

The Prosecutor summed up the case for the Prosecution, as follows:-

The Court will have now read the Circumstantial Letter and have come to the conclusion that the facts stated in it have been proved and that it gives a fair statement of the events of that day.

These outstanding points have been produced in evidence, -

1. That on 25th December, 1940, "MERCURY" had been sweeping in an area where mines were known to exist.
2. That when the sweep was hove in to about 174 fms. primers were removed from the depth charges, thus indicating that in this case, danger lay astern - not ahead.
3. That when the sweep was hove in still further, the engines were stopped, and when the turbulence of water had subsided, an obstruction was sighted in the otter.
4. that no movement of the engines took place between this time and the explosion - a matter of between 8 and 12 minutes.
5. That whilst the engines were thus stopped, the float was grappled, hoisted in board, and secured.

I submit that the following conclusions may therefore be drawn from these points. -

1. That when as much as 174 fms. sweep wire remained veered the accused realised that the cause of the peculiar behaviour of the float might have been a mine in the sweep, as at this stage the depth charge primers were removed as a precautionary measure.

Prosecution - Summing Up (Cont'd)

2. That, as the obstruction had not been clearly defined, even when the ship was stationary, the Accused was unable to conclude that it WAS a mine. No more could he conclude that it WAS NOT a mine.
3. That whilst the Accused may ^{have} considered it necessary to have stopped the "MERCURY's" engines in order to sight the otter - for which the instructions allow - the instructions go on to say that if a MINE IS in the otter, the sweep wire should at once be veered to about 50 fathoms, and the sweeper go ahead at full speed.

I have not proved that the object in the otter WAS a mine, but a piece of metal alleged to have been part of a mine was found on board afterwards. Evidence has shown that the ship did not go ahead at any speed after the obstruction was seen. Rather, did the ship remain stopped for sufficient time for the float to be grappled, hoisted and secured inboard, whilst the obstruction remained in the otter close by the ship's stern.

The accused, in his evidence, referred to the procedure adopted in "JEANIE DEANS" when sweeps were being hove in - in the Clyde. There is no evidence to show that the Accused has ever been on board the "JEANIE DEANS" to see for himself what was done on these occasions, and so I, as Commanding Officer of "JEANIE DEANS", consider his allegation in this respect is unfounded.

I submit that the instructions in the books are based on experience gained in all types of Sweepers and should be interpreted accordingly in a practical way. The Manual of Minesweeping, an Admiralty Publication, which is largely the result of experience in the Great War may be applied to Minesweeping in general. It will be observed that this Book is dated June, 1940, and it is reasonable to suppose that paddlers were taken into consideration.

Although in the case of "MERCURY", the otter was not seen until it was between 6 and 8 fathoms from the many observers on the Sweeping Deck, it is contended that these instructions still apply, and form a guide as to the action that should be taken in such circumstances. It has been alleged that the turbulence of the water aft in paddle Minesweeping is great, therefore I submit that greater care still should be taken in this class of ship, and action must be correspondingly more prompt than in ships where such turbulence is not experienced.

I have said that the instructions relate to a MINE. The obstruction was originally suspected to be a mine, and at no time, was that suspicion ever dispersed. Therefore it should have been treated as though it were a mine. Yet the evidence has shown that the engines were kept stopped for a matter of at least 8 mins. after the otter and the obstruction in, or near it, had been sighted. That the ship must have been stopped is not only borne out by evidence of the Senior Engineer Officer, but by the fact that the float was grappled at a distance of between 18 and 27 feet, when the float wire was 90 feet long.

I submit to this Court, that by allowing the otter and its suspicious parasite to remain so close to the stern for so long a time, the Accused took an unnecessary risk with regard to the safety of the ship he commanded.

It has been stated that the explosion took place near the stern of the ship. It has also been stated that at the time of the explosion the ship was about three cables to the northward of the fourth lap. Thus the ship was, at the time of the explosion, in water that had been swept by 4 sweepers in "G" formation that very day.

A piece of metal riddled with bullet-holes has been referred to as having come on board. It was suggested that this was part of a mine. I consider it very reasonable to suppose that this was a mine that was in the process of sinking when it got caught up in the otter. It is also likely that

a horn had been broken and that it freed itself from the otter, thus hanging from the otter and withdrawing the plunger when its weight became 330 lbs. In this case the mine would fire assuming it was a type XIV mine.

The Defence have drawn the attention of the Court to the test that should be applied in this case, a test known as the reasonable man test.

The Prosecution submits that the Accused omitted to do what a reasonable person of his standing and experience, - especially of minesweeping would have done in the circumstances. The Prosecution is aware of the strain and the difficulties with which Officers in the minesweeping are faced, and there is no question of their loyalty and zeal. That these charges should have been brought against an officer of such proved worth and devotion to duty is regrettable, but it is nevertheless necessary in the interests and welfare of the Service.