

(No. 328.)

“KATE KELLOCK.”

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the formal investigation held at the Chancery Court, St. George's Hall, Liverpool, on the 7th, 8th, and 9th days of January 1879, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Commander KNOX, R.N., and Captain WILSON, as Assessors, into the circumstances attending the material damage sustained by the sailing ship “KATE KELLOCK,” of Liverpool, off Cape Horn, on or about the 18th day of June 1878.

Report of Court.

The Court, having carefully inquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons annexed,—

- (1.) That it has not been proved that Charles Ricker, the master of the “Kate Kellock,” proceeded to sea with his boats in a damaged condition.
- (2.) That it has not been shown that proper and seamanlike measures were not taken for saving the ship when she was pooped on the 18th of June 1878 and afterwards.
- (3.) That the master was not justified in allowing his chronometers to run down.
- (4.) That the master did on the 2nd of July 1878, give up charge of his ship to the second mate, and that he was not justified in so doing.
- (5.) That the master was not justified in failing or neglecting to keep the ship's log-book after the 17th of June 1878, the first mate being disabled, and no orders having been given by him to the second mate to do so.
- (6.) That the damage to the said ship was caused by the great severity of the weather, and not by any misconduct or want of skill on the part of the master or other officer of the ship.
- (7.) That the damage to the ship was not occasioned by the wrongful act or default of the master, or of anyone else on board the vessel.

The Court is of opinion that the said Charles Ricker was guilty of gross acts of negligence in having allowed his chronometers to run down, in having given up the charge of his ship to the second mate on the 2nd of July 1878, when she was in the most imminent danger, and in having neglected to keep the log-book properly from and after the 17th of June 1878, but that as none of these acts contributed either directly or indirectly to the casualty in question it has no power to deal with his certificate.

The Court makes no order as to costs.

Dated the 9th day of January 1879.

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

We concur in the above report.

(Signed) HENRY KNOX, Commander, R.N., } Assessors.
 J. P. WILSON, }

Reasons.

The Commissioner.—The “Kate Kellock” is an iron ship belonging to the Port of Liverpool, of the burthen of 1,175 tons, built at Sunderland in the year 1865, and at the time of the casualty which forms the subject of the present inquiry she was the property of Mr. Charles W. Kellock, of Walmer Buildings, Water Street, Liverpool, and two other gentlemen, Mr. Kellock being the managing owner. On Tuesday, the 16th day of April last, she left San Francisco with a cargo of 1,400 to 1,500 tons of grain and flour, and a crew of 26 hands all told, and having on board besides the master's wife and child. She seems to have been in every respect a good vessel, as the result has shown, and we were told that until after the casualty on the 18th of June she had not made any water either on the outward or homeward voyages, I believe the carpenter said not more than an inch and a half. And she had five boats, as to which I shall presently have occasion to speak.

Very soon after leaving San Francisco a leak was discovered in the fore peak, owing to a pipe having given way

close to the ship's side. Fortunately the fore peak was separated from the vessel's hold by a water-tight bulkhead, so that the water did not get to the cargo, but as it was coming in very fast it was deemed expedient to return to San Francisco, where the damages were repaired, and she left again on the 23rd April. From that time all went well until about 2 a.m. of the 18th of June, when she was nearing Cape Horn; it was the chief officer's watch; the vessel was under two lower topsails, close-reefed foresail and foretop staysail, steering south-east and by east, with the wind from the westward, and therefore a little on the starboard quarter. We are also told that she had a hawser towing astern, with both ends on board forming a bight, for the purpose it is said of breaking the sea; but the assessors are unable to see how it could do this, and are inclined to think that such an arrangement was rather injurious than otherwise. At this time a wave broke over her stern, washing the two men away from the wheel, and carrying the chief officer, who was on the quarter deck, into the lee main chains and breaking his leg. All the woodwork of the wheel was carried away, the cabin partly wrecked, the skylights carried away, and the ship then broached to and fell off into the trough of the sea. On the captain coming on deck he ordered the yards to be braced up, but the lower main topsail was immediately blown away. About a couple of hours afterwards another sea struck her, which carried away all her compasses, besides doing other damage, and between that time and soon after daylight the three after boats had been smashed, and the two forward boats carried away. An attempt was made to get her head to wind by paying out a hawser with a piece of wood at the end of it from the bows, but without success, for she continued in the trough of the sea. During the day the main mast went overboard tearing up with it a portion of the deck, and through the hole caused thereby a good deal of water got down into the hold, until the hole had been covered over with tarpaulins securely battened down. Finding that the ship was labouring very heavily, orders were given to cut away the fore and mizen topmasts, and subsequently the lower masts also, and in place thereof a jury mast formed out of a studding sail boom was rigged up. That night the crew were set to work to jettison the cargo, and so heavy was the sea, that the only way to get at the cargo was through the hatch in the fore-castle, in which, I should state, the captain with his wife and child had taken refuge, the habitable portion of the cabin being occupied by the chief officer, whose leg, as I have said, had been broken.

In this state they continued to drift about almost helpless from that time until Tuesday 25th June, when land was observed, and after a time they came to anchor in 37 fathoms under the lee of what proved to be Noir Island. There they remained until the 28th, when the weather having moderated the vessel was got under weigh in the hope of finding a better anchorage, but they soon found that they were again out in the open sea; and whilst endeavouring to get under shelter of some islands to the northward, the wind failed them, and as the weather was coming on thick they were obliged to anchor in a very exposed situation in 37 fathoms, and with 105 fathoms of chain out. There they lay until the 2nd July, when between 2 and 3 o'clock in the morning the port anchor, or the chain by which she was riding, parted. Some discussion then ensued between the master and the second mate, to which I shall presently have occasion to refer; but in the end the chain was slipped, two men were sent to the wheel, sail was made, and she was steered for an opening, the bearings of which had been taken on the previous day, and most fortunately succeeded in getting safely into Melville Sound, and in the afternoon came to an anchor to avoid running on the rocks; so close indeed was she to the rocks that her stern at one time struck upon it, but by shortening the cable they were able to drag her clear.

Finding themselves in this position, completely out of the way of passing vessels, and all their boats lost, the carpenter was set to work to build a new boat. On the 13th July, the weather being moderate, and the wind favourable, the vessel was shifted to the opposite side of the bay, where she lay in a more secure berth. And on the 14th, the new boat having then been finished, Mr. Trim, the second mate, with two A.B.'s, and an apprentice, volunteers, left in her for a place called Puntas Arenas, or Sandy Point, in the Straits of Magellan, for the purpose of obtaining assistance. The voyage was attended with great difficulty and danger, it being midwinter, but it was the only hope of safety for the lives of all on board. After

being out several days they fell in very fortunately, on passing Cape San Isidro, with a steamer called the "Potosi," which took them on board and carried them on to Sandy Point. There they obtained the assistance of a Chilean man-of-war called the "Magellan," with which they returned to the "Kate Kellock," accompanied by the British Vice-Consul, and arrived alongside of her on Sunday 28th July. During their absence the carpenter had been set to work to make other boats, in case the second mate and those who were with him should be lost; and with the assistance of the rest of the crew he had succeeded in finishing one, and partly making another boat. On the following day the "Magellan" took them in tow, and after several days brought her safely to Sandy Point, arriving there on the 3rd August.

A day or two after their arrival the crew were taken on shore to the consul's office, and were asked to sign a protest which had been prepared. What were the contents of that protest we do not know, for it has not been given in; but one and all of the crew, including the second mate and carpenter, refused to sign it. They were thereupon discharged, and on the 6th August were put on board a steamship called the "Illimani" and sent to this country, the captain, his wife and child and the chief officer alone remaining at Sandy Point. There these latter remained until the 21st October last, when the captain gave up charge of the vessel to Captain Stark, the underwriter's agent, who had been sent out from England for the purpose; and they then returned to this country, and as I am informed arrived here only last week. The "Kate Kellock," I presume, is still at Sandy Point.

On the conclusion of the evidence, Mr. Tyndall, on behalf of the Board of Trade, stated that he should ask the opinion of the Court upon the following questions:—

- (1.) Was the master justified in proceeding to sea from San Francisco without having the three damaged boats repaired?
- (2.) Whether, when the ship was pooped on or about the 18th of June, and afterwards, the master took proper and seamanlike measures for saving the ship and the lives on board?
- (3.) Was the master justified in letting the chronometers run down?
- (4.) Did the master, on or about the 2nd day of July, give up charge of the ship to Mr. Trim, the second mate, and if so, was he justified in so doing?
- (5.) Was the master justified in failing or neglecting to keep the ship's log during the time the ship was in distress after the 17th June?
- (6.) Was the damage to the ship and cargo attributable to any misconduct or want of skill on the part of the master or other officer of the ship?
- (7.) Was the damage to the ship occasioned by the wrongful act or default of the master, or of anyone else on board the vessel?

And evidence having been given that this master, although an American citizen, holds a master's certificate issued by the Board of Trade and numbered 98,104, and without which of course he could not have commanded this vessel, Mr. Tyndall asked that this certificate should be dealt with.

The case comes before the Court under somewhat peculiar circumstances, for although we have had the evidence of the second mate, the carpenter, and several of the crew, and although I do not think that I ever before saw a better or smarter set of seamen, or men who have given their evidence in a more clear and straightforward manner, yet we are without the evidence of the two principal persons on board, the master and the chief officer. The absence of the chief officer indeed has been fully explained, he, poor fellow, having had his leg broken at the time the vessel was pooped had had it set, I should imagine not very skilfully, by the carpenter and the master's wife, and he is now nearly six months after the accident lying in the hospital, and we are told to ill too be examined. The master's absence however has not been so satisfactorily accounted for. Mr. Coulson, the assistant receiver of wreck, told us that on Thursday last the 2nd January the master was with him at his office from half-past 3 or 4 till 6 o'clock giving his deposition, on which occasion he was served with a notice of this inquiry. And Mr. Coulson told us that he then informed the master that although the date on which the inquiry would take place was not stated in the notice it would be held on Tuesday the 7th, and that he would have to attend. To this intimation, however, it would seem that the master has paid no attention whatever, for on the officer going on Saturday last to his lodgings for the purpose of serving him with a subpoena to attend as a witness he was informed that the master had gone. Mr. Carr, however, has appeared for him in these proceedings, and has told us that he had been expressly authorised by the mas-

ter to appear for him, in case the solicitor for the owners of the "Kate Kellock" should refuse to do so. And as Mr. Gray Hill, who has appeared for the owners, as well as Mr. Weightman, who has appeared for the underwriters on the ship and cargo, altogether refused to appear for him, Mr. Carr has intimated his intention to do so. Now Mr. Carr has explained the master's absence by saying that he had gone to Havre, on account of the illness of his wife, to attend upon her, and that he (Mr. Carr) had telegraphed to him for instructions, but had received no answer from him. This occurred on Tuesday last, on the opening of the inquiry. Yesterday Mr. Carr told us that he had received no answer from the master, but stated that he was ready to proceed with the cross-examination of the witnesses, and at the conclusion of the evidence, and on the charges being given in by Mr. Tyndall, he asked that the case might be adjourned until to-day at 12 o'clock for the purpose of enabling him again to telegraph to the master, and to receive his instructions, and to that application I assented. Mr. Carr has now appeared again to-day, and has told us that he had not received any answer to his telegram, but that he was quite prepared to proceed with the case, and did not ask for any further adjournment.

A preliminary objection was then taken by Mr. Carr that the paper of questions given by Mr. Tyndall contained nothing which his client was called upon to answer, and that it contained no charge. I am, however, disposed to think that it does contain a good deal which the captain is called upon to answer. I think that the statements that he left San Francisco with three of his boats damaged, that he allowed the chronometers to run down, that he gave up charge of the vessel to the second officer, and that when the chief officer was disabled he failed to see that the log was properly kept up, are all matters which do undoubtedly call for an answer from the master. It is also, in my opinion, equally clear that the paper tendered by Mr. Tyndall does contain a charge against the master. Mr. Tyndall has asked that the master's certificate shall be dealt with; that is to say, shall be either cancelled or suspended, as the Court should think proper, which is a clear intimation that in the opinion of the Board of Trade the master has been guilty of misconduct in the matters specified in these questions, and it is a sufficient notice to him of the acts of misconduct with which he is charged, sufficient at all events to give him, in the terms of the Act of Parliament, "an opportunity of making a defence."

Mr. Carr further contended that even if all these questions were answered adversely to the master, inasmuch as they were not the cause of the casualty, the Court has no authority to inquire into them at all, or to report whether the master has or has not been guilty of any misconduct in these respects, and he referred us to the case of *ex parte Storey* as an authority for that position. But as I read that case, the only point decided by the Court of Queen's Bench was, whether this Court had power to cancel or suspend the certificate of a master by whose misconduct the ship had been stranded, but without sustaining any serious or material damage, and the Court of Queen's Bench held that it had not. But in this case there has been material, nay, most serious damage; it is therefore a case in which, under the 432nd section of the Merchant Shipping Act of 1854, this Court has power to inquire, and having done so, the Court is bound, in the words of the 433rd section of that Act, "at the conclusion of the case "to send a report of their or his opinion thereon, accompanied by such a report of or extracts from the evidence, "and such observations, if any, as they or he may think "fit." Whether we may go on and cancel or suspend the master's certificate for acts of misconduct, even though those acts may not have caused the casualty, is another and a totally different question, as to which I shall presently have a word to say. All that I am now contending for is, that there having been material damage, this is a case in which we are entitled to inquire, and having done so we are bound to report to the Board of Trade as to all the attendant circumstances, and as to the acts of the master and officers, and whether those acts have or have not contributed to the casualty.

Now the first question upon which our opinion has been asked is, whether the master was justified in proceeding to sea from San Francisco without having had the three damaged boats repaired? No doubt those three boats were damaged in rounding Cape Horn on the outward voyage, for there is an entry to that effect in the log-book, under date of the 14th of November 1877; but the question is, whether or not they were subsequently repaired? If they were not, no doubt the master would be much to blame, for he is responsible for seeing that the boats are in proper condition. But the carpenter's evidence on this point was not altogether satisfactory. In the first place, in giving his evidence he showed a strong animus against

the master, which, although it might not compel us altogether to disbelieve his evidence, would induce us to look at it very narrowly. Moreover, he is not confirmed by any of the crew as to the state of these boats; they could not say anything about them. When again he was asked why he had not repaired them, he first told us that he had not any stuff on board, then he said that he had had no orders from the captain to do so, and lastly he told us that although on getting to San Francisco some stuff was obtained for the purpose, the captain said to him on his asking whether he should repair them, "What is the use of repairing them; perhaps they will get smashed in a gale off the Cape;" and so, he added, "I did not mend them." Now it seems to us very unlikely that any captain would have told his carpenter when three of his boats were smashed that it was not necessary to repair them because possibly in rounding the Cape they might be damaged again. At all events it is a most improbable statement. Moreover, if the carpenter had materials on board, as it is clear he had when he was at San Francisco, it was his duty to have repaired them if he had had time, and that he had plenty of time is clear from the fact that the ship remained at San Francisco for three months, and that they were two months from San Francisco before this accident happened. He was also quite competent to do so, for in about 11 or 12 days he was able to make the boat with which the second mate went to Puntas Arenas, and in the next 14 days, before the steamer came to them, he had succeeded, with the assistance of the crew, in building a second, and was well on with a third boat. We think, therefore, that the statement that those boats were damaged when they left San Francisco, resting as it does on the unsupported statement of the carpenter, has hardly been proved to our satisfaction, at all events to the extent of our saying that the captain has been guilty of negligence in this respect.

The second question upon which our opinion has been asked is, whether, when the ship was pooped on or about the 18th June and afterwards, the master took proper and seamanlike measures for saving the ship and the lives on board? This resolves itself into two questions, first, who gave the orders? and secondly, were they proper orders? Now according to the second mate the whole responsibility, and the whole management of the vessel rested with him; he gave all the orders, he said, because they could get nothing out of the master. And no doubt, to a certain extent, he is confirmed by the carpenter and the rest of the crew. So far as they knew, the orders came from the second mate, but whether they had been previously given to him by the master, they of course could not say. Mr. Carr told us that the captain was not a blustering kind of fellow going about the deck, and that he probably gave his orders through the second mate in a quiet gentlemanly way; and that he may have done so is to a certain extent clear, for when the second mate was pressed upon the point he admitted that a great many of the orders had emanated from the master. In the first place the orders to brace the yards up were given by the master, so also were the orders to cut away the masts. As to rigging a jury mast, the mate would not undertake to say that it was not the master who had given that order. The mate too has admitted that, except during the few hours when the vessel was given up to his charge on the 2nd of July, as to which I shall presently speak, the ship remained under the master's charge. No doubt the master did not appear to the crew to take that special interest in the management of his ship which under the circumstances might reasonably be expected of him; but except for the short time to which I have referred, there is no evidence to show that he did not continue to retain the command of his ship. But whether this be so or not, let us next proceed to inquire whether the orders that were given were proper and reasonable orders; for if so, and even assuming that they emanated from the second mate, if the master saw that they were proper and reasonable orders, there could have been no reason why he should have interfered. Now the second mate has not ventured to say that anything was done which ought not to have been done, or that anything more could have been done than was done; except he said that he thinks he should have set the reefed upper main topsail. But upon that the assessors do not agree with him; they think that if an attempt had been made to set that reefed upper main topsail in the state in which the main mast was it would have been attended with very great danger to the men engaged, and that it would not have been a proper step to take. There is, therefore, nothing whatever to show that the orders that were given were not proper orders, and nothing to show that, except during the short time of which I have spoken on the 2nd of July, the master had not the full charge and command of this vessel.

The third question upon which our opinion is asked is,

whether the master was justified in letting the chronometers run down? To this there can of course be but one answer, if the master from negligence allowed his chronometers to run down, he is of course very greatly to blame. As the evidence now stands the chronometers had been allowed to run down before the vessel was pooped, they were therefore not put out of order on that occasion. Now if there is any explanation to offer upon this point the master has not thought fit to come forward and give it, nor has his advocate offered any suggestion to account for their having run down. As the matter then stands at present, we have no option but to hold that the master has been guilty of great negligence for having allowed his chronometers to run down.

The fourth question on which our opinion is asked is, whether the master on or about the 2nd July gave up charge of the ship to Mr. Trim, the second mate, and if so, was he justified in so doing? Mr. Trim told us that when the port anchor parted they were in a very exposed situation, within three-quarters of a mile of a reef of rocks, on which the wind was setting them, that on seeing that they had parted he immediately called the master, and on his coming on deck the following conversation passed between them. "I asked him," says Mr. Trim, "what he was going to do with the ship, he said he could do nothing, we are lost, that was his answer. I told him I thought we had better try to do something, the ship was then dragging her port chain, she was dragging towards a reef of rocks, which was about three-quarters of a mile distant under our lee. I tried to get an order out of him, but I could get nothing. I asked him if I should do anything, and he said yes, and that he should go and pray with his wife. I then sent for the carpenter, and ordered him to slip the chain. I then asked for volunteers to go to the helm, and I got two men, and I told them to lash themselves first and then put the helm hard-a-port and keep her dead before the wind, until I gave them other orders. There was a spare compass in the cabin, and having consulted it I put her on a course N.E. by E. $\frac{1}{2}$ E., for I had observed that there was a small opening between the islands in that direction. I had on the previous day taken the bearings of it, and had called the master's attention to it, and told him that it would be well to take the bearings of it in case we parted, but he had said that if the ship parted then she would be lost. We succeeded in getting round the point, and continued going ahead, but could find no bottom. In the afternoon I came to an anchor in 37 fathoms. I did not know what time it was, as there was no clock going, we had two chronometers in the ship, but they were both run down. I never knew it till after they were run down." He also said, "when we came to anchor, I said to the captain, Captain Ricker there is your ship, take charge of her. I forget whether he said anything in reply, but he seemed very much ashamed of himself." This evidence was confirmed by the carpenter, who told us that after the anchor had parted the captain gave up charge to the mate, and that the mate then told him to get his tools ready to unshackle the chain. What passed is thus described by the carpenter, he said, "the second mate was standing by, and said to the captain, 'captain what are you going to do with the ship, and the captain said nothing. Then the second mate said, for God's sake give us some orders to do something to save our lives, but the captain said nothing. Then the second mate asked him a third time, and the captain then said, 'I cannot do nothing, act yourself. The second mate then gave me orders to unshackle the chain and let slip, and he then ordered sail to be made.'" Now if it rested simply on the evidence of the second mate and the carpenter, seeing the very strong animosity which they entertained against the master, and which they took no pains to conceal, we might perhaps have hesitated before placing implicit reliance on them, but their testimony has been fully confirmed by the rest of the crew who have been examined before us, and who have given their evidence in a clear straightforward manner, and apparently without any strong feeling against the master. They told us that as soon as the anchor had parted they all assembled round the master and mate, where they were standing under the brake of the fore-castle, and were waiting to execute any orders which they might receive, that the second mate asked the captain what he was going to do, and they all told us that they heard the captain give up charge of the vessel to the second mate. That a captain should, under the circumstances, have given up the charge of his vessel to the second mate, his first mate being disabled, is almost inconceivable, and yet there can be no doubt whatever of the fact, it is sworn to over and over again, and is not denied.

Let us consider for one moment what the position of this vessel was at the time. In the South American Pilot I

find, when speaking of Noir Island, the following caution: "Between Cape Schomberg on London Isle and Noir Island there are many large reefs, and a great number of detached outlying rocks, which render this part of the coast extremely dangerous and unfit for vessels. No chart could guide them; they must trust to daylight and clear weather, with a good look-out if necessary to enter or leave Barbara Channel." Further on it says: "The large space between Noir Island and Agnes Island is extremely dangerous for shipping, being scattered with rocks, some just awash, some showing themselves several feet above, and others under the water." Then it goes on: "The Milky Way is the name given to the space between Kempe and Noir Islands, as in every part of it rocks are seen just awash or a few feet above the water. On them the sea continually breaks. The 'Beagle' passed inshore of them all close to Fury, Kempe, and Agnes Islands, but no vessel should follow her track, nor is there any probability of its ever being attempted. This part of the coast only requires to be known to be avoided." Lastly, we have a description of Melville Sound, into which this vessel was obliged to run when her anchor parted: "Melville Sound is completely filled with islands, some of which are large, and all are of the most ragged and desolate character." Now I will ask after this whether it is right to say, as Mr. Carr has done, that any Liverpool boatman for 5s. would have undertaken to navigate this vessel from the position in which she was when her anchor parted until she was again brought to anchor, passing, as she must necessarily do, through the Milky Way and between Kempe and Fury Islands, and up into Melville Sound. To us it seems marvellous that she escaped all the dangers to which she was exposed, and it surely demanded that all on board should give their best assistance to save her from what was almost certain destruction, and the captain above all. And yet this man takes this opportunity to go into the forecabin to pray with his wife, leaving the whole charge of the vessel to the second mate, the chief officer at the time being disabled with a broken leg. No doubt the captain has received a good character from his former owners, the Messrs. Grimshaw, but, in our opinion, it weighs nothing against such conduct as this, when the vessel and the lives of all on board were in most imminent peril. It is not as if the second mate was intimately acquainted with the locality; he had never been there before, and knew nothing of the navigation.

The fifth question on which our opinion is asked is, whether the master was justified in failing or neglecting to keep the ship's log during the time the ship was in distress after the 17th June. No doubt it is the duty of the chief officer of every ship to keep the log-book, but the chief officer had been disabled on the 18th, and from that time, therefore, he was unable to keep it. I may observe that I have examined the log-book very carefully, and I find that until the chief officer was disabled it was very well kept, and it makes us regret the more that it has not been possible to produce him as a witness, as his evidence would have been of great value. The chief officer, however, being disabled, it would no doubt ordinarily devolve upon the second officer to discharge his duties, but it would be for the master to inform the second officer that he wished him to do so, for if he undertook the first officer's duties he would also be entitled to the first officer's pay. If, however, the master chooses to retain the second mate in his original position, and to take upon himself the duties of the first officer, there is no reason why he should not do so. Now it is not pretended that the master ever told the second mate that he wished him to undertake the duties of first

officer, and among those duties that of entering up the log. We think, therefore, that the master is responsible for the log not having been properly kept up, as it evidently was not, from and after the 17th June.

The sixth question on which our opinion is asked is, whether the damage to the ship and cargo was attributable to any misconduct or want of skill on the part of the master or other officer of the ship? And the seventh is very like it, namely, whether the damage to the ship was occasioned by the wrongful act or default of the master or of anyone else on board the vessel? Now although the captain has, in our opinion, been guilty of gross misconduct in the management of this vessel we cannot say that there is any one act done by him which can be said to have directly or indirectly caused this casualty. The fact, if it be one, that the boats were in a damaged state in no way conduced to the casualty. The fact, if it be one, that the master gave no orders for the management of the vessel, but left it entirely to the second mate in no way contributed to the casualty; for the orders that were given were, in our opinion, very proper orders, whether they emanated from the master or the second mate. The fact that the master allowed the chronometers to run down did not, in our opinion, in any way conduce to the casualty. The fact, and a most reprehensible fact it is, that the master did on the 2nd July give up charge of the vessel to the second mate, also in no way conduced to the casualty, nor the fact that the master neglected to keep the log or to see that it was properly kept.

How then stands the case? Here is a master guilty of as grave acts of misconduct as any master could commit, and yet none of those acts, so far as we can see, in any way contributed to the casualty, which was due entirely to the extreme severity of the weather, and to the ship having been pooped when the first officer was in command, and, so far as we can see, without any fault on his part. But can we go on to do what the Board of Trade have asked us to do, namely, cancel or suspend this man's certificate? for that it is that we are called upon to do when we are asked to deal with his certificate. I have already stated that I consider that under the 432nd and 433rd sections of the Act of 1854 we are entitled to inquire into the facts of this case, and to report upon them; but can we go on and cancel or suspend the master's certificate? Now there is a section of that same Act to which no reference was made either by Mr. Tyndall or by Mr. Carr, but of which the Court is bound to take cognizance, for it is under that section, if under any, that it has power to deal with this person's certificate. I refer to the 242nd section of the Act of 1854, sub-section 2 of which alone applies to this case. The words are as follows: "If upon any investigation conducted under the provisions contained in the eighth part of this Act it is reported that the loss or abandonment or serious damage to any ship, or loss of life has been caused by his wrongful act or default, then the Court may cancel or suspend his certificate." In this case the master has been guilty of gross acts of negligence, but none of those acts have contributed, so far as we can see, either directly or indirectly, to this casualty, and under the circumstances it appears to me that we have no power whatever to deal with this man's certificate, much as we regret it, and unfit as we believe him to be to hold the position and to discharge the duties of a master.

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

We concur.

(Signed) HENRY KNOX,
Commander, R.N., } Assessors.
" J. P. WILSON, }