



# THE MERCHANT SHIPPING ACT 1894

REPORT OF COURT

No. 8042

## m.v. DARLWYNE (O.N. 301110)

In the matter of a Formal Investigation held at the Old County Hall, Truro on the 13th, 14th, 15th, 16th, 17th, 19th, 20th, 21st and 22nd days of December 1966 and on the 2nd, 3rd, 4th, 5th and 6th days of January 1967 before Mr. J. V. Naisby, QC, assisted by Captain H. S. Hewson and Dr. E. C. B. Corlett MA, PhD, MRINA into the circumstances attending the loss of the motor vessel *Darlwyne* with the loss of thirty-one lives.

The Court having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds for the reasons stated in the Annex hereto, that the loss of the *Darlwyne* and of the lives of those on board of her was contributed to by the wrongful act or default of the late Brian Michael Bown in negligently taking the *Darlwyne* to sea with passengers on board when the vessel was not fit to go to sea in open waters and by the wrongful act or default of her owner John Campbell Maitland Barrett in failing to ensure that Mr. Bown, his servant or agent, was specifically warned that the *Darlwyne* in her then state was not fit to go to sea in open waters. And the Court orders that Mr. John Campbell Maitland Barrett do contribute the sum of £500 towards the costs of this Investigation, to be paid to the Solicitor to the Board of Trade.

Dated this 13th day of January 1967.

J. V. NAISBY, *Judge*.

We concur in the above report.

H. S. HEWSON  
EWAN C. B. CORLETT } *Assessors*.

### ANNEX TO THE REPORT

1. This Inquiry was held at the Old County Hall, Truro, on the 13th, 14th, 15th, 16th, 17th, 19th, 20th, 21st and 22nd of December 1966 and on the 2nd, 3rd, 4th, 5th and 6th January 1967.

The original parties to the Inquiry were:

The Board of Trade, represented by Mr. Michael Thomas and Mr. Nicholas Phillips, instructed by the Treasury Solicitor.

Mr. J. C. M. Barrett, the registered owner of the *Darlwyne*, represented by Mr. Quentin Edwards, instructed by Messrs. Warmingtons & Hasties, London.

Mr. R. W. Rainbird, represented by Mr. Langdon (Solicitor).

On the first day of the Inquiry:

Mr. Lawrence, of Messrs. Hancock, King and Lawrence, Solicitors in Truro, applied on behalf of Mrs. Mary Bown, the widow of Mr. Brian Michael Bown, to be made a party to the Inquiry.

Mr. R. F. Stone, instructed by the Treasury Solicitor, applied on behalf of the Ministry of Defence to be made a party.

Mr. Sidgwick, on behalf of the Royal National Lifeboat Institution applied to be made a party.

Mr. G. Beattie, instructed by Messrs. Ryland, Martineau & Co. of Birmingham, appeared on behalf of Mrs. Mills, the widow of one of the persons who lost their lives in the casualty, also applied to be made a party. He also held a watching brief on behalf of the administrators of the estate of the late Alfred Russell, who was also lost in the casualty, and was instructed by Messrs. Goffey, Battey & Gemmell of Southport.

Mr. Ruston, on behalf of the Ship and Boat Builders National Federation, also applied to be made a party.

All these applications were granted.

On the second day of the Inquiry:

Mr. Arthur Robinson, the father of Kenneth Robinson who also lost his life, applied to be made a party and this application was granted. But on the 16th December, Mr. Robinson intimated that he no longer desired to take any part in the Inquiry.

On the fifth day of the Inquiry:

Mr. Heathcote, the Clerk to the Falmouth Harbour Commissioners applied for them to be made parties to the Inquiry and this application was also granted.

On the ninth day of the Inquiry:

Mr. Ruston intimated that he would be unable to attend after the adjournment and said that he had arranged for Mr. Stone to act on behalf of his Federation for the remainder of the Inquiry. Mr. Stone agreed to

do so and appeared on behalf of the Ship and Boat Builders National Federation from the eleventh day.

All times stated in this report are British Summer Time unless otherwise stated.

2. The *Darlwyne* was a wood carvel-built ex-Admiralty 45 foot medium-speed picket boat number 41768 built in 1941 at Shoreham-by-Sea by Sussex Yacht Works Ltd.

The vessel had the following dimensions:

Length between perpendiculars	45 feet
Length overall	45 feet 9 1/4 inches
Width—maximum	11 feet 4 inches
Moulded breadth to outside of plank	10 feet 5 3/4 inches
Depth	6.1 feet

As built for the Admiralty the vessel was fitted originally with twin screws and Gardner 6LW diesel engines each engine developing 95 horsepower at 1,600 r.p.m. Originally the vessel was fitted with four fully watertight bulkheads and two bulkheads which were semi-watertight having controllable drain cocks from the forepeak and the after peak to adjacent compartments. Each fully watertight compartment was fitted with a bilge suction. The original steering gear was a rod and gear type such that the twin rudders would go from amidships to hard over in one turn of the steering wheel.

The specification of the hull planking for the original 45 foot m.s.p.b. was double diagonal, both skins in this case being either 1/8 inch or 3/8 inch African mahogany. The planking was on steamed rock elm 1 1/4 inch by 7/8 inch, timbers spaced at 7 inch centres, five stringers being fitted per side and web frames every fourth timber. The general lines of the vessel incorporated round bilges, a transom stern, a raked straight stem with considerable flare on the sections forward and a long, flat run aft. The original design drafts were approximately 2 feet forward and 3 feet aft.

3. The vessel was purchased from the Admiralty at Gosport by Belsize Boatyard Ltd. of Southampton where she was converted to a cabin cruiser. On conversion it appears that nearly all the bulkheads were removed with the exception of one at the forward end of the engine-room. These bulkheads were replaced by four new ones, none of them being of watertight construction. In September 1959 the vessel was sold by Belsize Boatyard to Messrs. Lowe and Gray as joint owners. The new owners re-engined the vessel at the Belsize Boatyard with twin Perkins P6 engines developing 65 h.p. at 2,000 r.p.m. These engines were of the direct drive type with suitable smaller propellers. The centre of gravity of the engines although practically unchanged vertically was moved forward by approximately 18 inches. The vessel was then taken to Teddington on the River Thames and used as a cabin cruiser. On the 22nd April 1960 the vessel was registered by her new owners as the *Darlwyne* although as her register tonnage was 12.35 tons such registration was not compulsory.

4. In September or October 1962 the *Darlwyne* was taken by sea from the Thames to St. Mawes and the voyage seems to have been made without any trouble though it was thought that she was rather short of ballast. In September 1963 the *Darlwyne* was taken to Mylor Boatyard and put up for sale. By Bill of Sale dated 30th May 1964 the ownership of the vessel was transferred to Mr. John Campbell Maitland Barrett of Penryn. Mr. Barrett bought the vessel with the idea of doing her up and selling her. Whilst in the ownership of Mr. Barrett substantial repairs and repainting was done to the *Darlwyne* in the summer of 1965. By an agreement dated 18th September 1965 Mr. Barrett agreed to sell the *Darlwyne* to a Mr. Steven

Gifford. Mr. Gifford took possession of the vessel and had her engines overhauled and certain internal changes made. The deal however fell through and Mr. Barrett re-took possession of the vessel. By this time the vessel was looking shabby and a friend of Mr. Barrett's, a Mr. Lang, and Mr. Barrett's elder daughter effected some small repairs to the vessel and did a good deal of scraping and painting of the hull in the early summer of 1966. It was decided that the vessel would be a more saleable proposition if she had an open cockpit aft and work was started on this but not completed at the time of the casualty. No expert advice had been taken about the alterations made to the *Darlwyne*.

5. At the time of the casualty, *Darlwyne* was arranged as follows:

A forward store with non-watertight bulkhead and door, leading to the forward cabin partially covered by the coach roof forward.

A door from the forward cabin led to the main cabin which was wholly covered fore and aft by the coach roof. The floor of both cabins was below the waterline.

Aft of these two cabins was the engine-room with the only original watertight bulkhead between the spaces. The top of this bulkhead was cut away to allow a ladder to lead to the wheelhouse and hence the bulkhead was only watertight up to approximately 3 feet above the inside of bottom.

On top of the engine compartment was the wheelhouse measuring approximately 8 feet by 8 feet, fitted with large glass windows all round, with doors port and starboard to the weather deck.

Aft a ladder led down from the wheelhouse to the galley, the floor of which was at approximately the same level as that of the forward cabins. This ladder again cut into the bulkhead between the galley and the engine-room. This galley led via a fairly substantial teak door to a non-watertight cockpit aft; this was the only portion of the vessel not fully decked. This large open cockpit was approximately 11 feet in length and full breadth except that at deck level there were narrow side decks with a 4 inch coaming extending above deck level. The cockpit was about 18 inches deep and its deck was reasonably watertight at the centre. It was supported on adequate beams which rested on some of the original stringers and the connections to these were not very robust. It was further supported by two longitudinal bearers in turn supported by struts from the original after cabin floor. The cockpit extended at the sides only to the insides of the timbers.

The planking on the central portion was 1 1/8 inch tongued and grooved with a 3 inch wash strake below and fitted side seats. Outboard of this a 1 inch deck was laid extending to the timbers and this was also fitted with a 3 inch strake against the inside faces of the web frames. As a result there were spaces on each side, giving a total area through which water could drain to the buoyancy space below the cockpit floor of approximately 0.5 square feet per side.

The cockpit floor was constructed to drain off to a small fish box and then through the transom, via a slot approximately 4 inches by 1 inch in area and approximately 15 inches above the load waterline. Two hatches, one 3 feet by 2 feet in area and the other 2 feet by 2 feet in area, were fitted to this cockpit floor and there is reason to believe that these were very tight and safe against lifting, although no safety catches were fitted.

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The transom was cut away to facilitate access for divers, etc. via a portable transom ladder to an extent of approximately 2 feet 6 inches transversely and 1 foot vertically. The sides of this slot were formed by sampson posts approximately 4 inches square. Slots were cut in these to allow dropping in a shutter which was approximately 1 inch in thickness and constructed of mahogany.

At the time of the accident ballast was fitted, the amount of which is uncertain. Probably it amounted to about 3½ tons in the form of broken pig iron and granite sets. It was stowed between and outboard of the engine girders and their continuations and extended over a considerable proportion of the vessel's length.

The original steering gear was retained although wheel position was moved forward, and it is probable that extensions were fitted to the push and pull rods connecting the steering box with the rudders.

6. The equipment carried by the vessel is not entirely determinate but is thought to consist of the following:

- One 2 gallon fire extinguisher in saloon.
- One 1 quart CTC fire extinguisher in wheelhouse.
- One 55 lb. CQR anchor, shackled to approx. 15 fathoms of ¾ inch anchor chain and turn shackle to the chain locker.
- One (about 40 lb.) fisherman's anchor.
- Approx. 60 fathoms of 6 inch circ. rope anchor warp.
- Various coils of rope.
- Two circular lifebuoys, 24 inches in diameter lashed lightly on wheelhouse top.
- Possibly two lifejackets of waistcoat, non-inflatable type.
- One compass and binnacle.
- One moulded wood dinghy approximately 10 feet in length stowed in davits across the transom.
- One towed dinghy approximately 16 feet in length.
- One portable petrol driven fire or bilge pump of 2½ inches flexible suction.
- One "Whale" hand bilge pump with flexible suction and discharge.
- An assortment of tools, etc.

No flares, buoyant apparatus or other equipment appears to have been carried but the appropriate charts seem to have been provided.

7. The condition of the vessel at the time of the accident is difficult to determine but it would appear that the hull was in moderate if not good condition. The major defects constituted a soft area amidships on the starboard side above the waterline which, from the evidence, would appear to be approximately 3 or 4 square feet in area but not of an immediately serious nature, and a portion of the bottom forward below the waterline where there is some reason to think that the vessel may have been set up slightly by sitting on an obstruction. The rudders and steering gear appear to have been in fair condition although the streamline rudder plates were corroded to some extent and there may have been some wasting of the plating in several places. Two windows in the wheelhouse were cracked and these windows were certainly large and to some extent vulnerable. No windscreen wipers or clearview screens were fitted and the vessel was not fitted with bilge keels or any form of masts or steadying sails.

Two fuel tanks were fitted, each of 30 gallons capacity sufficient to give the vessel about fifteen hours motoring range at two thirds power.

Radio: The vessel was not equipped with any form of radio.

Classification: The vessel was not classified in any way.

Load Line: The vessel was not issued with any loadline.

Galley: The galley was fitted with a Calor gas cooker, the bottles for which were stowed immediately aft of the break of the wheelhouse. The cooker was not fitted with gas-tight drain trays but the shelf on which the cooker was fitted did have an overboard drain well above the waterline.

8. The *Darlwyne* left Mylor Creek, within the jurisdiction of the City of Truro, somewhere about 1000 to 1030 on 31st July 1966, carrying a crew of two and twenty-nine passengers. The person in charge was Mr. Brian Michael Bown. She was bound for Fowey.

The following weather forecast had been issued on the 30th July at 1758 on the BBC Light Programme: "Wind, west to north-west, force 5 to 7".

At about the same time on the BBC regional forecast for the South and West: "Winds west to north-west will be moderate to fresh and rather gusty".

At about 2000 the Independent Television Company's Westward Region broadcast: "Fresh to strong west or north-west winds", and at about 2330 the Independent Television Company's Westward Region forecast: "Winds west to north-west, moderate to fresh".

On the 31st July at 0640 on the BBC Light Programme: "Winds west, north north-west, force 5 increasing to 6 locally at first".

At 0755 on the BBC Home Service for the West Region: "Winds will be light, westerly at first, but will back south-westerly and freshen during the day".

At 1155 (after the *Darlwyne* had proceeded on her voyage) the BBC broadcast "winds west to north-west force 3 to 5".

9. The *Darlwyne* arrived at Fowey sometime after 1300. Her passengers went ashore and re-embarked just before 1600. The vessel was identified as the *Darlwyne* in Fowey and the Coastguard at Polruan logged a cabin cruiser corresponding to the description of the *Darlwyne* as leaving the port at 1608. The *Darlwyne* on leaving Fowey was seen to be towing a dinghy astern and was seen to be on a course to pass clear of Dodman Point. One witness who was fishing in a position about a mile to a mile-and-a-half from Cannis Buoy stated that he watched the vessel which was still towing the dinghy astern until about 1800 hours, and another witness who was about three quarters of a mile east of Maenease Point saw a vessel which might have been the *Darlwyne*, but did not notice that she was towing anything astern, at a time which he estimated was about 1545 going roughly in a south-westerly direction. About 1745 a launch was seen in a position described as close in on Hemmick Beach, but no dinghy was seen. At a time stated as sometime between 1600 and 1800 a lady in a garden at Portloe noticed a blue cabin cruiser crossing Veyan Bay in a westerly direction nearer to Nare Head than Dodman Point, but saw no dinghy. This may have been the last observation of the *Darlwyne*.

10. When the *Darlwyne* left Fowey the wind was south-west about force 3; the weather: raining with some squalls and a choppy sea. Worse weather was, however, setting in from the west and by 1800 the wind had reached about force 6 with a most probable height of the highest wave in the area of about 6 feet.

By 2000 the wind had reached force 7 with a corresponding height of the highest wave in each hour in a position about 5 miles off-shore of nearly 12 feet. By 2100 the wind had, if anything, increased a little and the estimated height of the highest wave at 5 miles off-shore was over 12 feet with a significant wave height of 6½ feet. Between 2100 and 2200 the wind veered and began to decrease dropping to about force 4 or 5 at 2300 probably from about west north-west. About 1800 in a position about 5 miles off Dodman Point the estimated period of the significant waves was just under 5 seconds and their length about 120 feet.

11. On the early morning of the 1st August searches for the *Darlwyne* were instituted. The Coastguards began to patrol on foot the coastline in the Falmouth district. The Falmouth and Fowey lifeboats were launched and a considerable area was searched by helicopter and Shackleton aircraft. The only trace of the *Darlwyne* found was the dinghy which had been towed astern. These searches continued throughout the 2nd August. We will refer later in this report to the details of these searches and how they came to be instituted. The searches, in fact, continued until the 4th August with the results set out in the next two paragraphs.

12. On the 4th August, four bodies were found about four miles east of Dodman Point; on the 5th August one body wearing a lifebuoy about six miles west of the Eddystone Lighthouse; on the 8th August one body about eight miles south south-west of the Eddystone and another, seven or eight miles south of the Eddystone; on the 10th August one body six miles south of Looe Island and one about two miles south-west of the Mew Stone. On the 11th August one body was found washed ashore in Whitesands Bay, and on the 13th another also washed ashore between Longstone Beach and Dowderry Beach. On the 16th August a twelfth body was recovered about ten miles south-east of the Mew Stone. These bodies were all examined by a pathologist who stated that in all the cases the lungs were full of water and that the victims had all drowned in deep water without any sign of a struggle on the surface, although one of them was wearing a lifebuoy.

13. The dinghy referred to in paragraph 11 above was found about 1325 on the 1st August in a position with Dodman Point bearing 302° T distant about twenty and a half miles. On the 4th August a lifebuoy identified as having been on the *Darlwyne* was recovered about four miles east of Dodman Point. On the 4th and 5th August broken planking identified as being part of the dinghy carried in the davits on the *Darlwyne* was found on shore a few miles west of Polperro. On the 5th August the body with the lifebuoy round it was found about six miles west of Eddystone Lighthouse.

14. The following watches were found on the bodies recovered:

- a waterproof self-winding watch which was still going;
- a watch which had stopped at 8.5 but which was run down and when wound up started again;
- a lady's watch which stopped at 8.20;
- a lady's watch which stopped at 9.17;
- a child's watch which stopped at 9.19;
- a lady's watch which stopped at 9.49.

Evidence was given that the watch that stopped at 9.19 would probably stop in ten minutes when immersed in sea water but with a maximum period of immersion of 20 to 25 minutes, and that which stopped at 9.49 would stop after about an hour's immersion.

15. In addition to the lack of life-saving appliances for thirty-one persons the *Darlwyne* was not seaworthy in several respects, these varying in importance.

The first and major lack of seaworthiness arose from the open cockpit aft, its method of construction and lack of effective draining apertures. This cockpit was generally soundly constructed. The cockpit floor, however, did not extend to the shell of the ship, the planking stopping at the faces of the frames or timbers. As a result there was approximately half a square foot of gap at each side through which water could flow at a quite high rate from the cockpit to the space below. It was the intention of the owner and his associates to fit lockers under the cockpit seats and, while these would not have been watertight, they would, in the presence of adequate scuppers, have limited the ingress of water to the hull to a safe level. The lack of these lockers and the absence of adequate scuppers or freeing ports was a grave defect in the construction of the vessel at the time she sailed and went far to render her unseaworthy.

A second cause of unseaworthiness was the lack of adequate watertight bulkheads. Generally speaking a yacht of this size would not be fitted with watertight bulkheads throughout, but with a non-watertight cockpit as described it is necessary to fit a watertight bulkhead between the space below the cockpit and the rest of the vessel to prevent the general ingress of water throughout the hull in the not improbable event that the cockpit should become flooded. *Darlwyne* did not have any watertightness in this area and water thus had more or less free access from the cockpit space to the rest of the craft.

A third source of unseaworthiness was the condition of the hull as it was known that a soft patch of the order of 3 feet by 4 feet in area, and presumably of dry rot, existed on the starboard side above the waterline approximately amidships. An area on the bottom of the hull forward on the port side was set in and, although there is no evidence that this leaked, the fact that it was visible to a surveyor shortly before the accident when he examined *Darlwyne* on the beach, shows that the timbers and planking must have been disturbed and possibly cracked.

A fourth source of unseaworthiness was the stowage of the ballast in such a manner that if the vessel assumed an angle of heel approaching her vanishing angle some of the ballast would be likely to move. Ballast stowed between the engine girders and the continuations thereof in all probability would be stable but that stowed outboard of these could well move, thereby endangering the safety of the vessel.

Finally, although the vessel was originally well designed and of good hull form, she was not possessed of sufficient stability or weight lifting ability to make a voyage at sea in the weather conditions with thirty-one people on board. At the time of her sailing from Fowey it is probable that the metacentric height of *Darlwyne* was not much in excess of 1.5 feet with a displacement of approximately 13½ tons, of which nearly 2 tons was passengers. The angle of heel at which the deck edge became immersed would be not much in excess of 30 degrees and the vanishing angle of heel just under 50 degrees. In the presence of a non-watertight cockpit, such a large disposable passenger weight in proportion to the total displacement of the vessel associated with a modest initial metacentric height rendered the safety of the vessel dependent upon the careful disposition transversely of the passengers.

16. For the voyage from Falmouth to Fowey with more than twelve passengers the *Darlwyne* should have had a Class III Passenger Certificate. She had no certificate of any kind and had never undergone the survey necessary to obtain one. The harbour authorities at Truro and Falmouth have regulations which provide that boats carrying passengers for reward

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must obtain a licence which is given only after an examination of the boat. These regulations also provide for the person in charge of the boat to have a licence which is only granted to him after an examination by the Harbour Master. The *Darlwyne* had no licence from any authority and Mr. Bown who was in charge of her held no certificate or licence of any kind.

17. After leaving Fowey there is good reason to believe that she set a course to pass clear of Dodman Point and it seems probable that she was off that Point a little before 1800. This would indicate a speed of something under 6 knots but she was running into the weather and may have eased down from her full speed for the comfort of the passengers. Nobody who saw the *Darlwyne* saw anything to indicate that she was in any trouble. It seems probable that off Dodman Point the *Darlwyne* would alter course a little to starboard across the mouth of Veryan Bay. There is no evidence as to what happened to her after that.

18. The dinghy which was found on the 1st August contained little water but the painter by which it had been towed was broken. It seems unlikely that this dinghy ever went down with the *Darlwyne* and whether it broke adrift before or at the time of the casualty must remain unknown. However if the probable course of the dinghy is traced back from where it was found it could well have been on the evening of the 31st July in the neighbourhood where the four bodies were found on the 4th August. Having regard to the searches carried out from the 1st to 4th August it seems unlikely that if these four bodies had been on the surface they would have all escaped detection.

19. The Court has seriously considered whether any inference can be drawn from the times at which the watches referred to in paragraph 14 above stopped. If the time of the casualty was about 2100 it would fit with the back trace of the drift of the dinghy but would leave unexplained what the *Darlwyne* was doing for a period of about three hours. Moreover if the accident happened about four miles east of Dodman Point the question arises as to what the *Darlwyne* could have been doing in the meantime.

20. Various searches by the Royal Navy attempting to find the wreck of the *Darlwyne* have proved abortive although contacts were made with 912 objects under water and divers went down and examined 142 of these. In the circumstances the Court is unable to say when or where the *Darlwyne* was lost. On the whole we incline to the view that the most probable place of the loss is the area off Dodman Point and the most probable time about 2100 hours on the 31st July.

21. The Court is satisfied that the most probable cause of the loss was simply that the *Darlwyne* was overwhelmed by the sea entering the cockpit aft and water getting below through the interstices at the sides of the floor or deck of the cockpit.

If for any reason the vessel was beam or stern on to the seas the disaster could have happened suddenly and without any warning. The fact that one of the bodies found was that of a lady who was wearing a jersey which was too large for her, possibly her husband's, and a lifebuoy would seem to indicate that there had been some anxiety on board before the actual disaster occurred. The *Darlwyne* had no means of making her distress known. It is therefore possible that the cause of water entering the cockpit and getting below was not due to one sudden wave perhaps quickly followed by another but to a succession of waves building up a cumulative effect. The Court has considered various theories as to what could have happened to the *Darlwyne* after being off Dodman Point about 1800 and is

of the opinion that the most probable explanation is that the vessel had engine trouble, suffered an engine breakdown and then drifted back before wind and sea. The weather was at its worst about 2100 and it is extremely likely that all on board of her were either in the wheelhouse or in the cabin when the disaster happened whatever time that may have been.

22. The week beginning the 8th July was known in Falmouth as "Tall Ships" week and during that week the *Darlwyne* made two or three trips in Falmouth Harbour and down as far as the Helford River in the charge of Mr. Lang and on at least one occasion Mr. Brian Michael Bown was a passenger. Mr. Bown was employed by Eastern Carpet Stores at Teddington. He was a Falmouth boy and during his National Service was in the Marine Rescue Section of the Royal Air Force. He was very interested in boats and for about a year had been considering buying a boat for himself. He had, however, recently got married and after his marriage was not so anxious to go to the expense of purchasing a boat. He was attracted by the *Darlwyne* and thought it might be possible to run the *Darlwyne* in and from Falmouth at a reasonable profit. Towards the end of July he gave up his situation in the Carpet Stores and went down to Falmouth to run the *Darlwyne* and on the 25th July had a talk with Mr. Barrett to which reference will be made later. The next day or two was spent by Mr. Bown in making himself familiar with the working of the *Darlwyne* with the help of Mr. Lang and on the 31st July Mr. Bown with a friend of his, a Mr. Stocks, took the *Darlwyne* round to a guesthouse at Mylor Creek called Greatwood and embarked the passengers for the trip to Fowey.

23. At the time of her loss the registered owner of the *Darlwyne* was Mr. Barrett. Mr. Barrett stated that on the 25th July he sold the *Darlwyne* to Mr. Bown and parted with the possession of her to him. Mr. Barrett stated that he told no one, except possibly his wife, that he had sold the vessel. The sale is said to have taken place when Mr. Barrett and Mr. Bown were alone and nothing was reduced to writing. There is no confirmation of Mr. Barrett's assertion that the sale had taken place. Mr. Bown, of course, was lost with the *Darlwyne* and was unable to give his account of the conversation with Mr. Barrett. But, from what Mr. Bown said and wrote between the 25th and 31st July, it is apparent that his belief was that he was going to run the *Darlwyne* as skipper, his remuneration being "one-third of the take". The Court has been forced to come to the conclusion that Mr. Barrett's evidence cannot be accepted and that he was still the owner of the *Darlwyne* at the time of her loss.

24. The evidence as to what arrangements were made for the trip to Fowey and by whom they were made is sketchy. The passengers in the *Darlwyne* consisted of twenty-seven men, women and children who were staying at the guesthouse at Greatwood which was run by Mr. R. W. Rainbird and two children of a Mrs. Hicks who was employed at the guesthouse. Mr. Rainbird, had been on one of the trips on the *Darlwyne* in Tall Ships week and was approached by two of his male guests who wanted to take a trip with their families and Mr. Rainbird said that he knew of a boat that he thought would be suitable. Mr. Rainbird then got into touch with Mr. Barrett's son-in-law, Mr. Mitchell, as Mr. Barrett was not on the telephone; and as a result on the night of Saturday 30th July Mrs. Mitchell took Mr. Bown and Mr. Stocks to Greatwood where she introduced them by their christian names only to Mr. Rainbird. In the meantime the party had grown and on the fatal Sunday morning all except two of the guests at Greatwood plus two small children, belonging to a Mrs. Hicks who was employed at Greatwood, embarked for the trip. The final arrangements seem to have been made in the bar at Greatwood probably between Mr. Bown and the two male guests

mentioned above. It is clear that the arrangement was that in some form or another payment was to be made for the carriage of the party. Whether that was on the basis of so much a head or for a lump sum figure is not clear. It is probable that on that Saturday night it was decided to go to Fowey next day provided the weather permitted and the Court is satisfied that when the vessel left Mylor Creek on the Sunday morning her destination was Fowey.

25. The *Darlwyne* was normally moored opposite Mr. Barrett's house at Penryn and the first person to show any interest in the *Darlwyne's* failure to return seems to have been Mrs. Barrett who looked out of the window and saw that the *Darlwyne* was not lying at her moorings. Her son-in-law Mr. Mitchell was in the house and he volunteered to go to the coastguard station and see if he could get any information. After ringing up Mr. Rainbird on the telephone and ascertaining that the *Darlwyne* had not returned to Mylor Mr. Mitchell went to the Falmouth coastguard station and saw the coastguard on duty whose name was Seager. The time of his visit is fairly well established as being about 1927 at which time bad weather watch was set at the coastguard stations. What passed between Mitchell and Seager is in dispute. It is clear that Mitchell began by asking whether the *Darlwyne* had been entered in the coastguard log as leaving Falmouth and was told that she had not. Seager says he was told that the vessel had gone to Fowey whereas Mitchell's evidence was that he could not have said so because he did not know where she had gone. The evidence as to the remainder of the conversation is also contradictory. No record was made by the coastguard of this enquiry but the Court is satisfied that Mitchell did not convey to Seager any sense of urgency or anxiety. Mitchell returned to Penryn and reported that there was no record of the *Darlwyne* having left Falmouth. He stated that he thereafter rang up various people at Helford and made enquiries as to whether the *Darlwyne* had been seen there and received negative replies. Mitchell's evidence was not very satisfactory as he did not remember very much.

26. The next link in the chain of communication with the coastguard was a telephone call from Mr. Rainbird. This call was also taken by Seager and no record of it was made at the time. The time of this call is in dispute. Mr. Rainbird said it was just before 2000 and Seager estimated it as 2135 or just after. It is clear that Seager identified this enquiry with that made by Mitchell and that he advised Mr. Rainbird to ring up some other coastguard station or stations and gave him some telephone numbers of these stations and asked him to report the result. Again Seager states and Mr. Rainbird denies that he was told the vessel had gone to Fowey.

27. Mr. Rainbird undoubtedly made a number of telephone calls to various places. The order in which these calls were made is not clear. Mr. Rainbird produced a telephone docket showing a call to Polruan coastguard station at 2148. The coastguard on duty at Polruan recorded a request for information about the *Darlwyne* being received from Mr. Rainbird's telephone number at 2205 and a reply at 2215 that a large motor boat of the description given had been logged out at 1608. The coastguard on duty at Gorran Haven recorded the receipt at 2200 of an inquiry from Mr. Rainbird giving a description of the *Darlwyne* and stating that she was bound for Fowey. He was told she was not sheltering at Gorran Haven and advised to ring Polruan and asked to let the coastguard know the outcome of his enquiries at Polruan. About 2245 Mr. Rainbird rang up the Harbour Master at Mevagissey to ask if the *Darlwyne* was sheltering there. The Harbour Master went out saw no signs of the vessel in the harbour and rang Mr. Rainbird back with this information.

28. Mr. Rainbird stated that after receiving information from Polruan that a vessel answering the description of the *Darlwyne* had left Polruan at 1608 (as stated in the last paragraph this reply was timed at Polruan coastguard station as having been given at 2215) he telephoned Falmouth coastguard station with this information. This is denied by Coastguard Seager who was on watch until 2300. The Court is unable to decide this conflict of evidence. Seager originally reported to his superiors that Mr. Rainbird's call was about 2030 which is only about half an hour after the time Mr. Rainbird said he made it. If there was a second call from Mr. Rainbird after 2215 Seager certainly ought to have recorded it and acted upon it. On handing over to his relief at 2300 he made no mention of the two enquiries which he had admittedly had about the *Darlwyne*.

29. The Court is of the opinion that the first telephone call from Mr. Rainbird, if he made more than one to the Falmouth coastguard before 2300, should have been recorded but does not think that the information then conveyed warranted the institution of a search. The District Officer of the coastguard stated that if he had been informed at 2230 that the *Darlwyne* had left Fowey about 1600 he would have instituted a coast search and ordered out the Falmouth and Fowey lifeboats. By that time the disaster had already happened and it is improbable that anything would have been discovered.

30. At 0245 on the 1st August Mr. Rainbird again telephoned Falmouth coastguard station. Coastguard Beard was then on watch and had not been informed of any inquiries about the *Darlwyne*. He recorded the conversation; it included a description of the *Darlwyne*, the statement that she had left Mylor for Mevagissey and Fowey and should have been back at 7 or 8 p.m. Mr. Rainbird stated that extensive inquiries had been made at Fowey, Polruan and Gorran Haven and of the Harbour Masters at Mevagissey, Par and Charlestown as well as around Helford River and that the only information received was that a vessel of the description of the *Darlwyne* left Fowey at 1608. Beard at once informed the district officer who arranged for a coastal search at daylight, the launching of the Falmouth and Fowey lifeboats and an air search.

31. At 0537 on the 1st August the Falmouth lifeboat was launched followed by the Fowey lifeboat at 0555. A broadcast to shipping began at 0534 and at 0645 a helicopter arrived over the area and began a low level air search along the coast line between Falmouth and Fowey and to a depth of five miles to seaward. About 0700 the helicopter search was extended to Plymouth and thereafter the area was extended to eight miles out to sea. About 0945 a Shackleton aircraft joined the operations and covered an area from the Lizard to Prawle Point as far South as Latitude 49° 50'N. HMS *Fearless* searched an area off Dodman Point. Regular and auxiliary coastguards carried out a coast search. The visibility was excellent but the only trace of the *Darlwyne* found was the dinghy referred to in paragraph 11 above. During the evening HMS *Ark Royal* en route from Plymouth to Lyme Bay searched on her track.

32. On the 2nd August the weather was bad with poor visibility and some fog. The helicopter was able to make one search along the coast and the Shackleton searched for four hours before having to give up on account of poor visibility. The Salcombe and Coverack lifeboats were also launched this day. In the evening it was decided that no further air search should be made as there was by then no hope of finding any survivors. As a result it would seem of Mr. Rainbird's insistence that the *Darlwyne* was still afloat this decision was rescinded and further air searches by Shackleton aircraft were carried out on the 3rd and 4th August. On the 4th August a helicopter joined the search.

33. One of a Mr. Mills and did not go in daughter. Up Birmingham, went to Great Mills. Upon a been called o that the *Darl* search had no thereupon off ived the Ro craft, paymen flew from Co along the no Jersey and re There was ch and the Roy co-ordinated days. The Co generous acti

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33. One of the passengers lost in the *Darlwyne* was a Mr. Mills and the only two guests at Greatwood who did not go in the *Darlwyne* were Mrs. Mills and her daughter. Upon hearing of the disaster a Mr. Giles of Birmingham, who was a co-director of Mr. Mills', went to Greatwood on the 2nd August to help Mrs. Mills. Upon arrival he was told that the air search had been called off. Mr. Rainbird was strongly of opinion that the *Darlwyne* must be still afloat and that the air search had not covered a large enough area. Mr. Giles thereupon offered to provide a private air search provided the Royal Air Force agreed. Three Rapide aircraft, payment for which was guaranteed by Mr. Giles, flew from Cornwall to the Channel Isles, did a sweep along the north coast of France, spent the night in Jersey and returned to Cornwall on the 4th August. There was close liaison between the private aircraft and the Royal Air Force and the private search was co-ordinated into the air and sea searches on those two days. The Court wishes to express its appreciation of the generous action taken by Mr. Giles.

34. The sea and air searches for the *Darlwyne* were under the control of the Naval Commander-in-Chief Plymouth, the Royal Air Force Search and Rescue Organisation being responsible for the detailed conduct of any air search. There was close co-operation between the staff of the Commander-in-Chief Plymouth and of Air Vice-Marshal Barraclough, who was in charge of the Royal Air Force organisation. The coastguard worked in close co-operation with both. The Court is satisfied that the whole area where the *Darlwyne* could have been was thoroughly searched on the 1st and 2nd August.

35. The original idea when the final alterations to the *Darlwyne* was made seems to have been that a licence should be obtained from the Falmouth Harbour Commissioners for the vessel to carry up to twelve passengers. The Court is satisfied that both Mr. Barrett and Mr. Bown had at least a general idea of what would be required to obtain such a licence and also that the person in charge would have to obtain a boatman's licence.

36. In considering any question of blame for this disaster the Court is not concerned with any breaches of Acts of Parliament or local regulations or the failure to perform any duties imposed by the Common Law except in so far as such breaches or failures are proved to have contributed to the disaster. The woefully inadequate supply of life saving appliances may not have contributed to the loss of life especially if, as seems probable, everyone on board the *Darlwyne* was in the wheelhouse and cabin and the vessel at the end suddenly foundered or capsized. The lack of distress signals may have done so if, in fact, there was trouble with her engines or steering gear. That, however, is not sufficient to establish a causative wrongful act or default.

37. The Court is satisfied that the major cause of the disaster was the *Darlwyne* going on a voyage to sea when she was physically unfit to withstand the normal perils which she might expect to meet. The Court finds that the loss of the *Darlwyne* was contributed to by the wrongful act or default of the late Brian Michael Bown in negligently taking the *Darlwyne* to sea with passengers on board when the vessel was not fit to go to sea in open waters and by the wrongful act or default of her owner Mr. John Campbell Maitland Barrett in failing to ensure that Mr. Bown, his servant or agent, was specifically warned that the *Darlwyne* in her then state was not fit to go to sea in open waters.

38. The Court feels that the wrongful act or default on the part of Mr. John Campbell Maitland Barrett

calls for severe censure but that in all the circumstances of the case the maximum practicable amount which the Court can order Mr. Barrett to contribute to the costs of this investigation is £500.

39. Having regard to the evidence in this case the Court is strongly of the opinion that all messages, whether verbal or by telephone, relating to any enquiry about a vessel received by the coastguards, should be recorded by them as required by paragraph 371 of the *Instructions to Coastguards*.

The Court is also of the opinion that further consideration should be given to the question as to whether anyone in charge of any kind of craft of a certain size should not be compelled to hold a licence enabling him or her to take charge of such craft and whether such licences should only be issued after an examination to test a persons fitness to be in control of such a craft.

Both the City of Truro and the Falmouth Harbour Commissioners have local regulations saying that persons in charge of a boat carrying passengers for hire must be licensed and that any craft carrying passengers for hire must also be licensed for that purpose and an examination is made of the craft concerned and permission given to carry so many passengers according to the size and condition of the craft. With the number of small craft proceeding within or out of or into these ports these are clearly provisions which it is difficult to enforce and it is recommended that consideration should be given on a national basis to the need for there to be such regulations in all areas and how they are to be enforced.

40. The powers of local authorities to impose penalties for breach of their regulations which may affect the safety of life at sea date from the Victorian era and in the opinion of the Court are utterly inadequate in view of present-day conditions and values and it is suggested that consideration should be given to the question of enabling local authorities to increase these penalties drastically.

It is also recommended that in order to assist the Board of Trade surveyors and the local authorities consideration might be given as to whether selected officials such as harbour masters might not be given the power to detain any vessel which is not apparently complying with the Merchant Shipping Acts or local regulations.

41. There seems to be in this area, and probably in others, an idea that when the owner of any craft enters into an agreement with someone to pay so much for the hire of the craft for a fixed period and where the owner supplies the skipper and crew for the craft any passengers carried are not passengers within the meaning of the regulations. The legal decisions upon who is a passenger are somewhat complicated, but the Court is strongly of the opinion that in the circumstances suggested anyone on board the craft, other than the crew, whether a guest of the hirer or actually paying for their trip, are carried for hire within the meaning of the regulations and that steps should be taken to disabuse owners of craft of this mistaken idea and bring home to them that in such circumstances they themselves are clearly responsible for the observances of the Merchant Shipping Acts and any local regulations which may apply.

42. It appears that the *Darlwyne* was equipped with a calor gas cooking stove which was fitted in the galley. The drip tray arrangement for this appliance does not seem to have been very satisfactory and it is recommended that consideration should be given to the question of whether some national standard for such arrangements should not be laid down. It is not, however, suggested that the arrangement on the *Darlwyne* in any way contributed to this casualty.

QUESTIONS AND ANSWERS

The Court's answers to the questions submitted by the Board of Trade are as follows:

- Q. 1. Who were (a) the owner and (b) the skipper of the *Darlwyne* at the time of her loss?
- A. (a) Mr. John Campbell Maitland Barrett.  
(b) The late Mr. Brian Michael Bown.
- Q. 2. (a) When, where and by whom was the *Darlwyne* built?  
(b) What material changes had been made in her design and construction since she had been built?
- A. (a) 1941; Shoreham-by-Sea; Sussex Yacht Works Ltd.  
(b) See paragraphs 3 and 4 of the annex to the report.
- Q. 3. (a) Was the *Darlwyne* seaworthy when she sailed from Mylor on her last voyage?  
(b) If not, in what respects was she unseaworthy?
- A. (a) No.  
(b) See paragraph 15 of the annex to the report.
- Q. 4. (a) What life-saving appliances were on board the *Darlwyne* on her last voyage?  
(b) Did the life-saving appliances on board the *Darlwyne* comply with the relevant provisions of the Merchant Shipping (Life-Saving) Appliances Rules 1965?
- A. (a) One dinghy in davits at the stern, two lifebuoys and possibly two life-jackets; one dinghy was towed astern and had one life-jacket in it.  
(b) No.
- Q. 5. Had the owner or the skipper of the *Darlwyne* complied with the relevant provisions of the Merchant Shipping Acts 1894 - 1964 with regard to survey of passenger vessels by the Board of Trade?
- A. The *Darlwyne* had not been surveyed in compliance with the relevant provisions of the Merchant Shipping Acts.
- Q. 6. Had the owner or the master of the *Darlwyn* complied with the relevant provisions of the City of Truro bye-laws then in force with respect to boats in the port and harbour of Truro?
- A. The relevant provisions of the City of Truro bye-laws had not been complied with.
- Q. 7. (a) How many (i) crew and (ii) passengers embarked in the *Darlwyne* at Mylor on the 31st July 1966?  
(b) Under what agreement with the owner or the skipper were the passengers carried?  
(c) Was there in force any passenger certificate applicable to the last voyage of the *Darlwyne*?
- A. (a) (i) Two  
(ii) Twenty-nine  
(b) See paragraph 24 of the annex to the report.  
(c) No.
- Q. 8. How were the passengers embarked, and in whose boat or boats?
- A. The passengers were embarked in the two dinghies mentioned in the answer to Question 4 (a) above. The dinghy which was carried at the stern of the vessel belonged to Mr. B. M. Bown and the dinghy which was towed astern belonged to the son of Mr. R. W. Rainbird. They were embarked from the beach at Greatwood.
- Q. 9. When did the *Darlwyne* leave Mylor on her last voyage, where was she bound, and what time was she expected to return?
- A. About 1000 to 1030 hours on 31st July 1966; she was bound for Fowey and was expected back in time for the passengers to dine at 1900.
- Q. 10. What was the weather forecast for the area when the *Darlwyne* commenced her voyage?
- A. See paragraph 8 of the annex to the report.
- Q. 11. Did the *Darlwyne* carry or tow any boat when she left Mylor?
- A. The *Darlwyne* carried one 10 foot moulded dinghy in davits at the stern and towed one 16 foot clinker-built dinghy astern.
- Q. 12. (a) When did the *Darlwyne* leave Fowey on her return voyage?  
(b) Were the same passengers and crew members embarked for the return voyage?
- A. (a) About 1608 on the 31st July 1966.  
(b) Yes.
- Q. 13. Did the *Darlwyne* carry or tow any boat when she left Fowey?
- A. Yes, as in the answer to Question 11 above.
- Q. 14. What was the state of the wind, weather and sea in the area between the time the *Darlwyne* left Fowey, and the following midnight?
- A. See paragraph 10 of the annex to the report.
- Q. 15. What was the probable course and speed of the *Darlwyne* up to the time of her loss?
- A. See paragraph 17 of the annex to the report.
- Q. 16. When and where was the *Darlwyne* last sighted?
- A. See paragraph 9 of the annex to the report.
- Q. 17. What were (a) the probable place  
(b) the probable time  
and (c) the probable cause of the loss of the *Darlwyne*?
- A. (a) The area off Dodman Point  
(b) About 2100 on the 31st July 1966  
(c) That the *Darlwyne* was overwhelmed by the sea entering the cockpit aft and water getting below through the interstices at the sides of the floor or deck of the cockpit. See also paragraph 21 of the Annex to the Report.

- Q. 18. (a) W  
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Q. 18. (a) What information about the *Darlwyne* was passed to the Coastguard before daybreak on the 1st August 1966?

(b) Who provided that information, and when was it passed?

(c) Was that information adequate and accurate?

A. (a) and (b) see paragraphs 25 to 30 of the Annex to the Report.

(c) As to the adequacy of the information given in the first two enquiries see paragraphs 25 to 30 of the Annex to the Report. Some of the later information supplied by Mr. Rainbird was inaccurate in that it stated that the vessel was equipped to Ministry of Transport regulations and that the passengers included two officers of the Merchant Navy.

Q. 19. (a) Was a search for the *Darlwyne* instituted promptly and thereafter carried out efficiently?

(b) If not, was that through the fault of any person or persons, and if so, of whom?

A. (a & b) As to the promptitude of the institution of the search see paragraphs 28 and 29 of the Annex to the Report. The search when instituted was efficiently carried out.

Q. 20. What items of wreckage were found, and when and where?

A. See paragraph 13 of the Annex to the Report.

Q. 21. (a) How many lives were lost with the *Darlwyne*?

(b) How many bodies were found, and when and where?

A. (a) Thirty-one.

(b) See paragraph 12 of the Annex to the Report.

Q. 22. Was (a) the loss of the *Darlwyne*, or

(b) the loss of the lives of the persons on board her caused or contributed to by the wrongful act or default of any person or persons, and, if so, of whom?

A. Yes. The loss of the *Darlwyne* and of the lives of the persons on board her was contributed to by the wrongful act or default of the late Brian Michael Bown in negligently taking the *Darlwyne* to sea with passengers on board when the vessel was not fit to go to sea in open waters and by the wrongful act or default of her owner Mr. John Campbell Maitland Barrett in failing to ensure that Mr. Bown, his servant or agent, was specifically warned that the *Darlwyne* in her then state was not fit to go to sea in open waters.

J. V. NAISBY, Judge

EWAN C. B. CORLETT } Assessors  
H. S. HEWSON }