

(No. 158.)

"AYTON," (S.S.)

The Merchant Shipping Acts, 1854 to 1876.

Report of Court.

IN the matter of the formal investigation held at Westminster, on the 26th, 27th, and 28th November 1877, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Captain VISCONTI, R.N., and Captain BEASLEY, as Assessors, into the circumstances attending the stranding of British steamship "AYTON," of London, between Kaufkalida Island and Cape Glarenza, on the Coast of Greece, on the 12th October last, whilst on a voyage from Port Said to Patras.

The Court, having carefully inquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons stated in the annexed judgment, that the loss of the said vessel "Ayton" was due to Mark Storey, her master.

(1.) In having neglected to provide himself with proper charts and sailing directions for the voyage from Port Said to Patras, he being at the time imperfectly acquainted with the navigation.

(2.) In having kept his ship, which was proceeding at full speed, too close to the shore, without using the lead, when approaching Cape Glarenza, he being at the time ignorant of the depth of the water.

(3.) In having, on seeing the Island of Kaufkalida ahead, ported his helm and attempted to pass between it and the shore, instead of stopping and reversing full speed.

For these wrongful acts and defaults the Court is of opinion that the certificate of Mark Storey, the master of the "Ayton," should be suspended for a period of six calendar months from this date, but that during the period of such suspension he should be allowed a mate's certificate.

The Court makes no order as to costs.

Dated the 28th day of November 1877.

(Signed) H. C. ROTHERY,
Wreck Commissioner.

We concur in the above report.

(Signed) E. G. F. G. VISCONTI, Assessor,
Retired Commander R.N.

" THOS. BEASLEY, Assessor.

Judgment.

The Commissioner. On the 12th of October last the British ship "Ayton," of London, was run aground on the West Coast of Morea, between the Island of Kaufkalida and the mainland, and we have been requested by the Board of Trade to investigate the circumstances under which this casualty occurred.

The "Ayton" is a screw steamship of 1,504 tons gross and 970 tons net register, and she had two engines of 150 horse-power. She was built at Sunderland in the year 1876, and was the property of five gentlemen, of whom Mr. John Storey Barwick, of Sunderland, was the principal and managing owner. On the 14th of September last the "Ayton" left the Tyne, bound with a cargo of coals to Port Said, with the intention of afterwards proceeding through the Suez Canal to Calcutta, there to engage in the coasting trade between that place and Madras. At this time she was under the command of Captain Storey, and had a crew of 20 hands all told. We are told, and we have no reason to doubt it, that everything on board was in a thoroughly good and efficient condition. She had three compasses, a standard compass on the fore part of the bridge, another just forward of the midship wheel, and a third just before the after wheel; and we are told that they were all in good working order. I find, however, an entry in the log-book under date of the 14th September, the day on which the vessel left the Tyne, in these words: "Waited from 8 a.m. until 10.30, to adjust compasses, but no one came off." Nothing, however in this instance apparently turns upon the correctness or otherwise of the compasses, the stranding being, in our opinion, due to a totally different cause.

W. 105. 60.—12/77. Wt. 3011.

The vessel arrived at Port Said on the 3rd October, and there discharged her cargo, and on the Sunday following (the 7th I think) the master received from his owners orders to proceed to Patras instead of continuing his voyage to Calcutta. On the 8th she sailed for Patras in water ballast with the same crew as that with which she had left the Tyne, and drawing, we are told, about 11 feet forward and 14 feet aft. On the evening of the 11th she was off the West Coast of the Morea, and between 8 and 12 o'clock p.m. that night, it being the second mate's watch on deck, there were heavy rain squalls, accompanied with vivid flashes of lightning, and accordingly the vessel was put at half speed for about half an hour before midnight, when the chief mate's watch commenced, and from that time until the vessel took the ground there were on the bridge the master and the chief officer, a man at the midship wheel, and another forward on the look-out.

At midnight, the weather having cleared up, the engines were again set on full speed ahead, and she continued her course, heading north half west by the standard and steering compasses; but as on this course, we are told, that there was a deviation of 20°, or nearly two points to the west on both compasses equally, her true compass course would be north-north-west a quarter west. At about a quarter past 12 the chief mate took an observation of Cape Katakolo, which they had then recently passed, and found it to bear south-east and by east half east, distant about five miles. The course was continued north half west until they rounded Cape Trepito, when it was altered to north and by east half east; there being, we are told, no deviation on this course, although, as has been said, there was a deviation of nearly two points to the west, on a north half west course. The vessel, however, was not steered precisely on that course, but was kept parallel with the coast, occasionally heading on and off, at a distance, as the master supposed, of about two miles from the land.

At 1.20 a.m. the master ordered the chief mate to go aft and look at the patent log, and on his reporting the distance run (but what that distance was neither of the witnesses has been able to inform us), the master thought that they must be nearing Cape Glarenza, and as the chart which he had on board stated that that light was only visible at a distance of two miles, he came to the conclusion that he must be further out than he intended, and therefore beyond the radius of the light; and he accordingly ordered the helm to be ported until the ship headed north-east by north. After continuing this course for about 10 minutes a ripple was observed a little on the port bow. The captain it seems observed it before it was reported by the look-out man, and he thereupon directed the mate to jump down and take a cast of the lead, at the same time ordering the helm to be ported. Whilst the mate was so engaged the master observed a small spot of land on an island where the ripple had been. He immediately ordered the helm to be put hard a-port, and himself jumped down and took another cast of the lead and found 5½ fathoms, the mate having before found only 3½ fathoms. In the meantime the vessel had been going full speed ahead, which the master told us was between eight and nine knots an hour, when she was suddenly observed to lose her way, owing to her having taken the ground. The engines were thereupon reversed full speed astern, but the vessel remained fast. Shortly afterwards they were obliged to stop the engines, the injection pipe sucking mud instead of water, owing to her being on the ground.

Orders were then given to the engineers to empty the tanks. Ordinarily we are told that this would take from four to five hours; but the pump which was connected with the engine-room tank having become deranged, the water had to be run out into the bilges, and to be thence pumped out; and the result was that the tanks were not completely emptied until 3 p.m. of the same day. In the meantime the best bower and stream anchors had been carried out astern to the extreme lengths of the hawsers; and as the engines had begun to work at 10 a.m., owing to the ship being lifted from the ground by the lightening of the water tanks, they were turned full speed astern, but without any effect.

At 4 p.m. Her Majesty's ship "Wizard," which had been lying at Zante, and had observed them, came up and offered assistance, and a hawser having been passed to her, she commenced towing ahead, but she had so little power that she produced no effect; and it was then agreed that she should return to Zante and procure some lighters, into which they could discharge a portion of her coal. The "Wizard" returned on the following morning, bringing

with her two lighters, into which about 20 tons of coal were discharged, but that not being sufficient to lighten her, 60 tons more were jettisoned. The chains also having been unshackled were put into the two lifeboats so as to further lighten the vessel; and at about 3 p.m. of the 13th, the master, observing that the hawsers were slack, directed the crew to haul upon them, and in a few minutes the ship came off the bank into deep water. She then proceeded to Zante under her own steam, and it being found that she had sustained apparently no injury, and that she was not making any water, a portion of her homeward cargo was taken on board, with which she proceeded on to Patras and other ports, where she completed her cargo, with which she returned to this country, arriving in the Port of London on the 17th November instant. Upon her arrival she was put into a dry dock, and her bottom examined, and it was discovered, as we have been told both by the master and by the owner, that no damage whatever had been done to her.

These being the general facts of the case, it will now be proper to inquire how the master accounts for the vessel having got aground. He says that, not being personally acquainted with the waters, which he was about to visit, he took care before leaving Port Said to get all the information he could on the subject, and was told that, in passing between Zante and the Morea, the greatest danger to be apprehended was from the Montagne Rocks, which lie some six or seven miles away from the coast. He accordingly determined to keep well to the eastward of them, and, seeing from the only chart which he had in his possession, that there was deep water apparently close up to the coast, he kept the vessel, after passing Cape Trepito, at a distance of about two miles from the shore. He told us that when he first observed a ripple on the port bow he thought that it proceeded from the Montagne Rocks, and that this was why he ordered the helm to be ported, that he continued under that impression for about a minute, and that when he saw the island it was too far on his port bow for him to pass outside of it; and believing that he saw a passage between the island and the mainland, he ordered the helm to be put hard a-port, and continued his course full speed ahead, until the vessel soon afterwards took the ground.

In order to understand where it was that the vessel got aground, I should observe that the Island of Kaufkalida lies at a distance of about half a mile from the mainland, but is connected with it by a reef of rocks, as well as by a bank of sand and mud, and it was upon this latter the "Ayton" grounded, with the island some 150 yards away on his port side, and the mainland less than half a mile off on his starboard beam.

Now the way in which the master accounts for having attempted to pass between the island and the mainland, where there was not sufficient water for the vessel is this: He says that the only chart of these parts which he had on board was the Admiralty chart of the Mediterranean on a small scale; that that chart showed deep water right up to the coast, as much, he says, as 66 fathoms, and gave no indication of any dangers there. When, therefore, he observed this island ahead he ported his helm for the purpose of going between it and the mainland, thinking he could do so with safety.

Now without pausing to inquire whether or not a more careful examination of his chart would not have shown him the presence of two small islands off Cape Glarenza, which ought to have been some indication to him that there were dangers there which he ought to avoid, I may observe that a chart such as that which the master had was not a proper chart with which to navigate these narrow waters. It was no doubt a very good general chart of the Mediterranean, but before the master ventured into those narrow seas it was his duty to have obtained a chart upon a larger scale, such a chart as that which he has told us he afterwards obtained on his arrival at Zante, and such as that which I have now before me; which would have shown him the special dangers of the coast, the depth of water, and other particulars which no seaman would expect to find in a chart such as that which he had.

Now what excuse does the master give for not having provided himself with such a chart before he left Port Said? He told us that when he left England he was destined to the East Indies, and that he had provided himself with charts for those seas as well as for the Red Sea, and all the places which he expected to visit. When, however, he got orders from his owners to go to Patras he inquired from his agents, and amongst the shipmasters at Port Said, for charts upon a larger scale of the waters which he was about to visit, but that he was unable to procure any. He was told that he could not get them nearer than Suez, and that to have done this would have caused a delay of four days in the departure of the vessel.

In other words, he would wish us to suppose that it was his duty, in the interests of his owners, to venture with this ship into waters with which he was imperfectly acquainted without adequate charts or directions, rather than incur a delay of some four days; and he even added that an energetic man would never lose two or even one day, when his ship was ready for sea for such a purpose. On this point, however, we have had the advantage of hearing the owner himself, Mr. Barwick, and that gentleman has told us, that when he engaged the master he directed him to get what money he wanted, and to supply himself with all needful charts and directions, that no limit was placed upon him; and that he fully expected that he had supplied himself with all the charts, not for the Indian seas only but for the Mediterranean, and for any place to which he might be ordered by his owners. He said that when they ordered him to go to Patras he fully expected that the master had on board the necessary charts upon a large scale for those waters, and that he certainly never should have sanctioned his going there without them. So far from objecting to a delay of three or four days he would have ordered him to stay a week sooner than go without them, for, as he truly said, he was risking his insurance.

We think, therefore, that the master had no justification whatever for leaving Port Said, as he did, without proper charts and directions for the waters which he was about to visit. Had he obtained them he would have seen, first, that north of Cape Trepito there is not deep water close up to the coast; secondly, that between the Island of Kaufkalida and the mainland, and indeed for half a mile outside that island, there is a depth only of one fathom of water; and thirdly, that the light on Point Glarenza is visible, not, as he supposed, at only two miles, but at eight miles, and that it is hidden by a projecting headland from vessels approaching from the south. Had he known these facts he would hardly have dared to approach so close to the land as he did, nor would he have attempted to pass between Kaufkalida Island and the mainland, and in all probability this casualty would not have occurred.

And now let us proceed to inquire at what distance the vessel really was from the shore as she ran up the coast after passing Cape Trepito. The master has told us that he was, or thought that he was, at a distance of about two miles, but the facts show that he must have been very much nearer to the shore than this. I should observe that from Cape Trepito to Kaufkalida the coast runs, not exactly in a straight line, but generally in a north and by east half east direction, and as he has told us that his course from Cape Trepito was generally north by east half east, but following the sinuosities of the coast, he would have been about the same distance from the land all the way, until he laid the ship's head N.E. by N. for the purpose of making Glarenza Light. He says that he continued on this latter course for 10 minutes, and as we are told that the ship was going at the rate of from eight to nine knots an hour, she would go about a mile and a half in those 10 minutes, not heading directly for the land, but a point and a half nearer to it than on his previous course. Let us now inquire how much nearer to the land that would bring him. I think we may take it generally that an alteration of one point in a vessel's course will cause a difference of one mile to the right or left in a run of five miles, that is to say, a difference of one fifth of the distance run, and consequently an alteration of one point and a half would give a difference of about $\frac{3}{10}$ ths of the distance run. In the 10 minutes then, during which the vessel was running a mile and a half on a north-east by north course, which was one point and a half to the eastward of her original course, she would make about $\frac{3}{20}$ ths, or a little less than half a mile of easting. Now the vessel grounded less than half a mile from the mainland; before, therefore, her course was altered to N.E. by N., and when she was running parallel to the coast, she must have been not two miles, as the master supposed, but less than one mile from the land. These calculations may appear to be somewhat minute, but they show either that the vessel in coming up the coast was too close to the land, or that the master, when he altered his course to north-east and by north, stood on that course for a much longer time than he has stated. But be this as it may, the fact remains, that when he first sighted Kaufkalida Island, it was, as the master has told us, two points on his port bow, and that consequently at that time he must have been within less than half a mile from the shore.

It was said, however, as an excuse for the master, that at night it is very difficult to judge of the distance from the shore, especially when it is a bold coast. But if so, it was the more incumbent upon him, ignorant as he was of the depth of the water, to have exercised greater care and caution in approaching Glarenza Point. If there was a

chance of his not knowing at what distance he was from the land, and if he had no proper charts on board to show him the depth of water along the coast, it was his bounden duty to have taken extra precautions against his running aground. A cast of the lead would have shown him that there were not 66 fathoms, as he seems to have thought, close up to the shore.

It appears to us also utterly inconceivable that the master should have imagined, when he first saw the ripple on his port bow, that it came from the Montagne Rocks, seeing that the Montagne Rocks are at a distance from the land of between six and seven miles, whereas when he first observed the ripple he was inside of Kaufkalida Island, and consequently less than half a mile from the shore.

And now let us inquire whether the master, when he observed this island two points on his port bow, was justified in continuing his course full speed ahead, so as to pass between it and the mainland. And we think most certainly that he was not. He knew, as he has admitted, that they were not the Montagne Rocks, and if he had thought at all about it, he must have known that it was an island lying off the mainland, and that it was very doubtful whether there would be a passage between it and the mainland. To risk the safety of the ship and the lives of those on board under such circumstances seems to us the next thing to madness. Assuming that he was already too close to the land to pass outside of it, he might at any rate have stopped his engines at once, and put them full speed astern. The explanation which he has offered for not doing this, namely, that his screw being right-handed the vessel's stern would, if he had backed the engines, have been slewed round, and she would have gone stern foremost on to the island, seems to be almost an insult to our common sense, seeing that the island was, as we are told, when first seen, something like 250 yards distant, and two points on the port bow. Even, however, if there had not been time wholly to stop the vessel's way, so as to prevent her touching the bank, the speed would have been so much diminished that she would probably have gone off again without much difficulty. Instead of this, however, he keeps her going ahead full speed until she is brought up by striking the ground. We think that his conduct in this respect was very unseamanlike.

Again, as regards the speed of the vessel, the master has told us that she was going between eight and nine knots an hour, but this seems hardly consistent with the facts that at a quarter past midnight Cape Katakolo bore south-east and by east half east, distant five miles. Now the master has admitted that from that point until she got abreast of Cape Trepito the vessel would have to run about 13 miles, and from Cape Trepito to the place where she grounded is about six miles and a half, or a total of about 19 miles and a half. Now all the witnesses agree in stating that the time at which the vessel took the ground was about 20 minutes to 2 o'clock. So that, according to this, the vessel must have run 19 miles and a half in about an hour and a half, or at the rate of about 13 knots an hour, which seems impossible for a vessel of her class, and with engines of only 150 horse-power; and the only way in which we can account for the difference is, by supposing that the observation made a little after midnight was taken in the same careless way in which the navigation of this vessel generally was conducted. But be this as it may, we think that even eight or nine knots an hour was an excessive speed to go at under the circumstances, in waters with which the master was unacquainted, and for which he had neither chart nor directions on board.

Under these circumstances the Board of Trade have charged the master with having "caused or contributed to the stranding of the ship by his wrongful acts or defaults: first, in that he neglected to provide himself with proper charts and sailing directions for the voyage on which he was ordered before leaving Port Said; secondly, in that he neglected to use due and proper care in approaching Cape Glarenza; thirdly, in that he took the said ship too close along a coast with which he was imperfectly acquainted, and for which he was provided with no proper chart, and neglected to use the lead, and further, that he proceeded at a dangerous rate of speed; fourthly, in that, after land was reported on the port bow, he attempted to take his ship at full speed between that land and the shore."

From the remarks which I have already made it is needless to say that we consider that all these charges have been fully proved, and the question which we have to consider is, what, under these circumstances, we ought to do? And here a question of some importance has been raised on behalf of the master, which I must first decide.

The 432nd section, the first section of Part VIII. of the Merchant Shipping Act, 1854, defines certain cases in

which inquiries may be held, these cases being: "Whenever any ship is lost, abandoned, or materially damaged," or when she has caused "loss or material damage to any other ship," or when there has been "loss of life;" and it goes on to provide that the person appointed to hold the inquiry shall report thereon to the Board of Trade. And section 242 of the same Act says that "The Board of Trade may suspend or cancel the certificate of any master or mate, if upon any investigation conducted under the provisions of the VIIIth part of this Act, . . . it is reported that the loss or abandonment of, or serious damage to any ship or loss of life is caused by his wrongful act or default."

Since, then, the power to cancel or suspend the certificate has, by the 23rd section of the Merchant Shipping Act, 1862, been transferred from the Board of Trade to the Court or Tribunal "by which the case is investigated or tried." And by section 32 of the Merchant Shipping Act of 1876 it is provided that an inquiry may be held "Whenever any ship on or near the coasts of the United Kingdom, or any British ship elsewhere has been stranded or damaged," omitting the word "materially," and it goes on to say that "All the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to any such inquiry or investigation, as if it had been made or held under the VIIIth part of the Merchant Shipping Act, 1854."

Now it was contended by Mr. Roche on behalf of the master that on the true construction of these statutes the Court has only power to cancel or suspend an officer's certificate if serious or material damage has been done. It was admitted that we had full power under the Act to inquire into the stranding, and might, if we thought proper, censure the master for any misconduct of which we might deem him guilty, but that the Legislature has given us no authority either to suspend or to cancel his certificate in this case, no material or serious damage having been done to the vessel.

To this it was first objected by Mr. Marsden, on behalf of the Board of Trade, that in this case there had been material or serious damage to the vessel by the jettison of 60 tons of coal. He said that it was not essential that the damage should be to the hull of the vessel; that if, for instance, the masts, sails, or rigging had been injured, that might be a material or serious damage to the vessel; and that as the coals supplied the motive power to this vessel they must be regarded as a portion of her equipment, and that the loss of them would be a material and serious loss. I can quite understand that there might be a case in which the loss of the coal on board a steamer might be a material and serious loss to the vessel; but in this case the vessel is stated to have left Port Said with 200 tons of coal on board; her daily consumption, we are told, was about 11 tons, and consequently the jettison of some 60 tons could hardly be regarded as a serious or material damage within the meaning of the Act. I am bound therefore to consider whether the Acts of Parliament which have been referred to, do give power to the Court to cancel or suspend an officer's certificate in the case of the mere stranding of a vessel, and without any serious or material damage having been done to her.

Under the 432nd section of the Merchant Shipping Act of 1854 the only cases in which inquiries could be held were those in which there had been "loss or abandonment of, or serious damage to any ship or loss of life;" and in all these cases the 242nd section of the same Act gave power to cancel or suspend the officer's certificate. Now one of the objects contemplated by the 32nd section of the Act of 1876 was to extend these inquiries to cases of simple stranding, even though no serious or material damage had been done to the vessel; and it declared that all the provisions of the Merchant Shipping Acts, 1854 to 1876, should apply to any such inquiry, as if it was an inquiry under the Merchant Shipping Act of 1854. The Legislature clearly intended that an inquiry into a case of simple stranding without serious damage should stand in all respects upon precisely the same footing as inquiries under the Act of 1854; and that this is so is obvious from the words of the 29th section of the Act of 1876, which gives the wreck commissioner power to hold an investigation "into a loss, abandonment, damage, or casualty (in this Act called a shipping casualty)," thus ranking them altogether under one name; and it says that the commissioner is to have the same jurisdiction and powers as belong to two justices, and that all the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to inquiries held by a wreck commissioner; and if so, and if all the Merchant Shipping Acts from 1854 to 1876, both inclusive, are to be read together and to be taken as one Act, may it not be said that it was the intention of the Legislature that in every case in which an inquiry is held, whether material damage has or has not been done to the ship, the Court

should have the power, if it thought fit, to suspend or cancel the certificate of the master for misconduct? It being admitted that under the Merchant Shipping Act of 1854 the Court would have the power to cancel or suspend the certificate of an officer in any case in which it could hold an inquiry; and the Legislature having decided that the Court might hold inquiries in other cases than those contemplated in the Act of 1854, and that the inquiries in the new class of cases should be in all respects placed upon exactly the same footing as inquiries in the old class of cases, it seems to follow that the power of suspending or cancelling the certificates, which is one of the powers referred to, applies to the new equally as to the old cases. The question, I admit, is not free from doubt or difficulty, but upon the best consideration which I can give to it at the present moment, and with the desire to carry out what I believe to be the clear intention of the Legislature, that is the conclusion to which I have come. It, therefore, now becomes our duty to consider what, under the circumstances, we ought to do.

It appears that Captain Storey has held a master's certificate since 1869, and has been master of various vessels since 1870. For the first two years and a half he was master of a sailing vessel. After that he made one voyage in a steamer as mate, and then sailed as master of an iron barque for about four years, down to December 1876. In February last he joined the "Ayton," made one voyage in her as second mate, another as chief officer, and in September last was appointed to be her master. He has had good characters given him by his past and present employers for sobriety and efficiency. On the other hand, we cannot shut our eyes to the fact that he has on this occasion been guilty of great negligence and great want of skill and care in the navigation of this vessel. That without any adequate reason he thought proper to leave Port Said without proper charts or directions for the waters which he was about to visit. Although wholly unacquainted with the locality, he thought proper to proceed at full speed along this coast in dangerous proximity to the land, without taking any cast of the lead, and that without

knowing whether there was or was not sufficient water, he attempted to pass between the Kaufkalida Island and the mainland, instead of stopping and reversing his engines, as he ought to have done.

For these wrongful acts and defaults we think that we should not be doing our duty unless we suspended the master's certificate for six months; but we shall at the same time recommend to the Board of Trade that he be allowed a first mate's certificate during the period of his suspension. It will do him no harm to go a voyage under a skilful captain, and thus learn to be less reckless of the lives and property of others. His employer, although strongly disapproving of his conduct on this occasion, has given him a high character for general efficiency, and he may possibly be disposed to employ him for a time in an inferior position to that of master, in which he will be able to show his qualifications for taking a higher command. There seems to be no reason in this case why the master's punishment should be limited to a simple reprimand, and why his certificate should not be suspended. Of course there will be no costs in this case.

Mr. Roche. I have to ask, sir, that the captain's costs be allowed for attending here as a witness.

The Commissioner. It is not denied in this case that the Court has full power to order or not to order costs to be granted. It has been contended that the inquiry before any charge is made is a distinct and separate proceeding from that which follows it, and that the master ought to have his costs for attending the preliminary inquiry. Looking, however, at the rules as they have been sanctioned by the Lord Chancellor, I cannot regard it as other than one and the same proceeding. The evidence given before any charge is made is as available for the subsequent proceedings as any evidence given afterwards. Moreover, I am of opinion, whatever our decision may be in other cases, that this is not one in which the captain is entitled to his costs.

(Signed) H. C. ROTHERY,
Wreck Commissioner.