q. When did you put out the lights as you have described, at the time you got under way, or before?

A. Before we hove anchor.

Q. When you went forward on the "Thielbek" and looked aft to see whether the lights were all right, had you at that time come in sight of the "Thode Fagelund"?

A. No, sir.

Q. What did you do after you inspected the lights in that manner? Where did you go?

A. I went back in the pilot house.

Q. Did you stay in the pilot house with Pease?

A. Yes, sir.

Q. Was that your place of duty?

A. Yes, sir.

Q. Where were you at the time that the "Thode Fagelund" hove in sight?

A. I was in the pilot house.

Q. You had stood there all the time?

A. Stood there all the time.

Q. Can you locate the approximate position of your tug and tow, off the Astoria dock at that time.

A. No, I couldn't.

Q. Can you tell me about how the "Thode Fagelund" appeared to you at the time you first saw her?

(Testimony of W. R. Eckhart.)

A. Well, I saw the two range lights and the green light.

Q. Did you see the dredge "Chinook" at that time?

A. Yes.

Q. What?

A. Yes, sir, above the dredge "Chinook."

Q. What?

A. I saw the lights above the dredge "Chinook."

Q. On which bow of your vessel?

A. On our port bow.

Q. About how many points would you say on your port bow?

A. Oh, I couldn't tell.

Q. When you first saw the "Thode Fagelund's" range lights and green light, how did the range lights appear to you?

A. They was pretty well open.

Q. What signals did you receive from the "Thode Fagelund"?

A. I heard two whistles.

Q. From the "Thode Fagelund"?

A. From the "Thode Fagelund."

Q. Where was she then in relation to the "Chinook"?

A. She was in the upper side of the "Chinook."

Q. Could you see her clear of the "Chinook"?

A. No, sir.

Q. What response was given by your boat to the first two whistles of the "Thode Fagelund"?

(Testimony of W. R. Eckhart.)

A. None.

Q. What did Pease do?

A. He slowed down.

Q. What other signals did you receive from the "Thode Fagelund"? What was the next signal?

A. Two whistles again.

Q. About how long was it after the first two whistles?

A. Not a very long time.

Q. Where was the "Thode Fagelund" at that time, at the time she blew the second two whistles, in relation to the dredge "Chinook"?

A. Was coming out from behind the "Chinook."

Q. What?

A. She was clearing the "Chinook"; she was coming out from behind.

Q. She was clearing it?

A. Clearing it.

Q. Had she cleared it entirely with her whole hull?

A. I don't know. She was just about clearing it at the time she blew the whistles.

Q. When Pease heard those two whistles, or when you heard those two whistles, the second two, what did Pease do in answer?

A. He answered the two whistles.

Q. With what?

A. With our whistles. With two whistles.

Q. With what?

A. With two whistles of the "Ocklahama."

(Testimony of W. R. Eckhart.)

Q. What did he do then with the course of his boat, if anything?

A. The boat was swinging to port.

Q. What?

A. The boat was swinging to port.

Q. Before the first two whistles, or after?

A. She was swinging slowly.

Q. After the second two whistles?

A. After the second two whistles.

Q. Was there any danger?

A. He put her hard astarboard.

Q. What?

A. He put the wheel hard astarboard.

Q. What did that have on the course of the boat?

A. Made the boat swing over to the port.

Q. What did he do with his engines after he had answered the "Thode Fagelund" two whistles with two whistles?

A. He stopped and backed full speed.

Q. I thought you said he had stopped his engines before the second two whistles.

A. He slowed her down before.

Q. Then as I understand it, he slowed down between the two whistles of the "Thode Fagelund"?

A. I don't know exactly whether it was before or between.

Q. At the time that he received these second two whistles from the "Thode Fagelund," and gave an answer, and swung his boat more to port, as you

(Testimony of W. R. Eckhart.)

have described, what was the course of your boat then, in relation to the dredge "Chinook"? How were you headed?

A. We was heading about for the stern of the "Chinook."

Q. Did you vary from that course? Did you change that course up to the time of the collision?

A. I don't think he did.

Q. Were you watching?

A. Well, I was watching.

Q. If he did change it, would you know that he had changed it?

A. I guess I would.

Q. Now, after he had stopped his engine, which, as I understand you to say, was about the time of the second whistle, what next did he do with his engines?

A. He worked full speed astern.

Q. Can you give me an idea as to how long it was after the "Ocklahama" answered the "Thode Fagelund's" whistle, that the engine was backed full speed astern?

A. Well, about right afterwards. He answered the whistle, and then reached for the bells.

Q. Well, I understood you to say that right after the whistle, he stopped his engine.

A. Well, I don't know if he stopped them before the whistle or not. I don't know when exactly, he stopped them; the time.

Q. How far apart do you think the "Thode Fage-

(Testimony of W. R. Eckhart.)

lund" and the "Ocklahama" and "Thielbek" were when you first saw her?

A. I couldn't tell.

Q. What?

A. I couldn't tell. I paid very little attention to the distance.

Q. Well, can't you give us an estimate of it at all?

A. No, I would rather not. I won't be sure.

Q. You needn't be afraid to tell me these estimates of yours, because they are only guesses, you know. We are not trying to tie you down to exact feet, but if you know it was somewhere between one hundred and two thousand feet, we would just like to get your idea.

A. Somewhere between a thousand feet and fifteen hundred feet.

Q. As you approached the stern of the "Chinook," as you have testified, did you notice the course of the "Thode Fagelund"?

A. Her range lights was open.

Q. At what time?

A. The time we was heading for the "Chinook," the stern of the "Chinook."

Q. The range lights of the "Thode Fagelund" were open at the time you were heading for the stern of the "Chinook"?

A. Yes, sir.

Q. Now, as I understand it, you kept heading towards the stern of the "Chinook"?

(Testimony of W. R. Eckhart.)

A. Yes, sir.

Q. Was there any change in the appearance of the "Thode Fagelund's" range lights, as you approached the stern of the "Chinook"?

A. Well, the range lights closed in and opened up again on the other side, and shortly saw the red light—shortly before the collision we saw the red light.

Q. When you say the range lights closed in, and opened again, on the other side, I suppose you mean the rear range lights swung aft of the forward range light?

A. Well, yes.

Q. Can you state how much they opened when they crossed and opened on the other side?

A. No, I couldn't.

Q. Could you give the Court an idea from the change in the "Thode Fagelund's" lights, as to how much the "Thode Fagelund" swung on her course; how much she altered her course?

A. No, I couldn't.

Q. Well, which way did the "Thode Fagelund" alter her course? To her port, or to her starboard?

A. To her starboard.

Q. You said that the red light appeared on the "Thode Fagelund." About how long was that before the collision, do you think?

A. A short time before the collision.

Q. Did you hear any other whistles or signals, from the "Thode Fagelund" before the collision?

(Testimony of W. R. Eckhart.)

A. Shortly before the collision, I heard four whistles.

Q. How long was that before the collision?

A. Well, the last blast, the fourth whistle, was about the time it happened, very short time.

Q. After the crash, were any other whistles blown?

A. Yes, quite a few.

Q. What?

A. Quite a few whistles were blown.

Q. From what boat?

A. From the "Thode Fagelund."

Q. Not from your boat?

A. Not that I know.

Q. Did you hear any other sounds from the "Thode Fagelund"?

A. I heard the anchor chain go out shortly before the collision.

Q. Was it before or after you heard the "Thode Fagelund's" four danger whistles, that you heard the anchor chain?

A. Well, I believe the chain was still running out at the time of the collision. It sounded like it; I only heard the sound of it.

Q. What?

A. It sounded like the chain was still running out; made that kind of a noise at the time the ships came together.

Q. About where were the bows of the "Thielbek"

(Testimony of W. R. Eckhart.)

and the "Thode Fagelund," in relation to the dredge "Chinook," at the instant of the collision?

A. They were about 100 feet, about 100 feet from the stern of the "Chinook."

Mr. BRISTOL: From the stern, did you say?

A. From the stern of the "Chinook."

Mr. BRISTOL: One hundred feet. Towards the Astoria shore?

A. No, a little below, on the lower side of the "Chinook."

Q. How did the "Chinook" lie in the stream, at the time of the collision?

A. Her stern was to Astoria.

Q. Was the dredge towards Astoria, or was it a little upstream, or a little downstream?

A. I couldn't tell.

Q. And when you say the collision took place one hundred feet from her stern, you mean one hundred feet towards the Astoria shore?

A. It was about half ways between the Astoria shore and the lower side—it was below it. It wasn't right straight abreast the stern.

Q. How far was it from the bows of the two vessels to the Astoria dock?

A. About seven hundred or eight hundred feet.

Q. Do you think that you could take these wooden models and place them in about the way that you think the boats were when the collision took place?

A. I guess I could try.

(Testimony of W. R. Eckhart.)

Q. All right, you try. (Witness arranges blocks.) This is at the instant they came together?

A. The instant they came together.

Q. All right; if you are satisfied with that location, I will mark around the boats with a pencil. Astoria is here some place.

A. Yes, that is Astoria. Well, it was somewhere like this.

Q. The distance from the stern of the dredge "Chinook" to the bows of the boats over here, you have estimated to be about one hundred feet.

A. About one hundred feet; yes, sir.

Q. Of course, the bows of the boats are rather indefinite. I mean it covers quite a space there. I will ask you to estimate how far do you think it was from the dredge "Chinook" to the starboard side of the "Thode"?

A. I don't know. I never looked at the steamer at all. I hardly looked at the "Thode Fagelund" until after.

Q. But you think, say from this point, which I mark "a" to the stern of the "Chinook" was about one hundred feet?

A. About 100 feet, I think.

Q. And from the same point "a" to the Astoria dock, you estimate it what?

A. About eight hundred feet; seven hundred or eight hundred feet.

Q. Just sign that, will you? (Witness signs.)

Mr. WOOD: I offer this in evidence.

(Testimony of W. R. Eckhart.)

Marked "Knohr & Burchard's Exhibit 8 (Brauch)."

Q. Now, Mr. Eckhart, can you give us an idea of the speed you were going up the river, before or at the time you saw the "Thode Fagelund"?

A. Was going about six miles, I guess.

Q. Six miles?

A. Six miles an hour, about that.

Q. Does that mean past the docks, or through the water?

A. I don't know. Through the water, I guess.

Q. What?

A. Through the water.

Q. What was the state of the tide?

A. A little after low water, I believe.

Q. A little after low water. Can you give an estimate of the speed of the tide up the river?

A. Very little tide.

Q. Very little tide?

A. Yes, sir.

Q. Now, you say you think the speed of the boats through the water was about six miles an hour. Do you think it was faster than that past the land?

A. I think it wouldn't be as fast.

Q. What?

A. Maybe it was faster.

Q. Maybe it was a little faster?

A. Maybe it was faster. Maybe it was not quite as fast.

(Testimony of W. R. Eckhart.)

Q. I don't understand what you mean by saying maybe not quite as fast. If you were going six miles through the water, and there was a little tide upstream?

A. That made it faster, but I don't know that she was going six miles an hour. I am just guessing it was about six.

Q. What I am trying to get at, would the tide up the river make her go faster to any appreciable extent?

A. I guess a little.

Q. Can you tell how much faster?

A. No, I couldn't.

Q. Do you know whether you or Pease or anybody on your boat gave the "Thielbek" orders to let her own lights alone, and that you would attend to all the lights? Were those orders given?

A. I heard the captain tell.

Q. What?

A. I heard our captain tell the captain of the "Thielbek" about it, not to put out any of their side lights.

Q. Did he tell the captain of the "Thielbek"?

A. He did.

Q. That the "Ocklahama" would attend to the lights?

A. The "Ocklahama" would attend — we have our own lights, not to put any out of theirs.

Q. Mr. Eckhart, after the collision, was any change made in the side lights on the "Thielbek"?

(Testimony of W. R. Eckhart.)

A. At the time of the collision, our side light went out.

Q. Which side light?

A. The starboard light on the "Thielbek," the electric light; and as soon as after we got alongside again, I don't know; I believe the pilot told them to put out their side lights.

Q. Was it done?

A. It was done.

Q. What?

A. It was done.

Q. Did you see it done?

A. No, I didn't see it done.

Q. Did you see the lights there afterwards?

A. Yes, afterwards I saw them.

CROSS EXAMINATION FOR LIBELANT
WILHELMSEN.

Questions by Mr. Bristol:

Q. Mr. Eckhart, when did this conversation between Captain Turppa and Captain Bergmann take place?

A. The fore part of the evening.

Q. When?

A. I don't know the time.

Q. Were you present?

A. We were working. I heard him.

Q. Where were you?

A. On the "Thielbek."

Q. Where did they talk?

A. From the main deck down to the pilot house.

(Testimony of W. R. Eckhart.)

Q. From the main deck down to the pilot house?

A. Yes.

Q. What do you mean by that? Where was Captain Bergmann?

A. He was down on the main deck.

Q. On the "Thielbek"?

A. I believe so.

Q. Whereabouts?

A. I don't know whereabouts.

Q. Well, if you heard the conversations and saw the parties, you can tell me where Captain Bergmann was, can't you?

A. I can't remember. Too long ago.

Q. Don't remember where Captain Bergmann was?

A. He was somewhere on the main deck.

Q. Was he forward or aft?

A. I don't remember where he was.

Q. Was he opposite the spanker rigging, or was he opposite the main mast of the ship?

A. I don't know. I was making fast the ship then.

Q. What?

A. I was attending to the lines at that time, and I don't remember where he was.

Q. Attending to the lines. You have no distinct recollection about where Captain Bergmann was or where Captain Turppa was?

A. I believe Captain Turppa was in the pilot house.

(Testimony of W. R. Eckhart.)

Q. You were attending to the lines about the ship, and attending to your various duties?

A. I was talking to some of the fellows and telling him about the lines, yes.

Q. And your duty as watchman is to look after the lines of the tug and at this time of this conversation, you delineated, you were telling your crew where to put the line.

A. Yes—not our crew.

Q. Not your crew?

A. No, I was telling the crew of the "Thielbek" where I wanted the lines.

Q. Somebody had to fasten the lines on your ship?

A. Yes, but I wasn't talking to them.

Q. What?

A. I wasn't talking to them at that time.

Q. You were not talking to them?

A. No.

Q. What were you doing when fastening the lines? What were you occupied with?

A. Well, when we was taking the line through the scuppers, to make them fast on the inside rail.

Q. Now you were not doing that. What were you doing?

A. Well, I was there on board the "Thielbek."

Q. You were on board the "Thielbek"?

A. I was on board the "Thielbek," showing the sailors how to do it.

Q. You were on board the "Thielbek" yourself?

(Testimony of W. R. Eckhart.)

A. I was on board the "Thielbek" myself.

Q. Who had passed the lines up from the "Ocklahama"?

A. Some of the deck hands.

Q. By your order?

A. By my order.

Q. And you were giving them orders where to pass the lines, and you were giving the sailors of the "Thielbek" orders where to fasten the lines?

A. They knew where to fasten the lines; I told them that before.

Q. Just at this instant of this conversation you are talking about, you were occupied as watchman, directing the two crews where to fasten the lines.

A. About that.

Q. Isn't that a fact?

A. Yes, about the time. It is a fact, yes.

Q. Now, coming right down to the question of knowledge, as to whether Captain Bergmann told his crew or not, to put out any lights, or not to put out any lights you don't know, do you?

A. I heard them talking to the mate about it.

Q. But you didn't hear any orders given to the "Thielbek's" crew as to whether or not they should put out the lights, or leave the lights, or anything about lights, did you?

A. I heard the captain tell the mate in German he didn't need any side lights.

Q. Now, you heard the captain tell the mate in

(Testimony of W. R. Eckhart.)

German not to monkey with the side lights; is that right?

A. Not to put any out.

Q. What mate did he tell?

A. The first mate.

Q. Do you know that mate's name?

A. I forget it.

Q. Would you know it if you heard it again?

A. Yes, sir.

Q. Well, his name is Eggars. Did you ever hear that before?

A. That is his name.

Q. That is the man, isn't it?

A. That is the man.

Q. Now, if Mr. Eggars says in the log his side lights were out and burning, who is right—you or him?

A. He is wrong.

Q. He is wrong?

A. I say he is.

Q. Why do you say he is wrong?

A. Because no side lights out.

Q. I say if he enters in his log that the side lights were lit and burning, who is right, you or him?

Mr. WOOD: He has answered that.

Mr. MINOR: I want to object to that question, because Mr. Eggars didn't say that in the log at all.

Mr. BRISTOL: He does say that in the log.

(Testimony of W. R. Eckhart.)

Mr. MINOR: No, he doesn't. The log is in evidence.

Mr. BRISTOL: Said the side lights were lit and burning.

Mr. MINOR: No, he didn't. Mr. Eggars didn't say that at all. Mr. Eggars in his log said something very different from that.

COURT: Is the log copied into this record?

Mr. WOOD: Yes, it is there.

Mr. MINOR: Mr. Eggars in his log—

COURT: The memorandum he made in German from which the log was written?

Mr. MINOR: The master wrote up the log. Mr. Eggars' log is found on page 47.

COURT: The memorandum he made from which the log was made?

Mr. BRISTOL: The log itself is on another page, and distinctly says what I said.

Mr. MINOR: Mr. Eggars says this: "The star-board light was burning on the "Thielbek." It was made fast on the spanker rigging by the men off the steamboat, and at the same height of the side light of the "Ocklahama."

Mr. BRISTOL: Now, page 47, Mr. Minor read from, is a sort of a paper, not the log, a sort of a paper Mr. Bergmann distinctly testified to; he had the mate make it up, and around it centered a great deal of examination. The official log of the "Thielbek" is found on page 39. The captain distinctly said he wrote it out from the mate's statement, and

(Testimony of W. R. Eckhart.)

the captain wrote that up from the mate's statement. It says distinctly, "The rest of the port watch was occupied in clearing the deck. The side lights were burning according to regulation." Now, that is what was entered in the log of the "Thielbek."

Mr. WOOD: In the same connection, on page 52, Mr. Eggars was asked this question: "There is a passage in the log, which has been read into the record, saying that the side lights were properly burning according to regulation. I will ask you whether that means the side lights as you have described them, or did it mean that the 'Thielbek' had her own side lights out?" He answered that as follows: "It means the lights were on the place where they belonged, as I have described them." And he has described them as the present witness has.

Mr. BRISTOL: Well, we will argue that testimony later. There is some further testimony that Mr. Eggars says himself it was not her light, but the other boat's light that was wrecked, and it was not her light that he referred to. As I informed your Honor, considerable controversy will range around those lights.

Q. Now, you said, as I understand it, that if that entry was made in the official log, that wasn't right. Is that right?

A. I didn't catch that.

Q. What?

A. I don't hear that.

(Testimony of W. R. Eckhart.)

Q. I said you said, therefore, that this entry in this official log that the side lights were burning, was wrong?

A. I was wrong?

Mr. WOOD: No, he didn't say that.

Q. What did you say?

Mr. BRISTOL: If you gentlemen will let the witness testify, we will get along better.

Mr. WOOD: You better tell what the entry is.

Mr. BRISTOL: I don't tell like you did what he testified. I want to find what the facts are. You let him alone. I am going to cross examine.

A. If it is in the log book that the "Thielbek's" lights were burning it is wrong.

Q. That is what I understood you to say. Now, I show you Article V of the Pilot Rules.

A. I don't know anything about the Pilot Rules.

Q. I know; but I am going to show you Article V, the same lights as prescribed for a steam vessel under way with the exception of the white lights mentioned therein which they shall never carry. Now, you say that your duty was, as watchman of the "Ocklahama," to put out the side lights of the "Ocklahama." What side lights, when the "Ocklahama" is under way, does she carry?

A. The "Ocklahama"?

Q. Yes.

A. Red and green lights.

Q. Red and green lights. "A sailing vessel under way or being towed shall carry the same lights as

(Testimony of W. R. Eckhart.)

are prescribed by Article II for a steam vessel under way." Now, do you mean that you still adhere to the statement that if that entry in the official log that their side lights were trimmed and burning is wrong?

A. There is different ways of towing.

Q. I am not talking about towing. I am talking about the entry in the log. And you say you know the facts to be—

A. I suppose that refers to towing on hawser, not alongside.

Q. This refers to towing on hawser?

A. I believe it does.

Q. I thought you didn't know anything about it.

A. Not that regulation, no.

Q. Then we are not concerned whether towing on a hawser, or how towed. The testimony in this case is you said you put your starboard light out in the spanker rigging?

A. I did, sir.

Q. And you put a starboard light upon the "Thielbek," and a port light upon the "Ocklahama," and that is all the lights you put out?

A. All the lights I put out.

Q. Now, is that all the lights the "Ocklahama" carried?

A. They have two tow lights.

Q. Where did you put those out?

A. They are after, stationary.

(Testimony of W. R. Eckhart.)

Q. And you were in the wheel house all the time from the time you started?

A. I was down to look after the lights; after the lights, if they were lighted on the bow of the "Thielbek," and I came back to the pilot house.

Q. You were out to see if the lights were lighted on the bow of the "Thielbek"?

A. On the bow of the "Thielbek"?

Q. Where did you go to see that?

A. On the forecastle head.

Q. Whereabouts?

A. Well, to the starboard light first, and then to the port light.

Q. Where did you go? About how far away from the stem of the "Thielbek"?

A. I was right around in the side lights.

Q. Around where?

A. Around in the lights.

Q. Around in the lights?

A. Yes, I went in the bow and looked over the side lights into the screen.

Q. How far is that from the bow of the "Thielbek"?

A. Well, it is on the bow.

Q. How far up on the bow?

A. On the forecastle head.

Q. Right up on the bow?

A. On the forecastle head.

Q. How far, about, from the stem of the ship.

A. I don't know how long the forecastle head is.

(Testimony of W. R. Eckhart.)

Q. Well, how long do you estimate? You have estimated other distances in this case.

A. Well, I was about two feet from the side lights. At the time I looked in it, two or three feet from the side lights. I looked over the screen and into the light houses.

Q. And the "Thielbek" lights are screened?

A. Well, there is a screen out alongside of it.

Q. Isn't it a fact that the "Thielbek's" light house is in a little round tower?

A. Yes, and screened both sides.

Q. From the inside of the vessel to keep from showing across the bow?

A. Yes, sir.

Q. And you looked out and beyond that screen, you say?

A. I looked over the screen into the side lights.

Q. What time was this?

A. After we got under way.

Q. How long after you had been under way?

A. Oh, we had got headway on.

Q. You never looked at those lights again, did you, from that time until you were struck?

A. No, not from that time.

Q. You don't know whether lighted or not?

A. They were not lighted at that time.

Q. You don't know whether they were lit after that or not?

A. No, were not lit.

Q. How do you know?

(Testimony of W. R. Eckhart.)

A. Captain Turppa was on the forecastle head at the time of the collision, and they were not lit.

Q. Captain Turppa?

A. Yes.

Q. Captain Turppa was on the head—

A. Yes, as he said.

Q. Captain Turppa was on the head of the—

A. Forecastle head.

Q. Of what?

A. Of the "Thielbek."

Q. At the time of the collision?

A. After the collision.

Q. After the collision?

A. Yes.

Q. Where did you hear that testimony?

A. I heard him say so.

Q. Where? Here?

A. I don't know if he said it here or not.

Q. Didn't you hear Captain Turppa testify that he was in the pilot house with Pease at the time of the collision?

A. At the time of the collision? This was after the collision.

Q. And the lights after the collision you testify from what Captain Turppa said were not lit?

A. Were not lit, no, at the time the ships went together.

Q. All you know is what Captain Turppa said?

A. What I heard him say, yes.

(Testimony of W. R. Eckhart.)

Q. I ask you how you know the lights were not lit?

A. I was there twice to look at them.

Q. Twice?

A. I was on the forecastle head to heave the anchor, and the lights were not lit.

Q. That was before you got under way?

A. Yes.

Q. And after under way, you looked once?

A. I looked again.

Q. And didn't notice anything after that?

A. No.

Q. Up until the time of the collision?

A. No.

Q. And I ask you how you know the lights were not lit after that?

A. I don't know.

Q. As far as you know, if any sailor went up there and lit those lamps, you don't know anything about it, the kerosene lamps?

A. Yes.

Q. And you wouldn't have known whether he went out and lit those lamps or not?

A. Not after I was there the second time.

Q. You told Mr. Wood your place of duty was in the pilot house? You didn't mean that, did you?

A. Well, I am supposed to be all over the boat.

Q. Your particular place of duty is in the pilot house?

A. Not particular place.

(Testimony of W. R. Eckhart.)

Q. Now, you don't claim, Mr. Eckhart—now, just tell the Court—you don't claim you were in that pilot house as the official lookout, do you?

A. No.

Q. No, of course not. Now, I have tried here, and understand this is merely for the purpose of getting the testimony that you gave explained—I have tried here to illustrate a wheel and the levers that you steer by, this diagram representing the wheel with these stanchions, spokes and the board upon which are the bellpulls in the pilot house of the "Ocklahama," and this is the wheel turned side ways so as to show the lever that comes out here, by which they steer. Now, on this drum of the wheel, the rope is twisted, that passes down through into the respective pulleys, down through the floor, that goes back to the same rudder quadrant that the pistons work on, that is operated by this lever?

A. Yes, sir.

Mr. WOOD: Are you asking questions?

Mr. BRISTOL: Yes, he is saying yes all the time.

Mr. WOOD: Then I object as improper examination.

Mr. BRISTOL: I insist for this reason, that Mr. Wood has very nicely got the witness to say that the wheel was put to her starboard—hard astarboard wheel, he says; I want to find out how a hard astarboard wheel is made on the "Ocklahama." He was there and says he saw it.

(Testimony of W. R. Eckhart.)

Q. Now, is that an approximately true condition of the apparatus in the wheel house of "Ocklahoma"?

A. That is somewhere about. The bells are not right here, the handles.

Q. The bell.

A. I say the bells are not right here — the handles.

Q. Where do you want the handles? I will put them wherever you want them.

A. One here and two on the other.

Q. All right; we will rub one out on the port side, and we will leave the two on the starboard side; that is right, is it?

A. That is right.

Q. One bell pull on the port side?

A. That is the gong on that side.

Q. One gong pull port side of the wheel, and upon the starboard side those two pulls.

A. There is one jingle and one whistle.

Q. One jingle and one whistle. Now, this lever that they steer by, comes out from the board in front of the wheel that carries these bell cords?

A. Yes.

Q. That is approximately right, isn't it?

A. Yes.

Q. Now, I will make an arrow on here, showing towards the top of the paper as the direction, as we would stand looking over the wheel, when, if the ship was going forward, and you were in the

(Testimony of W. R. Eckhart.)

pilot house, like that witness box, looking out towards the court room. Now, I want you to tell me this: You say, speaking to this diagram, Archie Pease put his helm hard astarboard, do you?

A. Yes, sir.

Q. Will you tell me which way this lever was pulled by Archie Pease?

A. Towards me.

Q. Towards you? That is to say, he pulled the lever to his port side?

A. Yes, sir.

Q. Lever to port, for hard astarboard wheel; is that right?

A. Yes, sir.

Q. Now the wheel itself, and the spokes would go in what direction?

A. Go this way.

Q. The wheel would go anti-clockwise?

A. The same way as the lever does.

Q. To the port side, the top of the wheel?

A. Yes, sir, turns to port.

Q. The top of the wheel to port. That is what you call hard astarboard helm, is it?

A. Yes, sir; starboard helm, that is.

Q. That is a starboard helm?

A. Yes, sir.

Q. The top of the wheel turns to port, and the lever goes to port?

A. Yes, sir.

Q. Is that right?

(Testimony of W. R. Eckhart.)

A. Yes, sir.

Q. I offer that as part of the testimony of this witness.

Marked "Libelant Wilhelmsen's Exhibit 17 (Eckhart)."

Q. Can you tell me on the "Ocklahama" whether, on the movement of this wheel that you have described, or that lever, what direction that pulls the rudder blade?

A. No, I don't know.

Q. I beg pardon.

A. I don't know.

Q. You don't. Now, when you were in the pilot house, there with Mr. Pease, were you talking to him, and were you sitting down or standing up, or what were you doing?

A. I was sitting down.

Q. You were sitting down?

A. Yes, sir.

Q. And was there any conversation between you?

A. I guess there was.

Q. You say you guess there was?

A. Yes, sir.

Q. Did that conversation have anything to do with the operation of the ship?

A. I don't remember what the conversation was.

Q. Did Pease say anything to you about seeing the "Chinook"?

A. I don't know what he saw.

(Testimony of W. R. Eckhart.)

Q. Did you say anything to Pease about seeing the "Chinook"?

A. I don't know either.

Q. Did Pease say anything to you about seeing the "Thode Fagelund"? I mean, when you first saw her?

A. I don't know what he said; I don't know the conversation at all.

Q. Did you say anything to Pease when you first saw the "Thode Fagelund"?

A. I don't know.

Q. Now, did you sit down all the time in that pilot house, up to the time that you left it?

A. I was sitting down quite awhile. I guess I jumped up later on.

Q. When you jumped up, you mean you got up quickly?

A. I got off the chair quick, yes.

Q. Beg pardon?

A. I got off the chair quick.

Q. Why?

A. I don't know why. Saw the lights coming pretty close, and I jumped off it.

Q. Then where did you go?

A. Stand right there—stood right there.

Q. When you saw the lights come pretty close?

A. Yes.

Q. Rather surprised you when the lights got pretty close, did it?

A. It did.

(Testimony of W. R. Eckhart.)

Q. Now, where were you; on the side of the pilot house, or at the back of it? I would like to get the location, if I can. Were you on the port side, sitting down, or right behind the wheel, sitting down, or were you on the port or starboard side sitting down?

A. The starboard side sitting down.

Q. You were on the starboard side sitting down, next to the ship "Thielbek"?

A. Next to the ship "Thielbek."

Q. And how was the ship "Thielbek" headed at the time you first saw the "Thode Fagelund," with respect to the shore line of the Astoria docks. Was it then parallel, if you understand me, that is, in the same straight line as the dock, or was it as you had been, as I understand it, all the way up the river, bearing to port? That is, with her head somewhat off and away from the docks?

A. Well, I couldn't tell exactly how we was.

Q. You couldn't tell?

A. No.

Q. Mr. Pease says that at the time you saw the "Thode Fagelund," that in the position he was in the wheel house, the ship "Thielbek" was about 150 feet off the Callender dock, and possibly back to where the green light was, it was about 150 feet back from the dock, to that light, across to him. So he would see it on that angle of that 150-foot square, across the head of the ship looking at the

(Testimony of W. R. Eckhart.)

dock. Did you notice the Callender dock at the time you saw the "Thode Fagelund"?

A. No, I didn't.

Q. You couldn't say whether you were off it 150 feet or 200 feet?

A. No, I couldn't.

Q. Did you see any lights coming up the river?

A. No, not up the river.

Q. You didn't see any lights coming up the river?

A. No, sir.

Q. I mean now—don't misunderstand me—from the time you started, and got under way, until you got up where you first saw the "Thielbek," did you see any lights as you came up the river?

A. When I first saw the "Thielbek"—after we got under way with the "Thielbek"?

Q. Listen. From the time that you started up to the time that you saw the "Thielbek"—did I say the "Thielbek"? I beg your pardon for confusing you—from the time you got under way until you saw the "Thode Fagelund," the first time, did you see any lights as you went up the river?

A. Well, we saw the dredge "Chinook" laying at her anchor.

Q. Was that all the lights you saw?

A. I believe so, yes.

Q. That is all the lights you saw?

A. I believe all the lights that I saw; that I remember anyway.

(Testimony of W. R. Eckhart.)

Q. Do you know how wide the "Thielbek" is? You were on her prow out there, backward and forward. How wide is she?

A. Somewhere between thirty and forty feet.

Q. Can you fix for me how far it was from this starboard light, which you spoke about on the "Ocklahama," to the electric light in her spanker rigging?

A. Well, it was in the neighborhood of thirty feet.

Q. In the neighborhood of thirty feet?

A. Yes.

Q. You didn't take this light. Now, let me understand this. You didn't take this cord from the "Thielbek's" box, socket, you understand, and take it away up forward, and put it in the housing of the "Thielbek's" starboard light, did you?

A. No, sir.

Q. How long a cord would it take to do that?

A. Three hundred feet.

Q. How much?

A. About 300 feet.

Q. You didn't have that length of cord on the "Ocklahama," did you?

A. No, sir.

Q. Now, you say at the time Pease put this wheel hard astarboard, as you have described it upon that diagram, that you were then heading for the stern of the dredge "Chinook." Is that correct?

A. About there; yes, sir.

(Testimony of W. R. Eckhart.)

Q. Now, about — do you mean — what do you mean by about?

A. Well, we may swing towards it. We wasn't quite there, but—

Q. But you were still going to port?

A. We were still going to port, yes, and I believe later on we were heading for the stern of the "Chinook."

Q. Can you tell me where, with respect to the shore line, now, you were at the time Pease put his helm, as you describe it, hard astarboard?

A. No, I couldn't.

Q. When you headed up for the—after he put his helm hard astarboard, and you headed up for the stern of the "Chinook," you saw all the running lights of the "Thode Fagelund," did you not?

A. I did, yes.

Q. Both red and green lights?

A. No, only the green light.

Q. What?

A. Only the green lights.

Q. I don't hear you?

A. Only the green lights.

Q. You only saw the green light after he put his wheel hard astarboard?

A. Yes, sir, and the two range lights.

Q. And the two range lights, and that is all you saw?

A. That is all the lights I saw.

Q. After he put his wheel up hard astarboard?

(Testimony of W. R. Eckhart.)

A. Yes, later on I saw the red light.

Q. I am talking about before you got near her. You don't know how far off Pease was from the "Chinook," do you, at the time he put his wheel hard astarboard?

A. No, sir, I don't.

Q. Can you estimate that distance at all?

A. No, I couldn't.

Q. Can you approximate it at all for me like you approximated the distance for Mr. Wood, between the stern of the dredge and the ship. I would like to have you approximate the distance that you were, in your pilot house, when Pease put his helm hard astarboard, and you saw the stern of the "Chinook"?

A. No, I couldn't say that.

Q. Were you a quarter of a mile?

A. No, I wasn't that much. I don't think it was that much.

Q. Well, was it the length of the O. R. & N. dock?

A. I couldn't tell you how far it was.

Q. Do you know how long the "Thielbek" is?

A. No, I don't.

Q. Do you know how long the "Ocklahama" is?

A. Somewhere about 150 feet, I guess.

Q. How many? Can you give it to me this way: When Pease put his wheel hard astarboard, as you have described it, and you saw the stern of the dredge "Chinook" how many lengths of the "Ockla-

(Testimony of W. R. Eckhart.)

hama" was between you and the stern of that dredge at that time?

A. I couldn't tell. I don't remember how far it was.

Q. You couldn't estimate the time for Mr. Wood. Can you estimate the time for me?

A. Which time?

Mr. WOOD: What time is this?

Q. From where Pease put his wheel hard astarboard, and you brought up for the stern of the dredge, until you were in collision?

A. No, I couldn't.

Q. That is all.

CROSS-EXAMINATION FOR PORT OF
PORTLAND.

Questions by Mr. Minor:

Q. Mr. Bristol asked you about seeing lights after you were under way with the "Thielbek," and until you saw the lights of the "Chinook" and the "Thode Fagelund." Did you refer to lights of the river, or shore lights, when you answered that question?

Mr. BRISTOL: He said he didn't see any.

Mr. MINOR: I know, but I thought—

A. I thought he meant ship lights, of approaching ships.

Q. Now, about shore lights. Do you know whether you saw shore lights, or not?

A. Oh, I saw all the lights of Astoria.

(Testimony of W. R. Eckhart.)

RE-CROSS EXAMINATION FOR LIBELANT
WILHELMENSEN.

Questions by Mr. Bristol:

Q. In that connection, what lights of Astoria, did you see?

A. All the city lights.

Q. Is that all?

A. Yes, sir.

Q. Now, outside of the Astoria city lights, you didn't see any other light, did you?

A. Oh, I might have seen some, but I don't know what.

Q. Well, tell me if you saw any?

A. I don't remember what lights I saw. I saw the lights of the city.

Mr. BRISTOL: That is all.

RE-DIRECT EXAMINATION FOR KNOHR
& BURCHARD.

Questions by Mr. Wood:

Q. Mr. Eckhart, I didn't quite understand the conversation you say you heard between the captain of the "Thielbek" and somebody on the "Ocklahama." I understood you at first to say that Captain Turppa told Captain Bergmann of the "Thielbek," not to bother about the "Thielbek's" lights, that the "Ocklahama" would attend to the lights; and later on you said something about you heard the captain tell the mate in German, not to put out the lights. Now, I want to distinguish those two

(Testimony of W. R. Eckhart.)

conversations, if there were two. Explain them, as I don't understand them.

A. After Captain Turppa told the captain of the "Thielbek" he didn't need any of their side lights, the captain of the "Thielbek" repeated the order to the mate in German.

Q. And you heard both these conversations?

A. I heard both of those conversations.

Q. When the "Ocklahama's" green light was carried over, and put in the starboard spanker rigging of the "Thielbek," was a screen from the "Ocklahama" carried also over, or did they use the "Thielbek's" screen?

A. The "Ocklahama's" screen.

Q. And who was the actual man that fastened that light on the spanker rigging?

A. I fastened the light, and the third mate helped me; I believe it was the third mate.

Q. But it was put there under your direction?

A. Yes, sir.

Witness excused.

H. P. ELLISON, a witness called on behalf of Knohr & Burchard, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Wood:

Q. Mr. Ellison, state what position you held on the "Ocklahama" on the 23rd and 24th of August, 1913.

(Testimony of H. P. Ellison.)

A. Assistant engineer.

Q. Where were you on the "Ocklahama" at the time of the collision between the "Thielbek" and the "Thode Fagelund"?

A. I was in the engine room.

Q. How long had you been on watch?

A. Oh, probably an hour and a half.

Q. You were on watch, then, when they left the anchorage ground?

A. Yes, sir.

Q. Can you tell me what bells you got after you started away from the anchorage grounds? I don't mean all those preliminary bells there, but after you got under way up through the Astoria harbor, can you give me the bells you got from then to the collision?

A. Yes, sir.

Q. All right; tell them.

A. At first I got a slow bell.

COURT: That is, after you got into the harbor.

A. After I got in the harbor.

Q. This was at the time that you were running full speed, as I understand it, up the river?

A. Running full speed up the river, yes.

Q. Then you got a slow bell?

A. I got first a slow bell, then I got a stop bell, on top of that, then I got the reverse bell, and a backing bell; slow first.

Q. Is there a difference between a reverse bell and a backing bell?

(Testimony of H. P. Ellison.)

A. Yes, sir.

Q. All right.

A. I slowed first and then pretty much right away wide open.

Q. Wide open backing?

A. Wide open backing.

Q. Was that the last bell you got before the collision?

A. That was the last bell I got before the collision.

Q. Can you give the Court and us an estimate of the time that elapsed between those bells?

A. Not any ways correctly, I can't. It might be that—we might be busy with other things, you know, etc.

Q. Can you give an idea of the time from the stop bell to the collision—I mean your slow bell to the collision?

A. Slow bell?

Q. Yes. When you got your first bell after you were running on full speed?

A. No, I can't.

Q. Did you see the collision?

A. Why, yes.

Q. Did you see the boats come together?

A. No, sir.

Q. That is what I mean?

A. No, sir.

(Testimony of H. P. Ellison.)

CROSS-EXAMINATION FOR THE PORT OF
PORTLAND.

Questions by Mr. Minor:

Q. I want to ask you whether you obeyed those bells, or not?

A. Yes, sir, I obeyed the bells.

Mr. MINOR: With your permission, I will have to make him my own witness for this.

Q. I think while you didn't see the collision, did you see the boats while they were together, after the collision?

A. Yes, sir.

Q. Did you see the "Chinook" at that time?

A. See the "Chinook" at the time—

Q. While the boats were stuck together?

A. Yes, sir.

Q. And you saw the two boats while they were stuck together?

A. Yes, sir.

Q. Now, can you tell me, or tell the Court about how far the bows of the two boats were from the "Chinook," at that time?

A. Approximately, it looks to me that she would not be over fifty or seventy-five feet away from us.

Mr. SNOW: The bows of the two boats?

Mr. MINOR: I mean the bows of the "Thielbek" and the "Thode Fagelund" from the "Chinook."

A. From the bow of the "Thielbek" to the "Chinook"?

Q. Yes.

(Testimony of H. P. Ellison.)

A. Oh, that is a different proposition.

Q. The bow of the "Thielbek"?

A. The bow of the "Thielbek" and the bow of—
and the stern of our tow was 300 or 400 feet.

Q. What I am trying to get at, so you tell me—
can you tell me about how far apart the bows of
those two vessels, as jammed together, were from
the "Chinook"?

A. Were from the "Chinook"?

Q. Yes.

A. I couldn't say exactly. They say the "Chi-
nook" is something like 350 feet; the "Ocklahama"
then comes afterwards, sticks out behind the stern
about 75 feet.

COURT: You don't understand the question.
Did you see the dredge "Chinook," the Government
dredge?

A. I did, yes.

COURT: He is asking you how far the stern of
that is.

Mr. MINOR: No, how far the bow of the two
boats were from the "Chinook."

A. Yes, but he don't ask the question right. If
he asked the question right, then I would give a
different answer.

Q. Well, you answer me in your own way then.

A. Yes, from our stern, from where it looked
from where I stood, it looked to be not over 50 or 75
feet.

Q. To what?

(Testimony of H. P. Ellison.)

A. To the "Chinook."

Q. That is, from your stern; that is from where you were?

A. That is where I was.

Q. That is what I want to get at. Did you go out on deck at all?

A. No, sir.

Mr. MINOR: That is all.

CROSS-EXAMINATION FOR LIBELANT
WILHELMSSEN.

Questions by Mr. Bristol:

Q. Where were you looking when you made that estimate of 50 or 75 feet?

A. I was looking out the engine room of the "Ocklahamà."

Q. Which side?

A. From the port side.

Q. Where was the "Ocklahama" then?

A. She was dropped back and was making fast again.

Q. Dropped back, and was making fast again?

A. Yes, sir.

Q. So this was anywhere from 15 to 20 minutes just after the collision?

A. 15 to 20 minutes after the collision, I suppose.

Q. You don't then pretend to make any estimate of the distance for us here between the bows of the ships in collision, and the stern of the dredge "Chinook," at the time the ships crashed together?

(Testimony of H. P. Ellison.)

A. No, sir; no, sir.

Q. And you don't know, do you?

A. I don't know, no.

Q. Now, what you were trying to say to Mr. Minor, so you would understand where you were, was to explain to him that the "Thielbek" was 300 feet long?

A. Yes.

Q. The "Ocklahama" stood back of her about 75 feet?

A. Yes.

Q. And you were in that port gangway looking out?

A. I was in the port gangway looking out.

Q. And on that long angle was where you estimate this distance after she had gone ahead, and come back fifteen minutes after the collision?

A. Yes, sir.

Mr. BRISTOL: That is all.

Witness excused.

J. W. SHAVER, a witness called on behalf of The Port of Portland, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Minor:

Q. Captain, you are the president of the Shaver Transportation Company, are you?

A. No, I am the secretary and manager.

(Testimony of J. W. Shaver.)

Q. How long have you been engaged in steamboating on the Columbia and Willamette Rivers?

A. About 25 years.

Q. Do you hold any license as such?

A. Yes, sir, master and pilot, Columbia River and tributaries.

Q. And how long did you operate steamboats as master and pilot on the Columbia and Willamette Rivers?

A. About between 25 and 30 years.

Q. Are you well acquainted with the harbor down at Astoria?

A. Well, pretty well acquainted. I don't go down there very often now, but up to a few years ago, I was there quite a lot. Of course, I don't go down there very much now, the last few years.

Q. Do you know where, what one witness calls the anchorage grounds are down there, for vessels coming in from the sea?

A. Down below Smith's Point?

Q. Yes.

A. Yes, sir.

Q. Now, did you ever do any towing of sailing vessels when you were master?

A. Yes, I have done some. Not a great deal, but some towing.

Q. Now, Captain, there is in evidence here the fact that at the time this collision occurred the evidence says it was a dark night; some of them say—other evidence claims the moon was shining, but we

(Testimony of J. W. Shaver.)

will say it was a dark night; it was clear. The evidence shows the "Chinook" was anchored on the north side of the Astoria channel, and was swinging with her stern towards Astoria; that the "Thode Fagelund" was anchored above the "Chinook," and was somewhere between four and five hundred feet from what is known as the Gilman Buoy. Is that correct, Mr. Bristol?

Mr. BRISTOL: Gilman Light Buoy No. 2.

Q. Gilman Light Buoy No. 2. The "Thielbek" is a sailing vessel, between 300 and 400 feet. Have you ever seen her?

A. Yes.

Q. You know her?

A. Yes.

Q. And the "Ocklahama," you know her?

A. Yes, sir.

Q. Now, the "Ocklahama" was towing the "Thielbek," which was in ballast out from the anchorage grounds towards Portland, and the evidence shows she was coming up through the Astoria harbor, somewhere down near the Callender dock. You know that Callender dock?

A. Yes, sir.

Q. Somewhere near the Callender dock at a rate about between six and seven miles an hour, not more than seven. I will ask you to state from your knowledge of the Astoria harbor, and of those ships, taking into consideration all the facts which I have given you, whether in your judgment towing that

(Testimony of J. W. Shaver.)

ship at the rate of six or seven miles an hour, was an unusual or reckless rate of speed for the vessels to be coming?

A. No, sir, I don't think so.

Mr. BRISTOL: Same objection.

CROSS-EXAMINATION ON BEHALF OF
LIBELANT WILHELMOSEN.

Questions by Mr. Bristol:

Q. Captain do you know how long the "Chinook" is?

A. No, not exactly.

Q. You don't know how long it is?

A. I have seen her quite often, but I don't know her exact measurement.

Q. You don't know how long?

A. No.

Q. And you don't know how the tide was this particular night, that Mr. Minor asked you about?

A. No, sir.

Q. The tide wouldn't make any difference?

A. In what way? Speed, you mean?

Q. Yes.

A. Flood tide ought to be faster than ebb tide.

Q. She would go faster on flood tide?

A. Yes, sir.

Q. And if bucking ebb tide, would go a little slower?

A. Quite a little bit.

Q. You know the "Ocklahama" pretty well?

A. Yes, sir.

(Testimony of J. W. Shaver.)

Q. You know she is the biggest, fastest, most powerful towboat on this river, don't you?

A. No, sir.

Q. There was testimony here, Captain—I am glad you are here, because I want to have somebody defend the Shaver Transportation Company; you are here now. Somebody tried to tell us the "Ocklahoma" was the biggest, best and fastest tug on the river.

A. That is wrong.

Q. That can't be conceded, can it?

A. She is the biggest one towing yet, but the "Harvest Queen" is more powerful.

Q. The "Harvest Queen" is more powerful?

A. Yes.

Q. And is the bigger boat?

A. Yes, sir, bigger machinery.

Q. Take the "Ocklahoma" as you may know her, and as she is, and laying joking aside for the minute, would you limit the speed of the "Ocklahoma," with a vessel in ballast, hooked up—mind you, hooked up, and has been running at least fifteen minutes with flood tide, would you say the average speed of that vessel, in the Astoria harbor—I am not saying whether six or seven or eight, or ten or twelve miles; I don't know. But I am saying if she was hooked up, full speed, mark you, now, running with a light ship in ballast, that is delivering full power to the throttle, and I suppose—the engineer was on the stand and Mr. Wood didn't

(Testimony of J. W. Shaver.)

ask how much steam—but I suppose was carrying full head of steam, and could deliver full power, and he had been running from the red light buoy down there diagonally, across Desdemona Sands, from the fish oil place.

A. Yes, sir.

Q. He said ran out from that object, hooked up running 15 or 20 minutes up that harbor, with flood tide.

A. Yes, sir.

Q. You consider that careful navigation?

A. Yes, sir; that is the way we always run them, without some cause for slowing down.

Q. Now, then, suppose this dredge here—you say you don't know about the dredge; suppose this dredge; you are in the pilot house now of the "Ocklahoma"?

A. Yes, sir.

Q. And this dredge was 450 feet long, and is right square across the channel, but drifting upward with the flood tide, of course, and you in the pilot house of this "Ocklahoma," where you are in charge, you see the lights of the ship, and then her green light shut out; her mast head lights were open but you are not sure; in fact, you are so uncertain that you don't even answer the whistle; would you consider—would you consider now, you, in the pilot house that you were running safely with her still hooked up?

Mr. MINOR: If your Honor please, I want to

(Testimony of J. W. Shaver.)

object to that on one ground. Mr. Bristol has put in an element which is incorrect. He says her green light shut out.

Mr. BRISTOL: You had Pease testify to that right in this court room, that her green light shut out around the stern of the dredge.

Mr. MINOR: Yes, just an instant.

Mr. BRISTOL: That is what I said. I am not putting in anything except the fact. Did you understand me, or shall I say it again?

A. Say it again.

Q. Leaving the red light on Desdemona Sands down there, across from the fish oil tanks and were hooked up. She is running with this "Thielbek" light and in ballast, not drawing more than thirteen feet six, according to their log; now, they ran for 15 minutes anyway; maybe longer, but at least for 15 minutes and you are in the pilot house, and you see this dredge 450 feet long across the channel, somewhere off that O. R. & N. dock, as near as we are able to fix the place just now, for this purpose.

A. Yes, sir.

Q. And as it is described to us, and as you see it, you see here that dredge up the river; there is a vessel coming with two mast head lights and a green light, which, almost within the time I am talking, is shut out behind the end of this dredge. Now, would you still leave her hooked up, and run along at this speed?

A. Well, it would be kind of hard to tell with-

(Testimony of J. W. Shaver.)

out you were in the pilot house just what you would do.

Q. Now, you tell me; you are here as an expert witness; just tell me what the fact is. Captain, I know you are in a place where you don't like to be, but I didn't put you there.

A. The more headway you keep, the better you can steer your ship.

Q. Answer me—would you consider that speed careful navigation under those circumstances?

A. If I thought plenty of room to clear, I would. If I thought there wasn't, I might slow down.

Q. If you thought plenty of room to clear.

A. Clear the other ships, yes.

Q. Now, let's get that element in here. It is in testimony, that there was 700 feet between her and the place of this collision. Mr. Minor, it developed that was the distance afterward, 700 feet on his side of the river.

Mr. MINOR: You mean between the dredge?

Mr. BRISTOL: No, I mean between the point of collision, and the dock you referred to, 700 feet out.

Q. And that he has that space to navigate in. Now, he is running hooked up full speed from this light down there.

A. Well, hooked up. You know that don't mean full speed.

Q. I understand now. I am putting it in technical language they used here just for the moment,

(Testimony of J. W. Shaver.)

and we will get the full speed business in another moment. Let's have one step at a time, if you can tell?

A. All right.

Q. Is that the way you would run, and call it careful navigation?

A. If 700 feet—you mean 700 feet. • You will have, I suppose 700 feet to clear then.

Q. Yes, up towards Gilman's Ledge.

A. That ought to be plenty of room—700 feet.

Q. You wouldn't stop or slow down, or anything?

A. Not if had 700 feet, for if keep your headway, you have better steerage way.

Q. Now, we are running from that red light again—this is another question. We are running from that red light again 15 or 20 minutes, and we see this dredge across the channel, as we described before, with the lights of this ship coming from behind it, as it appears to us from the pilot house, and the green light shuts in by the end of the dredge, he says. Would you consider it careful navigation to run the "Ocklahoma" and the "Thielbek" full speed right along under those conditions?

A. Well, if the green light showed out, that would show the steamer was heading into shore, and if you kept on the other side, would be good judgment. Of course, if it was going to run right across her bow, it wouldn't be in front of her.

(Testimony of J. W. Shaver.)

CROSS-EXAMINATION ON BEHALF OF
GRACE & COMPANY.

Questions by Mr. Snow:

Q. This is not cross-examination, but may become an important matter to us. Captain Shaver, you did some towing for the "Colusa," and for the "Damara," at the time of this collision, moving your vessels so you could get this cargo transferred?

A. I don't remember. We very likely did, but I don't remember. Would have to look at the books and see.

Q. Who would be the man I would apply to if I have to do so, in order to get this testimony as to this move of this "Damara" and "Colusa"?

A. The bookkeeper, or one of my brothers who stays in the office. He attends to that part of it.

Q. You don't know anything about that matter yourself?

A. No, I would have to look at the books and see.

Q. Here are the two items. We may be able to facilitate the matter. You have got a bill against the "Colusa" and her owners for moving the "Colusa" from the Portland harbor, through the bridges, by the use of your steamer "Cascades," a bill for \$35. Do you know anything about it?

A. No, sir, but that would be the price.

Q. That is the regular price?

A. Yes, sir; I know that much. \$25 for the

(Testimony of J. W. Shaver.)

tow, and \$10 extra for the bridges. I have something to do with that part of it.

Q. Here is another bill that you have to the "Damara." Moving the "Damara" from the Portland Lumber Company to the North Pacific Lumber Company, use of the steamers "Cascades" and "Shaver," each \$35—\$70.

A. Yes, sir.

Q. Those are the usual bills for that service?

A. Yes, sir.

CROSS-EXAMINATION FOR LIBELANT
WILHELMOSEN.

Questions by Mr. Bristol:

Q. And they were paid to you by Captain Hansen?

A. I don't know about that.

Q. Who would know that?

A. The bookkeeper or my brother at the office.

Q. I forgot to ask—are you now navigating on the river as a pilot?

A. No, sir; not steady. I sometimes go.

Q. You take a trick at the wheel once in a while?

A. Yes, sir.

Q. But you haven't been navigating yourself for some years?

A. Well, not regularly, but I often make trips. I was down the river yesterday.

Mr. SNOW: I would say for the benefit of Mr. Bristol, that these bills are marked Grace & Co. papers.

Witness excused.

CAPTAIN I. TURPPA, recalled on behalf of Knohr & Burchard.

DIRECT EXAMINATION.

Questions by Mr. Wood :

Q. Captain Turppa, when you were down at the anchorage ground, as you have already testified, what orders, if any, did you give about the lights that were to be put on the "Thielbek"?

A. When we were made fast, we was passing this screen over on the ship there, and the captain wanted to know—Captain Bergmann of the "Thielbek"—he wanted to know what that thing was we was passing over the ship, and I told him that that was for the side lights. That we will give him a side light that carries a green light, and we will attach an electric cord to it, so that we will have electric light, and I told him he shouldn't put out no lights whatever, that we will put out all the lights that we will have.

Q. Do you know whether those orders were obeyed?

A. He was talking to his mate. I can half-way understand that they were talking about the lights, but I can't understand enough of it that I can tell just what he was saying.

Q. But I mean, do you know, from your actual observation, whether those orders were obeyed, or not?

A. Well, no, I can't tell that.

Q. After the collision, state what orders you gave, if any, about lights?

(Testimony of Captain I. Turppa.)

A. Well, after this electric cord was carried away, and we couldn't put out—we couldn't replace that because the lights, the circuit on the cabin deck, the fuse was burned out. I told them then to put out his green light on his starboard side. That was after we made—when we was making her fast to her after the collision.

Q. When you were making fast to her again?

A. Yes, after the collision.

Q. Why didn't you tell him to put out his red light?

A. Because we were carrying that.

CROSS-EXAMINATION FOR PORT OF
PORTLAND.

Questions by Mr. Minor:

Q. You knew the condition of the Astoria harbor that night of the collision?

A. You mean clear weather?

Q. Well, do you know the weather, and you knew what vessels were in that harbor that night?

A. Yes, sir.

Q. You went through it going down, didn't you?

A. Yes, sir.

Q. You were on duty when you went down?

A. I knew what vessels were there when I went down.

Q. And you knew what vessels were there after you got up and after the collision too, didn't you?

A. Yes, I found out after the collision.

(Testimony of Captain I. Turppa.)

Q. Now, you know also the condition of the tide, and wind that night, at the time of the collision?

A. Yes, I know the condition of the tide.

Q. Now, Captain, I will ask you to tell the Court whether, in your judgment, operating the "Ocklahoma" and the tow "Thielbek," at the rate of six or seven miles an hour, from the anchorage ground up to the point of collision, was, in your judgment, the ordinary or usual, or proper speed?

Mr. BRISTOL: Same objection.

A. Why, it was nothing unusual. We never slow down for—we never run slow going past Astoria, any more than any other place along the river, unless occasion would require.

Q. With the harbor as it was that night, was there such occasion as to require your slowing down at all, so far as—

A. Well, the way I saw the harbor the night before, I couldn't give a pilot orders to run any other ways but to go ahead full speed.

Q. Those were the orders you gave the pilot?

A. Well, I didn't give him any orders, but I shouldn't have known any reason the night before why I should give him orders, any others, but to go full speed.

CROSS-EXAMINATION FOR LIBELANT
WILHELMSSEN.

Questions by Mr. Bristol:

Q. You don't mean to say that you told Pease the night before to run full speed up that river?

(Testimony of Captain I. Turppa.)

A. I never told him anything about that. I was expecting he would. I was expecting he would run full speed.

Q. And you also expected Pease in running and operating that "Ocklahoma" that night, to run it and operate it, you being master, and his trick at the wheel, and you going off your watch, that he would run in a careful and prudent manner, as consistent with good seamanship, wouldn't you?

A. Naturally would judge he would do that for his own sake.

Q. And I understand your testimony to be on Mr. Minor's subject matter, that in case circumstances arose that it would be up to the ordinary man of good and skillful and careful seamanship to do otherwise than run full speed, you expected Pease to do that, didn't you?

A. Well, I expect he would do that for his own sake, without being told, or anything; that he would do that, which I think he did.

Q. Well, of course you don't know anything about that?

A. Well, I heard him—

Q. You were asleep, weren't you?

A. Well, I heard him give the bells stopping and slowing down first; stopping, then I heard him give a backing bell.

Q. Of course, that is as to speed; you wouldn't know anything about the direction of the ship's head, or anything like that?

(Testimony of Captain I. Turppa.)

A. No, I don't know about that.

Q. I might say in connection with this subject matter, that Mr. Minor has interrogated you about, the usual course of vessels plying inwardly from the vicinity of that red post light on Desdemona Sands opposite that fish oil dock, across there on the north side of the channel, and up towards Elmore cannery light, and towards Gilman light, is in close to the docks, usually making the heading out to Gilman Light Buoy No. 2.

A. I didn't know the Gilman Buoy has a number to it.

Q. It is marked here on this plat here, Flashlight Buoy No. 2.

A. Well, maybe it is. I wouldn't deny that.

Q. The buoy in the river is the one just above the O. R. & N. dock, or just above the railroad dock?

A. The one that has a gas light?

Q. Yes, that is the one we refer to.

A. Yes.

Q. Now, it is usual, isn't it, for all the vessels to run that course?

A. Well, they usually run parallel the docks, and then take a turn towards Gilman Buoy.

Q. You have to make a turn in there, don't you?

A. Yes, sir.

Q. Your usual place to make that turn is right by that Callender dock, or a few feet either way?

A. Yes, somewheres in the vicinity of that O. R. & N. dock, somewheres in that vicinity.

(Testimony of Captain I. Turppa.)

Q. And I understood you to say the other day that the "Ocklahama" made a good speed with a fair tide. Mr. Minor has limited that to six or seven miles in his question, and I would like to ask you this: Whether, when the "Ocklahama" had got under way and was running full speed with the "Thielbek" that night, whether that speed that she could make with the "Thielbek" which would take her on the flood tide—understand that the flood was still running and it would be high water about 5:40?

A. Yes, but was a very small tide, and wasn't very strong running up.

Q. And there wasn't any current in the river to help him along at all; you would have just as soon have started up with the "Thielbek" on an ebb tide, as stated up on a flood, I understand?

A. Not quite, but expect to make it.

Q. Your purpose in starting the "Thielbek" at 3:05 in the morning was not, of course, to get any benefit from the incoming flood?

A. Well, some, yes, and—

Q. Well, whatever it was, she had the benefit of it, didn't she?

A. She would have some benefit of course, yes.

Q. And whatever that benefit was, would be added to her regular speed she can make with that kind of a tow, wouldn't it?

A. Yes, she probably made a little better time.

Q. Yes, and that being the case, suppose you came along and you saw the "Chinook," I under-

(Testimony of Captain I. Turppa.)

stand 450 feet long, laying, as some of the witnesses have described it, directly across the fairway?

A. Yes, sir.

Q. With her stern towards, I believe the upper end, or approximately the upper end of the O. R. & N. dock?

A. Yes, sir.

Q. And this "Thode Fagelund," as far as you could see in your pilot house,—I am assuming as it appeared to you—coming from above that dredge with her mast head light showing and her green light showing; now, you first saw her, and then her green light became, as I understand it, obstructed behind the end of this dredge; would you consider it careful and prudent navigation to continue full speed ahead with your tow, the "Thielbek"?

A. Yes. When I hear another vessel blowing a whistle—

Q. I didn't say anything about another vessel blowing a whistle. I am talking about what you saw. I didn't say anything about a signal. Now, confine yourself first to the fact that all that was observed by you at that time was these two mast head lights, which, I understand are to be assumed as appearing to you over this thing called the dredge, and that over that you saw from your place a green light, and then the stern of the dredge, as I understand, it is claimed shut in that green light, so you didn't see it for a minute—not a minute. I won't say the length of time, I don't know how long.

(Testimony of Captain I. Turppa.)

Would you consider it prudent and careful, and would you, as the master of the "Ocklahama" continue up that river in the way you have described it, at the full speed she could pull the "Thielbek"?

A. It would depend on how far I was away from her. If I was a mile away from her, or half a mile away from her, would think it perfectly safe for me to go full speed ahead.

Q. The distance you were away from her has been variously fixed here, from a distance approximately near somewhat below the Callender dock, and a place somewhere in the vicinity, as Mr. Minor put it, 450 feet or thereabouts, out northward and in the river, coming down towards you from the Gilman light flash buoy.

Mr. MINOR: I didn't put it 450 feet out in the river. . You can put it that way if you want to, but I didn't put it there.

Mr. BRISTOL: Where do you want to put it?

Mr. MINOR: Put it anywhere you please. I didn't put it there.

Mr. BRISTOL: You certainly said 450 feet out.

Mr. MINOR: I didn't ask any such question. The "Fagelund" was 450 feet off. I asked that question, but you say here you were 450 feet off.

Mr. BRISTOL: I am confused again. Let me get this correct. Now, if I have, by reason of the complexities of the case here used wrong expressions, it is a slip of the tongue. I will repeat it again: You are running with the "Ocklahama";

(Testimony of Captain I. Turppa.)

you are in the pilot house and running the "Ocklahama" up the river, as described in the question of Mr. Minor, off this dock, and on that side of the "Chinook," and this dredge "Chinook" is across the channel, with her stern pointing approximately to the upper end of the O. R. & N. dock, and this "Thode Fagelund" is beyond the dredge, with her mast head lights showing and her green light showing to you, and about, as I have said, somewhere in the neighborhood of 450 feet, or thereabouts, off that Gilman Buoy in that direction, on that side of the river. And with reference to dredge's stern, I believe they have placed it—anywhere from six to eight hundred feet between the O. R. & N. dock and the end of the dredge. Now, you are coming along up the river under those circumstances with the "Ocklahama"; would you consider it prudent and careful navigation to continue at full speed?

A. Well, I can't understand how far I am away. It depends entirely on how close.

Q. Well, say, about a quarter of a mile.

A. A quarter of a mile. I ought to be able to go ahead full speed for a quarter of a mile.

Q. And hold your course, and go up around by the way you intended to go?

A. Yes, in a quarter of a mile. I ought to go around either side, if I had a half a mile to go in.

Q. And if you saw a vessel in that position, like the "Thode Fagelund," showing her green light to you, and you intended to go up around that way,

(Testimony of Captain I. Turppa.)

and take advantage of that quarter of a mile space between you what would you do?

A. Well, I wouldn't attempt to cross her bow, whatever I did. I wouldn't attempt to cross the bow of an approaching vessel.

Q. Well, I asked you what you would do, not what you would not do.

A. Keep my course.

Q. Keep your course?

A. Keep my course, yes.

Q. Well, if she was showing her green light to you, you would certainly be running across her bow then, wouldn't you?

A. No.

Q. What?

A. Probably would think she was going down some too.

Q. Beg pardon?

A. I would naturally think she would be going down too when I saw she was way too. She would be going down.

Q. You would still hold your course?

A. I would, yes.

Q. And would you give any signal?

A. Yes, maybe I would, if the other vessel hasn't signaled her intention before I got—before I gave a signal.

Q. I say, would you signal her?

A. I would.

Q. What signal would you give?

(Testimony of Captain I. Turppa.)

A. If I only saw the green light, maybe I would—the chances are I would blow two whistles.

Q. Would blow two whistles?

A. The chances are I would.

Q. And you would blow two whistles and hold your course?

A. I would.

Q. You would blow two whistles and hold your course?

A. Probably I would.

Q. What do you mean by probably?

A. Well, if I blow one whistle, I would have to cross her bow, wouldn't I?

Q. I am asking you whether, if you hold your course, what kind of a signal would you give to signify to that fellow you were going to hold your course, and keep running up that river?

A. Would try to keep on the starboard side of that vessel.

Q. Well, all right. That is all.

Witness excused.

FRED A. BALLIN, a witness called on behalf of Knohr & Burchard, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Wood:

Q. Mr. Ballin, please state what business you are in?

(Testimony of Fred A. Ballin.)

A. I am Naval Architect and Consulting Engineer, also surveyor for vessels.

Q. For what Underwriters?

A. Well, I am surveyor for the German Lloyd's and Norwegian Lloyd's, and for Underwriters' Bureau Veritas.

Q. Where do you live?

A. Portland.

Q. Carry on your business as a naval architect here?

A. Yes.

Q. Where were you educated?

A. Germany.

Q. At what place? In what school?

A. At the Naval Academy in Berlin.

Q. How long have you been in business as a naval architect and consulting engineer?

A. Between about 35 and 40 years.

Q. You mean by that, part of your business is to build and repair vessels?

A. Design and build. I have run ships. The last ten years, fourteen years I have done nothing but design and superintend construction.

Q. Mr. Tollefsen, the engineer of the "Thode Fagelund," gave the number of revolutions that his screw would turn at slow speed, and half speed, and the diameter of his propeller, the pitch of his propeller, and the percentage of slip, and stated, and I think his counsel agreed with him, that when those figures are given, the distance that the "Thode Fage-

(Testimony of Fred A. Ballin.)

lund" would travel, through the water, could be calculated. Is that correct? Can that be done?

A. Yes.

Q. I will give you those figures as given by Mr. Tollefsen, and ask you to calculate for me. Mr. Tollefsen said, on the night in question, that is, the night of the collision between the "Thode Fagelund" and the "Thielbek," the "Thode Fagelund" weighed her anchor, and got under way, and ran for five minutes at slow speed, and he said that the number of revolutions his propeller would make a minute at slow speed, would be about thirty. He then said that he put his engine at half speed, and ran at half speed for five minutes, and that the number of revolutions his propeller would make at half speed would be forty-eight per minute, forty-eight to fifty he said. But he said in the river it would be forty-eight; the pitch of his propeller he gave as seventeen feet; the diameter of his propeller he gave as sixteen feet and ten inches; the percentage of slip he gave as fifteen per cent. From these figures, I will ask you to calculate and tell us how far the "Thode Fagelund" would have traveled through the water in those ten minutes?

Mr. BRISTOL: In that connection, Mr. Wood, I would ask whether the fifteen per cent is effectiveness, or fifteen per cent slip?

Mr. WOOD: Fifteen per cent slip is the way Mr. Tollefsen says.

Mr. BRISTOL: Of course I disagree with you

(Testimony of Fred A. Ballin.)

on that. The question is, that Mr. Wood asks in that record. I think he misapprehends the question. Mr. Wood asked of Mr. Tollefsen, "If everything is working right, she will move that much? Mr. Bristol: No, that is not what he means at all. Witness: I mean if the propeller had gone through the water straight ahead, she would have gone 6630 feet through the water, but according to the slip of the propeller, she had not got so much. Q. I see. Then about how much has she got, allowing for the slip of the propeller? A. It is about fifteen per cent."

Now, the difference between us is that I take it that that is fifteen per cent effectiveness, and eighty-five per cent slip. He considers it the other way. Of course he can put this question to this expert witness with that qualification. This is my contention so your Honor understands.

COURT: I understand.

Mr. BRISTOL: Mr. Tollefsen did not testify that fifteen per cent was the calculated slip.

COURT: According to the testimony, they didn't go 6,000 feet. That would be over a mile, and all agree this collision occurred within 1000 or 1500 feet of Gilman Buoy.

Mr. BRISTOL: Exactly; that is less than a mile from Gilman Buoy to Callender dock.

A. Well, according to the question asked, if the figures were right, and the vessel was running at slow speed, slow speed and had already attained

(Testimony of Fred A. Ballin.)

a certain momentum, had attained a speed at that time, she would travel under those conditions you have quoted there 6630 feet. In other words, she would travel 2175 feet under her slow speed, and 3455 feet under her half speed.

COURT: 350 feet more than a mile.

Q. And that means, as I understand it, through still water?

A. That would be in still water, yes.

Q. Now, there seems to be some discrepancy in our ideas. What is meant by slip of the propeller, and I will ask you whether slip of the propeller is a well understood term in naval architecture or not?

A. It is well understood. The slip of the propeller is a loss of the speed of the vessel. If we figure the actual advance of the propeller through the water, as going through a solid mass; in other words, if the screw travels in a given path, and cannot slip backwards, then if it makes so many revolutions, the vessel goes ahead a certain amount. If the resistance of it, and the material, the medium through which the propeller travels is of resilient nature, then it will slip backwards a certain amount which is loss. So, in order to qualify a fifteen per cent slip, it is fifteen per cent of loss of what the propeller would have traveled if there had been no resiliency.

Q. If an engineer of a steamer tells you that a steamer has a fifteen per cent slip, and you were calculating the speed, you mean, as I understand

(Testimony of Fred A. Ballin.)

you, that her effectiveness is fifteen per cent less than it would be, theoretically, if the propeller were moving through a solid mass?

A. Yes. Now, permit me to say one thing for your general information. That every vessel that is navigating the high seas knows actually what a vessel will slip in still water, because on that knowledge, they base the speed of their vessel, what they call the dead reckoning. They take the number of revolutions on the revolution count, and know, in case of fog or dark night, how much they actually advance, allowing of course for the current, etc. Now, the slip of the propeller will change from the normal speed—

Q. From what?

A. From a normal speed. That is, what ordinary speed she traveled at when you slow her up, and ordinarily her slip is less at slow speed than it is at high speed.

Q. Have you ever heard of a vessel that lost 85 per cent of her effectiveness?

A. No.

Q. As Mr. Bristol thinks this man may have meant?

A. No; such a thing wouldn't be probable or possible, because a vessel wouldn't be sent out that way.

Q. Do you know the "Thode Fagelund"?

A. Yes, I know the "Thode Fagelund." The ordinary slip of those propellers varies from twelve

(Testimony of Fred A. Ballin.)

to fifteen per cent. On that propeller of these dimensions, and this proportion of diameter and pitch is usual.

Q. Then the slip is not a very variable factor?

A. Not—on this type of vessels nearly a constant factor.

Q. Mr. Ballin you said that you were the underwriter for—I mean surveyor for the underwriter. State what you have to do with the repairs that were made on the "Thielbek," surveys, etc.?

A. I was requested by the captain and by Henry Hewitt, who then was agent for the German underwriters, to make a survey on the damage that she had sustained, and to prepare specifications on the repairs, superintend the repairs, and make a report on the repairs later on.

Q. Did you make the survey?

A. I have.

Q. I wish you would describe briefly, and in a general way, the damage that you found on the "Thielbek."

A. The damage on the "Thielbek" was confined to her bow portion on her port and starboard sides. On the port side she was crushed in; on the starboard side was a large hole punched into her, a hole about two strakes down from the sheerstrake. Her decks were distorted, and deck beams were bent, and general minor damages in consequence of the collision that she had sustained, that she went through.

(Testimony of Fred A. Ballin.)

Q. She was ordered upon the dry dock, was she not?

A. She was, yes.

Q. Who ordered her there and for what purpose?

A. Myself and Captain Veysey. We ordered her on the dry dock for the reason that it was apparent that when the two vessels came together, the "Thielbek" had raised up.

Q. Ridden, you mean?

A. That the bow of the "Thielbek" had raised up, and had entered into the "Fagelund," and later, when they had pulled apart, that section of her hull had dropped down underneath the water again, and so, when we made our inspection, we couldn't see it without having her put in dry dock; so we suggested to put her on the dock.

Q. How long was she exposed to the atmosphere in the dock, if you know?

A. In the dry dock?

Q. What?

A. In the dock, you mean?

Q. Yes, if you know?

A. No, I do not know, because I didn't make the inspection. I was in Seattle that day, and Captain Veysey made the inspection. I did not make that inspection.

Q. Ordinarily, in putting a vessel on a dry dock, how long is she exposed to the air?

A. It depends a good deal on what is to be done

(Testimony of Fred A. Ballin.)

to her, but I should say it takes all the way from six to ten hours.

Q. Do you know whether the repairs on her were prosecuted as fast as they could be, from the time she was hurt and brought up here, until the repairs were finished?

A. I believe they were done as fast as the contractor could do it with the facilities he had.

Q. What facilities did you have for observing the work?

A. Well, I was back and forth between the dock and the ship continually.

Q. Was that part of your duty?

A. Yes, sir.

Q. There has been some testimony in the case by Captain Veysey, that five and a half days were lost because the contractor and Captain Bergmann departed from the specifications, and attempted to roll out some of the bent plates of the vessel, and use them over again, instead of putting in new ones, and I would like your explanation of that, if you have any?

A. As far as I remember, the contractor had to send out of town to get plates of the proper size. There were none in Portland to be had.

Q. What is that?

A. There were none to be had in Portland and, while we were waiting for those plates, the contractor asked Mr. Bergmann whether it would be just as good to take some of those plates that were

(Testimony of Fred A. Ballin.)

very slightly mashed, that were just bulged in, and re-roll them and save time in waiting for those plates; would make quicker work, and with the consent of Captain Bergmann was done, but when my opinion was asked about it, I told them I was perfectly satisfied as far as the underwriters were concerned; the plates were just as good as new, but it was up to Captain Veysey, who represented the Classification Society, to give his consent. If I remember, there were two or three plates put on the ship that way, when Captain Veysey came aboard and refused to accept them, not because they were better or worse, but simply because they didn't come up to his specification; and I think it was the same day that those other plates had arrived in the shop there, and if I remember, they were ready to put on in about two days.

Q. Well, how much time, then, was actually lost by this departure from the specifications?

Mr. BRISTOL: This brings me back to my former objection that we are not liable, to cover that same point, for any delay on the part of the contractor of the "Thielbek" in making her repairs as they are not incident to the collision.

Mr. MINOR: I want to make an objection on the same ground.

COURT: Go ahead.

A. I should judge the actual delay on that thing did not exceed over a day because they waited for material anyway.

(Testimony of Fred A. Ballin.)

Q. You said you thought the contractor proceeded with the work as vigorously as he could with his facilities, apparatus. I want to ask you whether or how his shops compared in that regard with other shops in Portland?

A. Well, the Portland Boiler Works have a boiler shop, and in a job of this kind, most of their work is right on the ship itself. In other words, the facilities of a large shop do not count any more than simply punching the holes and doing the preparing, for the work is aboard the ship. The delay is generally on the vessel itself in fitting and riveting, and I think in that respect the shop was as well prepared as any other shop, with that exception, that the shop didn't have any dock.

Q. Didn't have any dock?

A. No.

Q. What shops here have docks?

A. The Willamette Iron & Steel Works have, and the Vulcan Iron Works have.

Q. Would it have aided this particular case if the shop had had a dock?

A. It would be taken into consideration in canvassing our bids. The Portland Iron Works bid was low enough--

Q. Did you canvass the bids?

A. No. Mr. Hewitt and myself and Captain Veysey canvassed the bid together. We made our recommendation to Captain Bergmann.

(Testimony of Fred A. Ballin.)

Q. That is what I mean. You were present at the opening of the bids and canvassed them?

A. Yes, I did.

Q. Well, I will show them to you then and introduce them. Just look through this bundle of papers that I hand you and state what they are.

A. Well, those were the bids received, as far as I remember.

Mr. WOOD: I offer them in evidence.

Mr. MINOR: Why do you want to put the evidence in.

Mr. WOOD: I simply want to show that we accepted the best bid. If you admit that, all right.

Mr. BRISTOL: I told you we would, as far as I am concerned. I concede it cost you \$5950 to put those plates on, but I wouldn't concede it cost you \$7250. That is just my position.

Mr. WOOD: All right. I know that. I won't put these in.

Mr. BRISTOL: But of course I contest your right to recover, as I said before.

Mr. WOOD: I understand your position.

Mr. BRISTOL: And your right to recover that \$1300, because I think that delay is on the ship, and not on us.

Q. There were thirteen days; I think there is no dispute about this overtime, in the contractor's completion of the ship.

Q. I want to ask you, Mr. Ballin, if you know what that was caused by?

(Testimony of Fred A. Ballin.)

A. Well, it was caused, as far as I could observe by the fact that the contractor was unable to get a sufficient number of men to do the work, and the right class of men to do it.

Q. You don't know what the reason was for his inability to get them?

A. Well, the men weren't to be had in the city.

Q. They weren't here?

A. They wasn't here at the time. I might explain here that shipbuilding in this port is almost a lost art, especially steel shipbuilding.

Q. Well, you think it would have been better to send this "Thielbek" over to Seattle for repairs?

A. No, I don't know as it would be any better, because of the time lost in bringing the vessel back and forth, and towing her around might make up for the difference, but we had no bids from Seattle; but Captain Bergmann had no choice but taking the only bids he received; but whenever a job of this kind comes up, these men go back and forth from one town to another. They go as far as 'Frisco, and up to British Columbia. When the work comes up, these iron workers follow the work.

Mr. BRISTOL: It is customary to follow that work around?

A. They follow it all over. These men follow all over.

Q. I want you to state, if you know—I don't know whether you know about this or not—what

(Testimony of Fred A. Ballin.)

effect the exposure to the air has on the anti-fouling composition generally put on ship's bottoms?

A. Well, whenever we build boats—

Q. What?

A. Whenever we build boats, we always paint them just before launching. In other words, if we have an anti-fouling, or anti-corrosive paint, on the bottom of those ships, we try to launch them with the paint in a wet condition.

Q. In a wet condition?

A. Yes.

Q. There is a bill here I am going to introduce, showing that \$465 was paid for painting the "Thielbek" with this composition, and I want to ask you whether or not you know that is a reasonable charge, not including the dry dock.

A. I will say that includes the dry docking. I believe for a vessel of this size, that is a reasonable charge.

CROSS EXAMINATION FOR LIBELANT
WILHELMSEN.

Questions by Mr. Bristol:

Q. Mr. Ballin, I understood you to say that a contractor's delay of this kind would be upon the ship.

A. I said what?

Q. What?

A. Did I say so?

Q. I asked you if I understood you to say that?

A. No.

(Testimony of Fred A. Ballin.)

Q. You didn't say anything about that, did you?

A. Not that I remember.

Q. I understood in your testimony, you said that this delay would be on account of the "Thielbek." When you were answering Mr. Wood's question, I understood you to say that.

A. You misunderstood. I didn't pass any opinion on that.

Q. All right. You and I, then, will get down to that point later. Going back to the first question Mr. Wood asked you, I will read a little further in this testimony, a little bit more of what Toleffsen said, and refer you to the facts as follows: That after they had got through talking about the screw, he said: "Well, I will do it. That is 994 feet. Q. 994 feet? A. Yes, sir. Q. Is that the distance she would travel? Witness: She had gone through the water what I think 994 feet." Now, how do you reconcile your figures of 6630 feet with the engineer who knew his engines? Knew what she was doing? Knew the facts under which she was working? And you say she went 6630 feet, and he says she actually went through the water 994 feet. Now, keeping that question before you, I will state these facts parenthetically: The "Thode Fagelund" at that time, you understand, was loaded very heavily; she had a full hold and between decks cargo of dimension lumber and piling; she had a very considerable deck load of piling. She had 1037 and odd cases of dynamite; and she was drawing 25—well, approximately 26

(Testimony of Fred A. Ballin.)

feet, 251½ feet on an even keel; and she started from the anchorage against a flood tide. or a tide that was flooding; and besides that, she is three hundred and about eighty feet long, and about fifty feet beam. Now, having those statements before you, and assuming them to be correct, and the statement of the engineer, that he actually went through the water 994 feet, how do you, if you will, please, reconcile that to your statement that she went through the water 6630 feet?

A. If you asked me the question in the first place, or if I had been asked the question in the first place, what speed the vessel would attain from a standstill, under slow bell, under slow speed bell, at the expiration of five minutes, I wouldn't have given you this answer. Now, I was asked to tell you what distance this vessel would travel in the space of five minutes on slow bell condition, and I told that; I would have to assume then, that the vessel is moving, but when you have to overcome the inertia of a mass (it amounts in this case to probably 5000 or 6000 tons) and you start an engine at slow speed, at thirty revolutions a minute, I would say it will take at least two or three minutes until this mass commences to move, at any kind of speed.

Q. Yes. Now, get down to that, Mr. Ballin, so as to give you the full facts, Mr. Toleffsen, the engineer, said also that between the time that he would get his engine—without going and looking at

(Testimony of Fred A. Ballin.)

the testimony, I state it from recollection—this was an engine of about 1500 horse power. It had a circulating pump and condenser machinery attached to itself, and that they had to work the engines a certain length of time, an hour, before they got her warmed up. Then she started promptly, and that then, when they had her reversed, the various valves and one thing and another, and worked the pressure through high pressure, intermediate and low pressure, as a matter of fact, it would probably be from the time he got the signal to the time of turning the full number of revolutions, a short space of time; he fixed that at not to exceed a half a minute after she was so warmed up; then he could go into the next action with very little difference. Then when it came to full speed if she was on the high seas, and when she had good fairway, turning up the full number of revolutions, she would make about nine knots to the hour. Now, having regard to the fact that this vessel started from a dead standstill against a flood tide, and that she was loaded, as I have said, and about the size that I have said, do you want this court to understand that vessel moved 6630 feet?

A. No, I do not.

Q. No. That is what I thought. Now, we will go back to the "Thielbek." I understand you to say, that her bow, as you marine gentlemen express it, rode upwards on the "Thode Fagelund," and that naturally when she dropped down, it would be with

(Testimony of Fred A. Ballin.)

such motion it would cut her rivets, and cut her plates as she dropped into the water again.

A. No, that wouldn't—

Q. That wasn't your idea?

A. That wasn't—

Q. Isn't it a fact, then, Mr. Ballin, that they cut a lot of rivets on this boat, while she was coming up the river from this collision, and, when you saw the "Thielbek" and made the survey a whole lot of rivets and plates were cut?

A. Not that I am aware of.

Q. What is the fact about their cutting rivets?

A. Whatever they did before they got here, I don't know anything about.

Q. When you saw the "Thielbek" first and made your survey, were all the rivets in her bow cut ready for removing?

A. No.

Q. Were any cut ready for removal?

A. Not that I know of.

Q. What is that?

A. I didn't see any cut.

Q. I mean you didn't see the actual act of cutting them, but were any of the rivets removed when you made your survey?

A. Not that I know of.

Q. None at all?

A. I didn't notice.

Q. I show the witness Photo A and Photo C and

(Testimony of Fred A. Ballin.)

Photo B, being bow views on the "Thielbek," and ask you to look first at Photo D.

A. Here is the sketch I made at the time.

Q. Now, I show you this Photo C, and call your attention to the fact that the rivets are punched in a large number of the plates and do you think that punching of the rivets was done between the time of the collision and the time of the report, or was it done coming up the river, or when was it done?

A. It was done after the repairs were ordered.

Q. It was done after the repairs were ordered?

A. Yes.

Q. And pursuant to your orders and Mr. Veysey's?

A. Yes, sir.

Q. And wasn't due at all to the sliding motion in the collision?

A. Well, now, permit me to—

Q. Exactly; that is what I want you to do.

A. As far as I remember, there are a few rivets; you can't distinguish between a rivet knocked out with a chisel and hammer, and rivets that might fall out through a collision. If I remember right, there were a few rivets had fallen out and broken loose, but the photograph here shows the rivets knocked out by the contractor. There might have been a few.

Q. Those rivets were not knocked out by the collision?

(Testimony of Fred A. Ballin.)

A. No.

Q. The only thing that happened to the "Thielbek" by the collision was the puncturing of her starboard bow plates by the haft of the anchor being punched through them.

A. No, no; and the starboard and port bow was bent in, crushed in.

Q. That is, shifted out of shape?

A. I have my notes here that I made at the time, when I went first aboard, and I have the number of plates from the sheerstrake downwards. One, two, three, four and five.

Q. On the starboard side?

A. That would be on the port side now, from the sheerstrake right aft—right aft of the hawse pipe, was bent in a seam; No. 1 plate was buckled; No. 2, 3, 4 and 5 were all buckled; that is, bent in.

Q. That is on the port side?

A. On the port side. Now, on the starboard side, No. 1 and 2 strakes had plates pierced.

Q. Was that all on the starboard side?

A. And there was one—four plates were bent so bad that they needed renewal and removing. One plate had to be removed and faired into place, and one plate had simply a small buckling that was repaired right in place without taking it out, so all together, there were two, three, four, five, six plates taken out on the starboard side.

Q. Mr. Ballin, in connection with that injury that you have described now, would you say, or did

(Testimony of Fred A. Ballin.)

you say, that injury was caused by the impact of collision?

A. It was simply caused by piercing through the "Fagelund."

Q. By what?

A. By piercing, by cutting through the "Fagelund."

Q. But cutting through the "Fagelund"?

A. Yes.

Q. Was any of that due to other causes than mere cutting through the "Fagelund"? Suppose they had had that anchor catheaded or taken inboard. Would the injuries have been as extensive as you have described them?

A. Probably that hole in the plating would not have occurred.

Q. Those injuries you have described in the "Thielbek," did they, or did they not, indicate to you whether the impact would be what would be called one of great suddenness and speed, or was it one of a slow, crushing force?

A. Well, the injury, I think, was caused in the first place by piercing through the boat by the impact, and further by the motion of the two vessels interlocked together.

Q. Trying to get them apart?

A. Trying to move them apart. Well, it might have been also due to the vessel moving, by the current or other causes, by there still being movement, motion, and then still having a hinged move-

(Testimony of Fred A. Ballin.)

ment between the two of them; they are not tight enough together to act individually.

Q. Would it be correct to say that the fact that the "Thielbek" had a prow the shape she had, a stem the shape she had, like an English vessel, like an ogee, and that she would ride up on anything when she would hit it, that a ship of that prow would have anything to do with the character of her injury.

A. I believe that due to that bow, the injury to the "Fagelund" was less than it was—

Q. The injury to the "Fagelund" or the "Thielbek"?

A. No, the "Fagelund."

Q. Was less?

A. Less than it would have been otherwise.

Q. For that reason?

A. Yes.

Q. You state that on your opinion as a marine architect?

A. Because if she had struck with a straight bow—

Q. Like the "Thode Fagelund" has.

A. (Continuing) With a straight bow, I believe the damage would have been more.

Q. Has the Willamette Iron & Steel Works got a dry dock?

A. No, the Willamette Iron & Steel Works has not.

(Testimony of Fred A. Ballin.)

Q. The Oregon Dry Dock Company has a dry dock?

A. Yes.

Q. It is operated in connection with the Willamette Iron & Steel Works, is it not?

A. Well, in a way, and in a way not.

Q. Well, it is right next to the shop?

A. Right next to the shop.

Q. If the "Thielbek's" contractor you said, had the facilities of a dry dock, he would have been able to prosecute his repairs with more diligence—isn't that what you said?

A. No, not a dry dock. I said a dock adjoining the shop.

Q. But he didn't even have a dock—this contractor?

A. No.

Q. Not that you could tie the ship to?

A. No.

Q. What did you have to do—take these plates from the Phoenix Iron Works, or whatever it was?

A. The Portland Boiler Works.

Q. The Portland Boiler Works, and take these plates and bring them around to the dock?

A. The boat was repaired at the Irving dock on the east side of the river.

Q. And you had to truck these plates from the Portland Boiler Works clear up to that dock to put them on?

A. They put them on a scow.

(Testimony of Fred A. Ballin.)

Q. There is evidence in this case that the "Thielbek" lay on the Oregon dry dock?

A. You understand she wasn't dry docked until after the repairs were done.

Q. I don't care when. I don't care when, but the fact is, she was on the dry dock, isn't it?

A. Yes, she was put on.

Q. Can you tell me—did you see her on that dry dock?

A. I did not. I was out of town the day she was put in the dock.

Q. Well, can you tell me this: That dry dock extends east and west across the river, doesn't it?

A. Yes.

Q. Well, a ship like the "Thielbek" being put in that dock, would she be put in stem first or stern first.

A. Put her stem first.

Q. Then will you explain to me how it would be that the hot sun in the month of August and September would blister her paint on the starboard side?

Mr. WOOD: I would like to ask Mr. Bristol this question. As I understand, you admit our bills. Now, your examination looks to me as if you were preparing to contest them, and I would like to ask your intention.

Mr. BRISTOL: No, no; you are way off of what I am driving at entirely. Just a moment, if you will let me go on and I will show you. I am not

(Testimony of Fred A. Ballin.)

talking about this anti-fouling business. That is not what I am after. I want to know if the sun would blister the paint on the starboard side, as she was headed in on that dock?

A. You mean old paint or new paint?

Q. Well, I don't know. I really don't know. All I know—

A. You know the starboard side extends from her keel up to the bulwarks.

Q. Yes.

A. What part of the starboard side do you refer to?

Q. I understand it was in patches, and I only want to know about one patch. I want to know a patch near the limb of the vessel, as she broke to her beam, going back from the bow about two or three strakes from the keel proper on the starboard side.

A. You mean on the bottom of the ship?

Q. Just about at the break where she commences to bulge.

A. On the bluff of the bow, we call it.

Q. Yes.

A. That is under water.

Q. That would be under water if she wasn't on the dry dock.

A. How is the sun going to get under water?

Q. I am asking you that.

A. I don't believe the sun would affect it, but the air would.

(Testimony of Fred A. Ballin.)

Q. Now, the testimony was, that they disclosed a hole in this "Thielbek," a small hole in those plates, after she was in the dry dock, and after the sun had blistered this paint, and it brought to light this hole.

A. I did not.

Q. Did you require any repairs to be done in order to get at that hole?

A. No, sir.

Mr. BRISTOL: I want to say, in answer to Mr. Wood's statement that I am not taking any issue with him about his anti-fouling proposition. I told him I would not, and I am not.

Mr. WOOD: And I understand you don't take any issue with me about my bills?

Mr. BRISTOL: Not about the bills. The only quarrel you and I have is about the \$1300. Of course, I contest liability on the whole business.

Mr. WOOD: Certainly.

CROSS EXAMINATION ON BEHALF OF PORT OF PORTLAND.

Questions by Mr. Minor:

Q. When you gave your estimates here of the distance the "Thode Fagelund" would go, you gave so many feet on slow bell, and so many feet on half speed bell.

A. That was under the supposition that the boat was in a moving condition when she was given those bells.

Q. Now would there be any change in your esti-

(Testimony of Fred A. Ballin.)

mate there of the speed under half speed bell, the distance under half speed bell?

A. There would be some.

Q. How much?

A. Until the vessel attains—we will say, a vessel is running on a slow-speed bell, and you give her the half-speed bell, the vessel will not immediately pick up, and while I calculated that she traveled under half-speed bell 3455 feet, from the pitch of her propeller, she will probably require half a minute before she would go from one speed to another.

Q. How much would that reduce it?

A. Say that is half a minute. Of course, this is only approximate. There would probably—that might make a difference of about 400 feet.

Q. So, instead of being thirty-four hundred and some odd feet on half speed—

A. About three thousand.

Q. Be about three thousand?

A. Yes.

Q. Now, Mr. Ballin, I want to ask you a question or two about those repairs: Was it necessary to put this ship on dry dock, in order to make the repairs which were made?

A. It was not. At the time when we ordered the "Thielbek" on the dry dock, we didn't know whether any damage was done to the bottom of that ship. As I said before, she rolled into, or upon the "Fagelund," then slipped back again into the water.

(Testimony of Fred A. Ballin.)

Now, if that passage through the rent in the "Fagelund," would mean a damage to her bottom below the water line, when we saw it, we couldn't tell. I have the report here of Captain Veysey, and that speaks for itself. There was nothing found except the paint scratched off.

Q. Only the paint scratched off.

A. Yes, sir.

Q. It wasn't necessary to put her in dry dock to make the repairs necessary?

A. That was not necessary. It was simply a matter of inspection.

Q. Now, putting in the dry dock for inspection, how long does it take to inspect her after she gets in dry dock?

A. Well, you could raise her up, and let her down again, inside of four or five hours, but it was found after making the inspection that the paint on the bow of the vessel was scratched off.

Q. How long would it take to put that paint on?

A. Well, you would have to wait until—you have to clean that off, you know, before you can put the paint on. They have to have a dry surface to do that.

Mr. WOOD: What is that?

A. They have to have a dry surface in any part of the vessel, and one part of the vessel will dry just as quick as the other one, so as I said before, the repairing of the portion of her hull would probably have taken eight or ten hours, because it

(Testimony of Fred A. Ballin.)

depends on the season of the year. Now take at this season of the year when it is damp and wet, it would take longer. We would sometimes have to leave the vessel in dock a whole day before we could paint her; that is 24 hours, but dry weather you sometimes can do so inside of about ten hours; but practically it will take two days to do it, because you couldn't work day and night.

Q. This paint that you speak of, this anti-fouling paint?

A. Anti-corrosive or anti-fouling.

Q. That kind of paint can be put on as rapidly as other paints, can it?

A. It can be painted—yes, it can.

Q. Does that require a dry surface, also?

A. Oh, yes.

Q. And does the air affect that paint in a short time?

A. Very shortly.

Q. How shortly?

A. Well, if the bottom is—if the vessel is left long enough in the dry dock to give a dry surface, the paint on it will crack all up.

Q. Crack that kind of paint all up?

A. Yes, will crack all to pieces. It will simply go off as so much dust.

Q. Some of these witnesses testified that the only effect it had on it is, it no longer had an anti-fouling effect, that it changed it chemically, as it

(Testimony of Fred A. Ballin.)

were, so it lost its virtue, so to speak. Your idea is it makes it all crack and go off; is that right?

A. Well, it couldn't be a chemical effect except in this way: That it is a copper composition. It is a composition; it contains what we call verdigris; it is a strong poison against fungus growths, and as long as it is kept in a moist condition, it acts. If it is in a dry condition, it doesn't act on fungus as well.

Q. But when it goes back into the water, it gets wet again.

A. No, it doesn't do that.

Q. Doesn't get wet if it goes back into the water?

A. Because if it dries out, the oil in it, you see, it cracks up.

RE-DIRECT EXAMINATION FOR KNOHR & BURCHARD.

Questions by Mr. Wood:

Q. Mr. Ballin, going back to this speed of the "Fagelund," the engineer, Mr. Toleffsen, testified that he warmed up his engine, as Mr. Bristol has described, before he got under way; and then he said that after he got the bell to slow speed ahead, it would take about half a minute for her to acquire her full thirty revolutions per minute. He says then as follows: "Now, then, after you had got her working at slow speed ahead, how long did you work her slow speed ahead before you got the next signal?" And he says: "About five minutes." Now,

(Testimony of Fred A. Ballin.)

that is the testimony that after he got slow speed ahead, he ran about five minutes. Would that alter the calculation that you have made, or is, as I gave it to you first, correct?

A. The calculations that I made here were based upon a vessel in motion. Now, if a man gets a bell for slow speed, and it takes half a minute to clear the engines out from the water and condensation before the engine attains her thirty revolutions per minute, that does not mean that in that interval a vessel will attain a speed within half a minute of time. It will require probably to move a fully laden vessel of her kind, at least from two to three minutes until she overcomes the inertia of her mass.

Q. Until she gets under way.

A. Before she was got constant speed, but with a constant slip.

Q. Now, you know the "Thode Fagelund," don't you?

A. Yes, I know it.

Q. Now, I wish you would give us your idea as to how far she would have traveled from her anchorage in the first five minutes, taking into consideration these two or three minutes to get started.

A. Without regard to the tide?

Q. Yes, if it was still water. You don't know anything about the tide.

A. She might travel in that first five minutes probably 1600 feet.

Q. And in the second five minutes.

(Testimony of Fred A. Ballin.)

A. About 3000.

Q. Mr. Bristol asked you something about whether the hole in her bow appeared to have been made by the anchor. Do you know?

Mr. BRISTOL: Not in her bow. In the "Thielbek's" bow.

Q. I meant in the "Thielbek's" bow, and you answered that it did have that appearance, as I understood you. Is that right?

A. It looked as if it had been pierced from the outside, and whether it was caused by the anchor of the "Thielbek," or caused by the anchor of the "Fagelund," I couldn't say.

Q. You couldn't tell?

A. No.

Q. Suppose it was made by the anchor of the "Thielbek," hanging down on the outside of her bow; I want to ask you if you know whether it is customary for vessels which have anchored at Astoria, and are being towed up the river, to anchor in Portland, to take their anchor in and put it on deck, or to leave it hanging out there.

Mr. BRISTOL: This man is not a mariner. He is a marine architect.

Mr. WOOD: If you object, I will withdraw it.

Mr. BRISTOL: He can answer it if he knows.

A. It is a matter of custom. They generally keep at least one anchor hanging outside for immediate use.

(Testimony of Fred A. Ballin.)

Q. Do you know when the repairs of the "Thielbek" were completed.

A. If my recollection is right, about October 8th.

Q. Now, there has been a good deal of talk about the thirteen days that the contractor lost, and his ability to carry on the work. I want you to state what you and Mr. Hewitt and Veysey and Bergmann did in the matter of taking bids, getting the best contractor to do the work in the least time and for the least price.

A. We prepared the specifications and sent the specifications around to all the bidders that probably could bid on it, and the bids were opened in Mr. Hewitt's office, in the presence of the captain, Mr. Veysey and myself, and while there was one lower bid than this one we accepted, it was rejected for the reason that this party didn't have any facilities at all that I knew about for doing the work, and it was given to the lowest bidder who agreed to do it for the least money and in the shortest time.

Witness excused.

Whereupon proceedings were adjourned until tomorrow morning at 10 a. m.

Thursday, September 18, 1914, 10 A. M.

Mr. WOOD: If your Honor please, I desire to introduce these "Thielbek" bills, and they are admitted under an understanding between counsel as I understand it: Mr. Bristol admits them all as proper elements of collision damage, except that

on the bill of the Portland Boiler Works, which reads as follows: "To making repairs as contracted \$7250, less thirteen days demurrage at \$100 per day, \$1300. Balance paid them in cash \$5950." He reserves the right to dispute our right to recover that \$1300. And Mr. Minor also wants to resist that same thing. In the bill of L. Veysey, dated October 10th, for \$80, there is an item of \$20 appraising ship. That is in the petition of limitation of liability, and I concede that has no proper place in this. The balance of the \$60 Mr. Minor wants to dispute.

COURT: You mean not the amount of the bill.

Mr. WOOD: That it is a proper item of collision damage. Bill of Anderson & Crowe, for painting bottom of the ship \$465. Mr. Minor wants to dispute as not a proper item. Mr. Minor reserves the right to dispute bill of the Auto Livery and Taxicab Company for \$11. Also that of the Merrill Boat House for \$4. Also bill of A. E. Mann for \$12.50. Also bill of F. C. Haggermann Co. for \$718.20 for supplies. And in the statement of the captain's personal cash expenditures, Mr. Minor wants to dispute the item of \$10 for taxicab. Bill of Fred A. Ballin totaling \$163.50 contains an item of \$20 for appraisal of the "Thielbek" in a damaged condition and report. I concede that is not a proper item of collision damages. That is in the petition limiting liability. Mr. Minor also disputes the bill of Kerr & Gifford, for cables \$90.15.

Mr. MINOR: Of course, your Honor under-

stands we reserve the right to object to anything and claim we are not liable at all.

Mr. WOOD: On the ground of your general non-liability.

COURT: I think it would be fair to prepare a full statement of the account, and for Mr. Minor to prepare a statement of the ones he objects to, or noted on your statement.

Bills offered in evidence and marked "Knohr & Burchard's Exhibit 8."

Mr. WOOD: There will be a controversy between us about that thirteen days of time, \$1300 claim, and bearing on that, I would like to put in evidence also the contract as made, with the successful bidder. It will have to be identified unless counsel waives identification.

Mr. MINOR: I waive identification.

Mr. BRISTOL: I don't want you to identify them. If you say they are the contracts and bid, but my point is they would not prove liability on our part, even if the \$1300 was accrued, because these are bids and contracts between the "Thielbek's" captain, or the owners of her represented by him, and an independent contractor that hadn't a thing to do with this collision. With respect to the \$1300 your Honor understands."

Bids marked "Knohr & Burchard's Exhibit 9."

Contracts marked "Knohr & Burchard Exhibit 10."

Mr. MINOR: Witnesses on behalf of The Port of Portland have been called on the other side, and

we introduced some evidence out of order, and that is our case.

Mr. BRISTOL: I did not expect Mr. Wood to close so early. I have some other witnesses on matters pertaining to the case, and I told them not to come until noon time. I will try to get them over the telephone.

Mr. SNOW: The damage by this collision to both ship and cargo, the general average was taken in an examination by the other side; and I understand we are to try to come to an agreement upon that question.

Mr. BRISTOL: You said ship and cargo. Now Mr. Minor has looked over the ship's bills, but the cargo bills I understand he hasn't looked over.

Mr. SNOW: I don't care about that. I would like, if your Honor please, to offer at this time preliminary proof to be followed subsequently, if we have to prove our damage—I offer now the bills of lading, and in that connection I will offer copy also of the ship's manifest, merely to show with what this vessel was loaded, and these bills of lading are made out as follows. One bill of lading Standard Explosive Company, Limited, Stella, Washington, for dynamite, dated August 21, 1913. Six bills of lading, Grace & Company, for the lumber of date August 23, 1913. These bills of lading are copies, and it is understood between counsel that the production of the original will be waived, and these copies may be substituted in lieu of them. Touching the Standard Explosive Company, Limited, bill

of lading for the dynamite, it is understood that the Standard Explosive Company is a subsidiary company of the libelant the Dupont Powder Company, and it was shipped from this subsidiary company in the name of the Standard Explosive Company, Limited, but the Dupont Powder Company was in fact the owner of these goods. Is that statement satisfactory?

Mr. MINOR: I have no objection.

Mr. SNOW: We will let them all go in as one exhibit, and later on, if we don't reach an agreement as to the damages to cargo, I will make proof of that, but, I suggested, if your Honor please, that the proof on that question be postponed until your Honor has decided the question of liability. It is immaterial to me. If your Honor says prove it any time, I will prove it.

COURT: That will be satisfactory to the Court.

Bills of lading and manifest marked "Grace & Co. Exhibit 1."

Mr. BRISTOL: In order to try and dispose of the details, your Honor, about these bills: The situation that involves the Libelant Wilhelmsen is this: I have proven in the record through my captain, the items that he has paid out, and showed a list of the same as to the times and dates, you have heard the testimony, aggregating \$49,000. I have introduced in evidence the days we were off time charter, and the rates. The reason I couldn't produce the vouchers, is because they had to go to Grace and Dupont Company, who were adjusting

the damages, with which I had nothing to do at that time. Now Mr. Snow and Mr. Minor have some sort of arrangement about those vouchers. He has looked over mine, as far as mine are concerned. He doesn't dispute them but does dispute liability. Mr. Wood was to do whatever Mr. Minor was going to do, but he has not said what he will do.

Mr. WOOD: I haven't seen the voucher.

Mr. BIRSTOL: I have Mr. Minor's letter to the effect that Mr. Wood had the vouchers, and as soon as he got the vouchers back from Wood, he would hand them to The Port of Portland. You had them two weeks and they were returned. I sent the vouchers down to Mr. Snow, and Mr. Snow and his clients have had them for nearly a year. Now, back comes this 166-page book. I am not concerned with the 166-page book. That shows the average, and contains a long list of these vouchers, but the vouchers I am entitled to. I have asked for them a dozen times. Now, then, that explains the situation to your Honor. I presented the sworn testimony of my captain as to what we paid out, and I am standing on that. That is, under the condition of the explanation to your Honor, and if further proof is demanded or required, I ask now, and reserve the right to make it.

COURT: Very well.

Mr. MINOR: Perhaps your Honor may have misunderstood Mr. Bristol's statement. Mr. Talbot didn't say they were O. K.—

Mr. BRISTOL: I didn't mean Mr. Talbot admit-

ted liability. I meant the bills as the show *prima facie* show these payments. He was not admitting liability, but the bills appear to be all right.

Mr. MINOR: What I mean is this: We don't dispute the facts these bills have been paid, but we will dispute the fact that some of the bills are proper charges in this case, and dispute, of course, liability on any of them.

Mr. WOOD: I am willing to do that.

Mr. BRISTOL: I understand counsel conceded we paid out \$49,097.63, as shown in Captain Hansen's testimony, where we went at it voucher by voucher under Mr. Snow's examination. Now, in addition to that, I understand counsel to say that they would pick out from these bills, and in a reasonable time we can have proper opportunity to show, if we need to, that these items that they contest were proper charges to this collision, we paid them and they were reasonable; that only leaves the demurrage situation, which is right on the face of the paper and the time, and that is the end of that. Now I apprehend that there might be no necessity, under ordinary circumstances, to submit to the Court, proof of a matter which perhaps is well recognized, but there is a decision of the Supreme Court of the United States which seems to indicate that in practice here this Court does not take judicial knowledge of matters of independent boards and tribunals unless introduced in evidence. I therefore offer in evidence, that part of the pamphlet—not the one that has the log in the fore part

of it—but so much of that same pamphlet that contains the Pilot Rules for certain classes of vessels on inland waters, as made by the inspectors from page 17 to 22, both inclusive.

Mr. WOOD: Is that all the Pilot Rules?

Mr. BRISTOL: Those are all the Pilot Rules of Inland Waters, and the reason is that under the case of 158 U. S. 285, *Union Pacific vs. Wyler*—

Mr. MINOR: Heretofore your Honor has generally taken judicial knowledge of these.

COURT: I don't suppose it is necessary.

Mr. BRISTOL: I haven't either, but Mr. Minor himself taught me that very thing. It came up in the case of a state statute, and also with reference to a decision by a state tribunal. This *Union Pacific vs. Wyler* says that the matter of judicial notice as to United States statutes applies, but as to anything outside of United States statutes, it is a matter of evidence and must be proven.

Mr. WOOD: These editions change a little from year to year.

Mr. BRISTOL: This one I offer is the edition of July 1, 1913. In order that there may be no misapprehension, I will just cut these out.

Marked "Libelant *Wilhelmsen's Exhibit 18.*"

Mr. BRISTOL: Now, the only way I can expedite the matter is to say this: I have another official witness and he was summoned to be here this afternoon, but I will put it this way, if the theory of the case has not opened up that point of rebuttal evidence, I will suffer no inconvenience by not being

able now to produce it. But if the case should open up, by the declaration of their argument and claim, I would like to have leave to show to the Court, if it becomes material, the evidence I want to produce. With that understanding, I will close in rebuttal.

I offer in evidence Section 5156, Chapter 4, Volume 2 of Lord's Oregon Laws.

Mr. MINOR: I object as immaterial and irrelevant.

Mr. BRISTOL: It is as follows: "The Bar Pilotage Grounds shall be deemed to extend from the uppermost dock or wharf at the port of Astoria or Knappton to the open sea, at least ten miles beyond the uttermost buoy; and the river pilotage grounds shall be deemed to extend from the lowermost dock or wharf at the port of Astoria, to the head of navigation on the Columbia and Willamette Rivers and their tributaries; and the branches or warrants issues" (the word is issues here, but should be issued) "and the branches or warrants issued by the Board of Pilot Commissioners hereinafter provided for, to pilots appointed by them shall define the ground covered by the pilot authority and the fees to which he is entitled."

Mr. SNOW: Aren't the laws of Oregon recognized here by the Court.

COURT: I have assumed it does.

Mr. BRISTOL: It is a peculiar situation.

COURT: You can put it in. I have no objection.

Mr. BRISTOL: United States vs. Wyler practically holds that Federal Courts, for instance in a

case tried in Missouri, wouldn't take judicial notice of a law of the State of Kansas.

Mr. SNOW: That is another thing.

Mr. BRISTOL: When the case went back into Missouri, they proceed to say that they have to plead and offer in evidence the Statutes of Missouri with respect to the claim that is made in the Missouri Federal Court as to the case then on trial there, and because he hadn't done it, they turned him out. So I am covering the point.

I offer so much of the opinion of Mr. Justice Moore, of the Supreme Court of Oregon, in *State vs. Turner*, 34 Oregon, 175, as the decision of the Supreme Court of the State in interpreting the laws of this State relative to tug boats operating in this State, in this record: "A tug boat is not a public carrier, and hence is not an insurer of the vessels towed by her, notwithstanding which, to avoid accidents to such vessels resulting from the ignorance or carelessness of the master of the tug, certain rules in aid of navigation have been adopted by the courts, one of which is that when a tug boat is lashed to a tow, the identity of the latter, so long as this union exists, is merged in the former, and under this legal fiction, they are treated as a single vessel under steam."

Now, Mr. Minor asked me—he is entitled to that explanation—what I expected to prove by Captain Edwards, if necessary to call him. There has been some testimony here, I think by Captain Smith, of the practice they had, over my objections, of run-

ning below the Port of Astoria under Government license, and that the Government license gave them greater license than the State pilot license. As to that, I would offer evidence to the contrary.

Libelant Wilhelmsen rests.

Monday, September 28, 1914, 2 P. M.

Mr. MINOR: With Mr. Bristol's consent, I offer in evidence copy of letter which The Port of Portland wrote to the master of the ship, in regard to the matter of dry docking:

Marked "Port of Portland Exhibit 6."

"The Port of Portland, September 5, 1913.

Captain N. B. Hansen,

Master S. S. 'Thode Fagelund,'

Oregon Hotel, Portland, Ore.

Dear Sir: We have been asked by Captain L. Veysey what the position of The Port of Portland would be relative to the assumption of whatever risk is involved in docking the S. S. 'Thode Fagelund' with cargo aboard, and he has requested that we advise you by letter of our position.

The Port of Portland, of course, assumes all the risk in docking a vessel under ordinary conditions, but as the docking of a vessel of this size with considerable amount of cargo aboard is an unusual undertaking, and while we are not familiar with the construction of the vessel, manner of loading, and whether or not there is any great risk of straining the vessel, we are not disposed to assume any

of the risk that may be involved by reason of the vessel having cargo aboard. Therefore the superintendent of the dry dock has been instructed to procure a release from you on behalf of the S. S. 'Fagelund' and owners, undertaking to hold The Port of Portland free from any and all liability for any damage which may be directly or indirectly caused to the vessel or cargo by reason of the vessel being docked with cargo aboard.

We trust you will appreciate that our position is entirely just and if any great risk is involved it should be assumed by the ship, while if there is none you could not possibly have any objection to signing a release. Yours truly,

(Signed) M. T."

"The Port of Portland,

Portland, Ore., September 2, 1913.

The undersigned hereby agrees, on behalf of the S. S. 'Thode Fagelund' and owners, to hold The Port of Portland free from any liability from any damage which may be sustained by the said vessel while in process of being docked or undocked or while resting upon The Port of Portland dry dock; such damage being in any way caused by reason of the said vessel being docked with cargo aboard. It is hereby acknowledged that the docking of this vessel with cargo aboard is an unusual undertaking, especially upon a sectional floating dry dock, and is undertaken by The Port of Portland at the request of the master of the said steamship and at the risk of the said steamship and owners."

Mr. SNOW: If the Court please, I would like, at this time, to get as far along as we can in the matter of proof of damage, and I therefore want to offer the General Average Statement made up as between the ship owners on one hand, and the cargo owners on the other, apportioning these damages as between the ship and cargo in certain proportions. Now, this General Average Table is made up by Wilcox, Peck & Hughes of New York, and the Charter Party provides that they shall be made up in accordance with the York-Antwerp rules. Preceding this general average statement, there is a series of documents upon which the general average statement is founded. These documents consist of various copies of vouchers, the originals of which I have, and the details of which I need not go into, but they are bills here and there for this and that repair, bills for transferring cargo, etc., and a protest filed by the master. I would like to offer this general average statement; I offer with that general average statement the expenses for this general average, the expenses attendant upon making up this general average table. Now, Mr. Minor and Mr. Wood, I presume it may be consented to that this general average statement has been made up as between the ship and the owners of the cargo honestly by Messrs. Wilcox, Peck & Hughes.

Mr. MINOR: I concede the statement is made and I suppose honestly made—I don't know whether honestly made or not; not made under oath and therefore I object to it.

Mr. WOOD: I concede made by Wilcox, Peck & Hughes—

Mr. SNOW: And honestly made up according to their version of the York-Antwerp Rules.

Mr. WOOD: Yes, I concede that.

Mr. SNOW: It may be conceded that the documents which precede this statement are copies, without further identification?

Mr. MINOR: The same papers which Bristol had?

Mr. SNOW: Yes.

Mr. MINOR: Yes.

Mr. SNOW: Now, with this general average statement I want to offer the vouchers and bills for this damage which this general average statement purports to adjust, the vouchers and bills attendant upon this collision, and I would like to offer these vouchers and statements without further identification, by the calling of the men to whom the money has been paid.

Mr. MINOR: I waive calling the men, but I object to each statement as incompetent and not proven.

COURT: You make no objection to their authenticity or verity?

Mr. MINOR: I don't question they are copies at all; I admit that all the bills have been paid, your Honor, but I will contend that some of them are not recoverable. I contend none of them are recoverable.

Mr. BRISTOL: In order that we may get it definitely upon the record, as I understand, this bunch

of vouchers you refer to consists of the vouchers referred to in the testimony of M. B. Hansen, and as many more as may have developed since?

Mr. SNOW: Mr. Hansen's signature is upon all of these.

Mr. WOOD: I haven't seen these bills, but I presume they are the same as shown in the general average statement.

Mr. SNOW: They are the same as shown in the general average statement. Mr. Bristol suggests that it should be stated definitely in the record now, that this bunch of vouchers and bills presented here and offered in evidence are the bunch of vouchers and bills bearing the signature of Hansen, the master of the ship "Thode Fagelund," which is a fact.

General Average Statement marked "Grace Exhibit 2."

Bills and vouchers marked "Grace Exhibit 3."

Mr. SNOW: I will ask whether or not there is any contest to be made as to the reasonableness of these bills?

Mr. MINOR: Yes, we are going to show they are not reasonable.

Mr. SNOW: Then you can let us know what part you are going to contest, and I will determine the question whether we shall make any proof on them.

Filed November 16, 1914. G. H. Marsh, Clerk.

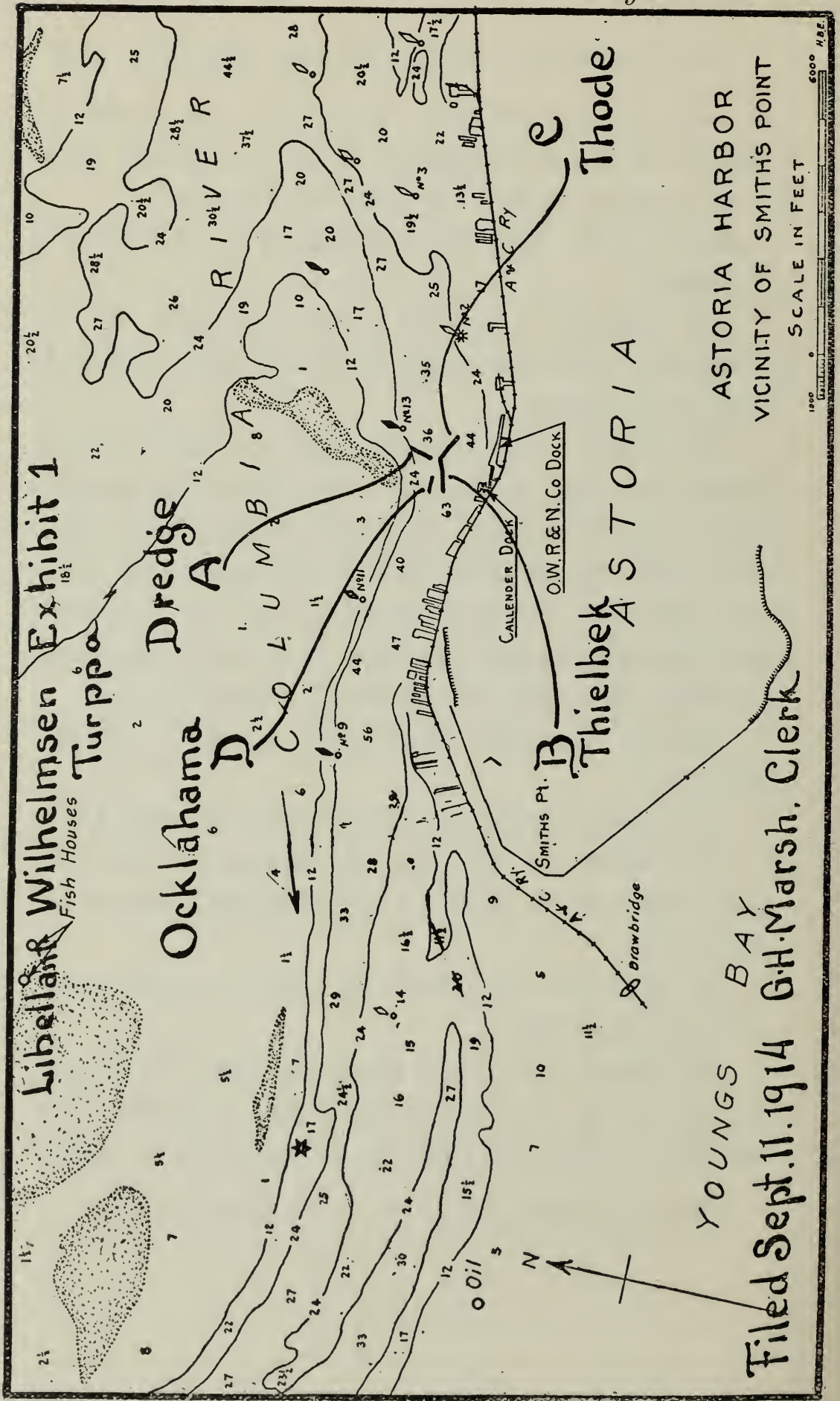


Exhibit 1

Wilhelmsen Fish Houses

Turppa

Ocklaha

Dredge

COLUMBIA RIVER

ASTORIA

SMITHS Pt.

CALLENDER DOCK

O.W.R. & N. Co. Dock

Thielbek

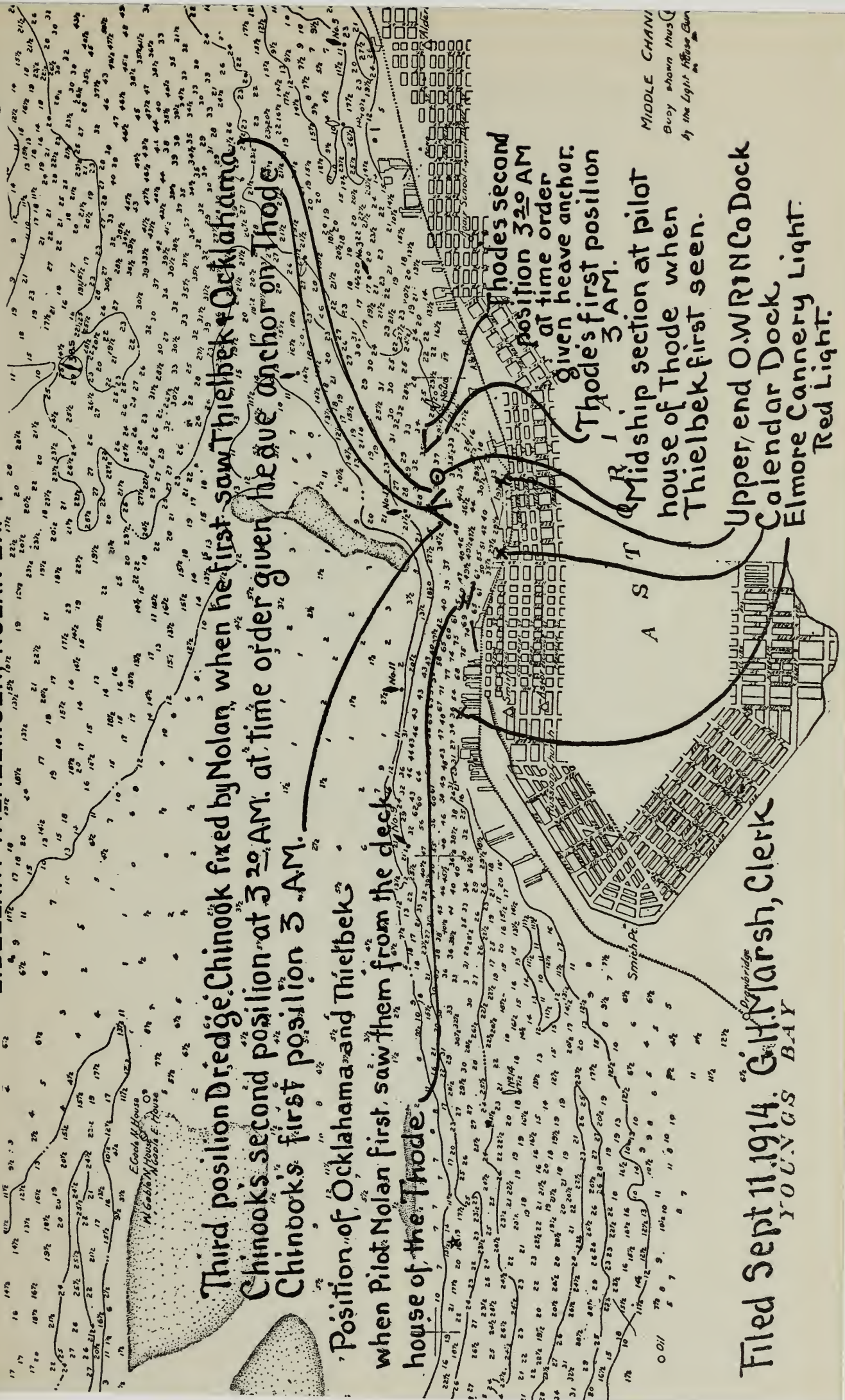
Thode

ASTORIA

YOUNGS BAY
Filed Sept. 11. 1914
G.H. Marsh, Clerk

ASTORIA HARBOR
VICINITY OF SMITHS POINT
SCALE IN FEET

6000
1000
0
SCALE IN FEET
N.B.E.



Third position Dredge Chinook fixed by Nolan when he first saw Thielbek & Ocklahama
 Chinooks second position at 3:20 AM. at time order given he gave anchor on Thode
 Chinooks first position 3 AM.

Position of Ocklahama and Thielbek
 when Pilot Nolan first saw them from the deck
 house of the Thode

Thodes second
 position 3:20 AM
 at time order
 given heave anchor.
 Thode's first position
 3 AM.

Midship section at pilot
 house of Thode when
 Thielbek first seen.

Upper end O.W. Rinco Dock
 Calendar Dock
 Elmore Cannery Light
 Red Light.

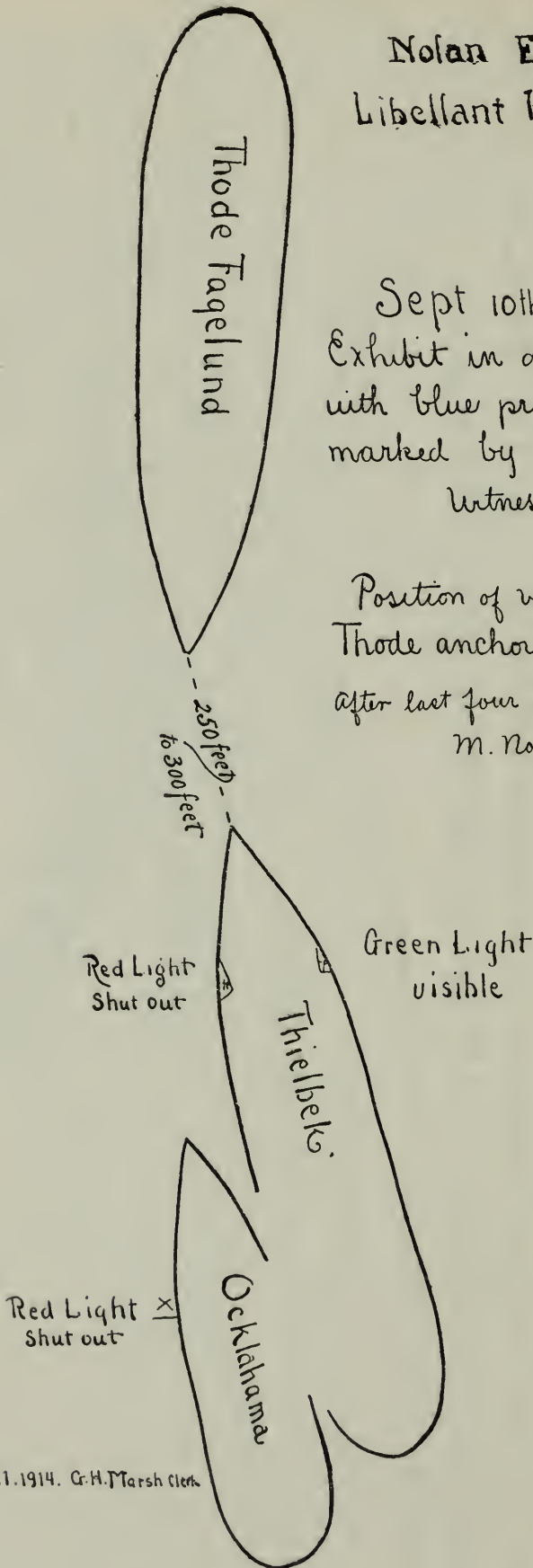
Filed Sept 11, 1914. G.H. Marsh, Clerk
 YOU'NG'S BAY

MIDDLE CHAN
 Buoy shown thus
 by the Light House Buoy

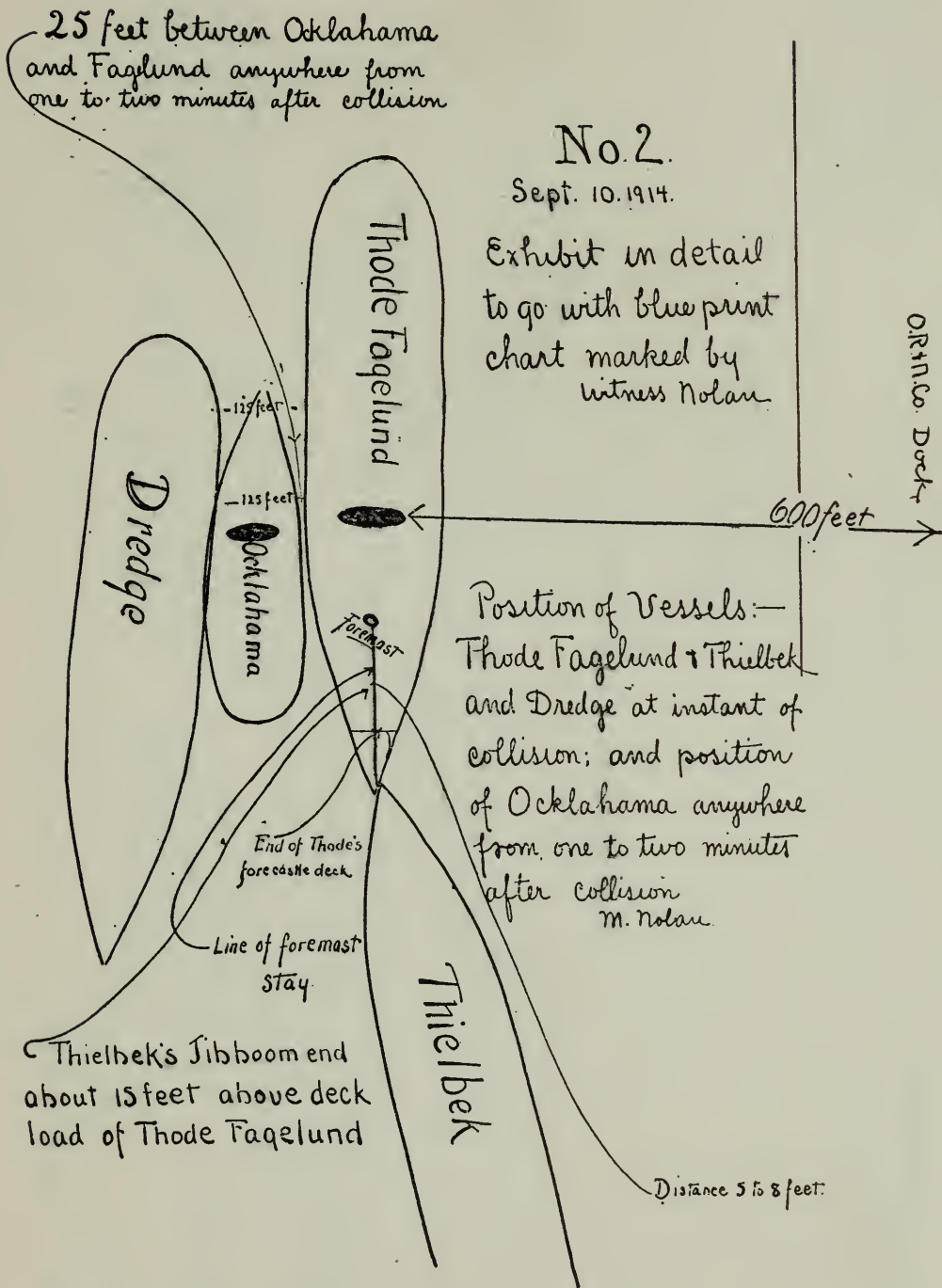
Nolan Ex 5
Libellant Wilhelmsen

Sept 10th. 1914.
Exhibit in detail to go
with blue print chart
marked by
Witness Nolan.

Position of vessels after
Thode anchor down
after last four whistles
M. Nolan



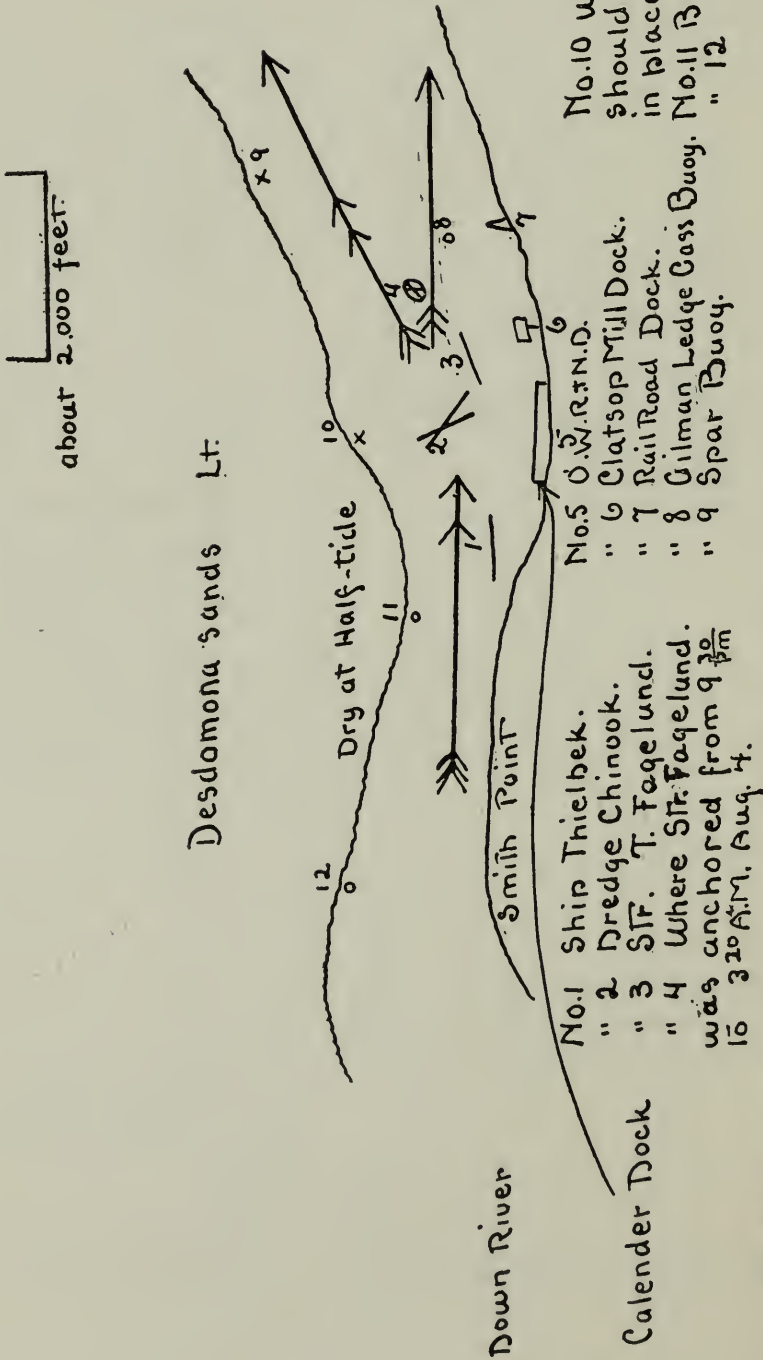
LIBELANT (WILHELMSSEN) EX. 6
NOLAN



Filed Sept. 11 1914. G.H. Marsh. Clerk.

Libeller Wilhelmsen.
Nolan Ex. 7.

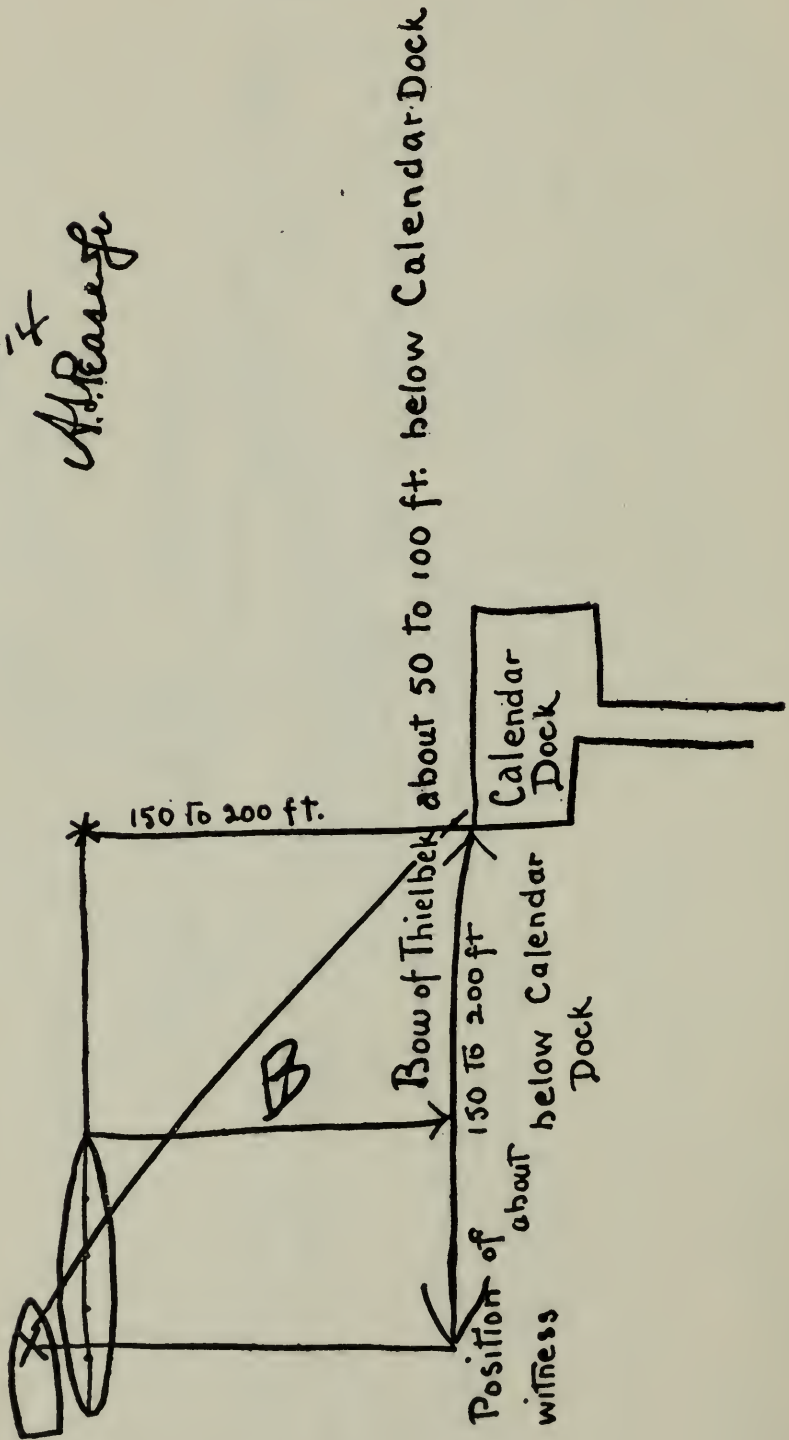
Libellants Ex. 16
on Re-direct Examination
Cause No. 6111
A.W.P.



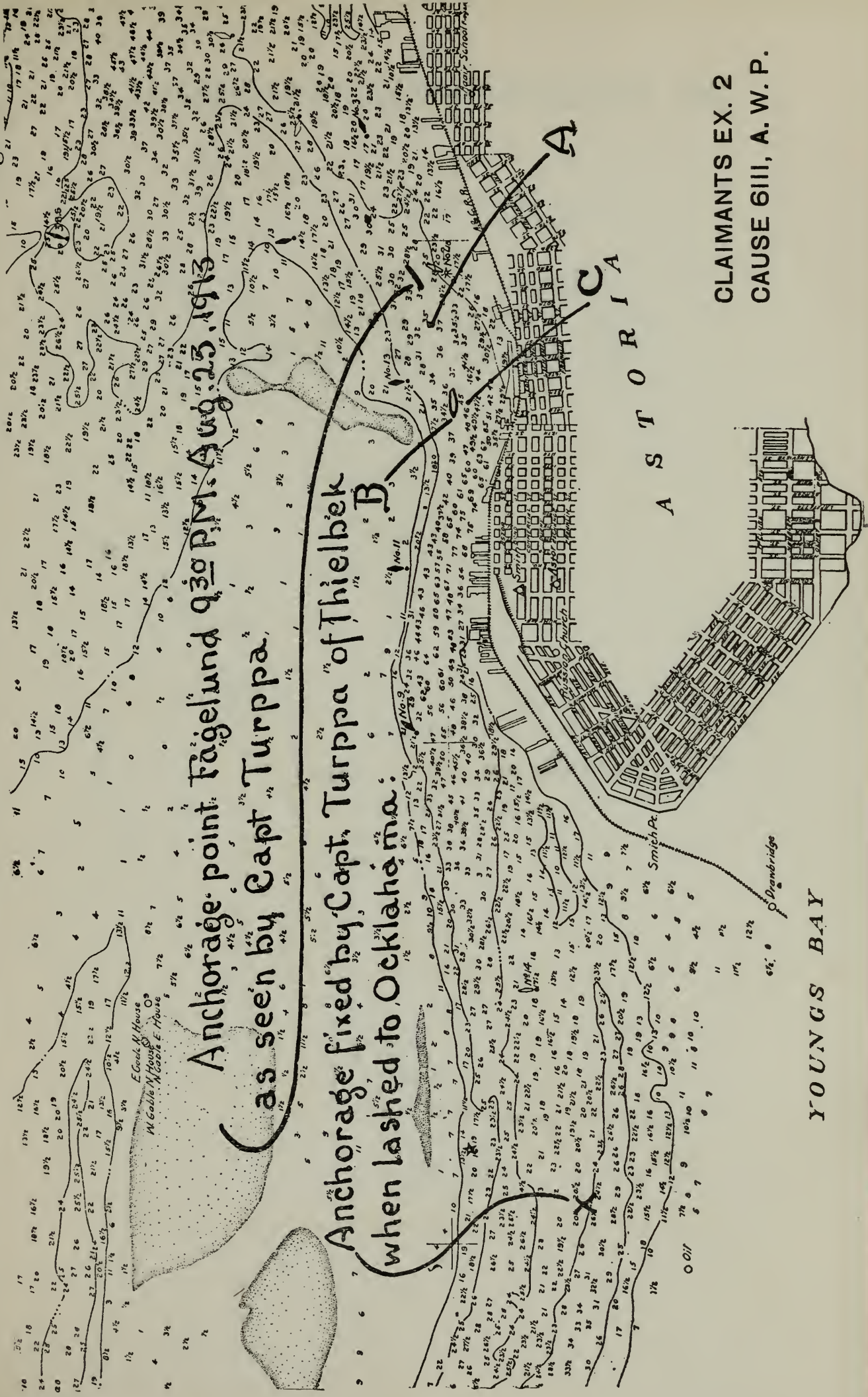
Filed Sept. 11, 1914. G.H. Marsh Clerk

Wilhelmsen Ex. 14
Pease

9/15/14
A. Pease



Filed Sept. 16. 1914 G.H. Marsh. Clerk.



Anchorage point: Fagelund
 as seen by Capt. Turppa,
 Anchorage fixed by Capt. Turppa of Thielbek
 when lashed to Ocklahoma.

CLAIMANTS EX. 2
 CAUSE 6III, A. W. P.

YOUNGS BAY

ASTORIA

Smith Pt.

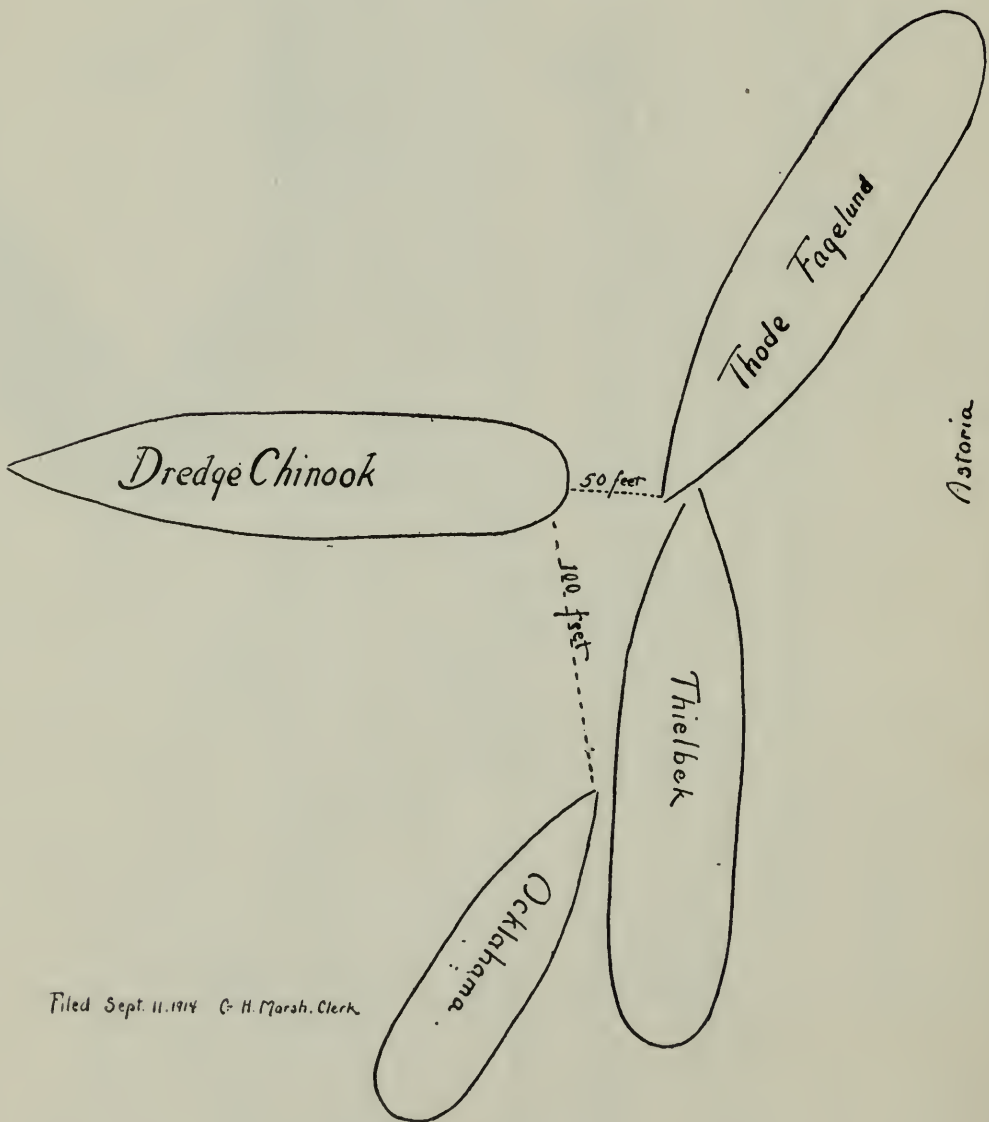
Danbridge

Oil

1424 The "Thielbek" and the "Thode Fagelund"

Knohr & Burchard Nfl. Ex. 1
Capt. I. Turppa

Situation of Vessels
when Turppa entered
Pilot House after collision

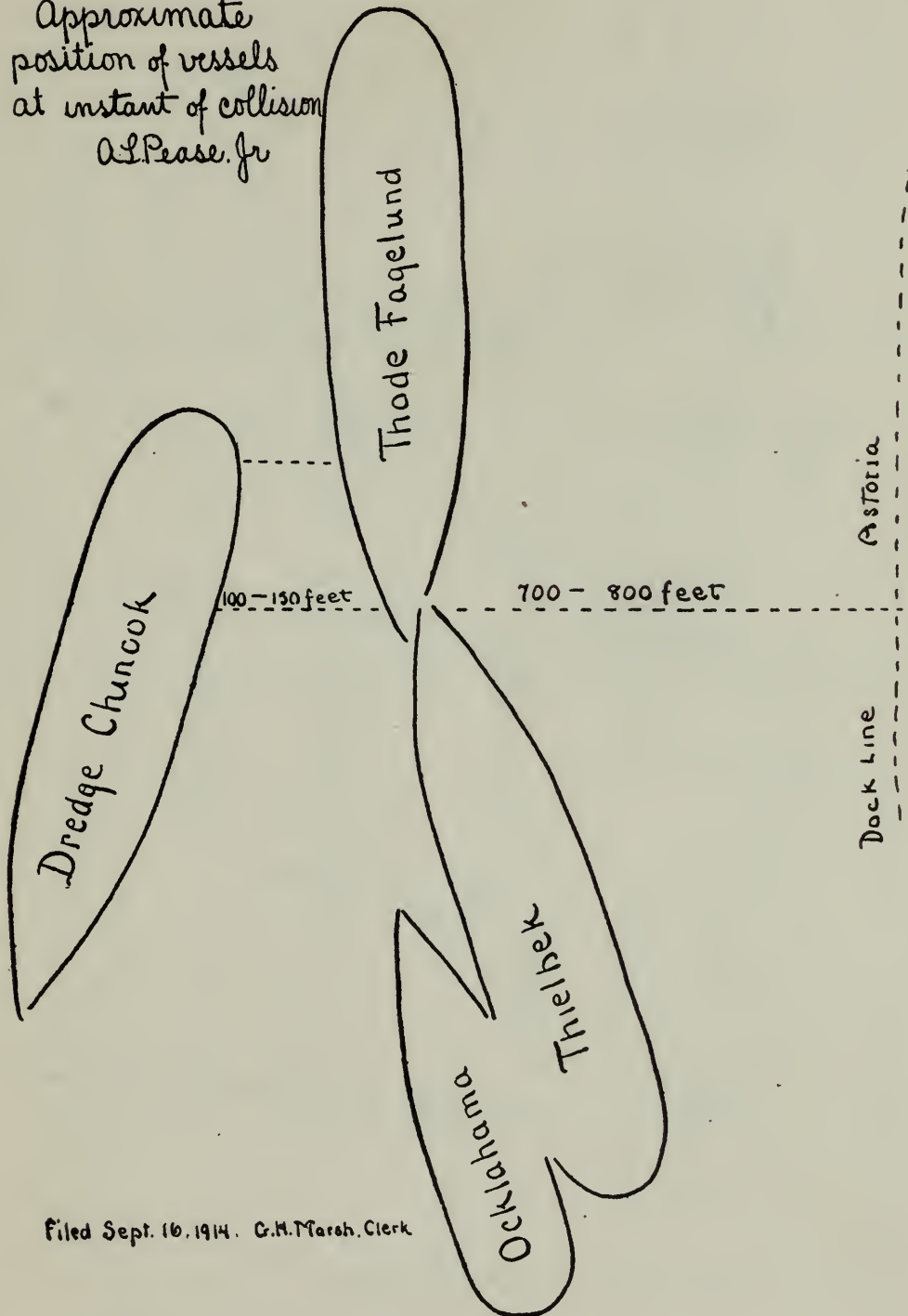


Filed Sept. 11, 1914 C. H. Marsh, Clerk.

The "Thielbek" and the "Thode Fagelund" 1425

Bohr. & Burchard. Ex. 5

Approximate
position of vessels
at instant of collision
A.L. Pease, Jr



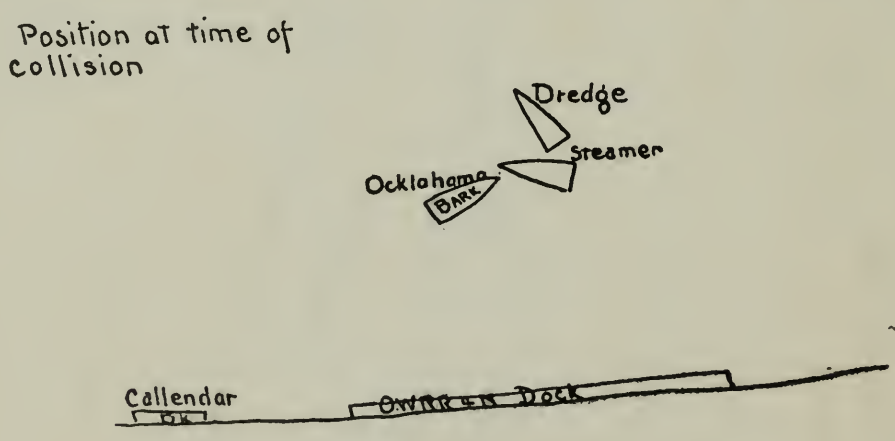
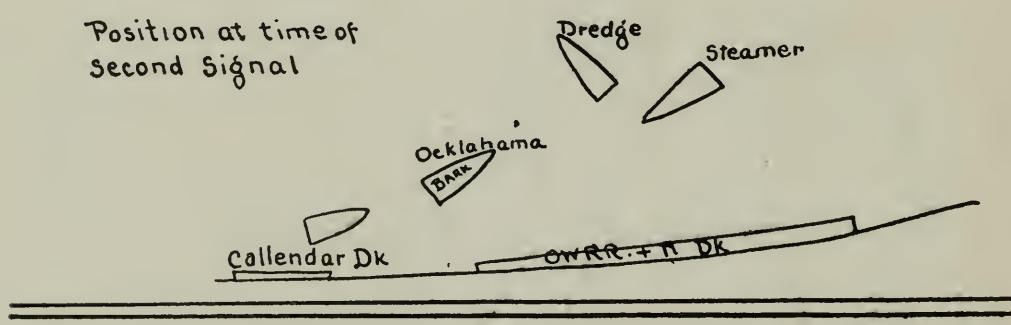
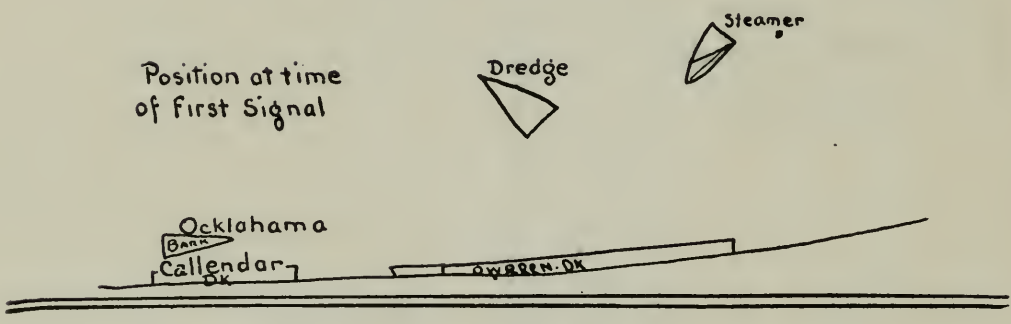
Filed Sept. 16, 1914. G.M. Marsh, Clerk

1426 The "Thielbek" and the "Thode Fagelund"

K+B Ex.7

THE PORT OF PORTLAND

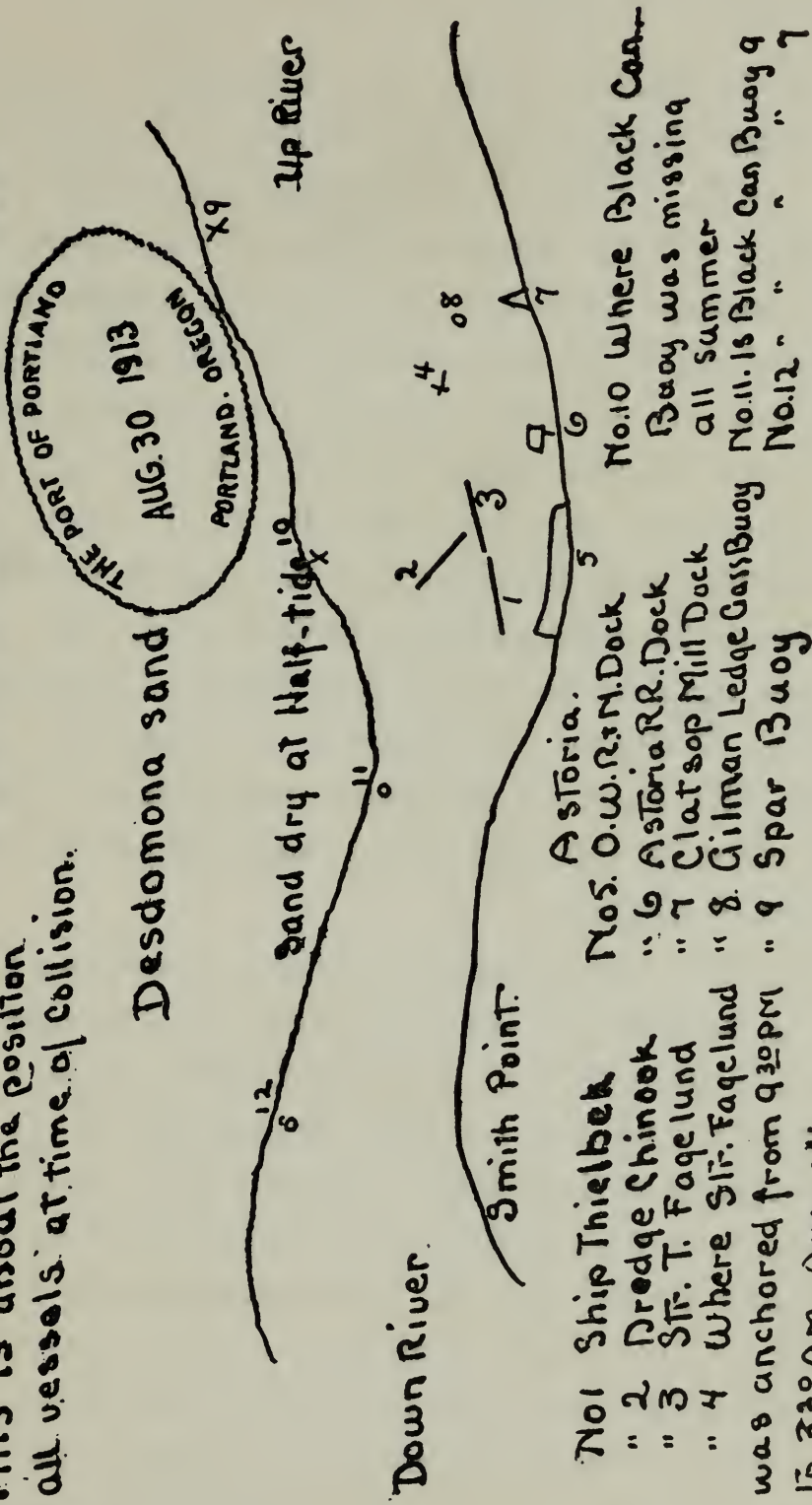
THE PORT OF PORTLAND
AUG 27 1913
GENERAL OFFICE



Filed Sept. 16. 1914 G.H. Marsh. Clerk.

Port of Portland. Ex. 2. Nolan.

This is about the position of all vessels at time of collision.



- No. 1 Ship Thielbek
 - " 2 Dredge Chinook
 - " 3 Sfr. T. Fagelund
 - " 4 Where Sfr. Fagelund
 - was anchored from 9:30 PM
 - to 3:20 AM. Aug. 24.
- No. 5 O.W.R. M. Dock
 - " 6 Astoria R.R. Dock
 - " 7 Clatsop Mill Dock
 - " 8 Gilman Ledge Gas Buoy
 - " 9 Spar Buoy
- No. 10 Where Black Can Buoy was missing all Summer
 - No. 11 Is Black Can Buoy
 - No. 12 " " " "

M. Nolan.

The Port of Portland. Sept. 2. 1913

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that the foregoing printed record, consisting of two volumes, constitutes the apostles on the appeals from the final decrees in the cause numbered 6111, in said Court, in which Wilhelm Wilhelmsen is libelant against the German bark "Thielbek," of which Knohr & Burchard, Nfl., are claimants, and against The Port of Portland, respondents; and in the cause numbered 6116, in said Court, in which Knohr & Burchard, Nfl., are libelants, against the steamship "Thode Fagelund," of which Wilhelm Wilhelmsen is claimant and against The Port of Portland, respondent, which causes were by the said Court consolidated for the purposes of appeal.

That the said apostles contain a caption prepared in accordance with the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, and a true and complete transcript of all of the pleadings with exhibits thereto; of so much of the testimony and exhibits as is designated by the stipulation of the parties to be included in these apostles; of all of the opinions of the Court; of the interlocutory and final decrees; of the notices of appeal and of the assignments of errors; and of all orders of Court in said causes pertinent to these appeals; and also contains a true and complete transcript of such opinions and orders from other

causes pertinent to this appeal as were designated by said stipulation of the parties to be included in these apostles, as the said pleadings, testimony, exhibits, opinions, and orders appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing is \$....., for clerk's fees for preparing the same, and \$..... for printing the said apostles.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Portland in said District this day of March, 1916.

Clerk. 6